

**Equal Opportunity
Tasmania**
Annual Report
2020–21

Unexpected kindness
is the most powerful,
least costly, and most
underrated agent of
human change.

Bob Kerrey

The Honourable Elise Archer, MP
Attorney-General
Minister for Justice
Parliament House, Hobart

Dear Attorney-General

As required by section 10 of the *Anti-Discrimination Act 1998* (Tas), it is my pleasure to present the 22nd Annual Report on the operation of the *Anti-Discrimination Act 1998*.

This report covers the activities of my office from 1 July 2020 to 30 June 2021.

I commend the report to you.



Sarah Bolt
Anti-Discrimination Commissioner

30 September 2021

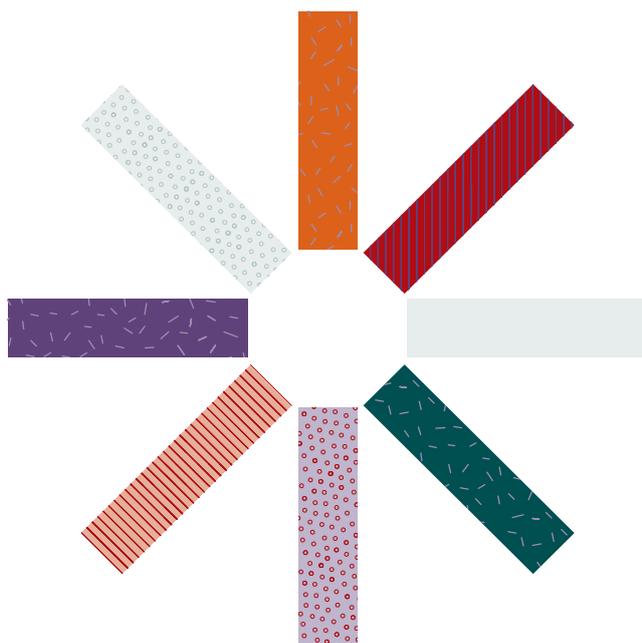
This Annual Report outlines the activities of the Anti-Discrimination Commissioner and Equal Opportunity Tasmania in 2020–21.

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

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



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From the Commissioner



Last year the impacts of COVID-19 were only just beginning to be felt. A year on, COVID-19 continues to lead the national news. Tasmania has, to date, been largely spared from the uncertainty and disruptions experienced and endured by other States.

My office, Equal Opportunity Tasmania (EOT), has been remarkably fortunate to be able to operate on a business as usual basis. This has enabled us to deal with complaints as expeditiously as possible, deliver training and education programs and pursue community initiatives.

I am pleased to report that EOT was the first of the Department of Justice outputs to develop and launch a Reflective Action Plan Aboriginal and Torres Strait Islander People (RAP). We are proud of the completion of the first inward focused stage of our RAP which has given us a greater awareness, understanding and appreciation of the history and culture of Tasmanian Aboriginal Peoples. On behalf of EOT staff, I must say that our cultural learnings have been and continues to be a worthy and enjoyable one.

EOT's 2020 Human Rights Week Awards provided a poignant highlight in December. Twenty-one individuals or community based organisations received an award for acts of kindness and compassion.

In March 2021, we commenced the delivery of an education program 'Girls Can Be Heroes' at Mary Hutchinson's Prison for Women. The program has proven to be well received and well attended.

Last year I reported that complaint forms can be lodged online. This change has, as anticipated, resulted in an increase of complaint numbers.

An unfortunate reality is that discrimination, prohibited conduct and sexual harassment continues to be a part of many people's life experience. For decades we, in Australia, have had federal and state legislation implemented for the purpose of reducing or eliminating discrimination and associated behaviours and yet they persist. For many years I have pondered why this continues to be the case.

I have concluded that the answer is quite simple. Society would be a fairer, kinder and less discriminatory place if people treated others with respect. Invariably everybody would prefer to be treated with respect and to feel accepted as part of the community and safe in our daily lives.

Too often people live in their own silos exercising their own needs and opinions. A potential consequence is to treat those who are different less favourably.

If everybody were to exercise empathy by standing, even for a moment, in the shoes of those who they consider to be different or inferior then Tasmania, Australia, the World would be a better place.

On behalf of EOT I thank all government and non-government stakeholders with whom we have worked and collaborated with over the reporting period.

Special thanks must go to the Department of Justice for providing the administrative support and technical assistance which enables us to administratively function at a high level.

A fundamental role of EOT is to advocate to the highest standard for the legislation which we administer. Our reputation must be founded on the basis that we act with integrity, impartiality and independence.

I take this opportunity to express my gratitude and appreciation to those who work with me. Their commitment, professionalism and collegiality is to be commended.



Sarah Bolt
Anti-Discrimination Commissioner

Our work at a glance

190 complaints received

34 days average assessment
timeframe of a complaint

74 complaints proceeded to
conciliation

577 enquiries answered from members
of the public

38 *Report it!* reports received

256 training, education and
development sessions delivered

10 exemption applications granted

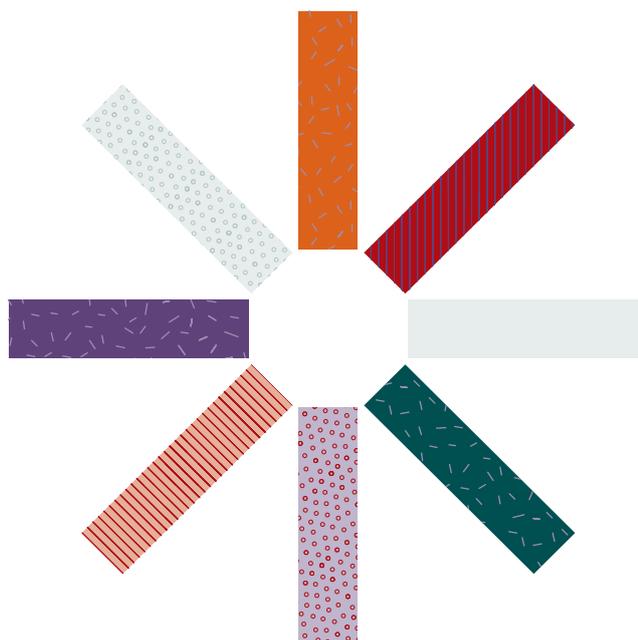
1 Aims and principles

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

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

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

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



2 Complaint handling

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

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

- discrimination on the basis of one or more of 22 protected attributes;
- conduct that offends, humiliates, intimidates, insults or ridicules on the basis of one or more of 14 protected attributes;
- sexual harassment;
- incitement, by a public act, to hatred, serious contempt or severe ridicule on the basis of one or more of 8 protected attributes;
- promoting discrimination and prohibited conduct;
- knowingly causing, aiding or inducing another person to breach the Act; and/or
- victimisation: which is protection against retaliation for making a complaint or participating in the complaint process.

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

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

In 2020–21, 190 complaints were received under the Act (Table 2.1). This is a significant increase from 166 complaints received in 2019–20. Note, 24 of the 166 complaints received in 2019–20 were made by one person.

Of the 190 complaints received, 8 concerned COVID-19 related issues.

105 of the 190 complaints were received by the online complaint form. The online complaint form was introduced in May 2020 providing a more accessible means for people to lodge a complaint.

Table 2.1 Type of breach alleged

	Current year 2020-21	Previous year 2019-20
Total complaints	190	166
Allegations raised in complaints		
Discrimination	312	409 ¹
Conduct that offends, humiliates, intimidates, insults or ridicules	205	262 ²
Victimisation	97	74 ³
Incitement	71	102 ⁴
Sexual harassment	17	14
Promoting discrimination and prohibited conduct	0	4
Causing, inducing or aiding a breach	0	1

¹184 of the 409 allegations of discrimination related to complaints made by one complainant.

²116 of the 262 allegations of offensive conduct related to complaints made by one complainant.

³23 of the 74 allegations of victimisation related to complaints made by one complainant.

⁴48 of the 102 allegations of incitement related to complaints made by one complainant.

Discrimination

During 2020–21, as in most previous reporting periods, disability continues to be the most complained about attribute, with it being identified in 85 of the 312 allegations of discrimination (27%) (Table 2.2).

The next highest levels of discrimination allegations related to the attributes of race (10%), age (8%) and gender (6%). For the second reporting period in a row, race has been the second most complained about attribute.

Table 2.2 Allegations of discrimination by attribute

	Current year 2020-21	Previous year 2019-20
Total complaints in which discrimination alleged or identified	312	409
Disability	85	91
Race	30	36
Age	25	22
Gender	19	33
Industrial activity	18	20
Irrelevant medical record	17	16
Family responsibilities	15	18
Irrelevant criminal record	13	8
Religious belief or affiliation	10	9
Association with a person who has, or is believed to have, any attribute	10	33 ⁵
Parental status	10	15
Marital status	8	11
Relationship status	8	10
Sexual orientation	7	10
Pregnancy	6	6
Political activity	6	14
Political belief or affiliation	6	17
Religious activity	5	9
Gender identity	4	12
Intersex variations of sex characteristics	3	8
Lawful sexual activity	3	5
Breastfeeding	2	5
Unknown	2	1

⁵ The majority of allegations of discrimination on the basis of association in 2019–20 (33) were made by one complainant in 24 complaints.

As noted earlier, for discrimination to be unlawful it must be connected with an area of activity. In 2020–21, for complaints alleging discrimination the main area of activity was employment followed by the provision of facilities, goods and services.

Complaint case studies

Child with disability excluded from school

A complaint was lodged by parents of a child with disability. Due to behavioural issues, the child was excluded from their school. The complainants alleged the school did not adequately consult with them regarding their child's behaviour, including whether the child should undertake an assessment for autism.

The respondent said the child had demonstrated behaviour which the school deemed a risk to students and staff.

The parties attended a conciliation conference conducted by Equal Opportunity Tasmania. The parties were not legally represented, however the complainants brought an advocate for children with disability as they thought it would be helpful when discussing the complaint matters.

The complaint was resolved at the conciliation conference, with the respondent agreeing to:

- a reimbursement of school funds;
- a letter of acknowledgement;
- provision of its newly reviewed policies to the complainants;
- a targeted professional development exercise to be undertaken by involved staff; and
- discrimination training for the entire staff of the school.

Racial discrimination complaint did not show link to race

The complainant alleged that their lease had been terminated due to their racial background, and they were the only non-Australian to be evicted.

The respondent said that the eviction took place because the complainant owed rent.

The investigation considered the true and genuine reason for the conduct, and whether there was any connection between the termination of the lease and the race of the complainant. The complainant was unable to show conduct by the respondent which was connected to their race.

The Commissioner heard from all parties during the investigation and decided to dismiss the complaint on the basis it did not relate to discrimination or prohibited conduct.

Prohibited conduct

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

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

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

	Current year 2020-21	Previous year 2019-20
Total complaints in which offensive conduct alleged or identified	205	262⁶
Disability	68	74
Race	29	35
Gender	18	27
Age	16	20
Family responsibilities	15	21
Parental status	12	11
Marital status	9	11
Gender identity	8	12
Relationship status	7	13
Sexual orientation	6	12
Pregnancy	6	7
Intersex variations of sex characteristics	4	7
Lawful sexual activity	4	6
Breastfeeding	3	6

⁶The majority of allegations of offensive conduct related to complaints made by one complainant. For data breakdown refer to Equal Opportunity Tasmania's Annual Report 2019–20.

Of the other types of prohibited conduct:

- Allegations of sexual harassment increased from 14 in 2019–20 to 17 in 2020–21.
- Allegations of victimisation increased from 74 in 2019–20 to 97 in 2020–21.
- There were no allegations of causing, inducing or aiding a breach of the Act or promoting discrimination and prohibited conduct in 2020–21.

Employment and the provision of facilities, goods and services were again the most identified areas of activity.

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

Allegations of incitement to hatred, serious contempt or severe ridicule show a decrease in 2020–21 compared with the previous year (Table 2.4). However, excluding the 48 complaints made by one complainant in the previous period, there was actually an increase in the total number of incitement complaints.

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

	Current year 2020-21	Previous year 2019-20
Complaints in which incitement alleged or identified	71	102⁷
Disability	30	41
Race	17	27
Religious belief or affiliation or activity	11	12
Gender identity	6	5
Intersex variations of sex characteristics	3	1
Sexual orientation	2	10
Lawful sexual activity	2	6

⁷48 of the 102 allegations of incitement related to complaints made by one complainant.

Who makes complaints and who they are against

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

Most complaints are received from individuals who either complain on their own behalf or on behalf of another person or group (Table 2.5). Most of the complaints made by a person on behalf of another are made by a parent on behalf of their child or a family member on behalf of a person with disability.

In 2020–21, 190 complaints were made by 194 complainants against 371 respondents.

Table 2.5 Complaints: complainants and respondents

	Current year 2020-21	Previous year 2019-20
Number of complainants	194	176
Individual complainants	194	176 ⁸
Male	104	71
Female	89	102 ⁹
Other ¹⁰	1	3
Organisation or group complainants	0	0
Number of respondents	371	276
Individual respondents	186	106
Male	109	54
Female	77	52
Organisation or group respondents	185	170

⁸24 complaints were made by one complainant.

⁹24 complaints were made by one complainant.

¹⁰Other includes complainants who are non-binary and transgender or prefer not to say.

Complaint case studies

Complaint results in accessible dog park

The complainant uses a wheelchair and has a small dog. The local off lead dog exercise area was inaccessible to wheelchair users. The complainant was unable to exercise her dog and made a complaint against her local council, the respondent.

The respondent worked proactively with the complainant to resolve the complaint. The complaint resolved at conciliation with the respondent agreeing to establish an accessible, off lead, dog exercise area that could be used by the complainant.

Person engaging in racial abuse online found and asked to respond to complaint

Equal Opportunity Tasmania received a complaint from a Taiwanese man, who had advertised a room for rent on Facebook. Another Facebook user had made a series of racially abusive comments on the post, and claimed (among other things) the man was responsible for the COVID-19 pandemic.

Other than a profile picture and Facebook user name, no other contact details were provided for the respondent.

Equal Opportunity Tasmania worked with Tasmania Police to find the real world identity of the person who had made the abusive comments online. The person was found, personally served with the complaint, and asked to respond.

The respondent did not attend conciliation, claiming they had another appointment on at the same time as the conciliation conference. The complaint was referred to the Anti-Discrimination Tribunal for inquiry.

Respondent organisation type identified in complaints

Organisational respondents are categorised according to their type.

In 2020–21, State government entities were the most complained about respondent type, this is consistent with previous years. Private enterprise respondents were second highest, followed by non-profit entities and local government (Table 2.6).

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

Table 2.6 Complaints by primary respondent organisation type

	Current year 2020-21	Previous year 2019-20
State government entities	51	54
Private enterprise	49	45
Non-profit entities	46	29
Local government	12	8
Federal government	1	5

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

Access to legal representation, advocacy and support

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

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

In 2020–21, of the 190 complaints under the Act:

- 18 complainants (9%) had a lawyer at some stage during the complaint process.
- 23 complainants (12%) had an advocate or other representative involved at some time during the complaint process.
- Of the primary respondents, 30 (16%) had a legal representative (private lawyer or in-house counsel) and 12 (6%) involved another representative at some stage during the complaint process.

These figures are consistent with the previous reporting year.

Assessment

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

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

Acceptance of a complaint does not mean the complainant has proved they have been discriminated against or subjected to prohibited conduct. Rather, it means the complaint satisfies the requirements of the Act and discloses possible breach/es of the Act based on what the complainant alleged has happened.

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

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

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

An overview of complaint assessment decisions made in 2020–21 is shown in Table 2.7.

Table 2.7 Complaint assessment decisions

	Current year 2020-21	Previous year 2019-20
Assessment decisions	169	163
Accepted	98	81
Rejected	41	76 ¹¹
Part accepted/rejected	13	6
Part rejected/not accepted	12	0
Not accepted	5	0

¹¹38 of the decisions to reject were in relation to complaints made by one complainant. Several of these complaints were combined, and then rejected.

Of the 169 assessment decisions made by the Commissioner in 2020–21:

- 12 complaints were received in 2019–20 and the remaining 157 were received in 2020–21.
- 98 complaints (58%) were accepted (up from 50% in 2019–20).
- 41 complaints (24%) were rejected (down from 47% in 2019–20).
- 13 complaints (8%) were part accepted and part rejected (up from 4% in 2019–20).
- 12 complaints (7%) were part rejected and part not accepted.
- 5 complaints (3%) were not accepted.

Of the 41 complaints rejected under section 64 of the Act:

- 14 complaints were lacking in substance or misconceived.
- 22 complaints did not relate to discrimination or prohibited conduct.
- 2 complaints had already been adequately dealt with by the Commissioner, a State authority or a Commonwealth statutory authority.
- 3 complaints were rejected as they could be more effectively dealt with by another statutory authority.

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

The average timeframe for a complaint to be assessed during the reporting period was 34 days (up from 32 days in 2019–20).

Early conciliation

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

During 2020–21, 56 early conciliations were held (down from 62 in 2019–20). Of these:

- 25 complaints (45%) were resolved.
- 28 complaints (50%) were not resolved and returned to investigation.
- 2 complaints (3%) were withdrawn resolved.
- 1 complaint (2%) was not resolved and referred to Tribunal.

Investigation

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

Outcome of investigations

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

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

During the reporting period, investigations were finalised in relation to 30 complaints (Table 2.8).

Of the 30 investigations finalised:

- 12 complaints (40%) were referred to the Tribunal for inquiry.
- 11 complaints (37%) were dismissed.
- 6 complaints (20%) proceeded to post-investigation conciliation.
- 1 complaint (3%) was part-dismissed and part-referred to the Tribunal for inquiry.

Table 2.8 Complaint investigation decisions

	Current year 2020-21	Previous year 2019-20
Investigation decisions	30	43
Referred to inquiry by Tribunal	12	20
Dismissed	11	12
Proceed to conciliation	6	7
Part dismissed, part referred	1	1

Complaint case studies

Race complaint referred to Anti-Discrimination Tribunal

The complainant alleged discrimination, conduct that is offensive, humiliating, intimidating, insulting or ridiculing, and incitement on the basis of race in the area of accommodation. He alleged that his next door neighbour, and friends of his neighbour, damaged his property, assaulted him and wrote 'black dogs' on his fence.

The respondents to the complaint did not engage with Equal Opportunity Tasmania and did not provide a response to the complaint. No conciliation was attempted because of this.

There was no basis to dismiss the complaint and it was referred to the Anti-Discrimination Tribunal for inquiry (hearing).

Note: The Anti-Discrimination Tribunal has previously held that accommodation is the relevant area of activity when a complaint involves incidents between neighbours that impact on the quality of a complainant's accommodation.

Dispute about access with a guide dog

The complainant uses a guide dog. She sought to book an appointment with a service provider, whose rooms were on the second level.

The complainant alleged she was denied an appointment which would take place in the privacy of the second floor, after the service provider told her the stairs were too dangerous for her and her guide dog.

The complainant said she told the service provider her guide dog allows her to go anywhere a person without disability would go, but the appointment was still refused.

The service provider denied discrimination, stating that the stairs posed a risk because they were too steep and narrow, and that alternatives were offered, including an appointment in the shop front, or a referral to another service.

The complaint was resolved at conciliation. The service provider agreed to undertake discrimination training with a focus on disability, and provided a written apology to the complainant.

Complaint case studies

***Fair Work Act* defence raised – meaning Anti-Discrimination Tribunal would not have jurisdiction to deal with complaint**

The raising of Federal matters during the complaint process continues to create barriers for access to justice.

The complainant alleged her employment with the respondent ended for discriminatory reasons relating to her pregnancy. In the response, the respondents referred to a provision in the *Fair Work Act 2009* (Cth) in relation to parental leave entitlements. By doing so, the respondent had raised a 'Federal matter'. As the complaint now involved a Federal matter, the Anti-Discrimination Tribunal would not have jurisdiction to deal with the complaint.

The Anti-Discrimination Commissioner informed the parties of the jurisdictional issue.

The parties were able to negotiate a resolution to the complaint. Had they not been able to reach resolution, the complaint would not have been able to be referred to the Tribunal and it is unclear what other options would have been available to the complainant to pursue the complaint.

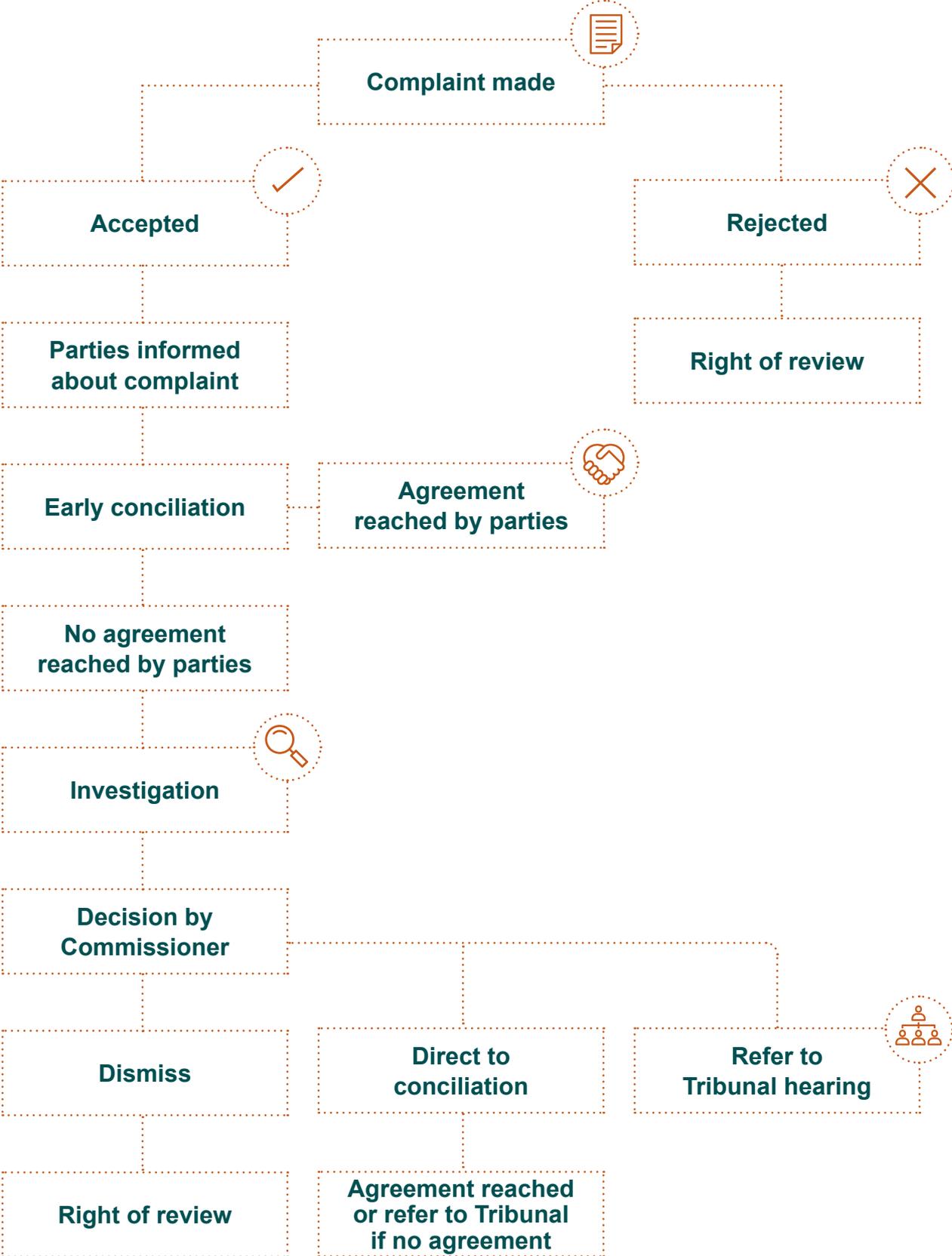
Disability complaint resolved

The complainant, recently diagnosed with Multiple sclerosis (MS) attended a music event. Security determined she was alcohol affected and told her not to consume more alcohol in the venue. Her friends advised security of her medical condition which presented in part as unsteadiness. Security approached the complainant three times telling her to go home and eventually evicted her from the venue.

The respondent denied discrimination, and argued that the decisions made related to the complainant's presentation, its obligation to the responsible service of alcohol and compliance with relevant legislation.

The complaint was resolved at conciliation. The respondent provided the complainant with vouchers for accommodation and a meal.

Complaint flowchart



Outcome of conciliations

The total outcomes of all conciliations held during the reporting period, including early and post-investigation conciliation conferences (Table 2.9).

Table 2.9 Conciliation outcomes

	Current year 2020-21	Previous year 2019-20
Conciliations held	74	85
Resolved	36	54
Not resolved and returned to investigation	28	24
Not resolved and referred to the Tribunal	4	4
Withdrawn resolved	4	1
Withdrawn with no resolution	1	1
Adjourned	1	1

Please note that if a complaint cannot be resolved through post-investigation conciliation, the Act requires the Commissioner to automatically refer the complaint to the Anti-Discrimination Tribunal for inquiry.

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

- The respondent/s providing an apology/acknowledgement to the complainant.
- The respondent/s paying compensation and/or economic loss recovery to the complainant. During 2020–21, the compensation amounts ranged from \$500 to \$43,500.
- The respondent/s reviewing its anti-discrimination and complaint policies and procedures.
- The complainant’s concern registered/heard.
- The respondent/s agreeing to make modifications.

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

During 2020–21:

- 49 conciliations were held in Hobart.
- 14 conciliations were held by tele or video conference or negotiations without a meeting.
- 4 conciliations were held in Devonport.
- 4 conciliations were held in Burnie.
- 2 conciliations were held in Launceston.
- 1 conciliation was held in Deloraine.

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

- Legal Aid Commission of Tasmania, Launceston;
- Devonport Community and Health Services Centre; and
- Deloraine House.

Withdrawals

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

During the reporting period, there were a total of 41 complaint withdrawals. Of these, 16 complaints were withdrawn because they had resolved, 23 were withdrawn where there was no resolution and 2 complaints were part-rejected and part-withdrawn.

Finalising complaints

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

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

During the reporting period, 173 complaints were finalised. This is a slight decrease when compared to 188 complaints finalised in 2019–20.

Timeliness of the complaint process

The average time from receipt to finalisation for complaints finalised in 2020–21 has remained consistent with the previous year. In 2020–21:

- 78% of complaints were finalised within 6 months, the same as in 2019–20.
- 92% within 9 months, compared to 93% in 2019–20.
- 99% within 12 months, compared to 97% in 2019–20.

Complaint case studies

Sexual orientation complaint resolved

The complainants, in a same sex relationship sought support to find accommodation. They alleged they were treated less favourably by a service provider on the basis of their sexual orientation when suggestions about possible accommodation options were provided to them. The complainants also alleged less favourable treatment in the allocation of support services whereby they were not treated as individual clients.

The respondent denied discrimination, asserting it provided services to the complainants to assist them to find safe, appropriate and suitable accommodation. The respondent asserted it provided services to the complainants in accordance with its policies, procedures and code of conduct.

The complaint was resolved at conciliation through Equal Opportunity Tasmania. The respondent agreed to provide an acknowledgement and apology to the complainants, confirm training in relation to LGBTIQ+ for all Tasmanian employees and the development of the implementation of a support agreement that would include rights and responsibilities, roles and expectations related to the service to be provided by the respondent to its clients.

Complaint of victimisation resolved at conciliation

The complainant alleged victimisation after she had raised concerns about discrimination on the basis of gender in education and training. The complainant alleged that after she had complained about discrimination her e-mails were not responded to and she was not approved to undertake the voluntary duties previously undertaken before she complained.

The respondent denied victimisation, asserting that due to COVID-19 restrictions the activity it carried out was reduced and the number of volunteers at the complainants' level were also reduced. The respondents also noted a review had taken place in regards to how its service was provided which also led to a reduction of volunteers.

The complaint was resolved through conciliation with the respondent agreeing to provide an acknowledgement to the complainant as agreed to by the parties at the conciliation.

Complaint case studies

Complaint about performance management

The complainant, who suffers with anxiety, depression, and catastrophic thinking, alleged she was discriminated against and subjected to offensive conduct because of her disability in employment. The complainant alleged she wasn't meeting key performance indicators because of her disability and was placed on several performance management plans. She alleged her employer denied her requests to pause the current performance management plan to allow her to see her psychologist and become well again.

The employer denied discrimination. The employer alleged that following absences from the workplace it had arranged for the complainant to attend an independent medical assessment. The assessment found she was fit to work full-time. The employer relied on that advice.

The complaint was resolved at conciliation conducted by Equal Opportunity Tasmania. The parties agreed to end the employment relationship. The employer paid the complainant a settlement sum of \$7,800.

Political activity complaint resolved

The complainant, who engaged in political activities opposing a development in her local community, alleged the developer discriminated against her by banning her from other sites and services the developer owned.

The developer denied discrimination and alleged the reason for the ban was because of the complainant's aggressive behaviour towards members of the developer, and not her political activity.

Following conciliation conducted by Equal Opportunity Tasmania, the parties continued to negotiate between themselves. The parties resolved the complaint by entering into a mutual undertaking. The complainant agreed to act in a respectful manner towards members of the developer. The developer agreed to allow the complainant access to other sites and services the developer owned as long as the complainant acted respectfully. The complainant then withdrew her complaint.

Anti-Discrimination Tribunal

Under section 13 of the Act, the Anti-Discrimination Tribunal’s functions in relation to complaints made under the Act are to:

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

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 2020–21, 16 reviews were sought of the Commissioner’s decision to reject or part-reject a complaint.

During the reporting period, 22 review applications were finalised by the Tribunal, including some reviews that were sought in the previous year. Of these, in 9 reviews the Tribunal had no jurisdiction to conduct the review, 8 review decisions upheld the Commissioner’s rejection decision, 4 were withdrawn and 1 upheld the Commissioner’s rejection decision in part and overturned it in part. There were 4 reviews pending a Tribunal decision at the end of the reporting period (Table 2.10).

Please note that the ‘No jurisdiction to conduct review’ outcomes relate to 9 reviews of rejections sought in 2017 (8 by the same person). The Commissioner rejected all of these 9 complaints because they were made out of time. Subsequent to the review applications being made to the Tribunal in 2017, in May 2020 the Supreme Court in *Bullard v Anti-Discrimination Tribunal* [2020] TASSC 15 held that the Commissioner not accepting a complaint out of time is not a ‘rejection’ and the Tribunal does not have jurisdiction to review these decisions. Rather, the decisions can only be reviewed by the Supreme Court by way of judicial review. Accordingly, the Tribunal had no jurisdiction to conduct these reviews.



Table 2.10 Outcomes of rejection reviews finalised by the Tribunal in 2020-21

No jurisdiction to conduct review	9
Commissioner's rejection decision upheld by the Tribunal	8
Reviews withdrawn	4
Rejection decision upheld in part and overturned in part	1

Review of decision to dismiss

In 2020–21, 4 reviews were sought of the Commissioner's decision to dismiss or part-dismiss a complaint. During the reporting period 3 dismissal reviews were finalised; 2 were upheld and 1 withdrawn (Table 2.11).

Table 2.11 Outcomes of dismissal reviews finalised by the Tribunal in 2020-21

Reviews upheld	2
Reviews withdrawn	1

Referral to the Tribunal for Inquiry

In 2020–21, 19 complaints were referred either in their entirety or in part to the Anti-Discrimination Tribunal for inquiry (hearing).

During the reporting period, 26 complaints were finalised by the Tribunal. Some of these complaints were referred during previous financial years. Of these, 15 complaints were withdrawn, 4 were resolved before hearing, 3 were dismissed at hearing, 2 were dismissed before hearing and 2 complaints were upheld (Table 2.12). There were 17 complaints pending a Tribunal decision at the end of the reporting period.

Table 2.12 Referred complaints finalised by the Tribunal in 2020-21

Complaints withdrawn	15
Resolved before hearing/conciliation	4
Complaints dismissed at hearing	3
Complaints dismissed before hearing	2
Complaints upheld	2

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

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

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

Barrier to access to justice

In 2020, the Supreme Court of Tasmania in *Bullard v Anti-Discrimination Tribunal* [2020] TASSC 15 (Bullard) drew a distinction between when a complaint is 'not accepted' and when a complaint is 'rejected'.

For example, if a complaint is made out of time and the Anti-Discrimination Commissioner does not exercise her discretion to accept it out of time, following the Bullard decision, this is not a rejection but a non-acceptance. The Bullard decision also identifies other circumstances where the Commissioner is unable to accept complaints.

This distinction has resulted in the application of the *Anti-Discrimination Act 1998* (Tas) (the Act) becoming more complex and less accessible to people. In the last year, this office has had situations where complaints have been part-accepted, part-not accepted, and part-rejected. This has caused confusion for parties. It has also meant for some complainants that they face the complexity of having to seek a review in two separate jurisdictions.

Under the Act, a person whose complaint has been rejected can apply to the Anti-Discrimination Tribunal for that rejection to be reviewed. In Bullard, the Supreme Court held that if a complaint is not accepted, it can only be reviewed by way of judicial review to the Supreme Court.

In 2020–21, the cost for an individual commencing a matter in the Supreme Court was \$988.20. I understand that as at 1 July 2021, this has increased to \$1,006.50. In contrast, there are no fees at the Anti-Discrimination Tribunal to make an application for a review of a rejection decision.

In the majority of cases, it is unaffordable for complainants to seek judicial review by the Supreme Court. The Act offers protection for many people who are disadvantaged in our community. Requiring them to seek a review of decisions through the Supreme Court, or both the Supreme Court and the Anti-Discrimination Tribunal, creates a barrier to access to justice.

It is recommended that the Act be amended to clarify this area of law to enable all decisions that involve complaints not being accepted to be reviewed by the Anti-Discrimination Tribunal.

Achieving gender equality requires the engagement of women and men, girls and boys. It is everyone's responsibility.

Ban Ki-moon

3 Enquiries

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

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

Table 3.1 How enquiries were received

	Current year 2020-21	Previous year 2019-20
Telephone	402	390
E-mail	102	139
Online enquiry form	34	22
Person	18	42
Mail	6	6
Text	5	1
Facebook	1	3
Other	9	0
Total	577	603

In 2020–21, the office received and responded to 577 enquiries (a slight decrease from 603 in 2019–20). Enquiry staff dealt with many complex and detailed enquiries relating to the provisions of the Act and the complaint handling process.

The highest ground of alleged discrimination raised by the enquirers was disability (Table 3.2), predominantly in the areas of employment and provision of facilities, goods and services (Table 3.3). Table 3.2 shows race as the second highest ground of alleged discrimination with 61 enquiries.

Enquiries made in relation to other prohibited conduct shows offensive conduct being the highest, followed by sexual harassment (Table 3.4). When compared with the previous year, inciting hatred enquiries has decrease significantly (57 enquiries in 2019–20).

The recorded outcomes of enquiries range from information being provided about the application of the Act and/or the complaint handling procedures; referral services being provided to Complaint forms, Report it! forms and publications being sent to enquirers.

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

Table 3.2 Highest discrimination attributes raised in enquiries in 2020–21

Disability	210
Race	61
Gender	60
Age	46
Family responsibilities	23
Irrelevant criminal record	22

Table 3.3 Highest discrimination areas raised in enquiries in 2020–21

Employment	268
Provision of facilities, goods and services	173
Accommodation	60
Education and training	47
Membership and activities of clubs	24

Table 3.4 Other prohibited conduct enquiries in 2020–21

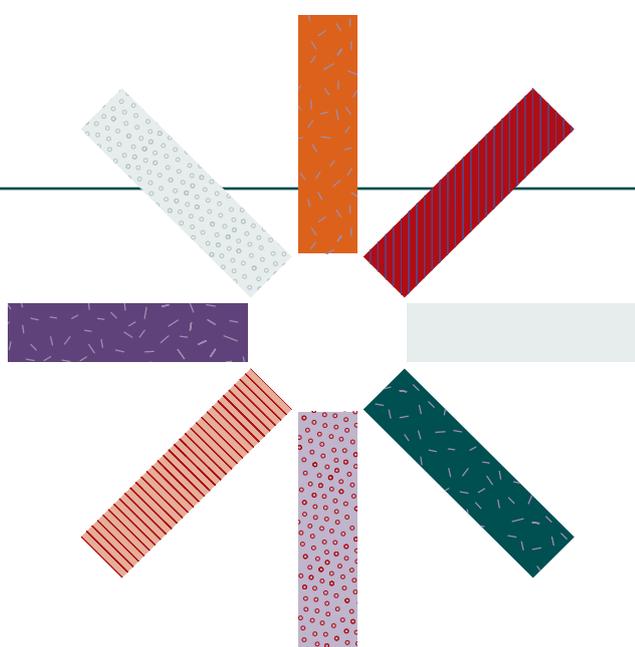
Offensive conduct	67
Sexual harassment	30
Victimisation	26
Inciting hatred	11

Enquiries related to COVID-19

Of the 577 enquiries, 64 specifically related to COVID-19. The majority of these enquiries related to disability, age and race discrimination and offensive conduct on the basis of race.

There were 16 enquiries that did not identify any related breaches under the Act, however a number of them raised concerns about various COVID restrictions and requirements being forced upon them. Some enquirers were seeking information about COVID in which referral was provide to the Tasmanian Public Health Hotline and/or website.

4 Report it!



People who experience or witness discrimination, harassment or abuse are able to provide Equal Opportunity Tasmania with information about the incident using a *Report it!* form. *Report it!* provides a way for people to report the incident without making a formal complaint. Reports can be made anonymously.

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

A positive aspect of the *Report it!* form is that it enables the Commissioner to take proactive steps to prevent certain behaviours from continuing without a formal complaint being made.

During 2020–21, Equal Opportunity Tasmania received 38 reports. Although numbers reflect a considerable decrease from 74 reports received the previous year, 33 of the 74 reports received during 2019–20 directly related to the COVID-19 pandemic. Only 1 report received during 2020–21 could be identified to be directly related to COVID-19.

The majority of reports received during 2020–21 related to discrimination, offensive conduct and inciting hatred on the basis of race and discrimination based on disability and age.

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

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

Report it! case studies

A report was made by a woman who was driving to a shopping centre. She was racially abused by the driver of another vehicle, who made rude hand gestures to her, got out of his car in traffic, knocked on her car window and made racist comments. The woman contacted Tasmania Police and also made a formal complaint with Equal Opportunity Tasmania.

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

An international student reported racist comments that had been made on a Government Department's Facebook page. The Commissioner contacted the Secretary of the Department and the comments were quickly deleted from the page.

An online seller abused a buyer due to her race and her husband's vision impairment when she and her family went to inspect the goods. The seller was hostile and told the buyer, who was of Asian descent, to 'go back to where she belongs' and called her husband a 'retard'. The incident occurred in front of their children.

A migrant family (mother, father and three children) reported an incident of racial abuse at a local Hobart beach. Two females 'kept asking if we are eating bats and if we're going to give them coronavirus'. The family also had stones thrown at them and a male from the group attempted to get her husband to fight.

A woman reported discrimination and offensive conduct by her employer on the basis of pregnancy. Her request for a larger uniform was denied and she was made to feel that she was a burden due to her pregnancy-related illness. She felt unsupported and pressured to return to work despite being unwell. She subsequently made a formal complaint to Equal Opportunity Tasmania.

Table 4.1 Gender of person

Female	24
Male	12
Transgender	1
Unknown	1

The age of those reporting ranged from 20-29 years age through to over 75 years of age. The majority of reporters were evenly spread between the 20-29, 30-39, 40-49 and 50-59 year age brackets and 5 reports were made from the over 75 year age bracket (Table 4.2).

Table 4.2 Age of the person

20-29	9
30-39	7
40-49	8
50-59	6
60-69	2
70-75	1
>75	5

Of the incidents reported, 31 happened in Southern Tasmania; 4 in the North and North West, 1 in the West and 2 were in unknown locations (Table 4.3).

Table 4.3 Region in which reported incident happened

South (7000-7199)	31
North (7200-7299)	3
North West (7300-7399)	1
West (7400)	1
Unknown	2

The majority of reports made to Equal Opportunity Tasmania in 2020–21 related to incidents of discrimination (41). Race, disability, age and gender identity being the attributes most reported (Table 4.4).

Table 4.4 Basis of incident by attribute

Discrimination	41
Race	14
Disability	7
Age	6
Gender Identity	4
Sexual orientation	2
Industrial activity	1
Religious belief or affiliation	1
Intersex variations of sex characteristics	1
Marital status	1
Pregnancy	1
Irrelevant criminal record	1
Unknown	2
Conduct that is offensive, humiliating, intimidating, insulting or ridiculing	23
Race	11
Disability	3
Age	3
Sexual orientation	2
Gender	1
Gender identity	1
Intersex variations of sex characteristics	1
Pregnancy	1
Inciting hatred	5
Race	4
Sexual orientation	1

The majority of incidents occurred in connection with the provision of service, followed by employment and public spaces (Table 4.5).

Table 4.5 Location of incident

Service provision	16
Public space	12
Street, beach etc.	8
Online- Facebook, Gumtree	4
Employment	9
Education	1

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

Table 4.6 Status of the person

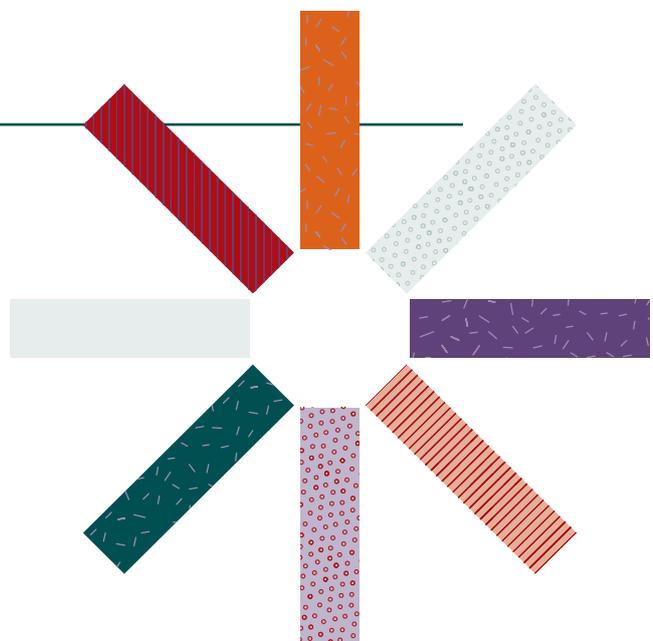
A person with a disability	14
Member of a visible minority	9
International student	8
A migrant or humanitarian entrant	7
LGBTIQ+	5
Aboriginal and/or Torres Strait Islander	1
Unknown	11

In many of the reports the perpetrator was unknown to the person who made the report, making the process of lodging a formal complaint about the incident more difficult. However, 6 reports received progressed to a formal complaint and were dealt with through Equal Opportunity Tasmania's complaint handling process.

How I wish we lived
in a time when laws
were not necessary
to safeguard us from
discrimination.

Barbra Streisand

5 Training, education and development



2020–21 has been a particularly busy and successful year in the delivery of training, education and development. A highlight has been the increase in private organisations seeking programs on employer and employee rights and responsibilities under discrimination law.

Equal Opportunity Tasmania developed online training programs as a result of COVID-19 restrictions. This has enabled training to be delivered in a flexible and engaging format as the need arises.

Training, education and development highlights in 2020–21 include:

- Managers and Supervisors training delivered in Launceston and Hobart for Communities Tasmania.
- Discrimination Law: Rights and Responsibilities training delivered for the Tasmania Fire Service in Hobart, Launceston, East Coast, West Coast, and Huonville.
- Discrimination Law: Rights and Responsibilities training with a focus on disability discrimination delivered to Housing Tasmania and the Community Housing sector statewide.
- Workplace Behaviour: Where is the Line training delivered to SRT Logistics and Pigeon Whole Bakers state-wide.
- Discrimination Law, Recruitment and Selection and Workplace Support Contact Officer training for Latrobe Council, Wynyard/Waratah Council, Kingborough Council and Huon Valley Council.
- Discrimination Law Rights and Responsibilities training for Hops Australia, Bushy Park.
- Community sessions with the Association of Children with a Disability with Carers, Youth Leadership, Kin Raising Kids groups.
- Worksafe Month webinar session on COVID 19 – Employer Legal Obligations under the Act.
- Student Information sessions provided to Launceston College, Hellyer College, Don College, Hutchins School and Elizabeth College.

Collaborations in 2020–21 include:

- Huon Valley Service Providers Hub.
- Freedom Project, an ‘Arts for Justice’ initiative being delivered through a partnership between Kickstart Arts, Court Mandated Diversion and Community Corrections, Department of Justice. The project aims to break the cycle of offending and addictive behaviour for people on court orders through the Court Mandated Diversion and Community Corrections programs.
- Tasmanian Health Service LGBTIQ+ training program on discrimination.
- A Fairer World’s diversity education program designed to foster a school culture free from bullying and discriminatory behaviours.
- Australian Council of Human Rights Authorities (ACHRA) Education and Network meetings. These quarterly meetings include representatives from Commissions throughout Australia, and provide an opportunity for trainers and educators to share information, and discuss training and education courses.
- National meetings for the Aboriginal and Torres Strait Islander Officers Network facilitated bi-monthly. This has been particularly important for staff who have been in lock down for a number of months to network, support and share information and discuss current issues affecting Aboriginal and Torres Strait Islander Peoples.

The total training and education sessions delivered in 2020–21 has seen a significant increase compared to the previous year (Tables 5.1 and 5.2).

Table 5.1 Training and education delivery

	Current year 2020-21	Previous year 2019-20
Total training and community education sessions delivered	256	188
Total training and community education hours	562	399
Total training and community education participants	3610	3220



Table 5.2 Training and education sessions by location

	Current year 2020-21	Previous year 2019-20
South	153	104
North West	56	29
West	29	5
North	14	48
South East	4	2
Total	256	188

In 2020–21 the training team delivered comprehensive training across a number of industries and specialist organisations around Tasmania. As shown in Table 5.3, the greatest number of sessions were delivered to private organisations, State government entities and statutory authorities and government business enterprises.

Table 5.3 Training and education by sector

	Current year 2020-21	Previous year 2019-20
Private organisations	92	29
State government entities and statutory authorities and government business enterprises	74	50
Not-for-profit and community organisations, forums and events	34	16
Local government	30	32
Schools and tertiary education sessions	16	45
Calendar training	3	9
Unions and industry bodies	2	3
Other	5	4
Total	256	188

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

Table 5.4 Training and education by session topic

	Current year 2020-21	Previous year 2019-20
Discrimination Law: Rights and Responsibilities	70	67
Workplace behaviour: Where is the line?	67	16
Managers and Supervisors	18	18
Workplace Support Contact Officer	9	5
Workplace Support Contact Officer Refresher	4	6
Recruitment and Selection	3	2
Workplace Support Contact Officers Networking Meeting	0	2
Other	16	2
Total	187	118

Community education

Community education continues to play an important role in promoting awareness and understanding of the Act across Tasmania's diverse community.

Table 5.5 Community education by session type

	Current year 2020-21	Previous year 2019-20
Community awareness	35	10
Student sessions	17	35
Community forum	6	10
Other	11	15
Total	69	70

In respect of rights Newsletter

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

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

6 Community engagement

Functions and events

During the year there were a number of events held that were relevant to the work of Equal Opportunity Tasmania. Attending such events keeps us connected to the community and aware of emerging trends or issues.

International Day for the Elimination of Racial Discrimination

Equal Opportunity Tasmania held an event on 22 March 2021 to raise awareness of the importance of International Day for the Elimination of Racial Discrimination including; the impacts of racism on individuals and communities and practical actions we can all do to eliminate racism from our workplaces, communities and other areas of life. Invited guests included representatives from Department of Justice, Communities Tasmania, Department of Premier and Cabinet, City of Hobart and individual members of the Tasmanian community.

Launch of Reflective Action Plan Aboriginal and Torres Strait Islander Peoples

On 12 November 2020, Equal Opportunity Tasmania launched its Reflective Action Plan Aboriginal and Torres Strait Islander Peoples. The launch was held during NAIDOC Week to acknowledge the work of our internal RAP committee in developing the plan and also to promote Equal Opportunity Tasmania's commitment in providing a culturally safe and respectful workplace.

The plan is our first step to building and maintaining respectful relationships with the Tasmanian Aboriginal community and to providing a service that is culturally respectful and welcoming.

Since the plan was implemented, staff have engaged in a number of cultural learning activities. Such activities have included; attendance at the flag raising event at piyura kitina (Risdon Cove), an internal conversation regarding cultural safety, watched the Tasmanian Museum and Art Gallery's virtual cultural learning tour, distributed a document listing Tasmanian Aboriginal cultural learning resources, read the State Service Management Office Aboriginal Employment Action Plan 2019-20 and Employment Strategy 2022, and have attended Tasmanian State Service Aboriginal Cultural Respect training.

Human Rights Week (Tasmania): 3 to 10 December 2020

Equal Opportunity Tasmania was inspired by the generosity and kindness of Tasmanians during the COVID pandemic and decided to host the 2020 Human Rights Week Awards. All Awards related to activities occurring in Tasmania.

On 10 December 2020, The Attorney General, the Honourable Elise Archer, MP presented awards to 22 recipients at a ceremony held in the Premier's Reception Room. The Awards were presented to Tasmanians who had demonstrated acts of kindness and compassion towards fellow Tasmanians. The award recipients included individuals, community groups and organisations that have each made a positive difference in the Tasmanian community.

The recipients expressed humility, pride and gratitude when receiving their awards and were inspired to hear of the other wonderful acts of kindness and compassion.

Equal Opportunity Tasmania will continue its campaign to spread the message about kindness, gratitude and respect.

Other events

In addition to these events, Equal Opportunity Tasmania has participated in:

- None a Week Film Launch.
- Multicultural Consultative Reference Group Meeting.
- Harmony Day Premier's Event.
- Whitlam Institute in partnership with the Department of Education: 2020 What Matters? Tasmania writing competition awards ceremony.
- Commissioner for Children and Young People (CCYP) Statewide Ambassador event, Launceston.
- NAIDOC Week event – Launch of EOT's Reflective Action Plan: Aboriginal and Torres Strait Islander Peoples.
- Council on the Ageing (COTA) Walk the Talk Forum.

Presentations and speaking engagements

During the year, Equal Opportunity Tasmania participated in a number of events across the State to increase awareness of discrimination law and promote diversity. Highlights include:

- Presentation with Resolution Institute - Gendered violence: Is mediation an option, and if not, what might be?
- Presentation to Healthy Ageing Network Meeting.
- Presentation to Housing Tasmania, Housing Program staff.
- Presentation to Nyrstar senior managers.
- Guest Speaker at ANMF Aged Care Conference: Reshaping the 'Care' in Aged Care.
- Guest Speaker at Ogilvie High School, School assembly.

-
- Guest Speaker at Tasmanian Prison Service – Mary Hutchins Women’s Prison International Women’s Day talk.
 - Guest Speaker to International Women’s Day Breakfast Port Arthur Historic Site Authority.
 - Panel Speaker on the Council on the Ageing (COTA) Online Forum.
 - Presentation to National Elder Abuse Conference (NEAC) Forum Series.
 - Presentation to Legislative Council Electorate Officers and staff.
 - Presentation to Women’s Legal Service staff.
 - Guest Speaker at Speak Out Advocacy’s annual conferences in Hobart, Burnie and Launceston.
 - Presentation to Advocacy Tasmania’s Team Meeting.
 - Presentations at Advocacy Tasmania Seniors Week Abuse events.
 - Presentation at the 2020 State Service Strategic Management Program (S3MP).

Community collaborations

Community discussions combating racism

With the steady rise of racist incidents, happening in both Tasmania and across Australia, directed at Chinese/Australians and anyone of Asian appearance with reference to COVID-19, it was important that the Tasmanian community were kept informed about what they can do about racism.

In July 2020, a webinar titled, ‘There is no place for racism in Tasmania’ was organised in partnership with City of Hobart and the Federation of Chinese Associations. The main aim of the webinar was to make sure every Tasmanian in particular Tasmania’s Chinese community were made aware of their legal rights and responsibilities and how they can seek legal protection from unlawful discrimination, including racism.

The webinar provided an overview of Tasmania’s discrimination law, legal rights and responsibilities, how to lodge a complaint of discrimination, how to report incidents of racist behaviour and what actions can happen when a report is received. The webinar was engaging with lots of questions answered.

Feedback after the webinar was positive and included the development of a community newsletter to inform community members of their legal rights under discrimination law and what’s happening in the space of Equal Opportunity and the City of Hobart. A newsletter ‘Keeping you Connected’ was developed, translated and distributed to the Tasmanian Chinese community.

Australian Red Cross bicultural workers and community members

During a three month period from September 2020 to November 2020 our Training, Education and Development Officer delivered a number of sessions to Australian Red Cross Bicultural workers in the south and north of the state. During this period community information sessions were also held with members of the Arabic and Burundi, Tigrinya, Hazara, Karen, Bhutanese and Oromo communities.

Mental Health Families and Carers (Formerly Carers Tasmania)

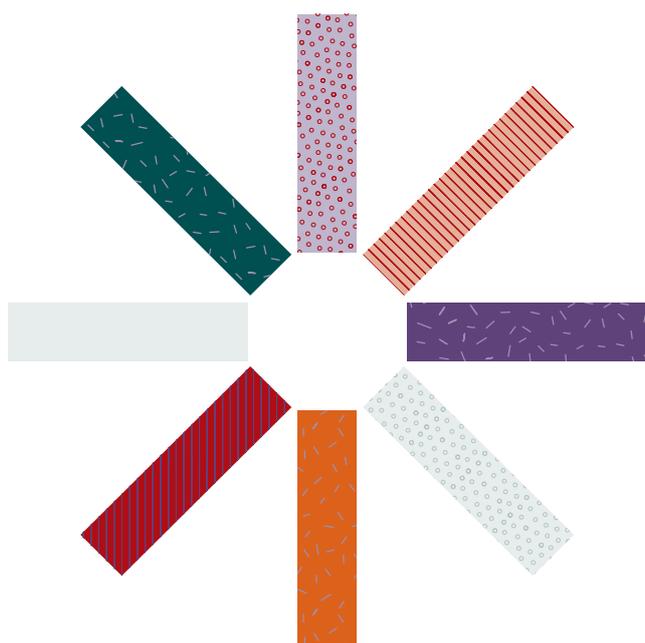
In November 2020, an information session was delivered to carers associated with Mental Health Carers of Tasmania. These sessions were provided to give carers an overview of discrimination law, how to access more information and how to take action against unlawful discrimination when it happens.

2020 Tasmanian Regional Delegates Conference 2020 (Australian Services Union)

In December 2020, Equal Opportunity Tasmania was invited to present a workshop on Equal Opportunity and Discrimination to Australian Service Union (ASU) delegates from across the state. Two staff from Equal Opportunity Tasmania collectively presented the workshop and staffed a stall at the conference providing information and publications to delegates and answering any queries about the work of the office.

Leprena – Uniting Aboriginal and Islander Christian Congress in Tasmania

During the reporting period, Equal Opportunity Tasmania continued working collaboratively with Leprena – Uniting Aboriginal and Islander Christian Congress in Tasmania. This included Equal Opportunity Tasmania delivering information sessions on racism and other discriminatory issues affecting Tasmania's Aboriginal community.



7 Exemptions

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

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

In some instances, exemptions may not be granted where the purpose is of an ongoing nature and an exception clearly applies. An exception is a 'defence' to a complaint of discrimination. An exception makes discrimination lawful in some situations. Exceptions that organisations may be able to rely upon include:

Section 25 – Disadvantaged groups and special needs

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

Section 26 – Equal opportunities

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

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

There were 20 applications for exemption received during the reporting period (up from 10 in 2019–20). Of these applications, ten were granted within the reporting period, five were withdrawn and five remain to be determined. Of the five exemptions withdrawn, three of the applicants decided to rely on the exception provisions provided under the Act.

During the reporting period, the following decisions were made on three applications for exemption received in 2019–20:

-
- One application was granted for three years;
 - One application was withdrawn relying on the exceptions under the Act; and
 - One application was rejected with no appeal sought.

There were no reviews sought in the Anti-Discrimination Tribunal on any exemptions granted by the Commissioner during the reporting period.

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

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

Exemptions granted

Relationships Australia Tasmania

Exemption no: 20/07/051

Date granted: 29/7/2020 for 3 years

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

This exemption was granted to permit Relationships Australia Tasmania to recruit and employ a female practitioner to work in the Men Engaging in New Strategies ('MENS') Program. This is to enable the program to be facilitated by a team of one man and one woman (state-wide).

Women's Legal Service (Tasmania) Inc

Exemption no: 20/07/064

Date granted: 4/7/2021 for 3 years

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

This exemption was granted to permit Women's Legal Service (Tasmania) Inc to recruit and employ women only in the identified positions of Financial Counsellor, Trainee Financial Counsellor and Social Worker.

Women's Health Tasmania Inc

Exemption no: 20/07/088

Date granted: 28/8/2020 for 3 years

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

This exemption was granted to permit Women's Health Tasmania Inc to provide services to women only and for the benefit of women; recruit and employ women to work for the organisation; recruit women to the Board of Governance; and provide facilities to women and women's groups.

City of Hobart (Crowther Reinterpretation Project)

Exemption no: 20/09/001

Date granted: 18/9/2020 for 2 years

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

This exemption was granted to permit City of Hobart to select at least two (50%) of the four temporary public arts commissions (Crowther Reinterpretation Project) to be Tasmanian Aboriginal people.

Cancer Council Tasmania

Exemption no: 20/10/020

Date granted: 9/11/2020 for 3 years

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

This exemption was granted to permit Cancer Council Tasmania to recruit and employ an Aboriginal and/or Torres Strait Islander to the position of Aboriginal Quitline Counsellor and Liaison Officer.

Nyrstar Hobart Pty Ltd

Exemption no: 20/10/032

Date granted: 9/11/2020 for 3 years

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

This exemption was granted to permit Nyrstar Hobart Pty Ltd to advertise, recruit and employ five (5) female trainee Operators to participate in a traineeship with Nyrstar Hobart Pty Ltd.

City of Hobart (Urban Art Wall 2021)

Exemption no: 20/10/053

Date granted: 11/11/2020 for 1 year

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

This exemption was granted to permit the City of Hobart to advertise for and engage an artist who has lived experience as a woman (or a team of people with this experience), to paint a new mural celebrating the stories, contributions and/or spirit of women in Hobart, now or into the future.

City of Hobart (Youth Arts Officer)

Exemption no: 20/12/022

Date granted: 11/12/2020 for 3 years

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

This exemption was granted to permit the City of Hobart to advertise, recruit and employ a female only to the position of 'Youth Arts Officer', located at the City of Hobart's Youth Arts & Recreation Centre in Hobart.

Vibrance Festival Pty Ltd in partnership with City of Hobart

Exemption no: 20/10/030

Date granted: 23/11/2020 – 28/02/2021

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

This exemption was granted to permit Vibrance Festival Pty Ltd in partnership with City of Hobart to advertise and select a Tasmanian Aboriginal artist or team of Tasmanian Aboriginal artists to undertake a public art commission on the wall of the Tasmanian Aboriginal Health Service Building as part of the Vibrance street art festival in February 2021.

Tasmanian Electoral Commission

Exemption no: 20/09/070

Date granted: 06/01/2021 for 3 years

Relevant exceptions under the Act: Sections 16 (m) and (n) and 20 under the Act.

This exemption was granted to enable the Tasmanian Electoral Commission (TEC) to request and consider information pertaining to the following criteria in determining whether or not a person should be: employed or appointed as a member of staff with the TEC; appointed as a returning officer or election official under section 24 or 26 of the *Electoral Act 2004* (Tas); or engaged as a contractor:

- a) Current membership, or membership within the past 5 years, of any political party in any State or Territory or the Commonwealth.
- b) A course of conduct within the past 5 years directed to supporting the aims of a political party or an independent candidate in a State, Territory or Federal election.
- c) A person who has held the office of councillor for a Tasmanian local council within the past 5 years.
- d) A course of conduct within the past 5 years directed towards supporting the political aims of a local councillor.
- e) A person who has publicly engaged in conduct promoting a political position in respect of an issue currently before the electorate in the election for which that person is to be employed.
- f) A person who is a member of a lobby group (not being a union or professional association) which promotes a political position in respect of an issue currently before the electorate in the election for which that person is to be employed.

8 Policy and working groups

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

Submissions

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

In 2020–21 Equal Opportunity Tasmania provided comment or made submissions on a variety of issues including:

- Comments provided on the draft Justice Miscellaneous (Increasing Judicial Retirement Age) Bill 2021.
- Submission to Tasmanian Law Reform Institute on the *Sexual Orientation and Gender Identity (SOGI) Conversion Practices, Issues Paper No 31*.
- Submission to Department of Treasury and Finance on 2021–22 State Budget Community Consultation process.
- Submission to the Custodial Inspector Amendment Optional Protocol to the Convention Against Torture (OPCAT) Bill 2020.

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

Other policy work

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

- Department of Justice – Disability Action Plan.
- Communities Tasmania – National Agreement on Closing the Gap: Implementation Plan Information Gathering 2020.
- Department of Premier and Cabinet's Draft periodic report to CERD – International Convention for the Elimination of All Forms of Racial Discrimination.
- Communities Tasmania – Multicultural Island: Tasmanian's Multicultural Policy and Action Plan 2019–2022.

Participation in working groups

In 2020–21 Equal Opportunity Tasmania participated in the following strategic working groups and consultative forums:

- Legal Profession Board Tasmania – Sexual Harassment Working Group.
- Department of Communities Tasmania Family Violence Consultative Group.
- Department of Communities Tasmania Family and Sexual Violence Services Group, formed in response to needs identified during the COVID-19 pandemic.
- Department of Communities Tasmania Statewide Elder Abuse Prevention Advisory Committee (SEAPAC) and Sub-Committee member for Safeguarding Adults Advisory Group.
- Department of Communities Tasmania LGBTIQ+ Whole of Government Reference Group.
- Department of Education Inclusion Advisory Panel.
- Department of Health LGBTI Reference Group.
- Department of Justice Disability Action Plan Working Group.
- Department of Justice Right People, Right Role Implementation Committee.
- Department of Justice Diversity and Inclusion / People Strategy Steering Committee.
- Department of Police, Fire and Emergency Management and Department of Health and Human Services Multicultural Issues in Emergency Management Strategic Working Group.
- Department of Police, Fire and Emergency Management LGBTI Strategic Working Group.
- Australian Council of Human Rights Authorities (ACHRA).

Equal Opportunity Tasmania, in partnership with the Association for Children with Disability, Brain Injury Association of Tasmania, Magistrates Court of Tasmania, Legal Aid Commission of Tasmania and Speak Out Advocacy, commenced a video project to demystify and explain the processes involved in going to court for people with disabilities. The project gained significant momentum during the reporting period and it is anticipated that the final product will be completed and available for distribution by the end of the year (2021).

9 Staff establishment

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

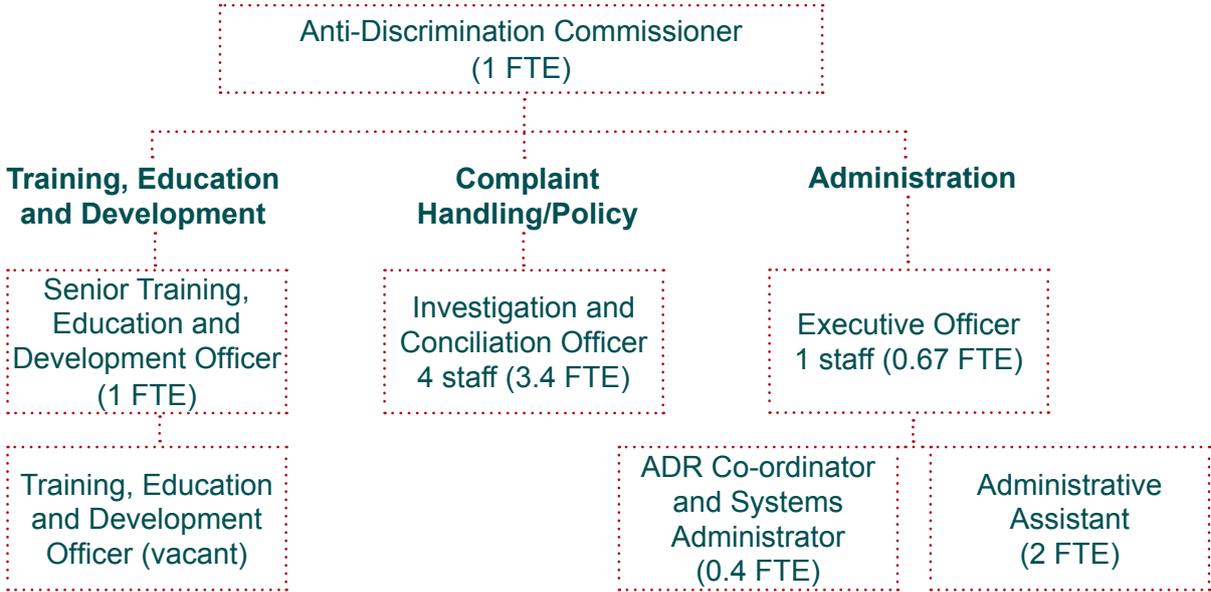
Equal Opportunity Tasmania has a permanent staff complement of nine (four of whom are part-time) and three fixed-term contract positions.

During the reporting period the staffing establishment increased from 8.40 FTE to 9.47 FTE as at 30 June 2021.

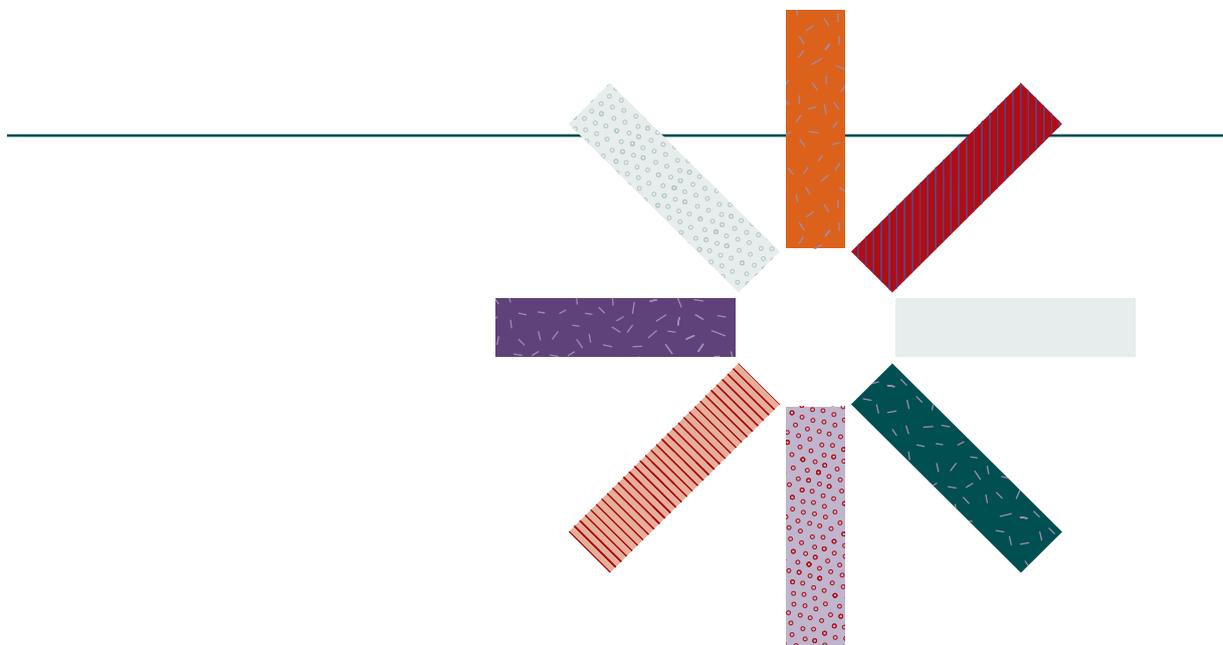
Staffing changes during the period included:

- Two staff on fixed-term secondments to work in other areas in the State Service.
- Two new appointments were made to the positions of Policy, Investigation and Conciliation Officer position and Administrative Assistant; and
- One position of Investigation and Conciliation Officer was vacant pending the selection process.

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



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



Staff training

During 2020–21 staff participated in training as part of their continuing professional development, which included:

- Creating Safety and Connection webinar provided through Blue Knot Foundation.
- Addressing Power and Vulnerability in Public Service Dispute Resolution webinar delivered through Resolution Institute.
- Child Inclusive and Developmentally Focused Dispute Resolution webinar delivered through Resolution Institute.
- Mediation 5-Day Workshop delivered through Resolution Institute.
- Public Interest Disclosure.
- Cultural Awareness Training delivered through Migrant Resource Centre.
- Tasmanian State Service Aboriginal Cultural Respect Training provided by Department of Premier and Cabinet.

Staff continue to be committed to completing online training provided through the Department of Justice e-learning programs, including Ethics and Behaviour; Workplace Health and Safety, Violence against Women and Disability Confident Workplaces.

10 Anti-Discrimination Tribunal

For more information about the Anti-Discrimination Tribunal functions and activities during 2020–21, you can access the Tribunal’s latest Annual Report on their website at: www.justice.tas.gov.au/tribunals/tribunal_sites/Anti-Discrimination_Tribunal.

Tribunal membership

Tribunal members during 2020–21 consisted of:

- Alison Clues (Chair – South)
- Lucinda Wilkins (Deputy Chair – South)
- Kate Cuthbertson (Member – South)
- Audrey Mills (Member – South)
- Robert Winter (Member – South)
- Leigh Mackey (Member – South)

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

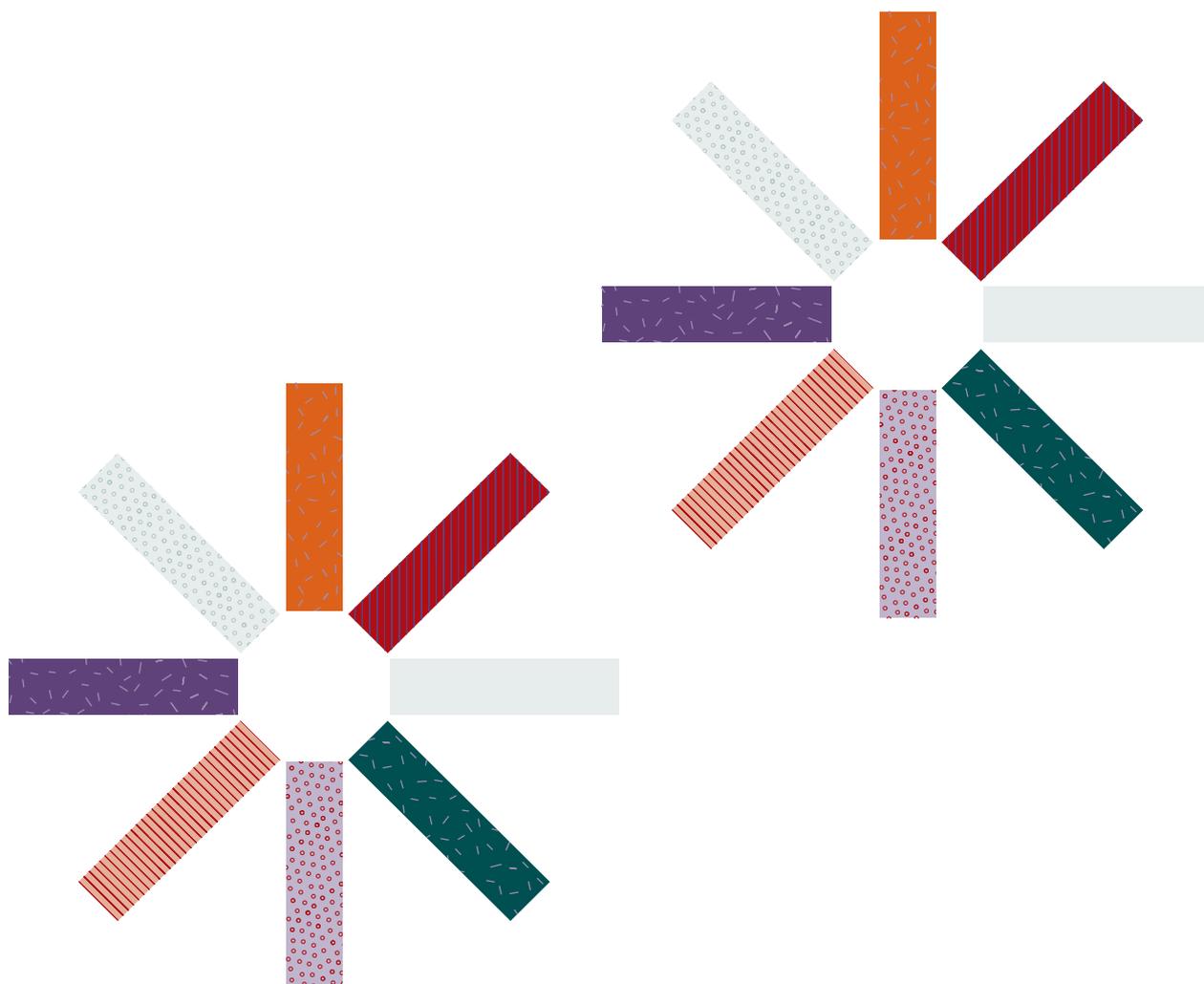
Contact

Registrar
Anti-Discrimination Tribunal
38 Barrack Street
HOBART TAS 7000

Phone: (03) 6166 4750
Fax: (03) 6173 0203
E-mail: ADT@justice.tas.gov.au

11 Financials

A Financial Statement for the office is provided in the Department of Justice’s Annual Report 2020–21. The Department of Justice Annual Report for 2020–21 can be found at: www.justice.tas.gov.au/annual-report.



12 Contact

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

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

Equal Opportunity Tasmania

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

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Website: www.equalopportunity.tas.gov.au

It is often easier to become outraged by injustice half a world away than by oppression and discrimination half a block from home.

Carl T. Rowan

