



EQUAL
OPPORTUNITY
TASMANIA

Annual Report

2022-23



A U D R E L O R D E



It is not our differences that divide us. It is our inability to recognise, accept, and celebrate those differences.



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 24th Annual Report on the operation of the *Anti-Discrimination Act 1998*.

This report covers the activities of my office from 1 July 2022 to 30 June 2023.

I commend the report to you.



Sarah Bolt
Anti-Discrimination Commissioner
30 September 2023

This Annual Report outlines the activities of the Anti-Discrimination Commissioner and Equal Opportunity Tasmania in 2022–23.

It is also available on the Equal Opportunity Tasmania website:
www.equalopportunity.tas.gov.au

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

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I have often said that no matter how good a piece of legislation, it does not drive itself. Each and every one of us has role to play in reducing discrimination, harassment and prohibited conduct across all areas of public life.



From the Commissioner

This is my final annual report as Anti-Discrimination Commissioner.

It was a privilege to be reappointed as Commissioner in 2017. Seven years later I leave the role in hope that more Tasmanians are aware of their legal rights and responsibilities under the *Anti-Discrimination Act 1998* (Tas).

I have often said that no matter how good a piece of legislation, it does not drive itself. Each and every one of us has a role to play in reducing discrimination, harassment and prohibited conduct across all areas of public life.

In light of the age of the *Anti-Discrimination Act*, and to be consistent with other jurisdictions, I am calling for the *Anti-Discrimination Act* be updated. This will be discussed further in the body of this report.

Anecdotal evidence suggests that discrimination, sexual harassment and prohibited conduct continues to affect the lives of many Tasmanians. The impact of discrimination and sexual harassment cannot be overstated. It can interfere with an individual's ability to fully engage with society and to feel safe as they go about their daily business.

Despite best efforts to increase the visibility of Equal Opportunity Tasmania, build understanding of complaint processes and outcomes, and offset fear of victimisation, under-reporting of discrimination and, in particular, sexual harassment, remains a significant concern. Training, community engagement, improvements to complaint processes, and collaboration with stakeholders go some way to remedying the issue.

To that end, the demand for fee for service training has remained consistent as has our involvement in the community engagement space. The broad reaching collaborations and networks that have been formed has been pleasing. It is hoped such work goes some way to reducing barriers to complaining.

Barriers that lead to under-reporting include a lack of awareness or understanding of the law, fear, apathy, cultural and social stigma, embarrassment, low levels of literacy and fear of defamation proceedings or victimisation (i.e. losing a job). We all have a role in breaking down the barriers in order for people to feel safe and confident enough to speak up and exercise their legal right to complain. A message I like to promote is that complaints, made in good faith, are a positive thing. History has provided a plethora of examples where complaints have provided impetus for affirmative change to occur.

In relation to complaint handling and the conciliation process a striking observation has been the sway a genuine apology can have on a complainant and the successful resolution of a complaint. I have no doubt that there would be less conflict and resentment in our lives if we all reflected on our behaviours and when appropriate employ two simple words, "I'm sorry".

Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services was publicly released in August 2022. I am extremely proud of the Report, those who worked on the project and the political and public response the Report received.

It is impossible to say with any certainty what the future holds, but looking back over the past seven years may offer a glimpse. Locally and globally, we have witnessed events, good and bad, that have influenced equality, diversity, inclusivity and human rights generally.

Standouts we have witnessed over the past few years include: the disturbing influence of Trumpism which allows discrimination and intolerances to thrive. We watched as the leader of the free world took the art of lying to new heights and threatened democracy like never before.

The 2019 massacre in Christchurch, New Zealand, took the lives of 51 people and injured many more, fuelled by one man's discriminatory hatred towards Muslims and the religion of Islam.

The COVID-19 pandemic proved, particularly in the early stages, to be a breeding ground for fear, blame and discriminatory behaviours. Persons of Asian appearance, whether visitors or residents, were often targeted as if they personally were to blame for the pandemic. Older people and people with a disability also bore the brunt of discriminatory practices and behaviours.

The unlawful public housing towers lockdown in Melbourne in which some three thousand residents, predominately members of the CALD community, were placed into hard lockdown with no warning. The strict lockdown lasted for two weeks during which the residents' human rights were violated.

Twenty years after the war began, we witnessed the withdrawal of American and Allied forces out of Afghanistan. It will be hard to forget the distressing sight of Afghani people storming the runway and clinging to departing airplanes. It will also be hard to forget the faces of those left behind to face an uncertain and unprotected future.

In no time at all following the withdrawal, the Taliban surged back into power and the short-lived democratic processes collapsed.

Restrictions on women's rights, freedom of the media and freedom of expression increased exponentially. Institutions designed to support human rights were severely limited or shut down completely.

Peaceful protesters faced arbitrary arrests, torture and enforced disappearance. One is left wondering if the war, initiated by the United States, achieved anything of sustainable value to those who live in Afghanistan, particularly girls and women.

The senseless invasion by Russia into Ukraine grinds on. Innocent lives continue to be disrupted, displaced or taken. The fundamental human rights of millions have been desecrated in ways that, for most of us, are unimaginable.

Closer to home, Grace Tame was named the 2021 Australian of the Year. The award highlighted Ms Tame's extraordinary courage, using her voice to push for legal reform and raise public awareness about the impacts of sexual violence.

The Brittany Higgins and Bruce Lehrmann sexual assault case and its continuing fallout, fuelled by media interest, certainly put the spotlight on the urgent need to improve workplace culture and safe pathways to complain.

There have been Royal Commissions into Violence, Abuse, Neglect and Exploitation of People with Disability, Aged Care Quality and Safety, and the Robodebt Scheme. In Tasmania there was the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

Each Commission or Inquiry provided a stark reminder of the violations of human rights experienced by vulnerable members of the community. We are reminded of the harm that can be caused when government policy doesn't respect people's human rights and dignity as a matter of priority.

We have heard the public announcements that Governments across the country intend to adopt the recommendations made from these Commissions and Inquiries. However, it should be noted that accepting the recommendations is one thing and implementing them is another. One can only hope that recommendations are implemented expeditiously and that robust changes are made to prevent similar experiences of neglect, abuse, exploitation and persecution.

On a positive note, the 2017 Australian Marriage Law Postal Survey for same-sex marriage provided a watershed moment for those wanting to be able to marry their same sex partner and for the marriage to be legally recognised.

The same year saw the first match of the new Australian Football League Women’s competition. Women’s presence in elite sporting competitions once dominated by men will hopefully provide a ripple effect across other fields of life.

Looking back, with the odd exception, it is hard to see where real positive change has occurred in the area of equity, diversity, inclusion and fundamental human rights. There are glimpses of promise, but they are all too often overshadowed by menace. The concerning rise of antisemitism and right-wing extremism provides a poignant example.

Climate change also warrants a mention given that the increasing threats posed by climate change impacts on the human rights, now and into the future, of billions of people. The irony that cannot be ignored is that if we can’t not turn the tide on climate change all else will become largely academic.

However, being an optimistic pessimist allows for hope that things will improve. I hope that, as a society, the need for protective legislation as it relates to human rights, discrimination and harassment diminishes over time. Such hope lies in the belief that if the virtues of kindness, respect and gratitude were embraced as the norm, it would be difficult for those who are unkind, disrespectful and resentful to find a disruptive voice.

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

I convey my deep appreciation to my colleagues and their resolute understanding that the role of the Office is to advocate for the *Anti-Discrimination Act* and not to advocate for an identifiable group or the individual. Their collective professionalism and expertise has enhanced Equal Opportunity Tasmania’s reputation of as one of integrity and independence.

I also pay my thanks for the Department of Justice for the administrative and technical support it has provided the Office over the preceding years.

Looking ahead, it is my hope that the important work undertaken in this space can continue to be built upon. I am optimistic that people and the environment will be protected by a Tasmanian Human Rights Act. I hope that that older people are better protected from elder abuse and exploitation and that access for people with disability is the rule rather than the exception. Further, that hate speech against culturally and linguistically diverse people and LGBTIQ+ people reduces, and individuals who experience discrimination and sexual harassment have the confidence to engage in complaint processes.

It has been an honour and a privilege to undertake this second term as Anti-Discrimination Commissioner and my best wishes to whomever next occupies the role.



Sarah Bolt

Anti-Discrimination
Commissioner



Our work at a glance

190 complaints received

35 days average assessment
timeframe of a complaint

77 complaints proceeded to
early conciliation

168 complaints finalised

796 enquiries answered from
members of the public

28 Report it! reports received

105 training, education and
development sessions delivered

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)*:

- » 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.

A L E X E L L E

“

You're not a victim
for sharing your story.
You are a survivor
setting the world on
fire with your truth.
And you never know
who needs your light,
your warmth, and
raging courage.

”

Complaint handling

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

The *Anti-Discrimination Act 1998* (Tas) 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 *Anti-Discrimination 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 2022–23, 190 complaints were received under the *Anti-Discrimination Act* (Table 2.1). This is a slight increase from 184 complaints received in 2021–22. It is the equal highest number of complaints ever received by Equal Opportunity Tasmania, with 190 also being received in 2020–21.

Table 2.1: Type of breach alleged

	Current year 2022–23	Previous year 2021–22
Total complaints	190	184
Discrimination	305	266
Conduct that offends, humiliates, intimidates, insults or ridicules	186	152
Victimisation	103	64
Incitement	75	50
Sexual harassment	16	16
Causing, inducing or aiding a breach	1	0
Promoting discrimination and prohibited conduct	0	3
None alleged	0	1

Discrimination

During 2022–23, as in most previous reporting periods, disability continues to be the most complained about attribute, with it being identified in 91 of the 305 allegations of discrimination (30%) (Table 2.2).

🔍 CASE SUMMARY

Complaint against a taxi company alleging discrimination

Equal Opportunity Tasmania received a complaint from a young woman who uses a motorised wheelchair. She alleged that on a number of occasions when she had booked a wheelchair accessible taxi, it either failed to arrive or was significantly late in arriving. She alleged discrimination on the basis of disability and offensive, humiliating, intimidating, insulting or ridiculing conduct.

The Commissioner accepted her complaint and the matter went to a conciliation conference. The complaint was resolved with the taxi company putting in place a number of measures that would ensure that taxis would arrive on time and ensure better communication with her in the future.

🔍 CASE SUMMARY

Complaint of disability discrimination in employment

The Complainant alleged discrimination and offensive, humiliating, intimidating or insulting conduct on the basis of disability after her employment was terminated due to her being unable to perform the role she was employed for. The Complainant had advised her employer that she was neurodivergent and had requested some accommodation to assist her to perform the role.

The Respondent employer denied accommodations were not provided and disputed the termination of the employment was due to disability.

The complaint resolved at conciliation with the Respondent agreeing to change the termination to resignation, provide a statement of service, provide education and training for all staff and a payment of compensation.

The next highest levels of discrimination allegations related to the attributes of race (11%), gender (10%) and age (6%).

“ Ageism is as odious as racism and sexism. ”

CLAUDE PEPPER

Table 2.2: Allegations of discrimination by attribute

	2022–23	2021–22
Total allegations of discrimination	305	266
Disability	91	73
Race	33	30
Gender	29	26
Age	18	21
Sexual orientation	16	8
Family responsibilities	14	10
Irrelevant medical record	12	14
Political belief or affiliation	11	4
Gender identity	9	3
Association with a person who has, or is believed to have, any attribute	9	10
Industrial activity	9	9
Irrelevant criminal record	7	14
Religious activity	6	3
Parental status	6	4
Intersex variations of sex characteristics	6	3
Political activity	6	6
Religious belief or affiliation	5	18
Relationship status	4	5
Pregnancy	4	4
Lawful sexual activity	4	3
Marital status	4	8
Breastfeeding	1	2
Unknown/not covered by ADA	1	2

As noted earlier, for discrimination to be unlawful it must be connected with an area of activity. In 2022–23, for complaints alleging discrimination the main areas of activity were employment followed by the provision of facilities, goods and services, accommodation, membership and activities of clubs and education.

CASE SUMMARY

Complaint of race discrimination in the provision of facilities, goods and services

The Complainant engaged a service provider to conduct some work at his home. The service provider allegedly was rude and made comments to a co-worker about not speaking to the Complainant because the Complainant did not understand English. The Complainant lodged a complaint of race discrimination and offensive, humiliating, insulting or intimidating conduct on the basis of race.

The complaint resolved at conciliation with the Respondent providing an apology to the Complainant where they acknowledged their behaviour, what they had learned from the circumstances of the complaint and what they would do in response to the circumstances of the complaint. What was positive about the Respondent's apology was that the words and intent of the apology were clearly authentic and, further, demonstrated that they had reflected on their conduct and the impact it had had on the Complainant.

CASE SUMMARY

Disability discrimination at work resolved

The Complainant has ongoing reasonable adjustments in place at work due to medical issues. She underwent surgery for a medical issue and was cleared to return to work (with her ongoing adjustments to remain in place).

She alleged the employer said it required her to be cleared of all adjustments before it would allow her to return, and subsequently, that her ongoing adjustments were no longer being followed.

The complaint was resolved via written negotiations, with the employer agreeing to pay her for hours lost and by re-crediting her an amount of annual and personal leave, as well as non-disparagement, confidentiality and the provision of a release from liability.

CASE SUMMARY

Complaint of disability discrimination in the provision of facilities, goods and services

The Complainant is hearing impaired, but is able to lipread. He wanted to upgrade his mobile phone and after entering the store advised the customer service employee of his hearing impairment and would they remove their mask so he could read their lips. The employee walked away from him and another employee approached him and after also refusing to remove his mask, yelled at the Complainant and told him to leave.

The parties attended conciliation, with the Complainant explaining that it was important he had the opportunity to talk about the impact the treatment had had on him. The complaint resolved with the Respondent agreeing to provide a detailed apology from the individual employees and compensation.

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 *Anti-Discrimination Act*.

Disability continues to be the most complained about attribute for allegations of offensive conduct followed by race and gender (Table 2.3).

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

	2022-23	2021-22
Total allegations of offensive conduct	186	152
Disability	64	60
Race	33	24
Gender	23	17
Age	14	19
Sexual orientation	14	10
Gender identity	11	4
Relationship status	7	3
Family responsibilities	5	5
Intersex variations of sex characteristics	5	0
Lawful sexual activity	5	2
Parental status	2	3
Marital status	2	2
Pregnancy	1	2
Breastfeeding	0	1

Of the other types of prohibited conduct:

- » There were 16 allegations of sexual harassment in 2022–23, the same as in 2021–22.
- » Allegations of victimisation increased significantly to 103 in 2022–23 from 64 in 2021–22 – but similar to 97 in 2020–21.¹
- » One allegation of aiding a breach of the *Anti-Discrimination Act* was made during the reporting period. No allegations of promoting discrimination and prohibited conduct were made in 2022–23.

CASE SUMMARY

Complaint of sexual harassment by young male with autism in hospitality employment

The Complainant alleged gender discrimination, offensive, humiliating, insulting or intimidating conduct and sexual harassment while he was employed as a casual. He alleged that one of his co-workers repeatedly slapped him on his backside and another ran her foot up his leg and told him he looked good. He raised his concerns with his supervisor and the general manager but alleged no formal action was taken.

Separate conciliations were conducted, and resulted in the Complainant resolving with each Respondent. Agreements included apologies, education and training, the review of policies in relation to sexual harassment and the development and implementation of a policy to support its young workers in the workplace and compensation.

CASE SUMMARY

Complaint of victimisation dismissed

The Complainant had made a first complaint to Equal Opportunity Tasmania.

The Complainant made a second complaint that when they sought to resign from their employment, the employer required them to withdraw their first complaint in order to receive their entitlements paid out.

Victimisation can occur even when someone is threatened with a detriment as a result of making a complaint to Equal Opportunity Tasmania.

The complaint was accepted for investigation on the basis that the possibility of victimisation was disclosed.

The Respondent provided information that they were seeking to negotiate with the employee, rather than deny them the payment of entitlements. The materials obtained during the investigation demonstrated that the intent of the correspondence sent from the Respondent to the Complainant was not made clear because of poor phrasing and the complaint was dismissed after considering the construction of a sentence was a result of literacy/email skills, rather than an intent to deprive the Complainant of their entitlements.

¹ It should be noted that often people complain about victimisation when it is not victimisation within the meaning of the *Anti-Discrimination Act*.



CASE SUMMARY

Complaint furthers inclusive access to healthcare

The Anti-Discrimination Commissioner received a complaint from a transgender woman who alleged she was denied an appropriate referral by a medical professional on the basis of her gender identity, and the medical professional spoke to the woman using masculine identifiers. The woman made the complaint against the medical professional and the organisation they worked for.

Equal Opportunity Tasmania held a conciliation conference between the Complainant, the medical professional, and the medical organisation. The parties had an open and honest conversation about what had occurred. The complaint resolved with the medical professional agreeing to do two training sessions: one on gender identity discrimination, and another on providing an inclusive practice.

After receiving the complaint (and prior to the conciliation conference), the organisation made changes to its policies and arranged for staff training, which the Complainant was pleased with.

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 an increase in 2022–23 compared with the previous year (Table 2.4). Disability is usually the most complained about attribute for incitement, but in this period race was the most complained about attribute, followed by disability and gender identity.

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

	2022–23	2021–22
Total allegations of incitement	75	50
Race	22	16
Disability	20	21
Gender identity	12	3
Religious belief or affiliation or activity	9	4
Sexual orientation	7	5
Intersex variations of sex characteristics	3	0
Lawful sexual activity	2	2

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 2022–23, 190 complaints were made by 200 complainants against 319 respondents.

Table 2.5: Complaints – complainants and respondents

	2022–23	2021–22
Number of complainants	200	188
Individual complainants	200	187
Female	96	92
Male	101	92
Other ²	3	3
Organisation or group complainants	0	1
Number of respondents	319	283
Individual respondents	129	99
Male	68	53
Female	58	46
Undetermined ³	3	3
Organisation or group respondents	190	181

Respondent organisation type identified in complaints

Organisational respondents are categorised according to their type.

In 2022–23, private enterprises were the most complained about respondent type with 72 being identified, similar to last 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

	2022–23	2021–22
Private enterprise	72	70
State government entities	48	53
Non-profit entities	38	38
Local government	4	6
Federal government	4	1

Please note that the *Anti-Discrimination Act* does not apply to complaints made against the Federal government and its agencies and they are rejected.

² Other includes complainants who are non-binary and transgender or prefer not to say.

³ Some respondents were named by position title and their gender is undetermined.



CASE SUMMARY

Difficulty in complaint process where Tasmanian Government does not follow its guidelines

The Anti-Discrimination Commissioner received a complaint from a state service employee, who alleged he had disclosed to his manager that he is Aboriginal. The man alleged that following this, his manager engaged in bullying conduct toward him. The man made a complaint against his manager and the State (as his employer). The man was not seeking a financial outcome, but rather was seeking some kind of resolution that would enable him to attend work and be treated respectfully.

The State Government has a scheme in which it allows state service employees to be given legal assistance, legal representation and legal indemnity where they are subject to legal proceedings or investigations because of incidents that arise in relation to their work. The relevant Guidelines state, however, that indemnity should not be granted in relation to complaints by one state service employee against another (Policy and Guidelines for the Grant of Indemnities and Legal Assistance to Public Officers of the State of Tasmania).

It is a frequent experience in complaints under the *Anti-Discrimination Act* involving one state service employee against another that indemnity is granted, contrary to the Guidelines.

In the experience of Equal Opportunity Tasmania, this exacerbates power imbalances, and creates unfairness. One state service employee has the benefit of the resources and expertise of the State, whereas the other employee, who has made the complaint, does not.

In this case example, the manager was granted indemnity. Representatives for the manager sought adjournments and caused delay. For example, despite asking for the response to the complaint to be provided within 21 days, the response was not provided until 82 days after the Anti-Discrimination Commissioner asked for the response.

The Complainant ended up withdrawing the complaint.

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.

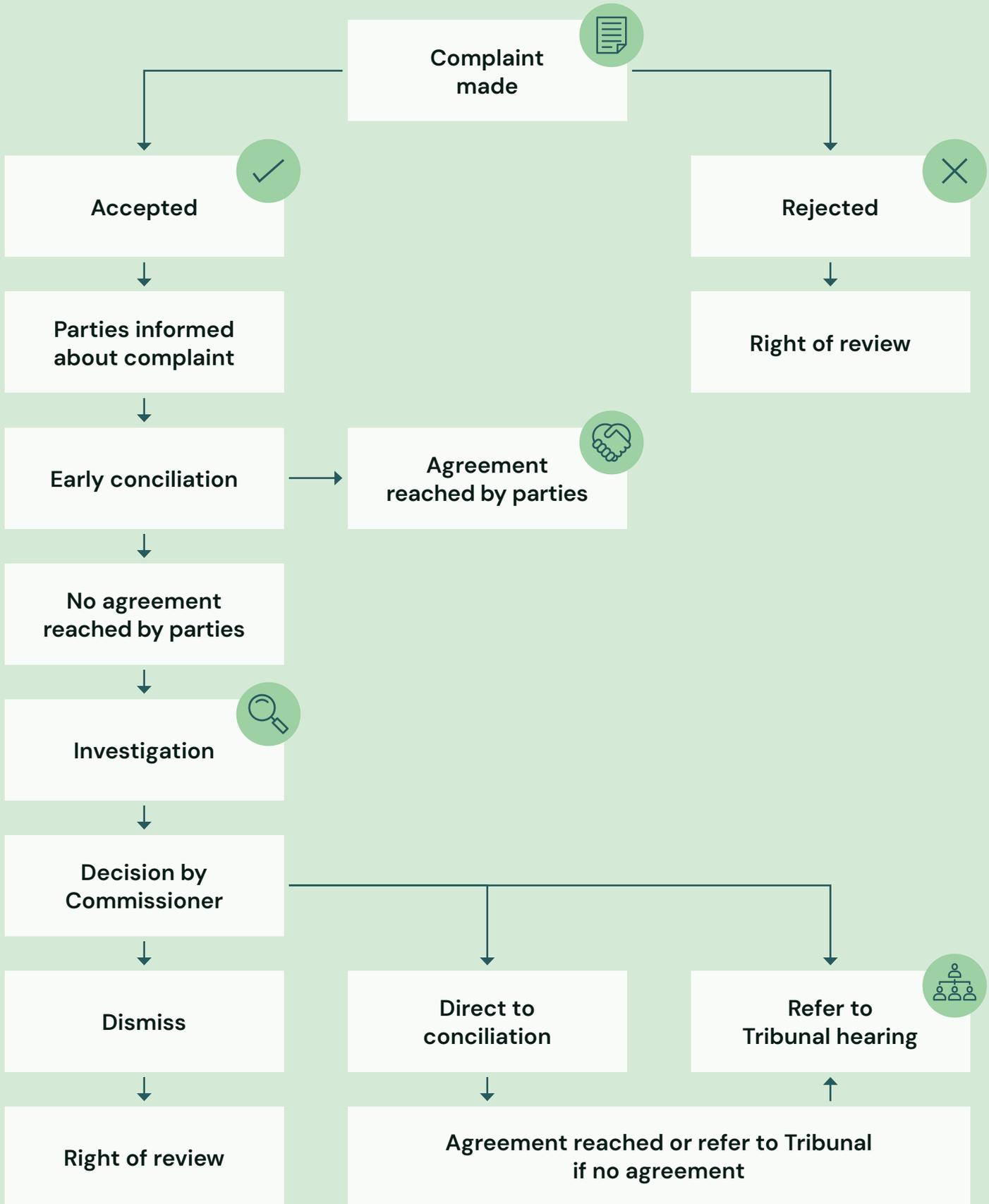
The relatively informal complaint handling process within the Equal Opportunity Tasmania setting enables, in many instances, a timely, creative and flexible approach to resolving matters without the need for legal or other representation.

In 2022–23:

- » 20 complainants (11%) had a lawyer at some stage during the complaint process.
- » 19 complainants (10%) had an advocate or other representative involved at some time during the complaint process.
- » Of the primary respondents, 28 (15%) had a legal representative (private lawyer or in-house counsel) and 10 (5%) involved another representative at some stage during the complaint process.

These figures are consistent with the previous reporting years.

Complaint procedure



Assessment

Equal Opportunity Tasmania handles complaints independently, impartially and within the timeframes prescribed by the *Anti-Discrimination 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 *Anti-Discrimination Act* and discloses possible breach/es of the *Anti-Discrimination Act* based on what the complainant alleged has happened.

The *Anti-Discrimination Act* requires the Commissioner to accept or reject a complaint within 42 days after it is received. Section 64 of the *Anti-Discrimination 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 *Anti-Discrimination 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 *Anti-Discrimination Act*.

An overview of complaint assessment decisions made in 2022–23 is shown in Table 2.7.

Table 2.7: Complaint assessment decisions

	2022–23	2021–22
Assessment decisions	164	173
Accepted	84	84
Rejected	43	55
Part rejected/not accepted	11	13
Part accepted/rejected	10	6
Not accepted	7	6
Not a valid complaint	1	6
Part accepted/not accepted	8	2
Part accept/reject/not accept	0	1

Of the **164 assessment decisions** made by the Commissioner in 2022–23:

- » 84 complaints (51%) were accepted (up from 49% in 2021–22).
- » 43 complaints (26%) were rejected (down from 32% in 2021–22).

There are a number of grounds on which a complaint can be rejected. The most common grounds on which complaints were rejected included that they did not relate to discrimination or prohibited conduct and/or were lacking in substance or misconceived. Other grounds for rejection included that complaints had already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority, and that complaints could be more effectively dealt with by another statutory authority.

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 6 complaints combined with another complaint.

The average timeframe for a complaint to be assessed during the reporting period was 35 days (down from 37 days in 2021–22).

🔍 CASE SUMMARY

Complaint against Commonwealth Government agency rejected

Equal Opportunity Tasmania received a complaint alleging discrimination and offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of disability. The complaint was made against a Commonwealth Government agency, and alleged the agency had rejected an application because of the Complainant's mental health status.

The complaint was rejected because the Commonwealth government and its agencies are not subject to the Tasmanian *Anti-Discrimination Act* and the Commissioner has no jurisdiction to deal with these complaints.

Equal Opportunity Tasmania referred the Complainant to the Australian Human Rights Commission, which is the Commonwealth statutory authority that administers Commonwealth discrimination laws.

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 2022–23, 77 early conciliations were held (similar to 74 in 2021–22), of these:

- » 53 complaints (69%) were resolved.
- » 19 complaints (25%) were not resolved and returned to investigation.
- » 2 complaints (2.5%) were withdrawn resolved.
- » 2 complaints (2.5%) were not resolved and referred to Tribunal.⁴
- » 1 complaint (1%) was adjourned.

A conciliation can also be held after the investigation into a complaint has been completed. In 2022–23, one conciliation was held after investigation. It was unable to be resolved and was referred to the Tribunal.

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 2022–23, the compensation amounts ranged from \$200 to \$150,000.
- » 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.

⁴ 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.

**CASE SUMMARY****Complaint about competition prize resolved early**

The Anti-Discrimination Commissioner received a complaint from a woman who had won a travel prize for two people. By the time the prize had been allocated, there were travel restrictions imposed because of the COVID-19 pandemic. The organisation that had run the competition said it would award the prize when the travel restrictions were lifted. By the time this had occurred, the woman who had won the prize had had a baby. The woman expressed an intention to take her child on the trip with her. The organisation allegedly refused this, and said the winner could only travel with another adult, and not with a child.

The woman made a complaint of discrimination and prohibited conduct on the basis of parental status, family responsibilities, and gender.

When Equal Opportunity Tasmania contacted the organisation that had run the competition and advised it of the complaint, the organisation stated it wanted to work with the Complainant to resolve the complaint fairly. Equal Opportunity Tasmania facilitated discussions between the parties. The organisation agreed to pay the Complainant \$10,000, which was the monetary value of the prize.

The complaint was resolved within approximately two weeks of the Respondent being notified of the complaint.

**CASE SUMMARY****Complaint about 'deadnaming' and incorrect pronouns resolved**

A complaint against a service provider alleged discrimination and offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of gender and gender identity. It was alleged the service provider 'deadnamed' and used the wrong pronouns for the Complainant on paperwork and in person. The Complainant had not changed their name legally.

The service provider explained that some of its legal documents require the use of a person's legal name, and some of its IT systems can only record a legal name and not a preferred name. The service provider said there were some issues with its employees using the wrong name and pronouns early on, but did not think there were any recent problems.

Equal Opportunity Tasmania held a conciliation conference with the parties, where the issues were discussed in a respectful manner. An agreement was reached to resolve the complaint, including that the service provider would arrange inclusion training for its employees and ensure as far as possible that its employees use the Complainant's preferred name and pronouns. The service provider also agreed to change its IT systems to have the Complainant's preferred name on non-legal documents, and the Complainant's legal name with preferred name in brackets for legal documents.

CASE SUMMARY

Complaint in healthcare setting resolved

A complaint was made by a man who attended a medical facility during the night for pain management. Upon admission, his wife, who is also his official carer, accompanied him. She was present to assist him as his communication and cognitive issues are impacted when tired or in pain, due to a disability he has.

When she was leaving, she was told to call in the morning (before visiting hours) and explain she is his official carer, and the hospital would arrange access. She was subsequently denied entry until visiting hours.

He spoke to staff, who advised she would not be allowed in unless she was his official carer and he has a formal diagnosed disability. He explained she is his formal carer and he does have a formal diagnosed disability. She was still denied entry.

He felt his choice was to stay in hospital and risk incorrect treatment due to his inability to communicate, which was rapidly decreasing, or discharge himself (against medical advice) into the care of his official carer (which he did).

The complaint was made by him, on his own behalf and on behalf of his wife (who consented to the complaint being on her behalf) and accepted for investigation on the basis there was possible discrimination and offensive, humiliating, intimidating, insulting or ridiculing conduct – for him on the basis of disability and her on the basis of family responsibilities.

The complaint was resolved at conciliation, in part by the Respondent undertaking to develop a video featuring the Complainant and his wife outlining their experience. The Respondent would send the video to all staff and actively use the video in targeted information sessions.

Three representatives for the hospital attended the conciliation, with each providing a detailed verbal apology to the Complainant and his wife/carer. As a result, the Complainant stipulated he wanted the record of the agreement between the parties to specifically set out not just his acknowledgement, but his acceptance of the verbal apologies provided by those who attended on behalf of Respondent.

CASE SUMMARY

Conciliation results in apology and payment for lost wages due to alleged disability discrimination

An employee made a complaint of discrimination and offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of disability against their employer. The employee had worked for the employer for a number of years with a known medical condition, which required some restrictions on work tasks. The Complainant alleged their employer decided without consultation to cut their hours because of their disability.

The employer said its decision to cut the Complainant's hours was to provide a day of rest and recuperation for the Complainant to help manage the medical condition.

The employer did not consider the Complainant's medical condition a 'disability'.

During the complaint process, Equal Opportunity Tasmania was able to explain to the employer that disability is broadly defined in the *Anti-Discrimination Act* and covers medical conditions.

The complaint was resolved at a conciliation conference by the employer providing a verbal apology to the Complainant, and agreeing to pay compensation to cover a short period of time the Complainant had reduced hours before they found alternate employment.

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 2022–23:

- » 46 conciliations were held in Hobart.
- » 10 conciliations were held by tele or video conference
- » 8 negotiations without a meeting.
- » 5 conciliations were held in Launceston.
- » 5 conciliations were held in Devonport.
- » 2 conciliations were held in Burnie.
- » 2 conciliations were held in other locations.

Equal Opportunity Tasmania would like to thank the organisations who allowed us to use their facilities free of charge to conduct conciliation conferences, particularly Launceston Legal Aid and the Devonport Community and Health Services Centre.

It has been disappointing that some Department of Justice facilities have not been made available for Equal Opportunity Tasmania to use for conciliation conferences, particularly given the difficulty of finding venues in some areas of the State and the cost of hiring venues.

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 if the investigation has not been completed within the 6 months allowed. However, there are provisions in the *Anti-Discrimination 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 16 complaints (down from 36 complaints in 2021–22) (Table 2.8).

Of the 16 investigations finalised:

- » 5 complaints (31%) were referred to the Tribunal for inquiry.
- » 10 complaints (63%) were dismissed.
- » 1 complaint (6%) proceeded to post-investigation conciliation.

“ One of the most sincere forms of respect is actually listening to what another has to say.

BRYANT H. MCGILL

”

In 2022–23, 12 complaints were referred to the Tribunal because the investigation was not completed in the 6-month timeframe allowed under the *Anti-Discrimination Act*, an increase from 6 in 2021–22. Factors that contribute to fewer investigation decisions being made and more investigations not being completed include staffing, whether there have been protracted unsuccessful conciliation proceedings, and delays in information being provided to Equal Opportunity Tasmania.

Table 2.8: Complaint investigation decisions

	2022–23	2021–22
Investigation decisions	16	36
Dismissed	10	16
Referred to inquiry (hearing) by Tribunal	5	17
Proceed to conciliation	1	3

Withdrawals

Complainants may apply to withdraw their complaints (or a part of their complaint against a particular respondent/s) 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 22 complaint withdrawals. Of these, 15 complaints were withdrawn not resolved, five were resolved and two complainants withdrew part of their complaint.

🔍 CASE SUMMARY

Complaint about alleged discrimination on the basis a person was divorced and had started a new relationship

The Anti-Discrimination Commissioner received a complaint from a man who had previously been married, but had divorced. The man stated that after his divorce he developed a committed, ongoing relationship with a new partner, and together they had had a child.

The man alleged he was offered a job in an organisation. The man alleged that shortly after he was offered the job, the job offer was rescinded on the basis of his 'relationship arrangement'.

The Anti-Discrimination Commissioner accepted the complaint on the basis it disclosed possible discrimination and prohibited conduct on the basis of marital status, which includes the status of being divorced, and relationship status (among other possible breaches).

Equal Opportunity Tasmania conducted a conciliation conference with the parties, after which the parties negotiated directly. The man then withdrew the complaint on the basis a resolution had been reached.

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;
- » referral to Tribunal; or
- » dismissal.

During the reporting period, 168 complaints were finalised. This is a decrease from 195 complaints finalised in 2021–22.

Timeliness of the complaint process

The average time from receipt to finalisation for complaints in 2022–23 has remained consistent with the previous year.

In 2022–23:

- » 74% of complaints were finalised within 6 months, compared to 72% in 2021–22.
- » 90% within 9 months, compared to 89% in 2021–22.
- » 96% within 12 months, compared to 98% in 2021–22.

Tasmanian Civil and Administrative Tribunal

The Anti-Discrimination Stream of the Tasmanian Civil and Administrative Tribunal conducts inquiries into complaints under the *Anti-Discrimination 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 2022–23, 9 reviews were sought of the Commissioner’s decision to reject or part-reject a complaint.

During the reporting period, 9 review applications were finalised by the Tribunal, including some reviews that were sought in the previous year. Of these, 8 review decisions upheld the Commissioner’s rejection decision and one review application was withdrawn (Table 2.9).

Table 2.9: Outcomes of rejection reviews finalised by the Tribunal in 2022–23

	2022–23
Commissioner’s rejection decision upheld by the Tribunal	8
Reviews withdrawn	1

Review of decision to dismiss

In 2022–23, no reviews were sought of the Commissioner’s decision to dismiss a complaint.

The Tribunal finalised one dismissal review during the period, which was sought in the previous reporting period. The Commissioner’s decision to dismiss the complaint was upheld.

CASE SUMMARY

Complaint against a person who responded to discriminatory conduct

The Anti-Discrimination Commissioner received a complaint from a woman who had been shopping at a retail store. The woman alleged that whilst she was in the store, she had a conversation about gender identity and access to ‘female-only facilities’ with two other women in the store. It was alleged that the conversation was spoken at a volume so that other people in the store could hear it. It was alleged a staff member of the retail store approached the woman and said ‘You are being discriminatory. You’re a TERF.’ and directed the woman to leave the store. The woman alleged she did not leave the store, and proceeded to the front counter to pay for her items.

The woman alleged to the Commissioner that the conduct of the staff member was discriminatory toward her.

The Anti-Discrimination Commissioner rejected the complaint on the basis there was no discrimination or prohibited conduct directed toward the Complainant.

The Complainant sought a review of the Commissioner’s decision to reject the complaint.

The Tasmanian Civil and Administrative Tribunal upheld the Commissioner’s decision to reject the complaint. The Tribunal held there was no discrimination of the Complainant, as on the Complainant’s evidence:

The treatment [of the Complainant] was as a result of her own discriminatory comments and disruptive behaviour. It follows that any customer making the same comments and behaving in the same manner would have been asked to leave the Retail Store by the staff member.

Referral to the Tribunal for Inquiry

The Anti-Discrimination Commissioner can decide to refer a complaint to the Tribunal for inquiry after investigation. The *Anti-Discrimination 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 2022–23, 18 complaints were referred either in their entirety or in part to the Tribunal for inquiry (hearing).

CASE SUMMARY

Sexual harassment complaint referred to Tribunal

The Complainant alleged that her employer sexually harassed her by sending her explicit photos of himself over social media, making sexually suggestive comments to her in the workplace and then terminated her employment after she said the relationship needs to remain professional.

The complaint was against both the individual she said sexually harassed her, and the organisation who may have been liable for the conduct of that individual.

The complaint was accepted for investigation and the Respondents provided materials disputing the allegations. Specifically, the individual Respondent said that the relationship was consensual and misleading and false materials were submitted by the Complainant.

The parties were unable to resolve the complaint by coming to an agreement.

The complaint was referred to the Tasmanian Civil and Administrative Tribunal for inquiry.

During the reporting period, 30 complaints were finalised by the Tribunal. Some of these complaints were referred during previous financial years. Of these, 16 complaints were resolved before hearing, 2 were dismissed or struck out at hearing, 2 were upheld at hearing and 10 complaints were withdrawn (Table 2.10).

The Anti-Discrimination Commissioner successfully appealed to the Supreme Court one of the complaints upheld at hearing. The Commissioner appealed because of errors of law made in the decision. The decision was quashed and remitted to the Tribunal for hearing and determination in accordance with law.

🔍 CASE SUMMARY

Anti-Discrimination Commissioner’s appeal of Tribunal decision

The Anti-Discrimination Commissioner must refer complaints that have not been resolved and cannot be dismissed to the Tasmanian Civil and Administrative Tribunal for inquiry (hearing). After inquiry, the Tribunal makes a decision about the complaint and can make a number of orders. A person can appeal to the Supreme Court a question of law or fact against an order of the Tribunal.

The Commissioner decided to appeal the Tribunal’s decision in *White v Department of Police, Fire and Emergency Management* [2022] TASCAT 126.

The Commissioner decided to appeal the decision because of concerns about how the Tribunal had interpreted a number of sections of the *Anti-Discrimination Act*, which had the potential to adversely affect future complaints.

The Commissioner was concerned about four parts of the Tribunal’s decision:

1. When interpreting direct discrimination under section 14 of the *Anti-Discrimination Act*, the Tribunal held the respondent remedying the discrimination ‘quickly’ after a period of 90 days meant there was no detriment.
2. The narrow interpretation by the Tribunal of the exceptions (defences to a complaint) in sections 25 and 26 of the *Anti-Discrimination Act*,

which promote equal opportunity for groups that are disadvantaged and have a special need (the ‘positive discrimination’ exceptions).

3. In relation to section 104 of the *Anti-Discrimination Act*, which requires organisations to take reasonable steps to do a number of things to make sure its employees don’t engage in discrimination or prohibited conduct. If an organisation doesn’t do these things, it can be vicariously liable for the conduct of its employees. The Tribunal held section 104 is a conjunctive provision and only applies if the organisation has already had an order made against it by the Tribunal.
4. The Tribunal held only the Supreme Court, and not the Commissioner or Tribunal, can consider whether or not an organisation has complied with section 104 of the *Anti-Discrimination Act* and is vicariously liable for the conduct of its employees.

The appeal was held in the Supreme Court in June 2023. On 26 July 2023, Acting Justice Marshall delivered his decision in *Anti-Discrimination Commissioner v White* [2023] TASSC 26 and upheld all of the Commissioner’s grounds of appeal. The decision of the Tribunal was quashed and the matter has been sent back to the Tribunal to hear and determine in accordance with law

Other Tribunal decisions

During the reporting period, an application for costs was made by a respondent for a complaint that had been dismissed in 2021–22. The Tribunal determined that the complainant pay the costs of the respondent.

In another case, a complainant sought an interim order under section 98 of the *Anti-Discrimination Act* before their complaint had been referred for inquiry. The complainant was seeking to prevent the respondent from doing certain things during the investigation of the complaint. The Tribunal dismissed the application.

Table 2.10: Referred complaints finalised by the Tribunal in 2022–23

	2022–23
Resolved before or hearing/ conciliation	16
Complaints withdrawn	10
Complaints dismissed at hearing	2
Complaints upheld	2

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.

Commissioner's update on continuing barrier to access to justice

In my last two Annual Reports, I have raised a continuing barrier to access to justice. This barrier to access to justice arose from the decision in *Bullard v Anti-Discrimination Tribunal* [2020] TASSCT 15, which drew a distinction between when a complaint is 'not accepted' and when a complaint is 'rejected'. The effect of the decision is that if I decide to 'not accept' a complaint it can only be judicially reviewed by the Supreme Court at a cost in excess of \$1,000. In comparison, if I decide to 'reject' a complaint it can be reviewed free of charge by the Tasmanian Civil and Administrative Tribunal. I recommended that the *Anti-Discrimination Act* be amended to allow the Tribunal to review my decisions to 'not accept' complaints.

I was extremely pleased that this issue was raised during Estimates and that the Attorney-General is considering my proposed amendment with the potential for the change to be made this year. This would be an excellent result considering the large number of complainants who have and continue to be affected by this barrier to access to justice.

3

CHAPTER

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).

During 2022–23, the office received and responded to 796 enquiries (an increase from 650 in 2021–22). The increase in e-mails is in part the result of 160 received from one individual. Staff dealt with many complex and detailed enquiries relating to the provisions of the *Anti-Discrimination Act 1998* (Tas), complaint handling processes and related issues.

The highest ground of alleged discrimination raised by enquirers 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 72 enquiries.

Enquiries made in relation to other prohibited conduct shows offensive conduct being the highest with the same number as the previous year (Table 3.4), followed by sexual harassment with an increase of 4 and victimisation enquiries slightly increased to 21 (19 enquiries in 2021–22).

Recorded outcomes of enquiries ranged from information being provided about the application of the *Anti-Discrimination 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.

“ What hurts the victim most is not the cruelty of the oppressor, but the silence of the bystander. ”

ELIE WIESEL

Table 3.1: How enquiries were received

	2022–23	2021–22
Telephone	409	438
E-mail	328	168
Online enquiry form	23	22
In person	25	12
Post	4	4
Text	3	4
Facebook	2	1
Other	2	1
Total	796	650

Table 3.2: Highest discrimination attributes raised in enquiries in 2022–23

	2022–23
Disability	350
Race	72
Gender	51
Age	25
Gender identity	21

Table 3.3: Highest discrimination areas raised in enquiries in 2022–23

	2022–23
Employment	385
Provision of facilities, goods and services	300
Education and training	44
Accommodation	42
Membership and activities of clubs	31

Table 3.4: Other prohibited conduct enquiries in 2022–23

	2022–23
Offensive conduct	78
Sexual harassment	30
Victimisation	21
Inciting hatred	15

C Y N T H I A O L M E D O

“

Diversity is being invited to the dance.
Inclusion is being asked to dance.
Equity is allowing you to choose the music.

”

Report it!

People who experience or witness any incidents of discrimination, harassment or abuse are able to provide Equal Opportunity Tasmania with information about it by using a *Report it!* form.

This form 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.

In collaboration with the Migrant Resource Centre and Tasmania Police, the form has now been expanded to ask if the person making the report would like Equal Opportunity Tasmania to tell Tasmania Police about the incident.

Reports received provide a valuable tool in identifying trends of discrimination or harassment and where in Tasmania anti-social behaviour is occurring. Where appropriate, information may be provided to state government authorities, Tasmania Police 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 2022–23, Equal Opportunity Tasmania received 28 reports, slightly down from the previous year (35).

The majority of reports received during 2022–23 related to discrimination, offensive conduct and inciting hatred on the basis of race, disability, gender and sexual orientation.

🔍 CASE SUMMARY

A report was made about discrimination that an employee was experiencing from a co-worker. The employee has dyslexia, ADHD and PTSD. They said their co-worker singled them out and scorned them for spelling and grammar mistakes in view of customers, and said ADHD is not a disability. They would flinch at the sound of bangs and told their co-worker that they were still getting adjusted to the sounds of the workplace. He responded in a condescending manner by asking the employee if they had gone to war. In an instance where the employee reported being unable to work due to being admitted to the hospital, their co-worker verbally told other staff that they would be fired.



CASE SUMMARY

A report was made about a landlord being discriminatory in their tenant choice, specifically against those from Indian descent. The reporter stated that the landlord said they did not want to rent to Indians, as they would bring their whole family to live in the property which is not big enough for that.



CASE SUMMARY

A person reported that they were racially abused when walking their dog, by a child approximately 10 years of age. The child shouted that they wanted to buy the person's dog. When they did not respond and walked away, the child proceeded to follow them and call them a "fucking smelly Asian", and a "dog". The person stated that they would call the police, to which the child responded, "Do it then". When the police were called the child called them a "fucking smelly Asian" one more time and then ran away.



CASE SUMMARY

A mother made a report about her minor daughter's employment. She reported that her daughter (who is a minor) was employed at a supermarket part-time and had her hours changed to evening shifts. The mother could not transport her daughter to and from work at this time, due to family responsibilities (caring for neurodiverse children). The manager said the daughter would have to comply with the work roster regardless.

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* (Tas). 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, three 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 *Anti-Discrimination Act* reporters are provided with information about more appropriate organisations to contact, for example WorkSafe Tasmania, Hobart Community Legal Service or the Tenants Union of Tasmania.

The data from the reports shows that in 2022-23 more reports were made by females than males (Table 4.1).

Table 4.1: Gender of person

	2022-23	2021-22
Female	14	11
Male	11	19
Transgender	1	1
Unknown	2	3

The age of those reporting ranged from 15-19 years age through to over 75 years of age. The majority of reporters were in the 50-59 year age bracket with others evenly spread between the 20-29, 30-39, 40-49 and 60-69 year age brackets. One report was made from the over 75 year age bracket (Table 4.2).

Table 4.2: Age of the person

	2022–23	2021–22
15–19	2	0
20–29	3	9
30–39	4	9
40–49	4	7
50–59	6	4
60–69	4	4
70–75	0	0
>75	1	1
Unknown	4	0

Of the incidents reported, 13 happened in Southern Tasmania, 12 in the North and North West, and three were in unknown locations or online (Table 4.3).

Table 4.3: Region in which reported incident happened

	2022–23	2021–22
South (7000–7199)	13	20
North (7200–7299)	8	5
North West (7300–7399)	4	7
West (7400)	0	0
Unknown or online	3	3

The majority of reports made to Equal Opportunity Tasmania in 2022–23 related to incidents of discrimination (23), with race, disability and gender having the highest numbers. (Table 4.4).

Table 4.4: Basis of incident by attribute

	2022–23
Discrimination	23
Race	9
Disability	5
Gender	2
Sexual Orientation	1
Age	1
Gender Identity	1
Religious belief or affiliation	1
Political belief or affiliation	1
Industrial activity	1
Unknown	1
Conduct that is offensive, humiliating, intimidating, insulting or ridiculing	9
Race	3
Gender	2
Disability	1
Sexual Orientation	1
Age	1
Gender Identity	1
Inciting hatred	2
Disability	1
Gender Identity	1

The majority of incidents occurred in connection with the provision of services, in public spaces and in relation to employment. (Table 4.5). The 10 incidents in relation to service provision were spread across various types of business including retail, accommodation providers and other services.

Table 4.5: Location of incident

2022-23	
Service provision	10
Public space	9
Street, park etc.	6
Online – Facebook, SMS	3
Employment	8
Education	1

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

Table 4.6: Status of the person

2022-23	
A person with a disability	7
LGBTIQ+	5
A migrant or humanitarian entrant	3
Member of a visible minority	3
Aboriginal and/or Torres Strait Islander	2
International student	2
Unknown	1
Other	10

There were four anonymous reports made with all indicating the reporter did not wish to be contacted. One reporter who did provide an email address was sent information about the *Anti-Discrimination Act* and referred to another appropriate authority. This year, three reports in the “other” category were made by support people from the Migrant Resource Centre on behalf of migrants who required the support of interpreters.

Report it! case studies

CASE SUMMARY

A person reported that their new HR Manager commented to her, “isn’t it time you put your mother into an aged care facility?” in response to her taking time off to care for her elderly mother.

CASE SUMMARY

An anonymous person reported that a manager in state service employment often makes derogatory and racist remarks.

CASE SUMMARY

An anonymous report was made by an individual stating that they were being discriminated against by the staff of their children’s school, and that the school was taking it out on the children.

CASE SUMMARY

A person made a report about witnessing a supervisor at their place of employment being racist towards Japanese backpackers. The supervisor also engaged in physical bullying against them, by aggressively grabbing their jacket and directing them in certain directions. They told the supervisor this was not okay, and their employment was terminated. This person ended up making a complaint under the *Anti-Discrimination Act*.

CASE SUMMARY

A report was made about a community event in relation to an LGBTIQ+ group. In the days before the event, they were advised that equipment (owned by a religious organisation) was no longer available for hire as the group would be doing some fundraising. The event was then cancelled, as the group could not afford to hire other equipment. The organisation was contacted to ask if the organisation could participate in a later event, provided it had no fundraising element. The representative of the organisation said it would have no issues participating in a youth homelessness event and that the organisation was a membership-based organisation and some members had complained about the organisation's participation in the LGBTIQ+ event.

CASE SUMMARY

A person reported an incident of a blind man with an assistance dog being refused service by two taxi drivers. The second driver initially said "I cannot take your guide dog", however eventually allowed the man to sit in the passenger seat and the dog in the rear passenger seat. The person reporting the incident believed the only reason service was provided was due to the intervention of a third person who advised the driver that refusal of service is unlawful and also because the driver thought he was being filmed by the reporter, who held his phone up.

CASE SUMMARY

A report was made about a memorial stone having been defaced with a transphobic message. The stone had been sprayed with the letters YWNBAW, which stood for "You will never be a woman". It was reported that this was extremely hurtful to individuals, and alarming for members of the transgender and gender diverse community.

CASE SUMMARY

A report was submitted outlining difficulties encountered by a client who wanted to make a report to a service provider and requested an interpreter. In the first instance, it was communicated that they would need to pay for their own interpreter, then that an onsite interpreter would be arranged by the service provider for the following day. Arrangements were not made. Following this, there was resistance to the use of a telephone interpreter service, with the service provider advising they preferred an onsite interpreter. For privacy reasons, the reporter thought a phone interpreter from interstate may be more appropriate.

CASE SUMMARY

A report was made about a refugee family member who was taken into custody, held overnight and denied language support. The person who is facing charges of assault and resisting arrest, alleges that he was assaulted while in custody and that no interpreter was provided until he was released. The interpreter then explained the court process and date of appearance.

P A U L F A R M E R

“

The idea that some
lives matter less is
the root of all that is
wrong with the world.

”

Training, education and development

CHAPTER

5

From July 2022 – December 2022 delivery of training, education and development work of Equal Opportunity Tasmania was undertaken by the Senior Training, Education and Development Officer.

Their work consisted of a broad cross section of training around the state, with a focus on delivering workplace conduct training to organisations.

The Discrimination Law: Rights and Responsibilities training continues to be one of the most popular training courses sought and delivered. This course equips attendees with knowledge and understanding of the *Anti-Discrimination Act 1998 (Tas)*, including how to identify unlawful behaviours such as discrimination and sexual harassment.

In January 2023, the Senior Training, Education and Development Officer accepted a permanent transfer to a different agency.

Between January 2023 – June 2023, Equal Opportunity Tasmania received a number of enquiries for training and education. Where possible, Investigation and Conciliation Officers undertook these sessions. The Commissioner also undertook a number of sessions. This training and education consisted of:

- » Fee for service training
- » Community information sessions
- » Education sessions in schools
- » One on one development sessions

Equal Opportunity Tasmania has had difficulties in recruitment, which is understood to be an issue facing many sectors. While the selection process had to be undertaken more than once, in June 2023 the appointment of a new Training and Education Officer was confirmed.

It is heartening to see that the appetite for training and education in discrimination law continues to grow. There can be no doubt that all members of the community benefit from possessing knowledge of their legal rights and responsibilities under the *Anti-Discrimination Act*. Equal Opportunity Tasmania is to review and reform its current training courses to adopt exciting new approaches to ensure our training and education remains engaging and informative for participants.

There has been a rise in requests for one on one development sessions. Many of these sessions arise as a result of internal complaint processes. In addressing unsafe workplace conduct that has been investigated internally, the organisation elects for a person to undertake training with a specific focus of the circumstances giving rise to the internal complaint.

The Commissioner has undertaken the majority of these sessions and has developed a renewed focus on section 21 of the *Anti-Discrimination Act*, which sets out that it is unlawful to cause, induce or aid another person to contravene the *Anti-Discrimination Act*.

In future training sessions, more information will be provided about the different ways that managers and supervisors may cause, induce or aid the undertaking of discriminatory acts and how consideration will be given to adding such individuals to complaints where there is an indication this has occurred. It is hoped this focus will position managers and supervisors to take more proactive steps to ensure that discrimination and prohibited conduct does not occur in their workplaces.

Training, Education and Development highlights in 2022–2023 include:

- » **Information sessions with Tasmania Police recruits:** In these sessions we speak with recruits about the importance of discrimination law in administering the law as a police officer and about ways that Equal Opportunity Tasmania has worked with Tasmania Police to achieve better outcomes for the community.
- » **Multiple sessions to college and TAFE students:** Equal Opportunity Tasmania is routinely invited to numerous colleges around the state, and as part of multiple TAFE courses, to present information on discrimination law. These sessions are tailored to the audience to equip them with the information they need to take their next steps in the workforce with a developed knowledge of their rights and responsibilities under the *Anti-Discrimination Act*.
- » **Multiple one on one sessions with State Service employees:** The Commissioner and various senior staff members from Equal Opportunity Tasmania have delivered training in a one on one setting to individuals who have been named in State Service investigations. These one on one sessions have been received well and assist Agencies to comply with their obligations to take reasonable steps to prevent discrimination and prohibited conduct in the workplace.

- » **Commissioner’s delivery to senior leaders within DPAC relating to aiding a contravention of the *Anti-Discrimination Act*:** The Commissioner spoke with senior executive employees of Department of Premier and Cabinet, specifically relating to causing, inducing or aiding a contravention of the *Anti-Discrimination Act*, ways that organisations can practically address and reduce discrimination and prohibited conduct and the importance of accountability and leadership.
- » **Workplace Contact Officer Network meetings:** Equal Opportunity Tasmania facilitates Contact Officer meetings, which are an opportunity for Contact Officers to connect, share strategies and tips, and refresh their knowledge as to best practice approaches. The meetings feature guest speakers and provide discussions points to assist those holding the important role of Contact Officer in their workplace, to continue to improve and successfully undertake such role.

Table 5.1: Training and education delivery

	2022–23 ⁵	2021–22
Total training and community education sessions delivered	105	170
Total training and community education hours	256	408
Total training and community education participants	2338	3753

⁵ Between January 2023 and June 2023 Equal Opportunity Tasmania was without a trainer. Sessions were delivered by the Commissioner and Investigation and Conciliation Officers.

Table 5.2: Training and education sessions by location

	2022–23	2021–22
South	60	101
North West	21	35
North	17	23
South East	7	5
West	0	6
Total	105	170

Table 5.3: Training and education by sector

	2022–23	2021–22
State Government and statutory authorities and government business enterprises	30	50
Local Government	35	42
Private organisations	23	38
Not-for-profit and community organisations, forums and events	8	22
Schools and tertiary education sessions	8	16
Calendar training	1	2
Total	105	170

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

Table 5.4: Training and education by session topic

	2022–23	2021–22
Workplace behaviour: Where is the line?	40	12
Discrimination Law: Rights and Responsibilities	26	65
Workplace Support Contact Officer	7	11
Managers and Supervisors	3	4
Workplace Support Contact Officer Refresher	0	5
Recruitment and Selection	0	1
Other (includes individual sessions)	7	7
Total	83⁶	105

Community education

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

Table 5.5: Community education by session type

	2022–23	2021–22
Community awareness	7	27
Student sessions	6	20
Community forum	3	10
Other	6	8
Total	22	65

⁶ Multiple sessions have only been counted once.

6

CHAPTER

Community engagement

Alliance for a Tasmanian Human Rights Act

Following Equal Opportunity Tasmania's event: Silos enable discrimination to thrive, held in Parliament House in June 2022, the Alliance for a Tasmanian Human Rights Act (ATHRA) was formed.

The basis for the formation of ATHRA was the collective dismay Tasmanian community organisations felt in their observation that Tasmanians continue to be left behind in the improvement of human rights protections.

ATHRA includes over 60 high profile organisations who support a Tasmanian Human Rights Act, including:

- » Tenants' Union of Tasmania
- » Disability Voices Tasmania
- » Women's Health Tasmania
- » Equality Tasmania
- » Tasmanian Refugee Legal Service
- » Speak Out Association of Tasmania
- » The Association for Children with Disability (Tas) Inc
- » Multicultural Council of Tasmania
- » Engender Equality
- » Launceston Community Legal Centre
- » Commissioner for Children and Young People Tasmania
- » Environmental Defenders Office
- » Hobart Women's Shelter

“ How do we change the world? One random act of kindness at a time. ”

M O R G A N F R E E M A N

- » Unions Tasmania
- » Sexual Assault Support Service
- » COTA (Council On The Ageing) Tasmania
- » Anglicare Tas
- » Tasmanian Council of Social Service Inc
- » Tasmanian Aboriginal Legal Service – TALS
- » The Salvation Army Tasmania
- » Mental Health Council of Tasmania
- » Bob Brown Foundation
- » Tasman Peninsula Marine Protection
- » Working It Out Inc
- » Prisoners Legal Service Tasmania
- » Women’s Legal Service Tasmania Inc
- » Shelter Tasmania
- » ACD Tas – The Association for Children with Disability Tas Inc.
- » Reconciliation Tasmania
- » Amnesty Southern Group
- » Wilderness Society Tasmania
- » Hobart City Mission
- » Zonta Club of Hobart Derwent Inc
- » Brain Injury Association of Tasmania
- » Respect at Work
- » Tasmania University Law Society – TULS
- » Giant Steps Tasmania

- » Jus Tas
- » Tasman Peninsula Marine Protection
- » Tasmanian Conservation Trust
- » Tasmanian Alliance for Marine Protection
- » Taroona High School

Membership of ATHRA also includes many high profile Tasmanians and other concerned Tasmanians who support the urgent need for a Human Rights Act.

Repeatedly highlighted throughout ATHRA’s advocacy is that the Tasmanian Law Reform Institute recommended a Charter of Human Rights and Responsibilities be enacted in Tasmania in 2007. This has not happened. Meanwhile, Victoria, the ACT, and Queensland have such protections, with the ACT Government planning to enhance its human rights protections in 2023, to include the right to a healthy environment.

The inextricable link between human rights and the environment cannot be ignored.

As part of discussions with ATHRA, Equal Opportunity Tasmania actively raises the profile of the *Anti-Discrimination Act 1998* (Tas), by juxtaposing its scope against those protections which could be included in a Human Rights Act in Tasmania (such as the right to housing). Anti-discrimination protections only go so far, and individuals who experience infringements on their human rights are not always able to access justice in this jurisdiction.

ATHRA has held regular meetings, developing a community driven campaign in late 2022. A distinctive and impressive element to this campaign was a collection of supporting statements for a Human Rights Act, provided by high profile community members, business leaders, activists, advocates, and more. Equal Opportunity Tasmania extends its thanks to everyone involved in the campaign and recognises their ongoing commitment to better rights protections for Tasmanians.

On 26 November 2022 ATHRA held the Rally for a Human Rights Act on Parliament Lawns. The Rally was well attended by passionate and dedicated community members, calling on the government to commit to a Human Rights Act for Tasmanians, highlighting other jurisdictions have such legislative protections.

Just prior to Human Rights Day 2022, ATHRA wrote to every Tasmanian Member of Parliament calling for their support for a Tasmanian Human Rights Act. The letter was sent with 16 posters featuring, on average, eight different individuals, with the statement 'Every Tasmanian Deserves a Human Rights Act', and highlighting individual messages of support.

Upon release of the awaited Tasmania Law Reform Institute report calling for a Human Rights Act it is anticipated that ATHRA will expand and continue its call for a Human Rights Act.

Networking with the Community

Tasmanian Prejudice Related Crime Working Group

In 2022 – 2023 Equal Opportunity worked 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 meets regularly 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 Community Engagement Officer regularly contacted the Working Group members to share relevant information relating to prejudice motivated incidents happening in the community and engage in discussion.

Information was also shared with the Working Group members about relevant complaints under the *Anti-Discrimination Act* and outcomes resultant from those complaints, with the hope that such information would assist individuals to understand that, in some circumstances, prejudice related conduct may be dealt with under Tasmanian anti-discrimination laws.

Collaboration with Migrant Resource Centre

Equal Opportunity Tasmania collaborated with the Migrant Resource Centre (MRC) to develop the 'Myths about Discrimination' information factsheet.

The purpose of the factsheet is to assist with legal literacy of newly arrived people in Tasmania by providing a resource that challenges misconceptions and promotes accurate understanding of people's rights.

In conversation with the MRC, Equal Opportunity Tasmania was able to understand some of the pervasive myths that exist and ensure their inclusion in the factsheet, such as the myths:

- » People on visas cannot make complaints of discrimination, or only permanent residents or citizens can complaint;
- » Giving a person a nickname cannot be considered discriminatory;
- » Employers can ask a woman if she is planning to have children soon, or if she has children;
- » Sexual harassment is just about touching.

The Myths about Discrimination factsheet is available on our website www.equalopportunity.tas.gov.au.

Working with Tasmania Police and Migrant Resource Centre

The identification of the appropriate organisation to which to make complaints can be a barrier in access to justice. Sometimes discriminatory conduct can also be conduct which can be dealt with under criminal laws.

Equal Opportunity Tasmania, Tasmania Police and the Migrant Resource Centre collaborated to create a tailored *Report it!* form. The form has been updated so that people can provide additional details about an incident, as well as request a referral to Tasmania Police where an allegation of a hate crime is made.

The Migrant Resource Centre provides the form to users of its service as the primary form for reporting incidents of discrimination, prohibited conduct, hate or prejudice motivated incidents.

If a person elects to be contacted by Equal Opportunity Tasmania on the form, a staff member will contact them to have a confidential conversation about their rights under the *Anti-Discrimination Act* and how to make a formal complaint, if they wish to do so.

Girls Can Be Heroes

Building on the successful reception of the 2021 program, the Commissioner again delivered the education program 'Girls Can Be Heroes' at Mary Hutchinson's Prison for Women. The purpose of the program is to deliver information about rights through empowering stories, building resilience, courage and determination.

What Matters Writing Competition

In 2022, the Commissioner was again invited to sit on the judging panel for the Whitlam Institute's What Matters Writing Competition (Tasmanian State Awards). The competition asks young people from school years 5 – 12 to respond to the question 'What Matters?'

Entries were poignant, moving, and powerful. The identification of issues of equality, progress and inclusion, by school-aged children, is something to be admired and aspired to.

Speaking engagements and events

Equal Opportunity Tasmania again participated in a number of important community events to increase awareness of discrimination law and promote diversity. Highlights during the year include:

- » Hobart and Clarence City Councils – Councillors and General Managers presentation;
- » Women's Legal Service Tasmania – Safe Equal Respected Conference panel discussion;
- » Harmony Week Events – Franklin Square and Wall of Friendship presentation;
- » Tasmania Australian of the Year 2023 (John Kamara) – Speech to Parliamentarians;
- » Speak Out Disability Conference – panel discussion;
- » Annual Aboriginal Employee Network Gathering;
- » Tasmanian Leaders Inc diversity and inclusion presentation.

Community Engagement Officer

Equal Opportunity Tasmania created a 12-month fixed-term Community Engagement Officer position, which was filled in January 2022. The actions undertaken by the person who filled this position (some of which is described above) demonstrated the immeasurable value of this work.

Whilst the individual initially holding the role ceased employment with Equal Opportunity Tasmania in January 2023, they created important new networks of engagement between this office and the community which continue to be built on.

Pleasingly, a permanent Community Engagement and Education Officer position was advertised in June 2023. Equal Opportunity Tasmania looks forward to further meaningful and productive engagement with community groups into the future.

C H A R L O T T E C L Y M E R

“

Every time a trans gender person comes out publicly, my heart leaps for joy. That kind of visibility is essential to progress.

”

Exemptions

The Commissioner may grant, refuse to grant or revoke an exemption under the *Anti-Discrimination Act 1998 (Tas)*. An exemption can be granted with conditions or unconditionally.

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

An exception is distinct from an exemption in that it is a 'defence' to a complaint of discrimination. An exception makes discrimination lawful in some situations, such as where it is for the benefit of a disadvantaged group.

Exemptions are unlikely to be granted in circumstances where the discrimination sought to be exempted is of an ongoing nature and an exception clearly applies.

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.

There were three applications for exemption received during the reporting period (down from 10 in 2021–22). All three were refused.

It is noted that where organisations have previously been granted exemptions, when seeking renewal and/or a new exemption, they are now routinely advised of Equal Opportunity Tasmania's approach. This may be the reason for lower numbers of exemption applications being lodged.

During the reporting period, one decision was made in relation to an application for exemption received in 2021–2022. That application was not granted.

In 2021–22 one review was sought through the Tasmanian Civil and Administrative Tribunal (formerly Anti-Discrimination Tribunal) on the Commissioner's decision to refuse to grant an application for exemption. The review was finalised in this reporting period and the Commissioner's decision upheld and is the subject of the case study on the following page.

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 *Anti-Discrimination Act*, refer to our website at: www.equalopportunity.tas.gov.au/exemptions.

 **CASE SUMMARY**

Exemption to exclude transgender women refused

In May 2021 an application for exemption was made under the *Anti-Discrimination Act 1998* (Tas) to permit discrimination against ‘Biological Men on the basis of sex’.

The application set out the exemption was sought to discriminate against ‘biological men’ for same sex attracted drag show performances as drag kings, because lesbians ‘find it difficult to meet each other and to be in a safe environment away from the “Eyes of Biological men”’.

The exemption application set out:

‘The exemption that i seek will be for the foreseeable long term as same sex attraction is not something you can change.

The only male aloud (sic) is the DJ and camera man as this is his paid Job.’

The Commissioner refused to grant the application for exemption.

The Applicant sought a review of the decision to refuse to grant the exemption.

On 24 November 2022, the Tasmanian Administrative and Civil Tribunal handed down the decision *Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption) [2022] TASCAT 142*.

The Tribunal upheld the Commissioner’s decision not to grant the exemption, noting:

The applicants propose to exclude “biological males” from their event. The substance of the application makes it clear that the intention is to exclude from the proposed

female-only event some males (but not transgender or transsexual men or Derek the DJ and cameraman) and also transgender and transsexual women, that is, those persons identifying as female in circumstances where that identity does not correspond with the gender identity assigned them at birth or their birth gender. The exclusion of such persons engages the provisions of the act prohibiting direct discrimination on the basis of gender and gender identity.

...

The information provided in support of the application makes a number of assertions about the potential motivation of transgender and transsexual women who seek to access women-only spaces or events, including engaging in certain paraphilic conduct labelled autogynephilia. As already noted, the information before the Tribunal did not include any robust, peer-reviewed research to support such assertions.

...

The Act, particularly as a consequence of the 2013 amendments, prescribes norms of conduct that both recognise and accept the experience of transgender and transsexual men and women and seeks to uphold their rights to live their lives free from discrimination and prohibited conduct and consistently with their individual gender identity.

Anti-trans sentiment is discussed further in the Policy section of this report.

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 *Anti-Discrimination Act 1998* (Tas).

In 2022–23 Equal Opportunity Tasmania provided comment or made submissions on a variety of issues including:

- » External Pathways Guide and Interactive Online Tool (Respect@Work);
- » Sexual Orientation and Gender Identity Conversion Practices (Department of Justice);
- » Working with Vulnerable People – Draft Agency Policy & Guidelines (Department of Justice);
- » Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints (Respect@Work);
- » Disability Justice Plan (Department of Justice);
- » Local Government Elected Representatives Workplace Health and Safety Review;
- » Religious Educational Institutions and Anti-Discrimination laws (Australian Law Reform Commission);
- » Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (Department of Justice);
- » Tasmanian Government Elder Abuse Strategy 2023 – 2029;
- » A Charter of Rights for Tasmania 2022 (Tasmanian Law Reform Institute);
- » Police Offences Bill (Nazi Memorabilia) 2023;
- » Use of innate/intersex terminology (Department of Justice);
- » Alcohol, Tobacco and Other Drugs Policy (Department of Justice);
- » Justice Miscellaneous (Intersex Terminology) Bill 2023;
- » National Justice Project: Alternatives to Police as First Responders;
- » Consultation paper 1 – Approach to OPCAT Article 4: identifying places of detention;
- » Abacus Diversity and Inclusion Chapter (Tasmania Police);
- » Taxi and Hire Vehicle Regulations 2023;
- » Tasmanian State Service – Aboriginal Cultural Leave Guide (State Service Management Office);
- » Inquiry into Tasmanian experiences of gendered bias in healthcare (Gender and Equality Parliamentary Committee).

Participation in working groups

In 2022–23 Equal Opportunity Tasmania participated in various working groups and consultative forums including:

- » Victims and Survivors and their Advocates Workshop – Legal Services Pilot;
- » Respect@Work Council Forum;
- » Respect@Work Roundtable: Community Legal Centres and Human Rights Commissions: Good Practice Frameworks;
- » Multicultural Action Plan Whole of Government Group;
- » OPCAT Implementation Project;
- » Disability Justice Plan Working Group;
- » Whole of Government LGBTIQ+ Reference Group;
- » Department of Police, Fire and Emergency Multicultural Reference Group;
- » Department of Health LGBTIQ+ Reference Group;
- » Department of Police, Fire and Emergency LGBTIQ+ Strategic Working Group;
- » State-wide Elder Abuse Prevention Advisory Committee (SEAPAC);
- » People, Culture and Inclusion Steering Committee (Department of Justice).

Emerging themes and trends

There are a number of areas relevant to the work of Equal Opportunity Tasmania that are worth highlighting this year, as they continuously arise across the areas of complaints, enquiries, training, community engagement and policy.

Review of *Anti-Discrimination Act*

As a matter of priority, the *Anti-Discrimination Act* should be reviewed. Equal Opportunity Tasmania is currently drafting a discussion paper noting areas of possible reform which will be released later this year.

It is noted that other jurisdictions have already taken steps to review their anti-discrimination protections and it is hoped that Tasmania will not be left behind in doing this.

Tasmanians deserve to retain the gold standard protections our anti-discrimination laws have afforded them, and to have modern laws which promote access to justice and enhance equality and social cohesion.

Human Rights Act

Equal Opportunity Tasmania is supportive of a Tasmanian Human Rights Act and has been actively involved in the campaign being driven by the community sector. Tasmanians continue to be disadvantaged by a lack of enforceable rights, while people living in Queensland, the ACT and Victoria have the benefit of a range of protections.

The Tasmanian Law Reform Commission is soon to release a report which re-examines the need for a Human Rights Act in Tasmania. It is anticipated that this report will echo the calls already rising from the community for such protections.

Positive duty

The concept of a positive duty to eliminate discrimination and other conduct which may breach relevant laws has become a central topic of discussion. Branching across areas of discrimination, sex-based harassment and sexual harassment, there is increasing support for imposing a legal obligation on employers to create workplaces which are free from such unsafe conduct.

While the *Sex Discrimination Act 1984* (Cth) applies to Tasmanian organisations, the positive duty set out in that Act is limited in its applicability. The benefits of a positive duty being incorporated into state-based discrimination legislation has been recognised in the Queensland Human Rights Commission's report: *Building Belonging – Review of Queensland's Anti-Discrimination Act 1991* (Qld), July 2022.

The possibility of a positive duty in Tasmania will be explored in the discussion paper calling for a review of the *Anti-Discrimination Act* to be released later this year, and referred to previously.

Assistance Animals

Access to public places by assistance animals remains a complicated and uncertain area. Through complaints, questions are raised as to what types of animals can be considered assistance animals (i.e. livestock) and what is an appropriate level of training.

The *Disability Discrimination Act 1992* (Cth) sets out the legal definition of an assistance animal under section 9, which includes animals accredited through State or Territory laws or a training organisation, as well as an animal which:

- c) is trained to assist a person with a disability to alleviate the effect of the disability and meets standards of hygiene and behaviour that are appropriate for an animal in a public place.

Questions also arise as to what is meant by alleviating the effect of disability.

When a complaint is made under the *Anti-Discrimination Act* assistance animals are taken to be 'therapeutic devices' under the definition of 'disability', as the *Anti-Discrimination Act* is otherwise silent on assistance animals. There are no guidelines or accreditation in Tasmania relating to assistance animals.

Anti-trans sentiment

Of increasing concern is anti-transgender sentiment, fuelled by misinformation and fearmongering. The transgender community continue to be impacted significantly by reductive and harmful commentary.

On 24 November 2022 the Tasmanian Civil and Administrative Tribunal handed down its decision on a review of the Commissioner's decision not to grant an application made under the *Anti-Discrimination Act* for an exemption to discriminate against biological men on the basis of sex.

On the information submitted by the applicant in support of the exemption being granted, Tribunal Member Cuthbertson noted:

"I consider that there are aspects of the applicants' arguments that do a great disservice to transgender and transsexual communities. Many of the assertions, particularly those regarding paraphilias, patterns of criminality and nefarious motivations for attending female-only events were unsupported by empirical research or compelling evidence. The wider public interest in protecting the rights of all members of the community from discrimination and prohibited conduct would not be advanced by the Tribunal yielding to such arguments when considering the current application."

The application is discussed further in the Exemption section of this report.

Wheelchair Accessible Taxis

People with disability have a fundamental right to equal access and participation in all aspects of society, including access to transport options available to the public.

As it stands, many people with disability in Tasmania are denied this right. It is disappointing that people with disability continue to be disproportionately disadvantaged by limited availability of wheelchair accessible taxis (WATs). Equal Opportunity Tasmania is hopeful that recent reform in this area will contribute to positive change.

Notwithstanding, public transport options in Tasmania are limited, particularly for people with disability. It is essential that sufficient numbers of wheelchair accessible taxis (WATs) are available to meet demand.

The shortage of WATs is predominantly evident in regional and rural areas, where overall demand for taxis is lower. Based on enquiries and complaints made to Equal Opportunity Tasmania, it is understood that bookings for WATs are less likely to be fulfilled as they take more time to undertake and there are a lack of incentives available to operators of taxis and rideshare operators.

Equal Opportunity Tasmania has been advised of circumstances where individuals attempting to use a WAT are placed into vulnerable and unsafe situations, such as being stranded for hours, abused by drivers and denied service.

It is imperative that further steps are taken to incentivise taxi and rideshare operators to offer accessible services. Further, imposed minimum requirements should be reasonably achievable, reviewed periodically, and not discourage the operation of WATs (leading to further shortages).

It is also worth noting that if a taxi company does not provide an accessible taxi for a person with a disability, this may breach the *Anti-Discrimination Act* as it may constitute disability discrimination.

Equal Opportunity Tasmania has previously received complaints and enquiries relating specifically to long wait times, taxis not turning up and refusal of service.

If a person with disability has experienced these types of situations, they may be able to make a complaint of disability discrimination.

The comments above were made to the *Advocate Newspaper* and published in an article dated 30 June 2023.

Provision of interpreters when dealing with government services

Equal Opportunity Tasmania continues to receive reports and anecdotal information of the denial of interpreting services in the provision of government services for culturally and linguistically diverse people.

Predominantly in the field of justice, it is been reported that interpreters are requested but not provided, or are denied, or there is a significant delay in providing one.

This is incredibly concerning.

The *International Covenant on Civil and Political Rights* (1966) (which Australia has signed and ratified), states:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

The *Anti-Discrimination Act* provides for the Commissioner to investigate discrimination or prohibited conduct without the lodgement of a complaint if satisfied there are reasonable grounds to do so (referred to as an own motion investigation).

If Equal Opportunity Tasmania continues to receive reports that culturally and linguistically diverse people are denied interpreters in government services, it may be that this type of investigation is undertaken.

Commissioner makes report to the Attorney-General about discriminatory impacts of legislation

A complaint was made by a State Service employee who, before becoming a permanent employee, had several months out of the workforce to have a child and then returned to the State Service. The Complainant was advised that being out of the workplace for more than 3 months, prior to being permanent, in order to have children is considered 'discontinuation of service' and meant she lost any long service leave entitlement she may have accrued.

The complaint was made more than 12 months after the alleged discrimination occurred, which is the timeframe under the *Anti-Discrimination Act* a person has to make a complaint. The Anti-Discrimination Commissioner can accept a complaint made out of time, but may have to contact the Respondent to seek submissions about whether accepting the complaint out of time would cause them any prejudice.

Regardless of the time issue, there is an applicable exception (defence to a complaint) in section 24 of the *Anti-Discrimination Act*. Section 24 states a person can discriminate against another person if it is reasonably necessary to comply with a law. The *Long Service Leave (State Employees) Act 1994* (Tas) states an employee who has completed at least 10 years of continuous employment is entitled to a period of long service leave, however, continuous employment is 'interrupted' if a period of 3 months or more occurs between periods of employment. In this case, the Complainant had a period of more than 3 months between periods of employment with the State Service.

The Complainant decided to withdraw the complaint when Equal Opportunity Tasmania explained this to her.

One of the Anti-Discrimination Commissioner's functions is to examine legislation and report to the Minister for Justice and Attorney-General as to whether it is discriminatory or not. In this case, the Commissioner made a report about the *Long Service Leave (State Employees) Act 1994*.

I reported the complaint raises possible indirect discrimination on the basis of gender, pregnancy, family responsibilities and parental status. However, because of section 24 of the *Anti-Discrimination Act*, it is not unlawful.

I noted that according to the State Service Workforce Report No 1 of 2022, as of 31 December 2021 more women are employed in the State Service than men, and around 13.5 % of employees are employed on a fixed-term (not permanent) basis. Further, women are more likely to have a break from the workforce after having a child and be the primary caregiver than men.

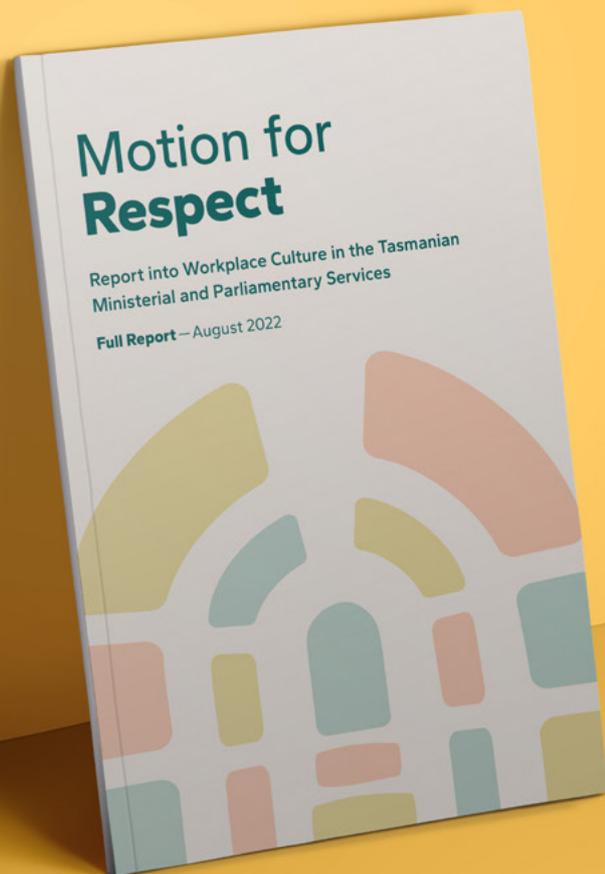
I reported that women in the Complainant's situation are more likely to be disadvantaged by the *Long Service Leave (State Employees) Act*. Their entitlement to long service leave and when they become eligible for this entitlement is negatively impacted.

I recommended the *Long Service Leave (State Employees) Act* be reviewed and remedied.

I was very pleased to receive a response from the Attorney-General, who has asked the relevant Department to provide her with advice about potentially amending the *Long Service Leave (State Employees) Act* to resolve the discriminatory impacts.

CHAPTER 8A

Independent Review into Parliamentary Practices and Procedures to Support Workplace Culture



On 28 July 2021, the Honourable Peter Gutwein MP, then Premier of Tasmania, announced the Commissioner’s appointment as the Independent Reviewer to undertake the Independent Review into Parliamentary practices and procedures to support workplace culture (the Review).

The Terms of Reference set out that the Independent Reviewer was to:

- » Ascertain whether there is workplace discrimination, sexual harassment and bullying within the Tasmanian Ministerial and Parliamentary Services (MPS) and understands its nature and extent;
- » Ascertain and understand the existing perceptions of workplace culture within MPS;
- » Ascertain the existing awareness and understanding of responsibilities prescribed under the *Anti-Discrimination Act 1998* (Tas) within MPS;
- » Ascertain and understand the impact of workplace discrimination, sexual harassment and bullying on individuals, and any contributing factors, including workplace culture, on the prevalence of workplace discrimination, sexual harassment and bullying within MPS;
- » Review existing complaint and reporting mechanisms available to staff of MPS, and any cultural and/or structural barriers that may impede staff making complaints;
- » Review existing policies, procedures and practices that govern responses and outcomes, where workplace discrimination, sexual harassment and bullying is found to have occurred in MPS;
- » Review existing Human Resources practices within the MPS setting.

On 29 August 2022, the Independent Reviewer released *Motion for Respect: Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services* and made the following statement:

I am pleased that today I am able to release the Report: *Motion for Respect*.

The Report is the result of the Independent Review into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services in particular as it related to workplace discrimination, sexual harassment and bullying.

When a Review is commissioned nobody really knows what will be revealed. I commend the Government for taking the bold step to commission such a broad and far-reaching Review.

The Review attracted high participation. There was;

- » a 56.5% response rate to the Survey into Workplace Culture (equating to 318 individuals)
- » 620 substantive comments made throughout the Survey
- » 26 written submissions
- » 13 verbal submissions

The Review was conducted on a platform of confidentiality and anonymity. The high level of participation demonstrated a desire for change and also a trust and confidence in the Review process.

I thank all those who participated in the Review process for their courage, insights and candour.

Evidence provided in the written and oral submissions was consistent, comprehensive, powerful and poignant. There is no ignoring the fact that some of the content raised in the submissions was deeply disturbing.

It is also important to note that those who provided submissions work or have worked at all levels and across all areas of MPS

There were many people who shared accounts of discrimination, sexual harassment and bullying which had caused them great distress. The Review provided participants an outlet, often for the first time, to have their experiences heard and considered in a safe and non-judgemental space.

Many participants engaged in the process in order to share their views as to where improvements could be made across their workplace.

This aligned well with the primary intent of the Review, which was to identify needs and gaps within the Ministerial and Parliamentary Services Workplace. In conducting the Review, a number of issues of concern were identified.

From the Survey, it was identified that:

- » 82% of respondents expressed general dissatisfaction with complaint processes
- » 40% of respondents experienced bullying
- » 24% of respondents experienced discrimination
- » 15% of respondents experienced sexual harassment
- » Two thirds of respondents had witnessed discrimination, sexual harassment or bullying
- » Only 11% of those who witnessed the behaviours intervened

It is important to emphasise that while the Report identifies a workplace culture considered by many to be unacceptable or unsafe there is absolutely no suggestion that the Report is a reflection on all those who currently work within and across Ministerial and Parliamentary Services.

The Report provides a comprehensive, honest and frank insight into the MPS Workplace.

Significant problems uncovered in the Review include:

- » an absence of, or inconsistent, workplace policies, procedures and practices;
- » inadequate or unsafe complaint mechanisms;
- » a lack of training and education in relation to rights and responsibilities;
- » a general lack of good governance, including a lack of accountability and consequences that follow poor, disrespectful or unlawful behaviours; and
- » inconsistent recruitment and employment practices.

It became evident that the current culture and associated workplace practices are a culmination years of political iterations, siloed workplace structures, a lack of oversight, the coming and going of politicians across all party lines, political staffers and other MPS employees.

Such factors erode employee confidence, professional enjoyment and allow poor and unacceptable behaviours to flourish.

It was essential that the results of the Review reflected the experiences of participants. Accordingly their voices can be heard throughout the Report.

It needs to be clear that no body's behaviour is beyond scrutiny.

There are 14 Recommendations to improve workplace culture within the Tasmanian Ministerial and Parliamentary Services, all of which are constructive, sensible, forward-focused, and designed to build functional and effective frameworks to ensure accountability at all levels and consistent workplace processes.

Support across political lines for the Review to be undertaken leaves me feeling optimistic that there is a genuine and united appetite for positive cultural change and improvement of workplace practices. The Report and its recommendations provide practical and achievable pathways to change.

I would like to acknowledge how proud I am of the small but talented team who worked on the Review. I pay special mention to my colleague Melanie van Egdom for her tireless contribution throughout the process. The team's professionalism, sensitivity and pragmatic approach resulted in a Report that will, I am sure, provide a guide to others and endure the test of time.

To read *Motion for Respect* go to www.equalopportunity.tas.gov.au.

To track the implementation of the recommendations see the Workplace Culture Oversight Joint Sessional Committee page at: www.parliament.tas.gov.au/committees/joint-committees/sessional-committees/wco

Staff

CHAPTER

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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 1998 (Tas)* and the strategic initiatives planned each year.

Equal Opportunity Tasmania has a permanent staff complement of 11 (one of whom is part-time) although from late 2022 there were three vacant positions, one being filled in March 2023.

During the reporting period, there were several changes to staffing. This was an opportunity to review the staff structure to a model better suited to meet operational needs. Two former contract positions were made into permanent positions and one position was abolished.

- » Two staff on fixed-term secondments in other areas in the State Service relinquished their roles to accept permanent placements;

- » The Senior Training Officer relinquished their position to accept another role in the State Service. The position has now been filled and will commence in the 2023/24 financial year;
- » The Executive Officer was appointed to another role in the State Service and this position has been filled on a temporary basis pending recruitment;
- » One Administrative Assistant position was filled for a short period on a temporary basis;
- » A new permanent Investigation and Conciliation Officer was appointed in March 2023;
- » One long term fixed-term contract position was filled on a permanent basis;
- » One staff member accepted a short fixed-term secondment placement in a State Service office;
- » The Community Engagement Officer contract position became vacant in early 2023 and will be filled on a permanent basis.

The figure on the following page shows the organisational chart for Equal Opportunity Tasmania.

Organisational chart



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

From September – November 2022 Equal Opportunity Tasmania hosted a work experience student from the University of Melbourne. The student was primarily tasked with undertaking legal research, working with stakeholders, developing campaign content for the Rally for a Tasmanian Human Rights Act and social media management.

Over a period of three weeks in May and June 2023, Equal Opportunity Tasmania hosted a Tasmanian Legal Practice Course work experience trainee. The trainee was exposed to all aspects of the work of Equal Opportunity Tasmania, but with close contact with the complaints team. The trainee was involved in the preparation of assessments of complaints and drafting documents and correspondence, observation of conciliation conferences, legal research, seeking further information from stakeholders and engagement with parties to complaints.

Staff training

During 2022–23 staff participated in training as part of their continuing professional development, which included:

- » St Johns Ambulance First Aid refresher training
- » Investigation Skills provided by Tasmanian Training Consortium
- » Regulating and expressing emotions in conflict: practical skills for conflict resolution provided by the Resolution Institute
- » Women and Leadership Australia – Impact Program
- » Your Obligations: Sexual Harassment Legislation Changes – Law Society
- » Safe Equal Respected Conference – Women’s Legal Service Tasmania
- » Bush Tucker Tour – NITA Education
- » UTAS Professional Practice Pathway Immersion Program
- » mumara patrula/wood for the fire – Blak Led Tours Tasmania

Equal Opportunity Tasmania staff also routinely participate in webinars on relevant topics, such as:

- » What a Positive Duty on Sexual Harassment looks like – Diversity Council Australia
- » Sexual harassment: The new bar – WorkSafe
- » Human Rights, Anti-Racism and Reform – Australian Human Rights Commission

Equal Opportunity Tasmania established and hosted an Executive/Administrative Officer Networking Group open to anyone working in administrative roles in the Department of Justice. The meetings provide valuable opportunities to connect people and build relationships and share skills and resources. Guest speakers from different sections of the Department attended meetings to share information about their areas.

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 participation in lunchtime discussions, visiting the *typani milaythina-tu: Return to Country* exhibition at the Tasmania Museum and Art Gallery and participation in a Bush Tucker Tour provided by NITA Education.

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 courses.

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Tasmanian Civil and Administrative Tribunal (TASCAT)

The Anti-Discrimination Stream of TASCAT conducts 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 and 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
-  1800 657 500
-  Anti-Discrimination Stream – antidiscrimination@tascat.tas.gov.au
For all other inquiries – tascat@tascat.tas.gov.au

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Financials

A Financial Statement for the office is provided in the Department of Justice's Annual Report 2022–23.

The Department of Justice Annual Report for 2022–23 can be found at: www.justice.tas.gov.au/annual-report.

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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

“

It is incredible how many hurts can be healed by the two words, ‘I’m sorry’.

”



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