

Anti-Discrimination
Commissioner
Annual Report 2014-15

CELEBRATING DIFFERENCE EMBRACING EQUALITY

30 September 2015

The Honourable Vanessa Goodwin, MP
Attorney-General
Minister for Justice
Parliament House, Hobart

Dear Attorney General

As required by section 10 of the *Anti-Discrimination Act 1998* (Tas), it is my pleasure to present the 16th Annual Report of the Anti-Discrimination Commissioner.

This report covers my activities and those of my office from 1 July 2014 to 30 June 2015. It also provides a summary report of matters dealt with by the Anti-Discrimination Tribunal.

I commend the report to you.

A handwritten signature in blue ink, appearing to read 'Robin Banks', with a large, stylized initial 'R'.

Robin Banks
Anti-Discrimination Commissioner



This Annual Report outlines the activities of the Anti-Discrimination Commissioner and the Office of the Anti-Discrimination Commissioner (OADC) in 2014–15. It provides a summary report on matters dealt with by the Anti-Discrimination Tribunal.

It is also available on the OADC website:
www.antidiscrimination.tas.gov.au

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Publication ISSN: 1832-9772

*Please note, all case studies in this report set out what was alleged by the person making the report or complaint.

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Highlights

- The release of the report, *Treatment of historic criminal records for consensual homosexual sexual activity and related conduct*. The report provided a number of recommendations for the State Government to consider and has been welcomed by the Attorney-General, the Hon Vanessa Goodwin.
- Growing support and engagement by Tasmanian Government agencies, service providers and local government in the national anti-racism strategy, *Racism. It stops with me*, with two major events to witness and celebrate signing onto the campaign and pledge.
- Securing commitment from the Department of Justice to developing a Disability Justice Strategy for Tasmania to identify and address barriers experienced by people with disability participating in the justice system in this State. My office will lead this work in the coming year.
- Significant progress in updating all our brochures and other information materials into a new format that will ensure they are much more accessible and readable.
- Increased delivery of community education to schools, with this increase likely to continue in 2015–16.
- Appointment to and participation in the Ministerial Taskforce on Improved Support for Students Living with a Disability to advise Education Minister, the Hon Jeremy Rockliff. This built on previous work done with the Department of Education's Inclusion Working Group – Disability Focus in 2013–14.
- Implementation of changes to our office processes and structure, particularly in the area of complaint management, following the independent review completed in July 2014.
- Continuing strong performance in the area of complaint management and resolution, with complaints managed in a more timely way with strong rates of resolution.
- The Attorney-General's announcement of changes to the Anti-Discrimination Tribunal and working with the key participants to assist in ensuring as smooth a transition as possible.
- Partnership with A Fairer World to deliver the *Let's Get Together* diversity education program for schools.
- Continuing strong contribution to national and state inquiries relating to discrimination, equal opportunity and human rights, particularly in relation to people with disability, with submissions to the review of the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) and to the Senate Inquiry into violence, abuse and neglect of people with disability in institutional settings.
- Abolition by the State Government of compulsory medical assessments for drivers aged 75 years and over.
- Involvement in the development of improvements to policing and emergency services in diversity including race and multiculturalism, and sexual orientation, gender identity and intersex through participation in ongoing working groups.

The next year and a half will be busy, with plenty of challenges and lots of hard work. But more importantly, it will present new as well as continuing opportunities for me to work with my fantastic team of staff, with the Attorney-General and others in Government, and with the community to progress the achievement of equality of opportunity for all in Tasmania.

Commissioner's overview



I welcome the opportunity to present this 2014–15 annual report on the operation of the *Anti-Discrimination Act 1998* (Tas), with a particular focus on the work of my office.

It has been a year of implementing and bedding down important changes to the office structure and processes. These changes and further changes proposed for implementation in 2015–16 are all being made with a view to improving the way we work with the Tasmanian community to ensure the intent of discrimination law is achieved to the highest level possible.

We have also had our first full reporting period in relation to the new protections provided under the Act covering discrimination on two newly identified grounds: gender identity and intersex and offensive, humiliating, intimidating, insulting and ridiculing conduct of an additional seven attributes: race, age, disability, sexual orientation, lawful sexual activity, gender identity and intersex. We have seen the impact of these changes in relation to the latter protections, with the level of complaints alleging offensive conduct more than doubling since the new protection came into effect.

It has been a strong year for conciliation of complaints, with much greater emphasis on giving the parties an opportunity early in the process to meet and try to find mutually agreeable ways to resolve the complaint. Outcomes achieved in 2014–15 by parties through conciliation ranged from agreements to make modifications to buildings or facilities in 13 cases; to give an apology or acknowledgement in 35 cases; to pay compensation in 31 cases (amounting to over \$1.1 million); to reinstate employment benefits such as accrued leave in six cases; to review and amend policies and procedures in 19 cases; and to ensure training in discrimination and related matters for people within the respondent organisation in 19 cases.

Our capacity to work effectively in the area of conciliation was enhanced by staff receiving training in Statutory Conciliation by the Australian Human Rights Commission. For some this was a refresher, for others it was their first opportunity to access such training. It will be further enhanced with the delivery of training in other approaches such as narrative mediation early in 2015–16.

For many people, the idea of participating in a process of resolving complaints by conciliation is completely alien and the important and time-consuming work done in assisting parties to prepare for conciliation meetings cannot be understated. All of my staff have embraced new approaches to this work enthusiastically and it has borne fruit with very positive feedback from participants about how they were made to feel comfortable and supported in the process of finding solutions to the complaint in which they were involved in.

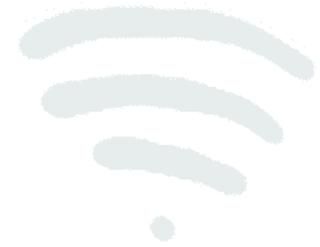
I continued to be an active participant in the Australian Council of Human Rights Authorities and, in the second half of the reporting period, took over the role of Chair. In this role, I look forward to convening our next face-to-face meeting in Hobart in November 2015 and see it as an opportunity to continue important discussions on where discrimination and equal opportunity law could and should be developing in the future.

This report comes at the end of my 5-year term as Commissioner and I was delighted to be advised that in July 2015 I would be re-appointed for a further 18 months. This means the next year and a half will be busy, with plenty of challenges and lots of hard work. But more importantly, it will present new as well as continuing opportunities for me to work with my fantastic team of staff, with the Attorney-General and others in Government, and with the community to progress the achievement of equality of opportunity for all in Tasmania.

A handwritten signature in black ink, appearing to read 'Robin Banks', written over a horizontal line.

Robin Banks
Anti-Discrimination Commissioner

Aims, principles, purpose and values



Purpose of the Anti-Discrimination Commissioner and her office

The Anti-Discrimination Commissioner and her staff seek to work closely with the Tasmanian community in fostering a society free of discrimination, prejudice, bias and prohibited conduct.

Values

The Anti-Discrimination Commissioner and her staff seek to act in accordance with the following values:

- high standards of professional service delivery
- building and fostering relationships with key stakeholders
- ensuring equity: fair and just treatment and seeking fair and just outcomes in complaint-handling processes
- impartiality
- encouraging and affirming participation at all levels
- maximising the potential of individual employees
- encouraging and supporting staff development and multi-skilling

Our guiding principle is:

Celebrating Difference Embracing Equality

Aims and Principles

The Anti-Discrimination Commissioner and her staff envisage a Tasmanian community that recognises all people are entitled to respect, dignity and appreciation for their contributions and in which all are recognised for their diverse abilities and strengths.

The work and practice of the Anti-Discrimination Commissioner and her staff are founded in principles of fairness, recognition, co-operation, cultural diversity, awareness and continued service to the community. Within the Anti-Discrimination Commissioner's office, all staff members continue to provide leadership in the application of these principals.

Change to the Anti-Discrimination Tribunal

On 3 March 2015, the Hon Vanessa Goodwin, Minister for Justice announced that from 1 July 2015 the Anti-Discrimination Tribunal (ADT) would move from being located with the Magistrates Court to be co-located—remaining as a separate tribunal—with the Worker’s Rehabilitation and Compensation Tribunal (WR&CT).

In announcing this change, the Minister stated:

There will be no job losses as a result of this change, no functions of the ADT will be lost, and it is anticipated that the new model will provide a more accessible and less legalistic environment and process than the current Magistrates Court based arrangements.

I publicly supported the transfer, which was also supported by the Chief Magistrate, Michael Hill, the (then) Chair of the ADT, Glenn Hay, and the Chief Commissioner of the WR&CT, Stephen Carey.

While the change means a change to the Chair of the Tribunal and the terms of several Tribunal members ending, a number of Tribunal members will continue and be available to ensure complaints referred to the Tribunal can be dealt with in a timely way. Stephen Carey is now appointed as the Chair, and Andrew Cooper is the Registrar for the Tribunal.

The Department of Justice co-ordinated a working group to assist in ensuring the transition was done smoothly and within the time frame. I was a member of that working group along with representatives of the ADT, the Department of Justice and the Worker’s Rehabilitation and Compensation Tribunal.

Our work included developing a communications strategy, identifying what complaints would remain with existing Tribunal members and the process for transferring the remaining complaints to the new registry. I also provided training on the Act and processes to the newly appointed Chair and Tribunal member along with staff of the registry.

I look forward to working with the Tribunal to ensure the Attorney-General’s stated intention of providing ‘a more accessible and less legalistic environment and process’ is achieved.

Details of the Tribunal’s members in 2014–15 are provided in Appendix C, along with the new contact details and location of the Tribunal.



Review of the Commissioner's office structure and processes

In 2013–14, I engaged an external, independent consultant, Karen Toohey, to review and provide advice on ways in which the structure and processes of my office could be improved, with a particular focus on complaint handling. Karen is the Assistant Commissioner – Dispute Resolution Branch, Office of the Australian Information Commissioner and former CEO and Acting Commissioner of the Victorian Equal Opportunity and Human Rights Commission.

Karen finalised her report and recommendations in July 2014. I want to thank Karen for her willingness to do this work with my office, for her expertise, and for assisting us further by agreeing to Ryan McConville of her office working with us (both remotely and through a 1-week visit to our office) to design and implement significant changes to our case-management system, Resolve.

Following are the recommendations Karen made with the actions we have taken, or response to the recommendation if it has not been implemented.

Recommendation

Actions or response

Issue or area: Complaint handling

The Commissioner recruit/appoint a complaints team leader to oversee the complaint-handling function. The role would have responsibility for ensuring administrative compliance with timeframes, allocation of work, co-ordination of the enquiries roster, and liaison with the Commissioner regarding complaint-handling statistics, trends and issues.

Not implemented due to lack of financial capacity and a view that more of this responsibility should vest in the members of the Complaint team.

The OADC consider undertaking alternative dispute resolution training provided by the Australian Human Rights Commission (AHRC).

Completed in November 2014.

Consideration be given to establishing a mentoring or coaching arrangement to continue to develop the focus on alternative dispute resolution skills through webinar, teleconference. This may be through the AHRC, Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or local alternative dispute resolution or mediation practitioners.

Being undertaken through the engagement of external narrative mediation experts as mentors following mediation training to be completed early in 2015–16.

OADC to undertake investigation training after further review of complaint-handling process to ensure investigation training complements the move to an early resolution model.

Not yet implemented due to focus on other training and implementation and bedding down of a range of changes.

Undertake a review of Resolve workflows to ensure they reflect business process (rather than direct business process) and, where possible, reduce unnecessary step entry and consider the use of *ad hoc* actions.

Review undertaken with assistance from Ryan McConville, Office of the Australian Information Commissioner, and significant redesign completed on workflows. These are yet to be fully user tested and implemented.

Further review of file management process to identify reasons for the high workload associated with file management.

Significant changes have resulted to file management workload through changes in the administration and record keeping. These have reduced and streamlined work. The amended Resolve workflows, when implemented, should further streamline file management practices.

Consideration be given to transitioning over time to full utilisation of Resolve and TRIM for electronic file management. The Commissioner could consider reviewing implementation of full and partial electronic file management in comparable agencies such VEOHRC and AHRC.

On hold due to extent of other changes being implemented.

The OADC utilise complaint-handling case conference meetings to discuss approaches to alternative dispute resolution.

In place and providing benefits.

Issue or area: Legal officer

The OADC consider an additional role, or converting an existing role to a legal officer role who would be responsible for specific legal work, including interventions, exemption applications, own-motion investigations, legal support and other advice to support other OADC functions (such as law reform and policy, and education and training).

Not implemented due to lack of financial capacity and desire to ensure all Complaint team members maintain a diversity of expertise and have the opportunity to perform different work tasks.

Issue or area: Training, education and development

OADC consider recruiting a part-time administrative support/communications officer to support the work of the Training Education and Development team.

Not implemented in this form due to lack of financial capacity. The Administrative Officer has taken on some of the administrative support functions for this work team.



Recommendation (cont.)

Actions or response (cont.)

Issue or area: Enquiries

Consideration be given to reviewing the makeup and number of staff who share responsibility for responding to public enquiries to further distribute the work and enable a broader range of staff to understand the nature of enquiries being made to the OADC and provide their expertise to the public through that mechanism.

Training scheduled for administrative staff to build on their existing skills to enable them to deal with more of the enquiries received.

System developed and implemented for Training Education and Development to record individual enquiries they deal with through their outreach work.

Implemented.

Issue or area: Administration and record keeping

Given all incoming and outgoing complaint-related mail is generally recorded in Resolve and on a complaint file, consider ceasing to record incoming and outgoing mail in a separate spread sheet.

Implemented.

Review administrative procedures associated with complaint handling to ensure effective use of resources and reduce double handling:

Review done and continuing to identify ways to reduce double handling while maintaining system integrity.

Review Resolve procedures to confirm incoming and outgoing correspondence has an action associated with it and, where appropriate, an ad hoc action to assign correspondence to the Commissioner for her consideration.

Implemented.

Commissioner to consider whether she needs to review all incoming and outgoing complaint correspondence.

Done and Commissioner copied into Resolve action for incoming correspondence and therefore able to consider which, if any, correspondence requires her attention.

OADC to consider whether Investigation and Conciliation Officers manage their own correspondence, eg, copying, posting, e-mailing, etc, to reduce the overall administrative load created by distributing those tasks.

Implemented in part, with system redesigned to ensure all complaint correspondence is accurately recorded and there is no risk of correspondence being overlooked due to staff absences.

OADC to consider whether e-mail correspondence can be sent from staff e-mail addresses to reduce the administrative load in forwarding mail to and from the enquiries address and the distribution of correspondence by administrative staff.

Not implemented due to concerns about impact of staff absences on complaint correspondence being actioned.

Issue or area: Statistics and reporting

The Commissioner review the annual report reporting requirements and consider aligning OADC reporting with other agencies

Implemented.

Policy work

Introduction

Under section 6 of the *Anti-Discrimination Act 1998* Tasmania's Anti-Discrimination Commissioner has responsibility for a diverse range of functions.

Relevant to the area of policy work are the following functions:

- Advising and making recommendations to the Minister on matters related to discrimination and related conduct;
- Promoting recognition and approval of acceptable attitudes, acts and practices relating to discrimination and related conduct;
- Consulting and inquiring into discrimination and prohibited conduct and the effects of that conduct;
- Undertaking research and educational programs to promote attitudes, acts and practices against discrimination and related conduct; and
- Examining any legislation and reporting to the Minister as to whether it is discriminatory or not.

These functions are fulfilled through policy work done in response to formal State and Federal Government and other inquiries as well as through our identification of issues that are creating a systemic barrier to people experiencing equality of opportunity.

Policy projects

Treatment of historic criminal records for consensual homosexual sexual activity and related conduct

For some Tasmanians, the legacy of an era when homosexual acts were unlawful remains with them today as a reminder of their treatment before male homosexuality was decriminalised in 1997.

In 2013–14, my office began work on identifying the impact historic criminal records for consensual homosexual activity has had on those who may be affected and to identify strategies for addressing the ongoing discrimination this creates.

In April 2015, I provided my report to the Attorney-General, the Hon Vanessa Goodwin MLC, on the *Treatment of historic criminal records for consensual homosexual sexual activity and related conduct*.

In the report, I made a number of recommendations on strategies to enable historic criminal and related records to be expunged. This included a recommendation for the establishment of a dedicated scheme overseen by the Anti-Discrimination Commissioner to assess relevant records and recommend the expunction of references to certain actions taken against them and certain offences. These would be actions and offences arising from consensual sexual activity in situations where the applicant would not have been dealt with by police but for the fact they were suspected of engaging in sexual activity of a homosexual nature. It would also deal with actions and offences arising because of perceptions about their sexual orientation or gender identity.

The impact of expunging historic criminal and related records would be to restore all legal rights to the person with the record as if the record had not been made. It would also give the person the right not to disclose the content of the expunged records under all circumstances.

Implementation of the recommendations of the report will bring Tasmania into line with other jurisdictions that have moved to address this issue.

The report is available online at http://www.antidiscrimination.tas.gov.au/policy_legal_submissions



Protecting the rights of intersex people

My office has continued to be involved in promoting awareness of the protections provided under discrimination law to people with an intersex variation.

As a result of genetic, chromosomal or hormonal variations, some people may possess both male and female biological attributes. This is a biological state that exists at birth but may not become apparent until later in life.

Intersex is not a sexual orientation or a gender identity. People with intersex variations may be heterosexual, bi-sexual or same-sex attracted, just like all other people. They may identify with the gender they were brought up as, they may identify as a different gender or they may reject gender labels.

Issues intersex people raise often relate to the way in which they are dealt with in the health care system, principally through pressure to conform to male or female sex and gender norms. This is often experienced as pressure to undergo surgical or other interventions that can have lifelong impact.

The situation facing children who are born with intersex variations is now recognised internationally as a human rights issue and my office has continued to raise awareness of these issues in its work this year.

Access to justice for people with disability

In August 2014, the Australian Law Reform Commission (ALRC) released its final report into the laws and legal frameworks within the Commonwealth jurisdiction that deny or diminish equal recognition of people with disability before the law. The principal focus of the inquiry was about ensuring people with disability are able to make decisions for themselves about their lives and the support they receive. The ALRC recommendations centred on principles and guidelines to be applied to support decision making and ensure the experiences, views and wishes of people with disability are heard, including as parties and witnesses in court proceedings and other areas of the justice system.

Recommendations made by the ALRC were broadly consistent with the Australian Human Rights Commission (AHRC) report *Equal Before the Law: Towards Disability Justice Strategies*. That report recommended each state and territory develop a Disability Justice Strategy to promote enhanced autonomy and decision making in the justice system.

Consistent with the findings of these reports, the Department of Justice has signalled its intention to develop a Disability Justice Strategy for Tasmania to

address any remaining barriers to people with disability participating in the justice system in this State. I and my office will be leading that work.

Whilst the core of this work will be undertaken in the forthcoming financial year, my office has been doing preparatory work in 2014–15 to plan and identify the scope of the project.

It is intended the work on a Disability Justice Strategy for Tasmania will be completed by the end of 2016.

Bullying and harassment

Bullying is a complex social problem that is experienced in many different ways. It includes behaviour that is abusive, offensive, intimidating, ridiculing and offensive. Bullying behaviour is not confined to any particular demographic, age or social group. However, behaviour of this sort that targets people because of particular personal characteristics (attributes) protected under the *Anti-Discrimination Act 1998* is unlawful.

For some time now, my office has been working with various authorities to address bullying. This has involved making representations to Parliamentary inquiries into bullying. In 2012, my office made a submission to the House of Representatives Standing Committee Inquiry into Workplace Bullying. That Inquiry led to new protections being introduced into the *Fair Work Act 2009* (Cth). Those protections allow workers who have been bullied to apply to the Fair Work Commission to seek an order for the behaviour to stop. We have also worked with WorkSafe Tasmania and the WorkCover Tasmania Board to implement strategies to reduce the prevalence of workplace bullying in Tasmanian workplaces.

My office has also been consulted by a broad range of stakeholders seeking information and assistance on best-practice approaches to addressing bullying within their organisations. This has included, for example, the Royal Australasian College of Surgeons and a large number of Tasmanian workplaces.

In June 2014, the Attorney-General asked the Tasmanian Law Reform Institute (TLRI) to examine Tasmania's existing legal framework and make recommendations for how these may be enhanced. The TLRI released a discussion paper in May 2015 and my office is currently in the process of developing a comprehensive response to the paper.

It is expected that this issue will continue to be a focus of our work in the 2015–16 reporting period.

Exemption for religious schools

On 2 June 2015, the Tasmanian Parliament passed amendments to the *Anti-Discrimination Act 1998*. This amendment Bill repealed the provisions that allowed the Commissioner to grant an exemption in relation to admission to a faith-based school in certain circumstances. Those provisions had been added to the Act in January 2014. The amendment Bill replaced the exemption provisions with an exception relating to the admission of students to an education institution on the basis of religious belief, religious affiliation or religious activity.

The effect of the exception is to provide religious schools with a defence to a complaint of religious belief, affiliation or activity discrimination made by a person wishing to attend the school. The exception does not apply to the enrolment of existing students and does not permit discrimination on the basis of other attributes such as race, disability, sexual orientation or relationship status.

My office will have an ongoing role in monitoring the effect of the new provision and in supporting faith-based schools to understand their obligations in relation to prevention of discrimination and provision of inclusive education. This may include working with schools to identify the policies and procedures they need to have in place if they are hoping to rely on the exception. As with other exceptions under the Act, if a complaint of discrimination is made, the educational institution will be required to prove the exception applies in the circumstances.

Medical assessments for older drivers

In October 2014, I welcomed the announcement that annual medical assessments for drivers aged 75 years and older without a medical condition are to be abolished.

The requirement that drivers undergo a mandatory annual medical assessment simply on the basis of their age is an issue that has been of concern to me and previous Commissioners for a number of years.

Maintaining a driver's license is very important to many older people as a means of maintaining social networks and continuing their active involvement in the community. The shift to undertaking assessments based on the disclosure of a relevant medical condition, regardless of age, is a less discriminatory and more focused way to determine whether a driver remains fit to drive and does not penalise older people simply because of their age.

The change to the system was the final measure announced by the Government in response to a 2008 report prepared by the previous Commissioner, Sarah Bolt. That report also recommended the phase out of mandatory on-road assessments of drivers aged 85 years and older. That change was implemented in 2011.

Case study *

Discrimination on the grounds of 'imputed' disability

Discrimination can be against the law not only when it is on the basis of an actual attribute a person has, but also when it is the basis of an 'imputed' prescribed attribute. This can happen if a person believes or assumes another person has a prescribed attribute, and then discriminates against them because of that belief or assumption.

A person complained to a more senior staff member about being bullied by his supervisor.

The manager formed the view that the person making the complaint had a disability in the form of a psychiatric disorder, and dealt with the complaint on that basis. The person who complained eventually became ill because of the way the work situation was being dealt with by the employer and senior staff.

The person made a complaint to the Anti-Discrimination Commissioner and a worker's compensation claim. Both the complaint and the claim were resolved together through negotiation with the employer agreeing to pay compensation of \$175 000 for hurt and distress caused by the alleged conduct.

**Please note, all case studies in this report set out what was alleged by the person making the report or complaint.*

Input and submissions to inquiries

Review of Disability (Access to Premises - Building) Standards

In April 2015, the Department of Industry and Science commenced a review of the *Disability (Access to Premises – Building) Standards 2010* (Premises Standards). The Premises Standards, which came into effect in May 2011, are aimed at providing people with disability with equitable and dignified access to public buildings.

Access to the built environment is critical in enabling the increased participation in employment and other areas of community life for people with disability. It becomes increasingly important as Australia's population ages and new initiatives such as the National Disability Insurance Scheme facilitate greater inclusion of people with disability in social, economic, sporting and cultural life.

It is important that the regulation of building standards keep pace with the demands of people with disability and that the construction of new facilities and the conversion of existing buildings represent attain the best possible standards in accessibility.

My response to the review sought assurances that any amendments to the Standards be considered by a working group of federal and state discrimination bodies, the building industry, state and territory regulators and people with disability as was the case for the negotiation of issues during the final stages of the development of the initial standards.

The review is due to be completed by May 2016.

The submission is available online at http://www.antidiscrimination.tas.gov.au/policy_legal_submissions

Senate inquiry into violence, abuse and neglect of people with disability in institutional settings

In February 2015, the Senate referred the issue of violence, abuse and neglect against people with disability in institutional and residential settings to the Senate Community Affairs References Committee for inquiry and report.

Information available to me suggests that people with disability are much more susceptible to violence and abuse than the rest of the population and that in many instances this abuse is not appropriately addressed.

The closed nature of large institutional and residential facilities presents particular risks and those living in such facilities may be reluctant to report abuse because of fear and victimisation. In addition, there is less likelihood that protocols for reporting and investigating such abuses are strictly followed.

My submission to the review suggested that a robust, independent, human-rights oriented complaints mechanism be established to handle complaints about disability service provision and that arrangements for independent monitoring and oversight of institutions providing services to people with disability be improved. This included a call for the appointment of an independent Disability Services Complaints Commissioner and the establishment of an Official Visitors program modelled on similar services available to mental health patients and prisoners.

The Committee is due to issue its final report in September 2015.

The submission is available online at http://www.antidiscrimination.tas.gov.au/policy_legal_submissions



Participation in working groups

Tasmanian Women's Plan 2013–2018 Working Group

My office has continued to participate in the development and implementation of the Tasmanian Government's *Tasmanian Women's Plan 2013–2018*. The Plan sets out actions to promote gender equality and promote the equal participation of males and females in all areas of public life.

In 2014–15, a key focus of this work was to increase understanding within the Tasmanian community regarding flexible working arrangements, including the legal obligations of employers.

A key recommendation of the Australian Human Rights Commission 2014 Report into its *Pregnancy and Return to Work National Review* was the need for improved information to both employers and employees on their obligations and rights to parental leave and workplace flexibility. This recommendation is consistent with the priority actions identified in the *Tasmanian Women's Plan* to improve awareness of the benefits and legal obligations of providing flexible workplaces.

The focus on this issue arises in part because of the confusion and lack of understanding arising from the intersection of a number of different laws at both state and territory level in relation to pregnancy, parental leave and return to work.

In July 2015, the work of the national Sex Discrimination Commissioner culminated in the release of a new website and online resources to provide information to employers and employees on their legal obligations and entitlements. The website <https://www.supportingworkingparents.gov.au> provides detailed information on state and territory law, including protections available under the Tasmanian *Anti-Discrimination Act 1998* for employees who are pregnant or seeking to take or return from parental leave.

Case study

Disability discrimination

A person with physical disabilities who uses a mobility device complained about being unable to move around a particular business's display at an outdoor event because the ground surface was not suitable for the mobility device. When the business was notified of the complaint, it showed it was keen to resolve the situation. The business did some research into how similar interstate events achieve accessibility and then consulted with the complainant. Together they agreed that for future such events, the business would:

- use specific plastic or rubber matting for the main pathways; and
- compact any wood chips used on other ground surfaces to limit wood chips straying on the pathway.

The business also agreed to meet with the complainant after the next event to discuss the effectiveness of the solution and any further improvements needed and review plans for accessibility of the business's display at future events.

Tasmanian Multicultural Policy

My office has continued to participate in the development and implementation of the multicultural policy in Tasmania. This followed the release of the *Tasmanian Multicultural Policy 2014*. The Policy identifies actions to promote cultural, religious and linguistic diversity in Tasmania. This includes the development of a multicultural access and equity framework and the development of a new cultural competency training package.

The Policy includes a strong commitment to denouncing racism and discrimination in the Tasmanian community and aims to support initiatives that promote an inclusive, respectful and diverse State.

As reported elsewhere, the work that I and my staff are undertaking to promote national initiatives such as the Racism. It Stops with Me campaign in Tasmania and the work with a diverse range of partners such as emergency management services and the Hobart and Launceston City Councils are all important contributions toward increasing tolerance and respect in the Tasmanian community.

Lesbian Gay Bisexual Transgender and Intersex (LGBTI) Strategic Issues in Education Working Group

I continued to participate in this working group chaired by the Secretary of the Department of Education.

The Working Group met twice during the reporting period. Key issues for discussion were the Safe Schools Coalition, access to school nurses, and inclusion of transgender issues, particularly in the *Guidelines for Supporting Sexual and Gender Diversity in Schools and Colleges*. At the October 2014 meeting, we also benefitted from a presentation from Dr Gávi Ansara on transgender and intersex issues and the opportunity to discuss how these issues are of relevance to schools and colleges.

We also reviewed online materials available through the Department of Education's website and in May 2015 relaunched *Talking Out*, a biannual newsletter for Tasmanian schools to celebrate diversity and share information and resources to help build safe, supportive and inclusive schools for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) people. Issues of *Talking Out* are available at: <https://www.education.tas.gov.au/Students/schools-colleges/Pages/LGBTI.aspx>

Lesbian Gay Bisexual Transgender and Intersex (LGBTI)/ Police Strategic Working Group

I continued to participate in this working group chaired by Police Commissioner Darren Hine.

The Working Group met twice during the reporting period. Key issues for discussion were the development of a 'vulnerable person's strategy', internal communications, professional development, the LGBTI Liaison Officer structure and training, and updated information poster and pamphlet.

Members of the Working Group were pleased to be able to participate in a program for the official visit of eight police officials from Hong Kong from 6–10 October 2014. One aspect of Tasmanian policing that the visiting officials were keen to learn about was the work being done by Tasmania Police through and with the Working Group.

I was able to use the Working Group as one of the stakeholder groups invited to contribute to the research into historic criminal records and approaches to removing the continuing negative impact of those records.

Ministerial Taskforce on Improved Support for Students living with a Disability in Tasmania

In May 2014, the Education Minister, the Hon Jeremy Rockliff, established the Ministerial Taskforce on Improved Support for Students living with a Disability in Tasmania. Its role was to:

...examine current provision and support for students with disability; review evidence based research and provide informed recommendations to improve educational support for these students and their families.

The Taskforce was chaired by Cheryl Larcombe and we had research and executive support from Martin O'Byrne and Marie Gavlik. I was invited by the Minister to be a member of the Taskforce, along with:

- Terry Burke, Chief Executive Officer, Autism Tasmania Inc
- Kylee Davie, parent and community representative
- Kristen Desmond, Tasmanian Disability Education Reform Lobby
- Jenny Eddington, Tasmanian Association of State Schools Organisations Inc
- David Raw, President, Tasmanian Principals' Association Inc, until January 2015, when he was replaced as President by Malcolm Elliott

- Fiona Redgrove, Tascare Society for Children, until July 2014, when she was replaced by Michele Foley
- Jeff Garsed, Australian Education Union
- Bernard Knight, Australian Association of Special Education Inc
- Nadia Ollington, Australasian Society for Intellectual Disability (Inc)
- Gerry Plunkett, community representative

The Taskforce held nine meetings between June 2014 and July 2015. It had the opportunity to hear from:

- Liz Banks and Lynne McDougall, Department of Education, who provided an overview of the Department's inclusive education approach
- Andrea Brumby, Tasmanian Catholic Education Office, who provided an overview of Office's inclusive education approach
- Terese Phillips, Independent Schools Tasmania (IST), who provided an overview of the support IST provides to its members to achieve an inclusive education approach
- Dr Chris Rayner, University of Tasmania, who presented on inclusive education teacher training and professional development
- Bernard Knight, Australian Association of Special Education, who presented on the teacher mentoring program
- David Raw, Tasmanian Principals Association, who presented OECD information on the incidence of special needs in populations
- Jane Bird, Learning Services North West, who provided an overview of inclusive education approach in that area of the state
- Pam Steele-Wareham, National Disability Insurance Agency, who presented on the National Disability Insurance Scheme and the interface with inclusive education

The Taskforce also reviewed relevant research materials and sought submissions from the public through an advertised submission process. In total, 34 submissions were received and reviewed.

Through this work, the Taskforce identified key issues affecting inclusion of students with disability in education in Tasmania and recommended strategies to improve outcomes for these students.

The Taskforce's report to the Minister is available online at: <http://taskforcereport.blogspot.com.au/p/improved-support-for-students-with.html>

Case study

Criminal record discrimination

The Act applies to all applicants for all types of work: volunteer or paid.

The Anti-Discrimination Commissioner received a complaint from a person who had applied to be a volunteer driver for a charity organisation. The applicant had:

- attended interviews for the position;
- taken the organisation's vehicle for a drive so that she could familiarise herself with the vehicle;
- been given a uniform to wear when working for the organisation; and
- attended relevant information sessions.

The organisation also required the applicant to provide it with a copy of her police check. The applicant's police check showed two convictions in the 1970s for drink driving. The applicant had no other convictions.

The organisation told the applicant she could not volunteer with the organisation because of her criminal record.

The Act prohibits discrimination on the basis of an 'irrelevant criminal record'. Tasmania and the Northern Territory are the only parts of Australia that include irrelevant criminal record as a protected attribute in discrimination law.

The Tasmanian Act applies to employment and defines 'employment' to include voluntary employment.

The applicant made a complaint of discrimination on the basis of irrelevant criminal record in employment. The applicant felt her criminal record was irrelevant because of how long ago the convictions had happened. The applicant noted she had not committed any driving-related offences for over 30 years.

The Office of the Anti-Discrimination Commissioner provided information to the organisation about the protection against discrimination on the basis of irrelevant criminal record.

The organisation accepted that the applicant's criminal record was irrelevant. The organisation apologised to the applicant and offered her the position.

Australian Council of Human Rights Authorities

The Australian Council of Human Rights Authorities (ACHRA) is made up of all of the statutory authorities responsible for human rights, discrimination or equal opportunity laws at the federal and state and territory level.

At its face-to-face meeting in Sydney in November 2014, ACHRA focused on issues of common concern and new developments relevant to its members' work. Key matters of concern discussed include the following:

- **Racism:** identifying the broad range of activities being undertaken under the national anti-racism strategy and by state and territory authorities. There was strong recognition of the importance and effectiveness of bystander actions and systemic responses to discrimination.
- **Supporting working parents:** Pregnancy and Return to Work National Review: Of particular interest was the work being done to develop nationally relevant and consistent resources for employers and employees about rights and obligations in relation to pregnancy and return-to-work arrangements.
- **Workers returning to work from injury or illness:** There are consistently high levels of disability discrimination complaints and of those complaints that relate to workplace injury and difficulties experienced on return to work from injury and significant illness. Data was reviewed from different ACHRA members on complaints alleging issues related to return to work, and dismissal or redundancies related to injury or illness. ACHRA identified the need for collaborative research work with workplace safety authorities and to develop better resources for employers on how to make appropriate workplace adjustments, whether permanent or temporary.
- **Disability and equality:** State and Territory authorities provided input to the Australian Disability Discrimination Commissioner on disability trends in complaints and issues identified through other work. All but one authority indicated that disability complaints represent the greatest proportion of complaints received.
- **Education fees for asylum seekers:** ACHRA members have identified a continuing concern about asylum seeker children being charged fees to attend schools in some jurisdictions.
- **International human rights:** The meeting also noted and discussed Australia's 2015 Universal Periodic Review Report submitted to the United Nations Human Rights Council on implementation of human rights in Australia.

At its face-to-face meeting in Sydney in February 2015, ACHRA had considerable focus on the continuing, systemic and serious barriers to equality of opportunity for people with disability across Australia. In the Communiqué from that meeting, ACHRA identified the following issues as requiring urgent and sustained attention:

- barriers to employment and work opportunities, including a failure to implement adjustments;
- barriers to the built environment and, as a result, limits on community participation;
- barriers to justice and equal protection before the law;
- negative attitudes towards people with disability that impact in all areas of life; and
- barriers to education, particularly at the compulsory school level.

At this meeting, ACHRA also discussed:

- respective roles in court and tribunal proceedings to assist with the development of discrimination law;
- a co-ordinated information campaign to assist employees and employers to understand rights and obligations in relation to pregnancy and return to work after parental leave; and
- impacts of institutionalisation and detention on vulnerable people, whether children or adults.

The full communiqués from these meetings are available at: http://www.antidiscrimination.tas.gov.au/news_and_events.

In early 2015, ACHRA wrote to the Federal Government in relation to the review of the *Disability (Access to Premises – Buildings) Standards 2010* (Cth). That letter, among other things, noted the need to ensure that the review had active participation from people with disability and provided opportunities for ACHRA and disability sector input on any draft amendments to be proposed to the Standards as a result of the review.

In May 2015, ACHRA made a joint submission to the Federal Senate Community Affairs Legislation Committee Inquiry into the Social Services Legislation Amendment Bill 2015. ACHRA was invited to give evidence to the Inquiry and I did this on behalf of the Authorities.

This submission is available online at http://www.antidiscrimination.tas.gov.au/policy_legal_submissions.

Other policy work

During the year, my office provided significant input into a number of other government and non-government processes, these included:

- Input to Australian Human Rights Commission submission on Australia's 5th Report on the *Convention on Torture*
- Input to Australia's Periodic Report on the UN *Convention on the Elimination of Racial Discrimination*
- Data to support research on level of complaint by Aboriginal and Torres Strait Islander people and employment-related complaints in the aged-care sector
- Involvement in the 'Hear our Voices' initiative and workshop facilitated by Multicultural Tasmania
- Participation in Age Discrimination Round Table with the Hon Susan Ryan AO
- Participation in Disability Discrimination Round Table with the Hon Susan Ryan AO
- Comment on Births, Deaths and Marriages Amendment Bill
- Input to Australian Human Rights Commission Universal Periodic Review Progress Report 2014
- Input to Australia's 6th Report under the *International Covenant on Civil and Political Rights*
- Input to Launceston Safer Communities Partnership
- Briefing note on the Smoke Free Generation Bill
- Consultation with the Royal Hobart Hospital Redevelopment Rescue Taskforce on the design of proposed facilities for acute mental health in-patients
- Consultation on family violence strategies
- Implementation issues in relation to the Working With Vulnerable People checks
- Input to security guidelines relating to religious and/or cultural head-dress and other clothing

Case study

Complaints on behalf of children

If a person is not able (lacks legal capacity) to make a complaint under the Act (because of their age or disability for example), another person, such as a parent or guardian, can make the complaint on behalf of that person.

If an agreement is reached to resolve a complaint that involves a person who lacks legal capacity, the Act specifies that any agreement reached while the complaint is with the Anti-Discrimination Commissioner must be approved by the Commissioner. This is to protect the rights of people who lack legal capacity. The Commissioner can only grant approval if she considers the agreement reached is satisfactory.

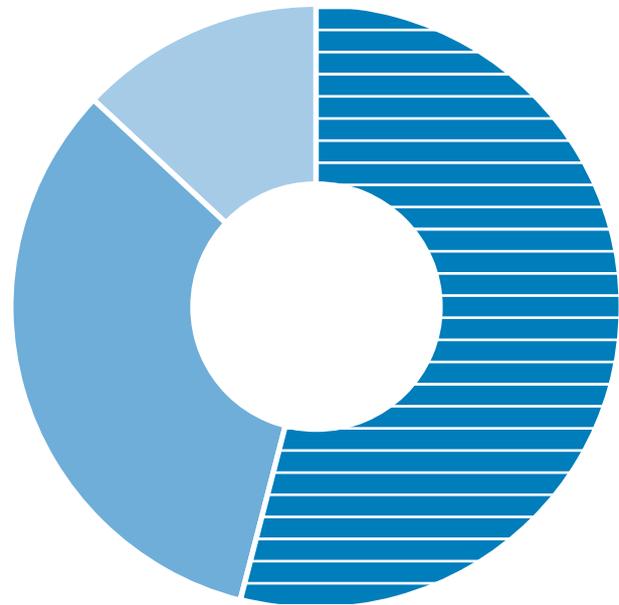
A mother made a complaint on behalf of her child with mental illness, against her child's school. It was alleged the school had expelled the child for reasons associated with his disability.

The child's mother and the school reached an agreement to resolve the complaint that involved a payment of compensation.

The Anti-Discrimination Commissioner reviewed the agreement and determined that the terms were satisfactory. The Commissioner noted, however, that she had concerns about the school's understanding of its obligations in relation to education of students with disabilities and asked the school to meet with her to discuss its policies for students with disability.

The Anti-Discrimination Commissioner approved the agreement reached between the parties and later met with the school to review its policies.

Report it!



Enabling a person to report on incidents of abuse, harassment or discrimination where the identity of the perpetrator is unknown or where an individual has witnessed someone else being treated badly remains an important strategy for my office.

In 2014–15, my office received 24 incident reports under the *Report It!* process.

These incidents varied widely.

The number of incidents reported by women again outnumbered those reported by men.

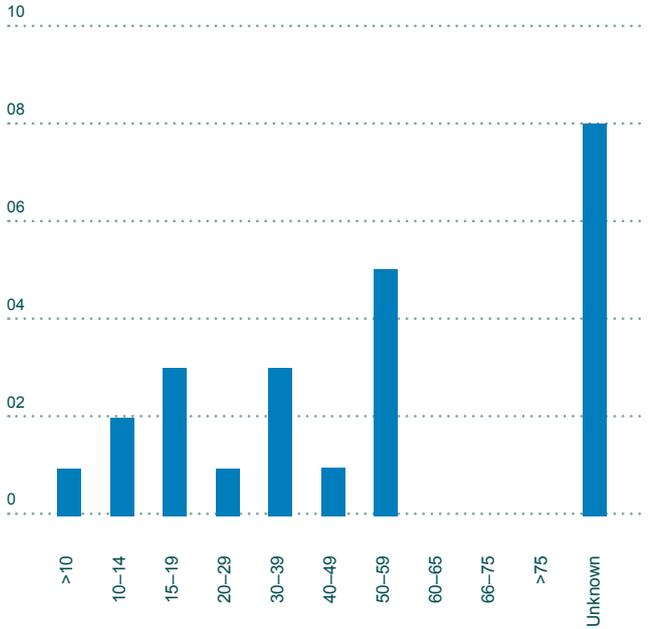
The age range of those subjected to the conduct ranged from the very young (under 10 years of age) through to those over 50 years of age. Reflecting increased reporting by bystanders, the age range of many of those people who were targeted was unknown.

Report It! allows bystanders to report incidents they have witnessed, even if the identity of the person who is targeted by the behaviour or of the perpetrator is unknown. More of the reports received in 2014–15 were made by the person targeted by the behaviour. However, close to half of the reports received were filed by a bystander or witness.

Gender of person targeted

| | |
|--------|-----|
| Female | 54% |
| Male | 33% |
| Other | 13% |





Age of the person who was the target of the incident

| | |
|---------|---|
| >10 | 1 |
| 10-14 | 2 |
| 15-19 | 3 |
| 20-29 | 1 |
| 30-39 | 3 |
| 40-49 | 1 |
| 50-59 | 5 |
| 60-65 | 0 |
| 66-75 | 0 |
| >75 | 0 |
| Unknown | 8 |

Report it! Case studies

M is a single mother with 8 children who came to Australia as a humanitarian entrant from Afghanistan. M reported that whenever she and her children walk past a neighbouring property they are sprayed with water pistols by children in a neighbouring house. Rocks have also been thrown at M's house and her garbage bins have been upturned. On one occasion one of her children was hit in the face and the police were called. The behaviour made M and her children afraid to walk in the neighbourhood. M reported the incident to my office because she considers the behaviour is based on her and her children's race and nationality. M also approached her children's school to help stop further incidents involving her children.

H and her partner were walking along a public street near their house when they came across a poster attached to a wall that was derogatory of her and her partner. She reported the incident, but was unable to identify those responsible. The posters made allegations regarding her physical and mental health and incited hatred against her. H felt frightened, scared and intimidated.

C noticed a poster outside a Hobart hotel with the words 'hump' above a photo of a woman in black lace underwear. The photo did not show the woman's head. It showed the woman sticking out her hip and bottom with the words 'Rump Steak with Rosemary = Wednesday special' implying women are just part of the menu. She reported this as she believed the poster was derogatory toward women and amounted to gender discrimination and sexual harassment.

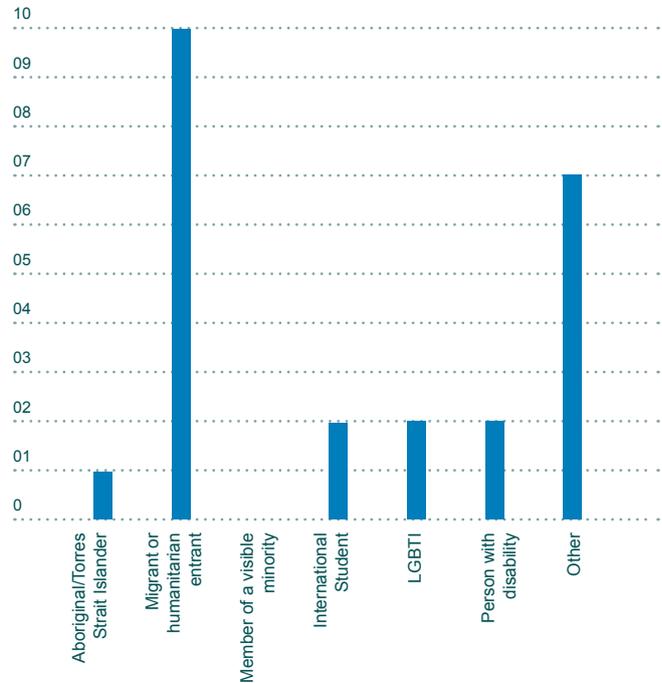
Report it! Case studies

A told the employment agency responsible for arranging her work appointments that she was having hormone treatments as part of a gender-transition program. Upon learning this, her manager asked for medical certificates. A provided these. Despite this, at the time of making the report, it had been 4 months since A had been given any work. A believes the employment agency is trying to circumvent discrimination law, hoping she will quit.

T's roster was changed, denying her time off. During an argument over the change of roster T's supervisor raised the issue of previous leave she had taken due to a miscarriage. T had she used a combination of sick and annual leave at that time as she was unable to perform any heavy duties.

Z and a group of her friends were being video-taped by other students. It is against her culture to have her photo taken, so Z became quite upset. The other students started abusing her and said 'go back to your own country' and then kicked Z's lunch out of her hands. The other students said that they would fight her and started swearing.

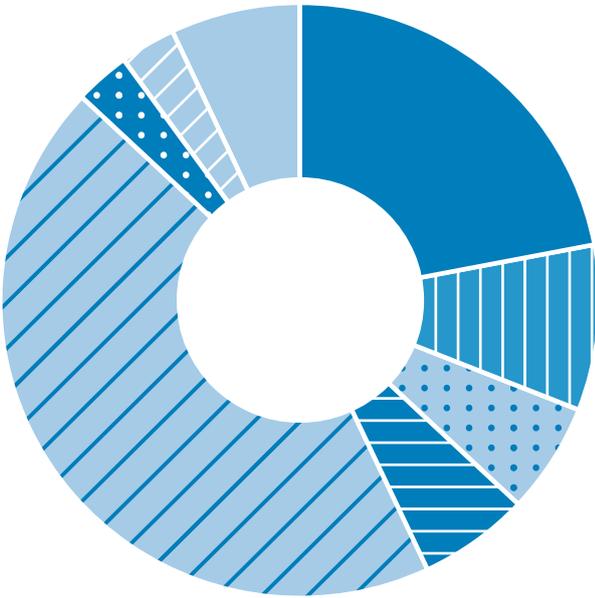
L is an Afghani migrant attending a local high school. L was walking into class and two other students deliberately shouldered her. They did it quite hard and then the girls started swearing at her. L believed that the behaviour happened because of her nationality. She was extremely upset and her teacher reported the incident using the Report It! form. Staff from my office attended the school to deliver anti-discrimination training to all students.



Status of victim

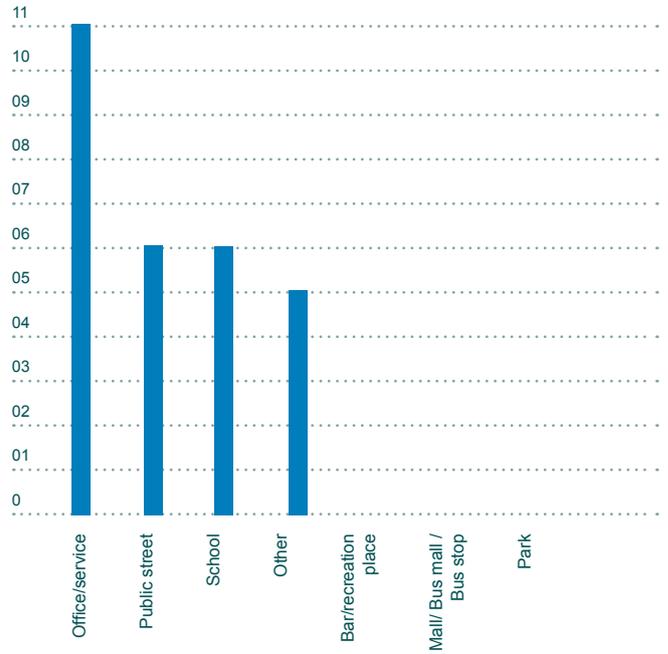
| | |
|-----------------------------------|----|
| Aboriginal/Torres Strait Islander | 1 |
| Migrant or humanitarian entrant | 10 |
| Member of a visible minority | 0 |
| International student | 2 |
| LGBTI* | 2 |
| Person with disability | 2 |
| Other | 7 |

* Lesbian, gay, bisexual, trans, intersex



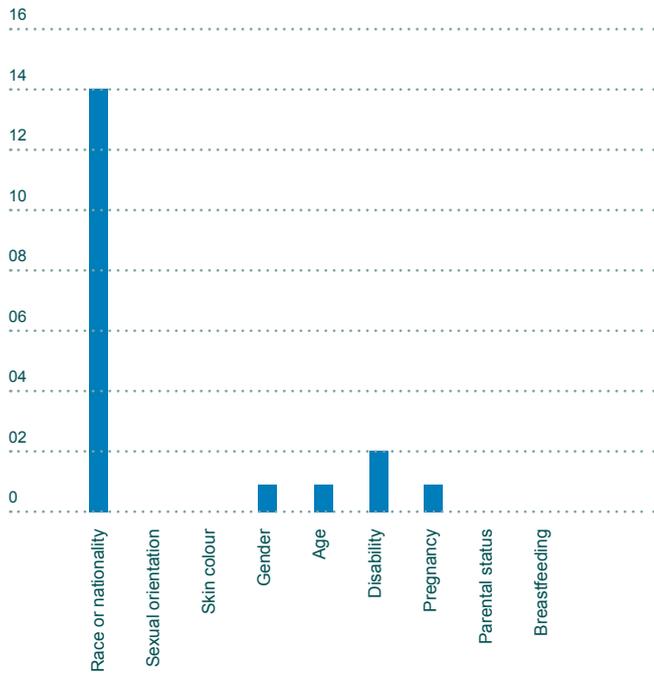
Type of incident

| | |
|-------------------|-----|
| Verbal abuse | 22% |
| Physical assault | 9% |
| Harassment | 6% |
| Intimidation | 6% |
| Discrimination | 44% |
| Incitement | 0% |
| Sexual harassment | 3% |
| Property damage | 3% |
| Other | 6% |



Type of location

| | |
|--------------------------|----|
| Office/ service | 11 |
| Public street | 6 |
| School | 6 |
| Other | 5 |
| Bar/ recreation place | 0 |
| Mall/ Bus mall/ Bus stop | 0 |
| Park | 0 |

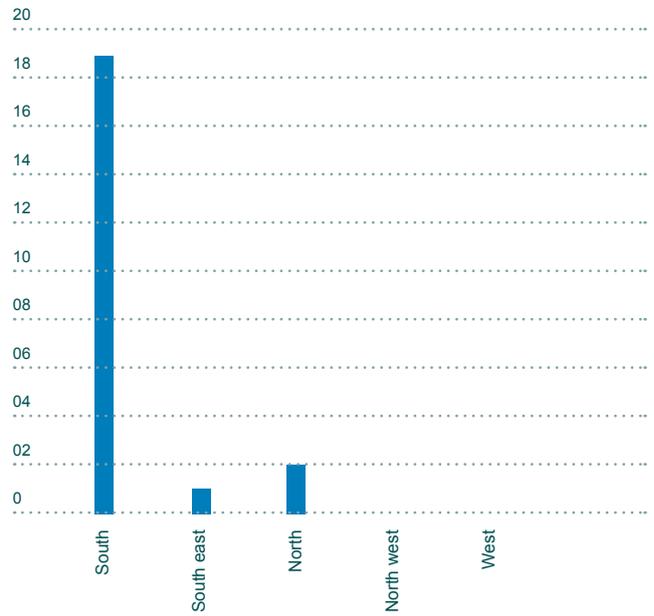


Apparent basis of attack

| | |
|---------------------|----|
| Race or nationality | 14 |
| Sexual orientation | 0 |
| Skin colour | 0 |
| Gender | 1 |
| Age | 1 |
| Disability | 2 |
| Pregnancy | 1 |
| Parental status | 0 |
| Breastfeeding | 0 |

Who made the report

| | |
|-----------------------------|----|
| Reported by targeted person | 13 |
| Reported by other | 11 |



Region in which reported incident happened

| | |
|------------------------|----|
| South (7000–7099) | 19 |
| South east (7100–7199) | 1 |
| North (7200–7299) | 2 |
| North west (7300–7399) | 0 |
| West (7400-) | 0 |

The overwhelming majority of reports received in 2014–15 involved incidents that happened in the southern region of the State, principally in Hobart (11 reports) or in the Glenorchy/Moonah area (6 reports). The two incidents reported in the northern region both happened in Launceston.

Verbal abuse, harassment, intimidation and other forms of discrimination were identified in the reports made to me. Of great concern is report of at least three incidents involving physical assault.

Those who were targeted were variously identified as Aboriginal, of diverse sexual orientation or a person with disability. Again, in 2014–15 the overwhelming majority of reports were received in relation to migrant or humanitarian entrants and international students.

As in previous years the vast majority of reports received in 2014–15 related to incidents in which a person’s race or nationality appeared to be the primary motivating factor. Two reports progressed to lodging a formal complaint.

Of particular note among this year’s reports is the number of incidents involving students, some of which related to high school and also to post-secondary education. There may be a number of reasons for this, including heightened awareness about reporting incidents following the work my office has been undertaking with both schools and with the various campuses of the University of Tasmania.

Also evident, is the concern surrounding the attitudes of many service providers. Several reports this year were about the attitudes of medical service providers, including doctors. Also of significance are the reports that indicate the persistence of discriminatory attitudes among employment service providers.

Report it! Case studies

G student had a note put in her bag saying ‘go back to where you came from, you don’t belong here’. When she confronted the girls who she thought had placed the note they told her to ‘f..k off’.

A group of overseas students reported concern about the way they were being addressed by their teacher, believing that they were being insulted on the basis of personal characteristics that the teacher imputed to their nationality. The students said they get abuse every day on the streets and were concerned this was also happening in the class room. They believed the teacher was culturally insensitive.

B’s nephew has a severe disability and relies on a wheelchair for mobility. On arriving at a local recreational facility they found the car park that had previously been allocated for people with disability was no longer available. After reporting the incident B made a complaint under the Act. This resulted in an apology from the organisation and a commitment to employ a disability access consultant.

R’s client was denied access to support services because he was facing an assault charge. No enquiry was made by the support service provider about the details of the assault, nor was an assessment done of the level of violence or whether the charge was relevant in the circumstances.

K reported a number of incidents in which taxi drivers told her they were racially abused on a regular basis by passengers. She was concerned because they had said they felt they couldn’t do anything about it and there was no point in making a report.

Information, awareness and promotion



Without the work we do promoting awareness and understanding of the Act, many people experiencing discrimination or harassment would not be aware of their right to make a complaint. Equally, this work plays an important role in reducing the incidence of discrimination and harassment by helping everyone in Tasmania to understand their rights and obligations. We promote awareness and understanding through community education, training, participation in events, the publication and dissemination of information materials in both print and electronic form, and through media interviews, Facebook and Twitter.

Disseminating information and information materials

Electronic newsletter, *In respect of rights*

By the end of the 2014–15 reporting period, the number of subscribers to our electronic newsletter, *In respect of rights*, reached 2,457. Many subscribers then forward the newsletter on to others in their networks and the newsletter is also accessed through the office's Facebook page.

Most subscribers are based in Australia, but the snapshot for the January 2015 edition above shows that people around the world are opening our newsletter.

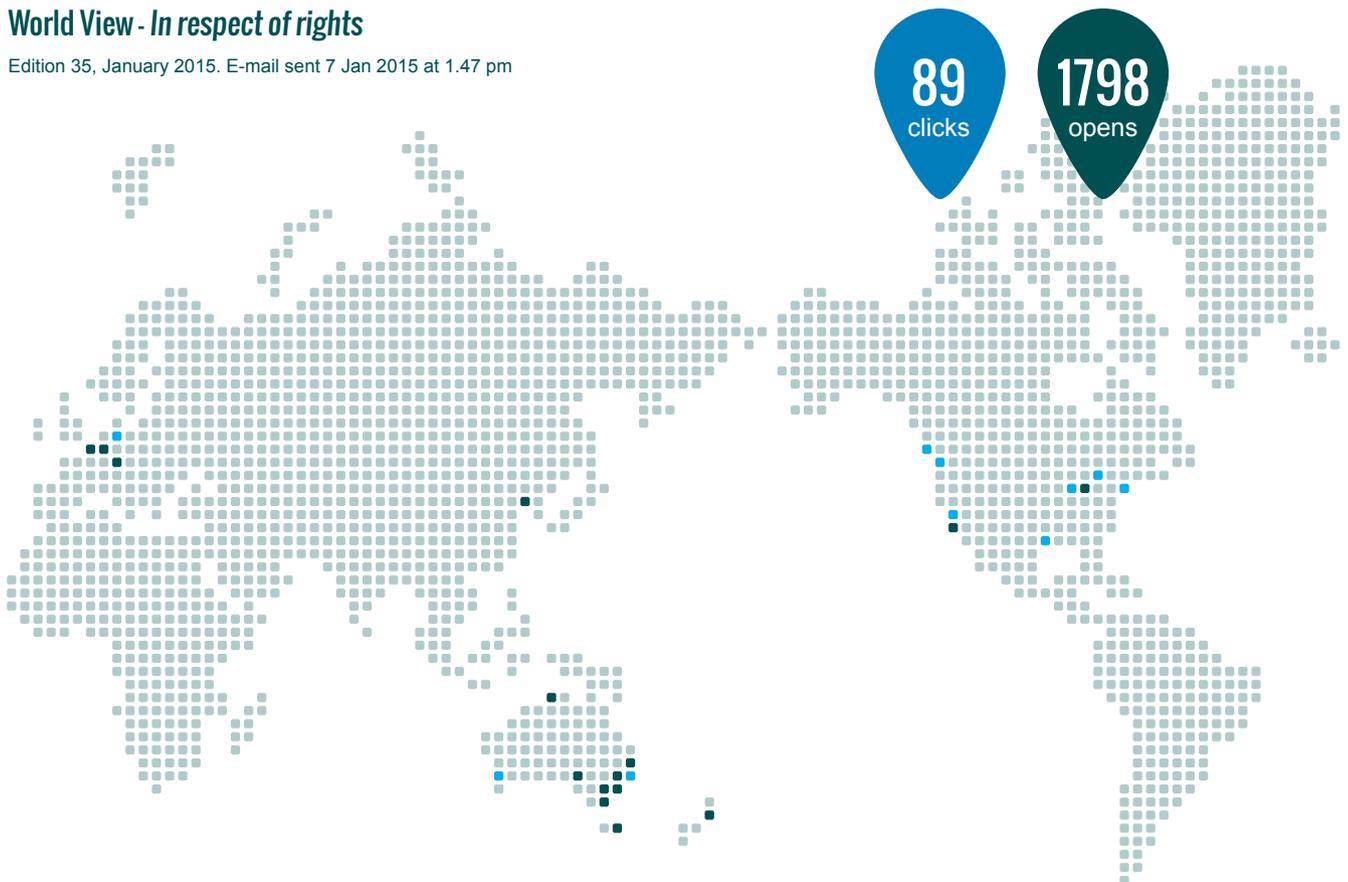
Information brochures

During 2014–15, we have continued the process of updating brochures and other information materials. The new format for the brochures, to be launched late in 2015, will ensure they are much more accessible, and the content is being extensively updated to ensure readability.

As part of this project, we have also developed options for re-branding the office and the work that we do and it is hoped this new look will provide a more contemporary feel for our work.

World View - *In respect of rights*

Edition 35, January 2015. E-mail sent 7 Jan 2015 at 1.47 pm



Facebook

My office continues to use its Facebook page to publicise coming events and the electronic newsletter, as well as sharing information that is current and relevant to our work. At the end of June 2015, the number of subscribers to the Office of the Anti-Discrimination Commissioner Facebook page has grown significantly from 297 to 454. This tells us people are connecting with us to keep up-to-date with current discrimination and human rights issues in Tasmania.

Website and website development

The office website— <http://www.antidiscrimination.tas.gov.au>—is a useful resource for many people looking for information about discrimination and related unlawful conduct and about the roles and responsibilities of the Anti-Discrimination Commissioner and the office.

During this past year, the website has undergone a thorough review and revamp, not only to improve its relevance and functionality, but also to meet the AA Accreditation for Website Accessibility standards.

We are continually looking at ways of improving our on-line presence in order to meet the increasing demands of our stakeholders in providing relevant and accessible information.

We greatly appreciate the decision of the Department of Justice to actively support us in this work, in particular through the work of the team at Web Support.

Media

In my role as Anti-Discrimination Commissioner, it's important that I respond, where reasonable, to radio, print and television media on stories related to discrimination and community harmony.

Media coverage during the reporting period has included comments relating to the proposed changes to the Act (which included the addition of a religious schools exception), education for children with disability, the historical convictions discussion paper release and final report to the Minister, *Education Act* reforms, exemption applications granted, positive ways to respond to racism, and the complaint process. I do not comment on current complaints and cannot comment on cases being dealt with by the Anti-Discrimination Tribunal.

The media coverage across the State has been very positive and responsive to matters of concern to the community. This assists our office in raising general understanding and awareness of our work and the importance of discrimination legislation.

Providing training and educational programs

Key functions of the Commissioner under the Act include:

To disseminate information about discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;

To undertake ... educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct

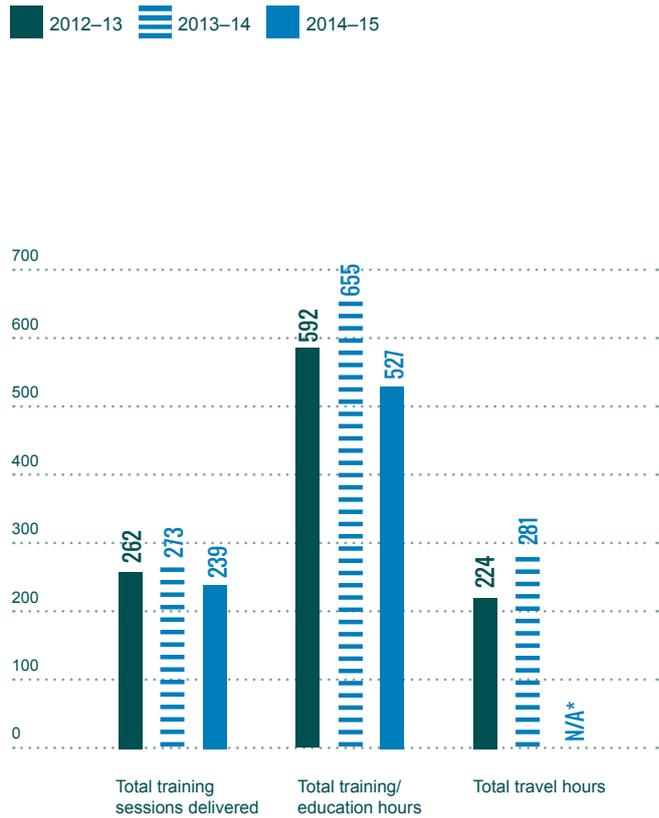
This work is done mainly through the Training, Education and Development team made up of the Senior Training, Education and Development Officer, Roz Smart, and Training, Education and Development Officer, Louise Adams. Roz and Louise develop and deliver training for government, business and community organisations, as well as community education sessions for schools and members of the public.

Course development

A new course, *Where is the line?* was developed and trialed during the 2014 WorkSafe month. We developed the course because it became apparent from general courses such as *Bullying, what it is, what it's not and what to do about it*, that many people are not aware of what is expected behaviour within workplaces and organisational settings. The course was originally designed as a 2-hour course, but has since been delivered as a 1 or 2 hour session or incorporated into other training sessions.

Also new in 2014–15, is the *Racism. it stops with me!* course, developed to support the national *Racism. It stops with me* campaign and respond to heightened community awareness and discussion around racism. The course assists people to know what they can do as bystanders and to support those affected by racism. It also creates a basis for safe conversations about racism in our community.

All the rest of our courses continued to be regularly revised and refreshed to ensure they remain current and relevant to national trends, recent case outcomes and topical issues, and to ensure the best possible facilitation and delivery of information.



Training and education delivery

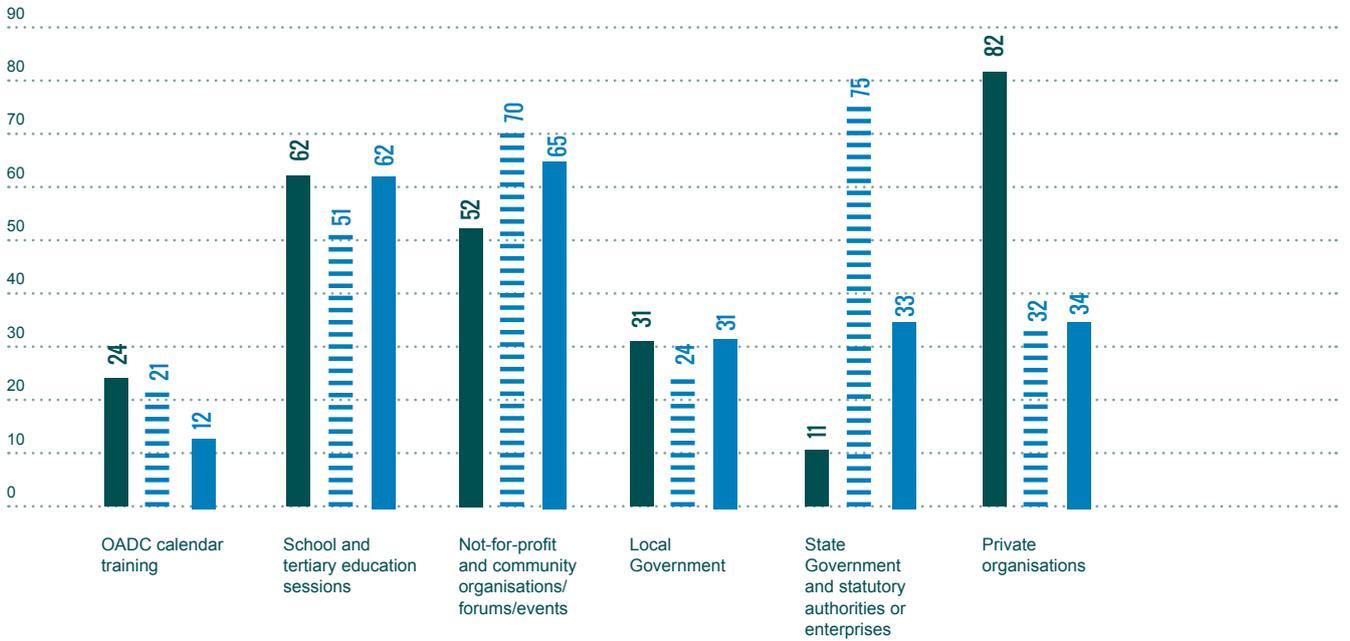
| | 2012-13 | 2013-14 | 2014-15 |
|-----------------------------------|---------|---------|---------|
| Total training sessions delivered | 262 | 273 | 239 |
| Total training/education hours | 592 | 655 | 527 |
| Total travel hours | 224 | 281 | N/a* |

* See the discussion below for an explanation of this change to reporting.

Statewide and sector coverage

Training delivered by my office generated income of \$92,390 in 2014–15. This was considerably less than the income in 2013–14 of \$124,080. The decrease in income seems to be partly due to a change in training demand during the period, which may reflect a more cautious approach from some sectors to investing in training.

2012-13 2013-14 2014-15



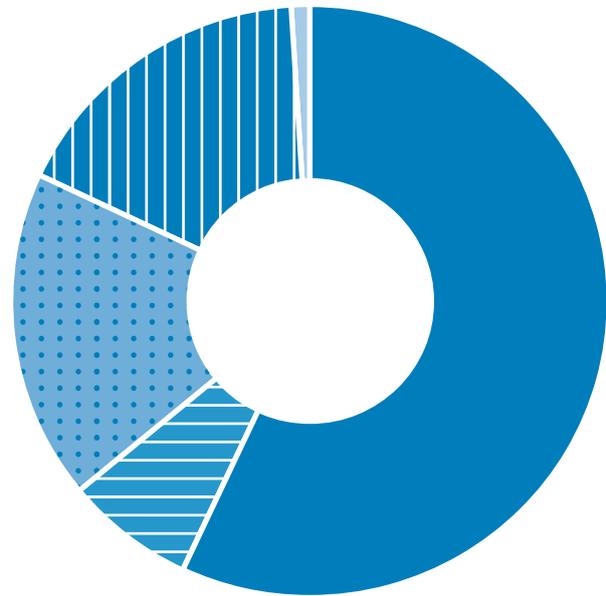
Training and education by sector

| | 2012-13 | | 2013-14 | | 2014-15 |
|---------------------------------------|------------|---|------------|---|------------|
| OADC calendar training | 24 | OADC calendar training | 21 | OADC calendar training | 12 |
| School education sessions | 62 | School and tertiary education sessions | 51 | School and tertiary education sessions | 62 |
| Community organisations/forums/events | 52 | Not-for-profit and community organisations/forums/events | 70 | Not-for-profit and community organisations/forums/events | 65 |
| Local Government | 31 | Local Government | 24 | Local Government | 31 |
| State Government | 11 | State Government and statutory authorities or enterprises | 75 | State Government and statutory authorities or enterprises | 33 |
| Private organisations | 82 | Private organisations | 32 | Private organisations | 34 |
| | | | | Unions and industry bodies | 2 |
| Total | 262 | | 273 | | 239 |

Training and education sessions decreased to 239 sessions delivered in 2014–15 down from 273 the previous year. Our statistics for training by sector show the biggest difference in training sessions delivered in the 2014–15 period is within State Government. This may be due to a large agency training all its staff in the 2013–14 period. It is disappointing more State Government agencies have not implemented a similar approach to ensuring compliance with discrimination law and promoting appropriate workplace conduct, employment practices and service delivery approaches. In relation to our regular, public offering of training through a published calendar, we offered 27 sessions, but only 12 of these sessions were able to go ahead due to low registrations.

It is pleasing to see our school sessions increased in 2014–15 and we believe these will continue to slowly increase in 2015–16. The benefit of school-based training cannot be overstated. Through this work, we can help young people to gain much greater awareness of their legal rights and obligations and the negative individual and systemic effects of discrimination and related behaviour. This in turn can have the positive benefit of reducing the likelihood of these young people behaving in ways that are inconsistent with their obligations under discrimination law and exclude others from having equality of opportunity and access to the benefits of our community.

The trainers once again delivered training and education sessions across the State. Since January 2015 we have been able to cut down our hours travelled with one of our trainers being based part time in Launceston and part time in Hobart. Thanks to Community Corrections for providing Roz Smart with access to an office pod within its Launceston office. Through this arrangement, we have been able to increase our northern presence. While this is not yet reflected in our workplace training figures there has been a noticeable increase in demand for school talks in the north and requests for participation in northern community events. Rather than report on hours spent travelling as we have in previous annual reports, our reporting now shows a break-down of training delivered.



Training and education sessions by location 2014–15

| | |
|------------|-----|
| South | 138 |
| South east | 17 |
| North | 42 |
| North west | 40 |
| West | 2 |

Workplace training

There are 22 training courses available on a fee-for-service basis for private-for-profit and public-sector organisations in Tasmania. The team tailors and often combines these courses to meet the requirements of a particular session and nature and approaches of a particular organisation.

During 2014–15, the Training, Education and Development team delivered 115 training sessions over 359 hours to over 1,750 participants.

Training courses offered are:

- **Specialised Anti-Discrimination Training Programs**
 - Train the Trainer – Conduct your own Discrimination, Harassment & Bullying program in your workplace
 - Supporting the process; training for Advocates and Community Workers
 - Anti-Discrimination Policies
- **Anti-Discrimination Awareness Training Programs**
 - Bullying – what it is, what it's not and what to do about it
 - Where is the Line?
 - Racism, It stops with me!
 - Sexual Harassment – what it is, what it's not and what to do about it
 - Discrimination, Harassment and Bullying Awareness
 - Racism – defining, recognising and dealing with it
 - Young, old, in-between... Is your workplace age inclusive?
 - Disability Awareness – Is your workplace disability ready?
 - We are not all the same but we are equal, GLBTI anti-discrimination awareness
 - Family Responsibilities and the Workplace – Best Practice for all
 - Discrimination, Harassment and Bullying – A Guide for Hospitality Workers
 - Discrimination, Harassment and Bullying – A Guide for Teachers and Principals
- **Workplace Support/Contact Officer/Person Training Programs**
 - Workplace Support/Contact Officer/Person Role
 - Workplace Support/Contact Officer/Person Refresher
 - Workplace Support/Contact Officer/Person Networking Meeting
- **Management Training Programs**
 - Discrimination, Harassment and Bullying – Management for Managers
 - Addressing and Preventing Workplace Bullying for Managers and Supervisors
 - Recruitment and Selection
 - Investigating Complaints

Community education

In 2014–15, 124 community education and awareness sessions were delivered. This is a slight increase from the previous year. It is estimated that, including festival participants, community education and awareness sessions reached over 4,300 people in the past year, down from approximately 6,800 in the previous reporting period. This considerable decrease in people reached is partly due to some community events being conducted bi-annually and therefore were not taking place in this reporting period.

WorkSafe Month

A significant time of year for the team is WorkSafe Tasmania Month, which occurs in October. This was the sixth year my office delivered presentations as part of the month.

My office delivered three different sessions in each of the Hobart, Launceston, Devonport and Burnie locations. The courses delivered were:

- Discrimination-Free Recruitment and Selection
- Writing Discrimination Policies
- Workplace Behaviour: Where is the Line?

These sessions were a great success: In response to the WorkSafe month survey question *Did the session provide you with a better understanding of the work health and safety topic presented?* (Yes/No) 93% said 'yes'.

Once again our thanks to WorkSafe Tasmania for the opportunity to participate in its calendar of events for WorkSafe Month Tasmania.

Feedback

The following is just a sample of the feedback received:

‘The discussion and question/answer content discussed topics relevant to our workplace’

Telegraph Hotel, August 2014

‘Everything was good, especially Louise’s willingness to answer questions and explain situations with scenarios’

Community Based Support, August 2014

‘Exceeded my expectations – was expecting “boring” and got “fabbo”!!’

‘Held my attention throughout session, very useful and applicable information’

‘I found the whole course informative, Roz was a wonderful trainer who made the course very interesting. I found the group discussions and questions informative as well as its great to hear other peoples thoughts and experiences’

DHHS Child and Youth Services, October 2014

‘I have attended a lot of these courses the presenter used a lot of examples that made the information more relevant and interesting’

‘Friendly, factual, excellent communicator, informative’

Devonport City Council, May 2015

‘Thanks Louise – you are excellent in delivering your training’

Clarence City Council, May and June 2015

‘Very useful for our work, more knowledge.’

‘Kept attention at all times. Very informative.’

Parkside Foundation, June 2015

‘Roz is an excellent presenter with a wealth of expert knowledge in this area. She is also very capable at explaining the message in many different ways so as to engage the group.’

WorkSafe Month training course participant, October 2014

Evaluation and feedback

To ensure the training and education presented stays current, relevant and meets the needs of participants, the Training, Education and Development team distributes evaluation forms to participants at most sessions. The completed forms are then compiled and all of the feedback reviewed to improve and adapt training material in response to the comments received.

We have recently updated our recording and documentation of evaluations and from January 2015 we have been using an updated evaluation form.

We now have consistent, documented evidence of the continuing high standard of our training and education sessions.

Feedback

| | 2013–14 | 2014–15 |
|---|------------------------------------|------------------------------------|
| For the question: <i>Please give the training an overall rating</i> | Total of 1,182 completed responses | Total of 1,023 completed responses |
| Excellent | 57% | 52% |
| Very good | 38% | 40% |

‘A difficult topic handled very well with some challenging input.’

Clarence City Council, May and June 2015

Diversity Education - *Let's Get Together* project

This year, my office continued to work in partnership with the community organisation, A Fairer World on the development and delivery of a broad-based diversity education school program, *Let's Get Together*.

In 2014, Rose Bay High School teachers and students assisted in piloting the program with two classes of Grade 8 students and contributed greatly to the evaluation of and revisions to the program. The pilot program was evaluated by Dr Sue Stack, Research Fellow, Faculty of Education, University of Tasmania. The program has now been finalised and is available to all schools.

This is a unique program designed for schools wanting to partner with their students and the wider community to create a more respectful school environment.

The program includes opportunities for students to meet face to face, through the Hobart Human Library, with young people who have first-hand experience of prejudice and discrimination because of their race, disability, sexual orientation or gender identity. The program addresses discrimination by building 'diversity competence' in students. Students get the opportunity to participate in classes that challenge their thinking so they can better understand diversity and barriers to equality and participation. They also have an opportunity to meet community organisations at a Diversity Expo, giving them a broad experience and knowledge of local support and services available.

Students participating in this program have the opportunity to change the culture of their school by designing their own campaigns to raise awareness of current issues of importance to them.

Rose Bay High School has committed to run this program again in Term 3 of 2015, this time for all Grade 8 students. This will see my office involved in delivering seven sessions on rights and responsibilities under discrimination law to students. I look forward to reporting further on this important work in my next annual report and through our Facebook page and regular newsletter.

This program, and our participation in it, is supported through funding received from the Solicitors' Guarantee Fund, granted by the Attorney-General.

Here is some of the teacher feedback from the pilot program in 2014:

'The students are more mindful of discrimination, the behaviours of discrimination and the impact of discrimination on personal wellbeing.'

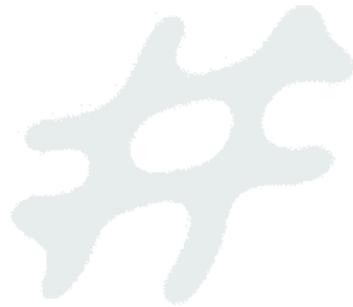
'Students are using the terms linked to diversity and naming up behaviours and actions of others with more confidence.'

'I really enjoyed seeing students being intellectually and emotionally moved by the content of the course.'

'... some are still name calling without registering they are doing it. However, others are calling them on it.'

Rose Bay High teachers

Enquiries



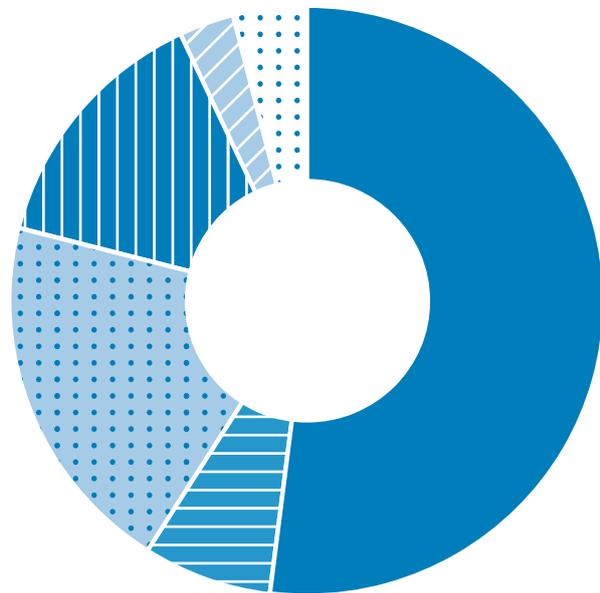
My office receives general and complaint-related enquiries in a range of ways to ensure our services are accessible to everyone. We can get enquiries by telephone, e-mail, web SMS, fax, through an on-line enquiry form and through people dropping in to the office.

In 2014–15, the office formally recorded receiving and dealing with 618 enquiries (down from 651 in 2013–14).

How enquiries were received

| | 2013–14 | 2014–15 |
|-------------------------|---------|---------|
| by phone | 474 | 432 |
| by e-mail | 80 | 105 |
| in person | 66 | 51 |
| by post | 7 | 14 |
| via online enquiry form | 24 | 13 |
| by SMS | 0 | 2 |
| by fax | 0 | 1 |

As well as these formal enquiries, a number of informal enquiries are dealt with at community events and training and education sessions.



Enquiry by location of enquirer

| | |
|------------------|-----|
| South 7000+ | 324 |
| South east 7100+ | 45 |
| North 7200+ | 121 |
| North west 7300+ | 84 |
| West 7400+ | 1 |
| Interstate | 21 |
| Unknown | 22 |

Community engagement

Functions and events

During the year there were a number of events held that had direct relevance to my work and that of my office. Participating in the following events keep our work relevant and connected with both the issues and people in the Tasmanian community.

NAIDOC Week - 6 to 13 July 2014

My office continues to acknowledge the importance in participating and celebrating NAIDOC (National Aboriginal and Torres Strait Islander Day Observance Committee) Week with the Aboriginal community in Tasmania.

NAIDOC origins can be traced back to the 1920s with Aboriginal groups seeking to increase awareness in the wider community of the status and treatment of Aboriginal and Torres Strait Islander peoples.

Each year's NAIDOC Week has a theme. The theme for 2014 was *Serving Country: Centenary & Beyond*. The National NAIDOC Website observed:

This year's NAIDOC theme honours all Aboriginal and Torres Strait Islander men and women who have fought in defence of country.

From our warriors in the Frontier Wars to our warriors who have served with honour and pride in Australia's military conflicts and engagements across the globe.

We proudly highlight and recognise the role they have played in shaping our identity and pause to reflect on their sacrifice. We celebrate and honour their priceless contribution to our nation.

Staff from my office and I attended the flag raising ceremony at Risdon Cove on Monday 7 July 2014. It was an opportunity to share in reflection on the many sacrifices and contributions made by Aboriginal and Torres Strait Islander people throughout Australia and to celebrate the continued strength and richness of Aboriginal culture and community in Tasmania.

United Nations Day for the Elimination of Racial Discrimination (Harmony Day) - 21 March 2015

This year my office joined with Hobart City Council and other organisations and community groups to acknowledge the United Nations Day for the Elimination of Racial Discrimination and participate in the celebration of Harmony Day.

On Saturday 21 March 2015, a Harmony Day event was held on Parliament Lawns during the popular Salamanca Markets. With the presence of local market shoppers and visitors to Hobart it was a wonderful opportunity for all to reflect on how we can work together to contribute to a safer, more inclusive and welcoming place by eliminating any forms of racism and promoting harmony and respect in our community.

Staff members from my office collected *Racism It Stops with Me* pledges from people we met on the day. The number of people pledging *Racism It Stops with Me* continues to clearly demonstrate the commitment and support of the Tasmanian community for the message that racism is not acceptable nor will it be tolerated within our community.

As Commissioner, I also attended a Harmony Day Event hosted by the Premier, The Hon Will Hodgman and Parliamentary Secretary Guy Barnett.

Below: Governor's Human Rights Week Reception at Government House on 10 December 2014. Pictured: Lieutenant Governor of Tasmania, His Excellency the Honourable Justice Alan Blow, OAM with Ms Karina Stojansek receiving the Human Rights Individual Award on behalf of her late husband Jeremy Ball with Griffin Ball (left) and Jasper Stojansek (right).



Below: Tasmanian Human Rights awards Announcement at Parliament House on 3 December 2014. Pictured: (L to R) Craig Martin, Acting Director of Communities, Sport and Recreation Tasmania with Jenny Hood, Mrs Pat Hood, and Chris Symonds and Neal Rodwell, recipients of the Robin Hood AM Sports Award.



Human Rights Week Tasmania - 3 to 10 December 2014

I am happy to report that the celebration of Human Rights Week in Tasmania continues to get bigger and better each year. Human Rights Week Tasmania started in December 1988 with a small group of volunteers acknowledging and celebrating local human rights activities and campaigns. Since then, Human Rights Week in Tasmania and the Human Rights Week Launch and Awards announcements have grown and been an opportunity for many more human rights focused activities.

Each year there are events held across the week in December that begins with International Day of People with Disability on 3 December and ends with International Human Rights Day on 10 December. There are strong links to other international days including World AIDS Day on 1 December and International Volunteer Day on 5 December.

Tasmania continues to be the only state or territory in Australia celebrating these international days over a full week of activities. Tasmanian Human Rights Week continues each year to give us an opportunity to celebrate the progress and achievements made towards the protection, promotions and fulfilment of human rights here in Tasmania and also globally.

The local theme for International Human Rights Week 2014 was *Human Rights – It's up to us*. This continued as the theme in December 2014.

On 3 December 2014, the launch of Human Rights Week was held at Tasmania's Parliament House. It was an opportunity to recognise, through the Tasmanian Human Rights Awards, the contribution of local human rights defenders.

The announcing of awards was enhanced in 2014 with the re-naming of the Sports Award to the 'Robin Hood AM Sports Award' in recognition of Robin Hood's lifetime of service to his community through developing the sporting sector in Tasmania until his death in 2012. Robin Hood was the initiator of the Tasmanian Sporting Hall of Fame and during his lifetime received 22 awards for his service to the Tasmanian community, including eight Life Memberships (often the highest and most prestigious award an organisation can bestow on one of its members). Robin Hood was a community creator, developer and nurturer. He provided opportunities for countless Tasmanians to participate in sport and embodied the principles of fairness and respect for others. He was represented at the Launch and Awards ceremony by his wife Pat and his daughter Jenny.

Another special moment shared by all who attended was the Individual Award winner being the late Jeremy Ball. The award celebrated the extraordinary life of Jeremy Ball who had made a profound, passionate and enduring contribution to the people of Tasmania and particularly to people in and around Launceston. Jeremy's wife Karina, children Griffin and Jasper, and Jeremy's parents John and Caroline (and many of his friends from Launceston) attended.

The commitment in Tasmania to celebrate Human Rights Week was also evident around the State with at least seven other events being held. Human Rights Week Committee members organised a successful event on 10 December at Brooks High School (winners of the 2013 Human Rights School Award) to both celebrate Human Rights Day and celebrate and recognise winners of the 2014 Human Rights Awards.

The success of Human Rights Week in Tasmania is due to the hard work and dedication of a diverse group of organisations and volunteers who make up the Human Rights Week Organising Committee. As well as the Committee members, the following people contributed to the success of 2014 Human Rights Week:

- Lieutenant Governor of Tasmania, His Excellency the Honourable Justice Alan Blow, OAM, who hosted a Reception for the award recipients on 10 December at Government House.
- The Premier of Tasmania, The Hon Will Hodgman MLA, who was the guest speaker at the launch on 3 December.
- The Hon Elise Archer MLA, for being the parliamentary host for the launch on 3 December.
- Madeline Wells from the north-west coast, who welcomed us to Country with passion and strength at the launch on 3 December.
- Annelise Smith, who was the MC for the launch on 3 December.
- Shewit Belay Ghebregabhier for her amazing powerful singing at the launch on 3 December.
- Pen Tayler for volunteering her time to photograph the launch event, the reception at Government House and the Human Rights Week information stall at Salamanca Market.
- Awards Panel Judges Michael Small, Jo Hall, Heather Rose and the Very Reverend Richard Humphrey for their important work in choosing the award winners.

Information about Human Rights Week Tasmania is available on the internet at: http://www.afairerworld.org/_HRWeek. Human Rights Week activities and announcements are also available through the Facebook pages of both Human Rights Week Tasmania and the Office of the Anti-Discrimination Commissioner.

2014 Awards:

A Fairer World School Award

Winner – St James Catholic College
Sponsored by A Fairer World with a donation from Anne & Tony Peacock

Human Rights Youth Award

Winner – Emillie McDonell
High Commendation Jointly –
Oliver Hovenden and Annie Chessells
Sponsored by Newport Wildman &
Associates

Human Rights Lesbian, Gay, Bi-Sexual, Transgender and Intersex (LGBTI) Cultural Awareness Award

Winner – Andrew Badcock
High Commendation – Caleb Nichols-
Mansell
Sponsored by Rainbow Communities
Tasmania Inc

Angus Downie Print Journalism

Award Winner – Caroline Tang
Sponsored by Robin Banks and Michael
Small

Multicultural Award

Winner – Bridging Visa Social Club and in
particular the contribution of Mieka Tabart
Sponsored by the Migrant Resource
Centre (Southern Tasmania)

Human Rights Organisation Award

Winner – Launceston Human Library
Sponsored by the Hobart City Council

Robin Hood AM Sports Award

Winner – Wynyard Yacht Club and in
particular the contribution of Neal Rodwell
Sponsored by Communities, Sport and
Recreation Tasmania

Lucy Henry Human Rights Award

Winner – Dannii Lane
High Commendation – Zac Lockhart
Sponsored by the Mental Health Council
of Tasmania Inc

Human Rights Individual Award

Winner – The Late Jeremy Ball
High Commendation – Phillipa
McCormack
Sponsored by Salamanca Chambers

Pictured (L to R): Federal Race Discrimination Commissioner, Dr Tim Soutphommasane; Tasmania Police Commissioner Darren Hine; Tasmania Fire Service Chief Officer Mike Brown; Ambulance Tasmania Chief Executive Officer Dominic Morgan; Anti-Discrimination Commissioner Robin Banks; and State Emergency Service Acting Director Andrea Heath.



Pictured (L to R): Cambridge Primary School Principal Courtney Howard; Migrant Resource Centre (Southern Tas) CEO Alison O'Neill; Soroptimist International Hobart President Julie Marsaban; Eastlands Shopping Centre's Area Centre Manager Craig Connell; The Passion of Purpose Group Founder Colton Stollenmaier; Clarence City Council Mayor Alderman Doug Chipman; and Colony 47 CEO Therese Taylor.



Racism. It Stops with Me. Campaign continues to build support in Tasmania

I am pleased to report my office was able to continue the great work already undertaken by various organisations and groups in Tasmania who have signed up to the *Racism. It Stops with Me* campaign.

In an Australian first, all four emergency service agencies in Tasmania came together to jointly pledge their support for the campaign.

The Federal Race Discrimination Commissioner, Dr Tim Soutphommasane joined me to support and endorse the signing of the national agreement by Tasmania Police, Ambulance Tasmania, the Tasmania Fire Service and the State Emergency Service.

As a result of this collaborative approach, the Multicultural Issues in Emergency Management Strategic Work Group was formed, of which I am now a member. The Working Group members include both emergency services and community representatives who have knowledge of multicultural issues in the community relevant to employment in emergency services and the provision of emergency services to members of their communities.

The event was held on 5 December 2014 during Tasmanian Human Rights Week.

My office was also involved in supporting a second *Racism. It Stops with Me* campaign event in May 2015. In recognition of their commitment in signing up to the campaign in July 2014, Clarence City Council co-ordinated a City of Clarence event to bring organisations, businesses and schools together to help spread the word that racism is not okay in any community.

The Mayor of City of Clarence, Alderman Doug Chipman, joined me to support and witness the signing of the national *Racism. It Stops with Me* campaign pledge by Eastlands Shopping Centre, Rose Bay High School, Cambridge Primary School, Colony 47, Migrant Resource Centre (Southern Tasmania) Inc, Soroptimist International Hobart, Clarendon Vale Neighbourhood Centre and the Passion of Purpose Group.

The event coincided with the lead up to the World Games Day on 25 May at Blundstone Arena, Tasmania.

What Matters? 2015

The Tasmanian Department of Education, under the leadership of Secretary Colin Pettit, again worked with the Whitlam Institute to hold the *What Matters?* writing competition for schools. The competition, created to honour Prime Minister Gough Whitlam's commitment to involving young people in shaping Australia's future, the competition asks students to respond to the simple question 'what matters?' Students from Year 5 to Year 12 participate and write about what matters to them in 400–600 words. Entries are divided into four categories: Years 5 & 6, Years 7 & 8, Years 9 & 10, and Years 11 & 12.

The entries again came from across the State and were considered by a number of reviewers, who provided a short list to the judging panel. As a member of the judging panel, along with writers David Owen, Poppy Gee and Alex Wyld, I enjoyed the opportunity to read the very high quality writing of students on issues as diverse as greyhound racing, environmental protection, being a transgender teenager, recognition of Australia's first people, and the importance of books. The quality of the writing and the depth of thought the students demonstrated was noted by the judging panel and left us all with a strong sense of a positive future for Tasmania.

The Tasmania Award Ceremony was held on 1 July 2015. Details of the four Tasmanian category winners and the overall winner are available at: <https://www.education.tas.gov.au/Students/schools-colleges/Pages/Awards---Scholarships.aspx>. There are also links to the winning entries.

Each of the category winners is invited to participate in a Young Writers Forum run by The Writing Workshop and attend the NSW/ACT and Tasmania Award event at the Whitlam Institute in Sydney in early September.

By the time this report is published, the 2015 Award winners will have been announced and information available about them on: http://www.whitlam.org/the_program/what_matters_writing_competition/what_matters_2015

Other events attended

In addition to the events above, I with various staff from my office have attended and participated in a number of community events, receptions, award presentations and launches to connect and support the diversity inclusion work of the community and our stakeholders.

- Disability Research Hallmark Initiative & Scope Victoria Partnership Launch, Melbourne
- Launch of Hobart Human Library, Kingston High School
- Migrant Resource Centre Southern Tasmania Inc: event to farewell former CEO Cedric Manen and welcome new CEO Alison O'Neill
- 2015 International Day against Homophobia (IDAHO) breakfast, Hobart
- What Matters? Awards Ceremony, Montrose Bay High School
- Women in Super lunch featuring the Federal Sex Discrimination Commissioner, Elizabeth Broderick
- 2014 Tasmanian Training Awards
- Australian Association of Special Educators (AASE) Breakfast Session with Michael Giangreco speaking on School wide Inclusive Service Delivery
- Reception at Government House for Speech Pathology Australia: 2014 International Year of Communication – celebrating communication and raising awareness
- Premier's Australia Day Address by The Hon Fred Chaney AO: 'Australia – Are we ready for reconciliation?'
- Race Discrimination Commissioner, Dr Tim Soutphommasane Community Consultation and Function – Celebrating 40 years of the *Race Discrimination Act 1975* (Cth), Hobart
- Centenary of Women's International League of Peace and Freedom (WILPF), Parliament House
- AFL Leadership Diversity Corporate Lunch, Hobart
- Australian Education Union's hosted function, with Dr Ken Boston OA speaking on 'Gonski: Reimagining Australian Education'
- Rise up for Olga, Parliament Lawns
- Mental Health Expo, Launceston
- Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Aged-care forum, Hobart
- University of Tasmania 2015 International Student Welcome event
- Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Youth forum, Launceston and Burnie
- Migrant Resource Centre Immigrant and Refugee Women's Health and Wellbeing gathering
- Human Rights Week and 'Racism. It Stops with Me' information table at Salamanca Market

Commissioner's presentations and speaking engagements

Over the past year, as well as attending the diverse range of events noted above to promote awareness of discrimination law and the Act, and presenting at several training programs, I have spoken at a number of public events on matters related to discrimination and the Act.

August 2014

Presentation:

To participants in the Anna Stewart Program on the role of the Anti-Discrimination Commissioner and the relevance of our work to industrial officers and union delegates

To the University of Tasmania's Graduation Ceremony for law, health and education graduates

To the University of Tasmania's Human Rights Law Unit

SEPTEMBER 2014

Presentation:

To University of Tasmania first year medicine students about equality and discrimination

To Bethlehem House board members about and exceptions and exemptions under the Act

At Opening of Art Exhibition for the Alzheimer's Association Tasmania

Chaired:

Multicultural Council of Tasmania Special General Meeting

October 2014

Presentation:

To Hong Kong Police on the work being done by Tasmania Police as a member of its working group on lesbian, gay, bisexual, trans and intersex (LGBTI) issues

To Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Aged Care Forum

Closing remarks:

To the Tasmanian Institute for Law Enforcement Studies (TILES) workshop, Vulnerable People, Criminal Justice and Policing: competing or irreconcilable views?

November 2014

Presentation:

To Health & Safety Networking Group – Independent Schools, on inclusion, exclusion and disability

To National Disability Service – to facilitate panel discussion on people with disability and access to justice

To Women in Sport Leadership Conference

Participation in:

Round table discussions with Federal Age and Disability Commissioner, The Hon Susan Ryan AM, on age and disability issues

December 2014

Panel participant in:

Tasmanian Emergency Service *Racism. It stops with me* Pledge Event



February 2015

Participant:

In Australian Press Council Round Table on media standards

Presentation:

To senior staff at Bell Bay Aluminium on acceptable workplace behaviour

March 2015

Lecture to:

University of Tasmania 1st Year Medical students on Social Determinants of Health & Discrimination – Discrimination as a Social Determinant of Health

Presentation:

To the Former Heads and Senior State Servants Association on the role of the Anti-Discrimination Commissioner, current issues and the law

Video interview:

For podcast with Dr Chris Rayner on inclusion of students with disability

Participant in:

University of Technology Sydney - A Round Table on Biotechnologies of the Body and Discrimination Laws – Should addiction be considered a disability and protected under discrimination law

MC:

For Hobart Women's Health Centre International Women's Day Quiz

Performer:

In *The Vagina Monologues* performances in Hobart highlighting women's stories of violence and violence prevention

April 2015

Presentation:

To students and staff of the School of Engineering and ICT at the University of Tasmania on discrimination law: rights and obligations

Participant:

In International Guide Dog Day media event about guide dogs and taxi access

Performer:

In *The Vagina Monologues* performance at the Mary Hutchison Women's Prison highlighting women's stories of violence and violence prevention

May 2015

Presentation:

To Tasmanian Leaders Program Community Sessions

MC:

For Clarence City Council and other local organisations *Racism. It stops with me* Pledge Event

June 2015

Presentation:

To Clarence Lions Club on racism and the national Anti-Racism Strategy: *Racism. It stops with me.*

Investigating and seeking to resolve complaints of discrimination and prohibited conduct

Introduction

In this section of the report, I give an overview of the complaints dealt with in 2014–15 and discuss some identifiable trends in the complaints received.

Further detailed data for complaints for 2014–15, with comparative data for the previous year, can be found in Appendix A. Comparative data over a longer period is available on the office website.

For more information about the Anti-Discrimination Tribunal's membership and contact details, see Appendix C.

I note that the review of the office structure and procedures, detailed earlier in this report, has had significant impacts in the complaint-handling area of our work. These positive benefits of these changes are likely to become more apparent in future years.

Commissioner's complaint function

A significant function I have under the Act is to receive, investigate and attempt to resolve complaints of discrimination and prohibited conduct under the Act. (A detailed description and diagram of the complaint process is available in previous annual reports.)

Much of this work is done under delegation by members of the complaints team.

My key concerns in dealing with complaints are:

- to ensure that complaints are dealt with in as timely a manner as possible; delays in complaint handling can and often do make resolution much more difficult;
- to provide the best possible support to parties to find a resolution to the complaints at the earliest opportunity; and
- to recognise that most people involved in the complaint process have little or no experience of dealing with legal processes and, as a result, provide clear and timely information about the process, the complaint and how the law might properly apply to the complaint.

Anti-Discrimination Tribunal's complaint functions

Under section 13 of the Act, the Tribunal's functions in relation to complaints made under the Act are:

- (a) to conduct an Inquiry into a complaint; or
- (b) to review a decision of the Commissioner relating to exemptions, withdrawals, rejections and dismissal of complaints.

Complaints under the Act

Under the Act, a person can complain about conduct that could be one or more of the following breaches of the Act:

- discrimination on the basis of one or more of 22 protected attributes
- conduct that offends, humiliates, intimidates, insults or ridicules on the basis of one or more of 14 protected attributes
- sexual harassment
- incitement, by a public act, to hatred, serious contempt or severe ridicule on the basis of one or more of 6 protected attributes
- promoting discrimination or prohibited conduct ('prohibited conduct' is any of the types of breaches other than discrimination)
- knowingly causing, aiding or inducing another person to breach the Act
- victimisation, which is protection against retaliation for making a complaint or participating in the complaint process

Other than discrimination, all of the other types of conduct that are unlawful under the Act are found within Part 4, Division 2 – Prohibited Conduct. The Act defines 'prohibited conduct' as 'any conduct referred to in Division 2 of Part 4'.

There are 22 attributes listed in the Act.

The table, Relationship between attributes and breaches, on page 43 shows the protections provided by the Act in relation to the breaches that require a link to an attribute.

Case study

Newspaper article derogatory about people with disability

The complaint alleged that a newspaper ran a front page article with a picture and headline that was discriminatory against people with disability and also humiliating, ridiculing and offensive on the basis of disability. The person making the complaint also said that by publishing the article, the newspaper had engaged in a public act that incited hatred, serious contempt or severe ridicule of people with disability. The headline referred to people receiving disability support pensions as 'slackers'.

The complaint was accepted under the Act as a valid complaint because it disclosed possible breaches of the Act through creating or perpetuating negative stereotypes of people with disability.

Case study

Access to information

A complainant alleged disability and age discrimination. The club she belonged to provided club information only by e-mail to members. The complainant did not have e-mail access because, in part, of a medical condition that meant reading screen-based text caused her to feel ill.

In assessing the complaint, it was noted there is evidence of many older people having a lower level of comfort relying on electronic communications.

The complaint was resolved through a process facilitated by the Commissioner's office shortly after the complaint was assessed. The respondent agreed to provide club information by post to the complainant and to provide information by post to any other members who indicated they want to get information this way.

For discrimination to be unlawful it must be on the basis of one or more of the listed attributes and take place in connection with an area of activity specified in the Act. The areas of activity listed are:

- Employment (includes both paid and unpaid and is defined to include a range of employment and occupation related activities)
- Education and training
- Provision of facilities, goods and services
- Accommodation (includes both residential and business accommodation)
- Membership and activities of clubs
- Administration of any law of the State or any State program
- Awards, enterprise agreements or industrial agreements

Other than incitement, the other types of conduct listed above are only unlawful if they happen in connection with one or more of these areas of activity.

Complaints received

In 2014–15, 142 complaints were made under the Act. This is a decrease from 181 complaints received in 2013–14.

The table, Type of breach alleged, on page 43 details the nature of the breaches identified in the complaints received in 2014–15.

It is clear from this information that almost every person making a complaint alleged discrimination in their complaint or it was identified as a possible breach through the complaint assessment and/or investigation process. This is consistent over the years.

What has changed significantly is the percentage of complaints in which the person making the complaint alleged conduct that offends, humiliates, intimidates, insults or ridicules or this was identified as a possible breach through the assessment/investigation process. This increased by almost 17% in 2014–15 and, in part, probably reflects the changes made to the Act at the beginning of 2014. Those changes resulted in this particular protection being extended from seven attributes to 14. It may also reflect the increased percentage of complaints received from women (see Complaints: Complainants and Respondents table on page 45).

Relationship between attributes and breaches

| | Protection against discrimination (section 14, 15 & 16) | Protection against offensive conduct (section 17(1)) | Protection against incitement (section 19) |
|--|--|--|--|
| Age | Yes | Yes | No |
| Race | Yes | Yes | Yes |
| Disability | Yes | Yes | Yes |
| Gender | Yes | Yes | No |
| Sexual orientation | Yes | Yes | Yes |
| Lawful sexual activity/conduct | Yes | Yes | Yes |
| Gender identity | Yes | Yes | No |
| Intersex | Yes | Yes | No |
| Marital status | Yes | Yes | No |
| Relationship status | Yes | Yes | No |
| Pregnancy | Yes | Yes | No |
| Breastfeeding | Yes | Yes | No |
| Parental status | Yes | Yes | No |
| Family responsibilities | Yes | Yes | No |
| Industrial activity | Yes | No | No |
| Political belief or affiliation | Yes | No | No |
| Political activity | Yes | No | No |
| Religious belief or affiliation | Yes | No | Yes |
| Religious activity | Yes | No | Yes |
| Irrelevant criminal record | Yes | No | No |
| Irrelevant medical record | Yes | No | No |
| Association with a person who has or is believed to have any of these attributes | Yes | No | No |

Type of breach alleged

| | 2013–14 | Alleged or identified in % of complaints | 2014–15 | Alleged or identified in % of complaints | Change in % |
|---|------------|--|------------|--|-------------|
| Total complaints | 181 | | 142 | | |
| Discrimination | 175 | 96.7% | 141 | 99.3% | 2.6% |
| Incitement | 58 | 32.0% | 53 | 37.3% | 5.3% |
| Conduct that offends, humiliates, insults, intimidates or ridicules | 82 | 45.3% | 88 | 62.0% | 16.7% |
| Victimisation | 62 | 34.3% | 77 | 54.2% | 20.0% |
| Sexual harassment | 15 | 8.3% | 16 | 11.3% | 3.0% |
| Promoting a breach | 2 | 1.1% | 2 | 1.4% | 0.3% |
| Causing, inducing or aiding a breach | 0 | 0.0% | 0 | 0.0% | 0.0% |

Who makes complaints and who are they against

Most complaints are received from individuals who either complain on their own behalf or on behalf of another person or group. Most of the complaints made by a person on behalf of another are made by a parent on behalf of their child or a family member on behalf of a person with disability.

The year saw an increase in the percentage of complaints made by or on behalf of women or girls. This is a slight increase from 2013–14 and a significant increase from 2011–12 (36.6%).

The Complaints: Complainants and Respondents table on page 45 provides some details of the parties to complaints received in 2014–15.

In some complaints, the person making the complaint identifies an individual only as responsible for what they say happened. In most, however, the person will identify an organisation, either alone or with one or more individuals. The following table shows the relevant data for 2014–15.

Respondent type identified in complaints in 2014–15

| | |
|-------------------------------------|----|
| Organisation only | 81 |
| Both organisation and individual(s) | 41 |
| Individual only | 20 |

The Complaints by Respondent Type table on page 45 provides details of the complaint levels in relation to particular respondent types for complaints received in 2014–15.

This indicates a significant imbalance in power for parties in complaints. It is a matter that continues to be of concern and that needs further consideration. Issues to be considered include what more can be done to increase access to formal legal representation and advocacy support, and what more we and the Tribunal can do to ensure the adverse impacts of this imbalance in power and knowledge are minimised to the greatest extent possible while maintaining fairness.

This data indicates an increase in the number of complaints made against State Government entities (59, compared to 51 in 2013–14, which represents a percentage increase from 25.8% to 42.8% of complaints received). This is a matter of concern as State Government is a significant employer in the State and discrimination and related conduct is not only prohibited by the Act, but may also amount to a breach of the State

Service Code of Conduct (section 9(3) of the *State Service Act 2000* (Tas)). It is also notable that there was a significant reduction in the uptake of training by the State Government that is reported above on page 27.

While there may be a range of explanations for these changes, I hope to have opportunities in the coming year to work with the head of the State Service and State Government Agency heads to understand the data and improve the situation.

Table A9 in Appendix A provides a summary of the types of breaches alleged in complaints against State Government in 2014–15.

On a positive note, the data in the Complaints by Respondent Type table on page 45 indicates a marked decrease in both number and percentage of complaints made against both Local Government (1.4%, compared to 5.6% in 2013–14) and Private Enterprise (38.4%, compared to 50.0% in 2013–14).

Access to legal representation, advocacy and support

In 2014–15, 142 people made complaints under the Act. Of these:

- 12% (17) had a lawyer or advocate at the time they made their complaint
- 22% (31) had a lawyer or advocate involved at some time during the complaint process

In terms of respondents, of the 95 complaints notified in 2014–15:

- 92% had either legal or advocacy support or were organisations with an organisational representative (including in-house counsel)

Of those respondents without support or representation:

- 6 were individual respondents (6% of all respondents)
- 2 were organisational respondents (2% of all respondents)

Complaints: complainants and respondents

| | 2013–14 | | 2014–15 | |
|--------------------------------------|------------|-------|------------|-------|
| Total complaints | 181 | | 142 | |
| Number of complainants | 206 | | 158 | |
| Individual complainants | 204 | 99.0% | 156 | 98.7% |
| Female complainant | 91 | 44.2% | 76 | 48.1% |
| Male complainant | 112 | 54.4% | 77 | 48.7% |
| Transgender or intersex complainant | 1 | 0.5% | 3 | 1.9% |
| Organisational or group complainants | 2 | 1.0% | 2 | 1.3% |
| Number of respondents | 381 | | 239 | |
| Individual respondents | 183 | 48.0% | 101 | 42.3% |
| Male respondents | 124 | 32.5% | 74 | 31.0% |
| Female respondents | 58 | 15.2% | 25 | 10.5% |
| Gender of respondent unknown | 1 | 0.3% | 2 | 0.8% |
| Organisational respondents | 198 | 52.0% | 138 | 57.7% |

Complaints by respondent type

| | 2013–14 | As % of organisational respondents | 2014–15 | As % of organisational respondents | Change in % |
|--|------------|------------------------------------|------------|------------------------------------|---------------|
| Total complaints | 181 | | 142 | | |
| Total organisational respondents | 198 | | 138 | | |
| State Government entities | | | | | |
| State Government department | 30 | 15.2% | 39 | 28.3% | 13.1% |
| Member of Parliament | 2 | 1.0% | 0 | 0.0% | -1.0% |
| State Government agency or business enterprise | 7 | 3.5% | 4 | 2.9% | -0.6% |
| State statutory authority | 4 | 2.0% | 9 | 6.5% | 4.5% |
| Education – primary and secondary | 6 | 3.0% | 6 | 4.3% | 1.3% |
| Education – tertiary | 2 | 1.0% | 1 | 0.7% | -0.3% |
| Total State Government | 51 | 25.8% | 59 | 42.8% | 17.0% |
| Local government | 11 | 5.6% | 2 | 1.4% | -4.2% |
| Federal government | 2 | 1.0% | 3 | 2.2% | 1.2% |
| Private enterprise | 99 | 50.0% | 53 | 38.4% | -11.6% |
| Non-profit entities | | | | | |
| Education – primary and secondary | 3 | 1.5% | 5 | 3.6% | 2.1% |
| Education – tertiary | 1 | 0.5% | 0 | 0.0% | -0.5% |
| Other | 31 | 15.7% | 15 | 10.9% | -4.8% |
| Total non-profit | 35 | 17.7% | 20 | 14.5% | -3.2% |
| Not determined | 0 | 0.0% | 1 | 0.7% | 0.7% |

Case study

Pregnancy discrimination

The complainant worked as a volunteer in a role that could be physically demanding. While she was volunteering she became pregnant. When she advised the organisation she was pregnant, she was asked to provide a full medical clearance to participate in her volunteer duties during pregnancy and after giving birth. Her husband, who was also a volunteer with the organisation, was asked to attend a meeting with her to discuss her duties. This complaint was accepted as a valid complaint under the Act on the basis it disclosed possible discrimination on the basis of pregnancy and gender.

A conciliation conference was held and the complaint was resolved. The organisation agreed to:

- apologise to the complainant;
- explore discrimination training for its volunteers and staff;
- develop a procedure on pregnancy and the inherent requirements of the role that clarifies the circumstances in which medical clearance would be required during pregnancy and in the 6 weeks following the birth of the child;
- meet with Anti-Discrimination Commissioner before finalising the procedure to get feedback on the draft and information on discrimination training options; and
- include the final procedure in its induction manual.

The following table provides details of the area of activity identified in complaints against organisations. It shows that employment complaints dominated complaints against State Government and non-profit organisations, while provision of facilities, goods and services was more dominant in complaints against private enterprise and was significant in complaints against State Government entities.

Respondent organisation type by area of activity

| Area of Activity | |
|---|----|
| State Government | |
| Employment | 22 |
| Provision of facilities, goods and services | 21 |
| Administration of any law of the State | 13 |
| Education & training | 8 |
| Accommodation | 5 |
| Awards, enterprise and industrial | 5 |
| Membership and activities of clubs | 1 |
| Local Government | |
| Employment | 1 |
| Provision of facilities, goods and services | 1 |
| Commonwealth Government | |
| Employment | 3 |
| Private Enterprise | |
| Provision of facilities, goods and services | 28 |
| Employment | 22 |
| Accommodation | 1 |
| Membership and activities of clubs | 1 |
| Non-Profit | |
| Employment | 11 |
| Membership and activities of clubs | 5 |
| Education & training | 3 |
| Accommodation | 1 |
| Administration of any law of the State | 1 |
| Awards, enterprise and industrial | 1 |

Discrimination complaints

During 2014–15, disability continued to dominate the discrimination complaints, with it being identified in over 50% of complaints. The related attribute of irrelevant medical record was the second highest recorded attribute, followed by relationship status, gender, then age.

The Complaints of discrimination by attribute table below details the attribute identified as the alleged basis for discrimination in complaints received in 2014–15.

Complaints of discrimination by attribute

| | 2013–14 | Alleged or identified in % of complaints | 2014–15 | Alleged or identified in % of complaints | % increase |
|---|------------|---|------------|---|------------|
| Total complaints | 181 | | 142 | | |
| Total alleging discrimination | 175 | | 141 | | |
| Attribute identified (highest to lowest) | | | | | |
| Disability | 90 | 49.7% | 72 | 50.7% | 1.0% |
| Irrelevant medical record | 19 | 10.5% | 22 | 15.5% | 5.0% |
| Relationship status | 10 | 5.5% | 19 | 13.4% | 7.9% |
| Gender | 24 | 13.3% | 18 | 12.7% | -0.6% |
| Age | 22 | 12.2% | 17 | 12.0% | -0.2% |
| Irrelevant criminal record | 12 | 6.6% | 16 | 11.3% | 4.7% |
| Industrial activity | 20 | 11.0% | 15 | 10.6% | -0.4% |
| Race | 18 | 9.9% | 14 | 9.9% | -0.0% |
| Marital status | 9 | 5.0% | 14 | 9.9% | 4.9% |
| Family responsibilities | 21 | 11.6% | 11 | 7.7% | -3.9% |
| Sexual orientation | 9 | 5.0% | 11 | 7.7% | 2.7% |
| Political activity | 3 | 1.7% | 8 | 5.6% | 3.9% |
| Association | 13 | 7.2% | 7 | 4.9% | -2.3% |
| Parental status | 11 | 6.1% | 4 | 2.8% | -3.3% |
| Political belief or affiliation | 3 | 1.7% | 4 | 2.8% | 1.1% |
| Religious belief or affiliation | 3 | 1.7% | 4 | 2.8% | 1.1% |
| Gender identity* | 2 | 1.1% | 4 | 2.8% | 1.7% |
| Lawful sexual activity | 2 | 1.1% | 4 | 2.8% | 1.7% |
| Pregnancy | 7 | 3.9% | 3 | 2.1% | -1.8% |
| Religious activity | 2 | 1.1% | 3 | 2.1% | 1.0% |
| Unknown | 0 | 0.0% | 2 | 1.4% | 1.4% |
| Breastfeeding | 0 | 0.0% | 1 | 0.7% | 0.7% |
| Intersex* | 0 | 0.0% | 0 | 0.0% | 0.0% |

* Gender identity and intersex were added as protected attributes from 1 January 2014

Discrimination complaints by area of activity identified

| | 2013–14 | % of discrimination complaints | 2014–15 | % of discrimination complaints | Change in % |
|---|------------|--------------------------------------|------------|--------------------------------------|-------------|
| Total complaints | 181 | | 142 | | |
| Complaints alleging discrimination | 175 | | 141 | | |
| Area of Activity | | | | | |
| Employment | 86 | 49.1% | 64 | 45.4% | -3.7% |
| Provision of facilities, goods and services | 78 | 44.6% | 57 | 40.4% | -4.2% |
| Accommodation | 20 | 11.4% | 13 | 9.2% | -2.2% |
| Administration of any law or program of the State | 6 | 3.4% | 13 | 9.2% | 5.8% |
| Education & training | 15 | 8.6% | 10 | 7.1% | -1.5% |
| Membership and activities of clubs | 7 | 4.0% | 7 | 5.0% | 1.0% |
| Awards, enterprise and industrial agreements | 3 | 1.7% | 4 | 2.8% | 1.1% |

As noted earlier in this report, for discrimination to be unlawful it must be connected with an area of activity. The year saw a slight reduction in the dominance of the areas of employment and provision of facilities, goods and services compared to 2013–14.

The Discrimination complaints by area of activity identified table above details the area of activity identified in discrimination complaints received in 2014–15.

Table A1 in Appendix A shows the types of discrimination complaints received by area of activity for the year. This is graphed in Figure A1 and Figure A2 in Appendix A.

Table A1 and Figure A1 and Figure A2 show employment was the dominant area of complaint for 13 out of the 22 attributes. Provision of facilities, goods and services was the dominant area in relation to discrimination complaints on the basis of seven attributes: disability, race, political activity, political belief or affiliation, parental status, religious belief or affiliation, and religious activity. For the two remaining attributes, there was no difference between employment and provision of facilities, goods and services: association with a person with an attribute (3 complaints each) and intersex (none).

Table A10 in Appendix A details the discrimination complaints by industry sector (using the *Australian and New Zealand Standard Industrial Classification (ANZSIC), 2006* (Revision 2.0), cat. no. 1292.0.) and respondent organisation type. It indicates that the largest number of complaints relate to Government Administration (26.1%, compared to 12.2% in 2013–14) and Health and Community Services (21.0%, compared to 24.3% in 2013–14). The other major industry sectors are Education (8.7%, compared to 6.1% in 2013–14); Cultural and Recreational Services; and Accommodation, Cafés and Restaurants (both 7.2%, up from 5.0% and 3.9% respectively in 2013–14).

Complaints of other forms of prohibited conduct

Table A2 in Appendix A shows prohibited conduct complaints by area of activity. Again, employment and the provision of facilities, goods and services dominate.

As noted earlier, the year saw a significant increase in the percentage of complaints in which the complainant alleged there had been conduct that offends, humiliates, insults, intimidates or ridicules ('offensive conduct') (99.3% compared to 45.3% the previous year). There was also a marked increase in the number of complaints in which victimisation was alleged or identified (up 20%).

Tables A4 and A5 in Appendix A show the breakdown of offensive conduct and incitement complaints by attribute.

Table A4 shows the percentage of offensive conduct complaints that identified disability as the relevant attribute increased by almost 17%. This is likely to reflect that the protection against offensive conduct on this basis was only in place for half of the 2013–14 reporting period. Similar increases are seen in relation to the other attributes that gained that protection in 2013–14.

The notable changes in the complaint data for incitement complaints were the reduction in the number and percentage of complaints alleging incitement on the basis of race (13 fewer complaints, a 6.6% drop), and the increase in the percentage alleging incitement on the basis of disability (a 4.7% increase).

Assessment

Every complaint made under the Act is allocated to a member of the complaints team and their first task is to undertake an assessment of the complaint to identify whether or not the complaint discloses possible breaches of the Act. Based on that assessment, the complaint handler makes a recommendation to the Commissioner on whether or not the complaint should be accepted under the Act.

Acceptance of a complaint does not mean the complainant has proved they have been discriminated against or subjected to prohibited conduct. Rather, it means the complaint is a valid complaint under the Act and discloses possible breaches of the Act through the conduct the complainant alleged has happened.

The Act requires the Commissioner to 'accept or reject a complaint within 42 days after its receipt': section 64(2). Section 64(1) of the Act sets out the reasons the Commissioner can reject a complaint and these are detailed in Appendix B.

The amendments to the Act that took effect from 1 January 2014 mean the Commissioner can now reject part of a complaint, while accepting other parts of it. This is particularly important when a complainant names a number of respondents (people or organisations allegedly responsible for what happened). When this happens, the Commissioner may decide only some of those respondents could have any possible liability under the Act. Part rejecting such a complaint—that is rejecting it in relation to specific respondents—avoids those people or organisations having to remain involved in the complaint process.

Assessment decisions made in 2014–15

Of the 139 decisions made in 2014–15 on whether to ‘accept or reject’ a complaint:

- 17 were complaints received in 2013–14 and the remaining 122 were complaints received in 2014–15 (there were 20 complaints received in 2014–15 for which the assessment decisions were yet to be made at the end of the reporting period);
- 48 complaints were rejected (35%; up from 22% in 2013–14);
- 1 complaint was part accepted and part rejected (that is rejected in relation to one or more respondents).

This means 65% of complaints received complained of conduct that is within the jurisdiction of the Act.

Table A3 in Appendix A shows the comparative data for 2014–15 for complaint assessment (and investigation) decisions.

Table A6 summarises the rejection (and dismissal) decisions made in 2014–15.

Table A7 in Appendix A shows the rejection (and dismissal) data in relation to specific alleged breaches of the Act.

The Act specifies a complaint must be made to the Commissioner within 12 months of the conduct occurring. Where all of the conduct alleged in the complaint happened more than 12 months before the complaint is made, the complaint is considered to be made ‘out of time’. The Commissioner has the discretion to accept a complaint about conduct that occurred more than 12 months earlier.

In 2014–15, two complaints were not accepted because they were out of time and I did not consider it appropriate to exercise my discretion to extend the time available to make the complaint. Two other complaints were rejected for several reasons and parts of those complaints were about conduct that was ‘out of time’.

In the vast majority of cases, the primary reason the complaint was rejected was that it was lacking in substance or misconceived (21 complaints), or the conduct alleged did not relate to discrimination or prohibited conduct (12 complaints). Where complaints were rejected, the other reasons all or some aspect of the complaint was rejected were:

- the subject matter of the complaint may be more effectively or appropriately dealt with by another State Authority or Commonwealth statutory authority: 8 complaints;
- the complainant did not have standing to make the complaint: 2 complaints;
- the complaint did not meet the statutory requirements in terms of matters addressed in the complaint: 2 complaints;
- the subject matter of the complaint had already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority: 1 complaint.

Review of decisions to reject or part reject complaints

A decision to reject a complaint can be reviewed by the Tribunal on application from the complainant. The Tribunal’s decisions on rejection reviews indicate that, while there is a threshold for acceptance of complaints¹, it is a relatively low threshold.

In 2014–15, four complainants have sought review by the Anti-Discrimination Tribunal of the decision to reject a complaint (out of 56 notified during the period: 7%). This compares to review being sought in relation to 7 out of 38 rejection decisions made in 2013–14 (18%). Two of these applications were, at the end of the reporting period, yet to be determined by the Tribunal. One of the applications for review was withdrawn. The Tribunal upheld the Commissioner’s decision to reject the complaint in the remaining review.

As well as dealing with applications for rejection review made in 2014–15, the Tribunal also dealt with several earlier applications for review.

Outcomes of rejection reviews conducted and finalised by the Tribunal in 2014–15

| | |
|---|---|
| Reviews withdrawn | 1 |
| ADC Rejection decisions upheld by ADT | 3 |
| ADC Rejection decisions overturned (in whole or in part) by ADT | 2 |

At the end of the reporting period, there were two rejection review applications yet to be determined by the Tribunal.

Notification

If a complaint is accepted, the Act requires that the respondent(s) be notified within 10 days of that decision and the reasons for it. On average, this notification occurred within 9 days of the decision, with 28 notifications occurring later than 10 days (30% of notifications, up significantly from 11% in 2013–14). Notifications that occur later than 10 days are generally due to difficulties with getting current address details for parties.

Parties are offered, through the notification process, a date for an early resolution meeting and this usually goes ahead.

Investigation stage

Once parties have been notified of the decision to accept a complaint, my office has 6 months to complete the complaint investigation, irrespective whether or not an early resolution meeting is held. This is a statutory time limit that requires me to refer a complaint to the Tribunal if the investigation has not been completed within the 6-months allowed. The Act permits the investigation time to be extended with the complainant's consent.

In the vast majority of complaints notified in 2014–15, parties were asked to participate in conciliation conferences early in the investigation stage. This provided an early opportunity for the parties to consider options to resolve the complaint.

Case study

Discrimination on the grounds of association with a person with a criminal record

A complaint was made against an organisation by a person who had sought to change registration details related to a particular record. While trying to have the changes made, the customer services officer dealing with the request checked the person's personal details and noted she shared the same address as a person who had minor criminal record. While dealing with the person seeking the change, the customer service officer made comments based on his assumptions about the nature of the person's relationship with the person with the record. This caused offence and the customer service officer seemed, to the person, to be making the change of registration details more difficult.

The person made a complaint to the Commissioner. The complaint was accepted on the basis it disclosed possible discrimination on the grounds of association with a person with an irrelevant criminal record.

The conciliation conference concluded with the parties agreeing the complaint would be resolved on the basis of an apology.

Early conciliation meetings

During the year, 82 early conciliation meetings were held (up from 76 in the previous year). Of these, 48 (59%) of the complaints resolved at or following the meeting. A further three complaints were resolved during the investigation stage through facilitated negotiation. This number of successful early conciliation processes (51) is up from 49 for the previous year.

Outcome of investigations

At the completion of an investigation, the Commissioner must make one of four decisions: to dismiss the complaint; to refer the complaint to conciliation conducted under the Commissioner's authority; to refer the complaint to the Tribunal; or to decline to refer the complaint and dismiss it.

During the reporting period, the investigation was finalised in 46 complaints (1 being a complaint from 2012–13, 35 from 2013–14; and 10 from 2014–15). Of these, 13 were completed within 6 months of notification to the parties (this is 50% of investigation decisions and compares to 63% of the investigation decisions made in 2013–14).

Of the 46 investigations finalised in 2014–15:

- 8 complaints were dismissed, all of which were complaints received in 2013–14. This represents 17% of investigation decisions made;
- 11 complaints were referred direct to the Tribunal for Inquiry: 1 complaint received in 2012–13; 6 complaints received in 2013–14; and 4 were complaints received in 2014–15. This represents 24% of investigation decisions made;
- 25 complaints were referred to conciliation: 21 complaints received in 2013–14; and 4 were complaints received in 2014–15; this represents 54% of investigation decisions made;
- in 2 complaints, the complainant had failed to pursue the complaint and as a result the decision was made to decline to refer the complaint and dismiss it²; both were complaints received in 2014–15. This represents 4% of investigation decisions made.

In addition, 2 complaints were referred to the Tribunal because the investigation time limit had expired and the investigation had not been completed: 1 complaint received in 2012–13; and 1 complaint received in 2013–14. This represents the outcome in relation to 4% of investigations undertaken.

Table A3 in Appendix A shows the comparative data for 2014–15 for investigation (and assessment) decisions.

Table A6 summarises the dismissal (and rejection) decisions made in 2014–15.

The number of investigations completed is significantly lower than in 2013–14, largely due to the increased number of complaints that were resolved without the need for investigation. It also represents a significant reduction in the number completed within the 6-month timeframe. This appears to reflect delays to investigations being actively commenced because of ongoing resolution discussions that subsequently did not result in resolution at that stage. It also reflects the complexity of some of the investigations and some external delays.

Table A7 in Appendix A shows the dismissal (and rejection) data in relation to specific alleged breaches of the Act.

Finalising complaints

Complaints can either be finalised while they are being dealt with by the Commissioner, or following referral by the Commissioner to the Tribunal for Inquiry.

Complaints received by the Commissioner are finalised in a range of ways:

- Rejection by the Commissioner (dealt with above on page 50)
- Resolution with assistance from the Commissioner's office (reported in part above under 'Early conciliation meetings, and also below')
- Withdrawal while being dealt with by the Commissioner
- Dismissal by the Commissioner (dealt with earlier on this page)
- Resolution after referral by the Commissioner to the Tribunal
- Withdrawal after referral by the Commissioner to the Tribunal
- Dismissal before hearing by the Tribunal (after referral by the Commissioner)
- Dismissal by the Tribunal following hearing (after referral by the Commissioner)
- Upheld by the Tribunal following hearing (after referral by the Commissioner)

The following sections provide information about these finalisation processes.

During 2014–15, the Commissioner finalised 185 complaints (up from 175 in 2013–14, a 6% increase).

Timeliness of the complaint process

In 2014–15:

- 60% of complaints were finalised by my office within 6 months (up from 46% in 2013–14),
- 69% within 9 months (up from 61% in 2013–14)
- 78% within 12 months (up from 74% in 2013–14).

The average time from receipt to finalisation for complaints finalised in 2014–15 was just over 7 months (down from just over 8 months).

Over the past 4 years there has been a significant improvement in the percentage of complaints finalised within 6 months (up from 33% in 2011–12); a small improvement in the percentage closed within 9 months (up from 62% in 2011–12), and only a 1% improvement in the percentage closed within 12 months.

The time available under the Act for assessment of complaints is 42 days. In 2014–15, 139 assessment decisions were made (compared to 174 in the previous reporting period) with the average time to finalise the assessment being 37 days. Assessment decisions were made within the permitted 42 days in respect of all but 14 of the complaints.



Case study

Workplace Assessment to accommodate disability

A person with Multiple Sclerosis alleged disability discrimination against their employer. The employer required the employee to provide a medical certificate each time they took personal leave, which was difficult for them to do. The employer also reduced the employee's work duties, allegedly saying, 'you need to sort your illness out'. The complaint was accepted as a valid complaint under the Act on the basis it disclosed possible disability discrimination in connection with employment.

The complaint resolved at an early conciliation conference through:

- the employer organising a workplace assessment for the complainant and arranging for the complainant to actively provide input into that assessment;
- the parties agreeing to discuss the workplace assessment report together when it is received and how the complainant's disability can best be accommodated at work;
- the complainant not having to provide medical certificates each time they take sick leave;
- the parties agreeing that they will meet every two months to talk about any workplace adjustments that may be needed or changed.

Resolution with assistance from the Commissioner's office

Resolution is most commonly achieved through conciliation meetings or negotiations facilitated by the Commissioner's office. Following the changes to the Act that came into effect on 1 January 2014, the Commissioner can attempt to resolve a complaint at any time after it is received and can use whatever approach is considered appropriate to the circumstances. Before those changes, most conciliations or dispute resolution processes were held after the investigation was completed. As a result of the changes, parties now also have an opportunity to participate in conciliation processes during the investigation stage.

Some complaints are resolved by the parties outside the Commissioner's processes (and the complaint subsequently withdrawn).

In the resolution processes, the parties can generally agree to any outcome (so long as it is lawful). There is, however, an additional requirement if the complaint involves a child or a person who does 'not have the capacity to approve a settlement by reason of a disability'.³ In that situation, if the proposed resolution is achieved while the complaint is being dealt with by the Commissioner, her approval is required. If it is achieved while the complaint is being dealt with by the Tribunal, the Tribunal's approval is required. The Commissioner or Tribunal can only give such approval if they consider 'that the terms are satisfactory'. This is a new provision that came into effect on 1 January 2014. One of the complaints resolved during the reporting period has required the Commissioner's approval.

Details of outcomes of early conciliations are provided above on page 52.

Conciliation after investigation completed

In 2014–15, my office conducted 41 conciliations after the investigation was completed (up from 38 in 2013–14).

Of these, 20 resulted in the complaint being resolved between the parties: 49% of conciliations (down from 58% in 2013–14).

One further complaint was resolved through facilitated negotiation following investigation.

Withdrawal while being dealt with by the Commissioner

The Act states that a complaint that is with the Commissioner can only be withdrawn with the Commissioner's approval.

During 2014–15, 19 complaints were withdrawn. Of these nine (47%) were withdrawn because they had been resolved. Another nine were withdrawn without resolution. The remaining complaint that was withdrawn was referred by the Commissioner to the Australian Human Rights Commission as it was not within the jurisdiction of the State Act.

Dismissal by Commissioner

If a complaint is accepted and the parties cannot agree on a resolution early on, the Commissioner can investigate the complaint. At the completion of the investigation, the Commissioner has to decide on what should happen with the complaint. One of the options available to the Commissioner is to dismiss the complaint. The Act sets out the basis on which the Commissioner can dismiss a complaint and these are detailed in Appendix B.

As noted above, of the 46 investigations finalised in 2014–15, eight complaints were dismissed, all of which were complaints received in 2013–14. This represents 17% of investigation decisions made.

Review of decision to dismiss

Where a complaint is dismissed by the Commissioner, the complainant can seek review of that decision. The review is done by the Anti-Discrimination Tribunal.

In 2014–15, four complainants sought review by the Anti-Discrimination Tribunal of a decision to dismiss their complaint (of 12 dismissal decision notified during the period: 33%). This is the same number as sought review of dismissal decisions in 2013–14.

In relation to the four applications for dismissal review made in 2014–15, the Tribunal's decision has not yet been notified in one review, two applications for dismissal review were withdrawn, and one dismissal decision was upheld by the Tribunal.

As well as dealing with applications for dismissal review made in 2014–15, the Tribunal also dealt with several earlier applications for review.

Outcomes of dismissal reviews conducted and finalised by the Tribunal in 2014–15

| | |
|---|---|
| Reviews withdrawn | 3 |
| ADC Dismissal decisions upheld by ADT | 3 |
| ADC Dismissal decisions overturned by ADT | 0 |

The following table details complaints finalised by my office in 2014–15. More than half of the complaints finalised in this reporting period were complaints received in earlier reporting periods. The ways in which all of those complaints were finalised is detailed below.

Table A9 in Appendix A details the ways in which complaints made about particular organisational types were finalised. That table indicates a continuing low rate of resolution for complaints involving State Government (21.6% of all complaints finalised involving State Government) compared to all other respondent types (39.1% for private enterprise; 25.0% for non-profit organisations; and 42.9% for local government).

Complaints finalised in 2014–15 by the Anti-Discrimination Commissioner

| Complaint Outcome | Received by Commissioner in | | | | | Previous reporting period | | | | |
|--|-----------------------------|----------|-----------|-----------|-----------|--------------------------------------|---------------------------------|--------------------------------------|---------------------------------|-------------|
| | 2010–11 | 2011–12 | 2012–13 | 2013–14 | 2014–15 | Total for cases finalised in 2014–15 | % finalised this way in 2014–15 | Total for cases finalised in 2013–14 | % finalised this way in 2013–14 | Change in % |
| Rejected | 0 | 0 | 0 | 19 | 39 | 58 | 31.2% | 38 | 21.7% | 9.5% |
| Dismissed | 0 | 0 | 0 | 7 | 2 | 9 | 4.8% | 15 | 8.6% | -3.8% |
| Resolved through conciliation or negotiation | 1 | 0 | 6 | 39 | 25 | 71 | 38.2% | 60 | 34.3% | 3.9% |
| Withdrawn having been resolved | 0 | 0 | 0 | 3 | 6 | 9 | 4.8% | 5 | 2.9% | 1.9% |
| Part resolved, part withdrawn | 0 | 0 | 0 | 0 | 2 | 2 | 1.1% | 1 | 0.6% | 0.5% |
| Withdrawn without being resolved | 0 | 0 | 1 | 3 | 5 | 9 | 4.8% | 10 | 5.7% | -0.9% |
| Withdrawn and referred to another authority | 0 | 0 | 0 | 0 | 1 | 1 | 0.5% | 2 | 1.1% | -0.6% |
| Combined with another complaint | 0 | 0 | 0 | 0 | 1 | 1 | 0.5% | 0 | 0% | 0.5% |
| Referred to the Tribunal after investigation complete | 0 | 0 | 3 | 3 | 1 | 7 | 3.8% | 12 | 6.9% | -3.1% |
| Part dismissed, part referred after investigation | 0 | 0 | 0 | 1 | 0 | 1 | 0.5% | 0 | 0% | 0.5% |
| Referred to the Tribunal due to expiry of the six month investigation deadline | 0 | 0 | 1 | 2 | 0 | 3 | 1.6% | 14 | 8.0% | -6.4% |
| Part resolved, part referred after conciliation | 0 | 0 | 1 | 0 | 0 | 1 | 0.5% | 0 | 0% | 0.5% |
| Part dismissed, part referred after conciliation | 0 | 0 | 0 | 1 | 0 | 1 | 0.5% | 0 | 0% | 0.5% |
| Referred to the Tribunal after unsuccessful conciliation | 0 | 1 | 4 | 8 | 0 | 13 | 7.0% | 16 | 9.1% | -2.1% |
| | 1 | 1 | 16 | 86 | 82 | 186 | | 175 | | |

Referral to Tribunal for inquiry

During 2014–15, 26 complaints were referred either in their entirety or in part to the Anti-Discrimination Tribunal. The table above—Complaints finalised in 2014–15 by the Anti-Discrimination Commissioner—indicates the years in which those complaints were received and the type of referral.

Inquiries finalised by Tribunal

In addition to the reviews finalised by the Tribunal, it finalised 23 complaints that had been referred to it for Inquiry. Of these four had been referred in 2012–13, 14 in 2013–14; and five in 2014–15. The table below summarises the data on complaints referred for Inquiry that were finalised by the Tribunal during 2014–15.

Withdrawal by complainant after referral to the Tribunal

Until the amendments to the Act took effect on 1 January 2014, there was no mechanism for a complainant to withdraw their complaint if it had been referred to the Tribunal after the completion of the Commissioner's processes. As a result, when a complainant sought to withdraw their complaint, the Tribunal would use its dismissal powers to bring the complaint to an end.

Since 1 January 2014, the Tribunal can also approve withdrawal of a complaint after it has been referred to the Tribunal.

In 2014–15, 10 complaints referred for Inquiry were finalised through withdrawal: 9 that were referred in 2013–14; and 1 that was referred in 2014–15.

Resolved after referral to the Tribunal

Some complaints are resolved through processes conducted by the Anti-Discrimination Tribunal after being referred to the Tribunal at the completion of the Commissioner's processes.

In 2014–15, 8 complaints referred for Inquiry were finalised through being resolved through the Tribunal's processes: 2 that were referred in 2012–13; 4 that were referred in 2013–14; and 2 that were referred in 2014–15.

Upheld by Tribunal

A complaint may be upheld by the Tribunal if it finds, through its Inquiry, that part or all of the complaint is substantiated.

If a complaint is upheld, the Tribunal may make one or more of a range of orders. These are detailed in Appendix B.

In 2014–15, the Tribunal upheld two complaints following referral for Inquiry. One complaint was referred to the Tribunal in 2012–13; the other in 2014–15.

In *Power v Bouvy and Bouvy v Power* [2015] TASADT 2 (11 February 2015), the Tribunal upheld Mr Power's complaint finding he had been subjected by Mr Bouvy to direct discrimination on the basis of sexual orientation, conduct that was offensive, humiliating, intimidating, insulting or ridiculing on the basis of sexual orientation; and sexual harassment. It awarded Mr Power \$25,000 in damages. The Tribunal dealt with Mr Bouvy's complaint against Mr Power in the same decision. It dismissed Mr Bouvy's allegations of discrimination on the basis of disability and/or irrelevant criminal record, and victimisation.

The decision is available at: <http://www.austlii.edu.au/au/cases/tas/TASADT/2015/2.html>.

In *Williams v Threewisemonkeys and Durston* [2015] TASADT 4 (30 June 2015), the Tribunal upheld Mr Williams' complaint finding Mr Durston had unlawfully engaged in conduct that offended and humiliated, insulted and ridiculed on the basis of sexual orientation; incited hatred towards homosexuals because of their sexuality; and promoted prohibited conduct. Mr Williams had sought an apology and a statement from Mr Durston that he would not repeat such conduct. The Tribunal ordered Mr Durston to make a public apology and retraction to be published in *The Mercury*. The Tribunal specified the publication and details of the required apology and retraction.

The decision is available at: <http://www.austlii.edu.au/au/cases/tas/TASADT/2015/4.html>.

Referred complaints finalised by the Anti-Discrimination Tribunal in 2014–15

| | Year the complaint was referred by the Commissioner | | | Previous reporting period | | | | |
|--|---|-----------|----------|----------------------------|---------------------------------|----------------------------|---------------------------------|-------------|
| | 2012–13 | 2013–14 | 2014–15 | Total finalised in 2014–15 | % finalised this way in 2014–15 | Total finalised in 2013–14 | % finalised this way in 2013–14 | Change in % |
| Resolved before hearing | 2 | 4 | 2 | 8 | 33.3% | 12 | 37.5% | -4.2% |
| Complaints dismissed before hearing | 0 | 0 | 2 | 2 | 8.3% | 13 | 40.6% | -32.3% |
| Complaints dismissed following hearing | 1 | 1 | 0 | 2 | 8.3% | 0 | 0.0% | 8.3% |
| Complaints withdrawn | 0 | 9 | 1 | 10 | 41.7% | 1 | 3.1% | 38.5% |
| Complaints withdrawn & dismissed* | 0 | 0 | 0 | 0 | 0.0% | 6 | 18.8% | -18.8% |
| Complaints upheld | 1 | 0 | 1 | 2 | 8.3% | 0 | 0.0% | 8.3% |
| | 4 | 14 | 6 | 24 | | 32 | | |

* Before 1 January 2014, the Tribunal could only deal with a request to withdraw a complaint by dismissing it

Dismissal by Tribunal

The Tribunal has the power to also dismiss a complaint. It can do this if⁴:

... it finds after an inquiry that the complaint is unsubstantiated.

Or⁵

... at any time if it is satisfied that –

(a) the complaint is trivial, vexatious, misconceived or lacking in substance; or

(b) dismissing the complaint would, for some other reason, be just and appropriate.

In 2014–15, the Tribunal finalised four complaints referred for Inquiry through dismissal. Two of these were dismissed prior to hearing (both had been referred in 2014–15), and two were dismissed following hearing (1 had been referred in 2012–13, being the complaint of Mr Bouvy referred to above; the other was referred in 2013–14).

1 In this, the Act differs from other areas of law such as industrial claims, and common law actions. In those areas, a complaint does not get assessed up front by the receiving authority

2 The *Anti-Discrimination Act 1998* (Tas) was amended with effect from 1 January 2014 to provide the Commissioner with authority to 'decline to refer a complaint to the Tribunal and dismiss the complaint if the complainant has, in the opinion of the Commissioner, failed to pursue the complaint or the resolution of the complaint'.

3 *Anti-Discrimination Act 1998* (Tas) s 96A(1).

4 *Anti-Discrimination Act 1998* (Tas) s 99(1).

5 *Anti-Discrimination Act 1998* (Tas) s 99(2).

Exemption applications

During the reporting period, I received a total of 27 exemption applications (up from nine in 2013–14), 17 of which were granted with conditions (up from five in 2013–14), two were refused (up from zero in 2013–14) and eight were granted later in July 2015. (The total exemption applications received includes one application which was separated into five separate exemption applications and orders to ensure clarity. These five were not finalised during the reporting period.)

The exemptions granted are specific in terms of what is permitted—and might otherwise be unlawful under the Act—and do not exempt any other form of discrimination or prohibited conduct.

It is important that applicants and relevant staff of the organisation applying for exemption fully understand the exemption and the conditions set out in the exemption order, which are to be met within a specified timeframe. Section 57(2) (b) of the Act states the Commissioner can revoke an exemption if a condition of the exemption is contravened. Therefore, not complying with the exemption condition/s could result in the exemption being revoked.

The onus is on applicants to apply for renewal of an exemption before the expiry date if the exemption is still required. Given the majority of exemptions are granted for the maximum period of 3 years, application for renewal of exemptions by applicants has often been overlooked. To avoid this, during the reporting period we have taken on the administrative responsibility of reminding applicants of their obligations of meeting the conditions set out in the order and notifying them of pending expiry dates. This has resulted in an increased administrative workload for the office and will only continue so long as resources are available.

Notice must be published in the *Tasmanian Government Gazette* of every exemption granted. There is a right to seek a review of the granting of an exemption and of a decision to refuse to grant an exemption.

We have also begun reporting on the exemptions granted in our monthly electronic newsletter, *In respect of rights*. This encourages greater awareness of the exemption process and provides interested people with information that is more readily available than the *Government Gazette*.

Exemptions granted

Hobart City Council

granted on 30 July 2014 for 3 years

This exemption was granted to permit Hobart City Council to recruit and employ a man to the position of Youth Art Worker in the Council's Youth Art & Recreation Centre where the other continuing Youth Art Worker is a woman, and a woman to the position of Youth Art Worker where the other continuing Youth Art Worker is a man on the basis that this recruitment and appointment is for the purposes of:

- a) identifying, developing, delivering and maximising opportunities for young people aged 12–25 to participate in creative, cultural, social and recreational programs within the Youth Arts & Recreation Centre and Youth programs more generally; and
- b) providing appropriate support to young people who seek the assistance of the Youth Art Worker of a particular gender due to cultural and/or emotional needs.

Anglicare Tasmania

granted on 27 August 2014 for 3 years

This exemption was granted to permit Anglicare Tasmania to advertise and employ women only in the positions of Community Support Worker and Residential Disability Support Worker in the Disability and Acquired Injury Support Service/Community Aged Care service at Anglicare Tasmania on the basis that the recruitment and appointment is for the purposes of:

- a) ensuring the individual needs of clients are met, specifically in the areas of personal care needs such as toileting, showering, grooming and dressing in accordance with Client plans;
- b) ensuring the individual needs of clients are met and respected, specifically in the areas of developmental, social, recreational and emotional needs in accordance with rehabilitation, healthcare and support focus plans;
- c) providing appropriate support to Anglicare's clients by ensuring the continued presence of female staff in these positions whilst this need from its clients remains.

Speak Out Association of Tasmania Inc

granted on 27 August 2014 for 3 years

This exemption was granted to permit Speak Out to restrict its full membership to people with intellectual disability on the basis that it is for the purposes of:

- a) ensuring people with intellectual disability have a secure role in Speak Out management and shaping the future of the organisation and developing pertinent self-advocacy training; and
- b) maintaining Speak Out's traditional membership base as a self-advocacy organisation by and for people with intellectual disability.

Down Syndrome Tasmania Inc

granted on 1 September 2014 for 3 years

This exemption was granted to permit Down Syndrome Tasmania Inc to restrict the participation of dancers in its BrightStars dance group (excluding support persons) to people with Down syndrome on the basis that the restriction is for the purposes of:

- a) promoting social equality for persons with Down syndrome;
- b) encouraging persons with Down syndrome to develop self-confidence and self-esteem through the association's programs including BrightStars dance group; and
- c) ensuring that resources of Down Syndrome Tasmania Inc and the expertise of its staff are used appropriately for the benefit of people with Down syndrome.

Hobart Women's Health Centre

granted on 4 September 2014 for 3 years

This exemption was granted to permit Hobart Women's Health Centre to:

- a) provide services and facilities to women and women's groups;
- b) recruit and employ women only in all paid and volunteer positions with the Hobart Women's Health Centre on the basis that it is for the purposes of providing specific health and wellbeing services to women, by women; and
- c) recruit and engage women only to the Board of Governance.

Launceston Women's Shelter Inc (Magnolia Place LWS)

granted 1 October 2014 for 3 years

This exemption was granted to permit Launceston Women's Shelter Inc to recruit and employ women only in the identified positions of Chief Executive Officer, Response/ Property Worker, Women and Children's Support workers, On-call Crisis workers and Finance Officer on the basis it is for the purpose of operating a shelter for women and children escaping domestic/family violence and/or who are homeless to provide a secure, safe and supportive women-only space.

Yemaya Women's Support Services Inc

granted on 13 October 2014 for 3 years

This exemption was granted to permit Yemaya Women's Support Service Inc to recruit and employ women only in the identified positions of Co-ordinator/Counsellor with Yemaya Women's Support Service Inc.

Adam Honeyman and the Hobart Cat Café

granted on 13 October 2014 for 3 years

This exemption was granted to permit Adam Honeyman and the Hobart Cat Café to exclude dogs (including Guide Dogs and Assistance Dogs) from entering that part of the Hobart Cat Café that is physically separate from the food service area and identified as the cat-petting enclosure.

Archdiocese of Hobart

granted on 29 October 2014 for 3 years

This exemption was granted to permit the Archdiocese of Hobart to recruit and employ women to the position of Domestic Violence Case Manager for the Centacare Housing and Tenancy Support (CHATS) Programme on the basis that the recruitment and appointment is for the purposes of:

- a) providing sufficient access to appropriate support from Case Managers to ensure that clients are enabled to progress towards meeting their goals through the CHATS Programme; and
- b) providing appropriate access to female Case Managers for those CHATS clients, referred to the CHATS programme, who are escaping domestic/family violence and are, as a result, in need of support from a female Case Manager; and
- c) enabling CHATS programme to maintain the employment of two (2) female Case Managers to manage the existing case load of women clients and any new women clients requesting a female Case Manager.

Department of Education (Elizabeth College)

granted on 24 November 2014 for 12 months

This exemption was granted to permit the Department of Education (Elizabeth College) to recruit and employ a woman, over 18 years of age, for a fixed-term position of Teacher Assistant-Outdoor Education at Elizabeth College, Hobart for the purpose of:

- a) meeting the supervisory requirements as set out in the Department's procedures for Planning Off-Campus Activities; and
- b) providing assistance to the Outdoor Education Officer, where the incumbent is male, in order for Off-Campus and other related activities to continue to be provided to Elizabeth College students.

Launceston Women's Shelter Inc (Magnolia Place)

granted commencing on 5 February 2015 and ending 1 October 2017

This exemption was granted to Launceston Women's Shelter Inc to permit it to recruit and employ only women in the identified position of Administration Assistant on the basis this role has direct contact with service clients and is necessary to achieve the purpose of operating a shelter for women and children escaping domestic/family violence and/or who are homeless to provide a secure, safe and supportive women-only space.

Warrabee Committee Inc (Warrabee Women's Shelter)

granted on 7 January 2015 for 3 years

This exemption was granted to permit Warrabee Committee Inc (Warrabee Women's Shelter) to recruit and employ only women in the identified positions of Shelter Service Co-ordinator, Child Support Worker and Offsite Worker at Warrabee Women's Shelter in Ulverstone.

The exemption was granted on the basis that:

- a) the discrimination is for the purposes of operating a support service for women and children experiencing homelessness and/or in need of crisis accommodation, being a scheme for the benefit of a group — being women escaping domestic/family violence — that has special needs because of gender; and
- b) being a woman is a genuine occupational requirement of working with women escaping domestic/family violence.

Thomas Henry Reid Music Foundation

granted on 13 January 2015 for 3 years

This exemption was granted to the Thomas Henry Reid Music Foundation to permit it to design and deliver a series of workshops to encourage and empower female artistic professionals advance their careers in the music and recording industries.

The exemption was granted on the basis that the Thomas Henry Reid Music Foundation develop the workshops to assist women in achieving the following outcomes:

- a) for up to five (5) women, annually, to achieve a higher level of ability in recording and mastering techniques that advance their careers, delivered by music professionals; and
- b) connections with local recording studios, national and international community networks including through the promotion of these with developed skills to undertake placements; and
- c) a professional and supportive environment where women feel welcome, engaged and encouraged.

ParaQuad Association of Tasmania Inc

granted on 5 May 2015 for 3 years

This exemption was granted to ParaQuad Association of Tasmania Inc to permit it to recruit and employ only people with a physical disability in the identified positions of Presenter and Community Engagement Officer in the BodySafe Education Program for the purposes of:

- a) presentation of the ParaQuad Body Safe Education Program (Presenter and Community Engagement Officer);
- b) providing support to people who have recently acquired spinal cord injuries to assist them with their rehabilitation, recovery and re-integration into the community (Community Engagement Officer).

Launceston City Mission Inc

granted on 6 May 2015 for 3 years

This exemption was granted to Launceston City Mission Inc to permit it to recruit and employ a female or male Youth Mentor to work with 'at-risk' female or male youth aged between 13 and 25 years, in a mentoring role as part of Launceston City Mission's KidShed and The Mish Youth programs on the basis that:

- a) providing one-on-one mentoring for 'at-risk' youth, helping young people overcome issues that lead to social exclusion; helping young people re-engage with the education system and liaise with other support agencies;
- b) providing mentoring and facilitation of the KidShed and The Mish programs provided by Launceston City Mission Inc;
- c) providing gender-appropriate support services to young people, who seek the assistance of a Youth Mentor of a particular gender due to cultural and/or emotional needs; and
- d) ensuring that Launceston City Mission Inc has both a male and female Youth Mentor available to work with the at-risk youth in its KidShed and The Mish programs.

Karinya Young Women's Service Inc

granted on 24 May 2015 for 3 years

This exemption was granted to Karinya Young Women's Service Inc to permit it to advertise and employ women only to the identified position of Youth Crisis Accommodation Worker with Karinya Young Women's Service Inc on the basis that:

- a) the discrimination is for the purposes of operating a crisis accommodation service for young women aged between 13 and 20 who are homeless or at risk of homelessness, being a scheme for a benefit of a group — women at risk of homelessness — that has special needs because of gender; and
- b) being a women is a genuine occupational requirement of working with young women who require crisis accommodation and other services provided by Karinya Young Women's Service Inc.

Women's Legal Service (Tasmania) Inc

granted on 17 June 2015 for 3 years

This exemption was granted to permit Women's Legal Service (Tasmania) Inc to permit it to recruit and employ women only in the identified positions of Chief Executive Officer, Solicitor, Reception, Office Manager, Para-Legal, Legal Students, Volunteers and Management Collective for the purposes of:

- a) providing accessible and supportive state-wide legal advice, casework and referral service to Tasmanian women who face additional barriers in accessing legal services due to various social, economic and cultural factors; and
- b) providing a safe and non-threatening environment for its female clients.

Further details of all current exemptions can be found at:

http://www.antidiscrimination.tas.gov.au/exemptions/current_exemptions

Exemptions refused

The exemption applications that were refused during the reporting period were:

Tasmania Police

An exemption application received from the Department of Police and Emergency Services on 8 January 2015 was refused.

Tasmania Police sought an exemption from the *Anti-Discrimination Act 1998* (Tas) (the Act) to permit discrimination on the basis of gender in employment, through the enforcement of the *Tasmania Police Dress and Appearance Guidelines*.

The Guidelines included requirements that applied only to male officers, and other requirements that applied only to female officers. The Department wished to enforce these Guidelines, which do not allow male officers to wear earrings or ear studs.

Hobart City Council

An exemption application received from Hobart City Council on 13 October 2014 was refused.

The Hobart City Council sought an exemption from the Act to enable it to ban stallholders at the Salamanca Market displaying signage promoting candidates or political parties seeking election.

Tribunal Review of Exemptions

A person may apply to the Tribunal for a review of a decision of the Commissioner's decision to:

- Grant and exemption; or
- Renew an exemption; or
- Refuse to grant an exemption; or
- Refuse to renew an exemption; or
- Impose or vary a condition.

Applications for review must be in writing to the Tribunal and made within 28 days of notice in the *Gazette* or after receipt of the written statement of the Commissioner's reasons.

The Tribunal may review the decision of the Commissioner and make of the following determinations:

- Confirm that the Commissioner made a correct decision; or
- Quash the decision and direct the Commissioner to take such action as the Tribunal considers appropriate.

In 2014–15, the Commissioner was not advised of any applications for review.

Staffing

The office has a permanent staff complement of ten who work together in teams to support the Commissioner to perform the functions set out in section 6 of the Act through the specific activities identified in the Act and the annual Business Plan. Staff members often collaborate on work across the teams.

The teams are Administration; Policy and Research; Training, Education and Development; and Complaints.

Functions of the teams

The Executive Officer heads the Administration team of the Administrative Assistant and the Alternative Dispute Resolution (ADR) Co-ordinator and Systems Administrator. The Executive Officer is responsible for much of the day-to-day management of the office, finances and purchasing, and support for recruitment processes. She is also the key liaison and support person for the Commissioner. The Administration team provides support to all of the functions of the office, with a strong emphasis on supporting the complaint-handling processes, such as conciliation co-ordination.

The Training, Education and Development team co-ordinates the development and delivery of training for public and private sector education and training. The team also co-ordinates our monthly electronic newsletter, *In respect of rights*, and maintains the currency of much of the information on the website. The team provides ongoing support to many training participants through responding to questions about policies and procedures and facilitating the Workplace Support/Contact Officers' Networking events.

The Complaints team members are delegated to perform a range of functions specified in the Act in relation to investigating complaints and assisting parties to resolve complaints. The team also works with the Administrative team to respond to enquiries from members of the public about possible complaints. During the year, one of the Investigation and Conciliation Officers, Pia Struwe, continued to be delegated as a decision makers under the Act. This provides an important development opportunity and has assisted with managing the workload of the Commissioner.

The Policy/Research team consists of the Senior Policy and Project Officer and student interns on an *ad hoc* basis. The focus of this work is on responding to relevant inquiries, undertaking research into issues relevant to coverage under the Act, and developing and implementing policy strategies to encourage greater compliance with the Act.

Case study

Discriminated by 'blanket rule'

A venue with a gaming licence had a 'blanket rule' that all hats must be removed by customers entering the venue. The staff refused to serve a patron who was wearing a hat even though she tried to explain she was wearing it because she had recently had surgery on her head, had a large scar and a patch around the scar where her hair had not yet grown back. The woman left feeling humiliated by the experience.

The woman was very distressed and made a complaint about this to the Anti-Discrimination Commissioner. The woman and the venue owners were involved in a conciliation conference and the complaints was resolved. The venue owner:

- apologised to the woman for what happened;
- agreed to follow up with the gaming operator to ask for a change to its signage to take account of people who need to wear hats for medical or religious reasons;
- agreed to place their own sign next to the gaming operator's sign inviting patrons to approach staff if they need to wear a hat.
- agreed to provide training to new staff on discrimination awareness.

Staff members during 2014–15

| | |
|----------------------------------|--|
| Anti-Discrimination Commissioner | Robin Banks (full time, appointment commenced in 2010 with a further appointment in July 2015 until 31 January 2017) |
|----------------------------------|--|

Administrative team

| | |
|--|---|
| Executive Officers | Hilary Harris (temporary, part time from June 2014) |
| | Katrina Warburton (permanent, working part time from June 2014) |
| ADR Co-ordinator and Systems Administrator | Craig Beardwood (permanent, full time) |
| Administrative Assistant | Ann Harkus (permanent, full-time) |

Training, education and development team

| | |
|--|-------------------------------------|
| Senior Training, Education and Development Officer | Roz Smart (permanent, full time) |
| Training, Education and Development Officer | Louise Adams (permanent, full time) |

Policy team

| | |
|-----------------------------------|-------------------------------------|
| Senior Policy and Project Officer | Leica Wagner (permanent, full time) |
|-----------------------------------|-------------------------------------|

Complaints team

| | |
|---|---|
| Investigation and Conciliation Officers | Pia Struwe (permanent, working part time in 2014–15) |
| | Michelle Parker (permanent, on parental leave for all of 2014–15) |
| | Gemma Misrachi (permanent, working part time in 2014–15) |
| | Jason Wright (temporary, full time) |
| | Andrew Muthy (temporary, full time) |
| | Elma Nidorfer (temporary, full time from June 2014 to May 2015) |

Staffing arrangements and changes during the reporting period

Katrina Warburton and Hilary Harris shared the role of Executive Officer with responsibility for day-to-day management of the office, and key administrative and executive support to the Commissioner.

The role of Complaints Manager has not been filled due to the independent review undertaken during 2014–15 into the structure and functions of the office.

Investigation and Conciliation Officer, Gemma Misrachi, returned from parental leave in September 2014 in a part-time capacity working 2 days per week. Gemma has a reduced complaint load and does not generally take on the investigation role in relation to complaints, with her focus being on enquiries, assessments and conciliation.

Elma Nidorfer first joined the office in October 2013 on secondment from the Legal Aid Commission to help with enquiries and assessment of complaints. Elma returned in June 2014 and helped with the assessment and investigation of complaints until November 2014 being part funded by the Legal Aid Commission Tasmania. Elma was with our office until May 2015 when she moved to another position in the Department of Justice.

Jason Wright and Andrew Muthy both commenced 12-month contracts as Investigation and Conciliation Officers in November 2013. Their employment was extended for a further 12 months due to other staffing changes.

At the end of July 2015, Hilary Harris is returning to her permanent position with the Regional Management and Planning Appeals Tribunal (RMPAT).

We have really appreciated the contribution made to the office by both Elma Nidorfer and Hilary Harris, and are sad to lose them and wish them well in their work.

Interns

Unfortunately, due to the increased workload of the Senior Policy and Project Officer during 2014, we did not participate in any Internship programs provided by the University of Tasmania.

It is hoped that we will again be able to participate in the Internship programs as students have contributed to valuable research and policy work.

Work Placement Program

From April 2015, we participated in the Vocational Education and Training (VET) Business Program with Rosny College, supporting a VET Business student on work placement. The student, Jessica Knight (Term 2: 29 April to 1 July 2015) undertook a range of administrative duties whilst on placement providing practical experience of working in an office environment. Jessica's contribution was greatly valued and we wish her well for her future.

Staff training

During the 2014–15 year, staff members participated in training as part of their continuing professional development.

Training provided to all staff members included:

- LGBTI Awareness presented by Daniel Witthaus, Gay rights advocate and education activist
- Law Library Resources presented by Alison Jekamovics, Department of Justice
- Workplace Mental Health Training provided by Department of Justice

In November 2014, all staff participated in 3 days of training provided by the Australian Human Rights Commission on Statutory Conciliation. The trainers were Joanna D'Orey Novo and Rachel Holt, both of whom have extensive experience in alternative dispute resolution.

In December 2014, Debbie Dunn and Chris Wever of the Narrative Centre were contracted to undertake Narrative Mediation Training and Mentoring for our Investigation and Conciliation Officers. The first stage of this work involved an introductory session for staff members and then conciliation observations by the consultants. Extended training in narrative mediation techniques will be provided early in the 2015–16 year.

Funding of the Statutory Conciliation and Narrative Mediation Training and Mentoring was provided through the Solicitors' Guarantee Fund. Our thanks to the Attorney-General for this additional support for our work.

Financial situation and statements

The announcement in the 2014–15 State Budget of a cut to the funding allocation for the work of the Commissioner and her office was disappointing. While we have been able to operate to date without loss of staff or cuts to programs, our longer-term capacity to do this is doubtful as we will be drawing on reserves created over several years through training income.

The projects for which we received of one-off project funding from the Solicitors' Guarantee Fund are well advanced and it is anticipated they will all be completed in the 2015–16 financial year. This work is reported on elsewhere in this report.

An independent review of the structure and functions of this office was undertaken and finalised this year. Many of the recommendations from that review have been implemented. However, some of the recommendations have not been acted upon as it was not felt appropriate or possible within current funding constraints.

A Financial Statement for the office is provided within the Review Services Output in the Department of Justice Annual Report 2014–15. The Department of Justice Annual Report for 2014–15 and previous years can be found at: http://www.justice.tas.gov.au/annual_report

Appendix A:

Complaint data for 2014–15

Table A1: Discrimination complaints made by attribute and area of activity alleged or identified

| Discrimination on the basis of: | Employment | Education and training | Accommodation | Administration of State laws and programs | Industrial awards & enterprise agreements | Membership and activities of clubs | Provision of facilities, goods and services |
|-----------------------------------|------------|------------------------|---------------|---|---|------------------------------------|---|
| Disability | 28 | 5 | 8 | 7 | 2 | 3 | 34 |
| Irrelevant medical record | 14 | 0 | 1 | 6 | 2 | 0 | 8 |
| Relationship status | 12 | 0 | 3 | 5 | 1 | 0 | 6 |
| Gender | 12 | 0 | 2 | 0 | 0 | 1 | 6 |
| Age | 9 | 1 | 2 | 2 | 0 | 1 | 8 |
| Irrelevant criminal record | 9 | 0 | 1 | 2 | 0 | 0 | 7 |
| Industrial activity | 11 | 1 | 0 | 2 | 1 | 2 | 4 |
| Race | 3 | 3 | 1 | 3 | 1 | 1 | 7 |
| Marital status | 9 | 0 | 2 | 2 | 0 | 0 | 6 |
| Family responsibilities | 6 | 1 | 1 | 3 | 1 | 0 | 5 |
| Sexual orientation | 8 | 0 | 2 | 2 | 0 | 0 | 3 |
| Political activity | 3 | 1 | 1 | 0 | 0 | 0 | 6 |
| Association | 3 | 1 | 1 | 1 | 0 | 0 | 3 |
| Parental status | 1 | 1 | 1 | 1 | 1 | 0 | 2 |
| Political belief or affiliation | 1 | 1 | 0 | 0 | 0 | 0 | 3 |
| Religious belief or affiliation | 0 | 0 | 0 | 0 | 0 | 0 | 4 |
| Gender identity | 3 | 0 | 0 | 0 | 0 | 0 | 1 |
| Lawful sexual activity | 1 | 0 | 2 | 2 | 0 | 0 | 2 |
| Pregnancy | 3 | 0 | 0 | 1 | 1 | 0 | 0 |
| Religious activity | 1 | 0 | 0 | 1 | 1 | 0 | 2 |
| Unknown | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Breastfeeding | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Intersex | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total for area of activity | 139 | 15 | 29 | 40 | 11 | 8 | 117 |



Figure 1A: Complaint by attribute and area of activity: Eleven most commonly identified attributes

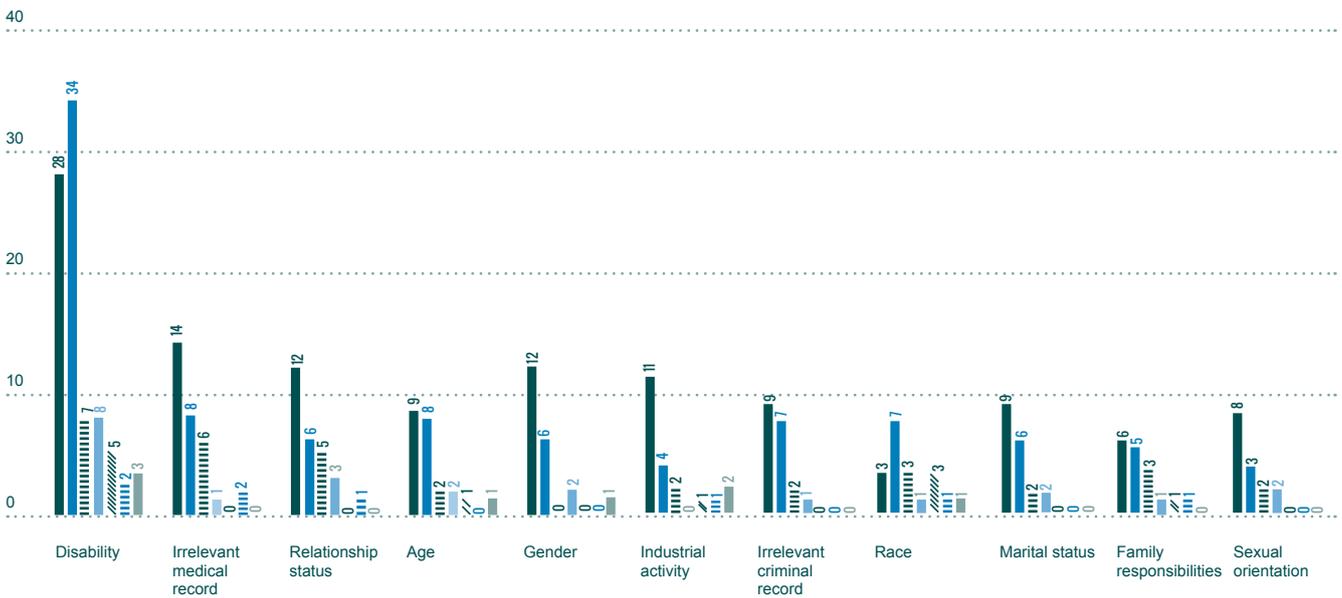


Figure 1B: Complaint by attribute and area of activity: Eleven least commonly identified attributes

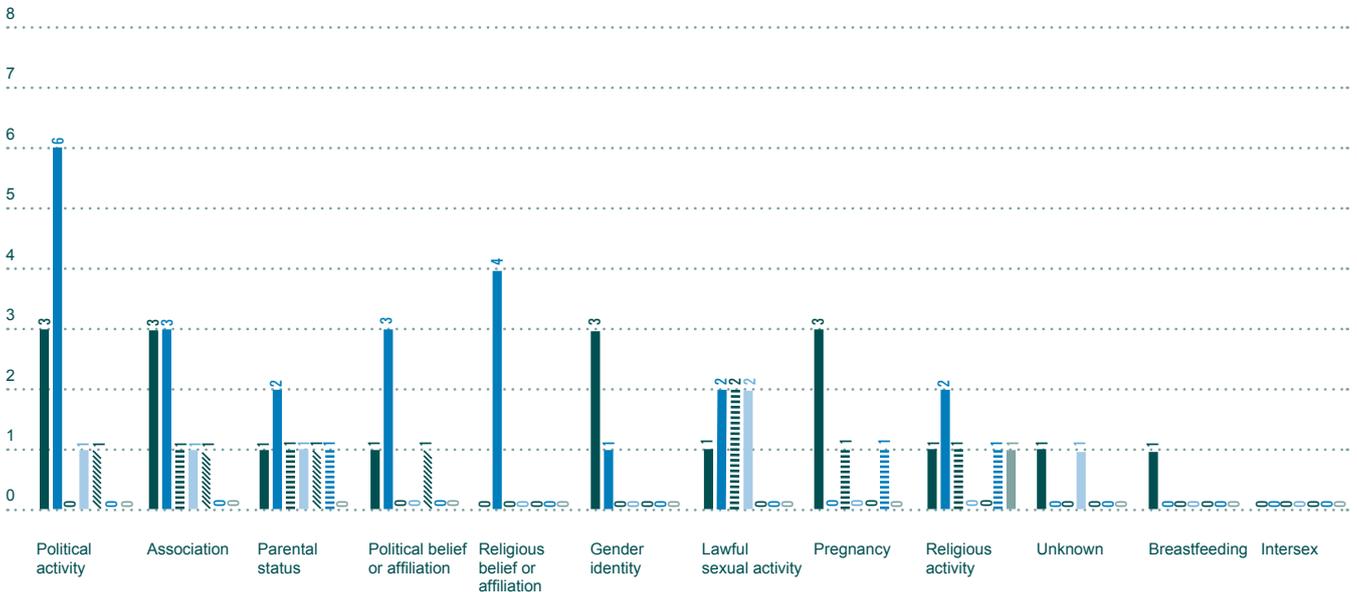


Table A2: Prohibited conduct complaints received by attribute and area of activity alleged or identified

| | Employment | Provision of facilities, goods and services | Accommodation | Education & training | Administration of any law of the State | Membership & activities of clubs | Awards, enterprise & industrial agreements |
|---|------------|---|---------------|----------------------|--|----------------------------------|--|
| Inciting hatred, serious contempt or severe ridicule on the basis of: | | | | | | | |
| Disability | 15 | 16 | 6 | 2 | 8 | 2 | 2 |
| Sexual orientation | 6 | 2 | 2 | 0 | 1 | 0 | 0 |
| Religious belief, affiliation or activity | 1 | 3 | 1 | 0 | 1 | 0 | 1 |
| Race | 0 | 2 | 1 | 1 | 1 | 0 | 0 |
| Conduct that offends, humiliates, intimidates, insults or ridicules on the basis of: | | | | | | | |
| Disability | 21 | 20 | 3 | 4 | 4 | 1 | 2 |
| Family responsibilities | 7 | 4 | 1 | 2 | 2 | 0 | 1 |
| Relationship status | 10 | 3 | 3 | 0 | 1 | 0 | 0 |
| Age | 7 | 5 | 1 | 1 | 1 | 1 | 0 |
| Gender | 9 | 5 | 1 | 0 | 0 | 0 | 0 |
| Sexual orientation | 8 | 3 | 2 | 0 | 2 | 0 | 0 |
| Race | 2 | 5 | 1 | 3 | 1 | 1 | 1 |
| Marital status | 7 | 4 | 0 | 0 | 2 | 0 | 0 |
| Gender identity | 5 | 1 | 0 | 0 | 0 | 0 | 0 |
| Lawful sexual activity | 1 | 1 | 1 | 0 | 2 | 0 | 0 |
| Pregnancy | 2 | 0 | 0 | 0 | 1 | 0 | 1 |
| Parental status | 1 | 0 | 0 | 2 | 0 | 0 | 0 |
| Breastfeeding | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Victimisation | 42 | 31 | 9 | 11 | 26 | 3 | 16 |
| Sexual harassment | 42 | 20 | 8 | 4 | 3 | 0 | 0 |
| Promoting discrimination or prohibited conduct | 0 | 2 | 0 | 0 | 0 | 0 | 0 |

Table A3: Complaint assessment and investigation decisions

| | 2013–14 | % | 2014–15 | % | % Change |
|--|------------|-------|------------|-------|----------|
| Assessment decisions | 173 | | 139 | | |
| Accepted | 126 | 72.8% | 91 | 65.5% | -7.3% |
| Rejected | 47 | 27.2% | 48 | 34.5% | 7.3% |
| Investigation decisions | 68 | | 46 | | |
| Dismissed | 15 | 22.1% | 8 | 17.4% | -4.7% |
| Proceed to conciliation | 44 | 64.7% | 25 | 54.3% | -10.4% |
| Decline to refer and dismiss | 0 | 0.0% | 2 | 4.3% | 4.3% |
| Referred to inquiry by ADT | 9 | 13.2% | 11 | 23.9% | 10.7% |
| Decision not made, automatic referral | 4 | | 2 | | |

Table A4: Complaints involving alleged offensive, insulting, intimidating, humiliating or ridiculing conduct by attribute

| | 2013–14 | % of all complaints | 2014–15 | % of all complaints | Change in % |
|--|------------|---------------------|------------|---------------------|--------------|
| Total complaints | 181 | | 142 | | |
| Complaints in which offensive conduct alleged or identified | 82 | 45.3% | 88 | 62.0% | 16.7% |
| Disability* | 28 | 15.5% | 46 | 32.4% | 16.9% |
| Relationship status | 10 | 5.5% | 14 | 9.9% | 4.4% |
| Gender | 28 | 15.5% | 13 | 9.2% | -6.3% |
| Family responsibilities | 14 | 7.7% | 12 | 8.5% | 0.8% |
| Age* | 6 | 3.3% | 12 | 8.5% | 5.2% |
| Race* | 7 | 3.9% | 11 | 7.7% | 3.8% |
| Sexual orientation* | 2 | 1.1% | 11 | 7.7% | 6.6% |
| Marital status | 3 | 1.7% | 8 | 5.6% | 3.9% |
| Gender identity* | 2 | 1.1% | 6 | 4.2% | 3.1% |
| Parental status | 10 | 5.5% | 3 | 2.1% | -3.4% |
| Lawful sexual activity* | 0 | 0.0% | 3 | 2.1% | 2.1% |
| Pregnancy | 5 | 2.8% | 2 | 1.4% | -1.4% |
| Breastfeeding | 2 | 1.1% | 0 | 0.0% | -1.1% |
| Intersex* | 0 | 0.0% | 0 | 0.0% | 0.0% |

* These attributes were added from 1 January 2014

Table A5: Complaints involving alleged incitement to hatred, serious contempt or severe ridicule by attribute

| | 2013–14 | % of all complaints | 2014–15 | % of all complaints | Change in % |
|---|------------|---------------------|------------|---------------------|-------------|
| Total complaints | 181 | | 142 | | |
| Complaints in which incitement alleged or identified | 58 | 32.0% | 53 | 37.3% | 5.3% |
| Disability | 36 | 19.9% | 35 | 24.6% | 4.7% |
| Race | 17 | 9.4% | 4 | 2.8% | -6.6% |
| Sexual orientation or lawful sexual activity | 7 | 3.9% | 9 | 6.3% | 2.4% |
| Religious belief or affiliation or activity | 4 | 2.2% | 5 | 3.5% | 1.3% |

Table A6: Complaints rejected or dismissed in 2014–15*

| Total decisions made in 2014–15 | |
|--|-----|
| Assessment decisions | 139 |
| Rejected | 48 |
| Investigation decisions | 46 |
| Dismissed | 10 |

* Includes all decisions made in 2014–15, including complaints lodged in earlier years.

Appendix A7: Rejection and dismissal decisions by alleged breaches and attributes

| | Rejected | % rejected | Dismissed | % dismissed* |
|---|-----------------|-------------------|------------------|---------------------|
| Allegations of discrimination on the basis of: | | | | |
| Disability | 27 | 35.1% | 4 | 15.4% |
| Irrelevant medical record | 19 | 76.0% | 1 | 20.0% |
| Relationship status | 9 | 52.9% | 0 | 0.0% |
| Irrelevant criminal record | 9 | 50.0% | 0 | 0.0% |
| Marital status | 7 | 50.0% | 0 | 0.0% |
| Industrial activity | 7 | 50.0% | 0 | 0.0% |
| Family responsibilities | 6 | 54.5% | 0 | 0.0% |
| Political activity | 5 | 71.4% | 0 | 0.0% |
| Race | 4 | 30.8% | 3 | 37.5% |
| Age | 4 | 26.7% | 2 | 25.0% |
| Parental status | 3 | 60.0% | 0 | 0.0% |
| Political belief or affiliation | 3 | 75.0% | 0 | 0.0% |
| Religious activity | 3 | 100.0% | 0 | N/a |
| Gender | 2 | 11.1% | 1 | 11.1% |
| Religious belief or affiliation | 2 | 50.0% | 1 | 100.0% |
| Lawful sexual activity | 2 | 50.0% | 0 | 0.0% |
| Association | 2 | 28.6% | 0 | 0.0% |
| Sexual orientation | 1 | 11.1% | 0 | 0.0% |
| Pregnancy | 1 | 33.3% | 0 | 0.0% |
| Gender identity | 0 | 0.0% | 0 | 0.0% |
| Intersex | 0 | N/a | 0 | N/a |
| Breastfeeding | 0 | 0.0% | 0 | N/a |

Appendix A7: Rejection and dismissal decisions by alleged breaches and attributes (continued)

| | Rejected | % rejected | Dismissed | % dismissed |
|--|-----------|--------------|-----------|--------------|
| Allegations of conduct that offends, intimidates, insults, humiliates or ridicules on the basis of: | | | | |
| Disability | 21 | 39.6% | 1 | 14.3% |
| Family responsibilities | 8 | 72.7% | 0 | 0.0% |
| Race | 3 | 27.3% | 3 | 50.0% |
| Relationship status | 3 | 27.3% | 1 | 33.3% |
| Marital status | 3 | 42.9% | 0 | 0.0% |
| Gender | 2 | 16.7% | 2 | 25.0% |
| Pregnancy | 1 | 50.0% | 0 | N/a |
| Age | 1 | 9.1% | 0 | 0.0% |
| Parental status | 1 | 33.3% | 0 | 0.0% |
| Breastfeeding | 0 | N/a | 0 | 0.0% |
| Gender identity | 0 | 0.0% | 0 | 0.0% |
| Lawful sexual activity | 0 | 0.0% | 0 | 0.0% |
| Intersex | 0 | N/a | 0 | N/a |
| Sexual orientation | 0 | 0.0% | 0 | 0.0% |
| Allegations of sexual harassment | 4 | 30.8% | 1 | 25.0% |
| Allegation of causing/aiding/inducing a breach | 0 | N/a | 0 | N/a |
| Allegations of victimisation | 23 | 44.2% | 3 | 20.0% |
| Allegations of promoting a breach of the Act | 1 | 50.0% | 2 | 66.7% |
| Allegations of incitement to hatred, serious contempt or severe ridicule on the basis of: | | | | |
| Disability | 22 | 56.4% | 0 | 0.0% |
| Religious belief, affiliation or activity | 4 | 66.7% | 1 | 50.0% |
| Race | 2 | 50.0% | 3 | 50.0% |
| Sexual orientation | 1 | 11.1% | 0 | 0.0% |
| Breach alleged in which area of activity | | | | |
| Provision of facilities, goods and services | 33 | 49.3% | 6 | 28.6% |
| Employment | 22 | 34.9% | 1 | 5.0% |
| Administration of State laws and programs | 7 | 58.3% | 0 | 0.0% |
| Accommodation | 4 | 30.8% | 1 | 20.0% |
| Industrial awards and agreements | 3 | 75.0% | 0 | 0.0% |
| Education and training | 2 | 16.7% | 3 | 75.0% |
| Membership and activities of clubs | 2 | 33.3% | 0 | 0.0% |

* This is the number dismissed for each alleged breach as a percentage of the total investigation decisions made in relation to each alleged breach.

Appendix A8: Outcomes of conciliation processes held in 2014–15

| Outcomes | 2013–14 | % | 2014–15 | % | Change in % |
|--|------------|-------|------------|-------|-------------|
| Resolved | 69 | 60.0% | 72 | 56.3% | -3.7% |
| Not resolved & returned to investigation | 22 | 19.1% | 23 | 18.0% | -1.2% |
| Not resolved and referred | 17 | 14.8% | 15 | 11.7% | -3.1% |
| Withdrawn with no resolution | 0 | 0.0% | 1 | 0.8% | 0.8% |
| Withdrawn resolved | 1 | 0.9% | 1 | 0.8% | -0.1% |
| Adjourned* | 6 | 5.2% | 16 | 12.5% | 7.3% |
| | 115 | | 128 | | |

* A significant number of the conciliation processes that were adjourned later resulted in resolution.

Appendix A9: Complaint finalisation by organisation type *

| | State Government | | | | Private Enterprise | | | |
|---|------------------|-------|---------|-------|--------------------|-------|---------|-------|
| | 2013-14 | % | 2014-15 | % | 2013-14 | % | 2014-15 | % |
| Rejected | 11 | 26.2% | 17 | 45.9% | 10 | 16.1% | 12 | 26.1% |
| Resolved-Conciliation or negotiation | 8 | 19.0% | 8 | 21.6% | 28 | 45.2% | 18 | 39.1% |
| Part resolved, part dismissed | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Dismissed | 6 | 14.3% | 2 | 5.4% | 3 | 4.8% | 3 | 6.5% |
| Referred to ADT after investigation complete | 4 | 9.5% | 0 | 0.0% | 3 | 4.8% | 1 | 2.2% |
| Part dismissed, part referred after investigation | 0 | 0.0% | 1 | 2.7% | 0 | 0.0% | 0 | 0.0% |
| Referred to ADT after six month expiry date | 6 | 14.3% | 1 | 2.7% | 2 | 3.2% | 1 | 2.2% |
| Part resolved, part withdrawn | 1 | 2.4% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |
| Part resolved, part referred-post investigation | 0 | 0.0% | 0 | 0.0% | 1 | 1.6% | 0 | 0.0% |
| Withdrawn-resolved | 2 | 4.8% | 2 | 5.4% | 2 | 3.2% | 1 | 2.2% |
| Withdrawn-not resolved | 0 | 0.0% | 1 | 2.7% | 4 | 6.5% | 5 | 10.9% |
| Withdrawn-Referred | 0 | 0.0% | 0 | 0.0% | 1 | 1.6% | 1 | 2.2% |
| Referred to ADT after unsuccessful conciliation | 4 | 9.5% | 3 | 8.1% | 7 | 11.3% | 4 | 8.7% |
| Part resolved, part referred-post conciliation | 0 | 0.0% | 0 | 0.0% | 1 | 1.6% | 0 | 0.0% |
| Combined with another complaint | 0 | 0.0% | 2 | 5.4% | 0 | 0.0% | 0 | 0.0% |

* This data relates to complaints finalised by the Anti-Discrimination Commissioner, some of which remain active through referral to or review by the Anti-Discrimination Tribunal (ADT).

| Non-Profit | | Local Government | | | | Commonwealth Government | | | | | |
|------------|-------|------------------|-------|---------|-------|-------------------------|-------|---------|--------|---------|--------|
| 2013-14 | % | 2014-15 | % | 2013-14 | % | 2014-15 | % | 2013-14 | % | 2014-15 | % |
| 2 | 5.6% | 10 | 41.7% | 4 | 33.3% | 0 | 0.0% | 0 | 0.0% | 3 | 100.0% |
| 17 | 47.2% | 6 | 25.0% | 4 | 33.3% | 3 | 42.9% | N/a | | N/a | |
| 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 4 | 11.1% | 2 | 8.3% | 1 | 8.3% | 0 | 0.0% | N/a | | N/a | |
| 1 | 2.8% | 0 | 0.0% | 1 | 8.3% | 1 | 14.3% | N/a | | N/a | |
| 1 | 2.8% | 1 | 4.2% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 5 | 13.9% | 0 | 0.0% | 1 | 8.3% | 0 | 0.0% | N/a | | N/a | |
| 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 1 | 2.8% | 2 | 8.3% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 2 | 5.6% | 1 | 4.2% | 0 | 0.0% | 1 | 14.3% | N/a | | N/a | |
| 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 1 | 100.0% | 0 | 0.0% |
| 3 | 8.3% | 1 | 4.2% | 1 | 8.3% | 2 | 28.6% | N/a | | N/a | |
| 0 | 0.0% | 1 | 4.2% | 0 | 0.0% | 0 | 0.0% | N/a | | N/a | |
| 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% | 0 | 0.0% |

Table A10: Complaints by industry sector

| | Private Ent. | State Gov't | Non-profit | Local Gov't | Fed. Gov't | Other | Sector total | 2014–15 % | 2013–14 % | Change in % |
|---|--------------|-------------|------------|-------------|------------|-------|--------------|-----------|-----------|-------------|
| Health and Community Services | 5 | 14 | 10 | 0 | 0 | 0 | 29 | 21.0% | 24.3% | -3.3% |
| Government Administration | 0 | 32 | 0 | 1 | 3 | 0 | 36 | 26.1% | 12.2% | 13.9% |
| Personal and Other Services | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 2.9% | 7.2% | -4.3% |
| Retail Trade | 5 | 0 | 0 | 0 | 0 | 0 | 5 | 3.6% | 6.6% | -3.0% |
| Education | 0 | 7 | 5 | 0 | 0 | 0 | 12 | 8.7% | 6.1% | 2.6% |
| Transport and Storage | 7 | 1 | 0 | 0 | 0 | 0 | 8 | 5.8% | 5.0% | 0.8% |
| Cultural and Recreational Services | 7 | 0 | 2 | 1 | 0 | 0 | 10 | 7.2% | 5.0% | 2.2% |
| Professional, scientific & technical | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% | 4.4% | -4.4% |
| Accommodation, Cafes and Restaurants | 6 | 3 | 1 | 0 | 0 | 0 | 10 | 7.2% | 3.9% | 3.3% |
| Finance and Insurance | 8 | 0 | 0 | 0 | 0 | 0 | 8 | 5.8% | 3.9% | 1.9% |
| Property and Business Services | 4 | 0 | 1 | 0 | 0 | 0 | 5 | 3.6% | 3.9% | -0.3% |
| Communication Services (Information/ Media) | 3 | 0 | 1 | 0 | 0 | 0 | 4 | 2.9% | 3.9% | -1.0% |
| Agriculture, Forestry and Fishing | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0.7% | 2.2% | -1.5% |
| Manufacturing | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 1.4% | 1.1% | 0.3% |
| Electricity, Gas and Water Supply | 0 | 2 | 0 | 0 | 0 | 0 | 2 | 1.4% | 0.6% | 0.8% |
| Mining | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% | 0.0% | 0.0% |
| Construction | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0.7% | 0.0% | 0.7% |
| Wholesale Trade | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.0% | 0.0% | 0.0% |
| Unknown | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0.7% | 0.0% | 0.7% |

Appendix B:

Decisions and orders available to the Commissioner and the Tribunal

Rejection by Commissioner

The Commissioner can reject a complaint on assessment if the Commissioner finds that one of a number of circumstances apply:

- (a) *in the opinion of the Commissioner, it is trivial, vexatious, misconceived or lacking in substance; or*
- (b) *the complaint does not relate to discrimination or prohibited conduct; or*
- (c) *the complainant has commenced proceedings in a commission, court or tribunal in relation to the same events, and that commission, court or tribunal may order remedies similar to those available under this Act; or*
- (d) *a person other than the complainant has commenced proceedings in a commission, court or tribunal in relation to the same subject matter of the complaint and the Commissioner is satisfied that the subject matter may be adequately dealt with by that commission, court or tribunal; or*
- (e) *in the opinion of the Commissioner, there is a more appropriate remedy that is reasonably available; or*
- (f) *the subject matter of the complaint has already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority; or*
- (g) *in the opinion of the Commissioner, the subject matter of the complaint may be more effectively or conveniently dealt with by a State authority or a Commonwealth statutory authority; or*
- (h) *in the opinion of the Commissioner, the complaint relates to conduct that is within the scope of an exemption granted under Division 11 of Part 5.¹*

Dismissal by Commissioner

If a complaint is accepted and the parties cannot agree on a resolution early on, the Commissioner can investigate the complaint. At the completion of the investigation, the Commissioner has to decide on what should happen with the complaint. One of the options available to the Commissioner is to dismiss the complaint. The Commissioner can do this if the Commissioner forms the view that one (or more) of the following apply:

- (a) *in the opinion of the Commissioner, it is trivial, vexatious, misconceived or lacking in substance; or*
- (b) *the complaint does not relate to discrimination or prohibited conduct; or*
- (c) *the complainant has commenced proceedings in a commission, court or tribunal in relation to the same events, and that commission, court or tribunal may order remedies similar to those available under this Act; or*
- (d) *a person other than the complainant has commenced proceedings in a commission, court or tribunal in relation to the same subject matter of the complaint and the Commissioner is satisfied that the subject matter may be adequately dealt with by that commission, court or tribunal; or*
...
- (f) *the subject matter of the complaint has already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority; or*
...
- (h) *in the opinion of the Commissioner, the complaint relates to conduct that is within the scope of an exemption granted under Division 11 of Part 5.²*

The Commissioner may also dismiss the complaint at this stage if the complainant has failed to remain involved in the process or changed their contact details and failed to inform the Commissioner of how to get in touch.

Upheld by Tribunal

A complaint may be upheld by the Tribunal if it finds, through its inquiry, that part or all of the complaint is substantiated.

If a complaint is upheld, the Tribunal may make one or more of a range of orders:

- (a) *an order that the respondent must not repeat or continue the discrimination or prohibited conduct;*
 - (b) *an order that the respondent must redress any loss, injury or humiliation suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;*
 - (c) *an order that the respondent must re-employ the complainant;*
 - (d) *an order that the respondent must pay to the complainant, within a specified period, an amount the Tribunal thinks appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;*
 - (e) *an order that the respondent must pay a specified fine not exceeding 20 penalty units;*
 - (f) *an order that a contract or agreement is to be varied or declared void in whole or in part;*
 - (g) *an order that it is inappropriate for any further action to be taken in the matter;*
 - (h) *any other order it thinks appropriate.*
- (2) *If the Tribunal finds after an inquiry that a complaint against a State Service officer or State Service employee is substantiated, it may order the Minister responsible for the Agency in which that officer or employee is employed to exercise any one or more of the powers specified in section 10 of the State Service Act 2000.*

(3) *If the Tribunal makes an order under subsection (2), the inquiry held under this Act is taken to be a determination arising from an investigation under section 10 of the State Service Act 2000.³*

...

The Tribunal may also:

... require the respondent to –

- (a) *apologise to the complainant; and*
- (b) *make any retractions the Tribunal considers appropriate⁴*

1 *Anti-Discrimination Act 1998 (Tas) s 64(1).*

2 *Anti-Discrimination Act 1998 (Tas) s 64(1).*

3 *Anti-Discrimination Act 1998 (Tas) s 89.*

4 *Anti-Discrimination Act 1998 (Tas) s 92(1).*

Appendix C:

Anti-Discrimination Tribunal

For more information about the Anti-Discrimination Tribunal functions and activities during 2014–15, you can access the Tribunal's Annual Report at the following website.

http://www.magistratescourt.tas.gov.au/publications/annual_reports (only provided in PDF)

Tribunal Membership

Tribunal membership during 2014–15 was as follows:

- Magistrate Glenn Hay (Chairperson – Hobart)
- Magistrate Melanie Bartlett (north-west coast)
- Magistrate Michael Brett (north-west coast)
- Magistrate Catherine Rheinberger (Hobart)
- Magistrate Simon Brown (Launceston)
- Professor Margaret Otlowski (Hobart)
- Mr Steven Bishop (Launceston)
- Ms Audrey Mills (Hobart)
- Ms Kate Cuthbertson (Hobart)
- Ms Lindi Wall (Hobart)
- Ms Jennifer Bridge-Wright (Hobart)
- Mr Robert Winter (Hobart)

Ms Cate McKenzie of the Victorian Civil & Administrative Tribunal is appointed to sit on Anti-Discrimination Tribunal cases where conflicts mean that Tasmanian members are unable to sit.

All Tribunal members carry out their responsibilities on a part-time basis.

Contact the Tribunal:

As noted earlier in this report, the Tribunal's registry moved from the Magistrates' Court to be co-located with the Workers Rehabilitation and Compensation Tribunal and Motor Accidents Compensation Tribunal. The following details are current:

Registrar

Anti-Discrimination Tribunal
Level 7, NAB House
86 Collins Street
Hobart
Ph: (03) 6166 4750
Fax: (03) 6234 3304
E-mail: ADT@justice.tas.gov.au

Website: www.justice.tas.gov.au/tribunals/tribunal_sites/Anti-Discrimination_Tribunal

Contact

If you have any questions about the work of the Anti-Discrimination Commissioner, this report, or would like to be sent this report in a different format, please contact the Office of the Anti-Discrimination Commissioner, Tasmania. The report is available on our website in Word and PDF at <http://www.antidiscrimination.tas.gov.au/resources>

The office of the Anti-Discrimination Commissioner

Phone: 1300 305 062 (in Tasmania) or (03) 6165 7515

E-mail: antidiscrimination@justice.tas.gov.au

Web SMS: 0409 401 083

Translating and Interpreting Service: 131 450

National Relay Service

TTY Users: Phone 133 677 then ask for 1300 305 062

Speak and Listen: 1300 555 727 then ask for 1300 305 062

Office: Level 1, 54 Victoria St, Hobart TAS 7000

Post: GPO Box 197, Hobart TAS 7001

Facebook: <https://www.facebook.com/pages/Office-of-the-Anti-Discrimination-Commissioner/212480648838657>

Twitter: @tasadc

<http://www.antidiscrimination.tas.gov.au>

