



Responding to a complaint of discrimination or prohibited conduct

The Office of the Anti-Discrimination Commissioner (OADC) is a neutral body, with the role of investigating complaints under the *Anti-Discrimination Act* 1998 (“the Act”). The OADC is not on anyone’s ‘side’ and does not act for a complainant or a respondent.

The Act is not a criminal law.

What happens if a complaint is made against me?



What happens when a complaint is received?

When the OADC receives a complaint, it is assessed to see if it should be accepted or rejected for investigation. This assessment is made on the basis of what the complainant alleges in the complaint only.

If you are named as a **respondent** to the complaint – that is, a person or organisation against whom a complaint is made – you will not be contacted at this stage. This is because the complaint may be rejected for investigation, in which case there is nothing for you to respond to.

Rejection of a complaint

If the Commissioner rejects the complaint, the complainant has a right to seek a review of that decision through the Anti-Discrimination Tribunal (Tribunal).

If the Tribunal believes the Commissioner was **correct** in rejecting the complaint, the complaint lapses. This means that this is the end of the complaint and no further action is taken.

If the Tribunal believes the Commissioner was **incorrect** in rejecting the complaint, the complaint will be returned to the OADC for investigation. It is at this stage that the OADC will notify the respondent that a complaint has been received.

Acceptance of a complaint

A complaint is accepted for investigation if the Commissioner is satisfied that there is a **possible** breach of the Act. At this stage, the complainant does not have to prove that the discrimination or prohibited conduct occurred. It is sufficient if the complainant provides sufficient material that shows there is a possible breach of the Act.

The OADC cannot give legal advice, but you are entitled to procedural advice regarding any complaint you are involved in as a respondent. You may seek outside legal advice or assistance from a lawyer or community legal centre at any stage of the complaint process.

If you remain unsure of your responsibilities as a respondent or have any questions, please contact the OADC for further information.



Contact Us

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Email antidiscrimination@justice.tas.gov.au

www.antidiscrimination.tas.gov.au

Disclaimer: This information is intended to provide a general understanding of the Anti-Discrimination Act 1998.

If the Commissioner accepts the complaint for investigation, or the Tribunal returns a complaint to the OADC for investigation, the OADC must notify the respondent **within 10 days**.

The OADC will write to you and provide you with a summary of the complaint or a copy of the complaint, with the complainant's consent, and ask for a response. The response is your opportunity to have your say and provide your account of events.

If the complainant names an organisation as the respondent, a response needs to be provided by the person who has authority to speak on behalf of the organisation. For example, the managing director, chief executive officer or human resources manager.

Why are you asked to respond?

The OADC asks for a response from you so that you have an opportunity to say what happened in response to what is alleged by the complainant. 'Natural Justice' means that you must have an opportunity to be heard.

However, you cannot be forced to respond. The Act imposes no penalty on you if you do not send a response to the OADC at this stage.

The OADC asks for a response **within 14 days** of being notified of the complaint. If you have any difficulty responding to a complaint within 14 days, you must let the OADC know. We can give you an extension of time, if you have good reasons.

What happens to my response?

A copy of your response will be sent to the complainant. The OADC asks the complainant to reply to what you have said within 14 days. The complainant may be given an extension of time, if he or she has good reasons.

Questions asked during investigation

During an investigation, both respondents and complainants may be asked questions in order to assist the Commissioner to obtain the relevant information. The questions will usually be in writing, so that you have a proper chance to consider them and take advice if you wish to.

At this stage, there is no penalty for not providing the OADC with answers to questions.

What is Section 97?

Under section 97 of the Act, the Commissioner can require the complainant, respondent, witness or any other person to provide specified information or documents that may be relevant to a complaint.

If you are required to provide information or documents under section 97, you **must** answer the questions or provide the documents, unless you have a reasonable excuse for not doing so. If you fail to provide this information to the Commissioner, without reasonable excuse, you could be fined.

If you are having difficulty providing the information or documents you must contact the OADC and ask for an extension of time to reply.

What happens at the end of the investigation?

At the end of the investigation, the Commissioner will determine whether the complaint should be:

- Dismissed;
- Directed to Conciliation; or
- Referred to the Anti-Discrimination Tribunal for inquiry.

If you do not provide a response or information that is requested of you, the Commissioner will make a decision based only on what the complainant says, without your full account of events.

Please advise the office prior to an appointment if you require special assistance or the services of an Interpreter /Auslan.