JUDGEMENT

EQUAL OPPORTUNITY TRIBUNAL
OF WESTERN AUSTRALIA

No. 11 of 1991

B. BOLTON
T. EADES
G. & P. BOLTON
S. & P. EADES
Complainants

- against -

D.P. & P.A. O'DEA
Respondents

BEFORE: Mr N. P. Hasluck Q.C. (President)
Ms B. Buick (Member)
Mr K. Wyatt (Deputy Member)

Counsel for the Complainants - H. Andrews
Counsel for the Respondents - J. F. Higgins

HEARD: 14 and 15 April 1992

REASONS FOR DECISION

(Delivered: 29 June 1992)

The Complainants claim that the Respondents discriminated against them on the ground of race. The complaint arises out of an incident which took place on licensed premises known as Hordern Hotel, Narrogin on 30 November 1990.

The Hordern Hotel is one of two licensed hotel premises in Federal Street, Narrogin, and is in the commercial centre of the town. The main entrance opens into a corridor leading to the kitchen area at the rear of the premises, that is to say, at the railway end of the premises. There is a dining room near the kitchen area which can also be used for live entertainment. The Public Bar lies between the dining room and Federal Street. One can enter the bar from Federal Street or from the corridor via a "side door" just inside the main entrance. In addition, a door behind the bar leads into a bottle shop which in turn opens in to the street. During the course of the hearing the Tribunal viewed the premises and noted that the bar itself is L-shaped and comparatively small in size with the result that a person standing at the Federal Street end of the bar is only a few metres away from the side door leading into the corridor.

Prior to the events giving rise to the present complaint the licensee of the premises was Stephen Rawle. Towards the end of 1990 the First and Second Respondents, Daniel O'Dea and Patricia O'Dea, were assigned the lease of the premises. They assumed management of the hotel on 30 November 1990 and became licensees on 7 December 1990. As normally happens when a business is being transferred they received some advice and instruction from the outgoing licensee Stephen Rawle about running the business.

Section 108 of the Liquor Licensing Act provides that a licensee has reasonable cause to refuse to receive a person or to sell liquor to a person if the person appears to be drunk or otherwise appears to be a person whose presence on the premises will occasion the licensee to commit an offence or if the licensee has reasonable cause to believe that the person is, or is known to be, quarrelsome or disorderly. By Section 115 where a licensee permits drunkenness or violent or disorderly behaviour to take place then he commits an offence.

Having regard to those provisions, Stephen Rawle had from time to time *"barred"* troublemakers. The bar staff working for him were generally acquainted with his decisions in that regard and had an instruction to summon him immediately if a known troublemaker or a person who had been "barred" or "banned" entered the premises. At the time of the handover a barmaid called Kara West had been working for Stephen Rawle for a number of months. Although she was comparatively youthful in appearance she had assumed responsibility for looking after the bar on various occasions. In giving advice to the Respondents, Rawle, in a somewhat casual way, pointed out a number of passers-by who he considered to be troublemakers. He agreed in evidence that none of the Complainants in the present case had been barred from the premises by him or by anyone on his behalf and he did not assert that they were troublemakers. There was no evidence to suggest that he told the Respondents that any of the Complainants had been banned by him or were troublemakers.

The male Respondent, Daniel O'Dea, was an experienced publican. He had managed the Hyde Park Hotel bar and had been Manager of the Shenton Park Hotel. He had also

been licensee of the Karratha Tavern in the north of the State. In regard to his experience in the latter premises he agreed that although he did not have a policy concerning Aboriginal drinkers he had occasionally evicted drinkers when they had too much to drink or became troublesome. He considered that he was entitled to take this step having regard to the provisions of the Liquor Licensing Act referred to above.

The Respondents decided to publicise the fact that they had taken over the Hordern Hotel. Accordingly, they arranged for an advertisement to be placed in the local newspaper a few days prior to 30 November 1990 referring to a party night at which there would be live entertainment and the price of drinks would be discounted. The local radio station broadcast an advertisement to the same effect. The band hired for the occasion came from Perth. The band was called "Two's a Party", although it actually consisted of three musicians. They were contracted to play from 8.00 pm until midnight in the dining room adjacent to the public bar but, in the event, they were persuaded to start playing at about 7.30 pm. For half an hour or so before the appointed commencement time they were warming up in the area set aside for live entertainment. There was also a juke-box in a corner of the bar which could be set by the publican so as to play continuously.

By their Points of Claim the Complainant's say that they are all persons of Aboriginal descent, and this plea was admitted by the Points of Defence filed on behalf of the Respondent. Graham Bolton was the senior member of the group and has been a long term resident of Narrogin. He is married to Penny Bolton who has also lived in Narrogin for many years. The Complainants include three of Graham Bolton's nephews, namely, Bradley Bolton, Wayne Eades and Troy Eades. Bradley was 21 years of age and lives in

Narrogin, Wayne Eades was 26 years of age at the relevant time and has lived in Narrogin all his life. He is married to Patricia Eades. Troy Eades was the youngest member of the group of Complainants. He was 19 years of age and is physically robust and tall. Both he and Patricia Eades have fair hair.

Patricia Eades heard the radio advertisement drawing attention to the party night to be held at the Hordern Hotel on Friday 30 November 1990. She told the others about it. The group dressed up intending going downtown to have a few drinks at the hotel and participate in the party night.

The Complainants arrived at the premises at about 7.00 pm and all were neatly dressed. They had not had anything to drink prior to their arrival at the premises. The newcomers entered the premises through the main entrance and, from the corridor, went into the public bar via the side door. Graham Bolton and Patricia Eades then went to the railway end of the bar where they attempted to catch the attention of the barmaid, Kara West, with a view to ordering drinks for the group. The noise level was high owing to the hubbub of voices in the crowded bar and the noise of music from both the juke-box and the "Two's a Party" musicians warming up.

According to Graham Bolton and Patricia Eades, the barmaid, Kara West made no attempt to serve them and that fact is admitted by the Points of Defence.

Kara West thought (mistakenly as it later turned out) that Graham Bolton and Patricia Eades were part of a group which included some persons that had been barred by the

previous licensee, Stephen Rawle. She mentioned her concern to Patricia O'Dea who was seated with a group of friends at the Federal Street end of the bar. Patricia O'Dea immediately went to the kitchen area to fetch her husband. She informed him that there might be *"trouble in the bar"*. He went to the bar, spoke briefly to Kara West, and was told that some of the group of Complainants had been barred. Without further ado, or any further inquiry, he summoned Graham Bolton and Patricia Eades and the rest of the group to a position about the middle of the bar area so that he could address the group collectively.

There is a considerable degree of controversy as to what exactly was said at that stage.

According to Graham Bolton, Daniel O'Dea asked the group to leave. He said he didn't want trouble. Bolton made it clear that the group was not intending to cause any trouble but had simply come to have a good time. Daniel O'Dea said they had to leave because a couple of them had been banned. He went on to suggest that some members of the group might be under age, especially Troy Eades from whom he sought proof of age. A number of witnesses on behalf of the Complainant suggested that Troy Eades provided proof of his age, but, in any event, whether or not sufficient proof was produced, it is clear that Daniel O'Dea did not take that point further.

Graham Bolton said in evidence that during the course of addressing the group, the Respondent contended that *"90% of you are troublemakers"*. This version of what he said was confirmed by Patricia Eades and by Wayne Eades. According to the former he said it with a smile on his face. According to Penny Bolton his tone was sarcastic and

loud when he said it. All of these witnesses testified that O'Dea asked them to leave the premises. Penny Bolton said also that reference was made to some of the group being barred but that point was disputed and she heard a man's voice behind her saying that *"none of us are barred"*. According to Patricia Eades most of those in the group tried to tell the publican than they weren't banned.

In summary, the evidence presented by the six Complainants suggested that an exchange took place in which reference was made to some of the group being banned, reference was also made either expressly or by implication to Aboriginals such as the Complainants being troublemakers, and that a verbal altercation took place in which it was denied that any in the group were barred or that any in the group or the group as a whole were troublemakers. Having regard to the uncontroverted evidence at the hearing that no member of the group had been barred, and that all members of the group were over age and were therefore entitled to resort to the licensed premises, it is not surprising that the request to leave was greeted with a degree of indignation and resistance. Thus, it seems likely, even on the Complainants' view of the matter, that voices were raised in argument. Having regard to the general level of noise in the bar, the exchange between the parties may have resembled a shouting match. Further, one member of the group, Wayne Eades, conceded that he made his annoyance known by swearing. On the Complainants' version of what occurred, however, a finding could not be made that in a public bar of this kind the group was acting in a quarrelsome or disorderly manner. They were simply voicing an indignant response to what seemed to be (and in fact was) an unreasonable request that they leave the premises.

According to Daniel O'Dea, having called the group together, he put it to them that he had been advised by the barmaid that some of the group had been barred. As they had come in a group he thought it best to talk to them as a group. He was then immediately greeted by a tirade of abuse. He alleges that one member of the group called him a *"racist pig"*. In an attempt to take the heat out of the situation he changed tack and asked Troy Eades whether he could produce evidence of his age. He denied saying that 90% of Aboriginal people or 90% of those before him were troublemakers. He required the group to leave and stated that they were welcome to come back the following night to talk about the problem and sort it out. He felt that he was justified in asking them to leave because of the information he had received from the barmaid and the extremity of their response. He conceded that he probably raised his voice to the group.

It appears to be common ground that as a consequence of the exchange the Complainants then left the bar. The evidence of the Complainants was that they felt a sense of humiliation. Bystanders had overheard the exchange. For a moment, the bar went silent as heads turned to see who was being told to leave. Penny Bolton said that she was the first member of the group to leave because she felt faint, her legs were getting wobbly, and she could feel her face getting hot, so she walked straight out. Patricia Eades confirmed that Penny was the first to leave. Graham Bolton said *"I just put my head down and walked"*. Bradley Bolton said he felt ashamed because he knew people in the bar from school days.

Once the Complainants had withdrawn, Daniel O'Dea joined his wife and their friends at the railway end of the bar. He agreed in the course of his evidence that he made no

attempt to find out from Kara West or from any other person whether any member of the group he had just evicted had indeed been barred by the previous licensee. It seems that at all material times he was prepared to act simply on the brief word to that effect given to him by the barmaid even though, in fact, the advice she gave was wrong. No member of the group had been barred. The case advanced on behalf of the Respondents at the hearing was that the response received in answer to the initial request to leave was so extreme that the licensee had reasonable cause to believe that they would be quarrelsome or disorderly. He does not point to any incident of drunkenness or violence and relies simply upon the verbal exchange when the request to leave was made.

In order to corroborate his evidence the Respondents called Kara West, Patricia O'Dea and members of the group who were drinking with or were positioned close to Patricia O'Dea at the Federal Street end of the bar, namely, Morag Maxwell, Malcolm Scott, Malcolm Knight and Robert Dew. These witnesses confirmed that voices were raised and it was also suggested that things got a bit heated. There was some swearing by members of the group being addressed by Daniel O'Dea. The bar was noisy. None of these witnesses gave any evidence which suggested that they feared that the matter would get out of hand or result in some physical conflict.

After leaving the hotel, the Complainants went across the street. There, by chance, they encountered Geraldine Walley and Priscilla Kickett, both members of the Aboriginal community in Narrogin. The Complainants said that they had just been kicked out of the hotel because they were troublemakers. Geraldine Walley was asked to intervene on their behalf by going back to seek an explanation as to why the publican had refused to admit

them to the pub.

Geraldine Walley had a considerable record of achievement behind her as an Aboriginal Liaison Officer for the Minister of Education, Chairperson of the Southern Aboriginal Corporation and Chairperson of the Aboriginal Lands Council. She acted as leader and spokesperson of the group when they returned to the premises. She was accompanied by Priscilla Kickett. The newcomers and the Complainants went through the main entrance and it was there, at the side door, that they were met by Daniel O'Dea who stood in the entrance so as to block the way. He told the group again that he didn't want them on the premises. According to Geraldine Walley, she asked the licensee to explain why he wasn't prepared to have the Complainants on the premises. O'Dea said that 90% of Aboriginal people were troublemakers. When Priscilla Kickett, who was standing near Geraldine Walley at the front of the group, asked how he could say that when he didn't know the members of the group, he said that he would call the police. According to Graham Bolton, at this stage Daniel O'Dea again said that 90% of Aboriginals are troublemakers. This evidence was corroborated by Penny Bolton who remembered the publican saying to Geraldine *"A couple of them's banned by the previous owner and 90% of Aboriginal people are troublemakers"*. She felt bad. She could see people in the bar staring at her.

Although the immediate matter of discussion was the request made by Geraldine Walley on behalf of the group for an explanation as to why the group had been evicted, it must have been apparent that, in effect, the group was still seeking admittance to the premises. The group was denied access to the premises.

Geraldine Walley said in evidence that discussion went to and fro for a considerable period of time. The publican was adamant that the group were troublemakers and would not be admitted, so she eventually advised the group that there was no point in remaining because nothing could be achieved at that stage.

During the course of the exchange several witnesses on behalf of the Complainants, including Geraldine Walley, said that the publican invited Geraldine Walley to enter the bar if she wished but although she was free to go in the others were not at liberty to do so. She declined that invitation. The fact that the invitation was extended suggested that the underlying point of the discussion was known to everyone present, namely, whether admittance to the bar could be obtained or not, even though, superficially, discussion may have focused upon the request for an explanation as to why the group had been evicted previously.

Daniel O'Dea gave a different account of the second incident. He agreed that he met the group at the side door but denied that he barred the entrance in the manner described by the Complainants. He agreed that Geraldine Walley was leading discussion on behalf of the Complainants and that she did seek an explanation from him as to why the group had been asked to leave the premises. He denied that he said anything about the group being troublemakers or 90% of Aboriginals being troublemakers. It was apparent from his evidence, however, that he was still of the view, although he had made no further enquiries from the barmaid, Kara West, or from any other quarter in the meantime, that some of the group had been barred and could become involved in disorderly conduct. He also said in evidence that during the course of this further encounter at the side door Troy

Eades raised his fists, or "shaped up" and it was then that he threatened to call the police.

Daniel O'Dea said under cross examination that Geraldine Walley was *"polite but terse"* in conducting the discussion. During the course of the discussion a member of the group resorted to foul mouthed abuse and he was not minded to alter his stance that the group as a whole should not be admitted to the premises, although he was prepared to admit Geraldine Walley. In regard to both incidents he considered that it was not practical to try and ascertain who exactly within the group had been barred and it was for that reason, combined with the abuse that he was allegedly subjected to, that he required all of them to leave and would not admit the group when they returned on the second occasion.

The Respondents' witnesses gave evidence concerning the encounter at the side door. They confirmed that voices were raised and the discussion became heated. However, Malcolm Scott confirmed during the course of his evidence that although voices were raised he did not at any time fear that the confrontation would result in physical conflict. It was really just a shouting match. The totality of the evidence suggests that, again, the noise level in the bar from general conversation and from background music, whether it be the visiting band warming up or the juke-box, was at a high level. In those circumstances, it is not altogether surprising that voices were raised.

Graham Bolton's perception was that no satisfactory explanation was provided by the publican as to why the Complainants were not allowed to enter the premises. This led him to believe that they were being denied access on the basis given by the publican, namely, that Aboriginal drinkers were troublemakers. After being advised by Geraldine

Walley that nothing further could be achieved, the Complainants left the premises via the main entrance. Again, as a result of the second incident, they felt humiliated because other people in th crowded bar must have noticed that they were being refused admittance. They parted company with Geraldine Walley and Priscilla Kickett, and gave thought to what they might do with the rest of the evening. Eventually, the Complainants went down the street to the neighbouring hotel, the Duke of York, and obtained some drinks. They went home and changed their clothes. The group then went to a drinking spot behind the municipal dump and talked about what had happened. Graham Bolton and others in the group felt upset and unhappy because they had gone out with the intention of having a good time at the only place in town where a live band was playing but they had been denied access to the premises. Wayne Eades, in describing this latter part of the evening, said he felt so bad about what had happened that he was not inclined to have a drink. The Complainants were conscious that other drinkers in the bar had seen them being evicted. Penny Bolton had recognised one person in the bar and she felt acute embarrassment on the next Monday when she saw the woman in question behind the counter at the hospital.

To complete the narrative, the Tribunal mentions that during the course of his evidence Daniel O'Dea said that since the incident he has served drinks to at least Troy Eades and Priscilla Kickett and this evidence was not disputed. He has Aboriginal customers at the hotel on a regular basis. They play pool. They play darts. They play the juke box.

Against this background the Tribunal now turns to the issues raised by the pleadings filed on behalf of the parties.

Section 36 of the Act provides that a person discriminates against another person on the ground of race if, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person of a different race.

Section 45 provides that it is unlawful for a person to discriminate against another person on the ground of race by refusing to allow the aggrieved person access to any place that the public is entitled to enter or use, or by refusing to allow the aggrieved person the use of any facilities in any such place or by requiring the aggrieved person to leave any such place.

By Section 46 it is unlawful for a person who, provides goods or services, or makes facilities available, to discriminate against another person on the ground of race by refusing to provide the other person with those goods or services or to make those facilities available.

By Section 4 the term "race" includes colour, descent, ethnic or national origin or nationality.

By Section 5 the doing of an act by reason of a particular matter includes a reference to the doing of an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

In looking at previously decided cases, the Tribunal notes that in Bear v Norwood Private Nursing Home (1984) EOC 92-019 at page 75-477 it was said in regard to a complaint of discrimination on the ground of sex that in order for there to be discrimination against the person it is not necessary that a person of the other sex be a reality, it is enough that there be merely a comparison with a notional person of a different sex. In other words, the statutory provisions allow for a comparison to be drawn between the situation of the Complainant and the situation of a notional person in the same or a not materially different set of circumstances.

That approach has been approved by this Tribunal in regard to cases of racial discrimination. See Chesson v Buxton (1990) EOC 92-295; Oakley v Rochefort Holdings Pty Ltd (1991) EOC 92-352.

Further, in a number of cases it has been held that the relevant statutory provisions are aimed at thoughtlessness and neglect and it is therefore not necessary to establish deliberately discriminatory conduct for an act of discrimination to take place. All that must be shown to establish an act of unlawful discrimination is a causal connection between the alleged discriminatory act and the circumstances of the Complainant. It is not necessary to show a purpose nor subjective intent to discriminate. See Williams and Another v Council of the Shire of Exmouth (1990) EOC 92-296, following the New South Wales Court of Appeal in Jamal v Secretary, Department of Health (1988) EOC 92-234.

The Tribunal also notes that in a complaint of racial discrimination the Complainant bears

the onus of establishing that he or she has been the victim of unlawful discrimination. The case must be proven on the balance of probabilities, but, in the absence of direct evidence, the Complainant may use in support inferences drawn from the primary facts, although discrimination cannot be inferred when more probable and innocent explanations are available on the evidence. See Fenwick v Beveridge Building Products Pty Ltd (1986) EOC 92-147; Erbs v Overseas Corporation Pty Ltd (1986) EOC 92-181; Department of Health v Arumugam (1988) VR 319.

The Tribunal now returns to the facts of the present case and, in doing so, notes that none of the Complainants had actually been barred from the premises and viewed objectively prior to their arrival at the premises the Respondents had no reason to suppose that any of the Complainants would conduct themselves in a disorderly manner. The evidence clearly shows that the Complainants had not been drinking and they were neatly dressed. Upon first entering the premises Graham Bolton and Patricia Eades approached the railway end of the bar in an entirely normal and well conducted manner and the other members of the group were similarly well conducted. It is quite apparent that Daniel O'Dea himself observed nothing in their behaviour which would cause alarm to a publican of his experience and in his first confrontation with the group he was acting simply upon the comparatively scant information given to him by the barmaid Kara West, that some members of the group were banned. That information was incorrect but without further enquiry Daniel O'Dea was prepared to act upon it. However, even on the information he had, it must have been immediately obvious that he did not have a sufficient basis to exclude all members of the group. His understanding was that "some" members of the group had been banned.

As a matter of inference it is clear that Daniel O'Dea saw those comprising the group not as individuals but as a group linked by their race. If some were banned then the group as a whole might behave in a disorderly way. This leads the Tribunal to conclude that one of the factors influencing O'Dea to act in the manner he did was the Complainants' racial characteristics. If the situation of the Complainants is compared with the position of an equivalent notional group of non-Aboriginal drinkers it is difficult to imagine that a group of the latter kind would have been treated in such a peremptory fashion. A responsible publican would surely have attempted to find out which members of the group, if any, were banned and why.

In addition to these matters there is evidence from the Complainants that Daniel O'Dea specifically referred to them as troublemakers and that 90% of all Aboriginals are troublemakers. On the balance of probabilities the Tribunal inclines to the view that a remark to this effect was made by Daniel O'Dea and that tends to confirm the inference emerging from other evidence that he viewed the six Complainants as a racial group when he first spoke to them. In other words, he viewed the Complainants not simply as a group of prospective drinkers who might cause trouble but as a group of Aboriginal drinkers who might cause trouble.

The line of defence principally advanced on behalf of the Respondents was that in talking to the group on the first occasion Daniel O'Dea was immediately subjected to a tirade of abuse which caused him to evict the group he was speaking to, not because he viewed them as Aboriginal drinkers, but because he reached a determination in his own mind, having regard to the extremity of their reaction to his request, that they were likely to

cause trouble. On the balance of probabilities, however, the Tribunal does not accept his evidence in that regard. The Tribunal accepts that voices were probably raised during the course of the encounter and that, having regard to the noise level in the bar, the encounter may have resembled a shouting match as far as bystanders were concerned. In the circumstances, however, the indignation of the Complainants is understandable and the Tribunal does not consider that the reaction of itself provided grounds for asking the Complainants to leave the premises. Thus, within the language of the statutory provisions referred to above, an act of discrimination occurred at this point afffecting all of the Complainants, in that they were refused goods and services on racial grounds and were denied access to a public place that in the normal course would have been available to persons or patrons of the hotel premises.

In regard to the second incident, that is to say, the encounter at the side door, the Tribunal places considerable weight upon the testimony given by Geraldine Walley. She was an impressive witness, being clearly an articulate and level-headed person. Although the subject matter of her parley with the licensee, on the face of it, was the request for an explanation as to why the Complainants had been asked to leave, it must have been quite apparent to all concerned that, in effect, the group was seeking admittance to the premises. The Tribunal considers that although voices may again have been raised during the course of this encounter owing to the level of noise in the bar, the discussion fell far short of disorderly conduct and was essentially a rational discussion led by Geraldine Walley in which the licensee was being asked to review his stance. As mentioned earlier, it is significant that Daniel O'Dea had taken no steps to verify the scant information he had obtained from the barmaid. Notwithstanding that he was now being addressed by an

articulate and persuasive spokesperson, namely, Geraldine Walley, he remained adamant that the group should not enter. It was clear that this stance was based upon the perception that they were a group of Aboriginal drinkers and that Aboriginal drinkers were viewed as troublemakers by the licensee. The Tribunal finds as a fact that Daniel O'Dea on this second occasion also said that 90% of Aboriginal drinkers were troublemakers. The inference is inescapable that the Complainants were discriminated against on the ground of their race.

It is quite apparent that the discriminatory conduct caused members of the group considerable distress. Narrogin is a comparatively small community and the humiliation associated with being refused access to a public bar is therefore likely to be felt more keenly and that appears to have happened in the present case. A number of the Complainants referred to a lull in the conversation which occurred when Daniel O'Dea made his position known to the group. They could therefore not help but feel that they had been humiliated in a public way and in circumstances which would probably be talked about. Their discomfort and embarrassment is illustrated by the fact that they then felt compelled to find a spot in the vicinity of the municipal dump in order to have a drink. In other words, as a result of what had taken place at the Hordern Hotel, they clearly felt that they were obliged to withdraw to the fringe of society.

This brings the Tribunal to the question of relief. The Complainants claim compensation. Section 127(b)(i) of the Act provides that after holding an inquiry, if the complaint is substantiated, the Tribunal may order the Respondent to pay to the Complainant damages by way of compensation for any loss or damage suffered by reason of the Respondent's

conduct. By Section 127(b)(iii) the Tribunal may order the Respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the Complainant.

A number of decisions bear upon the way in which these provisions should be interpreted. In Hall v Sheiban Pty Ltd (1989) EOC 92-250, the Federal Court indicated that the purpose of the legislation is remedial not punitive and the measure of damages in tort in the closest analogy. One should compare the position in which the Complainant might have been expected to be that the discriminatory conduct had not occurred but the situation which he or she was placed by reason of the conduct of the Respondent.

In Alexander v Home Office (1988) 1WLR 968 the Court suggested that although the damages to be awarded should be restrained in quantum having regard to the difficulty of assessing the monetary value of injured feelings, the awards made should not be minimal because this would tend to trivialise or diminish the respectful public policies.

On 13 December 1990 Commissioner Kevin O'Connor awarded compensation of between $1,000 and $1,200 to seven Aboriginals who were refused service at two Mareeba Hotels, the Royal and the Graham. He also directed that public apologies be published. As to the Royal Hotel, in handing down the relevant decisions, Commissioner O'Connor noted that he was satisfied that in February 1990 a barring policy was in place at the Royal Hotel which was racist and was directed against Aborigines and blacks in general including Torres Strait Islanders.

In Oakley v Rochefort Holdings Pty Ltd *(supra)* an Aboriginal drinker was evicted from the Federal Hotel in Kalgoorlie by the licensee in an unjustified fit of anger, in that case, this Tribunal awarded damages in the sum of $800 as compensation in respect of the injuries suffered by way of humiliation.

In the circumstances of the present case, the Tribunal is satisfied that the Respondents were not acting pursuant to a declared racist policy, and to some extent their actions, although constituting an infringement of the Act as aforesaid, can be explained by reference to the fact that Daniel O'Dea was acting under a mistaken belief as a consequence of what had been said to him inadvertently by the barmaid. This mistaken belief does not excuse his conduct because he had an opportunity to make further enquiries and to reconsider his position but he failed to taking advantage of that opportunity. However, taking account of the fact that this was the first night on which the Respondents were in control of the premises, with the result that an error of judgement was made, the Tribunal considers that the relief to be granted falls somewhere between the damages awarded in the two previously decided cases just mentioned.

The Tribunal considers that a slightly higher figure is appropriate in the case of Graham Bolton and Penny Bolton because, being the senior members of the party, it appears from the evidence that they felt the distress and humiliation at being asked to leave the premises more keenly than the younger members of the party. The Tribunal orders that each of these two Complainants be paid the sum of $600 each. The remaining four members of the party of Complainants will be awarded the sum of $400 each.

As to the question of publishing an apology the Tribunal considers that an apology should be published by the Respondents in the form of an advertisement to be placed in the Narrogin Observer referring to the finding of the Tribunal and stating that an apology is extended to the six Complainants who were unlawfully evicted from the premises on the night of Friday 30 November 1990, contrary to those provisions of the Equal Opportunity Act which make racial discrimination unlawful.