**Inquiry Procedures**

This information sheet deals with procedures after a complaint is referred to the Tribunal for Inquiry, and provides answers to questions that commonly arise.

For more detailed information see the Tribunal Practice Guidelines on the website or request copy of the Guidelines from Tribunal.

What happens after a Complaint is referred to the Tribunal for Inquiry?

The Tribunal is completely separate and independent from Equal Opportunity Tasmania and the Anti-Discrimination Commissioner. The role of the Commissioner is to investigate claims of discrimination. That phase is now complete and the Commissioner has no further involvement in the matter unless the Commissioner seeks leave and it is granted, allowing the Commissioner to intervene in these proceedings.

Now that the complaint has been referred to the Tribunal, the Inquiry phase has commenced and the complaint is managed by the Tribunal.

The steps that are taken by the Tribunal are as follows:

1. The matter will be initially subject to the preliminary stage conducted by the Tribunal. The preliminary stage will consist of telephone or face to face conferences and the purpose of this stage is to ascertain the nature of the issues raised, to identify the steps required to be taken by the parties to advance the matter and to ensure that the parties realise their obligations and duties in relation to the matter before the Tribunal. All teleconferences will be initiated by the Tribunal and there will be no cost to the parties in the normal course.
2. At an appropriate time the Tribunal will give notice of a directions conference. Formal directions may be given to the parties at this conference in order to ensure that the matter proceeds fairly and expeditiously.
3. Subsequent to the directions conference and compliance with any directions that may have been made, the Tribunal will arrange for the matter to proceed to the conciliation stage. During this stage a formal conciliation conference will occur unless the Tribunal believes that there is no reasonable prospect of a resolution of the matter by such process.
4. If a matter fails to settle during the conciliation stage, the Tribunal will list the matter for hearing. Prior to the date of hearing there will be a further directions conference which will confirm that all parties are prepared for the hearing and that all matters needing to be completed prior to the hearing have been completed.
5. The matter will then be listed for hearing when the parties and their witnesses will give evidence and the decision is made by the Tribunal as to whether the complaint has been substantiated.

# Preliminary Stage and Directions Conference

What occurs during the preliminary stage?

This stage is used to allow the Tribunal and the parties to informally discuss the issues raised and to identify steps required to be taken by the parties and to make directions that certain actions required to be taken by the parties are taken so as to ensure the matter proceeds expeditiously.

What is the purpose of the directions conference?

At the directions conference formal directions will be given to the parties on matters that have not been complied with during the more informal preliminary stage. Directions will address any procedural matters that need to be concluded before the matter can proceed further. If not already attended to, this would be the opportunity for applications by parties seeking to be legally represented or applications for suppression orders concerning the identity of parties or seeking a closed Inquiry hearing.

What directions will be made at the directions conference?

The Tribunal Member will, if not already attended to, make directions requiring the parties to prepare information about their case and to disclose information to the Tribunal and other parties about their case.

Typical directions:

1. that the parties must each prepare a list of the documents that they want the Tribunal to take into account at the Inquiry; and
2. that the parties must each prepare documents summarising the evidence that the parties and the witnesses will give.

Once these directions have been complied with, the parties will be ready to proceed with their case, and also will be aware of the substance of the case to be presented by the other party.

Note: the parties will be given time to attend to these matters and will have the opportunity to inform the Tribunal how much time they need.

What if the parties wish to raise issues before the Inquiry starts?

Directions conferences are also an opportunity for the parties to raise issues that they need to have considered by the Tribunal before the resolution process of conciliation or formal hearing starts.

Examples:

1. notices requiring witnesses to attend or produce documents at the Inquiry;
2. the use of Microsoft Teams; and
3. legal issues that can properly be decided before the Inquiry starts.

What if a party is not represented by a lawyer?

A significant percentage of parties are not legally represented. The preliminary stage, directions conferences and conciliation stage are relatively informal and will be conducted in such a manner to be readily understood by the parties involved. At any stage a party is entitled to seek clarification of matters that are raised to ensure an understanding, especially as to any obligations that are imposed upon them concerning procedural matters.

What is the purpose of the conciliation conference?

The conciliation conference is a mechanism used in any endeavour to resolve or partly resolve a matter before the Tribunal. It provides an avenue for the parties to achieve an acceptable outcome without the risks and costs associated with a formal hearing. It also provides the ability for parties to settle on terms that the Tribunal may not have the power to order. The conference is also held in private as opposed to a hearing which will be open to the public.

It is important that all evidence and material to be relied upon by a party to an Inquiry is disclosed prior to the conduct of a conciliation conference. A party shall not (unless leave is granted by the Tribunal), be permitted to raise any issue or rely upon any evidence, material or submission not disclosed or made prior to the conclusion of the conciliation stage.

# Documents and Witnesses

## The Referral Report

When complaints are referred to the Tribunal for Inquiry, a Referral Report is provided by the Commissioner to assist the parties and the Tribunal. The Referral Report identifies documents gathered during the course of the Commissioner’s investigation and witnesses which the Commissioner considers should be called at the Inquiry.

The Tribunal has been provided with a copy of the documents listed in the Referral Report.

The parties are not bound by the list of witnesses and documents listed in the Referral Report

The parties may call other witnesses not named in the Referral Report and produce documents not listed in the Report. Further, the parties are not required to follow the list of witnesses and documents in the Referral Report at all if they wish. It is entirely up to the parties to decide which witnesses they will call and which documents they will present to the Tribunal during Inquiry.

Obtaining access to the documents

The documents listed in the Referral Report are available to the parties to inspect and copy.

Parties may inspect, or request copies of the documents by making prior arrangement by contacting:

TASCAT

General Division – Anti-Discrimination Stream

38 Barrack Street

HOBART TAS 7000

Ph: (03) 6166 4750

Fax: (03) 6173 0203

Email: antidiscrimination@tascat.tas.gov.au

Parties will be provided with a copy of any document which it does not already have.

# The Inquiry Hearing

Each party is responsible for the presentation of his or her case at the Inquiry. Therefore the parties need to decide which witnesses to call and which documents to present to the Tribunal as part of their case.

The Tribunal’s decision is made on the basis of the information presented during the Inquiry and no other information

It is important to bear in mind that the Tribunal will take into account only the information which is presented during the Inquiry hearing in making its decision. The Tribunal’s decision will be based only on the information which is heard, or documents presented, during the Inquiry hearing. If there is information from the Commissioner which is not presented during the Inquiry hearing then the Tribunal will not take it into account when the Tribunal makes its decision. Information that you want the Tribunal to know about - from a witness or in a document - must be presented by you in your case.

The Tribunal may raise questions about documents and witnesses

While the parties are responsible for the presentation of their case, the Tribunal may raise questions about the production of documents or the calling of other witnesses not relied on by the parties and even require a witness to be called or document/s to be produced. If this occurs then the parties are informed in advance and are given the opportunity to be heard about whether that is an appropriate course.

The Hearing

The complainant (ie. the party who brings the complaint) has the burden of proving the complaint. Generally speaking, the complainant’s case will proceed first. The respondent (ie. the party against whom the complaint is made) is given the opportunity to question each of the witnesses presented by the complainant. The complainant is given the opportunity to question each of the witnesses presented by the respondent.

Informality and Efficiency

The Tribunal is to conduct an Inquiry with as little formality and as expeditiously as the requirements of the Act and a proper consideration of the matters before the Tribunal permit.

Natural Justice

The Tribunal is not bound by the rules of evidence but must observe the rules of natural justice.

Impartial

The Tribunal is impartial and objective. Because of this role, the Office of the Tribunal and the Tribunal Members cannot provide legal advice to a party about their case. However, questions about procedure and questions seeking clarification of the Tribunal’s processes may be asked of staff and the Tribunal Members during the proceedings.

# Conciliation

The Tribunal may refer a complaint to conciliation at any stage (see Alternative Dispute Resolution Act 2001). Conciliation enables the parties to decide how the case should be resolved.

Conciliation is conducted by an experienced conciliator appointed by the Tribunal and the procedure adopted by the conciliator is tailored to suit the needs and requirements of the case.

Conciliation is a free and confidential service. Nothing said during conciliation would be disclosed against parties’ interests if the matter went to Inquiry hearing. The Tribunal would not be made aware of what was said by the parties during the conciliation process.

If conciliation is explored but is not successful then the matter is resolved by Inquiry hearing. Generally speaking, conciliation does not delay the progress of the matter.

A conciliated outcome avoids the cost, inconvenience and time associated with an Inquiry.

# Particular needs or services

Any person suffering a disability that may in any way affect their ability to engage in the Tribunal process or who may require the assistance of an interpreter, should advise the Tribunal of this as early as possible in order that steps may be taken to assist that person.

If you wish to participate in a directions conference by telephone then you need to apply in writing to the Tribunal outlining the reason for that request and provide a telephone number where you can be contacted. The Tribunal may require that you attend a directions conference in person if it is considered such attendance is necessary to ensure the fair and expeditious conduct of the Inquiry.

A party may be permitted by the Tribunal to be represented or accompanied by another person in respect of a matter before the Tribunal. An application (written or verbal) for such permission must be made to the Tribunal at the earliest opportunity.

# Other Information and Contact Details

For other information, contact a lawyer, or see the website at: [www.tascat.tas.gov.au](http://www.tascat.tas.gov.au).

Decisions of the Tribunal can also be accessed on this website.

In relation to questions concerning the Tribunal’s processes, contact the Tribunal at 38 Barrack Street, Hobart, Tasmania 7000; Ph: (03) 6166 4750; Fax: (03) 6173 0203 or Email: antidiscrimination@tascat.tas.gov.au. You may also put your questions to the Tribunal Member during the proceedings.