

Anti-Discrimination
Commissioner
Annual Report 2015–16

CELEBRATING DIFFERENCE EMBRACING EQUALITY



**Equal Opportunity
Tasmania**

**Equal Opportunity Tasmania
seeks to work closely with the
Tasmanians (including the community
generally, government and business)
in fostering a society free from
discrimination, prejudice, bias
and harassment.**

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

Dear Attorney General

As required by section 10 of the *Anti-Discrimination Act 1998* (Tas), it is my pleasure to present the 17th Annual Report of the Anti-Discrimination Commissioner.

This report covers my activities and those of my office from 1 July 2015 to 30 June 2016. It also provides a summary report of matters dealt with by the Anti-Discrimination Tribunal.

I commend the report to you.

A handwritten signature in black ink, consisting of a series of loops and flourishes, representing the name Robin Banks.

Robin Banks
Anti-Discrimination Commissioner

30 September 2016



Equal Opportunity Tasmania

This Annual Report outlines the activities of the Anti-Discrimination Commissioner and Equal Opportunity Tasmania in 2015–16.

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

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

Publication ISSN: 1832-9772

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

Contents

1	Highlights
3	Commissioner's overview
4	Purpose, values, aims and principles
6	Policy work
16	<i>Report it!</i>
22	Information, awareness and promotion
32	Enquiries
33	Community engagement
40	Investigating and seeking to resolve complaints
60	Exemption applications
64	Staffing
67	Financial situation and statements
68	Appendix A: Complaint data for 2015–16
77	Appendix B: Decisions and orders available to the Commissioner and the Tribunal
79	Appendix C: Anti-Discrimination Tribunal
80	Contact



Highlights

- Working with the Anti-Discrimination Commission of Queensland and the Northern Territory Anti-Discrimination Commission on the development of training to highlight and challenge unconscious bias and its negative effects.

- Launching Equal Opportunity Tasmania as a positive reframing of the work we do under the *Anti-Discrimination Act 1998* (Tas).

- Working with people across all parts of the Tasmanian Government involved in the justice system and with individuals and organisations within the disability sector to begin the development of the Disability Justice Strategy for Tasmania.

- Publishing new and much more readable information materials on all aspects of the operation of the *Anti-Discrimination Act 1998* (Tas), as well as new promotional resources.

- Working with A Fairer World to further develop and deliver the *Let's Get Together* diversity education program for schools in Tasmania.

- Increased focus on working within Government to identify barriers to equality for women, people with disability, members of our multicultural communities, and members of our lesbian, gay, bisexual, trans and intersex (LGBTI) communities, and ways to remove those barriers. Through doing this work we are promoting approaches that increase the capacity of the Tasmanian Government to serve the whole community through harnessing a much more diverse range of skills and experiences within the public service.

- Development and delivery of a targeted training course on improving access to buildings for people with disability, with the capacity for that training to be delivered across Australia through our relationships with statutory human rights and discrimination bodies that are members of the Australian Council of Human Rights Authorities.

- Continuing success in our approach to ensuring parties have early opportunities to try to resolve complaints and supporting all parties to better understand the way discrimination law works.

- Significant growth in take up of Equal Opportunity Tasmania's training by State Government entities and by schools.

**As Anti-Discrimination Commissioner,
I have been privileged to work with
people across the breadth of the
Tasmanian community and with people
interstate and overseas who individually
and collectively seek to enable all
people to be the best they can be, to
achieve their goals and to flourish in an
inclusive and respectful community.**

Commissioner's overview

This is the 17th annual report of the Anti-Discrimination Commissioner of Tasmania, and the seventh I have presented to the Attorney General and Minister for Justice on the work of the Commissioner and this office. It is my last Annual Report as the Anti-Discrimination Commissioner for Tasmanians. What we, as an office, seek to achieve is a Tasmanian society in which discrimination and other behaviours founded in prejudice are understood to be social ills that hold people back from achieving their potential and from contributing to our society. I present this with a strong sense of pride in what we have achieved towards that goal.

Despite being a small office with a huge task, I think this report demonstrates that the Office of the Anti-Discrimination Commissioner, now Equal Opportunity Tasmania, is a vital and effective part of the local, national and international work of protecting, promoting and fulfilling the human right to equality and non-discrimination. It reflects on our capacity to work across sectors and to engage deeply with the Tasmanian community. It shows the diverse range of strategies that we use to be both responsive and proactive in achieving improvements in the Tasmanian community.

I acknowledge the dedication and hard work of my staff and everyone who has been part of Equal Opportunity Tasmania, over the last 12 months. I also acknowledge the continuing commitment of so many people in our community—whether in a professional capacity within government, business, or community organisations, or in their personal capacity—to upholding the principles that underpin discrimination laws: the principles of equality and equal opportunity for all. As Anti-Discrimination Commissioner, I have been privileged to work with people across the breadth of the Tasmanian community and with people interstate and overseas who individually and collectively seek to enable all people to be the best they can be, to achieve their goals and to flourish in an inclusive and respectful community. I thank you for that opportunity and commend this report to you.



A handwritten signature in dark ink, appearing to read 'Robin Banks'. The signature is stylized and fluid, with a large loop at the end.

Robin Banks
Anti-Discrimination Commissioner

Purpose, values, aims and principles of the Anti-Discrimination Commissioner and her office

Purpose

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

Our guiding principle is:

Celebrating Difference Embracing Equality





Values

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

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

Aims and principles

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

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

Policy work

A core function of my office is to provide advice on matters related to discrimination and related conduct. This role is performed through a variety of functions:

- advice to the Attorney-General on matters related to discrimination in law and policy
- consulting and inquiring into discrimination and related conduct
- contributing toward State and Federal discrimination law developments, through submissions to inquiries and other policy review processes
- participating in reference groups and other forums to assist in guiding policy outcomes.

Policy projects

Historical homosexual and related offences

The legacy of having a conviction under historic homosexual and related offence provisions or having a police file because of one's sexual orientation or conduct related to one's gender identity is a real issue for many Tasmanians.

Tasmania was the last state or territory in Australia to decriminalise male homosexuality. The removal of criminal offence provisions from Tasmanian law in 1997 represented a significant advance for the State. Unfortunately, however, the legacy of having a criminal record or coming to official attention simply because of being homosexual was not addressed at that time.

Other offence provisions, including the criminalising of a man for dressing in female apparel, were not repealed until 2001.

In April 2014, I presented a report to the Attorney-General outlining an approach for dealing with historic criminal records for consensual homosexual activity and related conduct. It included recommendations for expunging historic criminal records and other official documents used to record information about convictions, arrests or other police interactions with homosexual or gender diverse Tasmanians. It also recommended that a formal apology be made to those affected.

In December 2015, the Government announced it would introduce legislation in 2016 to expunge historic criminal records for consensual homosexual activity. The Government also gave a commitment to provide a public apology to those were affected, including the families and loved ones of those who are deceased.

During the reporting period, I was invited to provide comment on a draft Bill to implement a scheme to allow for expunction of criminal records.

My office will continue to work with the Government to seek to ensure the scheme fully responds to the ongoing trauma and other impacts facing people who hold such records.

Disability Justice Strategy for Tasmania

A primary focus for my office in 2015–16 has been work on development of a Disability Justice Strategy for Tasmania.

People with disability face a number of barriers to accessing justice, including in Tasmania. They are significantly more likely to be victims of violence, abuse or neglect and have disproportionately more contact with the criminal justice system than other Tasmanians.

In 2014–15, the Department of Justice included in its *Disability Action Plan 2014–17* the development of a Disability Justice Strategy to address barriers people with disability face to equitable participation in the justice system. The plan indicated this work would be led by my office.

The focus of our work in this area has been to examine current practices and identify ways in which these might be improved to ensure access to justice for people with disability. This includes:

- the ability within the system to identify disability and respond to the needs of people with disability as service users and justice system participants;
- improved access to supports and other adjustments to enable effective access and participation by people with disability in the justice system;
- the use of formal legal or court procedures, including making available adjustments in court proceedings and the adoption of appropriate diversionary measures for alleged offenders;
- the examination of legal barriers to the provision of supports or other adjustments; and
- the examination of how disability is addressed in service settings such as prisons and police activities.

To assist in this process, I established a high-level, cross-Agency Steering Committee and a Community Reference Group.

These groups have been meeting throughout 2015–16 to understand the issues and assist in identifying what changes can and should be made.

It is intended that the draft Strategy will be presented to the Attorney-General early in 2017.

Legal recognition of sex and gender diversity

In February 2016, I released a discussion paper on options for amendment to Tasmania's *Births, Deaths and Marriages Registration Act 1999* to provide for legal recognition of sex and gender diversity.

Concerns about the current arrangements for registering and amending official information collected about sex and gender identity include:

- the requirement to undertake gender re-assignment surgery for a change of sex to be recognised;
- the requirement that a person not be married to have a change of sex legally recognised;
- the age and approval requirements for young persons to have a change of sex or name registered;
- the restrictions associated with a person being recognised as a gender other than male or female;
- issues associated with unnecessary medical treatment to make intersex bodies conform to the sex assigned at birth.

The effect of the current provisions of the *Births, Deaths and Marriages Registration Act* is that a transgender person who has not had sexual re-assignment surgery and/or who remains married is not able to obtain official recognition of their gender identity. Nor is a person with intersex variations able to be registered in a way that recognises they may have both male and female biological sex markers or other non-binary sex characteristics.

Action to address the arrangements currently contained in laws governing the way in which the official sex or gender of Tasmanians is recorded occurs in the context of a greater recognition of the rights of people who are transgender or have biological characteristics outside the binary of male and female.

As the diversity of our biology and gender identity becomes increasingly understood, it is important that all Tasmanians are able to be formally recognised in ways that respect their identity and bodies.

The adoption of similar standards for all Commonwealth Government agencies and more recent moves by the Australian Bureau of Statistics to enable a person to identify as neither male nor female in the 2016 Census are indicative of a willingness to look at ways in which discriminatory barriers to the collection of information in official records can be removed.

I anticipate providing a final report to the Attorney-General on this matter in late 2016.

Tasmanian Law Reform Institute reference: Access to justice for people with complex communication needs

In 2015, the Tasmanian Law Reform Institute began work on a reference related to the need for a communication assistant/intermediary scheme for people with complex communication needs involved in the criminal justice system.

As this project is closely aligned to the work my office is doing to develop a Disability Justice Strategy for Tasmania, we have been actively working with the Institute on this.

Many Tasmanians have complex communication needs that are not effectively dealt with in the justice system when they participate as victims, witnesses or defendants. Police or courts may, for example need assistance to communicate effectively with a person with intellectual or cognitive impairment who is a victim of crime. Questions asked of a person with a learning disorder or intellectual disability in police or court settings may not be clear to the person.

To help address these issues, some jurisdictions have put in place schemes that assist the processes to ensure effective inclusion of people with communication difficulties. This includes making available a communication assistant to act as an intermediary in the interaction of police, lawyers and court officials with people with complex communications needs.

The Tasmanian Law Reform Institute published an issues paper in May 2016. The issues paper examines options for a similar scheme in Tasmania.

My office helped with the consultations conducted by the Tasmanian Law Reform Institute on this issue. This included working together in a series of community conversations across the State in April 2016. I look forward to a final report being released later in 2016.



Policy and strategic advice

Commissioner for Children and Young People Bill 2016

In October 2015, I responded to a request by the Department of Health and Human Services to comment on draft legislation aimed at clarifying the powers and functions of the Commissioner for Children.

The draft Bill arose from the recommendations contained in the November 2013 report prepared by the Advocacy for Children in Tasmania Committee into the adequacy of advocacy services for children and young people in Tasmania (referred to as the Harries Report) to which I was an advisor.

The Commissioner for Children has a significant role to play in protecting the human rights of children and young people in Tasmania and the introduction of legislation outlining the role of the Commissioner and his or her staff is critical to clarifying responsibilities.

I welcomed the intention to introduce stand-alone legislation. I expressed, however, the need for a clearly articulated package of reforms including a response to the broader recommendations of the Harries Report. In particular, I emphasised the need for clarity about independent oversight and complaints processes available to those in State care and youth detention.

Review of the *Disability (Access to Premises – Buildings) Standards 2010 (Cth)*

In April 2015, the Commonwealth Department of Industry, Innovation and Science began its review of the *Disability (Access to Premises – Building) Standards 2010*. These Standards incorporate into building law requirements for access for people with disability to buildings.

In June 2015, my office prepared a substantial submission to the review. As part of that submission I called for a working group of federal, state and territory representatives to be re-convened to consider proposed changes to the Standards and other matters relevant to the review process. Other recommendations included that work be done to:

- examine options to make the underlying Australian Standards more readily and freely available;
- update guidelines on how the Standards are to be applied;
- do further research on access barriers to short-term holiday accommodation and the provision of accessible residential accommodation; and

- develop a whole-of-journey approach to public transport for people with disability, including better alignment between Disability Standards for buildings and those applying to public transport.

I also asked that aspects of the current Standards be reviewed or amended, including in relation to:

- the adequacy of accessible car parking spaces;
- seating spaces allocated in auditoriums and assembly spaces;
- the design of shower basins and shower recesses;
- an increase in turning circle and landing length dimensions;

the dimensions of mobility aids and mobility scooters to ensure the current approach reflects their increased use and the changing nature of mobility aids in use in the community;

- way-finding; and
- emergencies (such a fire) and emergency egress procedures.

Of particular concern is the way in which the Standards deal with upgrades to existing buildings and lessee concessions. As I pointed out in the submission, more effective ways are needed to ensure that greater progress is made toward improving accessibility of all buildings including the need for clearer guidance on how alternative solutions may be implemented.

Since making my submission, my office has participated in a number of discussions aimed at addressing these matters.

In November 2015, the Department of Industry, Innovation and Science convened a forum to discuss the approaches taken to the unjustifiable hardship exemption available under the Standards and examine ways in which these approaches may be improved. National discussions have also taken place in relation to data collection to enable improved tracking of progress with implementation of and compliance with the Standards.

The Department provided its review report to the Minister for Industry, Innovation and Science and the Attorney-General on 1 May 2016.

Bullying and harassment

In policy terms, bullying is a 'wicked' problem. The broad ranging nature of what constitutes bullying and the fact that it can affect people of all ages and from all areas of our community means that as a problem it does not lend itself to a simple or single response.

Effective action to address bullying requires a mix of legal and non-legal responses and measures both to prevent it before it occurs and to effectively address it when it does.

As a theme, bullying type behaviours occupies much of the work of my office. Bullying type behaviour at times accompanies discriminatory activity and targets personal characteristics such as gender, race, sexual orientation or disability. Many of the complaints and enquiries I receive relate to behaviour that might be referred to as bullying. At the same time, understanding what bullying is and how to address it is an important theme in the education and training work done by my office.

In May 2015, the Tasmanian Law Reform Institute released a discussion paper on the existing legal frameworks for addressing bullying, including options for how responses might be improved.

One option examined by the Tasmanian Law Reform Institute was to extend the jurisdiction of the *Anti-Discrimination Act 1998* to address a broader range of bullying behaviours.

In making my submission on this matter, I emphasised the need for a comprehensive framework to address bullying. Such a framework should include education, training, and leadership, together with complaints procedures that enable accessible and timely interventions and effective remedies for those who are bullied.

The final report released by the Tasmanian Law Reform Institute in January 2016 made a number of recommendations. These included the development of a second-tier civil framework that institutes a mediated and restorative justice response to bullying. The report authors noted this could be achieved by extending the functions of the Anti-Discrimination Commissioner.

In March 2016, the Attorney-General announced the Tasmanian Government intended to proceed with law reform to strengthen the State's protections against bullying. A full Government response to the report is due by September 2016.

Family and domestic violence

In June 2016, I responded to a request from the Commissioner for Children to provide a submission on a report he is preparing on the impact of family and domestic violence on children and young people in Tasmania.

Children and young people are affected by family and domestic violence in different ways to adults and there is a need to structure responses to ensure their particular

needs are met. Whilst children and young people may not always be the primary target of the violence, they are often the silent or invisible victims and their experiences can result in long-term trauma and ongoing impacts.

Interventions to support children and young people who have experienced family violence need to support them in their recovery and provide intensive therapeutic responses where these are required.

I look forward to working further with the Commissioner for Children on this important matter.

Single Tribunal for Tasmania

In May 2015, the State Government authorised the preparation of a discussion paper examining the formation of a single Civil and Administrative Tribunal for Tasmania.

I provided input, particularly focusing on the need to ensure that the Tribunal has the capacity to ensure its processes and practices are fully accessible and to ensure that appointments to the protective jurisdictions of the Tribunal, including discrimination law, reflect the diversity of our community and include people with personal experience of discrimination. Ideally, tribunals dealing with people from identified disadvantaged groups would be made up of a legal member and at least one other member with relevant expertise and personal experience.

Willing to Work: Employment Discrimination against Older Australians and Australians with Disability

In March 2015, the Commonwealth Attorney-General asked the Australian Human Rights Commission to do a national inquiry into employment discrimination against older Australians and Australians with disability.

My office prepared two major submissions to the inquiry outlining particular issues for older Tasmanians and Tasmanians with disability.

The Australian Human Rights Commission's final report: *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* was released in May 2016 and I look forward to working with the Commission to implementing its findings.

Inquiry into employment discrimination (Australians with disability)

Addressing employment barriers for people with disability in Tasmania remains a critical issue.

The unemployment rate for people in Tasmania with disability is around 15 per cent compared to 6.6 per cent for the Tasmanian population as a whole. This is the highest unemployment rate for people with disability across all states and territories. Over 62 per cent of Tasmanians with disability who are 15 years and older rely on government pensions or allowances as their primary sources of income. The workforce participation rates for those with disability aged 15 to 64 is 45.8 per cent, compared with 81.3 per cent for those with no disability.

Low employment rates for people with disability in Tasmania contribute to high rates of poverty, with over 60 per cent of people with disability having a household income in the two lowest income brackets.

For these reasons, my submission to the disability aspect of the Inquiry emphasised the need for employers to show greater support for workers with disability, including in situations where a person is injured in the workplace. I also argued for the need to consider quotas at all levels of government to improve the numbers of people with disability getting jobs and for improved educational and training opportunities for people with disability. Improved support to employers to make reasonable workplace adjustments for people with disability is also critical.

Inquiry into employment discrimination (older Australians)

My submission to the older workers aspect of the Inquiry highlighted the age profile of the Tasmanian population and the particular challenges that this presents. I noted, for example, that by the year 2030 one in four Tasmanians will over 65 years of age, and by 2042 almost a third of our population will be over 65 years of age.

At the same time, a sharp decline in rates of workplace participation are evident among older Tasmanians. Poor attachment to the workforce and high reliance on government pensions as the main source of income for those who have exited the workforce contribute to increased rates of poverty among older Tasmanians.

I noted the problems arising from lack of access to flexible work arrangements. I also noted, with concern, that workplace renewal and redundancy arrangements often target older workers or have the effect of pressuring older workers to permanently leave the workforce. Limits placed on the protection of older worker under state and territory worker's compensation schemes also contribute to premature exit from the workforce.

A key underlying theme is the perception that age is an indicator of 'risk'. This is often accompanied by discriminatory or stereotyped perceptions about a person's ability as they age.

While initiatives aimed at shifting perceptions about older workers are welcomed, further policy and legislative change is also needed to ensure older workers are able to take advantage of flexible work arrangements and to prevent insurance and worker's compensation schemes from acting as disincentives to remaining in the workforce.

ACHRA Joint Submission to Senate Inquiry into access and attainment for students with disability in the school system

My office contributed to the submission made by the Australian Council of Human Rights Authorities (ACHRA) to the Senate Inquiry into access and attainment for students with disability in the school system.

The submission noted the following key points:

- Students have legal rights to educational access and attainment under both domestic and international human right laws
- These rights protect students with disability from discrimination and include specific provisions on providing reasonable accommodation or adjustments to support participation
- Failing to comply with discrimination and human rights laws affects participation and can cause students with disability to perform well below their potential
- Education is a means of overcoming social and economic marginalisation and is therefore an essential foundation for realising other human rights
- While there have been improvements and a range of positive policies and programs exist, students with disability still experience discrimination and barriers to participation. These barriers relate to key areas outlined in the submission including enrolment, participation, transition points in education, workforce capacity and skills, curriculum adjustment and personalised learning and support

ACHRA, in the submission, made a number of recommendations to remove these barriers and improve experiences for students with disability.

The submission is available on the Australian Parliament website at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/students_with_disability/Submissions.

Royal Australian College of Surgeons: Expert Advisory Group on discrimination, bullying and sexual harassment

In June 2015, the Expert Advisory Group to the Royal Australasian College of Surgeons invited submissions in response to an issues paper about discrimination, bullying and sexual harassment in medical work environments. This followed alarming reports about the level of discrimination, bullying and sexual harassment among fellows, trainees and medical graduates.

The issues paper recognised that, despite the introduction of discrimination law, discrimination, bullying and sexual harassment remained a significant issue for the health workforce across Australia.

In my response to the paper, I advised that the number of complaints received by my office alleging discrimination or other unlawful conduct in the health and community sector was significant and appeared to be increasing. I recommended the adoption of a comprehensive strategy including:

- improved education across the medical community about the nature and effects of bullying and related behaviour;
- the establishment of robust and independent complaints mechanisms;
- ongoing action to promote respect for diversity and difference among people; and
- arrangements to protect victims from further abuse.

In November 2015, the Royal Australasian College of Surgeons published an action plan aimed at addressing the problems identified and shifting the culture in workplaces and surgical training that allow them to exist.

It is pleasing that the Royal Australasian College of Surgeons has identified this as an important challenge that must be addressed and I look forward to working with the College further on this important initiative.



Case study

Airline travel for wheelchair users

A complaint was received from a person who alleged he was refused travel on his chosen flight because the airline's wheelchair limit had been exceeded.

The complaint was resolved through conciliation, with the parties agreeing to work together on a review of processes and procedures related to flight bookings for people with mobility disability.

The respondent also agreed to review its online information.

Access to training for people with physical disability

The complainant alleged he could not complete a particular practical course because it was not designed to be inclusive of amputees. The complainant was told he could do a specialised course that had not been developed, but he would have to pay more than people who could go to the usual course.

The complaint was resolved through the conciliation process.

The complaint highlighted how assumptions about what a person with disability can (or can't) do are often incorrect, and acting on or developing approaches based on those assumptions can lead inadvertently to unlawful discrimination.

The complaint process under the Act is a low-cost, accessible way for those assumptions to be tested, and actions and practices reviewed and changed to the benefit of our community.

Participation in Working Groups

Inclusive education for students with disability

Ministerial taskforce

The Ministerial Taskforce on inclusive education for students with disability, of which I was a member, gave its final report with recommendations to the Minister for Education, the Hon Jeremy Rockliff in August 2015.

The Minister made the report public on 19 August 2015, welcoming it and thanking the Taskforce chair, Cheryl Larcombe, and its members.

The Minister stated:

I know a number of parents and teachers believe we can do better to meet the needs of children, and I agree.

The report acknowledges the significant work that is already being undertaken by our educators, families and support services and has also identified opportunities for change, including:

- *Ensuring all schools are ready and responsive to the needs of students with disability;*
- *Providing ongoing professional learning with a focus on inclusive education qualifications;*
- *Developing a partnership that recognises and values the expertise of families;*
- *Taking a holistic view of the range of resources available to support schools; and*
- *Improving the monitoring, assessing and reporting of individual student's progress.*

We are taking immediate action to invest up to \$1 million to implement the following recommendations:

- *Provide incentives and scholarships to increase the number of teacher[s] and teacher assistants with recognised formal education qualifications¹*
- *Implement a pilot project in a number of schools to trial practice models for support staff and classroom teachers to more effectively work together to improve student learning²; and*
- *Provide access to Family Partnership Training, to assist school communities to partner more effectively with families.³*

We will continue to work with community as with consider the remaining recommendations.

The report contained 23 recommendations under six headings:

1. All Tasmanian schools are to be disability ready and responsive
2. All Tasmanian schools continuously improve through high-quality teaching and learning
3. All Tasmanian schools and communities working together in partnership
4. All Tasmanian schools align resources to inclusive education practice
5. Monitoring and accountability
6. Implement Taskforce recommendations

The report, *Improved support for students with disability: Ministerial Taskforce Report*, is available in word at: <https://www.education.tas.gov.au/documentcentre/layouts/WordViewer.aspx?id=/documentcentre/Documents/Improved-Support-for-Students-with-Disability-Ministerial-Taskforce-Report-Word-Version.docx&DefaultItemOpen=1>; and in PDF at: <https://www.education.tas.gov.au/documentcentre/Documents/Improved-Support-for-Students-with-Disability-Ministerial-Taskforce-Report.pdf>.

- 1 *Improved support for students with disability: Ministerial Taskforce Report* (2015): Recommendation 2(d) referred specifically to 'teachers and teacher assistances with and recognised for their formal inclusive education qualifications'.
- 2 *Improved support for students with disability: Ministerial Taskforce Report* (2015): Recommendation 2(e) stated: 'Appoint an action research team to review the research findings of Professor Michael Giangreco and implement a pilot project in a number of schools to trial the recommended practice models to ensure that the support teacher, classroom teacher and teacher assistants are used in the most effective way to improve student learning.'
- 3 *Improved support for students with disability: Ministerial Taskforce Report* (2015): Recommendation 3(c) stated: 'Provide access to Family Partnership Training, or similar, to assist school communities to work together more effectively.'

Inclusion Advisory Panel

In March 2016, I was invited by the Minister for Education to be a member of the re-formed Department of Education's Inclusion Working Group – Disability Focus. I had been a member of the original Inclusion Working Group and welcomed the opportunity to contribute to the work of implementing the Ministerial Taskforce recommendations to achieve the goal of ensuring improved support structures and a more inclusive education system for students with disabilities.

The re-forming of this Working Group is consistent with Recommendation 6 of the Taskforce Report:

Establish an Implementation Advisory Panel to provide practical advice on the opportunities and barriers to implementing the Taskforce recommendations. The Panel should include some members of the current Taskforce as well as representatives from Government and Non-Government schools sectors, education policy staff and the University of Tasmania.

The Working Group, chaired again by Cheryl Larcombe, had its first meeting in early June 2016. Information about the Inclusion Advisory Panel and the communiqué from that meeting (and later meetings) are available at: https://www.education.tas.gov.au/parents_carers/schools-colleges/Programs-Initiatives/Pages/Inclusion-Advisory-Panel---Disability-Focus.aspx.

Whole of Government LGBTI Reference Group

In November 2015, I was invited to join or be represented on the Lesbian, Gay, Bisexual, Transgender and Intersex Whole-of-Government Reference Group.

That same month, the Tasmanian Government launched its 2015 *Whole-of-Government Framework for Lesbian, Gay, Bisexual, Transgender and Intersex Tasmanians* and supporting Action Plan. In his foreword to the Framework, the Premier, the Hon Will Hodgman, states:

My Government is committed to working towards an inclusive community where all Tasmanians are treated with dignity and respect and have equal access to Tasmanian Government programs and services.

...

The Framework will inform the way that the Tasmanian Government supports LGBTI Tasmanians to participate in every aspect of social, economic, political and cultural life. The Framework ensures government policies, programs and services are accessible to, and inclusive of, LGBTI Tasmanians, their friends and their families.

The supporting Action Plan identifies two initial priority areas for the Tasmanian Government and provides a number of practical actions to support LGBTI Tasmanians in their interactions with government. These priority areas are:

- enhancing access and participation; and
- fostering inclusion, respect and dignity.

The Reference Group has developed a work plan to support Tasmanian Government agencies to develop

and implement strategies to achieve the actions under the Action Plan. It also has a role in monitoring and evaluating the achievements of agencies and this will inform an annual progress report for the Premier.

You can find out more about the Reference Group and download a copy of the *Framework and Action Plan* (in PDF only) at: http://www.dpac.tas.gov.au/divisions/csr/for_and_about/lgbti_community

Police LGBTI Strategic Working Group

The Police Commissioner, Darren Hine, continued to chair this Strategic Working Group and show leadership in ensuring policing practices respond better to the needs of members of the LGBTI community.

During the year, Tasmania Police finalised and published an information brochure on the role of LGBTI Liaison Officers and how to contact them. The Working Group also had an opportunity to comment on the Department of Police and Emergency Management's Diverse Communities Policy.

The Commissioner was among 20 Tasmania Police members who participated in the 2015 Pride Parade. This was welcomed as a clear demonstration of the commitment by Tasmania Police to appropriately support members of the LGBTI community in Tasmania.

LGBTI Strategic Issues in Education Working Group

In April 2016, the new Secretary of the Department of Education, Jenny Gale, chaired her first meeting of this Working Group. The Minister for Education, the Hon Jeremy Rockliff, attended for part of the meeting and spoke about the Government's commitment to funding an anti-bullying program, which will include an LGBTI focus.

The Working Group met again in June and identified its focus for the 2016–17 year.

Department of Health and Human Services and Tasmanian Health Service Lesbian, Gay, Bisexual, Transgender and Intersex Advisory Group

In March 2016, I was invited by the Secretary of the Department of Health and Human Services, Mr Michael Pervan, to join the newly formed Department of Health and Human Services and Tasmanian Health Service Lesbian, Gay, Bisexual, Transgender and Intersex Advisory Group.

The purpose of this Advisory Group is to assist the Department and Service to implement the LGBTI Whole-of-Government Framework and Action Plan,

The first meeting of the Advisory Group was held in June 2016.

Tasmanian Women's Plan 2013–18 Working Group

My office has continued to participate in the implementation of the Tasmanian Women's Plan 2013–18. The Plan sets out actions to promote gender equality in Tasmania. Progress reports on the Plan are presented to the Minister for Women annually.

A key action in the Plan is the commitment to provide regular statistical snapshots of the current status of women and girls in Tasmania. In 2016, the Department of Premier and Cabinet issued a series of Fact Sheets on the status of women in various areas of public life. This included a Fact Sheet on Safety and Justice. My office provided extensive information on gender-related complaints for inclusion in that Fact Sheet. The data showed that in 2014–15, over 25 per cent of complaints to my office allege discrimination on the basis of one or more gender-related attributes and 11.3 per cent of complaints allege sexual harassment. The predominant area of activity identified in gender-related complaints was employment. This again demonstrated that balancing paid work and family responsibilities remains a major challenge for many women in Tasmania.

Multicultural Community Reference Group

In June 2015 my office was invited to participate in the Tasmanian Multicultural Community Reference Group established to provide advice and input to the implementation of the *Tasmanian Multicultural Policy 2014*.

The Group meets on a quarterly basis.

Multicultural Issues in Emergency Management Strategic Working Group

The Police Commissioner has continued to chair the Multicultural Issues in Emergency Management Strategic Working Group. This Working Group brings together members of Tasmania's multicultural community, key multicultural community and other organisations (including my office and the University of Tasmania's Tasmanian Institute of Law Enforcement Studies (TILES) to support the Police Service, Tasmanian Fire Service, the State Emergency Service and Ambulance Tasmania to improve their engagement with Tasmania's multicultural communities.

The Working Group focuses not only on issues in service delivery, but also both paid and voluntary employment. The Working Group is able to identify key community events for participation by the emergency management service, other ways to get information out into communities, and potential content areas for training.

Family Violence Consultative Group

In February 2016, my office was invited to join the Tasmanian Government's Family Violence Consultative Group. The Group has been established to provide feedback on family violence initiatives, including the *National Plan and to Reduce Violence Against Women and their Children 2010–2022* and the Tasmanian Government's *Safe Homes, Safe Families, Family Violence Action Plan 2015–2020*.

Work of the Group in 2016 has focussed on providing input and feedback to the Third Action Plan of the *National Plan and to Reduce Violence Against Women and their Children 2010–2022* and related national initiatives. Of particular importance to my office is the need for national and State initiatives to recognise and address the particular impacts of family violence on specific groups of women such as those from culturally diverse backgrounds, Aboriginal and Torres Strait Islander women, women with disability, and young women.

Youth at Risk

In 2013, Children and Youth Services within the Department of Health and Human Services reviewed the way in which youth justice services were managed in Tasmania. One outcome of that work was a decision in late 2015 to prepare a Youth At Risk Strategy to inform the Government on the services required to respond to the safety and rehabilitative needs of vulnerable young people in Tasmania. This includes options for upgrading or replacing Ashley Youth Detention Centre.

During 2015–16 my office has participated in a series of consultations aimed at identifying key issues for inclusion in the Strategy and options for improved service provision for young people with complex needs. We are also members of the Expert Reference Group advising on the development of the Strategy.

It is anticipated that a draft Strategy will be presented to the Minister in December 2016.

Other policy work

During the year my office provided input into a number of other government and non-government processes. These included:

- Input to Australia's report on the implementation of ILO Convention No 159: *Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983*
- Input to Australia's report on the implementation of ILO Convention No 111: *Discrimination (Employment and Occupation) Convention 1958*
- Advice and background information for the Attorney-General regarding the obligations of the State Government as a model litigant in courts, tribunals, inquiries, arbitration and alternative dispute resolution processes.
- Advice to the Minister for Transport on proposed legislation to the permit Uber to operate in Tasmania to ensure that the introduction of Uber services does not result in reduced access to taxi and taxi-type services for people with disability.
- Tasmanian Government Whole-of-Service Workforce Diversity Strategy

Case studies

Woman needing husband's permission to deal with health insurance

Equal Opportunity Tasmania dealt with an enquiry from a woman who had joined the same health insurance fund as her husband. Despite being personally insured, she was told by the fund she could not enquire about or change her own personal insurance without her husband's permission to speak to the health insurance fund. This enquiry raised the possibility of gender discrimination.

Complaint leads to improved parking access

A complaint was received alleging disability discrimination against a business because it did not have any wheelchair accessible parking spaces.

The complaint was resolved early in the process through conciliation. The respondent agreed to provide a wheelchair accessible parking space compliant with the relevant Australian Standards.

Report it!



The *Report It!* process provides a way for victims of discrimination, harassment and abuse and people who witness such discrimination, abuse or harassment (bystanders) to report it. It is not a formal complaint process, but enables people to identify problems they are experience or witnessing.

In 2015–16, my office received 25 incident reports under the *Report It!* process. The majority (16) involved incidents in which the victim was the person making the report. A further nine reports were made by bystanders who witnessed the conduct.

Gender of person targeted

Female	13	52%
Male	12	48%

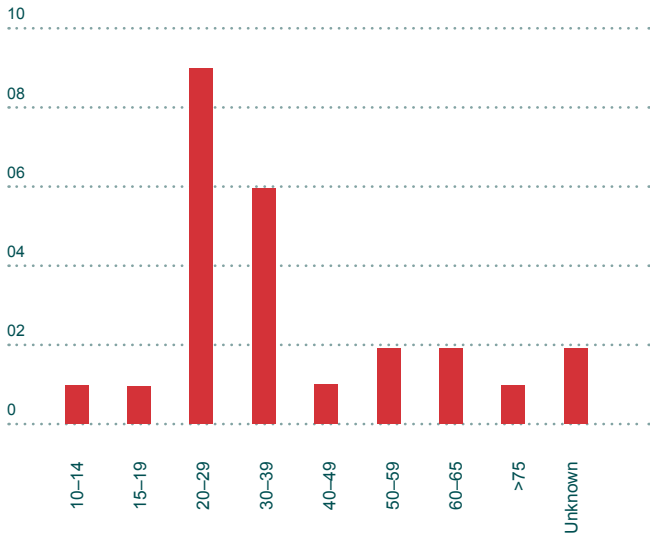
The gender of the person who was the victim of the incident was again evenly distributed, with 13 women or girls reporting incidents and 12 men or boys.

Who made the report

Reported by the targeted person/people	16
Reported by other person	9

Of the 25 reports, eight resulted in the person making a formal complaint. This happened both with victims who had reported and where the report had been made by a bystander who then spoke to the victim and gave them information about the formal complaint process. In a further eight cases, information was provided on the Act and how to make a complaint. In one instance, education and training was provided to a school identified in a report.





Age of the person who was the target of the incident

10-14	1
15-19	1
20-29	9
30-39	6
40-49	1
50-59	2
60-65	2
> 75	1
Unknown	2

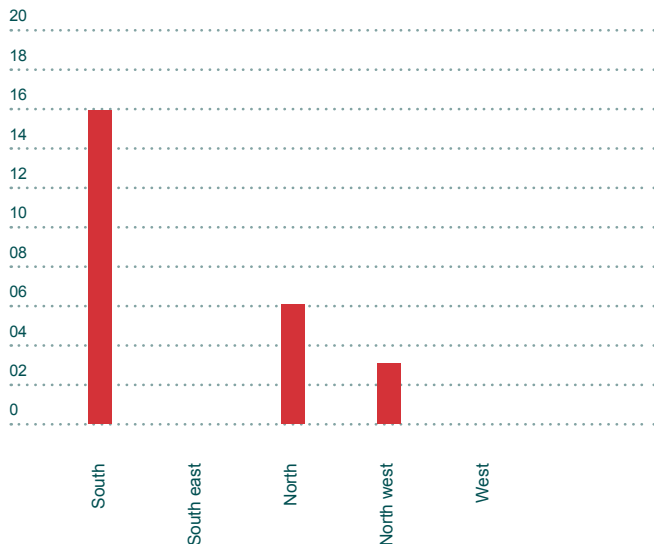
The age of victims ranged from the very young (10-14 years) through to people over 75 years of age, with the majority of victims being in the 20-29 and 30-39 year age brackets.

Report It! case studies

A is a Year 7 student studying at a local school. She was sitting in the library when another student asked if her head scarf was part of her uniform. A replied that it was and the student told her she should remove it. This was followed by verbal abuse in which A's religion was denigrated. A reported this to her teacher and other staff members. She told us she was very upset and cried for 30 minutes after the incident.

T is a young teenager living in an outer suburb of Hobart. He reported a number of racist incidents involving verbal abuse and disparaging comments that happened in his local neighbourhood. The abuse was linked to T's Korean background. The incidents were unprovoked and made T feel very angry, afraid and disappointed.

M witnessed a man who was very drunk randomly pick on a group of young Asian people (two women and two young men) outside a shop in Hobart. The man yelled and swore at the group and then smashed his hand against a rubbish bin and pole in an attempt to provoke a fight. He then gave his drink to another man with him and yelled at the boys to 'come on' and fight him. The young women managed to get their friends across the road before a fight broke out. M reported the incident to my office and also called the Police. She was distressed by what she saw, and the fact that the man appeared to be so full of hate and anger.



Region in which reported incident happened

South (7000–7099)	16
South east (7100–7199)	0
North (7200–7299)	6
North west (7300–7399)	3
West (7400–)	0

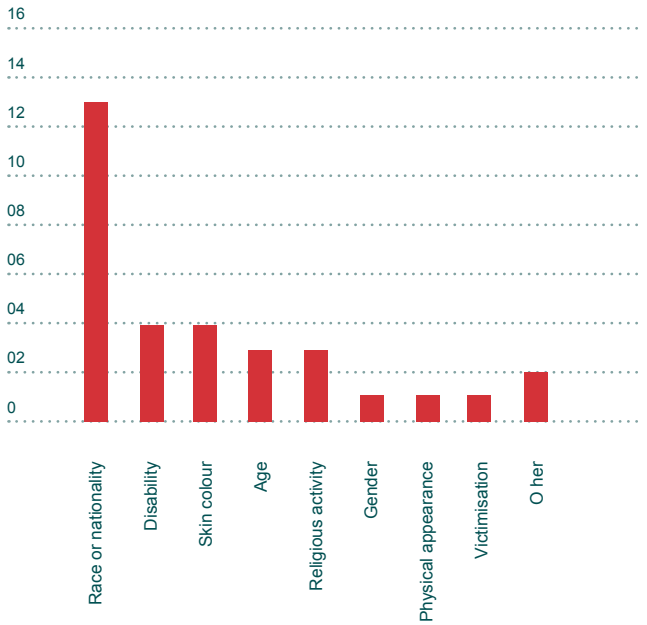
Of the incidents reported to my office, 16 happened in the southern region. Of these, eight were in the Hobart area, four in Sandy Bay, and two in Glenorchy, with other incidents reported in both Kingston and Lindisfarne. Six incidents were reported in the Launceston area; and one each in Smithton, Devonport and Burnie.

Report It! case studies

L made a report to us after an incident with her local GP. The GP had repeatedly referred to a shop assistant who had served him as 'spastic' because he believed the shop assistant did not serve him quickly enough. L was shocked that a doctor would use such derogatory language.

S is a university student who was subjected to racism by her fellow students. She was described as the 'one that wears the headscarf' and her name and the way she talks were made fun of. S indicated that the episode was aimed at socially isolating her and other Muslim students on the basis of their nationality and language. She felt humiliated and upset by the incident and felt uncomfortable continuing to participate in the class.

K reported her concern about international students regularly being harassed at public bus stops in the city. She told us she had heard about the students being yelled at with racist taunts, having eggs and paper thrown at them as they boarded a bus, and being told to go back to where they came from. She told us that similar events were also taking place at the bus mall and bus stops on the eastern shore. She said the students did not want to report the incidents to police because they feared repercussions and did not want to draw further attention to themselves. K asked whether it was possible for my office to follow up with the school the students attended to suggest some options that would help to reduce these events. This report resulted in my office delivering education and training to the identified school.



Apparent basis of attack

Race or nationality	13
Disability	4
Skin colour	4
Age	3
Religious activity	3
Gender	1
Physical appearance	1
Victimisation	1
Other	2

It is once again disappointing to note that the majority of incidents reported to me were considered to have taken place on the basis of the victim’s race, nationality or skin colour. Four reports were linked to a person’s disability; and a further three reports were thought to be linked to a victim’s religious activity.

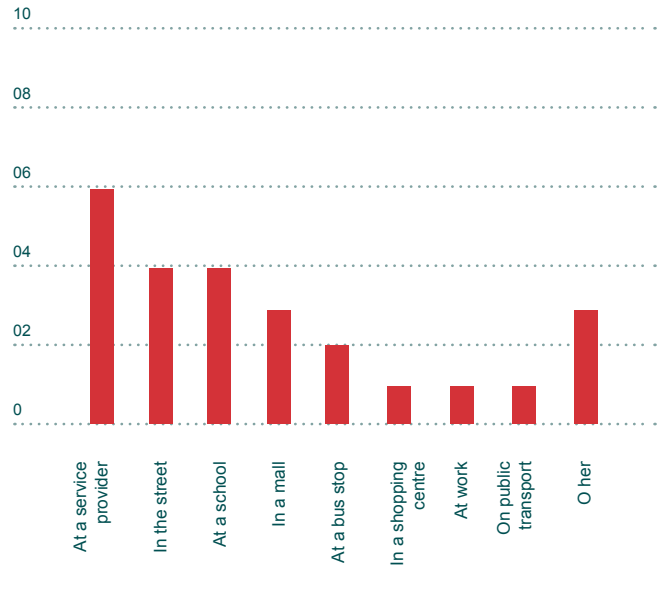
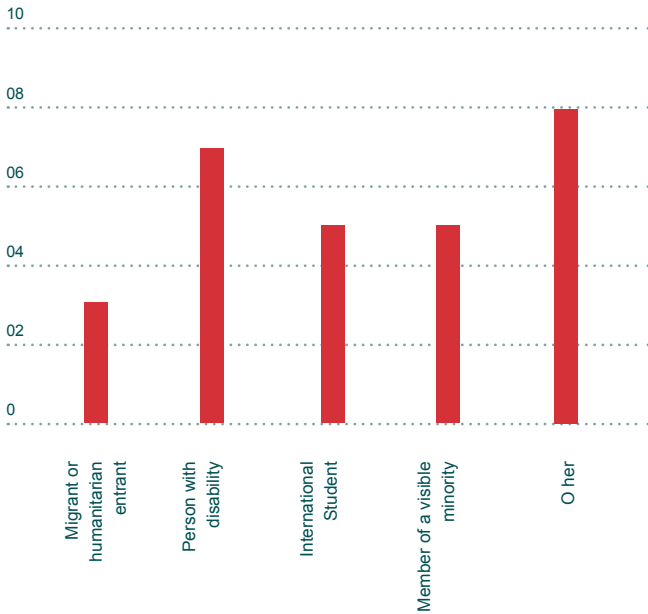
Report It! case studies

The owner of a Hobart café reported his concern about a man wandering around the city wearing Nazi insignias and white supremacist and racist T-shirts.

A university student was walking on campus when a teenager started following her. As the student approached a walkway, another teenager appeared and started to direct racial slurs at her, including calling her an ‘asian dog’. The two teenagers rushed ahead of her and cut her off. They started throwing things at her and kept yelling that she should go back to her own country. The place was quite deserted and the student was terrified by the behaviour. She did not know the perpetrators and the incident was completely unprovoked.

Two university students were at a bus stop in Launceston when a boy started yelling racist comments at them mixed with profanities. The boy’s mother also joined in and the situation became quite confrontational. The boy and his mother abused the two students, saying they should not be in Australia if they could not speak English. The students chose to ignore the abuse and walked away, managing to find a taxi and leave the area.

Two international students were sitting on a bus when a group of teenagers behind them started to whisper rude words mixing any words they could think of with the word ‘asian’. The teenagers also threatened to rob one of the students of their phone and threw something at the other. The students felt disgusted, intimidated, worried and anxious.



Status of victim

A migrant or humanitarian entrant	3
A person with disability	7
An international student	5
Member of a visible minority	5
Other	8

Type of location

At a service provider	6
In the street	4
At a school	4
In a mall	3
At a bus stop	2
In a shopping centre	1
At work	1
On public transport	1
Other	3

Of particular concern is the rise in the number of incidents involving young people and international students.

Tasmania is seeking to maximise tourism and the number of students coming to the State to study. This makes the consistently high percentage of reports of public abuse and other harassment on the basis of race or nationality and targeting of international students particularly worrying. It is clear from the reports that no level of school is immune from this harmful behaviour. Reports of discriminatory and offensive behaviour were received in relation to students at primary, secondary and tertiary levels. In many reports, the perpetrators were other students or young people.

This reinforces the need for leaders in our State and all adults to model respectful behaviour and language, particularly in relation to minority groups.

As I have outlined elsewhere in this report, some schools have gone to particular efforts to recognise and celebrate diversity within their school community and to encourage all students to respect one another. Actions such as these are commendable, but they can't simply be 'once off'. Ongoing vigilance is required to ensure that everyone in our community feels and is safe from discrimination and harassment.



Type of incident

Harassment	19%
Intimidation	14%
Discrimination	19%
Sexual Harassment	2%
Physical assault	10%
Verbal abuse	36%

Report It! case studies

D reported incidents in which his work-for-the-dole supervisor made abusive comments to him and other participants, including threatening to have their payments cut. He believes the comments were based on the age of the group members. Many of the participants were young and new to volunteering. The comments made D angry and fearful, causing him to become clinically depressed.

L and his wife were holidaying in Tasmania. When they got off their flight they went to a car rental service to pick up a booked car. They were treated rudely and told to go away several times. Despite having rented cars in other parts of the country, L's driver's license was not accepted and the rental did not proceed. L is of Hong Kong Chinese origin and believes the treatment was because of his racial background. L and his wife reported they were sorry they visited Tasmania. It left them out of pocket and astonished that a foreign visitor would be treated so badly.

S accepted the offer of a job at an educational facility in Tasmania following a phone interview. S was asked to start work as soon as possible. At the time of accepting the offer, S gave personal information, including her date of birth. The offer of employment was then retracted. S believes it was because of her age.

U was walking down the street in her local community and was abused very aggressively by a passing motorist. U has distinctive markings that are linked to her tribal background. U believes the abuse was motivated by racism and cultural intolerance.

Information, awareness and promotion



Key functions of the Commissioner under the Act include:

- To disseminate information about discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;
- To undertake ... educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct

New office name: Equal Opportunity Tasmania

In November 2015, the State Attorney General, the Hon Dr Vanessa Goodwin launched our new office name, Equal Opportunity Tasmania.

The new name:

- better reflects the scope of the work undertaken by my office;
- encourages public awareness of the purpose of the Act and the range of functions of my office beyond complaint handling; and
- communicates our broader role in encouraging practices that promote equality of opportunity and inclusion.

The new name and logo provides a more contemporary feel for our work.

Providing information and awareness materials

Without the work we do promoting awareness and understanding of the Act, many people experiencing discrimination or harassment would not be aware of their right to make a complaint. Equally, this work plays an important role in reducing the incidence of discrimination and harassment by helping everyone in Tasmania to understand their rights and obligations.

We promote awareness and understanding through community education, training, participation in events, the publication and distribution of information materials in both print and electronic form, and through media interviews, Facebook and Twitter.

Electronic newsletter, *In respect of rights*

The number of subscribers to *In respect of rights* remained constant at 2,500. We estimate that the actual number of readers may be double this, with many subscribers forwarding the newsletter on to others in their own networks.

The illustration on the next page shows how the newsletter is picked up around Australia and in some other parts of the world.

Information brochures

In November 2015, we finalised the work of rewriting and refocusing all of our brochures and other information materials such as posters and postcards. The new format for the brochures ensures they are much more accessible, and the content has been extensively updated to ensure readability and clarity.

World View - *In respect of rights*



Facebook

The Equal Opportunity Tasmania Facebook page now has 534 subscribers, up from 454 at the end of June 2015. The page is used to publicise and promote *In respect of rights*, relevant information, and discrimination and human rights issues.

Website and website development

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

The website has gone through a thorough review and revamp to improve its relevance and functionality. The new website was launched in November to coincide with the re-branding.

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

Our thanks to the Department of Justice and, in particular, the team at Web Support, for their support to us for the review, re-launch and maintenance of the website.

Media

There has been strong media interest in the past year in the *Anti-Discrimination Act 1998*, the work of my office as well as issues of systemic discrimination, and how the law can be used to challenge behaviour and actions that

limit equality of opportunity for all. Where possible and appropriate, I will respond to requests for media comment to ensure that media coverage is as accurate as possible and serves to better inform the community. I do not, however, respond to requests for comment about current complaints, as the complaints and what is happening with them is confidential. This does not prevent parties to complaints commenting to the media.

Media coverage during the reporting period covered a wide breadth of issues including: obligations on taxi drivers to carry guide dogs and assistance animals; bullying; employment barriers facing people with disability, women and older people; marriage equality; consultation on proposals to provide better legal recognition in relation to gender identity and intersex status; Wicked Campers; domestic violence and sexism; access to justice for people with disability; sexist abuse on Facebook; public displays of racism; weakening of the protections provided by the Act to allow for vilification and abusive comments in the name of freedom of speech; exemptions granted under the Act; expungement of historic homosexual criminal convictions; the 2015 Human Rights Awards for Tasmania, and the change of name of the office.

A number of complaints came to the attention of media. These included complaints about recognition of next of kin, enforcement of Tribunal decisions, and publications about marriage and sexual orientation.

The media's interest in this breadth of issues assists us in raising general understanding and awareness of our work and the importance and scope of discrimination laws.



**Equal Opportunity
Tasmania**

Discrimination is against the law.

Know your rights and responsibilities.



For more information
Phone: 1300 305 062
Email: office@equalopportunity.tas.gov.au
www.facebook.com/equal.opportunity.tasmania

www.equalopportunity.tas.gov.au

**Celebrating Difference
Embracing Equality**



Equal Opportunity
Tasmania

OFFENSIVE BEHAVIOUR



Equal Opportunity
Tasmania

OFFENSIVE BEHAVIOUR

Know where the line is –
when being offensive is
against the law.

- Housing and accommodation – including short-term accommodation such as a hotel or hostel
- Office and other business premises
- The design or implementation of state laws or programs
- Making or implementing industrial awards, enterprise agreements or industrial agreements

Would a reasonable person realise the effect of the behaviour?

To be unlawful, the behaviour must be of the kind a reasonable person would realise would offend, insult, intimidate or humiliate the person. This is known as the 'reasonable person test'.

Exceptions

In the interests of protecting freedom of speech from unjustified restriction, there are exceptions to this part of the law. The exceptions include:

- accurate and fair reporting of a public act
- public acts done reasonably and in good faith for purposes in the public interest (this includes public discussion and debate, as well as things said or done for academic, artistic, scientific or research purposes)

The law in action

Raffi has cerebral palsy and is bullied at school. The bullying involves her being called 'spaz' and 'crip'. This causes her to feel insulted, ridiculed and humiliated. It could be unlawful and the basis of a complaint of offensive conduct.

A manager at Robert's firm gives free movie tickets to the partners of all employees as a bonus but excludes same-sex partners. Robert queries this decision and the manager responds by telling Robert that he does not have 'a real partner'. This causes Robert to feel offended and ridiculed and he decides to make a complaint.

Jenny gets an e-mail being circulated among work colleagues that includes a cartoon that presents negative ideas about Aboriginal people. Jenny raises this with her manager and is told to 'lighten up or else'. Because the cartoons made her feel humiliated and insulted and the manager's response made her feel even more offended, ridiculed and intimidated, the behaviour could be the basis of a complaint.

Gary has decided to ask to reduce his working hours to care for his young son. He gets harassed by his supervisor about being a 'housewife'. This causes Gary to feel ridiculed and humiliated. It could be unlawful and the basis of a complaint of offensive conduct.

Equal Opportunity
Tasmania

Discrimination is against the law.

Know your rights and responsibilities.

Celebrating Difference
Embracing Equality

Equal Opportunity Tasmania
(the office of the Anti-Discrimination Commissioner)
Phone: 1300 305 062 (in Tasmania) or (03) 6165 7515
E-mail: office@equalopportunity.tas.gov.au
Web SMS: 0409 401 083
Translating and Interpreting Service: 131 450
National Relay Service
TTY Users: Phone 133 677 then ask for 1300 305 062
Speak and Listen: 1300 555 727 then ask for 1300 305 062
Office: Level 1, 54 Victoria St, Hobart TAS 7000
Post: GPO Box 197, Hobart TAS 7001
www.equalopportunity.tas.gov.au

Providing training and educational programs

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

Each year, new courses are developed and the Training, Education and Development team travel throughout the State to deliver programs to the government, private-for-profit and not-for-profit sectors.

Course development

A new course, *Understanding the Premises Standards and ensuring effective application* was delivered in February 2016. The 6-hour course was extremely successful and was delivered to participants from disability advocacy groups, members of council access advisory committees, community legal centre staff and disability service providers. Funding for the development and pilot of this course came from the State Attorney-General through a grant from the Solicitors' Guarantee Fund. The course was developed and presented by Michael Small of Michael Small Consulting Pty Ltd. This course is being made available nationally through the members of the Australian Council of Human Rights Authorities.

The course, *Where is the line?* developed in 2014–15 remained extremely popular in this reporting period with many requests for the course content to be delivered within our discrimination, harassment & bullying awareness courses. We now include activities from *Where is the line?* in all training sessions.

During 2015–16, we explored other training delivery methods and started working towards making our training delivery more contemporary and accessible. We hope the delivery of training and education using these methods will be reported in the next annual report.

Our Workplace Support Contact Officer training materials were given a fresher, more professional look and our Workplace Support Contact Officer networking meetings were changed to include guest speakers addressing current workplace issues.

State-wide and sector coverage

The 2015–16 period showed a decrease in almost all of our training numbers. Part of the reason for this decrease was staff absence for a period of 3 months during the year. The consistent decrease across so many areas with no clear pattern (and despite maintaining excellent feedback) does not indicate that there was any other obvious reason for the decrease in figures.

Training and education delivery

	2015–16	2014–15
Total training and community sessions delivered	216	239
Total training and community education hours	447	527
Total training and community education participants	5,947	6,147

Our total training and education sessions for 2015–16 decreased from 239 in 2014–15 to 216.

Training travel expenses were reduced again this year with one of our trainers continuing to be based part time in Hobart and part time in Launceston. Our state-wide coverage remained on par with the 2014–15 figures and we were able to achieve this with less travel costs than previous years.

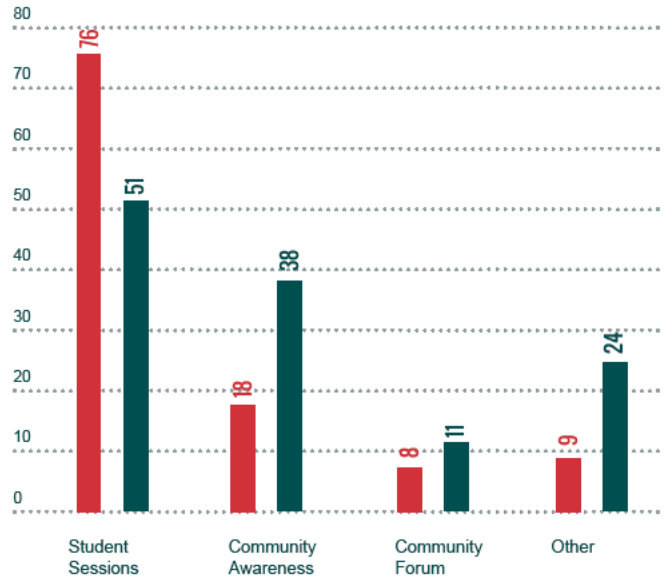
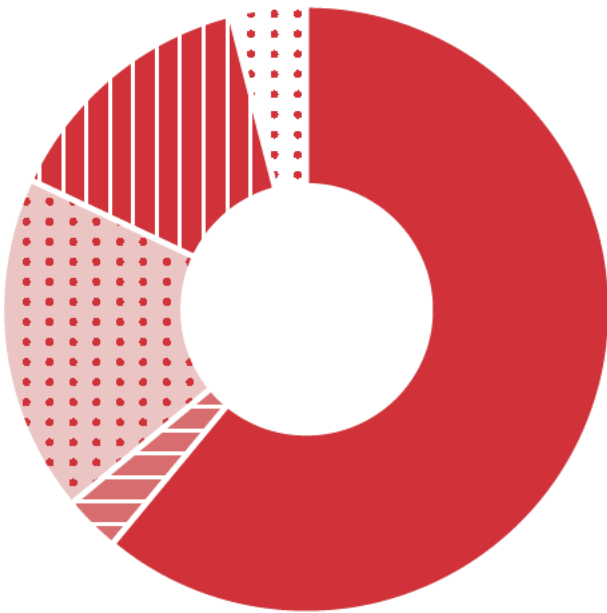
Although session numbers dropped in Local Government, community organisations and colleges it was pleasing to see numbers increase in State Government and secondary and tertiary education.

Workplace training

The income generated from training delivered in 2015–16 was \$71,250. This was considerably less than the income generated in 2014–15 of \$92,390. As mentioned earlier, this decrease in income, together with an overall decrease in other training figures, is partly due to staff absence but may also be an indication of changes in training trends away from traditional training delivery methods. We hope to address this decrease by adopting more options for delivery in 2016–17.

In 2015–16 (as in the previous reporting year), we had 22 training courses available on a fee-for-service basis for private-for-profit and public-sector organisations in Tasmania. Each of these sessions is tailored prior to delivery to meet the requirements and culture of the particular organisation. Examples used in sessions are current to the industry, topical issues and organisational policies.

2015–16 2014–15



Training and education sessions by location

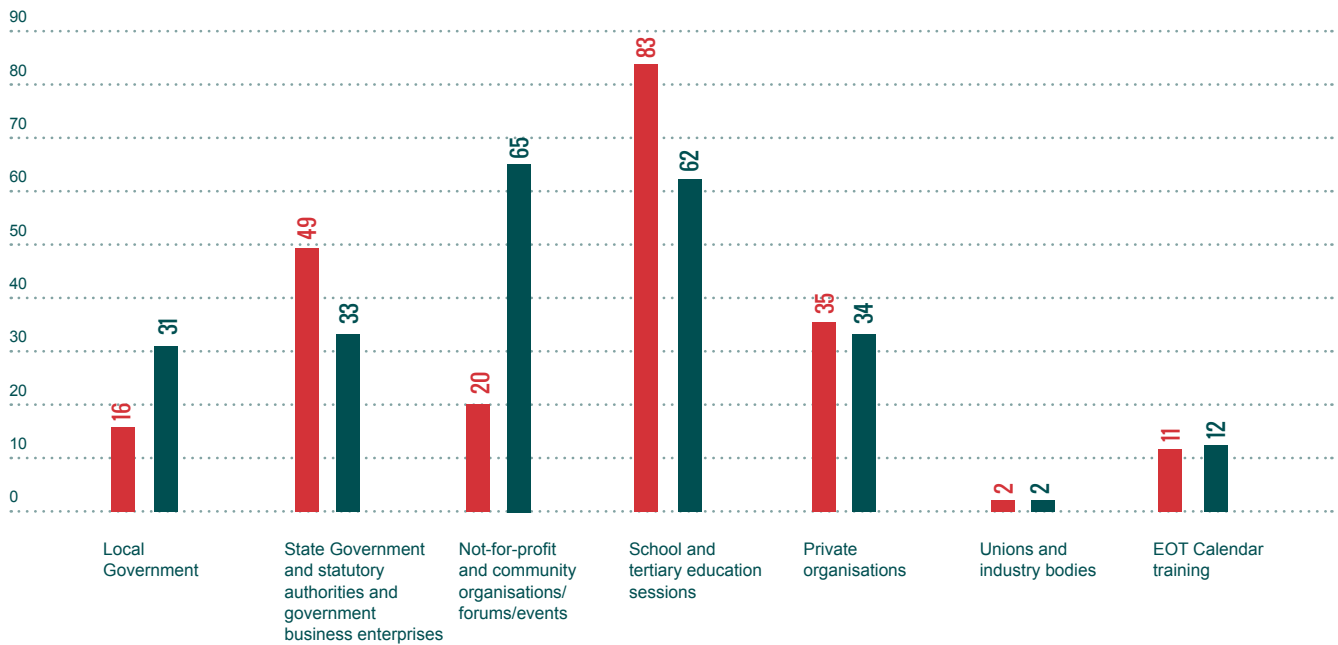
	2015–16	2014–15
South	131	138
South east	7	17
North	38	42
North west	31	40
West	0	2
State-wide	9	Not indicated

Community education by session type

	2015–16	2014–15
Student sessions	76	51
Community awareness	18	38
Community forum	8	11
Other	9	24
Total	111	124

During 2015–16, the Training, Education and Development team delivered 105 training sessions over 277 hours to 1,409 participants. Our 2-hour, *Discrimination, harassment and bullying awareness* course was our most popular course with 36 sessions being delivered, followed by 35 specially tailored and combined training sessions.

2015–16 2014–15



Training and education by sector

	2015–16	2014–15
Local Government	16	31
State Government and statutory authorities and government business enterprises	49	33
Not-for-profit and community organisations, forums and events	20	65
Schools and tertiary education sessions	83	62
Private organisations	35	34
Unions and industry bodies	2	2
EOT Calendar training	11	12
Total	216	239

Community education

We delivered 111 community education sessions in 2015–16. It was pleasing to see that there were 25 more student sessions delivered than in the previous reporting period. The value of student education and awareness about discrimination, human rights and equality cannot be underestimated. As we visit more educational institutions and speak to more young people about their rights and responsibilities, we have the opportunity to improve their futures through their influence on the culture and practices of their future workplaces and communities.

WorkSafe Month

In 2015, WorkSafe Tasmania changed the format for WorkSafe Month to a program mostly of webinars. My office delivered one webinar; *Small business: Protect your reputation: Know your rights and responsibilities*. Feedback received from this webinar included:

‘I really enjoyed this webinar (and this is about the 7th one that I have watched over WorkSafe Month 2015). The examples given were great and assisted understanding of the topic. Basic info on the slides, coupled with a lovely presentation style made it very enjoyable.’

We thank WorkSafe Tasmania once again for the opportunity to participate in the WorkSafe Month calendar of events.

2015–16 2014–15



Training and education by session topic

	2015–16	2014–15
Discrimination, harassment & bullying awareness	36	47
Other	35	36
Workplace Support / Contact Officers	11	9
Bullying	10	14
Manager awareness	5	3
Workplace Support / Contact Officer Networking	4	3
Workplace Support / Contact Officer Refresher	3	1
Train the Trainer	1	2
Total	105	115

Evaluation and feedback

Regular evaluation of our training and education content, relevance and delivery is essential to maintaining our professional training approach and reputation. The Training, Education and Development team distributes evaluations at most fee-for-service training sessions. Evaluations are compiled, results are recorded and all feedback is reviewed to ensure consistency, currency and professionalism in our product and performance.

Our evaluation forms also include the two questions:

- What did you find was the most informative/useful segment of the training session for you?
- What two things will you implement/change in your workplace because of this session?

These questions create a reminder and final reflection opportunity for participants.

Training evaluation ratings

	2015–16	2014–15
For the question: <i>Please give the training an overall rating</i>	Total of 717 completed responses	Total of 1,023 completed responses
Excellent	69%	52%
Very Good	28%	40%
Total	97%	92%

Feedback

Here is a sample of the feedback received from various training programs delivered in 2015–16:

‘This was essentially a refresher for me – was definitely worthwhile – Roz has a wealth of experience in relation to this subject which she uses to make the session relevant.’

Workplace Support / Contact Officer training, Waratah-Wynyard Council, May 2016

‘Roz took a very practical approach to the delivery of this training i.e. involved us in lots of discussion around how to apply this knowledge / awareness.’

Manager training, Waratah-Wynyard Council, May 2016

‘Roz is clearly extremely knowledgeable and passionate on the subject. She is an engaging presenter who makes the subject interesting and easy to understand’

Discrimination, harassment & bullying awareness, Macquarie Point, October 2015

‘It has been the most interesting and inspiring training session I have been to’

Workplace Support / Contact Officer training, July 2016

‘It was very good training, relaxed and very precise. Relevant legal and social content presented effectively.’

Discrimination, harassment & bullying awareness, Tasmania University Union (TUU), November 2015

‘Tools to recognise casual racism and bystander action ideas.’

‘Found all informative – has given me a lot to think about in a broader way. Good flow and content cover.’

Racism. It stops with me! LINC, November 2015

‘Great delivery by a knowledgeable and skilled facilitator.’

Racism. It stops with me! LINC Senior Management Team, March 2016

‘Detailed information about the Act – very informative and using our policies in training was great, Louise very knowledgeable and approachable’.

Managers, MONA, June 2016

Diversity Education: *Let's Get Together* project

My office has continued to work in partnership with the community organisation, A Fairer World, on the development, delivery and evaluation of a broad-based diversity education school program, *Let's Get Together*. The 2015 program built on the pilot program run with two classes of Grade 8 students in 2014. An evaluation of the program conducted by Dr Sue Stack from the Faculty of Education at the University of Tasmania recommended the program for 2015 be delivered to the entire Grade 7 cohort as the first year of a 3-year commitment by the school to change school culture around bullying and discriminatory behaviours. This allows home group teachers to follow students through the grades. Introducing the program in Grade 7 also helps new students to understand the philosophy of the school, to be advocates through creating their own projects as part of the program, and to then carry that understanding and behaviour with them as they move through the grades with the support of their teachers.

August 2015 saw staff from my office deliver seven sessions over a week to Grade 7 classes covering information on discrimination law, rights and responsibilities.

Overall feedback of the 2015 program, included in Dr Stack's evaluation report, was that:

The program was considered very worthwhile by teachers and students – it was engaging, developed student understanding, skills and attitudes, enabled student ownership and agency, and resulted in some behaviour change. An expectation of a culture of respectful behaviour has been developed within the grade as a result of the whole Grade 7 cohort participating.

Further testimony to the success of the program is that, in December 2015, the program received recognition when Rose Bay High won the 2015 Tasmanian Human Rights School Award for:

... incorporating human rights education into the school curriculum through a long-term commitment to implementing the Let's Get Together Diversity Education Program, the stand taken against racism and homophobia and the positive impact this is having on the school and wider community.

I look forward to reporting further on this work through Equal Opportunity Tasmania's Face Book page and our monthly electronic newsletter, *In respect of rights*.

My office's participation in the program and support for evaluation and resource development is supported through a grant from the Solicitors' Guarantee Fund, provided by the Attorney-General.

Feedback

'The responsibility given to the students and the emphasis on the program being for them, about them and developed with them.'

'The motivation of the students to work on their projects'

'Building better relationships with students'

'A student who felt more valued as a result of their project'

'Students exemplifying learning, community, respect, excellence, courage.'

Enquiries



My office seeks to maximise the range of ways general and complaint-related enquiries can be made. We do this to ensure our services are accessible to everyone.

We can get enquiries by telephone, e-mail, web SMS, fax, post, through an on-line enquiry form and through people dropping in to the office.

In 2015–16, the office formally recorded receiving and dealing with 577 enquiries (down from 618 in 2014–15).

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

How enquiries were received

	2015–16	2014–15
by phone	369	432
by e-mail	119	105
in person	54	51
by post	21	14
via online enquiry form	12	13
by SMS	2	2
by fax	0	1
Total	577	618

Enquiry by location of enquirer

South 7000+	311	54%
South east 7100+	26	5%
North 7200+	93	16%
North west 7300+	68	11%
West 7400+	3	1%
Interstate	29	5%
Overseas	1	>1%
Unknown	46	8%
Total	577	

Community Engagement



Functions and events

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

NAIDOC Week: 5 to 12 July 2015

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

Aboriginal and Torres Strait Islander peoples' unique and timeless connection to land was the special focus of the 2015 National NAIDOC Week celebrations.

The theme was 'We all Stand on Sacred Ground: Learn, Respect and Celebrate'. This theme highlights Aboriginal and Torres Strait Islander peoples' strong spiritual and cultural connection to land and sea.

The National NAIDOC Committee encouraged all Australians, young and old, to embrace the 2015 National NAIDOC theme and to respect and celebrate local and national sites of significance or 'sacred places' and to learn of their traditional names, history and stories.

For Aboriginal and Torres Strait Islander peoples, a sacred place could be a geographic feature like a river or lake, a beach, bays, inlets, hills or mountain ranges.

They could also be ceremonial grounds, galleries of rock art or engravings, or places used for gathering for cultural practices.

As the oldest continuing culture on the planet, the living culture of Aboriginal and Torres Strait Islander peoples is intrinsically linked with these sacred places. Long before European arrival, these places had traditional names that reflect the timeless relationship between the people and the land. Often they are connected with Dreaming stories or tell of the meaning of an area.

National NAIDOC Committee co-chairs Anne Martin and Benjamin Mitchell said the 2015 theme was an opportunity to pay our respects to country, acknowledge those who work tirelessly on preserving land, sea and culture and to celebrate our many sacred and significant places.

2015 marked the 30th anniversary of the 'Handback' of Uluru to its traditional owners on 26 October 1985 and we wanted to honour and share their story with the nation.

Along with staff from my office, I attended the flag-raising ceremony at piyura kitina (Risdon Cove) on Monday 6 July 2015. This was a great opportunity to share and engage with members of the Tasmanian Aboriginal community and learn first-hand the value of Aboriginal culture, family and community.



Above: Governor's Human Rights Week Reception at Government House on 9 December 2015. Pictured: Her Excellency Professor the Honourable Kate Warner AM with Police Commissioner Darren Hine, Commander Peter Edwards, Inspector Fiona Lieutier, Inspector Joanne Stolp, Senior Sergeant Julien Puurand, and Senior Sergeant Rebecca Davis, receiving the Special Commendation on behalf of Tasmania Police.



Above: Human Rights Week awards announcement at Tasmanian Parliament House on 3 December 2015. Pictured: Linley Grant, recipient of the Individual Human Rights Award, with Jennifer White who presented the award on behalf of the Prisoner Legal Service.

Human Rights Week Tasmania: 3 to 10 December 2015

The celebration of Human Rights Week in Tasmania continues each year to get bigger and better.

Human Rights Week Tasmania started in December 1988 with a small group of volunteers acknowledging and celebrating local human rights activities and campaigns. Since then, Human Rights Week in Tasmania and the Human Rights Week Launch and Awards announcements have grown and been an opportunity for many more human rights-focused activities across the State.

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

Tasmanian Human Rights Week continues each year to give us an opportunity to celebrate the progress and achievements made towards the protection, promotions and fulfilment of human rights here in Tasmania and also globally.

The local theme for Human Rights Week 2015 was 'Human Rights – It's up to us'.

On 3 December 2015, the launch of Human Rights Week was held at Tasmania's Parliament House. It was an opportunity to recognise, through the Tasmanian Human Rights Awards, the contribution of local human rights defenders.

It was exciting to see the Individual Award category for 2015 receive the highest number of nominations. All nominees demonstrated they are outstanding human rights advocates. It was difficult for the Awards Panel to make its decisions across all award categories but choosing the award recipient for the Individual category was particularly difficult and ultimately very rewarding.

The Awards Panel recommended that a special 'one-off' commendation be presented to an individual and organisation that in recent years has shown leadership and organisational change across a broad range of areas including domestic violence, racism and the delivery of services to meet the needs of the LGBTI and Multicultural communities.

This special commendation was awarded to Police Commissioner Darren Hine and Tasmania Police, in recognition of the leadership and commitment shown by Commissioner Hine and members of Tasmania Police in promoting human rights and the work being undertaken to engage respectfully and equitably with the whole community.

The commitment in Tasmania to celebrate Human Rights Week was also evident with several large events held across the State. Human Rights Week Committee members organised another successful event on 9 December 2015 with a reception at the Launceston Town Hall to celebrate past northern and north-western recipients of Tasmanian Human Rights awards. Award recipients spoke about their work and the event included students from Glen Dhu School and local academic Tom

Dunning sharing reflections on the history of human rights.

The success of Human Rights Week in Tasmania is due to the hard work and dedication of a diverse group of organisations and volunteers who make up the Human Rights Week Organising Committee. As well as the Committee members, the following people contributed to the success of 2015 Human Rights Week.

- Governor of Tasmania, Her Excellency Professor The Hon Kate Warner AM, who hosted a Reception for the award recipients on 9 December at Government House.
- The Hon Elise Archer MLA, who was the parliamentary host for the launch on 3 December.
- Professor Maggie Walter, Pro-Vice Chancellor of Aboriginal Research and Leadership, University of Tasmania, who welcomed us to country at the launch on 3 December. Professor Walter is the inaugural Pro Vice-Chancellor of Aboriginal Research and Leadership.
- Rodney Croome AM, who was the guest speaker at the launch on 3 December.
- Anneliese Smith, who was the MC for the launch on 3 December.
- The Karen Choir for their beautiful singing at the launch on 3 December. The Karen Choir formed in 2009 and is made up of members who attend the North Hobart Baptist Church.
- Pen Tayler for volunteering her time to photograph the launch event and the reception at Government House.
- Awards Panel Judges: Michael Small (co-ordinator), Professor Margaret Otlowski, Mercia Bresnehan and Cedric Manen for their important work in choosing the award recipients.

Information about Human Rights Week Tasmania is available on the internet at: http://www.afairerworld.org/_HRWeek/index.html. Human Rights Week activities and announcements are also available through the Facebook pages of both Human Rights Week Tasmania and Equal Opportunity Tasmania.

2015 Awards:

A Fairer World School Award

Sponsored by A Fairer World with a donation from Anne and Tony Peacock
Recipient: **Rose Bay High School**

Individual Human Rights Award

Sponsored by Prisoner Legal Service
Recipient: **Linley Grant**

Human Rights Organisation Award

Sponsored by City of Hobart
Recipient: **Breaking the Silence**

Human Rights Youth Award

Sponsored by Newport and Wildman Associates
Recipient: **Dakoda Leary**

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

Sponsored by Rainbow Communities Tasmania Inc
Recipient: **Under One Rainbow**

Angus Downie Human Rights Print Journalism Award

Sponsored by Robin Banks and Michael Small
Recipient: **The Mercury and Sunday Tasmanian 'Man-up' Campaign**

Human Rights Multicultural Award

Sponsored by the Migrant Resource Centre (South)
Recipient: **Waqas Durrani**

Robin Hood AM Human Rights Sport Award

Sponsored by Communities, Sport and Recreation
Recipient: **Southern Tasmania Softball Association**

Lucy Henry Human Rights Award for Mental Health-focussed activity

Sponsored by the Mental Health Council of Tasmania
Recipient: **Darren Jiggins**

Special 'one-off' Commendation Award

Recipient: **Police Commissioner Darren Hine and Tasmania Police**



Above: UTAS student intern with Equal Opportunity Tasmania, Jack Hodgkinson, talks with a passer-by in Elizabeth Street Mall on UN Day for the Elimination of Racial Discrimination (Harmony Day)



Above: Louise Adams, Training, Education and Development Officer with Equal Opportunity Tasmania, talking with members of the public at the Information Expo for International Women's Day 2016.

United Nations Day for the Elimination of Racial Discrimination (Harmony Day): 21 March 2016

This year again saw my office join with the City of Hobart and other community organisations and groups to acknowledge the United National Day for the Elimination of Racial Discrimination and participate in the celebration of Harmony Day.

On Monday 21 March 2016, a Harmony Day event was held in the Hobart City Mall welcoming international and migrant students as well as humanitarian entrants. It was a great opportunity for reflection on how we can continue to work together to create a safer, more inclusive and welcoming place for everyone by eliminating all forms of racism through empathy and respect within our community.

Staff from my office handed out a range of information including promotional material of the national campaign: Racism. It stops with me! Members of the public were encouraged and supported to make an individual pledge and be a supporter of the campaign by directly sending their photo with the pledge logo to the Racism. It stops with me! campaign team for uploading onto the national website.

Department of Justice signs up to the Racism. It Stops with Me Campaign

My office was able to continue to support the great work already being done by various organisations and groups in Tasmania who have signed up to the *Racism. It Stops with Me* campaign.

On 1 February 2016, the Federal Race Discrimination Commissioner Dr Tim Soutphommasane and the Tasmanian Attorney-General the Hon Dr Vanessa Goodwin MP joined leaders of the Department for the pledge event, hosted by the Tasmanian Prison Service. The Department of Justice has committed to engaging with its stakeholders to assess if, how and where racial barriers exist within its service, and adapt to ensure all services are as accessible as possible.

Other events attended

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

- University of Tasmania Orientation Day, Launceston
- Hear our Voices Women's gathering, Hobart
- Gearing Up Expos in Hobart, Launceston and Burnie
- Mental Health Expo, Launceston
- International Women's Day services expo, Hobart
- What Matters 2015? Awards Ceremony, Clarence
- Premier's White Ribbon Event, Hobart
- Breakfast event: Rosie Batty, Australian of the Year, to discuss men's role in preventing violence against women, Hobart
- CEDA gender equality lunch with keynote speaker, Federal Sex Discrimination Commissioner Liz Broderick, Hobart
- Leadership for a Fractured World, Dean Williams seminar, Hobart
- University of Tasmania, Institute for the Study of Social Change, Flagship Symposium, Hobart
- 2015 Tasmanian Training Awards, Hobart
- 2015 Sandy Duncanson Social Justice Lecture, Hobart
- Special event showing of *Gayby Baby*, Hobart
- Launch of Commissioner for Children's *Strengthening Child Safe Organisations' Report*, Hobart
- Governor's Presentation of Inaugural Commissioner for Children's Young Creative Writers Awards, Hobart
- Australian Council of Human Rights Authorities Officers Conference, Sydney
- Willing to Work consultations, Hobart
- Tasmanian State Service White Ribbon Event, Hobart
- Guide Dogs Tasmania Official Opening of refurbished offices, Hobart
- piyura kitina (Risdon Cove) 20 years of Aboriginal Community Ownership, Risdon Cove
- Taxi Industry Christmas Luncheon, Glenorchy
- Opening of the Law Year, Hobart
- The Premier's Australia Day Address, Hobart
- Glenorchy City Council - Disability Access Action Plan workshop, Glenorchy
- University of Tasmania Seminar: Families, Work and Society: Understanding Disadvantage, Hobart
- Melbourne Social Equity Institute, Disability, Human Rights and Social Equity Conference, Melbourne
- Moonah Taste of the World Festival, Glenorchy
- The Premier's Harmony Day Reception, Hobart
- NDCO Employing People with Disability Seminar, Hobart
- Governor's Launch of SHE Inc research report on domestic violence services, Hobart
- University of Tasmania, International Women's Day Address, Hobart
- Formal farewell event for Anita Smith, outgoing President of the Guardianship and Administration Board, Hobart
- Public Kitchen, Art and public space project, Hobart
- Inaugural Public Education Day dinner, Hobart
- Rally for Legal Aid, Hobart
- Governor's Reception to mark the 20th Anniversary of the Women's Legal Service Tasmania, Hobart
- AFL Gender Equity lunch, Hobart
- Social Identity and Health Conference, Brisbane
- 'Whistling at Work' Can it be done', The current state of Public Interest Disclosures, Hobart
- University of Tasmania, Foundation Dinner, Hobart
- Acquired Brain Injury and the Criminal Justice System national workshop, Sydney

Commissioner's presentations and speaking engagements

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

July 2015

Presentation:

- To the participants in the Anna Stewart Program on the role of the Anti-Discrimination Commissioner and the relevance of our work to industrial officers and union delegates.
- To Working It Out's new support group for LGBTI kids and their parents to discuss legislation changes, protections to their children and a general discussion with parents regarding legal protections.

Panel participant in:

- Unions Tasmania Women's Conference, with the theme *Gender Pay Gap – "Women, like men, but cheaper"*.

August 2015

Presentation:

- To the Multicultural Council of Tasmania General Meeting of Members.
- To the Human Rights unit at the Law School at the University of Tasmania on anti-discrimination law in Tasmania and Australia.
- At the 2015 Workplace Relations Conference (run by the Law Society of Tasmania and its Employment and Equal Opportunities Committee) discussing recent decisions of the Anti-Discrimination tribunal and unconscious bias in the workplace.
- At the Social determinants of Health project report launch.

Community Engagement

- At the launch of Soroptimist International's project *Year-long Learning of Tasmanian Aboriginal History and Culture*.
- To Year 1 Bachelor of Medicine and Bachelor of Surgery students at the University of Tasmania on equality and discrimination.

Panel participant in:

- Tasmania Police senior officer training hypothetical on integrity in state service.

September 2015

Presentation:

- To Board members, Principals and Business Managers of Christian schools in Tasmania on discrimination law in Tasmania and disability in the schools' context.
- To attendees of the Local Government and Multicultural Best Practice Forum on local government best practice in multicultural policy and programs.

Panel participant in:

- *The Man Problem: From the Bedroom to the Boardroom. A discussion on gender, discrimination and violence.* Hosted by the University of Tasmania in Hobart.

November 2015

Presentation:

- To Australian National University students on discrimination law, human rights and public interest practice.

Panel participant in:

- *The Man Problem – and How to be a Man Problem Solver. A discussion on gender, discrimination and violence in the Tasmanian context.* Hosted by the University of Tasmania in Launceston and Burnie.



December 2015

Presentation:

- To participants at the Department of Primary Industries, Water and Environment Senior Managers' Forum on gender and diversity.

MC for:

- The Governor's Human Rights Award conferral reception.

February 2016

Presentation:

- At the Disability, Human Rights and Social Equity conference on limits of discrimination law and process and possible future directions.
- To attendees of the Commissioner for Children lunchtime forum on approaches to reducing discrimination affecting children and empowering children to take effective action.

Guest Speaker:

- At the Tasmanian Leaders Program 2015 Graduation Dinner.

March 2016

Presentation:

- To the Community and Public Sector Union's 2016 International Women's Day event on the challenges facing working women in 2016.

Panel participant in:

- The Governance Linking Session for the Tasmanian Leaders Program looking at *The Decision Making Hierarchy within Tasmania*.

April 2016

Presentation:

- To Young MILE (Migrant Leadership Program) on the issues of discrimination from Equal Opportunity Tasmania's perspective and how it can be dealt with.

Facilitator:

- For Year 1 medical students at the University of Tasmania on the public health dilemma: discrimination, whether conscious or unconscious, has negative impacts on health outcomes.

May 2016

Panel participant in:

- The 26TEN breakfast event, *The Power of Plain English*, on our responsibility to communicate clearly when giving people information that affects their lives.

June 2016

Presentation:

- To the Tasmanian Leaders Program Alumni Lunch with a Leader series.

Investigating and seeking to resolve complaints of discrimination and prohibited conduct

Introduction

In this section of the report, I give an overview of the complaints dealt with in 2015–16 and discuss some identifiable trends in the complaints received.

Further detailed data for complaints for 2015–16, with comparative data for the previous year, can be found in Appendix A. Comparative data over a longer period is available on the office website and in previous Annual Reports.

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

Commissioner's complaint function

A significant function I have under the Act is to receive, investigate and attempt to resolve complaints of discrimination and prohibited conduct under the Act.

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

My key concerns in dealing with complaints are:

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

Anti-Discrimination Tribunal's complaint functions

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

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

Complaints under the Act

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

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

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

There are 22 attributes listed in the Act.

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

Case study

Protection from retaliation

The complainant was a volunteer announcer at a radio station. She refused to play a song requested by a listener because she believed the song is racist. She alleged she was told by the radio station that she had to play the song if she wanted to continue as an announcer.

The Anti-Discrimination Commissioner decided to deal with the complaint under the Act because it raised the possibility of victimisation. Victimisation is retaliation or threat of retaliation for alleging discrimination, making a complaint, being a respondent or being a witness in a discrimination case, and refused to do something that might breach the Act. Victimisation is against the law.

The respondent denied it had victimised the complainant and disputed some of what the complainant has alleged happened.

The complaint was unable to be resolved through conciliation and, after investigation, was referred to the Anti-Discrimination Tribunal for inquiry (hearing). The Tribunal has not yet made its decision.

Interesting legal issues raised by the complaint include:

- Whether or not playing the song in question could amount to a contravention of the Act, for example, under the provisions prohibiting conduct that is offensive, humiliating, intimidating, insulting or ridiculing on the basis of race or inciting hatred, serious contempt or severe ridicule on the basis of race.
- Whether or not the exception in section 55 of the Act would apply to the song in question: is it a public act done in good faith for artistic purposes?
- To show victimisation, whether or not there needs to be a refusal to engage in an actual contravention of the Act, or if it is sufficient if person believes it will be a contravention of the Act.

Case study

Equal Opportunity Tasmania's focus on achieving early resolutions to complaints

Equal Opportunity Tasmania seeks to resolve complaints as early in the complaint process as possible. When a complaint has been accepted for investigation, staff of Equal Opportunity Tasmania will contact the person or organisation the complaint is about to talk to them about the complaint and the complaint process, before sending a copy of the complaint and information about how the Act might apply to what the complainant alleged happened. Sometimes this can lead to complaints resolving almost immediately, and even before a written response to the complaint has been received.

For example, a complaint was made by a person who had been a prisoner. The person had moved to a small town and was refused entry to, and service at, the only grocery store in the town. Staff of Equal Opportunity Tasmania contacted the store owner, to let them know about the complaint and gave them information about discrimination because of an irrelevant criminal record. The store owner had not been aware that discrimination on the basis of irrelevant criminal record was unlawful, and agreed to now serve the complainant in the store.

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

- employment (includes both paid and unpaid and is defined to include a range of employment and occupation related activities)
- education and training
- provision of facilities, goods and services
- accommodation (includes both residential and business accommodation)
- membership and activities of clubs
- administration of any law of the State or any State program
- awards, enterprise agreements or industrial agreements.

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

Complaints received

In 2015–16, 150 complaints were received under the Act. This is an increase from 142 complaints received in 2014–15.

The table, Type of breach alleged, on page 43, details the nature of the breaches identified in the complaints received in 2015–16.

It is clear from this information that the vast majority of people making a complaint alleged discrimination in their complaint or it was identified as a possible breach through the complaint assessment and/or investigation process. This is consistent over the years, although the percentage in 2015–16 was 92.7%, down from 99.3% in 2014–15.

What has changed significantly is the percentage of complaints in which the person making the complaint alleged victimisation or it was identified as a possible breach during the assessment or investigation process. This dropped by almost 29% from 54.2% in 2014–15 to 25.3% in 2015–16.

Relationship between attributes and breaches

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

Type of breach alleged

	Current year		Previous year		Change	
	2015–16	Alleged or identified in % of complaints	2014–15	Alleged or identified in % of complaints	Change in number	Change in %
Total complaints	150		142		8	
Discrimination	139	92.7%	141	99.3%	-2	-6.6%
Incitement	43	28.7%	53	37.3%	-10	-8.7%
Conduct that offends, humiliates, insults, intimidates or ridicules	87	58.0%	88	62.0%	-1	-4.0%
Victimisation	38	25.3%	77	54.2%	-39	-28.9%
Sexual harassment	12	8.0%	16	11.3%	-4	-3.3%
Promoting a breach	3	2.0%	2	1.4%	1	0.6%
Causing, inducing or aiding a breach	2	1.3%	0	0.0%	2	1.3%

Who makes complaints and who are they against

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

The year saw the percentage of complaints made by or on behalf of women or girls remain virtually the same as the previous year (48.2%). The percentage of complaints made by or on behalf of men or boys went up very slightly (49.4%, up from 48.7% in 2014–15).

The table, Complaints: complainants and respondents, on page 45, provides some details of the parties to complaints received in 2015–16.

In some complaints, the person making the complaint identifies an individual only as responsible for what they say happened. In most, however, the person will identify an organisation, either alone or with one or more individuals. The table, Respondent type identified in complaints in 2015–16, below, shows the relevant data for 2015–16.

Respondent type identified in complaints in 2015–16

Organisation only	100
Both organisation and individual(s)	40
Individual(s) only	10

The table, Complaints by organisational respondent type, on page 45, provides details of the complaint levels in relation to particular respondent types for complaints received in 2015–16.

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

This data indicates a drop in the number of complaints made against State Government entities (37, compared to 59 in 2014–15, which represents a percentage decrease from 42.8% to 25.2% of complaints received). This is a positive change as State Government is a significant employer in the State and discrimination and related conduct is not only prohibited by the Act, but

may also amount to a breach of the *State Service Code of Conduct* (section 9(3) of the *State Service Act 2000* (Tas)).

By contrast, the data in the table, Complaints by organisational respondent type, on page 45, also indicates an increase in both the number and percentage of complaints made against both Local Government (4.8%, compared to 1.4% in 2014–15) and Private Enterprise (44.2%, compared to 38.4% in 2014–15).

Access to legal representation, advocacy and support

In 2015–16, 150 people made complaints under the Act. Of these:

- 6% (9) had a lawyer at some stage during the complaint process;
- 10% (15) had an advocate involved at some time during the complaint process.

In terms of respondents, of the 101 complaints notified in 2015–16:

- 90% of the primary respondents were organisations with an organisational representative;
- 48% of primary respondents also had legal representatives (private lawyers or in-house counsel)

Of those respondents without support or representation, all were individual respondents.

Complaints: complainants and respondents

	2015–16		2014–15	
Total complaints	150		142	
Number of complainants	168		158	
Individual complainants	165	98.2%	156	98.7%
Male complainant	83	49.4%	77	48.7%
Female complainant	81	48.2%	76	48.1%
Transgender or intersex complainant	1	0.6%	3	1.9%
Organisational or group complainants	3	1.8%	2	1.3%
Number of respondents	224		239	
Individual respondents	77	34.4%	101	42.3%
Male respondents	51	22.8%	74	31.0%
Female respondents	25	11.2%	25	10.5%
Transgender or intersex respondent	1	0.4%	2	0.8%
Organisational respondents	147	65.6%	138	57.7%

Complaints by organisational respondent type

	2015–16	As % of organisational respondents	2014–15	As % of organisational respondents	Change in number	Change in %
Total complaints	150		142			
Total organisational respondents	147		138			
State Government entities						
State Government department	25	17.0%	39	28.3%	-14	-11.3%
Member of Parliament	0	0.0%	0	0.0%	0	0.0%
State Government agency or business enterprise	4	2.7%	4	2.9%	0	-0.2%
State statutory authority	1	0.7%	9	6.5%	-8	-5.8%
Education – primary and secondary	6	4.1%	6	4.3%	0	-0.3%
Education – tertiary or vocational	1	0.7%	1	0.7%	0	-0.0%
Total State Government	37	25.2%	59	42.8%	-22	-17.6%
Local government	7	4.8%	2	1.4%	5	3.3%
Federal government	2	1.4%	3	2.2%	-1	-0.8%
Private enterprise	65	44.2%	53	38.4%	12	5.8%
Non-profit entities						
Education – primary and secondary	5	3.4%	5	3.6%	0	-0.2%
Education – tertiary or vocational	3	2.0%	0	0.0%	3	2.0%
Other	17	11.6%	15	10.9%	2	0.7%
Total non-profit	25	17.0%	20	14.5%	5	2.5%
Not determined	0	0.0%	1	0.7%	-1	-0.7%

Case study

Provision of benefits and concessions – an area where the Act does not apply

A complaint was received from a person with disability that causes his body's internal heat regulation system to not work properly. As a result of the disability, his body is not able to adequately cool and heat itself.

The complainant applied for the Government's Medical Heating or Cooling Concession. The complainant had recently moved to Tasmania from New South Wales, where he was in receipt of a similar concession.

The complainant was denied the Concession because his disability was not listed as eligible.

The Commissioner rejected the complaint because the Act does not apply in these circumstances. For discrimination to be unlawful, the person must be subject to some kind of less favourable treatment or disadvantage. Discrimination case law says that providing a concession to one person and not another does not amount to discrimination, as there is no disadvantage.

While the complaint was rejected, the Commissioner did contact the relevant Minister about the eligibility criteria for the Medical Cooling or Heating Concession. This is an example of complaint that cannot be resolved through the Act, but may be able to be resolved through changes to policy.

The table, Respondent organisation type by area of activity, below, provides details of the area of activity identified in complaints against organisations. It shows that provision of facilities, goods and services complaints dominated complaints against State Government, Local Government and private enterprise, while employment was more dominant in complaints against non-profit organisations and the Commonwealth Government.

Respondent organisation type by area of activity

State Government	
Provision of facilities, goods and services	18
Employment	11
Administration of any law of the State	9
Accommodation	6
Education and training	3
Awards, enterprise and industrial agreements	2
Membership and activities of clubs	1
Local Government	
Provision of facilities, goods and services	4
Employment	2
Commonwealth Government	
Employment	1
Private Enterprise	
Provision of facilities, goods and services	29
Employment	18
Education and training	2
Accommodation	1
Non-Profit	
Employment	7
Membership and activities of clubs	4
Education and training	3
Provision of facilities, goods and services	3
Accommodation	1

Discrimination complaints

During 2015–16, disability continued to dominate the discrimination complaints, with it being identified in 45.3% of complaints (down from 50.7% in 2014–15).

The next highest levels of discrimination allegations related to the attributes of gender (14.7%), race (12.7%), religious belief or affiliation (12.0%) and age (11.3%).

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

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

Complaints of discrimination by attribute

	Current year		Previous year		Change	
	2015–16	Alleged or identified in % of complaints	2014–15	Alleged or identified in % of complaints	Change in number	Change in %
Total complaints	150		142		8	
Total alleging discrimination	139		141		-2	
Attribute identified (highest to lowest)						
Disability	68	45.3%	72	50.7%	-4	-5.4%
Gender	22	14.7%	18	12.7%	4	2.0%
Race	19	12.7%	14	9.9%	5	2.8%
Religious belief or affiliation	18	12.0%	4	2.8%	14	9.2%
Age	17	11.3%	17	12.0%	0	-0.6%
Association	14	9.3%	7	4.9%	7	4.4%
Religious activity	13	8.7%	3	2.1%	10	6.6%
Industrial activity	12	8.0%	15	10.6%	-3	-2.6%
Irrelevant criminal record	9	6.0%	16	11.3%	-7	-5.3%
Family responsibilities	8	5.3%	11	7.7%	-3	-2.4%
Political activity	7	4.7%	8	5.6%	-1	-1.0%
Relationship status	6	4.0%	19	13.4%	-13	-9.4%
Irrelevant medical record	5	3.3%	22	15.5%	-17	-12.2%
Marital status	5	3.3%	14	9.9%	-9	-6.5%
Sexual orientation	5	3.3%	11	7.7%	-6	-4.4%
Political belief or affiliation	5	3.3%	4	2.8%	1	0.5%
Parental status	4	2.7%	4	2.8%	0	-0.2%
Lawful sexual activity	2	1.3%	4	2.8%	-2	-1.5%
Pregnancy	2	1.3%	3	2.1%	-1	-0.8%
Gender identity	1	0.7%	4	2.8%	-3	-2.2%
Breastfeeding	1	0.7%	1	0.7%	0	0.0%
Unknown	0	0.0%	2	1.4%	-2	-1.4%
Intersex	0	0.0%	0	0.0%	0	0.0%

Discrimination complaints by area of activity identified

	Current year		Previous year		Change	
	2015–16	% of discrimination complaints	2014–15	% of discrimination complaints	Change in number	Change in %
Total complaints	150		142			
Allegations of discrimination in	139		141			
Provision of facilities, goods and services	68	48.9%	57	40.4%	11	8.5%
Employment	59	42.4%	64	45.4%	-5	-2.9%
Education & training	12	8.6%	10	7.1%	2	1.5%
Accommodation	11	7.9%	13	9.2%	-2	-1.3%
Administration of any law or program of the State	8	5.8%	13	9.2%	-5	-3.5%
Membership and activities of clubs	6	4.3%	7	5.0%	-1	-0.6%
Awards, enterprise and industrial agreements	1	0.7%	4	2.8%	-3	-2.1%

As noted earlier in this report, for discrimination to be unlawful it must be connected with an area of activity. The year saw complaints alleging discrimination in connection with provision of facilities, goods and services (at 48.9%) being higher than employment (at 42.4%). This is a reversal of the top two areas from 2014–15. Complaints alleging discrimination in all the other identified areas of activity were all under 10% of the overall discrimination complaints.

The table, Discrimination complaints by area of activity identified, above, details the area of activity identified in discrimination complaints received in 2015–16.

Table A1, Discrimination complaints made: by attribute and area of activity alleged or identified, on page 68 in Appendix A shows the types of discrimination complaints received by area of activity for the year. This is graphed in Figure 1A and Figure 1B on page 69 in Appendix A.

Table A1 and Figure 1A and Figure 1B show provision of facilities, goods and services was the dominant area of complaint for 10 out of the 22 attributes. Employment was the dominant area for discrimination complaints in relation to six attributes. For the remaining attributes, there was no difference between employment and provision of facilities, goods and services.

Table A8, Complaints by industry sector, on page 76 in Appendix A details the discrimination complaints by industry sector (using the *Australian and New Zealand Standard Industrial Classification (ANZSIC)*, 2006 (Revision 2.0), cat. no. 1292.0.) and respondent organisation type. It indicates that the largest number of

complaints again relate to Government Administration (19.1%, compared to 26.1% in 2014–15) and Education (13.2%, compared to 8.7% in 2014–15). The other major industry sectors are Health and Community Services (11.8%, down from to 21.0% in 2014–15); Cultural and Recreational Services (11%, up from 7.2% in 2014–15); and Retail Trade (8.8%, up from 3.6% in 2014–15).



Complaints of other forms of prohibited conduct

Table A2, Prohibited conduct complaints received: by attribute and area of activity alleged or identified, on page 70 in Appendix A shows prohibited conduct allegations by area of activity. Again, the provision of facilities, goods and services and employment dominate.

As noted earlier, the year saw a marked decrease in the number of complaints in which victimisation was alleged or identified (down by almost 29%).

Tables A3 and A4 on page 71 in Appendix A show the breakdown of offensive, humiliating, intimidating, insulting or ridiculing conduct complaints, and incitement complaints, by attribute.

Table A3 indicates the percentage of complaints alleging offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of disability increased again in 2015–16. Similar increases are seen in relation to race and gender.

The notable changes in the complaint data for incitement complaints were the reduction in the number and percentage of complaints alleging incitement on the basis of disability (11 fewer complaints, an 8.6% drop), and the increase in the percentage alleging incitement on the basis of race (7 more complaints, a 4.5% increase) and on the basis of religious belief, affiliation or activity (5 more complaints, a 3.1% increase).

Assessment

The Act differs from many other areas of civil law—such as industrial relations claims and common law actions such as negligence or defamation—in that the complaint is considered up front by the Commissioner to determine whether or not what is alleged in the complaint discloses any possible breach of the Act. If the Commissioner determines it doesn't disclose any such breach, the complaint is rejected.

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

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

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

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

Assessment decisions made in 2015–16

Of the 147 decisions made in 2015–16 on whether to 'accept or reject' a complaint:

- 11 were complaints received in 2014–15 and the remaining 136 were complaints received in 2015–16 (there were 14 complaints received in 2015–16 for which the assessment decisions were yet to be made at the end of the reporting period);
- 45 complaints were rejected in part or in whole (30.6% were rejected; down from 34.5% in 2014–15);
- 102 complaints were accepted in part or in whole (69.4% were accepted; up from 65% in 2014–15).

This means 69.4% of complaints received complained of conduct that is within the jurisdiction of the Act.

Table A9 on page 76 in Appendix A shows the comparative data for 2015–16 for complaint assessment (and investigation) decisions.

Table A5 on pages 72 to 73 in Appendix A shows the rejection (and dismissal) data in relation to specific alleged breaches of the Act.

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

In 2015–16, the primary reasons six complaints were not accepted was they were made outside the time limit and I did not consider it appropriate to exercise my discretion to extend the time available to make the complaint. One other complaint was rejected for several reasons and parts of that complaint was about conduct that was 'out of time'.

In the vast majority of cases, the primary reason the complaint was rejected was that it was lacking in substance or misconceived (19 complaints), or the conduct alleged did not relate to discrimination or prohibited conduct (17 complaints). One complaint was combined with an existing complaint, while the primary reason for rejection in one case was that it could be more effectively dealt with by another Statutory Authority, and in another that the complainant had commenced proceedings under another law and it could be adequately dealt with under that law.

Where complaints were rejected, the other reasons all or some aspect of the complaint was rejected were:

- the subject matter of the complaint may be more effectively or appropriately dealt with by another State Authority or Commonwealth statutory authority: 4 complaints;
- the complainant did not have standing (was not sufficiently connected to the alleged conduct) to make the complaint: 2 complaints;
- the complaint did not meet the statutory requirements in terms of what was included in the complaint: 1 complaint;
- the subject matter of the complaint had already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority: 1 complaint.

Review of decisions to reject or part reject complaints

A decision 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 2015–16, six complainants have sought review by the Anti-Discrimination Tribunal of the decision to reject a complaint (out of 45 notified during the period: 13%). This compares to review being sought in relation to 4 out of 56 rejection decisions made in 2014–15 (7%).

One of these 2015–16 review applications was, at the end of the reporting period, yet to be determined by the Tribunal, along with one from the 2014–15 reporting period. One of the applications for review was withdrawn.

The Tribunal dealt with the remaining four review applications as well as one from the previous year. In all of these, the Commissioner's decision to reject the complaint was upheld by the Tribunal.

Outcomes of rejection reviews conducted and finalised by the Tribunal in 2015–16

Reviews withdrawn	1
Commissioner's Rejection decisions upheld by the Tribunal	5
Commissioner's Rejection decisions overturned (in whole or in part) by the Tribunal	0

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

Notification

If a complaint is accepted, the Act requires that the respondent(s) be notified within 10 days of that decision and the reasons for it. On average, this notification occurred within 9 days of the decision, with 23 notifications occurring later than 10 days (23% of notifications, an improvement from 30% in 2014–15). Notifications that occur later than 10 days are generally due to difficulties with getting current address details for parties.

Parties are generally, through the notification process, notified of a date for an early conciliation meeting and this usually goes ahead.

Investigation stage

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

In the vast majority of complaints notified in 2015–16, parties were asked to participate in conciliation conferences early in the investigation stage. This provided an early opportunity for the parties to consider options to resolve the complaint.

Case studies

Protection for older Tasmanians seeking work

The Anti-Discrimination Commissioner received a complaint from a man in his late 40s. He had applied for a job with a local business. The man believed he was well qualified for the position, but was not successful in his application. When he sought feedback about why he was not successful, the business told him that it was because it did not want to employ someone as old as he was.

The man made a complaint of age discrimination.

The complaint successfully resolved at a conciliation conference conducted by my office.

The Act used to challenge discriminatory policies

A complaint was received from an 18 year old who wanted to hire a venue for a birthday party. The venue owner refused to hire it to the complainant. The reason given for refusing to hire the venue to him was that it had a policy in place prohibiting the hiring of the venue for birthday parties to people 21 and under.

The complainant believed the policy was discriminatory on the basis of age and was based on negative assumptions about young people.

The complaint resolved through a conciliation meeting run by Equal Opportunity Tasmania. The venue owner agreed (among other things) to remove references to a person's age in its policies. The venue owner now intends its policies on venue hire to have objective criteria that are applicable to all people.

Early conciliation meetings

During the year, 81 early conciliation meetings were held (82 in the previous year). Of these, 43 (53%) of the complaints resolved at or following the meeting. A further three complaints were resolved during the investigation stage through facilitated negotiation. Six conciliations were adjourned and the possibility of resolution remains open in those cases. This number of successful early conciliation processes (46) is down from 51 for the previous year.

Outcome of investigations

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

During the reporting period, the investigation was finalised in 42 complaints (1 being a complaint received in 2012–13, 2 being complaints from 2013–14, 22 being complaints received in 2014–15 and 17 being complaints received in 2015–16). Of these, 34 were completed within 6 months of notification to the parties (this is 81% of investigation decisions and is a significant improvement on this being achieved in only 50% of the investigation decisions made in 2014–15).

Of the 42 investigations finalised in 2015–16:

- 12 complaints were dismissed (29% of investigation decisions made): 1 was a complaint received in 2013–14; 4 were complaints received in 2014–15; and 7 were complaints received in 2015–16;
- 9 complaints were referred direct to the Tribunal for Inquiry (21% of investigation decisions made): 5 were complaints received in 2014–15; and 4 were complaints received in 2015–16;
- 16 complaints were referred to conciliation (38% of investigation decisions made): 1 was a complaint received in 2013–14; 11 were complaints received in 2014–15; and 4 were complaints received in 2015–16;
- in 5 complaints, the complainant had failed to pursue the complaint and as a result the decision was made to decline to refer the complaint and dismiss it¹ (12% of investigation decisions made): 1 was a complaint received in 2012–13; 2 were received in 2014–15; and 2 were complaints received in 2015–16.

In addition, three complaints or part complaints were referred to the Tribunal because the investigation time

limit had expired and the investigation had not been completed: two complaints received in 2013–14; and one complaint received in 2014–15. This represents the outcome in relation to 1.9% of investigations undertaken.

Table A9 on page 76 in Appendix A shows the comparative data for 2015–16 for investigation (and assessment) decisions.

The number of investigations completed is similar to 2014–15, maintaining the reduction that we saw in that year as a result of the increased number of complaints that were resolved without the need for investigation.

It also represents a significant improvement in the number completed within the 6-month timeframe.

Table A5 on pages 72 to 73 in Appendix A shows the dismissal (and rejection) data in relation to specific alleged breaches of the Act.

Finalising complaints

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

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

- Rejection by the Commissioner (dealt with on page 50)
- Resolution with assistance from the Commissioner's office (reported in part above under 'Early conciliation meetings', and also below)
- Withdrawal while being dealt with by the Commissioner (dealt with on page 54)
- Dismissal by the Commissioner (dealt with on page 54)
- Resolution after referral by the Commissioner to the Tribunal (dealt with on page 56)
- Withdrawal after referral by the Commissioner to the Tribunal (dealt with on page 56)
- Dismissal before hearing by the Tribunal (after referral by the Commissioner) (dealt with on page 56)
- Dismissal by the Tribunal following hearing (after referral by the Commissioner) (dealt with on page 56)
- Upheld by the Tribunal following hearing (after referral by the Commissioner) (dealt with on page 56)

During 2015–16, the Commissioner finalised 156 complaints (down from 186 in 2014–15). Despite this drop and the increase in complaints received, there were fewer open complaints than at the end of the 2014–15 reporting period.

Timeliness of the complaint process

In 2015–16:

- 53% of complaints were finalised by my office within 6 months (down from 60% in 2014–15),
- 72% within 9 months (up from 69% in 2014–15)
- 83% within 12 months (up from 78% in 2014–15).

The average time from receipt to finalisation for complaints finalised in 2015–16 has remained steady at just over 7 months.

Over the past 5 years there has been a significant improvement in the percentage of complaints finalised within 6 months (up from 33% in 2011–12); a solid improvement in the percentage closed within 9 months (up from 62% in 2011–12), and an improvement in the percentage closed within 12 months (up from 77%).

The time available under the Act for assessment of complaints is 42 days. In 2015–16, 147 assessment decisions were made (compared to 139 in the previous reporting period) with the average time to finalise the assessment being 35 days (down from 37 days in 2014–15). All assessment decisions were made within the permitted 42 days.



Case study

On-line bullying

The Act can apply to online conduct.

This year, the Anti-Discrimination Commissioner received a complaint about a Facebook page that was posting offensive, sexual and derogatory comments about and pictures of Tasmanian girls.

The mother of one of the girls who featured on the Facebook page sought to take action. The mother contacted Tasmania Police, Facebook, the Commissioner for Children, Members of Parliament, and the Department of Education, in an effort to have action taken in relation to the Facebook page and the people who were posting to the page.

The mother then made a complaint on behalf of her daughter under the *Anti-Discrimination Act 1998 (Tas)*.

The Commissioner accepted the complaint for investigation, on the basis it disclosed numerous breaches of the Act.

Conciliation meetings were held involving the mother, her daughter, and the people responsible for the Facebook page. The complaint was successfully resolved through conciliation.

Resolution with assistance from the Commissioner's office

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

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

In the resolution processes, the parties can generally agree to any outcome (so long as it is lawful). There is, however, an additional requirement if the complaint involves a child or a person who does 'not have the capacity to approve a settlement by reason of a disability'.² In that situation, if the proposed resolution is achieved while the complaint is being dealt with by the Commissioner, her approval is required. If it is achieved while the complaint is being dealt with by the Tribunal, the Tribunal's approval is required. The Commissioner or Tribunal can only give such approval if they consider 'that the terms are satisfactory'. This provision came into effect on 1 January 2014.

Data on outcomes of early conciliations are provided on page 52. Many of the case studies in this report involve cases resolved through early resolution.

Table A7 on page 74 in Appendix A details the ways in which complaints made about particular organisational types were finalised. That table indicates some improvement on the low rate of resolution for complaints involving State Government (41.2% of all complaints finalised involving State Government up from 27.0% in 2014–15) compared to all other respondent types (45.9% for private enterprise; 55.0% for non-profit organisations; and 42.9% for local government).

Conciliation after investigation completed

In 2015–16, my office conducted 27 conciliations after the investigation was completed (down from 41 in 2014–15).

Of these, 40 resulted in the complaint being resolved between the parties: 51% of conciliations (up from 49% in 2014–15). Two conciliations have been adjourned for further negotiations.

Withdrawal while being dealt with by the Commissioner

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

During 2015–16, 13 complaints were withdrawn (either in part or in total). Of these, eight complaints (62%) were withdrawn because they had been resolved. Another five complaints were withdrawn without resolution.

Dismissal by Commissioner

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

As noted above, of the 42 investigations finalised in 2015–16, 12 complaints were dismissed and five were declined for referral and dismissed (due to failure by the complainant to engage with the process). This represents 40% of investigation decisions made.

Review of decision to dismiss

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

In 2015–16, two complainants sought review by the Anti-Discrimination Tribunal of the Commissioner's decision to dismiss or part-dismiss their complaint (of 18 dismissal or part dismissal decisions notified during the period: 11%). This is down from four (33%) who sought review of the Commissioner's decision to dismiss or part dismiss a complaint in 2014–15.

Of these two applications for dismissal review made in 2015–16, the Tribunal's decision has not yet been notified in one review, and one dismissal decision was upheld by the Tribunal. The Tribunal determined four other dismissal reviews (for reviews applied for in 2012–13: 1; 2013–14: 2; 2014–15: 1) and in all of these reviews, the Tribunal upheld the Commissioner's decision.

Outcomes of dismissal reviews conducted and finalised by the Tribunal in 2015–16

Reviews withdrawn	0
Commissioner's Dismissal decisions upheld by Tribunal	5
Commissioner's Dismissal decisions overturned by Tribunal	0

The following table details complaints finalised by my office in 2015–16. More than half of the complaints finalised in this reporting period were complaints received during this reporting period. The ways in which all of those complaints were finalised is detailed below.

Of the complaints that were finalised other than by rejection, 61% were resolved or part resolved. This is down from 65% in 2014–5.

Complaints finalised in 2015–16 by the Anti-Discrimination Commissioner

Complaint Outcome	Complaint received by the Commissioner in:				Current year		Previous year		Change	
	2012–13	2013–14	2014–15	2015–16	Number of cases finalised in 2015–16	% finalised this way in 2015–16	Number of cases finalised in 2014–15	% finalised this way in 2014–15	Change in number	Change in %
Rejected	0	0	2	40	42	26.9%	58	31.2%	-16	-4.3%
Combined with another complaint	0	0	2	4	6	3.8%	1	0.5%	5	3.3%
Dismissed	1	2	6	7	16	10.3%	9	4.8%	7	5.4%
Resolved through conciliation or negotiation	0	5	26	23	54	34.6%	71	38.2%	-17	-3.6%
Part resolved, part rejected	0	0	0	1	1	0.6%	0	0.0%	1	0.6%
Part resolved, part dismissed	0	0	0	1	1	0.6%	0	0.0%	1	0.6%
Part resolved, part withdrawn	0	0	1	0	1	0.6%	2	1.1%	-1	-0.4%
Part resolved, part referred due to expiry of the 6-month investigation deadline	0	0	1	0	1	0.6%	0	0.0%	1	0.6%
Referred to the Tribunal due to expiry of the 6-month investigation deadline	0	2	0	0	2	1.3%	3	1.6%	-1	-0.3%
Part resolved, part referred after investigation completed	0	1	1	1	3	1.9%	0	0.0%	3	1.9%
Referred to the Tribunal after investigation completed	0	0	7	2	9	5.8%	7	3.8%	2	2.0%
Part dismissed, part referred after investigation completed	0	0	0	0	0	0.0%	1	0.5%	-1	-0.5%
Part resolved, part referred after unsuccessful conciliation	1	0	0	0	1	0.6%	1	0.5%	0	0.1%
Part dismissed, part referred after unsuccessful conciliation	0	0	0	0	0	0.0%	1	0.5%	-1	-0.5%
Referred to the Tribunal after unsuccessful conciliation	0	5	2	0	7	4.5%	13	7.0%	-6	-2.5%
Withdrawn without being resolved	0	0	0	5	5	3.2%	9	4.8%	-4	-1.6%
Withdrawn and referred to another authority	0	0	0	0	0	0.0%	1	0.5%	-1	-0.5%
Withdrawn having been resolved	0	0	1	6	7	4.5%	9	4.8%	-2	-0.4%
	2	15	49	90	156		186			

Referral to Tribunal for inquiry

During 2015–16, 23 complaints were referred either in their entirety or in part to the Anti-Discrimination Tribunal. The table, Complaints finalised in 2015–16 by the Anti-Discrimination Commissioner, on page 55, indicates the years in which those complaints were received and the type of referral.

Inquiries finalised by Tribunal

In addition to the reviews finalised by the Tribunal, it finalised 30 complaints that had been referred to it for Inquiry. Of these, one had been referred in 2012–13, six in 2013–14; 11 in 2014–15, and 12 in 2015–16. The table, Referred complaints finalised by the Anti-Discrimination Tribunal in 2015–16, on page 57, summarises the data on complaints referred for Inquiry that were finalised by the Tribunal during 2015–16.

Withdrawal by complainant after referral to the Tribunal

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

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

In 2015–16, nine complaints referred for Inquiry were finalised through withdrawal: one that was referred in 2013–14; four that were referred in 2014–15; and four that were referred in 2015–16.

Resolved after referral to the Tribunal

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

In 2015–16, 14 complaints referred for Inquiry were finalised by being resolved through the Tribunal's processes: three that were referred in 2013–14; five that were referred in 2014–15; and six that were referred in 2015–16.

Upheld by Tribunal

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

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

In 2015–16, the Tribunal upheld two (related) complaints (one was referred in 2013–14; the other was referred in 2014–15).

The decisions are not yet published.

Dismissal by Tribunal

The Tribunal has the power to also dismiss a complaint. It can do this if³:

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

Or⁴:

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

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

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

In 2015–16, the Tribunal finalised five complaints referred for Inquiry through dismissal. Two of these were dismissed before hearing (one that had been referred in 2012–13, and one that was referred in 2015–16), and three were dismissed following hearing (1 had been referred in 2013–14; 1 in 2014–15; and 1 in 2015–16).

These decisions are available on Austlii at <http://www.austlii.edu.au/au/cases/tas/TASADT/>.

Referred complaints finalised by the Anti-Discrimination Tribunal in 2015–16

	Year the complaint was referred by the Commissioner				Current year		Previous year		Change	
	2012–13	2013–14	2014–15	2015–16	Total finalised in 2015–16	% finalised this way in 2015–16	Total finalised in 2014–15	% finalised this way in 2014–15	Change in number	Change in %
Resolved before hearing	0	3	5	6	14	48.3%	8	33.3%	6	14.9%
Complaints dismissed before hearing	1	0	0	1	2	6.9%	2	8.3%	0	-1.4%
Complaints dismissed following hearing	0	1	1	1	3	10.0%	2	8.3%	1	1.7%
Complaints withdrawn	0	1	4	4	9	31.0%	10	41.7%		-10.6%
Complaints upheld	0	1	1	0	2	6.9%	2	8.3%	0	-1.4%
					30		24			

Supreme court decisions on the Act

***Abblitt v The Anti-Discrimination Commissioner* [2016] TASSC 12 (18 March 2016)**

This case involved judicial review in relation to a complaint by a woman that she was refused the option of purchasing a family property because she is a woman and single. The property is a farm and the woman's occupation is farming.

The respondents did not deny the alleged conduct and, at the end of investigation, I referred the complaint to the Tribunal for inquiry.

The respondents sought review of my decision under the *Judicial Review Act 2000*. I submitted to the jurisdiction of the Supreme Court and the Tasmanian Attorney General intervened.

The Court held that my decision should be quashed on the basis that I was incorrect in finding that the conduct occurred in an area of activity. Section 22 of the Act states:

... this Act applies to discrimination and prohibited conduct ... by or against a person engaged in or undertaking any, activity in connection with any of the following:

(a) *employment;*

...

(c) *provision of facilities, goods and services;*

(d) *accommodation;*

...

The Act defines services as including 'services ... relating to the selling, buying, assigning or disposing of an interest in land'.

The Court held that this did not cover the conduct complained of.

Pearce J found that there was an administrative error in referring the complaint made by Ms Abblitt to the Anti-Discrimination Tribunal for inquiry because it was not a proper complaint because it did not engage an area of activity specified in section 22 of Act.

This decision indicates a need for amendment to the Act to ensure that the coverage of sale and assignment, etc, of property is covered, as it is in discrimination laws generally in Australia.

***R v Anti-Discrimination Tribunal ex parte Bryan & Others* (Unreported, Supreme Court of Tasmania, Estcourt J, 2 February 2016)**

This case was also a judicial review in relation to a decision of the Anti-Discrimination Tribunal to require the respondents to provide witness statements before the hearing.

This decision was challenged on the basis that it interfered with the common law privilege against exposure to penalties (related to privilege against self-incrimination).

Section 89(1) of the Act sets out what orders the Tribunal can generally make if it finds there has been a breach of the Act. These orders include:

...

(e) *an order that the respondent must pay a specified fine not exceeding 20 penalty units;*

If the respondent is a State Service officer or employee, the Tribunal can make a further order that is set out in section 89(2) of the Act:

... it may order the Minister responsible for the Agency in which that officer or employee is employed to exercise any one or more of the powers specified in section 10 of the State Service Act 2000.

Escourt J found that these orders would operate as 'penalties' and, as such, any requirement that a person make a witness statement in a hearing of complaint that might expose them to such an order being made conflicts with the common law privilege.

This decision indicates the need for review of these 'penalty' orders to determine whether they are an appropriate part of a civil law.

Ralph v State of Tasmania (Unreported, Supreme Court of Tasmania, Blow CJ, 7 October 2015)

This case involved an application to the Supreme Court of Tasmania for enforcement of the terms of a conciliation agreement. The conciliation was held by my office and resulted in resolution of the complaint. The parties agreed that the written record of the agreement accurately reflected the terms of the agreement reached, but the respondent (the State of Tasmania) later sought to change the terms and then failed to sign the record of the agreement reached. Based on a previous decision of the Anti-Discrimination Tribunal, I indicated to the parties that the complaint was resolved in the terms set out in the record of agreement and closed the complaint.

Under the Act, a party, or the Commissioner on request from a party, can enforce an agreement by filing a certified copy in the Supreme Court.

In this case, Mr Ralph (an unrepresented litigant) went to his local registry of the Supreme Court with a copy of the agreement that I had certified. The District Registrar initially accepted the document for registration. The respondent then challenged this process arguing that the certified copy did not satisfy the terms of the Act because it had not been signed by the respondent. The District Registrar then refused to accept filing.

Mr Ralph then applied to the Supreme Court to have a judge order the Registrar to accept filing. The application was heard by Chief Justice Blow. In directing the Registrar to accept the agreement for signing, His Honour stated:

In this case, the scheme of the relevant legislative provisions is clear. If the parties to an anti-discrimination complaint reach an agreement that resolve the complaint at a conciliation conference, then their agreement is to be recorded and, once recorded, may be enforced in the Supreme Court as if it were an order of the Supreme Court. If, between the making of an agreement and the recording of that agreement, either party were able to escape from that agreement simply by refusing to sign the required document, the purpose of the relevant legislative provisions could be very easily thwarted.

Section 8A(1) of the Acts Interpretation Act 1931 requires that an interpretation that promotes the purpose or object of a legislative provision is to be preferred to one that does not. The words "a copy of the record under section 76" in s 90(1)(b) need to be interpreted with that requirement in mind. If there were an agreement under s 76, and one party to that agreement refused to sign the record of that agreement despite the requirement made by s 76(2), then the interpretation contended for on behalf of the department would certainly not promote the purpose or object of the Act...

It is also significant that the language of s 76(2) treats the document in question as constituting a "record made by the Commissioner or authorised person" before it is signed by each of the parties. If an unsigned document constitutes a "record" for the purposes of s 76(2), it is logical to treat it as constituting a "record made under section 76 and certified by the Commissioner or an authorised person" for the purposes of s 90(1)(b), even if one or more of the parties have not signed it.

For these reasons, I conclude that the failure of one party to sign a record of an agreement, as required by s 76(2), does not prevent that agreement from being enforced in accordance with s 90.

The respondent sought review of this decision by the Full Court of the Supreme Court. The hearing took place in early April and I sought leave to intervene. I was represented by a member of the independent bar as the Crown was acting for the respondent. The decision has not yet been made.

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

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

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

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

Case study

Allowing assistance animals in housing

A complaint was received from a resident of a residential estate. The complainant, who has respiratory disease, wrote to the estate managers asking for permission to keep an assistance dog in her home. She did this on the basis of a recommendation from her doctor that she would benefit in terms of increased mental well-being and reduced risk of depression; increased physical independence and encouragement of personal mobility; increased emotional independence; increased confidence and sense of self worth; and increased socialisation and mental stimulation. The complainant's request was supported with letters from the doctor and a disability advocate.

The estate refused the request, referring to the estate's rules, which prohibit the keeping of dogs on the premises.

The complainant alleged the rules discriminated against her on the basis of disability.

The complaint was dealt with by Equal Opportunity Tasmania because it disclosed possible indirect disability discrimination.

Indirect disability discrimination occurs when a person unreasonably imposes a condition, requirement or practice that appears to be neutral but which has the effect of disadvantaging a member of a group who have (or are believed to have) a disability or the characteristics related to that disability more than a person who is not a member of that group.

The condition or requirement being imposed by the respondent in this case was that, in order to live on the estate, a person must comply with the rule prohibiting the keeping of dogs at premises on the estate.

This requirement or practice would, if the doctor's report is accepted, have the effect of disadvantaging a person with the complainant's disability, more than a person without that disability. Given the existing laws around access for guide and assistance animals when accompanying a person with disability, there is an argument that the condition was unreasonable in the circumstances. The complainant provided evidence the dog was a certified assistance animal.

The parties to the complaint participated in the conciliation process conducted by Equal Opportunity Tasmania, and the complaint was resolved.

The estate managers acknowledged the complainant's dog is an assistance dog and would be fully certified as a home therapy dog.

The estate managers agreed to review and, where necessary, amend the estate rules, policies and procedures to ensure that they comply with the *Anti-Discrimination Act 1998* (Tas) in relation to assistance animals.

The estate managers agreed to complete training, delivered by Equal Opportunity Tasmania, about discrimination and related conduct covered by the Act, and ensure training and information sessions were available to residents of the estate.

The estate managers agreed to publish a newsletter article for distribution to estate residents advising that the complainant would have an assistance dog at her home, and explaining why this is permitted.

Exemption applications

During the reporting period I received a total of 19 exemption applications (down from 27 in 2014–15). Of these applications, and those received in 2014–15 that had not yet been determined, 16 were granted with conditions (down from 17 in 2014–15), none were refused (down from two in 2014–15), and two were either postponed or withdrawn by the applicant. There were five applications yet to be determined at the end of the 2015–16 reporting period.

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

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

The onus is on applicants to apply for renewal of an exemption before the expiry date if the exemption is still required. Given the majority of exemptions are granted for the maximum period of 3 years, applicants commonly have overlooked the need to apply for renewal. To avoid this, since 2014–15 we have been active in reminding those granted exemptions of their obligation to meet the conditions set out in the order and notifying them of pending expiry dates.

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

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

Exemptions granted

University of Tasmania

Granted on 14 July 2015 for 3 years

This exemption was granted to permit the University of Tasmania to:

- a) develop and implement the University of Tasmanian Aboriginal and Torres Strait Islander policy framework;
- b) develop and implement the University of Tasmania Aboriginal Employment Strategy;
- c) establish and maintain the University of Tasmania Aboriginal Policy Working Group;
- d) through its Aboriginal Policy Working Group, consider, develop and recommend actions and approaches (however named or described) within the University of Tasmanian Aboriginal and Torres Strait Islander policy framework for the University of Tasmania to implement;
- e) create and maintain the position of Pro Vice-Chancellor Aboriginal Research and Leadership; and
- f) through its senior staff and Human Resources Department, and the University of Tasmania Aboriginal Policy Working Group and its members, do those things that are reasonably necessary to undertake the actions referred to in paragraphs (a)–(f) above.

Colony 47 Inc

Granted on 15 July 2015 and ending 30 June 2016

This exemption was granted to permit Colony 47 Inc to recruit and employ Aborigines and/or Torres Strait Islanders only to the two positions of Community Pathway Program Worker to deliver Colony 47 Inc's northern-based Safety and Wellbeing Program in accordance with the Indigenous Advancement Strategy administered by the Commonwealth Department of Prime Minister and Cabinet. It was granted on the basis that it is for the purposes of enabling Colony 47 Inc to:

- a) deliver its northern-based Safety and Wellbeing Program in accordance with the Indigenous Advancement Strategy administered by the Commonwealth Department of Prime Minister and Cabinet;
- b) achieve the objectives of the Safety and Wellbeing program and fulfil the mandatory key performance indicator set by the Department of Prime Minister and Cabinet; and
- c) foster the ability of Aboriginal and/or Torres Strait Islanders to engage in education, employment and other opportunities.

Victorian Aboriginal Legal Service Co-operative Limited

Granted on 15 July 2015 for 3 years

This exemption was granted to Victorian Aboriginal Legal Service Co-operative Limited to recruit and employ Aborigines and/or Torres Strait Islanders only to the positions of Aboriginal Client Services Officer within the offices of the Tasmanian Aboriginal Community Legal Service for the purpose of:

- a) ensuring clients of the Tasmanian Aboriginal Community Legal Service are provided with culturally appropriate and supportive access to legal services in Tasmania;
- b) improving client connections and engagement in the Tasmanian Aboriginal Community Legal Service processes; and
- c) providing employment opportunities for Aborigines and/or Torres Strait Islanders through the establishment of the identified positions of Aboriginal Client Services Officer within Tasmanian Aboriginal Community Legal Service.

Tasmania University Union Inc: five exemptions

Granted on 28 July 2015 for 3 years

Five separate exemptions were granted to permit Tasmania University Union Inc to restrict nominations and elections of five student representative positions (north and south) to people with specified attributes. The positions and attributes are as follows:

- a) Women's Officer: restricting the positions to people who identify as women. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of gender and gender identity.
- b) Position supporting and advocating for students who are lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQA) (however named): restricting the positions to people who identify as one or more of lesbian, gay, bisexual, transgender, intersex, queer or asexual. As such, intersex, gender identity and sexual orientation.
- c) International Students Officer: restricting the positions to people who are enrolled as International students (full-fee-paying overseas students) at the University of Tasmania. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of race (being relevantly nationality and/or national origin).

- d) Aboriginal and/or Torres Strait Islander Officer: restricting the positions to people who identify as Aboriginal and/or Torres Strait Islander. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of race.
- e) Disability Officer: restricting the positions to people who identify as having disability. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of disability.

Jireh House Association Inc

Granted on 1 September 2015 for 3 years

This exemption was granted to permit Jireh House Association Inc to recruit and employ women only in identified positions. The exemption is granted on the basis that:

- a) the discrimination is for the purposes of operating a crisis accommodation service for women and women with children who are homeless or at risk of homelessness due to domestic and family violence and other life crisis; and
- b) being a women is a genuine occupational requirement of working with women who require crisis accommodation and other services provided by Jireh House Accommodation Inc because staff members in these roles all have regular personal contact with women escaping domestic and family violence.

Tasmanian Centre for Global Learning Inc auspicing Students Against Racism

Granted on 17 November 2015 for 1 week

This exemption was granted to permit Students Against Racism to advertise and host a women-only event called *Women's Business* and being held on 2 days for the purposes of:

- a) encouraging and supporting women of migrant, refugee and/or asylum seeker backgrounds to participate and celebrate their cultural differences through fashion and performances without fear of disrespecting their culture; and
- b) respecting the participating women's cultures by excluding men from attending the *Women's Business* event.

The Roman Catholic Trust Corporation of the Archdiocese of Hobart (Archdiocese of Hobart) – Annie Kenney Young Women’s Emergency Accommodation Service

Granted on 23 December 2015 for 3 years

This exemption was granted to permit the Archdiocese of Hobart to advertise and employ women only in the positions of Crisis Worker(s) and Team Leader(s) at the Annie Kenney Young Women’s Emergency Accommodation Service on the basis that:

- a) the discrimination is for the purposes of operating the Archdiocese of Hobart’s Annie Kenney Young Women’s Emergency Accommodation Service for young women aged between 13 and 21 years who may be experiencing violence, homelessness or who are at risk of becoming homeless;
- b) being a woman is a genuine occupational requirement of working with women who require crisis accommodation and other services provided by Archdiocese of Hobart’s Annie Kenney Young Women’s Emergency Accommodation Service because staff working in these roles all have regular personal contact with the young women accessing the crisis accommodation services and the young women may be facing homelessness due to family violence involving a male perpetrator;
- c) the accommodation facilities provided by the Archdiocese of Hobart’s Annie Kenney Young Women’s Emergency Accommodation Service are for women and girls aged between 13 and 21 years and, as such, include residents who are girls under the age of 18 years; and
- d) the services provided are aimed at empowering young women by providing sufficient support to enable them to progress towards meeting their goals as identified from assessment and within their case plans.

The Roman Catholic Trust Corporation of the Archdiocese of Hobart (Archdiocese of Hobart) – CatholicCare Tasmania

Granted on 2 February 2016 for 3 years

This exemption was granted to permit the Archdiocese of Hobart’s CatholicCare Tasmania to advertise and employ a man in the position of Family Counsellor/Family and Relationship Counsellor on the basis that:

- a) the discrimination is for the purposes of enabling the Archdiocese of Hobart’s CatholicCare Tasmania service of family and relationship counselling and

specialised family violence programs to provide therapeutic services to individuals, couples, families and in particular children where the gender of the counsellor is an important consideration to ensure the particular needs of the client are met;

- b) the discrimination is for the purposes of enabling the Archdiocese of Hobart’s CatholicCare Tasmania service of family and relationship counselling and specialised family violence programs to continue to provide a year-round, on-going, psycho-educational group program for men who use abusive behaviours in their families through CatholicCare’s Challenging Abusive Behaviours Program;
- c) being male is a genuine occupational requirement of working directly with men and children who require specialised counselling and family services provided by the Archdiocese of Hobart’s CatholicCare Tasmania; and
- d) the discrimination is for the purposes of enabling the Archdiocese of Hobart’s CatholicCare Tasmania service of family and relationship counselling and specialised family violence to specifically allocate a male counsellor to male adults and children and other specific programs, where necessary and appropriate; and
- e) the discrimination is for the purposes of enabling the Archdiocese of Hobart’s CatholicCare Tasmania service of family and relationship counselling and specialised family violence programs continue to fill at least two (2) of the positions of Family Counsellor/ Family & Relationship Counsellor in Southern Tasmania with men, should one of the positions become vacant at any time during the exemption period.

Australian Red Cross Society – Administrative Assistant Traineeship

Granted on 11 April 2016 for 3 years

This exemption was granted to permit Australian Red Cross Society to advertise and employ an Aboriginal and/ or Torres Strait Islander for the position of Administrative Assistant Traineeship in the Migration Support Program in Hobart on the basis that:

- a) the traineeship is part of the Australian Red Cross Society’s Indigenous Employment Program, a joint initiative between the Australian Red Cross Society and the Commonwealth Department of Prime Minister and Cabinet.;
- b) the traineeship position is consistent with Red Cross’s aims developed in the Bright Futures – Reconciliation

Action Plan 2015–2018 to guide the organisation’s policies and practices in recruiting, retaining and supporting Aboriginal and/or Torres Strait Islander staff and volunteers;

- c) the traineeship position is consistent with Red Cross’s goal of increasing the current Aboriginal and Torres Strait Islander workforce by 2018 and to fully support and provide continuing career opportunities for Aboriginal and Torres Strait Islander people within the organisation and the broader community; and
- d) Aboriginal and Torres Strait Islander are a disadvantaged group in respect of employment and the Indigenous Employment Program is a scheme for the benefit of a disadvantaged group and a program that promotes equal opportunity.

Australian Red Cross Society – Customer Services Officer

Granted 27 May 2016 for 3 years

This exemption was granted to permit the Australian Red Cross Society to advertise and employ an Aboriginal and/or Torres Strait Islander for the position of Customer Services Officer on the basis that:

- a) the position is consistent with the Australian Red Cross Society’s aims developed in the Bright Futures – Reconciliation Action Plan 2015–2018 to guide the organisation’s policies and practices in recruiting, retaining and supporting Aboriginal and/or Torres Strait Islander staff and volunteers;
- b) the position is consistent with the Australian Red Cross Society’s goal of increasing the current Aboriginal and Torres Strait Islander workforce by 2018 and to fully support and provide continuing career opportunities for Aboriginal and Torres Strait Islander people within the organisation and the broader community; and
- c) Aborigines and/or Torres Strait Islanders are a disadvantaged group in respect of employment and the Indigenous Employment Program is a scheme for the benefit of a disadvantaged group and a program that promotes equal opportunity.

Cancer Council Tasmania

Granted on 15 June 2016 for 3 years

The exemption was granted to permit Cancer Council Tasmania to:

- a) develop and maintain a culturally appropriate employment strategy for the purpose of promoting

equal opportunity in employment through an increase in representation of Aboriginal and Torres Strait Islander peoples within the organisation’s workforce; and

- b) recruit and employ an Aboriginal person to the role of Aboriginal Quitline Counsellor; and
- c) develop and deliver culturally sensitive tobacco smoking cessation advice and counselling to Aboriginal and Torres Strait Islander people living in Tasmania.

Further details of all current exemptions can be found at http://equalopportunity.tas.gov.au/current_exemptions.

Tribunal review of exemptions

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

- a) Grant an exemption; or
- b) Renew an exemption; or
- c) Refuse to grant an exemption; or
- d) Refuse to renew an exemption; or
- e) Impose or vary a condition.

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

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

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

In 2015–16, the Commissioner became aware of one application for review by the Tribunal. The application was apparently dealt with by the Tribunal in conjunction with a complaint in relation to a related matter that had been referred. The Tribunal, in its decision, did not determine the application for review.

Staffing

Equal Opportunity Tasmania has a permanent staff complement of ten (four of whom are part time) who work together in teams to support the Commissioner to perform the functions set out in section 6 of the Act through the specific activities identified in the Act and the Equal Opportunity Tasmania Business Plan each year. Staff members often collaborate on work across the teams. The teams are Administration; Policy and Research; Training, Education and Development; and Complaints.

Functions of the teams

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

The Policy/Research team consists of the Senior Policy and Project Officer and student interns on an *ad hoc* basis. During the year, the Senior Policy and Project Officer supervised one student intern from the University of Tasmania's Public Policy Internship. The focus of this work was on examining current arrangements available to people with disability for reporting violence, abuse and neglect. This report will contribute to the development of the Disability Justice Strategy for Tasmania currently being prepared by Equal Opportunity Tasmania.

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

Members of the Complaints team are delegated to perform a range of functions specified in the Act in relation to investigating and resolving complaints. The team also works with the Administrative team to respond to enquiries from members of the public about possible complaints. During the year, Investigation and Conciliation Officers Jason Wright, Michelle Parker, Gemma Misrachi and Pia Struwe, were delegated as decision makers during October and November 2015 while the Commissioner was on leave.



Staff members during 2015-16

Anti-Discrimination Commissioner

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

Administrative team

Executive Officers

Katrina Warburton (permanent, part time, commenced parental leave June 2016)

Rebecca Headlam (temporary, part time, commenced June 2016)

Amelia Davies (temporary, part time, commenced August 2015)

Hilary Harris (temporary, part time, finished July 2015)

ADR Co-ordinator and Systems Administrator

Craig Beardwood (permanent, full time)

Administrative Assistant

Ann Harkus (permanent, full time)

Archiving Assistant

Christine Benthien (casual from February to April 2016)

Training, Education and Development team

Senior Training, Education and Development Officer

Roz Smart (permanent, full time)

Training, Education and Development Officer

Louise Adams (permanent, full time)

Policy team

Senior Policy and Project Officer

Leica Wagner (permanent, full time)

Policy Intern

Jack Hodgkinson (temporary, part time, for Semester 1, 2016)

Complaints Team

Investigation and Conciliation Officers

Pia Struwe (permanent, part time)

Michelle Parker (permanent, part time, returned from parental leave July 2015)

Gemma Misrachi (permanent, part time, commenced parental leave October 2015)

Jason Wright (temporary, full time, became permanent, full time in November 2015)

Andrew Muthy (temporary, full time)

Staffing arrangements and changes during the reporting period

Katrina Warburton and Hilary Harris shared the role of Executive Officer with responsibility for day-to-day management of the office, and key administrative and executive support to the Commissioner. Hilary left Equal Opportunity Tasmania in July 2015 to return to her substantive role at the Resource Management and Planning Appeal Tribunal (RMPAT). Amelia Davies commenced part time in August 2015 to replace Hilary. In June 2016, Katrina went on parental leave and Rebecca Headlam started in the role on a part-time basis. Amelia and Rebecca now both work as Executive Officer on a part-time basis, sharing the duties of the role.

Investigation and Conciliation Officer Gemma Misrachi began parental leave in October 2015. Before this, she was working on a part-time basis, 2 days per week. Gemma had a reduced complaint load and did not generally take on the investigation role in relation to complaints, with her focus being on enquiries, assessments and conciliation. Investigation and Conciliation Officer Michelle Parker came back to work from parental leave in July 2015 and works in a part-time capacity, 3 days per week. Investigation and Conciliation Officer Pia Struwe is also part-time, working 4 days per week.

Investigation and Conciliation Officers Jason Wright and Andrew Muthy finished their contracts in November 2015. Jason subsequently was appointed to a permanent full-time position, and Andrew began a second two-year contract.

Christine Benthien worked in the office from February to April 2016 as an Archiving Assistant to progress our archiving and improve our processes for disposal of records.

Interns

The Internship programs provided by the University of Tasmania continue to be valuable to my office. During 2015–16 one student, Jack Hodgkinson, contributed to the Disability Justice Strategy for Tasmania by working 1 day per week during Semester 1, 2016.

Staff training

During the 2015–16 year, staff members participated in training as part of their continuing professional development.

Training provided for all staff members included:

- *Workplace behaviour, where is the line?* Presented in-house by Roz Smart and Louise Adams, Equal Opportunity Tasmania.
- *Understanding the Disability (Access to Premises – Buildings) Standards 2010 (the Premises Standards) and ensuring effective application.* Presented by Michael Small, Michael Small Consulting Pty Ltd.
- *Emotional Debriefing.* Presented by Beverley Schiller, Psychologist.
- *Unconscious bias.* Presented by Beth Incognito, Anti-Discrimination Commission Queensland.
- *Provide First Aid.* Provided by St John Ambulance Australia).
- *HP TRIM refresher.* Provided in-house by Katrina Warburton and Amelia Davies, Equal Opportunity Tasmania.
- *De-escalation training.* Provided by the Department of Justice.

Other major staff development activities include:

Complaints team staff did *Narrative Mediation Training*, provided by Deb Dunn and Chris Weber of The Narrative Centre. They also attended the LEADR *Kongres* held in Hobart, and had a seminar with Deb Forsyth from the Fair Work Commission on conciliation and mediation approaches.

Several staff completed *Creating accessible documents – Word/PDF*, provided by Vision Australia.

A number of other training and development opportunities were attended by staff during the year.

Financial situation and statements

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

The projects for which we received one-off project funding from the Solicitors' Guarantee Fund are largely completed and it is anticipated the last aspects will all be completed in the 2016–17 financial year. This work is reported on elsewhere in this report.

A Financial Statement for the office is provided under Output Group 1 – Administration of Justice in the Department of Justice's Annual Report 2015–16. The Department of Justice Annual Report for 2015–16 and previous years can be found at: http://www.justice.tas.gov.au/about/annual_report_2015-16

Appendix A:

Complaint data for 2015–2016

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

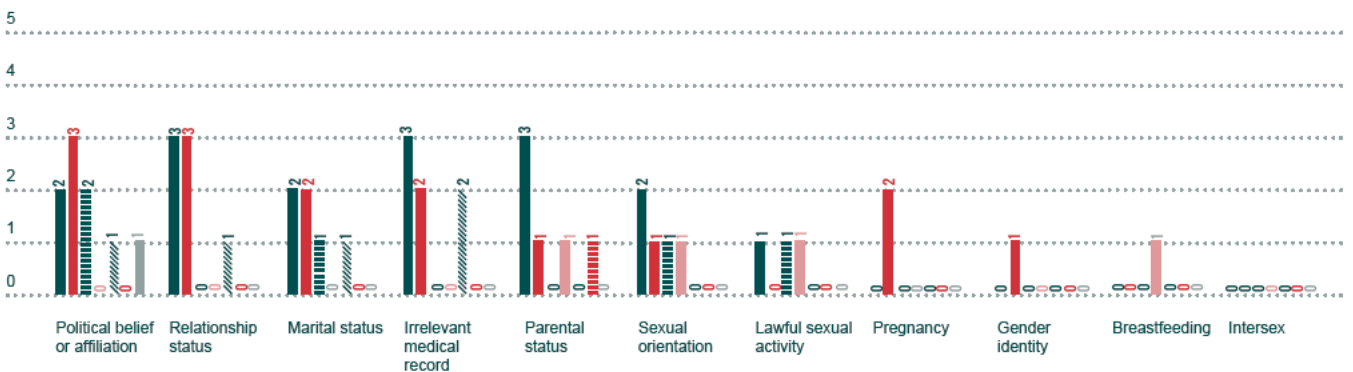
Discrimination on the basis of:	Provision of facilities, goods and services	Employment	Accommodation	Education & training	Administration of State laws and programs	Membership and activities of clubs	Awards, enterprise and industrial agreements
Disability	36	24	5	8	4	0	0
Religious belief or affiliation	12	7	5	1	3	0	1
Race	9	8	3	2	3	1	1
Religious activity	10	4	5	0	3	0	1
Gender	10	8	1	2	0	2	0
Age	7	10	0	3	2	1	0
Industrial activity	3	11	0	1	1	1	0
Association with a person who has, or is believed to have, any of these attributes	9	2	2	3	1	0	0
Irrelevant criminal record	4	4	2	0	1	1	0
Family responsibilities	4	4	0	1	1	1	0
Political activity	3	4	1	1	1	0	1
Political belief or affiliation	2	3	2	0	1	0	1
Relationship status	3	3	0	0	1	0	0
Marital status	2	2	1	0	1	0	0
Irrelevant medical record	3	2	0	0	2	0	0
Parental status	3	1	0	1	0	1	0
Sexual orientation	2	1	1	1	0	0	0
Lawful sexual activity	1	0	1	1	0	0	0
Pregnancy	0	2	0	0	0	0	0
Gender identity	0	1	0	0	0	0	0
Breastfeeding	0	0	0	1	0	0	0
Intersex	0	0	0	0	0	0	0
Total for area of activity	123	101	29	26	25	8	5



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



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



* Please note the different scale on the Y axis of these two graphs

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

	Provision of facilities, goods and services	Employment	Accom- modation	Administration of any State law or program	Education & training	Awards, enterprise and industrial agreements	Membership and activities of clubs
Conduct that is offensive, humiliating, intimidating, insulting or ridiculing on the basis of:							
Disability	24	21	7	4	5	1	0
Race	11	7	5	4	1	1	1
Gender	10	8	3	2	0	0	0
Age	3	9	0	0	1	0	1
Family responsibilities	2	4	0	0	2	0	1
Relationship status	2	3	0	1	1	0	0
Sexual orientation	3	1	1	0	2	0	0
Marital status	2	2	1	1	0	0	0
Gender identity	1	1	1	1	0	0	0
Lawful sexual activity	1	0	1	0	1	0	0
Parental status	1	0	0	0	1	0	0
Pregnancy	0	2	0	0	0	0	0
Breastfeeding	0	0	0	0	1	0	0
Inciting hatred, serious contempt or severe ridicule on the basis of:							
Disability	16	7	3	3	1	1	0
Religious affiliation, belief or activity	6	3	4	4	1	2	0
Race	7	3	3	3	1	2	0
Sexual orientation	4	1	1	0	1	0	0
Lawful sexual conduct	2	0	1	0	1	0	0
Victimisation	18	19	7	6	5	2	1
Sexual harassment	7	4	0	0	2	0	0
Promoting discrimination or prohibited conduct	1	1	0	0	1	0	0
Knowingly causing, inducing or aiding a contravention of the Act	1	1	0	0	0	0	0

Table A3: Complaints involving alleged offensive, insulting, intimidating, humiliating or ridiculing conduct by attribute

	Current year		Previous year		Change	
	2015–16	% of all complaints	2014–15	% of all complaints	Change in number	Change in %
Total complaints	150		142		8	
Complaints in which offensive conduct alleged or identified	87	58.0%	88	62.0%	-1	-4.0%
Disability	50	33.3%	46	32.4%	4	0.9%
Gender	18	12.0%	13	9.2%	5	2.8%
Race	18	12.0%	11	7.7%	7	4.3%
Age	12	8.0%	12	8.5%	0	-0.5%
Family responsibilities	7	4.7%	12	8.5%	-5	-3.8%
Sexual orientation	7	4.7%	11	7.7%	-4	-3.1%
Relationship status	6	4.0%	14	9.9%	-8	-5.9%
Marital status	5	3.3%	8	5.6%	-3	-2.3%
Gender identity	2	1.3%	6	4.2%	-4	-2.9%
Parental status	2	1.3%	3	2.1%	-1	-0.8%
Lawful sexual activity	2	1.3%	3	2.1%	-1	-0.8%
Pregnancy	2	1.3%	2	1.4%	0	-0.1%
Breastfeeding	1	0.7%	0	0.0%	1	0.7%
Intersex	0	0.0%	0	0.0%	0	0.0%

Table A4: Complaints involving alleged incitement to hatred, serious contempt or severe ridicule by attribute

	Current year		Previous year		Change	
	2015–16	% of all complaints	2014–15	% of all complaints	Change in number	Change in %
Total complaints	150		142		8	
Complaints in which incitement alleged or identified	43	28.7%	53	37.3%	-10	-8.7%
Disability	24	16.0%	35	24.6%	-11	-8.6%
Race	11	7.3%	4	2.8%	7	4.5%
Religious belief or affiliation or activity	10	6.7%	5	3.5%	5	3.1%
Sexual orientation or lawful sexual activity	9	6.0%	9	6.3%	0	-0.3%

Table A5: Rejection and dismissal decisions by alleged breaches and attributes

	Rejected	% rejected*	Dismissed	% dismissed*
Allegations of discrimination on the basis of				
Political belief or affiliation	4	66.7%	0	0.0%
Marital status	3	60.0%	0	0.0%
Family responsibilities	5	55.6%	0	0.0%
Religious belief or affiliation	10	52.6%	0	0.0%
Political activity	4	50.0%	2	40.0%
Religious activity	6	46.2%	0	0.0%
Industrial activity	5	45.5%	1	20.0%
Relationship status	2	28.6%	0	0.0%
Age	5	27.8%	5	71.4%
Disability	18	27.3%	7	30.4%
Association	4	26.7%	2	40.0%
Irrelevant medical record	1	25.0%	0	0.0%
Irrelevant criminal record	2	20.0%	0	0.0%
Race	3	17.6%	2	40.0%
Sexual orientation	1	16.7%	1	25.0%
Gender	3	15.8%	2	20.0%
Parental status	0	0.0%	1	50.0%
Gender identity	0	0.0%	1	33.3%
Lawful sexual activity	0	0.0%	0	0.0%
Pregnancy	0	0.0%	0	0.0%
Intersex	n/a		n/a	
Breastfeeding	n/a		n/a	
Allegations of conduct that offends, intimidates, insults, humiliates or ridicules on the basis of				
Marital status	3	60.0%	0	0.0%
Relationship status	3	50.0%	0	0.0%
Family responsibilities	2	28.6%	0	0.0%
Disability	12	25.5%	4	22.2%
Age	3	25.0%	3	60.0%
Gender	3	18.8%	2	25.0%
Race	3	17.6%	1	33.3%
Sexual orientation	1	12.5%	1	25.0%
Parental status	0	0.0%	1	50.0%
Gender identity	0	0.0%	1	20.0%
Pregnancy	0	0.0%	n/a	
Lawful sexual activity	0	0.0%	n/a	
Breastfeeding	n/a		n/a	
Intersex	n/a		n/a	
Allegations of sexual harassment	1	7.7%	0	0.0%
Allegation of causing/aiding/inducing a breach	0	0.0%	0	0.0%
Allegations of victimisation	13	35.1%	4	26.7%
Allegations of promoting a breach of the Act	1	33.3%	n/a	

	Rejected	% rejected*	Dismissed	% dismissed*
Allegations of incitement to hatred, serious contempt or severe ridicule on the basis of				
Religious belief, affiliation or activity	6	54.5%	0	0.0%
Disability	10	41.7%	3	25.0%
Race	1	10.0%	1	33.3%
Sexual orientation	0	0.0%	2	33.3%
Lawful sexual activity	0	0.0%	n/a	
Breach alleged in which area of activity				
Administration of State laws and programs	7	50.0%	0	0.0%
Provision of facilities, goods and services	26	34.2%	5	33.3%
Accommodation	4	33.3%	0	0.0%
Employment	20	31.7%	6	27.3%
Industrial awards and agreements	1	25.0%	0	0.0%
Education and training	2	16.7%	1	20.0%
Membership and activities of clubs	0	0.0%	1	50.0%

* as a percentage of allegations of this breach considered

Table A6: Conciliation outcomes

Outcomes	Current year		Previous year		Change	
	2015–16	%	2014–15	%	Change in number	Change in %
Resolved	55	48.7%	72	56.3%	-17	-7.6%
Not resolved & returned to investigation	30	26.5%	23	18.0%	7	8.6%
Not resolved and referred	8	7.1%	15	11.7%	-7	-4.6%
Withdrawn with no resolution	2	1.8%	1	0.8%	1	1.0%
Withdrawn resolved	2	1.8%	1	0.8%	1	1.0%
Adjourned*	16	14.2%	16	12.5%	0	1.7%
	113		128			

* a significant number of conciliations processes that were adjourned later resulted in resolution

Table A7: Complaint finalisation by organisation type *

	State Government				Private Enterprise			
	2015–16	%	2014–15	%	2015–16	%	2014–15	%
Rejected	14	27.5%	17	45.9%	18	29.5%	12	26.1%
Part rejected, part resolved	0	0.0%	0	0.0%	1	1.6%	0	0.0%
Resolved by conciliation or negotiation	15	29.4%	8	21.6%	21	34.4%	18	39.1%
Part resolved, part dismissed	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Dismissed	8	15.7%	2	5.4%	5	8.2%	3	6.5%
Referred to ADT after investigation complete	3	5.9%	0	0.0%	3	4.9%	1	2.2%
Part dismissed, part referred to ADT after investigation	0	0.0%	1	2.7%	0	0.0%	0	0.0%
Referred to ADT after 6-month expiry date	0	0.0%	1	2.7%	0	0.0%	1	2.2%
Part resolved, part withdrawn	1	2.0%	0	0.0%	0	0.0%	0	0.0%
Part resolved, part referred to ADT after investigation	2	3.9%	0	0.0%	0	0.0%	0	0.0%
Part resolved, part referred to ADT at 6 months	1	2.0%	0	0.0%	0	0.0%	0	0.0%
Part resolved, part referred to ADT after conciliation	0	0.0%	0	0.0%	1	1.6%	0	0.0%
Withdrawn, resolved	2	3.9%	2	5.4%	5	8.2%	1	2.2%
Withdrawn, not resolved	1	2.0%	1	2.7%	1	1.6%	5	10.9%
Withdrawn, referred	0	0.0%	0	0.0%	0	0.0%	1	2.2%
Referred to ADT after unsuccessful conciliation	0	0.0%	3	8.1%	4	6.56%	4	8.7%
Combined with another complaint	4	7.8%	2	5.4%	2	3.28%	0	0.0%

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

Non-Profit		Local Government				Commonwealth Government					
2015-16	%	2014-15	%	2015-16	%	2014-15	%	2015-16	%	2014-15	%
1	5.0%	10	41.7%	3	42.9%	0	0.0%	2	100.0%	3	100.0%
0	0.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	
11	55.0%	6	25.0%	3	42.9%	3	42.9%	n/a		n/a	
0	0.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	
2	10.0%	2	8.3%	0	0.0%	0	0.0%	n/a		n/a	
2	10.0%	0	0.0%	0	0.0%	1	14.3%	n/a		n/a	
0	0.0%	1	4.2%	0	0.0%	0	0.0%	n/a		n/a	
2	10.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	
0	0.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	
0	0.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	
0	0.0%	1	4.2%	0	0.0%	0	0.0%	n/a		n/a	
0	0.0%	2	8.3%	0	0.0%	0	0.0%	n/a		n/a	
2	10.0%	1	4.2%	1	14.3%	1	14.3%	n/a		n/a	
0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
0	0.0%	1	4.2%	0	0.0%	2	28.6%	n/a		n/a	
0	0.0%	0	0.0%	0	0.0%	0	0.0%	n/a		n/a	

Table A8: Complaints by industry sector

	Industry sector					Current year		Previous year		Change	
	Private Ent.	State Gov't	Non-profit	Local Gov't	Federal Gov't	Sector total 2015-16	2015-16 %	Sector total 2014-15	2014-15 %	Change in total	Change in %
Government Administration	0	18	0	6	2	26	19.1%	36	26.1%	-10	-7.0%
Education	2	8	8	0	0	18	13.2%	12	8.7%	6	4.5%
Health and Community Services	3	6	6	1	0	16	11.8%	29	21.0%	-13	-9.2%
Cultural and Recreational Services	9	0	6	0	0	15	11.0%	10	7.2%	5	3.8%
Retail Trade	12	0	0	0	0	12	8.8%	5	3.6%	7	5.2%
Personal and Other Services	7	0	4	0	0	11	8.1%	4	2.9%	7	5.2%
Transport and Storage	8	2	0	0	0	10	7.4%	8	5.8%	2	1.6%
Finance and Insurance	9	0	0	0	0	9	6.6%	8	5.8%	1	0.8%
Accommodation, Cafes and Restaurants	6	1	0	0	0	7	5.1%	10	7.2%	-3	-2.1%
Property and Business Services	3	0	0	0	0	3	2.2%	5	3.6%	-2	-1.4%
Communication Services (Information/ Media)	2	0	1	0	0	3	2.2%	4	2.9%	-1	-0.7%
Agriculture, Forestry and Fishing	1	1	0	0	0	2	1.5%	1	0.7%	1	0.7%
Professional, scientific & technical	1	0	0	0	0	1	0.7%	0	0.0%	1	0.7%
Electricity, Gas and Water Supply	0	1	0	0	0	1	0.7%	2	1.4%	-1	-0.7%
Mining	1	0	0	0	0	1	0.7%	0	0.0%	1	0.7%
Wholesale Trade	1	0	0	0	0	1	0.7%	0	0.0%	1	0.7%
Manufacturing	0	0	0	0	0	0	0.0%	2	1.4%	-2	-1.4%
Construction	0	0	0	0	0	0	0.0%	1	0.7%	-1	-0.7%
Unknown	0	0	0	0	0	0	0.0%	1	0.7%	-1	-0.7%

Table A9: Complaint assessment and investigation decisions

	2015-16	%	2014-15	%	Change in number	Change in %
Assessment decisions	147		139		8	
Accepted	102	69.4%	91	65.5%	11	3.9%
Rejected	45	30.6%	48	34.5%	-3	-3.9%
Investigation decisions	44		46		-2	
Dismissed	13	29.5%	8	17.4%	5	12.2%
Proceed to conciliation	16	36.4%	25	54.3%	-9	-18.0%
Decline to refer and dismiss	5	11.4%	2	4.3%	3	7.0%
Referred to inquiry by ADT	10	22.7%	11	23.9%	-1	-1.2%
Decision not made, automatic referral	2		2		0	

Appendix B:

Decisions and orders available to the Commissioner and the Tribunal

Rejection by Commissioner

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

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

Dismissal by Commissioner

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

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

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

Upheld by Tribunal

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

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

- (a) *an order that the respondent must not repeat or continue the discrimination or prohibited conduct;*
 - (b) *an order that the respondent must redress any loss, injury or humiliation suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;*
 - (c) *an order that the respondent must re-employ the complainant;*
 - (d) *an order that the respondent must pay to the complainant, within a specified period, an amount the Tribunal thinks appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's discrimination or prohibited conduct;*
 - (e) *an order that the respondent must pay a specified fine not exceeding 20 penalty units;*
 - (f) *an order that a contract or agreement is to be varied or declared void in whole or in part;*
 - (g) *an order that it is inappropriate for any further action to be taken in the matter;*
 - (h) *any other order it thinks appropriate.*
- (2) *If the Tribunal finds after an inquiry that a complaint against a State Service officer or State Service employee is substantiated, it may order the Minister responsible for the Agency in which that officer or employee is employed to exercise any one or more of the powers specified in section 10 of the State Service Act 2000.*
- (3) *If the Tribunal makes an order under subsection (2), the inquiry held under this Act is taken to be a determination arising from an investigation under section 10 of the State Service Act 2000.³*

...

The Tribunal may also:

... require the respondent to –

- (a) apologise to the complainant; and*
- (b) make any retractions the Tribunal considers appropriate.⁴*

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

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

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

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

Appendix C:

Anti-Discrimination Tribunal

For more information about the Anti-Discrimination Tribunal functions and activities during 2015–16, you can access the Tribunal’s Annual Report at http://www.justice.tas.gov.au/tribunals/tribunal_sites/Anti-Discrimination_Tribunal.

Tribunal membership

Tribunal membership during 2015–16 was as follows:

- Stephen Carey (Member and Chair – South)
- Stephen Bishop (Member – North)
- Michael Brett (Member – North)
- Jennifer Bridge-Wright (Member – South)
- Simon Brown (Member – North)
- Rodney Chandler (Member – South)
- Kate Cuthbertson (Member – South)
- Glenn Hay (Member – South)
- Cathryn McKenzie (Member – Other)
- Audrey Mills (Member – South)
- Margaret Otlowski (Member – South)
- Robert Winter (Member – South)

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

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

Contact the Tribunal:

Registrar

Anti-Discrimination Tribunal
Level 7, NAB House
86 Collins Street, Hobart

Phone: (03) 6166 4750

Fax: (03) 6234 3304

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

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

Contact

If you have any questions about the work of the Anti-Discrimination Commissioner 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 in Word and PDF at http://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

Web SMS: 0409 401 083

Fax: (03) 6173 0207

Translating and Interpreting Service: 131 450

National Relay Service

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

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

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

Post: GPO Box 197, Hobart TAS 7001

Facebook: <https://www.facebook.com/Equal-Opportunity-Tasmania-office-of-the-Anti-Discrimination-Commissioner-212480648838657/?ref=hl>

Twitter: @tasadc

Website: <http://www.equalopportunity.tas.gov.au>

