**Review of Dismissal Procedures**

This information sheet deals with procedures after a complaint is dismissed by the Anti-Discrimination Commissioner and is referred to the Tasmanian Civil and Administrative Tribunal (TASCAT) for Review. It also provides answers to questions that commonly arise.

For more detailed information see the TASCAT website, Anti-Discrimination Stream: [www.tascat.tas.gov.au](http://www.tascat.tas.gov.au).

**What happens after a dismissed complaint is referred to TASCAT for review?**

TASCAT is separate and independent from Equal Opportunity Tasmania (EOT) and the Anti-Discrimination Commissioner (the Commissioner). Unless the matter is referred back to EOT and the Commissioner, their role is now complete.

The review process is managed by TASCAT.

The steps that are taken by TASCAT are as follows:

1. TASCAT will give notice of a telephone conference before a conciliator. During that conference the parties will discuss what steps need to be taken to resolve the complaint and whether the parties should attend conciliation. Directions may be given to the parties at this conference in order to ensure that the matter proceeds fairly and expeditiously. There may need to be several telephone conferences.
2. If the complaint does not resolve during the conciliation process, it will be referred to hearing. A directions conference will be listed before a Member of TASCAT and that member will ensure the matter is ready for hearing. The Member may issue formal directions.
3. The matter will then be listed for hearing. At that hearing the parties and their witnesses will give evidence. After the hearing the Member or Members who heard the matter will deliver a decision as to whether the Commissioner made a correct decision.

**Telephone and Directions Conferences**

What is the purpose of a telephone or a directions conference?

At a telephone or directions conference directions may be given to the parties. Directions will address any procedural matters that need to be concluded before the matter can proceed further. 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 directions may be made?**

Directions may be made requiring the parties to obtain or prepare information about their case and to disclose that information to the Member and the other party/parties.

Directions may address the following issues:

* A timetable for the parties to prepare a list of the documents they want to rely upon at the hearing.
* A timetable requiring the parties to provide witness statements or a summary of the evidence the witnesses will give.
* The issue of representation of any party by a lawyer or any other person.
* The most suitable location for the hearing.
* The availability and relevance of witnesses.
* Whether witnesses will attend in person or via Microsoft Teams (video link).
* Whether the hearing should be closed to the public.
* Whether a party requires TASCAT to issue a notice to a person to attend the hearing or produce documents;
* A timetable for the filing and serving of a hearing book.
* Whether any legal or other need to be considered by a Member before the hearing starts.

**What if a party is not represented by a lawyer?**

A significant percentage of parties in the Anti-Discrimination Stream are not legally represented. The procedures at TASCAT are relatively informal and are 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 they understand any obligations that are imposed upon them concerning procedural matters.

**Documents and Witnesses**

**Obtaining access to the documents**

The documents that were provided to EOT and the Commissioner are available to the parties. Parties may request copies of any of the documents 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

**The Review Hearing**

Each party is responsible for the presentation of their own case at the hearing.

It is important to bear in mind that the Member will take into account the Commissioner’s reasons for decision and the information presented during the hearing in making their decision. Information that you want the Member to know about - from a witness or in a document - must be presented by you in your case.

**The Member may raise questions about documents and witnesses**

While the parties are responsible for the presentation of their case, the Member 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 will be informed in advance and will be 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 that the Commissioner did not make the correct decision. In a Review of Dismissal hearing 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**

TASCAT is to conduct a hearing with as little formality and as expeditiously as the requirements of the legislation allow and a proper consideration of the matters before TASCAT permit.

**Natural Justice**

TASCAT is not bound by the rules of evidence but must observe the rules of natural justice and procedural fairness.

**Impartial**

TASCAT is impartial and objective. Accordingly, Members and staff cannot provide legal advice to any party about their case. However, questions about procedure and questions seeking clarification of TASCAT’s processes may be asked of staff in the Anti-Discrimination Stream and of Members during the proceedings.

**Particular needs or services**

Any person with a disability that may in any way affect their ability to engage in the processes before TASCAT or who may require the assistance of an interpreter, should advise TASCAT staff in the Anti-Discrimination Stream of this as early as possible in order that steps may be taken to assist that person.

TASCAT adopts a trauma-informed approach to matters listed before it. For information on this see the trauma informed fact sheet on the TASCAT website: [www.tascat.tas.gov.au](http://www.tascat.tas.gov.au).

**Other Information and Contact Details**

For other information, contact a lawyer, or see the website.

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

In relation to questions concerning TASCAT’s processes, contact TASCAT, Anti-Discrimination Stream 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 Member during the proceedings.