

Equal Opportunity
Tasmania
Annual Report
2021–22



To deny people their
human rights is to
challenge their very
humanity.

Nelson Mandela

The Honourable Elise Archer, 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 23rd Annual Report on the operation of the *Anti-Discrimination Act 1998*.

This report covers the activities of my office from 1 July 2021 to 30 June 2022.

I commend the report to you.



Sarah Bolt
Anti-Discrimination Commissioner

30 September 2022

This Annual Report outlines the activities of the Anti-Discrimination Commissioner and Equal Opportunity Tasmania in 2021–22.

It is also available on the Equal Opportunity Tasmania website:

www.equalopportunity.tas.gov.au

© This publication is copyright. No part may be reproduced by any process without written permission from the Anti-Discrimination Commissioner, Tasmania.

Publication ISSN: 1832-9772

Please note, all case studies refer to what was alleged by the person making the report or complaint.

Contents

4 From the Commissioner

8 Chapter 1 - Aims and principles

9 Chapter 2 - Complaint handling

30 Chapter 3 - Enquiries

32 Chapter 4 - *Report it!*

38 Chapter 5 - Training, education and development

42 Chapter 6 - Community engagement

46 Chapter 7 - Exemptions

49 Chapter 8 - Policy and working groups

52 Chapter 9 - Staff establishment

54 Chapter 10 - Tasmanian Civil and Administrative Tribunal

55 Chapter 11 - Financials

56 Chapter 12 - Contact

From the Commissioner



It has been a very busy year across all areas of Equal Opportunity Tasmania, heightened by my appointment as Independent Reviewer for the Independent Review into Parliamentary Practices and Procedures to Support Workplace Culture (the Review).

The Review is one of the most significant pieces of work undertaken by Equal Opportunity Tasmania. The work was completed by staff of my office, together with specialist support provided for certain elements of the Review.

I acknowledge and thank all involved for their diligence, professionalism, sensitivity and commitment in producing the Report: *Motion for Respect - Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services*.

A copy of the Report can be found at www.equalopportunity.tas.gov.au.

Moving my reflections to incidents nationally and globally, we have recently witnessed numerous events which expose the fragility and vulnerability of human rights. This is a stark and confronting realisation and demonstrative of the need for continued work in this space.

The war in Ukraine provided a chilling reminder of how rapidly basic human rights can be extinguished and overridden. While economic sanctions against Russia have been put in place, these make little difference on an individual level, where people have experienced the irrevocable loss and destruction of lives, families, homes, jobs, schools and the fragmentation of their communities.

As we watched through our television or phone screens, seemingly disconnected, we witnessed ordinary people being displaced, fleeing their homes for safety, and becoming refugees overnight. While we may feel removed from this reality of war and terror, it is critical to remember we are not, and that human rights must always be protected.

Further global events reinforce the urgency of the need to protect human rights.

Recently, we witnessed the overturning of *Roe v. Wade*, the rights of girls and women being eroded in Afghanistan, and political tensions and instability in the Asia-Pacific region.

There are many human rights which are taken for granted, such as rights to education and

housing. Tasmania does not have a Human Rights Act, unlike some jurisdictions. While we are fortunate to live in a democracy and in a society where people are legally protected from discrimination, sexual harassment and incitement to hatred, these rights do not go far enough to protect people.

Further, in consideration of the legal protections and responsibilities under anti-discrimination legislation, one would hope that our communities, and the individuals within them, would practice increasing kindness, acceptance and respectful behaviours.

Unfortunately, it is evident that in Tasmania, discrimination, sexual harassment and incitement to hatred continue to touch the lives of too many. This is despite the protections contained in the *Anti-Discrimination Act 1998* (Tas) (the Act) and the ability for people to make complaints under it.

The Act protects twenty-two attributes with no attribute carrying more weight than another. But despite all attributes being of equal weight, there are some which are lesser known, such as family responsibilities, marital status, irrelevant criminal record and association with a person who has a protected attribute.

Many people possess multiple attributes and may experience discrimination on the basis of a combination of these. For example, age and marital status, or sexual orientation and family responsibilities, or gender identity and disability. Bringing awareness and building community knowledge of these attributes is continuous work.

One way for people to feel heard, validated and encouraged to speak out about discrimination and other unlawful conduct, is when they have the backing of communities who support their cause. In recent times, it's been encouraging to see the great work done by interest groups coming together on particular issues.

In June, the Attorney-General the Honourable Elise Archer, MP kindly sponsored a forum organised by my office 'Silos Enable Discrimination to Thrive'. The forum was attended by members from diverse community groups across Tasmania and aimed to build connections, amplify the discussion around the lesser-known attributes, and provide mechanisms to progress human rights of all Tasmanians.

The forum was a great success and I encourage community groups to continue to collaborate, to break down silos and to build greater momentum and strength in numbers. The ability to bring about change when operating in a silo is far more challenging than

when acting as a collective. Together, the voice of equality, kindness and respect can be undeniable.

History has proven that action and change occur when the collective has been mobilised. Examples of this include saving the Franklin River and the abandonment of the proposed Tamar Valley Pulp Mill. Both issues attracted the attention of, and action from, many thousands of Tasmanians from all walks of life. Put simply, there is strength in numbers.

If these issues had been siloed, the opportunity for attendance at events demonstrating the community perspective would have been limited. The true voice of the community may never had been heard.

The growing momentum to Change the Date of 'Australia Day' and the advocacy from community groups in response to the previous federal Liberal Government's Religious Discrimination Bill highlight the power of collective action by people possessing a myriad of attributes and personal interests.

This clearly shows that if we all took an interest in the hardships, discrimination and harassment faced by others and stood up for their rights, as we would like others to do for us, the prospect of reducing antisocial, discriminatory and disrespectful behaviours would be greatly increased.

From a national perspective, a powerful example of the collective voice of a community is that of the people of Biloela. The widespread advocacy and support for the Nadesalingam family (also known as the Murugappan family) was compelling, and influenced political decisions later made. Without such advocacy, there was real risk that the family may have been returned to their country of origin, becoming more victims of the cruel and inhumane approach to border control in Australia.

The power of the collective advocacy of the people of Biloela and others who joined them, directly impacted the return of the family to their community and increased awareness of the conditions asylum seekers are subject to in Australia.

This heartening story has spurred the conversation on in our Tasmanian communities, where interest groups are encouraged to work together to achieve change here and nationally.

In the words of Helen Keller, '*alone we can do so little, together we can do so much*'.

I take this opportunity to express my thanks and appreciation to my colleagues at Equal Opportunity Tasmania for their commitment, collegiality, professionalism and unwavering belief in the work that we do.



Sarah Bolt
Anti-Discrimination Commissioner

Our work at a glance

184 complaints received

37 days average assessment
timeframe of a complaint

76 complaints proceeded to
conciliation

195 complaints finalised

650 enquiries answered from members
of the public

35 Report it! reports received

170 training, education and
development sessions delivered

1 Aims and principles

Equal Opportunity Tasmania aims to foster a society free of discrimination, prejudice, bias and prohibited conduct by administering the *Anti-Discrimination Act 1998 (Tas)* (the Act):

- with integrity and impartially;
- effectively and efficiently;
- professionally; and
- in accordance with our legal obligations.

To achieve public confidence in our role and functions, we strive to:

- deliver high standards of professional service;
- operate in a collaborative manner;
- build and foster relationships with key stakeholders;
- ensure transparency, fairness, and confidentiality in complaint-handling processes; and
- engage community and key stakeholder participation through our training, education and development programs.

2 Complaint handling

A significant function of Equal Opportunity Tasmania is to investigate and attempt to resolve through conciliation complaints of discrimination and prohibited conduct.

The Act provides that a person can complain about one or more of the following:

- 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 8 protected attributes;
- promoting discrimination and prohibited conduct;
- knowingly causing, aiding or inducing another person to breach the Act; and/or
- victimisation: which is protection against retaliation for making a complaint or participating in the complaint process.

Other than incitement, the conduct listed above is only unlawful if it happens in connection with one or more of the following areas of activity:

- employment;
- education and training;
- provision of facilities, goods and services;
- accommodation;
- membership and activities of clubs;
- administration of any law of the State or any State program; and/or
- awards, enterprise agreements or industrial agreements.

In 2021–22, 184 complaints were received under the Act (Table 2.1). This is a slight decrease from 190 complaints received in 2020–21.

Of the 184 complaints received, 33 concerned COVID-19 related issues.

111 of the 184 complaints were received by the online complaint form. The online complaint form is proving to be an accessible and efficient process for people to lodge complaints.

Table 2.1 Type of breach alleged

	Current year 2021-22	Previous year 2020-21
Total complaints	184	190
Allegations raised in complaints		
Discrimination	268	312
Conduct that offends, humiliates, intimidates, insults or ridicules	153	205
Victimisation	64	97
Incitement	51	71
Sexual harassment	16	17
Promoting discrimination and prohibited conduct	4	0
Causing, inducing or aiding a breach	3	0
None alleged	1	0

Discrimination

During 2021–22, as in most previous reporting periods, disability continues to be the most complained about attribute, with it being identified in 73 of the 268 allegations of discrimination (27%) (Table 2.2).

The next highest levels of discrimination allegations related to the attributes of race (11%), gender (10%) and age (8%).

Table 2.2 Allegations of discrimination by attribute

	Current year 2021-22	Previous year 2020-21
Total allegations of discrimination	268	312
Disability	73	85
Race	30	30
Gender	26	19
Age	21	25
Religious belief or affiliation	18	10
Irrelevant criminal record	15	13
Irrelevant medical record	14	17
Association with a person who has, or is believed to have, any attribute	10	10
Family responsibilities	10	15
Industrial activity	10	18
Sexual orientation	8	7
Relationship status	5	8
Parental status	4	10
Pregnancy	4	6
Political belief or affiliation	4	6
Religious activity	3	5
Gender identity	3	4
Breastfeeding	2	2
Lawful sexual activity	2	3
Marital status	2	8
Political activity	1	6
Intersex variations of sex characteristics	0	3
Unknown / Not covered by ADA	3	2

As noted earlier, for discrimination to be unlawful it must be connected with an area of activity. In 2021–22, for complaints alleging discrimination the main areas of activity were employment followed by the provision of facilities, goods and services, education and training and accommodation.

Complaint case studies

Complaint of irrelevant criminal record discrimination resolved

The complainant applied for a position and was given an offer of employment by the respondent employer. When the complainant disclosed he had prior convictions the offer of employment was withdrawn. The employer alleged this was because the complainant's police check did not fit the values of the company.

The respondent denied discrimination, and said the complainant had recent convictions relevant to the position, and did not disclose the full extent of his criminal record.

The complaint was resolved confidentially at a conciliation held by Equal Opportunity Tasmania, with the respondent agreeing to pay the complainant an agreed amount of financial compensation.

Disability discrimination in the provision of facilities, goods and services

The complainants were parents who lodged a complaint on behalf of their son, who has a number of disabilities, about a hotel. They alleged their son was told he could not attend the hotel unless he has a support worker with him.

The respondent said that the son had been going there for a number of years, always with a support worker, and was considered a friend by many of the staff. They were concerned for his safety when he was there without a support worker, and that staff could not always watch him.

The complaint was resolved after an open and sincere discussion by all parties at conciliation conducted by Equal Opportunity Tasmania, with the respondent agreeing to:

- Provide disability awareness training for staff.
- Treat people with disability with dignity and respect.
- Provide an apology to the complainants' son, including saying that he is welcome at the hotel.

The complainants acknowledged the positive benefits to their son of attending the hotel, and that the respondent is not responsible for their son while he is at the hotel.

Prohibited conduct

Prohibited conduct refers to any of the types of unlawful conduct other than discrimination. It includes offensive conduct, sexual harassment, incitement, victimisation, promoting discrimination and prohibited conduct, and causing, inducing or aiding a breach of the Act.

Disability continues to be the most complained about attribute for allegations of offensive conduct (Table 2.3).

Table 2.3 Allegations of offensive, insulting, intimidating, humiliating or ridiculing conduct by attribute

	Current year 2021-22	Previous year 2020-21
Total allegations of offensive conduct	153	205
Disability	61	68
Race	24	29
Age	19	16
Gender	17	18
Sexual orientation	10	6
Family responsibilities	5	15
Gender identity	4	8
Parental status	3	12
Relationship status	3	7
Marital status	2	9
Pregnancy	2	6
Lawful sexual activity	2	4
Breastfeeding	1	3
Intersex variations of sex characteristics	0	4

Of the other types of prohibited conduct:

- Allegations of sexual harassment decreased from 17 in 2020–21 to 16 in 2021–22.
- Allegations of victimisation decreased from 97 in 2020–21 to 64 in 2021–22.
- There were 4 allegations of promoting discrimination and prohibited conduct and 3 of causing, inducing or aiding a breach of the Act in 2021–22.

Employment and the provision of facilities, goods and services continue to be the most identified areas of activity for allegations of prohibited conduct.

Incitement does not need to happen in connection with an area of activity to be unlawful. Rather, there must be a public act for the conduct to be unlawful.

Allegations of incitement to hatred, serious contempt or severe ridicule show a decrease in 2021–22 compared with the previous year (Table 2.4). Disability, followed by race, are again the most complained about attributes for incitement.

Table 2.4 Allegations of incitement to hatred, serious contempt or severe ridicule by attribute

	Current year 2021-22	Previous year 2020-21
Total allegations of incitement	51	71
Disability	21	30
Race	16	17
Religious belief or affiliation or activity	4	11
Sexual orientation	5	2
Gender identity	3	6
Lawful sexual activity	2	2
Intersex variations of sex characteristics	0	3

Who makes complaints and who they are against

The complainant is the person or organisation that lodges a complaint. The respondent is the individual and/or organisation against whom the complaint has been made. A complaint can be made by more than one person or organisation against more than one person or organisation.

Most complaints are received from individuals who either complain on their own behalf or on behalf of another person or group (Table 2.5). 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.

In 2021-22, 184 complaints were made by 188 complainants against 283 respondents.

Table 2.5 Complaints: complainants and respondents

	Current year 2021-22	Previous year 2020-21
Number of complainants	188	194
Individual complainants	187	194
Male	92	104
Female	92	89
Other ¹	3	1
Organisation or group complainants	1	0
Number of respondents	283	371
Individual respondents	102	186
Male	53	109
Female	46	77
Undetermined ²	3	0
Organisation or group respondents	181	185

1 Other includes complainants who are non-binary and transgender or prefer not to say.

2 Some respondents were named by position title and their gender is undetermined.

Respondent organisation type identified in complaints

Organisational respondents are categorised according to their type.

In 2021–22, Private enterprises were the most complained about respondent type with 70 being identified, which is a significant increase from 49 the previous year. State government entities were second highest, followed by non-profit entities and local government (Table 2.6).

The following table shows organisation type for primary respondents. This does not include data for organisations who are named as second or third respondents to a complaint.

Table 2.6 Complaints by primary respondent organisation type

	Current year 2021-22	Previous year 2020-21
Private enterprise	70	49
State government entities	53	51
Non-profit entities	38	46
Local government	6	12
Federal government	1	1

Please note that the Act doesn't apply to complaints made against the Federal government and its agencies and they are rejected.

Access to legal representation, advocacy and support

Some complainants and respondents choose to seek legal or advocacy representation. This may include lawyers from community legal centres, private firms and the Office of the Solicitor-General (for complaints involving the State government), in-house counsel, union representatives and advocates from advocacy organisations. Others may enter the complaint process unrepresented and remain so throughout the process.

The relatively informal complaint handling process within the Equal Opportunity Tasmania setting enables, in many instances, a timely, creative and flexible approach to resolving matters without the need for legal or other representation.

In 2021–22:

- 22 complainants (12%) had a lawyer at some stage during the complaint process.
- 28 complainants (15%) had an advocate or other representative involved at some time during the complaint process.
- Of the primary respondents, 35 (19%) had a legal representative (private lawyer or in-house counsel) and 6 (3%) involved another representative at some stage during the complaint process.

These figures are consistent with the previous reporting years.

Complaint case studies

Complaint of parental status and family responsibilities discrimination withdrawn

The complainant alleged she stopped receiving shifts after she returned to work following the birth of her child, and her employment was ultimately terminated.

The employer was operating a hotel quarantine facility which was not open to the general public. The employer asserted that the complainant said she was unavailable for shifts during the main hours of operation of the facility and, following an increase in vaccination rates, fewer people were required to quarantine. Her employment was terminated due to this downturn.

A conciliation conference was scheduled to try and resolve the complaint, but it was cancelled due to illness of one of the parties.

The parties then met privately to discuss the complaint, and the respondent offered for the complainant to return to work.

The complainant applied to withdraw her complaint. The Commissioner was satisfied the complainant was voluntarily seeking to withdraw her complaint, and accepted her application to withdraw the complaint.

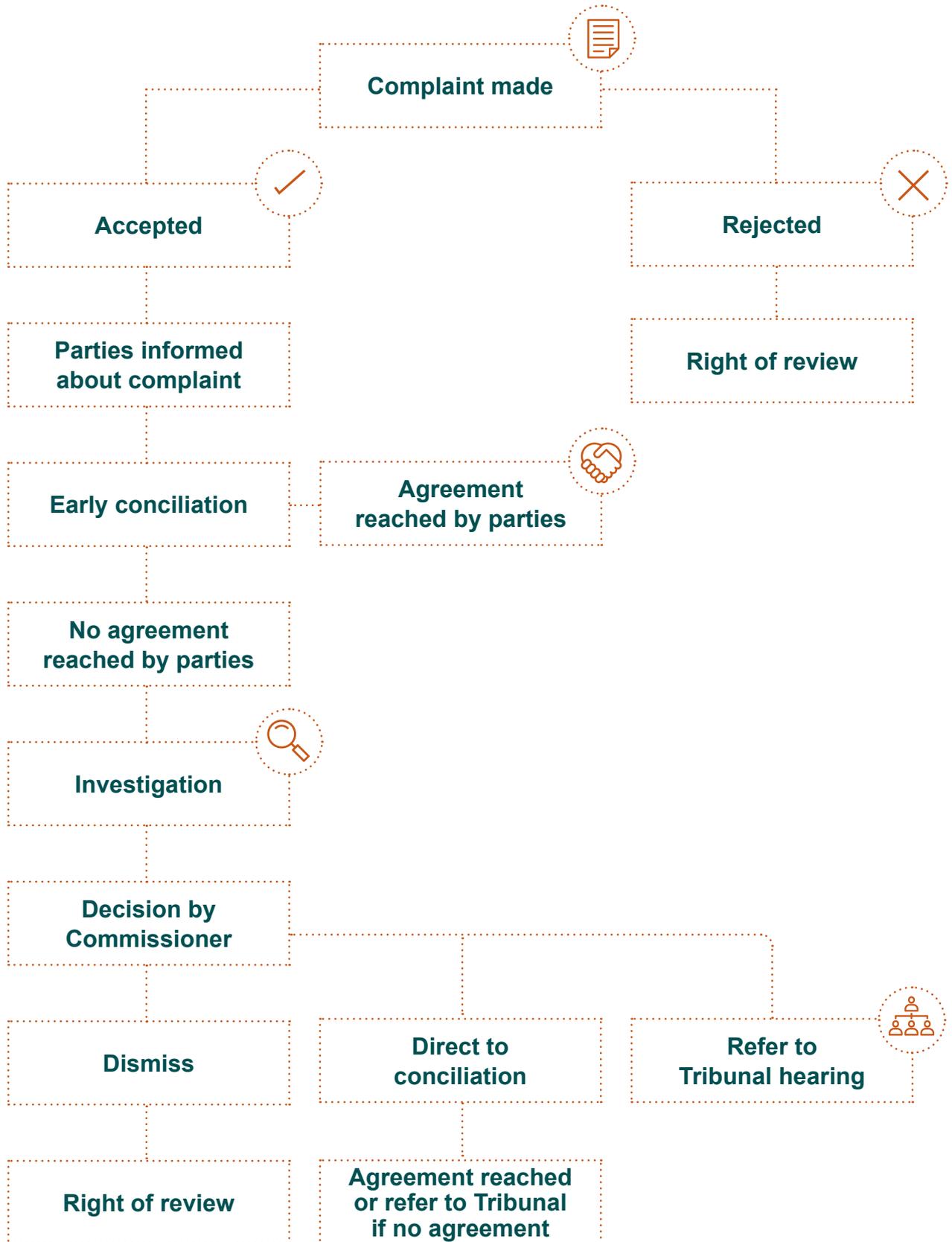
Complaint results in improved practices at medical facility

The complainant uses a wheelchair and had attended a medical facility for diagnostic tests. The complainant alleged that when he arrived at the facility for the tests, he was told the tests could not be done if he stayed in his wheelchair. He alleged he was spoken to rudely, felt offended and insulted, and became distressed. He then left without having the tests done.

The complainant lodged a complaint, which was accepted for investigation. A conciliation conference was scheduled. At the conference, the parties spoke about the needs of people with disability accessing medical services, and the way procedures could be improved.

The respondent apologised to the complainant, and agreed to develop and implement a policy that aimed to improve the organisation's communication with people with disability, and ensure people with disability can access its service in a dignified way, including making adjustments that allow tests to be done in a wheelchair if required.

Complaint Flowchart



Assessment

Equal Opportunity Tasmania handles complaints independently, impartially and within the timeframes prescribed by the Act.

The Commissioner assesses every complaint and decides whether to accept or reject it for investigation. Complaints may be accepted or rejected in part.

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 satisfies the requirements of the Act and discloses possible breach/es of the Act based on what the complainant alleged has happened.

The Act requires the Commissioner to accept or reject a complaint within 42 days after it is received. Section 64 of the Act sets out the grounds on which a complaint can be rejected.

The Commissioner also has the power to reject part of a complaint, while accepting other parts of it. For example, a complainant may name a number of respondents. The Commissioner may decide that only some of those respondents could have any possible liability under the Act. Part-rejecting a complaint avoids the need for all the respondents having to remain involved in the complaint process.

Please note, as a consequence of the decision in *Bullard v Anti-Discrimination Tribunal* [2020] TASSC 15, the Commissioner may decide to 'not accept' a complaint. For example, if a complaint is made out of time and the Commissioner does not exercise her discretion to accept it out of time. A non-acceptance is different to a rejection for one of the grounds under section 64 of the Act.

An overview of complaint assessment decisions made in 2021–22 is shown in Table 2.7

Table 2.7 Complaint assessment decisions

	Current year 2021-22	Previous year 2020-21
Assessment decisions	173	169
Accepted	84	98
Rejected	55	41
Part rejected/not accepted	13	12
Part accepted/rejected	6	13
Not accepted	6	5
Not a valid complaint	6	0
Part accepted/not accepted	2	0
Part accept/reject/not accept	1	0

Of the 173 assessment decisions made by the Commissioner in 2021–22, 14 complaints were received in 2020–21 and the remaining 159 were received in 2021–22.

- 84 complaints (49%) were accepted (down from 58% in 2020–21).
- 55 complaints (32%) were rejected (up from 24% in 2020–21).
- 13 complaints (8%) were part rejected and not accepted (up from 7% in 2020–21)
- 6 complaints (3%) were part accepted and part rejected (down from 8% in 2020–21).
- 6 complaints (3%) were not accepted.
- 6 complaints (3%) were not a valid complaint (this means the requirements to be a complaint under the Act were not met).
- 2 complaints (1%) were part rejected and part not accepted.
- 1 complaint (1%) was part accepted, part rejected and part not accepted.

Of the 55 complaints rejected under section 64 of the Act, the primary reason for rejection was:

- 38 complaints did not relate to discrimination or prohibited conduct.
- 12 complaints were lacking in substance or misconceived.
- 3 complaints had already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority.
- 1 complaint was rejected as it could be more effectively dealt with by another statutory authority.
- 1 complaint had already commenced proceedings in another forum, i.e. Commission, court or tribunal, in relation to the same subject matter.

The Commissioner may combine complaints relating to the same or similar matters when she considers it is appropriate and procedurally more effective. During the reporting period there were 5 complaints combined with another complaint.

The average timeframe for a complaint to be assessed during the reporting period was 37 days (up from 34 days in 2020–21).

Conciliation

When the Commissioner believes that an accepted complaint may be resolved, a conciliation conference will be held at an early stage of the investigation into a complaint. If a complaint cannot be resolved at early conciliation it is returned to investigation.

During 2021–22, 74 early conciliations were held (up from 56 in 2020–21). Of these:

- 41 complaints (55%) were resolved.
- 21 complaints (28%) were not resolved and returned to investigation.
- 6 complaints (8%) were adjourned.
- 3 complaints (4%) were withdrawn resolved.
- 3 complaints (4%) were not resolved and referred to Tribunal.³

3. Usually a complaint not resolved at early conciliation returns to investigation. In some cases, the period of time the Commissioner has to investigate a complaint (6 months) expires during the conciliation process and the complaint must be referred to the Tribunal.

A conciliation can also be held after the investigation into a complaint has been completed. In 2021-22, 2 conciliations were held after investigation and both were resolved.

Conciliation can result in the parties agreeing to resolve a complaint in many different ways. Outcomes to resolve a complaint reached at conciliation during the reporting period were:

- The respondent/s providing an apology/acknowledgement to the complainant.
- The respondent/s paying compensation and/or economic loss recovery to the complainant. During 2021–22, the compensation amounts ranged from \$100 to \$200,000.
- The respondent/s reviewing its anti-discrimination and complaint policies and procedures and have training provided through EOT.
- The complainant’s concerns registered/heard.
- The respondent/s agreeing to make modifications.
- Services being provided to the complainant/s.

Conciliations may be held in various locations around Tasmania. Conciliations can occur face-to-face, via tele or video conference, or negotiations without a meeting of the parties.

During 2021–22:

- 35 conciliations were held in Hobart.
- 27 conciliations were held by tele or video conference or negotiations without a meeting.
- 4 conciliations were held in Devonport.
- 4 conciliations were held in Burnie.
- 4 conciliations were held in Launceston.
- 2 conciliations held in other locations.

Equal Opportunity Tasmania would like to thank the following organisations for allowing us to use their facilities to conduct conciliation conferences:

- Launceston Legal Aid Tasmania;
- WorkSafe Tasmania (Burnie & Launceston);
- Devonport Community & Health Services Centre;
- Launceston Library;
- Burnie Library.

Complaint case studies

Complaints result in greater understanding of the rights of people with assistance animals

The complainants both had support workers and assistance dogs and attempted to attend a live performance. The complainants alleged they were told by the organisers of the event that in order to see the performance they would need to choose whether to attend with a support worker or their assistance dog/s, and would not be permitted to attend with both.

The complainants lodged a complaint of discrimination on the basis of disability in the area of provision of facilities, goods and services.

The parties attended a conciliation conference. As a result of the conciliation conference, the respondent provided a written apology to the complainants and arranged to do disability discrimination awareness training. The parties agreed to work together to develop an accessibility guide to ensure future events and performances put on by the respondent would be accessible for people with disability. The respondent said they were keen to ensure that future events would be accessible and that it was grateful to have the complainant's input to assist with the development of the guide.

Alleged discrimination on the basis of a personal relationship, resolved early

The complainants were in a de facto relationship and worked together. The complainants alleged they had disclosed their relationship to their employer. The complainants alleged that after this occurred, the employer began offering significantly less shifts to the female partner in the relationship, and attempted to prevent the complainants from working together.

The complainants lodged a complaint on the basis of relationship status in the area of employment.

Soon after receiving the complaint, the respondent organisation acknowledged it had engaged in discrimination, provided the complainants with an apology, undertook to develop policies to assist in managing staff who are in relationships, and agreed to allow the complainants to work together. After this, the complainants withdrew their complaint. The resolution occurred early in the process, prior to the scheduled conciliation conference taking place.

Complaint case studies

Actions taken in compliance with a Public Health Order do not amount to unlawful discrimination

The complainant worked at a hospital and alleged discrimination by her employer.

The Director of Public Health had made a direction under the *Public Health Act 1997* (Tas), requiring people to be vaccinated against COVID-19 (unless exempt) in order to enter medical or health facilities. The complainant was not vaccinated against COVID-19, did not intend to be vaccinated against COVID-19, and did not have an exemption from the vaccination requirement. The complainant had been informed her employment would be terminated as a result.

Section 24 of the *Anti-Discrimination Act 1998* (Tas) states that a person may discriminate against another person if it is reasonably necessary to comply with a law.

The complaint was rejected by the Commissioner on the basis that section 24 of the *Anti-Discrimination Act 1998* (Tas) meant that compliance with directions made under the *Public Health Act 1997* (Tas) is not unlawful discrimination.

Alleged disability discrimination in employment resolved through conciliation

The complainant alleged that after an incident at work related to a disability, of which his employer was aware, his employer stood him down from work. Despite medical clearance being provided, his employer would not allow him to return to work or to make adjustments as part of a return to work plan. The complainant lodged a complaint of discrimination on the basis of disability.

The parties attended conciliation conference. After open and frank discussions, they reached agreement. The complaint was resolved with the respondent paying the complainant compensation.

Investigation

Once parties have been notified of the decision to accept a complaint, Equal Opportunity Tasmania has 6 months to complete the complaint investigation. This is a statutory time limit and requires that a complaint be referred to the Tasmanian Civil and Administrative Tribunal (formerly Anti-Discrimination Tribunal) if the investigation has not been completed within the 6-months timeframe allowed. However, there are provisions in the Act that permit the investigation time to be extended with the complainant's consent.

Outcome of investigations

At the completion of an investigation the Commissioner must make one of the following decisions:

- dismiss the complaint;
- refer the complaint to conciliation; or
- refer the complaint to the Tribunal for inquiry (hearing).

During the reporting period, investigations were finalised in relation to 36 complaints (up from 30 complaints in 2020-21) (Table 2.8).

Of the 36 investigations finalised:

- 17 complaints (47%) were referred to the Tribunal for inquiry.
- 16 complaints (44%) were dismissed.
- 3 complaints (8%) were referred to post-investigation conciliation.

In 2021-22, 6 complaints were referred to the Tribunal because the investigation was not completed in the 6-month timeframe allowed under the Act.

Table 2.8 Complaint investigation decisions

	Current year 2021-22	Previous year 2020-21
Investigation decisions	36	30
Referred to inquiry by Tribunal	17	12
Dismissed	16	11
Referred to conciliation	3	6
Part dismissed, part referred	0	1

Withdrawals

Complainants may apply to withdraw their complaints at any stage during the complaint handling process. This may be because they have resolved their complaint, or they no longer want to pursue the complaint for other reasons.

During the reporting period, there were a total of 26 complaint withdrawals. Of these, 12 complaints were withdrawn because they had resolved, 13 were withdrawn where there was no resolution and 1 complaint was part withdrawn and part referred to the Tribunal.

Complaint case studies

Alleged victimisation after notification by complainant that they had lodged a complaint of discrimination

The complainant, a volunteer, alleged that after she had notified the organisation with whom she volunteered that she had lodged a complaint about the organisation with Equal Opportunity Tasmania, the offer for volunteer opportunities reduced and then ceased.

The complaint was accepted for investigation for possible victimisation.

The parties attended a conciliation conference. During the conciliation, the respondent provided information that offered an alternative explanation to victimisation. Despite this, the respondent agreed to improve the experience and management of volunteers.

Complaint of disability discrimination in relation to access to a café

The complainant alleged his elderly parent who used a mobility aid contacted a local café to make a booking. They advised that they used a mobility scooter and required level access. The café manager advised that level access was not available but they could book a table in the outside area.

The complaint was accepted on the basis that it disclosed possible direct and indirect discrimination on the basis of disability.

The parties attended a conciliation conference and an agreement was reached with the respondent agreeing to install permanent level access to the primary entrance to the café.

Finalising complaints

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

- rejection and/or non-acceptance;
- resolved through early conciliation;
- withdrawal;
- resolved through conciliation following investigation;
- referred to Tribunal; or
- dismissal.

During the reporting period, 195 complaints were finalised. This is an increase when compared to 173 complaints finalised in 2020–21.

Timeliness of the complaint process

The average time from receipt to finalisation for complaints in 2021–22 has remained consistent with the previous year.

In 2021–22:

- 72% of complaints were finalised within 6 months, compared to 78% in 2020–21.
- 89% within 9 months, compared to 92% in 2020–21.
- 98% within 12 months, compared to 99% in 2020–21.

Tasmanian Civil and Administrative Tribunal (formerly Anti-Discrimination Tribunal)

On 5 November 2021, the new Tasmanian Civil and Administrative Tribunal (the Tribunal) was launched. The establishment of the Tribunal integrated the functions and responsibilities of nine tribunals, including the former Anti-Discrimination Tribunal, with the aim of providing greater consistency in decision making, promoting alternative dispute resolution and enabling seamless service delivery to a diverse range of clients.

The Anti-Discrimination Stream of the Tribunal conducts inquiries into complaints under the Act that have been referred to it by the Anti-Discrimination Commissioner. It also reviews rejection and dismissal decisions of the Anti-Discrimination Commissioner.

Review of decisions to reject or part-reject complaints

A decision by the Commissioner to reject (or part-reject) a complaint must be reviewed by the Tribunal if the complainant applies for a review within 28 days of being notified that their complaint has been rejected (or part-rejected).

In 2021–22, 6 reviews were sought of the Commissioner's decision to reject or part-reject a complaint.

During the reporting period, 12 review applications were finalised by the Tribunal, including some reviews that were sought in the previous year. Of these, 9 review decisions upheld the Commissioner’s rejection decision, in 1 the Tribunal held it had no jurisdiction to conduct the review⁴, 1 was withdrawn, and 1 was upheld in part and overturned in part and returned to the Anti-Discrimination Commissioner for investigation⁵ (Table 2.9).

Table 2.9 Outcomes of rejection reviews finalised by the Tribunal in 2021-22

Rejection decision upheld	9
Reviews withdrawn	1
Rejection decision upheld in part and overturned in part	1
No jurisdiction to conduct review	1

Review of decision to dismiss

In 2021–22, 2 reviews were sought of the Commissioner’s decision to dismiss or part-dismiss a complaint after investigation. During the reporting period, 3 dismissal reviews were finalised with 2 upheld and 1 resolved before the review took place (Table 2.10).

Table 2.10 Outcomes of dismissal reviews finalised by the Tribunal in 2021-22

Dismissal decision upheld	2
Resolved before review	1

Referral to the Tribunal for Inquiry

The Anti-Discrimination Commissioner can decide to refer a complaint to the Tribunal for inquiry after investigation. The Act also requires the Commissioner to refer a complaint for inquiry if the 6-month timeframe for investigation expires, or if a complaint has not been resolved by post-investigation conciliation.

In 2021–22, 27 complaints were referred either in their entirety or in part to the Anti-Discrimination Tribunal for inquiry (hearing).

During the reporting period, 19 complaints were finalised by the Tribunal. Some of these complaints were referred during previous financial years. Of these, 7 complaints were resolved before hearing, 5 were dismissed at hearing, 4 were upheld at hearing and 3 complaints were withdrawn (Table 2.11).

4 This is because the complaint was not accepted, rather than rejected, and the Tribunal cannot review a non-acceptance of a complaint. Only the Supreme Court can review a decision not to accept a complaint.

5 The Tribunal’s decision to overturn part of the Anti-Discrimination Commissioner’s decision to reject the complaint was subject to judicial review by the Supreme Court. The Supreme Court quashed the Tribunal’s decision. The effect of the Supreme Court decision was that the Commissioner was required to re-make her assessment decision.

Table 2.11 Referred complaints finalised by the Tribunal in 2021-22

Resolved before hearing/conciliation	7
Complaints dismissed at hearing	5
Complaints upheld	4
Complaints withdrawn	3

Further information about complaints finalised by the Tribunal during the reporting period can be found in the TASCAT Annual Report:

<https://tascat.tas.gov.au/publications/annual-reports>

Published decisions of the Tribunal can be found on the Australasian Legal Information Institute (AustLII) website at: www.austlii.edu.au/au/cases/tas/TASADT.

Continuing barrier to access to justice

In my Annual Report last year, I reported on the case of *Bullard v Anti-Discrimination Tribunal* [2020] TASSC 15, which drew a distinction between when a complaint is ‘not accepted’ and when a complaint is ‘rejected’.

This distinction has resulted in the application of the *Anti-Discrimination Act 1998* (Tas) (the Act) becoming more complex and less accessible to people.

A person whose complaint is ‘rejected’ can apply to the Tasmanian Civil and Administrative Tribunal for that rejection to be reviewed. The Tribunal review process is free.

A person whose complaint is ‘not accepted’ can only apply for judicial review of the decision by the Supreme Court of Tasmania. As of 1 July 2022, the cost for an individual commencing a matter in the Supreme Court is \$1,037.00.

Some complaints have been part-accepted, part-not accepted, and part-rejected. This means complainants would have to seek a review in two separate forums.

As well as being confusing, in most cases it is unaffordable for complainants to seek judicial review by the Supreme Court. A right of review is an important safeguard. Inability to access a review mechanism creates a real barrier to access to justice.

I have written to the Attorney-General raising this issue and recommending the Act be amended to allow ‘not accepted’ decisions to be reviewable by the Tribunal. The Attorney-General is content to monitor the situation and consider the need for change in due course.

Since the Bullard decision, ‘not accepted’ decisions have been made in over 40 complaints. Accordingly, a significant number of people who have made complaints under the Act have been impacted, providing a stark and unfair contrast to people who have a right of review by the Tribunal without cost to themselves.

I strongly recommend that the Act be amended as a matter of priority to enable all decisions, including ‘not accepted’ decisions, to be reviewed by the Tasmanian Civil and Administrative Tribunal.

Complaint case studies

Alleged sexual harassment in employment

The complainant, a young female employee, was required to work away from home from time to time. The accommodation was provided by the employer. The complainant alleged her employer entered her room, got into her bed naked and tried to kiss her on multiple occasions and asked her for sex. The complainant left the hotel and did not return to her employment.

The complainant lodged a complaint of sexual harassment in the area of employment.

The complainant sought permission to withdraw her complaint after she had reached a private settlement with the respondent. The Commissioner accepted the complainant's reasons for withdrawing and granted the withdrawal.

Complaint dismissed after complainant fails to answer correspondence

The complainant alleged that her employer terminated her employment following a period of leave, some of which was comprised of sick leave. She was told she had to provide medical certificates or would be stood down.

The complaint was accepted for investigation on the basis that disability discrimination and offensive, humiliating, intimidating, insulting or ridiculing conduct may have occurred.

The respondent was notified of the complaint and provided a response alleging different factual circumstances. In the course of negotiations, the complainant was unable to be contacted and did not make further contact with Equal Opportunity Tasmania.

The complaint was dismissed on the basis the complainant had failed to pursue the complaint.

Complaint case studies

Sexual harassment complaint resolved at conciliation

The complainant alleged a range of conduct experienced by herself and other female staff members, including, but not limited to:

- being sent a violent pornographic video
- inappropriate access of personal details of female staff
- sexually explicit comments

She alleged she advised Human Resources, but Human Resources did not take action. She then approached a senior manager to discuss the issues, but he also made inappropriate and sexualised comments to the complainant.

A complaint was made against the organisation, and two senior managers. The complaint was successfully resolved following a conciliation conference with the respondent agreeing to:

- Pay the complainant compensation.
- Provide a written apology.
- Provide sexual harassment training to the whole organisation.
- Display respectful workplace conduct posters around the organisation and include reminders of such during meetings.
- Undertake other actions designed to create a safe workplace for women.

Disability discrimination in the provision of facilities, goods and services

A parent complained of disability discrimination on behalf of their son who has an intellectual and cognitive disability, and brain damage.

They sought to sign their son up to a loyalty card program and were denied the opportunity to do so, as the organisation required that the person signing up must contact the organisation directly by phone.

The complaint was accepted for investigation. Upon notification, the respondent made prompt contact with Equal Opportunity Tasmania with a written apology for the complainant and offer of resolution.

3 Enquiries

Equal Opportunity Tasmania seeks to maximise the range of ways general and complaint-related enquiries can be made. We do this to ensure, as far as possible, our services are accessible to everyone.

Enquiries can be made by telephone, e-mail, text, mail, Facebook, online enquiry form or people attending our office in person (Table 3.1).

Table 3.1 How enquiries were received

	Current year 2021-22	Previous year 2020-21
Telephone	438	402
E-mail	168	102
Online enquiry form	22	34
Person	12	18
Post	4	6
Text	4	5
Facebook	1	1
Other	1	9
Total	650	577

During 2021–22, the office received and responded to 650 enquiries (an increase from 577 in 2020–21). Enquiry staff dealt with many complex and detailed enquiries relating to the provisions of the Act, complaint handling processes and COVID-19 related issues.

The highest ground of alleged discrimination raised in enquiries was disability, which is the same as the previous year (Table 3.2), predominantly in the areas of employment and provision of facilities, goods and services (Table 3.3). Table 3.2 shows race as the second highest ground of alleged discrimination with 56 enquiries.

Enquiries made in relation to other prohibited conduct shows offensive conduct being the highest, followed by sexual harassment as per the previous year (Table 3.4). Victimisation enquiries slightly decreased to 19 (26 enquiries in 2020–21).

Recorded outcomes of enquiries ranged from information being provided about the application of the Act and/or the complaint handling procedures, referral services being provided, and complaint forms, *Report it!* forms and publications being sent to enquirers.

Informal enquiries were also dealt with at community events and training, education and development sessions. These informal enquiries are not recorded.

Table 3.2 Highest discrimination attributes raised in enquiries in 2021–22

Disability	227
Race	56
Gender	49
Age	31
Religious belief or affiliation	16
Gender identity	14

Table 3.3 Highest discrimination areas raised in enquiries in 2021–22

Employment	239
Provision of facilities, goods and services	176
Accommodation	61
Education and training	43
Membership and activities of clubs	25

Table 3.4 Other prohibited conduct enquiries in 2021–22

Offensive conduct	78
Sexual harassment	26
Victimisation	19
Inciting hatred	13

Enquiries related to COVID-19

Of the 650 enquiries, 142 specifically related to COVID-19. 50 (35%) did not relate to conduct covered by the Act. Enquirers that were seeking information about COVID-19 were referred to the Tasmanian Public Health Hotline and/or the website.

The majority of the COVID-19 related enquiries that did identify an alleged breach related to discrimination on the basis of disability, followed by age and religious belief or affiliation.

4 Report it!

Report it! is a form that provides a way for people to report experiences of discrimination, harassment or abuse (personally or as a witness) without making a formal complaint. Reports can be made anonymously.

Reports received provide a valuable tool in identifying trends of discrimination or harassment and where in Tasmania anti-social behaviour is occurring. Where appropriate, this information may be provided to Tasmania Police, state government authorities and/or other relevant stakeholders. Educational and awareness campaigns may also follow.

Information received via the *Report it!* form enables the Commissioner, where possible, to take proactive steps to prevent certain behaviours from continuing without a formal complaint being made.

During 2021–22, Equal Opportunity Tasmania received 35 reports, a similar number to the previous year (38). Only one report received during 2021–22 could be identified to be directly related to COVID-19.

The majority of reports received during 2021–22 related to discrimination, offensive conduct and inciting hatred on the basis of race, gender and sexual orientation. There was a noticeable increase in the number of reports of sexual harassment.

A person who makes a report and wants to be contacted by Equal Opportunity Tasmania can be provided with further information about their rights and responsibilities under the *Anti-Discrimination Act 1998* (the Act). After they have been provided with this information, some people may then choose to lodge a formal complaint.

In many of the reports, the perpetrator/s were unknown to the person who made the report, making the process of lodging a formal complaint about the incident more difficult. However, four reports received progressed to a formal complaint and were dealt with through Equal Opportunity Tasmania's complaint handling process. In situations where the information provided does not fall within the provisions of the Act reporters are provided with information about more appropriate organisations to contact. Two anonymous reports were referred to WorkSafe Tasmania for action.

The data from the reports shows that this reporting year more reports were made by males than females (Table 4.1).

Report it! case studies

A same-sex couple reported that they were being subjected to ongoing and serious abuse and harassment. A formal complaint was made with Equal Opportunity Tasmania and Tasmania Police were also contacted.

An anonymous report was made about treatment of residents in an independent retirement village. A complaint was lodged shortly after against the retirement village, however it was not accepted on the basis that the complainant did not have standing to lodge a complaint on behalf of a resident.

A person reported that their employment was terminated because of their “mental health”. After obtaining information about the complaint process, the person made a formal complaint with Equal Opportunity Tasmania.

A female reported that she was being sexually harassed at work. Her personal information was provided to the alleged harasser by the employer. She was then subjected to verbal abuse from the person she had reported. The reporter was provided with information about gender discrimination, sexual harassment, victimisation and how to make a formal complaint.

A report was made about discriminatory treatment of a person with a disability by a service provider. A formal complaint was later made by the reporter with Equal Opportunity Tasmania.

An anonymous report was made by an overseas worker about unsafe conditions in a workplace. The report advised of multiple employees who experienced bullying, threats and being made to work long shifts. The workers were threatened with violence if they complained. This report and another about the same workplace were referred to WorkSafe Tasmania.

Table 4.1 Gender of person

	Current year 2021-22	Previous year 2020-21
Male	19	12
Female	11	24
Transgender	1	1
Unknown	3	1

The age of those reporting ranged from 20-29 years age through to over 75 years of age. The majority of reporters were evenly spread between the 20-29, 30-39 and 40-49 year age brackets and one report was made from the over 75 year age bracket (Table 4.2).

Table 4.2 Age of the person

	Current year 2021-22	Previous year 2020-21
20-29	9	9
30-39	9	7
40-49	7	8
50-59	4	6
60-69	4	2
70-75	0	1
>75	1	5

Of the incidents reported, 20 happened in Southern Tasmania; 12 in the North and North West, and 3 were in unknown locations (Table 4.3).

Table 4.3 Region in which reported incident happened

	Current year 2021-22	Previous year 2020-21
South (7000-7199)	20	31
North (7200-7299)	5	3
North West (7300-7399)	7	1
West (7400)	0	1
Unknown	3	2

The majority of reports made to Equal Opportunity Tasmania in 2021–22 related to incidents of discrimination (27), with race, gender and sexual orientation having the highest numbers, followed by age and disability. There was also an increased number of reports made about incidents of sexual harassment (8) (Table 4.4). Reports can identify more than one type of incident.

Table 4.4 Basis of incident by attribute

	Current year 2021-22	Previous year 2020-21
Discrimination	27	41
Race	7	14
Gender	6	0
Sexual orientation	4	2
Age	3	6
Disability	3	7
Unknown	2	2
Family responsibility	1	0
Gender identity	1	4
Industrial activity	0	1
Intersex variations of sex characteristics	0	1
Irrelevant criminal record	0	1
Marital status	0	1
Pregnancy	0	1
Religious belief or affiliation	0	1
Conduct that is offensive, humiliating, intimidating, insulting or ridiculing	13	23
Race	6	11
Sexual orientation	4	2
Gender	3	1
Age	0	3
Disability	0	3
Gender identity	0	1
Intersex variations of sex characteristics	0	1
Pregnancy	0	1
Inciting hatred	5	5
Race	3	4
Sexual orientation	2	1
Sexual Harassment & Victimisation	10	0
Sexual harassment	8	0
Victimisation	2	0

The majority of incidents occurred in connection with the provision of service, and employment and public spaces (Table 4.5). The 13 incidents in relation to service provision were spread across various retail stores, hotels and restaurants. Reports can identify more than one type of incident.

Table 4.5 Location of incident

	Current year 2021-22	Previous year 2020-21
Service provision	13	16
Employment	12	9
Public space	8	12
Street, park etc.	6	8
Online – Facebook, SMS	2	4
Education	1	1
Unknown	1	0

Equal Opportunity Tasmania also collected data on who report incidents. The highest number of reports were made from people who identified as LGBTIQ+, people with disability and migrant or humanitarian entrants (Table 4.6). Note, more than one status can be selected.

Table 4.6 Status of the person

	Current year 2021-22	Previous year 2020-21
LGBTIQ+	9	5
A person with a disability	8	14
A migrant or humanitarian entrant	7	7
Member of a visible minority	2	9
International student	2	8
Aboriginal and/or Torres Strait Islander	2	1
Other	5	0
Unknown	3	11

There were 12 anonymous reports made with 11 indicating the reporter did not wish to be contacted. One reporter who only provided a telephone number was provided information about the Anti-Discrimination Act and referred to another appropriate authority.

You never really understand a person until you consider things from his point of view. Until you climb inside his skin and walk around in it.

Harper Lee (To Kill a Mockingbird)

5 Training, education and development

Training, Education and Development currently consists of one trainer, who has been busy delivering a broad cross section of training around the State. A primary focus has been raising awareness of discrimination across various and differing workplaces. Community groups and schools continues to be an important part of the education programs delivered.

A number of schools have requested a specific focus on racism to assist in building safe and respectful schools. In addition to this, the program has continued to connect with diverse communities in Tasmania to promote anti-discrimination law. The Trainer has attended events/forums such as TasPride Festival and staffing information stalls at Salamanca Market Respect Hobart project, Speak Out Advocacy Tasmania's Disability Expos and the Muslim Community Mosque Expo.

Despite the significant amount of training and education delivered across the State discriminatory behaviours continues to persist in some workplaces, schools and community groups in which training has been delivered. Long term, positive and sustainable cultural and behavioural reform requires strong leadership, accountability and consequences that address inappropriate and unlawful behaviours. Educational and training programs are an important part of that ongoing process.

Training, Education and Development highlights in 2021–22 include:

- Discrimination Law: Rights and Responsibilities training delivered for the Tasmania Fire Service in the North West/ West Coast.
- Principal Training on Discrimination Law for the Department of Education.
- Discrimination Law, Recruitment and Selection and Workplace Support Contact Officer training for Clarence City Council, Devonport City Council, Latrobe and Kingborough Councils.
- Managers training, Workplace Contact Officer and Where is the Line training delivered to Hellyer Gold Mines, TasWater, Motors Pty Ltd, Forico Pty Limited, Tasmanian Walking Company Pty Limited and Nyrstar Hobart Pty Ltd.
- Community sessions with the Association of Children with a Disability with Carers, Youth Leadership, Kin Raising Kids groups.
- Student Information sessions provided to Launceston College, Hellyer College, Cosgrove High School, Don College, Hobart College, Hutchins School and Ogilvie High School.

Collaborations in 2021–22 include:

- Freedom Project, an ‘Arts for Justice’ initiative being delivered through a partnership between Kickstart Arts, Court Mandated Diversion and Community Corrections, Department of Justice. The project aims to break the cycle of offending and addictive behaviour for people on court orders through the Court Mandated Diversion and Community Corrections programs.
- A Fairer World’s diversity education program designed to foster a school culture free from bullying and discriminatory behaviours.
- Australian Council of Human Rights Authorities (ACHRA) Education and Network meetings. These quarterly meetings include representatives from Commissions throughout Australia, and provide an opportunity for trainers and educators to share information, and discuss training and education courses.
- Bi-monthly National meetings for the Aboriginal and Torres Strait Islander Officers Network. The meetings provide valuable opportunities to network, support and share information and discuss current issues affecting Aboriginal and Torres Strait Islander peoples.

Table 5.1 Training and education delivery

	Current year 2021-22	Previous year 2020-21
Total training and community education sessions delivered	170	256
Total training and community education hours	408	562
Total training and community education participants	3753	3610

Table 5.2 Training and education sessions by location

	Current year 2021-22	Previous year 2020-21
South	101	153
North West	35	56
North	23	14
West	6	29
South East	5	4
Total	170	256

Table 5.3 Training and education by sector

	Current year 2021-22	Previous year 2020-21
State Government and statutory authorities and government business enterprises	50	74
Local Government	42	30
Private organisations	38	92
Not-for-profit and community organisations, forums and events	22	34
Schools and tertiary education sessions	16	16
Calendar training	2	3
Unions and industry bodies	0	2
Other	0	5
Total	170	256

The most popular training programs during the reporting year were 'Discrimination Law: Rights and Responsibilities' and 'Workplace behaviour: Where is the line' (Table 5.4).

Table 5.4 Training and education by session topic

	Current year 2021-22	Previous year 2020-21
Discrimination Law: Rights and Responsibilities	65	70
Workplace behaviour: Where is the line?	12	67
Workplace Support Contact Officer	11	9
Workplace Support Contact Officer Refresher	5	4
Managers and Supervisors	4	18
Recruitment and Selection	1	3
Other (includes individual sessions)	7	2
Total	105	118

Community education

The delivery of community education sessions with schools, colleges, TasTAFE and a diverse range of community organisations were slightly down from the previous year due to COVID-19 restrictions (Table 5.5).

Table 5.5 Community education by session type

	Current year 2021-22	Previous year 2020-21
Community awareness	27	35
Student sessions	20	17
Community forum	10	6
Other	8	11
Total	65	69

In respect of rights Newsletter

Equal Opportunity Tasmania continued to produce a newsletter, *In respect of rights*, which outlines latest news from the Commissioner, upcoming training and events, case studies and responses to frequently asked questions.

People are able to subscribe, or view latest editions, of *In respect of rights* newsletter on our website at www.equalopportunity.tas.gov.au

6 Community engagement

Raising Community Awareness

Silos enable discrimination to thrive

On 23 June 2022, Equal Opportunity Tasmania hosted a community conversation with over 80 members of Tasmania's diverse community to discuss new ways to collaborate and collectively work together to stop discrimination, harassment and hatred. The Honourable Elise Archer MP Attorney-General and Minister for Justice supported the event at Parliament House and provided an opening speech.

The forum enabled group discussions and ideas to flow on how change can be progressed in this area and what is required from our Leaders.

IDAHOBIT Day 2022

Equal Opportunity Tasmania marked International Day Against Homophobia, Biphobia, Intersexism and Transphobia (*IDAHOBIT*) Australia (17 May 2022) by producing two animations to help raise awareness of the impact of discrimination, harassment and hate on LGBTIQ+ Tasmanians.

Partnering with Working It Out, the animations raised awareness for IDAHOBIT and recognised that it is not LGBTIQ+ people's responsibility to stop discrimination, harassment and hate against them, it is everyone's. The animations provided tips on how anyone can respond to stop discrimination, harassment and hate against LGBTIQ+ people, and provided advice to LGBTIQ+ people on the reporting of such incidents to either Equal Opportunity Tasmania or Tasmania Police. The corresponding Facebook post reached over 1,000 people.

International Day for the Elimination of Racial Discrimination

In recognition of the International Day for the Elimination of Racial Discrimination (21 March 2022), Equal Opportunity Tasmania produced a short animated video to provide guidance to bystanders and what they can do to assist the targets of racism, and to provide advice to targets on the reporting of racist incidents to Equal Opportunity Tasmania and Tasmania Police. The corresponding Facebook post reached over 15,000 people.

In the media release about the videos the Commissioner stated, "*Racism doesn't need superheroes to prevent it. It needs everyday people to stand up to it, every day. Today we call on all Tasmanians to strengthen their voices against racism, to stand up and make change*".

Zero Discrimination Day

Tasmania is a beautiful State but not everyone experiences it this way. Some people are treated less favourably because of certain attributes they possess. On 1 March 2022, Equal Opportunity Tasmania marked International Zero Discrimination Day by showcasing a video it produced with the voices of Tasmania's diverse community responding to the question, *What would Tasmania be like free from discrimination?* The corresponding Facebook post reached over 4,000 people.

In a media release about the video the Commissioner stated, *"In Tasmania, discrimination continues to be a part of many people's lives, which can have a significant impact on their emotional and physical wellbeing and sense of belonging. Zero Discrimination Day provides an opportunity to promote behaviours such as kindness, compassion, respect and dignity, which are the antidotes to discrimination"*.

All the animation videos can be viewed on Equal Opportunity Tasmania's Facebook page www.facebook.com/equal.opportunity.tasmania and from our website www.equalopportunity.tas.gov.au

Networking with the Community

Tasmanian Prejudice Related Crime Working Group

Equal Opportunity Tasmania has been working in partnership with a number of Tasmanian community organisations who meet under the name of the Tasmanian Prejudice Related Crime Working Group. The Working Group has been meeting monthly to respond to the growing incidence of prejudice related crimes in Tasmania, to raise awareness in communities who are targeted and to consider ways to respond.

The Working Group were successful in obtaining a grant from the City of Hobart and are working with the University of Tasmania and the Australian Hate Crime Network to deliver a community forum and series of information videos in the second half of 2022.

Responding to discrimination, harassment and hate incidents at places of worship

In conversation with the Faith Communities Network of Tasmania and Tasmania Police it became apparent that some religious groups are experiencing discrimination and harassment close to, and within their places of worship.

In response Equal Opportunity Tasmania facilitated a visit by a crime prevention expert from Victoria in May 2022. Over two days the expert visited six religious buildings across Greater Hobart providing advice on how to secure their buildings to improve safety of the people who attend.

Equal Opportunity Tasmania continues to work with the Faith Communities Network of Tasmania and Tasmania Police to design and deliver a training program for worshippers to assist them assist other members of their communities to report incidents of discrimination, harassment and hate to Equal Opportunity Tasmania and Tasmania Police. The training program is scheduled to be delivered in the second half of 2022.

Collaborations within Justice

Mary Hutchinson Women's Prison - Writing Competition 2021

Everybody has a story to tell. A story of real life or a story that comes from imagination. Stories are one of the greatest gifts we can give.

Interested women prisoners in the Mary Hutchinson Women's Prison were given the opportunity to express themselves creatively through the writing competition, Raw and Unedited, designed by Equal Opportunity Tasmania.

A total of 21 entries were received. At a formal ceremony held at the Prison, the winners of the competition were presented with a certificate by the Honourable Elise Archer MP, Attorney-General and Minister for Justice to congratulate and encourage them to continue telling their stories.

Completion of the *Going to court* video series

Equal Opportunity Tasmania was pleased to be a part of the successful production of the *Going to Court* video series that assists persons to access important information about Magistrates court processes and procedures.

The video series was produced with a grant from the Law Foundation and with assistance and advice from the Department of Justice, Equal Opportunity Tasmania, Tasmania Legal Aid, Association for Children with a Disability (Tas) Inc, Brain Injury Association of Tasmania and Speak Out Advocacy.

This collaborative approach enabled the videos to meet the specific needs of the target audience of people with disability and/or low literacy who may otherwise have difficulty understanding the requirements and processes of going to Court.

The videos are available on the Magistrates Court of Tasmania website at https://www.magistratescourt.tas.gov.au/going_to_court/going-to-court-videos

Presentations and speaking engagements

Equal Opportunity Tasmania participated in a number of presentations and engagements across the State to increase awareness of discrimination law and promote diversity.

Highlights during the year include:

- Council on the Ageing (COTA) 7th National Elder Abuse Conference.
- Tasmanian Policy Academy Recruits.
- Nubeena High School – special assembly.
- Culturally Diverse Alliance of Tasmania – Forum Q&A Discussion.
- Devonport City Council – Councillors and General Managers.
- The Australian Women's Leadership Symposium Tasmania.
- Tarooma Tennis Club – Information session.

-
- Latrobe and Kentish Council – Councillors and General Managers.
 - Opening Ceremony – Artist from Inside Exhibition.
 - Tasmanian Youth Parliament’s annual event 2021.
 - NAIDOC Week 2022 - Pathway to Truth Telling and Treaty presentation.

Other event highlights during the year include:

- Australian Council of Human Rights Agencies (ACHRA) Day 1 and 2.
- SEAPAC Elder Abuse Strategy – Planning Workshop.
- Australian Human Rights Commission – Respect@Work Council Roundtable.
- Council on the Ageing (COTA) 7th National Elder Abuse Conference 2021 Reception.
- Tasmanian State Service Aboriginal Employee Network Annual Gathering.
- Students Against Racism Workshop held at Parliament House.
- The Australian Women’s Leadership Symposium.
- NAIDOC Week activities 2021: Flag Raising at Piyura Kitina (Risdon Cove), Morning Tea Storytelling and Picture Book, Celebration Concept Song.
- Working It Out annual International Day Against Homophobia, Biphobia and Intersexism Breakfast and Dorothy Awards.
- Culturally Diverse Alliance of Tasmania’s first anniversary reception.
- TasPride 2022 – Pride Parade and Party in the Park.
- Red Cross – Labour Exploitation Forum.
- Multicultural Council of Tasmania’s supporter reception 2022.
- Reconciliation Tasmania’s Reconciliation Week forum 2022.
- Contributed to the Save the Children’s School Talk’ book and attended the launch of the resource for schools in Tasmania.
- Assisted and supported the Australian Youth Institute Association in the development of a grant application to promote diversity and inclusion in southern Tasmania.
- Networking for Harmony Multicultural Advisory Group quarterly meetings.
- E-Scooter Access Forum – Hobart Town Hall.
- Harmony Week Reception – International Wall of Friendship.

7 Exemptions

The Commissioner may grant, refuse to grant or revoke an exemption under the Act. An exemption can be granted with conditions or unconditionally. To ensure that managers, board members and relevant staff in an organisation understand why the exemption has been granted, it is a condition of the exemption order that applicants attend a discrimination information session.

Exemptions are designed to be a temporary measure to enable organisations to comply with the Act within a certain timeframe, or where special circumstances require it.

Exemptions are unlikely to be granted where the purpose is of an ongoing nature and an exception clearly applies. An exception is a 'defence' to a complaint of discrimination. An exception makes discrimination lawful in some situations. Exceptions that organisations may be able to rely upon include:

Section 25 – Disadvantaged groups and special needs

A person may discriminate against another person in any area if it is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute.

Section 26 – Equal opportunities

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.

The assessment of exemption applications thoroughly considers whether the exception provisions under the Act may be more appropriate in the circumstances and, if they are, applicants are advised of the relevant exceptions that allow for lawful discrimination.

There were 10 applications for exemption received during the reporting period (down from 20 in 2020–21). Of these 10 applications, three (3) were granted within the reporting period, five (5) were refused to be granted, one (1) was withdrawn and one (1) remained to be determined.

During the reporting period, the following decisions were made on applications for exemption received in 2020-2021:

-
- Three applications were granted: two for three years and one for 7 months;
 - One application was withdrawn; and
 - One application was not granted.

During the reporting period, one review was sought through the Tasmanian Civil and Administrative Tribunal (formerly Anti-Discrimination Tribunal) of the Commissioner's decision to refuse to grant an application received in 2020-21. The outcome of this review is still pending.

Exemptions granted are reported in our electronic newsletter, *In respect of rights*, on our website and are published in the *Tasmanian Government Gazette*.

For further information in relation to the exemption provisions under the Act, refer to our website at: www.equalopportunity.tas.gov.au/exemptions.

Exemptions granted

Women's Legal Service Tasmania

Exemption no: 21/06/059

Date granted: 9/07/2021

Relevant exceptions under the Act: Sections 25, 26, 27(1)(d)

This exemption was granted to permit Women's Legal Service (Tasmania) Inc to recruit and employ women only in the (paid and/or volunteer) identified positions within the organisation on the basis of providing a safe and un-threatening working environment to its clients in particular, women addressing family violence issues accessing these services on a daily basis.

Forico Pty Limited

Exemption no: 21/06/039

Date granted: 15/7/2021

Relevant exceptions under the Act: Sections 25, 26, 41

This exemption was granted to permit Forico Pty Limited to recruit and employ an Aboriginal and/or Torres Strait Islander to the position of Cadet Forester (one of two Australian School Based Apprenticeships being offered) in the North West area/location operated by Forico Pty Limited.

Nayri Niara

Exemption no: 21/07/067

Date granted: 23/08/2021

Relevant exceptions under the Act: Sections 25, 26

This exemption was granted to permit Nayri Niara to advertise for and select an Aboriginal and Torres Strait Islander artist to participate in the Cultivate monthly exhibitions at The LongHouse Hobart on the basis that the program aims to build connections between

individuals and communities. A particular emphasis of the exhibition was on strengthening the sharing of stories and connections between the Tasmanian Aboriginal community and the broader lutruwita/Tasmanian community.

Karinya Young Women's Service

Exemption no: 21/07/067

Date granted: 23/08/2021

Relevant exceptions under the Act: Sections 25,26, 27 (1)(c), 27(1)(d)

This exemption was granted to permit Karinya Young Women's Service to recruit and employ women only in identified positions within the organisation to enable it to provide specialist homelessness services to provide immediate emergency accommodation to young women aged between 13 and 20 years of age.

Jireh House Association Inc.

Exemption no: 21/08/038

Date granted: 01/09/2021

Relevant exceptions under the Act: Sections 25, 26, 27(1)(d)

This exemption was granted to permit Jireh House Association Inc to recruit and employ women only in the identified positions within the organisation on the basis that Jireh House Association Inc operates a crisis accommodation and support service for women, and women with children, who have become homeless due to domestic violence and/or other life trauma/crises.

Veolia Environmental Services (Australia) Pty Ltd (Veolia Tasmania)

Exemption no: 21/08/065

Date granted: 6/10/2021

Relevant exceptions under the Act: Sections 25, 26, 27(1)(d)

This exemption was granted to permit Veolia Australia and New Zealand to advertise, recruit and employ female waste collection drivers through a targeted recruitment and driver training campaign at operational sites across Tasmania.

8 Policy and working groups

During the reporting period Equal Opportunity Tasmania contributed to the development of policies, procedures and legislative reforms that address discrimination and related conduct.

Submissions

Each year Equal Opportunity Tasmania is invited to comment on proposed amendments to Commonwealth and/or state legislation and development of law and policy, where relevant to the Act.

In 2021–22 Equal Opportunity Tasmania provided comment or made submissions on a variety of issues including:

- Submission (written and verbal) provided to Communities Tasmania on the 2021 Review of the *Disability Services Act 2011* (Tas).
- Submission (written and verbal) provided to the Australian Human Rights Commission on the National Anti-Racism Framework.
- Submission to the Parliamentary Joint Committee on Human Rights on the Federal Religious Discrimination Bill 2021.
- Submission provided to Respect@Work Taskforce relating to Recommendation 38.
- Comments provided to Respect@Work Taskforce relating to Recommendation 51 – 52.
- Comments (written and verbal) provided to Tasmanian Law Reform Institute on Sexual Orientation and Gender Identity (SOGI) Conversion Practices – Continuing Consultation Brief.
- Comments provided to Department of Health on the Rethink 2020 Implementation Plan.

Copies of the above submissions can be found on Equal Opportunity Tasmania's website www.equalopportunity.tas.gov.au, under News, reports and submissions.

Other policy work

During the reporting period, Equal Opportunity Tasmania provided input for the Department of Justice's response to various State Government policy development and review processes:

- Department of Justice – Disability Action Plan.
- Accessible Island: Tasmania's Disability Framework for Action 2018-2021.

Participation in working groups

In 2021–22 Equal Opportunity Tasmania participated in various working groups and consultative forums including:

- Tasmanian Law Reform Institute – Human Rights Update.
- Tasmanian Health Justice Partnership – Pilot Program.
- Legal Profession Board Tasmania – Sexual Harassment Working Group.
- Department of Communities Tasmania Family Violence Consultative Group.
- Department of Communities Tasmania Family and Sexual Violence Services Group.
- Department of Communities Tasmania Statewide Elder Abuse Prevention Advisory Committee (SEAPAC) and Sub-Committee Member for Safeguarding Adults Advisory Group.
- Department of Communities Tasmania LGBTIQ+ Whole of Government Reference Group.
- Respect@Work Roundtable.
- Department of Justice Disability Action Plan Working Group .
- Department of Justice Right People, Right Role Implementation Steering Committee.
- Department of Justice Diversity and Inclusion / People Strategy Steering Committee.
- Department of Police, Fire and Emergency Management and Department of Health and Human Services: Multicultural Issues in Emergency Management Strategic Working Group.
- Department of Police, Fire and Emergency Management LGBTI Strategic Working Group.
- Australian Council of Human Rights Authorities (ACHRA).

There is no greater
disability in society than
the inability to see a
person as more.

Robert M. Hensel

9 Staff establishment

All staff work together as a collective team to support the delivery of the functions set out in section 6 of the Anti-Discrimination Act and the strategic initiatives planned each year.

Equal Opportunity Tasmania has a permanent staff complement of nine (four of whom are part-time) and three fixed-term contract positions.

During the reporting period, the staffing establishment decreased slightly from 9.47 FTE to 9.27 FTE due to staffing changes below:

- Two staff remain on fixed-term secondments in other areas in the State Service.
- The permanent occupant of the position of ADR Coordinator and Systems Administrator retired in September 2021; to fill this vacancy an Administrative Assistant position was advertised and filled on a permanent full-time basis.
- One position of Investigation and Conciliation Officer remains vacant since April 2022 following the occupant leaving after 6 months into a 12-month contract to take up appointment of a permanent position within the State Service.

The figure below shows the organisational chart for Equal Opportunity Tasmania.



FTE – Full Time Equivalent is the hours worked by one employee on a full-time basis.

Staff training

During 2021–22 staff participated in training as part of their continuing professional development, which included:

- St Johns Ambulance First Aid training.
- Tasmanian State Service Aboriginal Cultural Respect Training provided by Department of Premier and Cabinet.
- Building Trauma Awareness: Wellbeing and Emotional Awareness Webinar provided through Blue Knot Foundation.
- Managing Wellbeing and Recognising Vicarious Trauma.
- General Media Training through Tasmanian Training Consortium.
- Mental Health First Aid provided by Talking About.
- Early Resolution Tools for Complaint Handlers.

Staff are committed to further developing their learning and understanding of Aboriginal history and culture through the activities and actions arranged as a result of our Reflective Action Plan for Aboriginal and Torres Strait Islander people. The learning activities during the year have included a storyboard of staff's special places/history, participation in lunchtime discussions and visiting artworks and places with Tasmanian Aboriginal history, culture and heritage.

Staff completed online training provided through the Department of Justice e-learning programs, including DOJ Induction, Ethics and Behaviour, Workplace Health and Safety Induction and Refresher, Violence against Women and Disability Confident Workplaces.

10 Tasmanian Civil and Administrative Tribunal (TASCAT)

Tasmanian Civil and Administrative Tribunal (formerly Anti-Discrimination Tribunal)

On 5 November 2021, the Tasmanian Civil and Administrative Tribunal (TASCAT) was officially opened. The establishment of TASCAT integrates the functions and responsibilities of nine tribunals and boards including the former Anti-Discrimination Tribunal with the aim of providing greater consistency in decision making, promoting alternative dispute resolution and enabling seamless service delivery to a diverse range of clients.

The Anti-Discrimination Stream of TASCAT conduct inquiries concerning complaints about conduct prohibited by the *Anti-Discrimination Act 1998* (Tas) and reviews complaint decisions of the Anti-Discrimination Commissioner.

More information about TASCAT or the Anti-Discrimination Stream functions and activities is available on its website at: <https://www.tascat.tas.gov.au/home>.

Contact

Tasmanian Civil and Administrative Tribunal
38 Barrack Street
Hobart Tas 7000

Phone: 1800 657 500

Email: (Anti-Discrimination Stream) antidiscrimination@tascat.tas.gov.au

For all other inquiries: tascat@tascat.tas.gov.au

11 Financials

A Financial Statement for the office is provided in the Department of Justice's Annual Report 2021–22. The Department of Justice Annual Report for 2021–22 can be found at: www.justice.tas.gov.au/annual-report.

12 Contact

If you have any questions about the work of Equal Opportunity Tasmania or this report, or would like to be sent this report in a different format, please contact Equal Opportunity Tasmania.

The report is available on our website at:
www.equalopportunity.tas.gov.au/about_us/annual_report.

Equal Opportunity Tasmania

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

E-mail: office@equalopportunity.tas.gov.au

Text: 0409 401 083

Translating and Interpreting Service: 131 450

National Relay Service:

Internet users: Connect at <https://internet-relay.nrscall.gov.au> then enter 1300 305 062

Speak and Listen users: Phone 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: www.facebook.com/equal.opportunity.tasmania

Website: www.equalopportunity.tas.gov.au

Respect comes in two
unchangeable steps:
giving it and receiving it.

Edmond Mbiaka

