

List of Refined Recommendations

Establishment of a specialized Equal Opportunities Tribunal

1 The EOC recommends to the Government the establishment of a specialized Equal Opportunities Tribunal (“EOT”) to replace the District Court as the adjudicating body for discrimination cases, as a new judicial organ in its own right with its own statutory framework, similar to the Lands Tribunal where District Court judges are ex-officio presiding officers;

1.1 That the rules and procedures of the proposed EOT are to apply exclusively to discrimination cases brought under anti-discrimination legislation, displacing the District Court rules; and the proposed EOT will not deal with other issues not arising from anti-discrimination legislation¹ .

1.2 The rules and procedures of the proposed EOT should contain the following features:-

1.2.1 An explicit statement of the objectives and principles of the rules² , and that the rules should be interpreted accordingly, including:

- (i) Ensuring parties are on equal footing with sufficient opportunity to be heard;
- (ii) Dealing with the case in ways which are proportionate to the complexity and importance of the issues;

¹ From the perspective of EOC’s case handling, it is desirable to confine the jurisdiction of the proposed EOT to claims made under the anti-discrimination legislation, but the EOC recognizes that it is in the litigants’ interest to allow the proposed EOT to exercise discretion to expand jurisdiction in appropriate circumstances to also deal with claims that are not made under the anti-discrimination legislation.

² Reference may be made to relevant tribunal rules in the UK, NSW and Canada which contain such explicit statements.

- (iii) Ensuring that the case is dealt with as expeditiously and informally as appropriate;
- 1.2.2 Commencement of proceedings by the use of specific forms, which will guide the parties to set out their case and define the issues in an appropriate manner;
- 1.2.3 Wide general case management powers to manage proceedings (both informally through telephone or case conferences, and by formal hearings), with examples of usual and permissible orders or directions, and also power to investigate and inquire into claims;
- 1.2.4 Have the function of attempting to help the parties to settle amicably and the discretion to refer cases to the EOC for complaint-handling (i.e. investigation and conciliation);
- 1.2.5 Power to call for and have proper regard to a summary of the complaint, setting out the complaint, the response and the outcome of the handling process;
- 1.2.6 Only claims under the anti-discrimination legislation are to be dealt with. Other claims of different nature between the parties should not be entertained by the proposed EOT³ ;
- 1.2.7 Provisions for appeals from the proposed EOT should be consistent with current appeal provisions for appeals from the District Court;
- 1.2.8 Unreasonable refusal to resolve disputes through conciliation or mediation should be made a permissible factor for adverse costs orders;

³ See note 1 above

1.2.9 Apart from the rules themselves, there should be provision of suitable information guides for the public on how to conduct discrimination cases.

1.3 In drafting the rules and procedures of the proposed EOT, consideration is to be given to overseas adjudication systems for discrimination cases, including:-

(i) Rules and procedures of the UK employment tribunals as applicable to discrimination claims;

(ii) Rules and procedures of the Canadian Human Rights Tribunal;

(iii) Rules and procedures of Australian federal and state jurisdictions as applicable to discrimination claims.

1.4 Legal representation in the proposed EOT should be permissible. Provisions for right of audience in the proposed EOT should be consistent with the current provisions for right of audience in relation to proceedings in the District Court under the anti-discrimination ordinance.

Interface between the EOC and the proposed EOT

2 Apart from providing the proposed EOT discretion to refer cases to the EOC (as recommended in paragraph 1.2.4 above), there should be complementary provisions for:-

(i) the EOC to terminate a complaint where the EOC considers that there is no reasonable prospect of settlement by conciliation;

(ii) the EOC to terminate a complaint where the EOC considers that the complaint involves an issue that would be more appropriately dealt with by the proposed EOT;

- (iii) the EOC to provide a summary to the parties and/or the proposed EOT, setting out the complaint, the response and the outcome of the handling process.
