

REASONS FOR DECISION

The Complainant, Eric Thompson, being of Aboriginal descent, claims that the Respondent, Dr Dennis Evans, discriminated against him on the ground of race in the area of goods, services and facilities contrary to Sections 36, 46 and 161 of the Equal Opportunity Act. His wife, Debra Thompson, has lodged a discrete complaint, relying on those provisions of the Act, especially Section 36(1a), which allow for a claim to be advanced if, on the ground of the race of any relative of the aggrieved person, discriminatory conduct occurs. Both complaints arise out of events that took place in the surgery of Dr Evans at Boulevard Shopping Centre, Port Hedland, on Monday, 26 May 1997.

Pursuant to procedural directions given by the Tribunal prior to the hearing a summary of the Complainants' allegations, appearing at pages 18 to 21 of the Report prepared by the Commissioner of Equal Opportunity, was treated as the Points of Claim in this matter. A letter in reply to those allegations written by Dr Evans dated 15 October 1997 was treated as the Respondent's Points of Defence ("the Evans letter").

Dr Evans

Dr Evans gave evidence to the effect that he was educated at various schools in Australia and mixed with many different races. He left high school on a scholarship to study in England and eventually qualified in medicine as a general practitioner in Birmingham. He took an interest in health issues concerning indigenous people and later worked on a voluntary basis with indigenous people in British Columbia.

Upon returning to Australia he worked in various country centres in Queensland and northern New South Wales and later spent a period with the Royal Flying

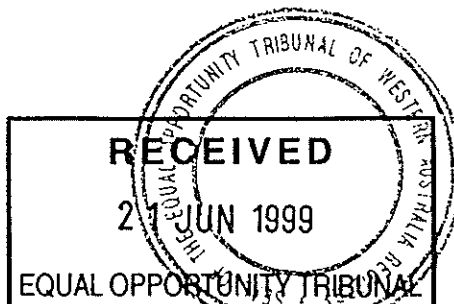


Doctor Service at Broken Hill. In that capacity he added to his knowledge of Aboriginal health issues. The associations he formed during these years eventually brought him to Port Hedland, about six years ago. Assisted by his wife, he settled in as a general practitioner in private practice. Since then, he has also found time to improve his knowledge of Aboriginal health issues, particularly in the field of diabetes-related blindness. As a consequence of further studies, undertaken at his own expense, he has invested in ophthalmological equipment which is now located at his surgery in Port Hedland. His principal receptionist is a woman of Aboriginal descent who has been with him since the day he opened his surgery.

Before leaving Dr Evans' background and turning to the circumstances of the complaints, it will be useful to note that in the course of his practice, and before the crucial encounter with the Thompsons on 26 May 1997, Dr Evans had on one occasion been consulted by Mr & Mrs Jose in regard to some facial injuries affecting their son. They were not normally patients of Dr Evans but on the day in question, about four years before the date just mentioned, they were obliged to seek urgent treatment from Dr Evans because no treatment was available at that moment from the hospital. During the course of that treatment, according to Mrs Jose, Dr Evans initiated a discussion about Aboriginal people which caused Mr & Mrs Jose to leave the surgery with their son. Mr & Mrs Jose were long standing friends of Mr & Mrs Thompson. The Tribunal will return to their role in the present proceedings in due course.

Mr & Mrs Thompson

Mr Thompson is a man of Aboriginal descent and that fact would be readily apparent to his fellow citizens. He was born in Perth, but was brought up in Port Hedland. He left school at 15 years of age, worked as a refrigerator mechanic, as an employee of the municipality, and spent five years working for the State



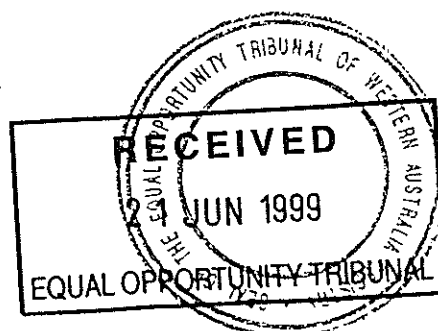
Energy Commission. He has been employed with BHP in Port Hedland since 1985.

It is also material to note that Mr Thompson played over 100 games of A grade football in Port Hedland and other areas. He said in evidence that he had dealt with racial taunts on the football field and had never allowed such taunts to arouse his anger. This aspect of his character was confirmed by his friends, Mr & Mrs Jose, who gave evidence concerning his good character and referring to his balanced but somewhat reticent temperament.

Mr Thompson's wife, Debra Thompson, is not of Aboriginal descent. The married couple have four children including a 9 year old boy, Grendon, and a 7 year old girl, Lakirah. The latter, unfortunately, was born with a heart condition which requires careful monitoring. The child has had two episodes of heart surgery and Mrs Thompson is aware that she should immediately seek medical attention whenever Lakirah gets a cough or the flu. In that regard she usually goes to her regular doctor or to Port Hedland Hospital. On Monday 26 May 1997, however, being troubled by Lakirah's cough, and because she could not get through to her usual doctor, Mrs Thompson made an appointment by telephone to see Dr Evans at 6.50 pm that evening, he being the nearest doctor available.

Arrival at the Surgery

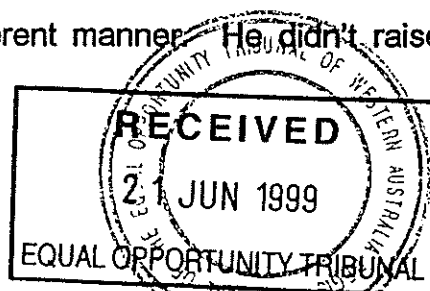
Mr Thompson said in evidence that he drove to the surgery with his wife, his son Grendon, and his daughter Lakirah she being at that time 5 years of age. They arrived at about 6.45 pm. They parked outside the surgery and found their way to the waiting room where the woman they now know to be Mrs Evans was in attendance behind the reception desk.



According to Mr Thompson, he sat down in the waiting area while his wife spoke to the receptionist. Mr Thompson overheard his wife make an enquiry about bulk billing and a response to the effect that bulk billing was not available. He heard his wife say that this seemed strange and was not a situation she had encountered previously. She referred to Lakirah's health care concession card and the receptionist then indicated that Mrs Thompson should have been informed about the situation by telephone at the time she booked the appointment. Mr Thompson understood the receptionist to be saying that if the Thompson's didn't like the service they could go elsewhere, that is to say, either to the hospital or to a private doctor who did bulk bill.

Mr Thompson and his wife then discussed the matter. They decided to stay and pay for the service as they felt that the hospital services at that time of night were for accident and emergency cases only. They had sufficient cash with them because Mrs Thompson had taken out some from a bank machine on the way to the appointment. Accordingly, Mrs Thompson then informed the receptionist that they would stay and pay for the service. She went on to enquire, however, as to why bulk billing wasn't available as most other doctors proceeded in that way. Mrs Thompson was told that the Government would only pay \$21 if the doctor bulk billed.

The receptionist then left the waiting area for a short period. Upon her return she asked whether the Thompsons would be paying by cash, credit card or cheque. When Mrs Thompson indicated that payment would be in cash the receptionist then asked for \$36.00. Mrs Thompson replied that the service would be paid for after they had seen the doctor. When the receptionist said that the payment had to be made first Mr Thompson decided to intervene. He approached the reception desk and asked what the problem was. The effect of his words was to enquire whether the receptionist thought they couldn't pay or might run away, or something like that, after the service had been provided. According to him, he made his point forcefully but not in a belligerent manner. He didn't raise his

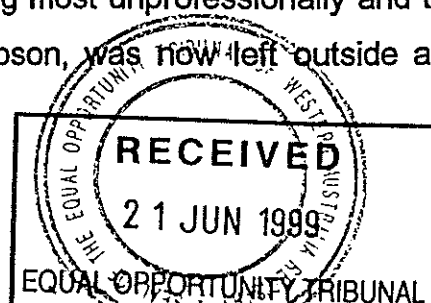


voice. The receptionist then went down the corridor for a little while. When she came back she walked to the entrance door to the surgery, held it open, and made it clear that Mr Thompson should leave, adding to this gesture a few words of complaint: "your attitude stinks". He asked why she was kicking him out, but heard no answer. Mr Thompson felt obliged to comply with the receptionist's demand. He was already across the threshold, on his way out, when Dr Evans suddenly appeared from his surgery and told Mr Thompson to "get out". According to Mr Thompson, these words were said as if the speaker was ordering a stray dog out of his yard. The words "piss off, you rock ape" were also allegedly spoken by Dr Evans at this stage.

Mr Thompson said that he was shocked by the doctor's behaviour. He turned to face the doctor and the receptionist, with his son Grendon beside him, and then told the doctor he was pathetic. He added: "You haven't got the smell of a man in your undies."

Dr Evans raised his fists as if shaping up for a fight. Mr Thompson continued on his way and this brought the exchange to an end. Under cross examination Mr Thompson said that he turned to face Dr Evans because he felt threatened, but he didn't advance towards Dr Evans. He was quite certain that the doctor called him "a rock ape".

When they reached their vehicle Mr Thompson's son, Grendon, asked his father why they had been kicked out. Was it because they were black? Mr Thompson said in evidence that he didn't know how to answer his son's question. His emotions were very confused. They had been asked to leave ostensibly because of a difference of opinion about bulk billing and how they were going to pay, but, deep down, his inability to answer his son's question had raised doubts in his mind and left him feeling powerless. He felt extremely humiliated by the incident. He had seen a professional man acting most unprofessionally and the result of the encounter was that he, Mr Thompson, was now left outside and



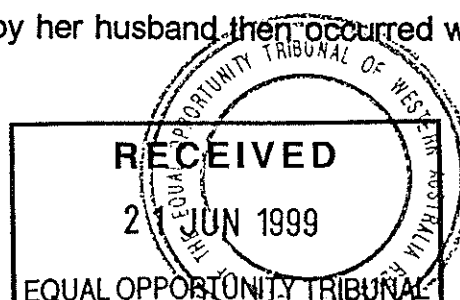
couldn't be there to give support to his daughter. In addition, he noticed that another man, probably a patient, went into the surgery after him, and he assumed that the doctor would be willing to attend to this man as a patient.

Mr Thompson felt that he had in no way provoked or deserved the treatment he had received. He felt that what had happened was out of the ordinary, and not right. He was deeply affected by the incident. Under cross examination, he said he did not know exactly why he was asked to leave. The only reason could be the discussion about fees, but he felt that what happened was something to do with his race.

Mrs Thompson

Mrs Thompson corroborated her husband's version of events. She was the one who had made the booking by phone and at that time there was no discussion about fees. She would normally just take her concession card to a doctor's surgery. When she first approached the receptionist she asked for a Medicare claim form and asked if they bulk billed. She gave essentially the same description as her husband of the events that followed. When Mrs Evans asked for the fee of \$36.00 in cash Mrs Thompson felt that her manner was not friendly and was somewhat intimidating. After that exchange, Mrs Evans left the reception area and came back. Mrs Thompson assumed that the Thompsons and their sick child were about to be called in to see the doctor, and for that reason they all stood up waiting to be called in. In fact Mrs Evans walked past them, held the door to the surgery open and said "your attitude stinks". It was clear that she was requiring Mr Thompson to leave the premises.

Mr Thompson commenced to leave with his son whereupon Dr Evans suddenly appeared and uttered the words "go on. Piss off you rock ape". According to Mrs Thompson he said this not so much in anger as in "a horrible, degrading sort of voice". The further exchanges described by her husband then occurred with

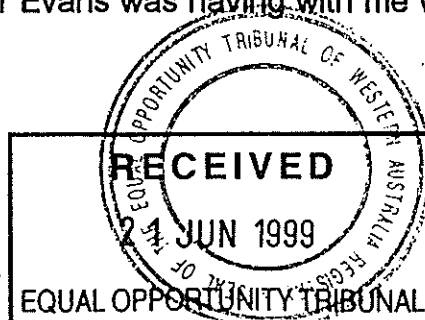


Mrs Evans holding the door open the whole time. At some stage during the exchanges, according to Mrs Thompson, the receptionist tugged her husband's shirt and said: "no Dennis, don't."

Mrs Thompson said that after these exchanges, Dr Evans returned to the waiting room and said directly to her: "how do you put up with a rock ape like that. You can do better than that." She rebuked him for this but, not knowing what else to do, and knowing that her child required treatment, she followed Dr Evans to the consultation room which was down a short corridor leading off the reception area. On the way Dr Evans asked her whether her husband was likely to be angry with her and mistreat her as a result of being evicted from the surgery.

In the consultation room Dr Evans began sounding off about Aboriginal people and how they were responsible for various break ins both at his surgery and at his home. According to Mrs Thompson, she felt obliged to enter into discussion and she therefore said that not all Aboriginal people were like that. Dr Evans agreed, and referred to his Aboriginal receptionist, but this simply meant that the rather rambling discussion ran onwards. He said he was sick of being ripped off by Aboriginal people. According to her he made comments about the situation in Tasmania where people sometimes had shot Aborigines for their misdemeanours.

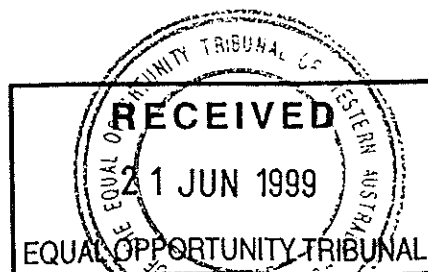
When it was put to her in cross examination that Dr Evans was simply initiating discussion in a general sense about various well-known historical facts in Australian history as a prelude to further discussion about contemporary issues such as reconciliation and views expressed by leading Aboriginal spokesmen such as Pat Dodson, Mrs Thompson disputed this view of the matter. According to her, she told Dr Evans on the day in question that she was "not familiar with Pat Dodson or what his views are or anything like that". As far as she was concerned "this conversation or discussion Dr Evans was having with me was to



do with justifying why my husband had been treated in the way he had been treated.”

Mrs Thompson said in evidence that she did not believe that Dr Evans would generally engage in such talk with his patients and she felt it was entirely out of place. Her main concern was to obtain a prescription for her child, and then to leave. She agreed that when Dr Evans finally did get round to looking at her child his manner changed and he acted in a balanced and professional way, and in due course arrangements were made for her to pick up a prescription at the front desk. Nonetheless, she felt that the whole experience had been very troubling to her daughter and she herself felt that she had not been treated properly. During the consultation Dr Evans had said to Lakirah: “you cannot help what you are.” Mrs Thompson took this to be a reference to the child’s Aboriginality. It struck Mrs Thompson as very unusual that Dr Evans was able to examine her daughter calmly and in a professional manner at one moment but then appeared to become irrational when talking about social issues involving Aboriginal people. He may have referred to multiculturalism in general terms but she did not feel that the spirit of his remarks was one of general discussion.

In due course she and her husband travelled home by car. In the car, and at home, they tried to work out the meaning of what had taken place. She told her husband about her conversation with Dr Evans. In the days that followed they mulled over the experience and because their friend, Mrs Jose, had some experience with the Aboriginal Legal Service, they were eventually able to reduce their complaints to writing, and these were submitted to the Commissioner of Equal Opportunity in the form of two signed statements under cover of a letter dated 6 June 1997. Mrs Thompson went on to say that the incident at the surgery was a source of continuing distress to her and her husband and she felt that in the months that followed it had an adverse effect upon their marital relationship. Mr Thompson who was usually outgoing and cheerful became withdrawn.

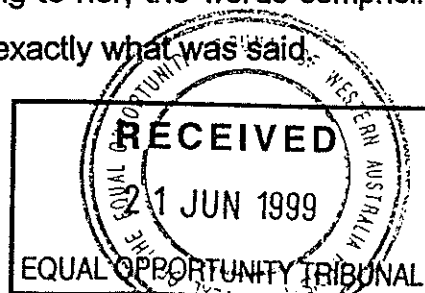


Mrs Evans

Mrs Evans provided a different account of what took place on the evening in question. When the Thompsons arrived there was no one else in the waiting room. Mrs Thompson completed a registration form for Lakirah and a discussion then took place about bulk billing in the course of which it was made clear to the new patients that bulk billing was not available. This led to a discussion between the Thompsons as to what they would do.

Mrs Evans conceded that it had been a long day for her and she wanted to close up. The Thompsons were the last booked patients for the day. While the Thompsons debated the situation she went out the back to tidy up. When she returned she offered to ring the hospital for them if they had a problem with the service being offered. According to her, the usual practice was to ask the last patient for the day to pay in advance so that the books could be completed while the consultation was taking place and it was for this reason that the advance payment in cash was requested. She said in evidence that Mr Thompson took exception to this request and, in a belligerent way, asked whether she thought they were not going to pay the bill. According to her, Mr Thompson became extremely agitated and began dancing about and gesticulating and it was this which prompted her to say that if he was going to behave badly he should leave. She went to the door and opened it.

Mrs Evans said in evidence that there was only one previous occasion on which she had asked a patient to leave. That was some years ago and concerned a non-Aboriginal patient who was drunk. In her mind, if a patient was misconducting himself, she could ask him to leave. It was while she was holding the door open that her husband appeared and became involved in an exchange with Mr Thompson outside the surgery. According to her, the words comprising the exchange were muffled and she did not hear exactly what was said.

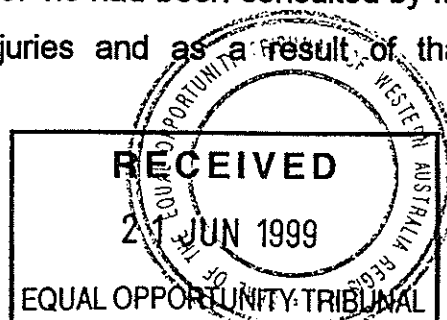


Under cross examination Mrs Evans indicated that she had not spoken to Dr Evans before asking Mr Thompson to leave but made this decision herself. She acknowledged that there was a doubt in her mind as to whether the Thompsons would in fact pay for the service but the reason she asked Mr Thompson to leave was because he "danced a jig" and she didn't want to put up with his jumping around and poor behaviour. Nor did she know exactly what might happen next. She conceded under cross examination that with the benefit of hindsight it could be said that her husband's reaction to what had taken place in the waiting room was too extreme, partly because by the time Dr Evans appeared Mr Thompson was already on the way out. Nonetheless, she felt her husband had acted reasonably because he was not to know what would happen next, and therefore obviously felt obliged to take action. She accepted that she probably did say to him: "It's all right, Dennis. It's under control." She also agreed that before her husband appeared he would not have had an opportunity to observe what she called Mr Thompson's "jig or dance".

Mrs Evans confirmed in evidence that after the exchange between her husband and Mr Thompson had taken place, Mrs Thompson and her daughter were accompanied to the consulting room by her husband. They emerged about fifteen minutes later and paid for the consultation and prescription. She denied that she asked Mr Thompson to leave the premises because of his race. She said that she and her husband generally treated all patients in the same manner, irrespective of race.

Dr Evans

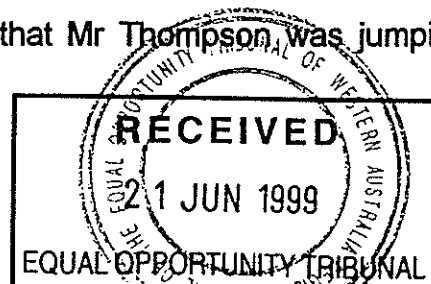
Dr Evans commenced his evidence by providing the details concerning his qualifications and interest in indigenous health issues mentioned earlier. He accepted that at some stage prior to 26 May 1997 he had been consulted by Mr & Mrs Jose concerning their son's facial injuries and as a result of that



consultation some of his concerns about the way in which the injuries might have been received were passed on to a local police officer. He suggested in evidence that Mr & Mrs Jose were probably biased against him because of that incident. He then turned to the events of Monday evening, 26 May 1997. Dr Evans confirmed that he saw Mrs Thompson and her daughter on the evening in question and made out a prescription for the daughter after the consultation. He accepted that at some stage during the course of the evening he was involved in an altercation with Mr Thompson although, initially, he was unsure whether the altercation took place before or after the consultation. He eventually accepted that the altercation must have taken place before the consultation commenced having regard to his exchanges with Mrs Thompson while examining her daughter.

He said in evidence that he was sitting in his consulting room with the door open. He overheard what seemed to be a heated discussion and emerged to find his wife evicting from the surgery waiting room the man he now knows to be Mr Thompson. He played a part in ordering out Mr Thompson because he perceived that the situation had become unpleasant but he denied using any words such as "piss off. You rock ape". He accepted that his wife might have said to him that she had dealt with the situation but he also recalled feeling at one stage during the encounter that he would have to fight the man being evicted, although he couldn't quite recall what exactly precipitated that part of the encounter. He might have used some strong language such as calling Mr Thompson a "low life" type or "ratbag" but felt this was due to Mr Thompson's belligerence towards him.

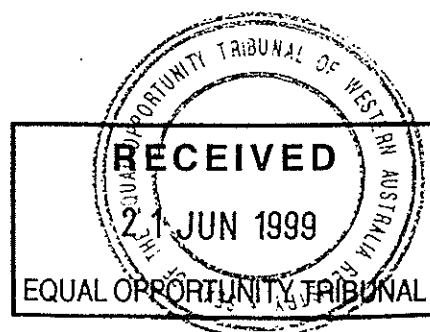
Under cross examination, he said that although he couldn't quite recall what was being said when he first arrived in the waiting room he felt that there was an atmosphere of animosity. He accepted that he made no enquiry from any person present in the waiting room as to what exactly was going on. He felt that his wife was being subjected to low grade abuse and that Mr Thompson was jumping



around in an unseemly way. He seemed to recall that Mr Thompson was being extremely abusive and using such words as "fuck" and "cunt" but he again strenuously denied that he himself used the words "rock ape", although he accepted that such a term was known to him as a term of racial abuse. He also accepted that his wife may have admonished him for playing a part in the eviction when she had the situation under control. When pressed further in cross examination, he agreed that he had seen the Commissioner's Report prior to the hearing and that his evidence might have been unconsciously influenced by a statement made by his wife in that report in which she described Mr Thompson dancing about as the cause of her decision to evict him. This statement might have prompted the evidence he gave at the hearing that he saw Mr Thompson dancing about.

The Tribunal pauses to note that in commenting on this facet of the transaction the Evans letter (dated 15 October 1997 and therefore prepared many months after the relevant events) reads in part as follows:

"Mrs Thompson presented with an unwell child and according to my wife took umbrage at the fact that they were required to be responsible for their private fees. I emerged from my consultation room at the sounds of an angry male voice, to observe Mr Thompson ply my wife with low grade abuse. My wife, it seemed, was attempting to lock Mr Thompson out of the surgery ... it was a vitriolic outburst from Mr Thompson that brought me into the waiting room to assist my wife rid the premises of him in the first instance. As I did this he became so irrational and abusive that I ordered him from the surgery. At this stage he advanced towards me with, I believe, intent to do physical violence. In response I advanced to meet him with a similar intent, if he was so foolish as to proceed. He stopped in his tracks, thought better of the idea of violence and retreated to his car with more obscenities and abuse. Should I have called him a "rock ape" (which this letter does not confirm) then I would apologise to rock apes, should such creatures exist, for never from David Attenborough to the Sydney Zoo have I seen an animal behave as poorly as Mr Thompson did on that night."

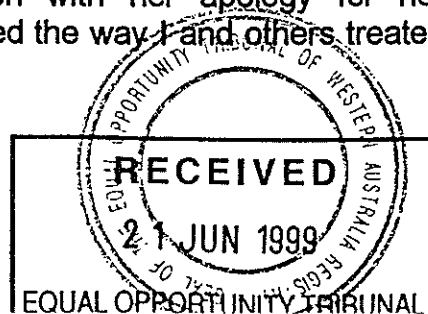


Dr Evans said in evidence that after Mr Thompson had departed he accompanied Mrs Thompson and her daughter to the waiting room. According to him, she seemed apologetic about what had happened and he therefore thought that it would be therapeutic, in view of the "ruckus" to enter into a dialogue or discussion with her about Aboriginal issues. In his view Aboriginal people had problems with alcohol and violence and this may have led to him making some enquiry as to whether Mrs Thompson might be in trouble with her husband in view of what had taken place in the waiting room.

According to Dr Evans, he told Mrs Thompson that he was not angry with her husband as an Aboriginal person but simply because he was a belligerent "pain in the arse". When she raised some suggestion that the world was generally against Aboriginal people he went on to say that in an ideal world society would be truly multicultural and not a nation of tribes. Each member of such a society would have to play a part and in that respect there was a responsibility upon Aboriginal people to lift their game. He mentioned the high crime rate of Aboriginal people and said that if they failed to lift their game society would continue to be afflicted by racial tensions. He was trying to correct her view that there was no fault on the Aboriginal side and it was in that context that he referred to the spirit of the Aboriginal leader Patrick Dodson. He may have referred in passing to the situation in Tasmania where Aboriginal people had been shot but this was again while trying to strike a note of constructive criticism about the requirements of present-day society.

The Tribunal pauses again to set out in part those passages of the Evans letter, prepared some months after the evening in question, bearing on this facet of the transaction:

"I shall briefly comment on a side conversation I had with Mrs Thompson in the consulting room. It was on the issue of race and racial prejudice. Mrs Thompson initiated the conversation with her apology for her husband's behaviour. She said he resented the way I and others treated

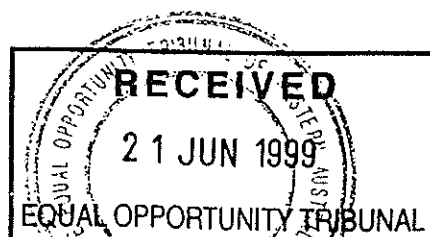


him because he was Aboriginal. I replied (none too subtly in hindsight) that I didn't resent him because he was Aboriginal but because he was a belligerent pain in the arse. Not the most sensitive phrase to use but I was reassured that Mrs Thompson must have heard much worse by the spectacle of Mr Thompson's abusive gutter invective directed at me prior to the consultation ... during our consultation in the consulting room I pointed out that non-Aboriginal society should not be expected to be tolerant of Aboriginal people who commit crimes any more than Caucasians who commit crimes. I cited the incidence of several established episodes where Aboriginal people had broken into my home and surgery. She seemed to accept my argument that Aboriginal people in terms of alcoholism and crime had to 'lift their game' if effective reconciliation between black and white was to occur. My statements were similar to those of that excellent Aboriginal leader Pat Dodson who recently admonished his people to play their part in reconciliation by reduced 'grog', 'domestic violence' etc. These non-racist remarks have been manipulated by Mrs Thompson. Unfortunately, I think this was intentional distortion considering the considerable numbers of other entirely fabricated accusations she has made."

He also noted in his letter that Mrs Thompson thanked him at the end of the consultation. While she was at the front desk, he overheard her expressing satisfaction to Mrs Evans about the medical service she and her daughter had received.

Credibility

It is apparent from the various versions of what occurred that, subject to some initial uncertainty on Dr Evans' part, there was broad agreement as to the sequence of events, commencing with the arrival of Mr & Mrs Thompson at the surgery waiting room. Significant differences emerged as to matters of detail, and especially as to whether Mr Thompson became belligerent and abusive as alleged by Dr Evans and as contended for to a lesser extent by Mrs Evans. It therefore becomes necessary to look briefly at the credibility and traits of the various witnesses.



The Tribunal begins by saying that Dr Evans was not convincing as a witness. He conceded that his recollection was not "crystal clear" and it rapidly became apparent that his description of the various events was confused and inconsistent. He changed his stance on various matters and his general mode of delivery was rambling and diffuse. When his account was measured against the demeanour of the Complainants it was clear that Dr Evans was given to exaggeration, and this is borne out by a close look at those passages of the Evans letter quoted earlier.

Dr Evans described Mr Thompson as abusive and yet it was clear to the Tribunal that Mr Thompson was reserved by nature and this was confirmed by the character witnesses called on his behalf, namely, Mr & Mrs Jose. The former of these two character witnesses described Mr Thompson as a "quiet achiever" and this seemed to be an apt description. His calm and dignified demeanour weighed strongly against the description of his actions given by Dr Evans, especially the suggestion that he was involved in a "vitriolic outburst" and began to ply Mrs Evans with "low grade abuse" including various obscenities. It is significant Mrs Evans' evidence did not support this part of her husband's story. In the final analysis, the Tribunal was unable to attach any real weight to the testimony of Dr Evans as to either the broad picture or as to matters of detail. The Tribunal does not go so far as to say that he was dishonest, but his garrulous and impulsive habits of expression meant that he was a thoroughly unreliable witness in every respect.

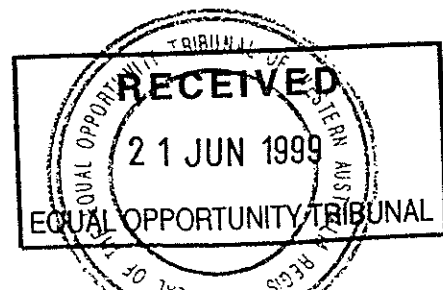
Mrs Evans was generally more reliable, being reasonably clear and succinct in her replies to the questions put to her. The Tribunal has already noted that she conceded, with the benefit of hindsight, that her husband was probably over-reacting to what he saw in the waiting room and was in error in intervening in circumstances where she had already taken control of the situation. His intervention was unnecessary, and an aggravation, bearing in mind that Mr



Thompson was already across the threshold and on his way out of the waiting room.

It is implicit in these observations that the Tribunal was favourably impressed by the demeanour of Mr & Mrs Thompson and gave considerable weight to their testimony. Mr Thompson spoke concisely and to the point and was generally consistent in his account of what took place. He was reluctant to accuse Dr Evans directly of racial discrimination and his low key and generally balanced approach to the matters in issue made it difficult for the Tribunal to accept that on the evening in question he had become abusive or danced about in the way described by Mrs Evans. It was apparent to the Tribunal that Dr Evans, on his wife's account, arrived on the scene after the crucial exchange had taken place, and acted impulsively, in taking steps to enforce the eviction. Mrs Thompson was a calm and self possessed witness and the Tribunal was satisfied that she had a clear recollection of what took place in her presence. It was apparent from the precision of the replies she gave to the questions put to her, and from the way in which she distinguished between the relevant and the irrelevant, that she had a clear sense of proportion. The Tribunal therefore attached considerable weight to her account of her exchanges with Dr Evans in the consulting room as being in the nature of a diatribe, and completely unlike the sort of discussion she would normally have with a doctor attending to her child.

Before leaving the question of credibility, the Tribunal notes that Mr & Mrs Jose were also reliable witnesses. A ruling was made at the hearing that they could give evidence as to their consultation with Dr Evans but in fact the Tribunal gave little weight to this part of their testimony because it was not sufficiently relevant. The Tribunal did give weight to what they said in their role as character witnesses.

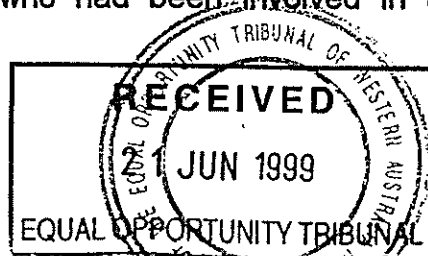


Statutory Provisions

Before proceeding to the Tribunal's findings it will also be useful to look briefly at the relevant statutory provisions. By Section 36 of the Equal Opportunity Act discrimination occurs if, on the ground of the race of the aggrieved person, 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. The Tribunal has already noted that Section 36(1a) is a means whereby Mrs Thompson, as a person related to Mr Thompson by marriage, is able to advance a claim in her own right.

Section 46 provides that it is unlawful for a person who provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's race by refusing to provide the other person with those goods or services or to make those facilities available to the other person. Discrimination may also occur in the terms or conditions on which the first mentioned person provides the other person with those goods or services. By Section 5 discriminatory conduct need not be the dominant or substantial reason for doing the act complained of.

The complainant bears the onus of establishing that he or she has been the victim of unlawful discrimination. The case must be proved 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 probably innocent explanations are available in the evidence. Previously decided cases indicate that a comparison can 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. For example, in one case, where two well-conducted Aboriginal drinkers were evicted from a hotel at the same time as some Aboriginal drinkers who had been involved in an



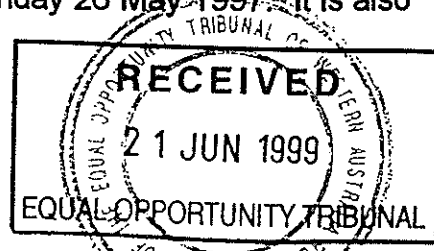
altercation, the Tribunal was prepared to grant relief to the two former drinkers because when their situation was compared to the situation of notional drinkers in the same circumstances – being bystanders when an altercation is taking place nearby – it was not likely that a well-behaved drinker would have been evicted in such circumstances. In that case the Tribunal was able to find that an act of discrimination had occurred. *Oakley v Rochefort Holdings Pty Ltd* (1991) EOC 92-352.

Further, it is not necessary to establish deliberate discriminatory conduct for an act of discrimination to take place. Statutory provisions include conduct arising from thoughtlessness and neglect. 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 complaint. It is not necessary to show a purpose of intent to discriminate. *Waters v Public Transport Corporation* (1991) 173 CLR 349.

Before leaving this review of the statutory provisions and decided cases, the Tribunal pauses to say in passing that it is satisfied in the circumstances of this case that the consultation with a medical practitioner for which Mr & Mrs Thompson had made an appointment amounted to the provision of “services” within the meaning of the Equal Opportunity Act in that both Mr & Mrs Thompson had an interest in and an involvement in the welfare of their daughter. They too were beneficiaries of the services being provided. It is apparent that the concept of providing “services” is to be interpreted broadly having regard to the convention that beneficial and remedial legislation of this kind is to be given a liberal construction. *IW v City of Perth* (1997) 71 ALJR 943.

Findings

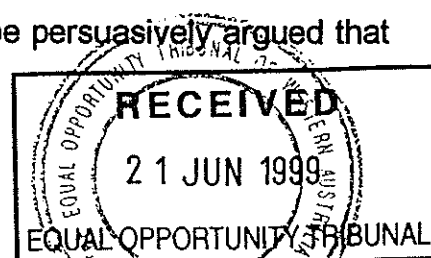
It is apparent from the evidence that Mr & Mrs Thompson made an appointment to see Dr Evans at his surgery on the evening of Monday 26 May 1997. It is also



apparent from the evidence given by Dr Evans and his wife that they were generally not in the habit of requiring patients keeping an appointment to leave the premises unless the patient in question was involved in some form of misconduct such as drunkenness or disorderly behaviour. The Tribunal is also able to infer that in treating his patients Dr Evans would generally act in a calm and professional manner, being the approach he ultimately (and to his credit) adopted when he finally transferred his attention to Lakariah. It follows from these observations that if a patient or the parent of a patient was evicted from the waiting room without justification, or was subjected to a harangue or diatribe about a range of social issues during the course of the consultation, then such a patient or parent of a patient would have been treated less favourably than other patients in the same circumstances. Accordingly, a crucial question in the present case is whether Mr Thompson was in any way responsible for the events which led up to and accompanied his eviction.

After giving careful consideration to the evidence, and having regard to the observations previously made concerning the credibility of the witnesses, the Tribunal is satisfied on the balance of probabilities that Mr Thompson did not act in a belligerent way or in any manner sufficient to justify his exclusion from the premises. A comparatively minor disagreement arose concerning the billing procedure and this may have been accompanied by a degree of misunderstanding on both sides. The differences between the parties may have also been exacerbated to some degree by the fact that Mrs Evans was at the end of a long day and was keen to close up the premises.

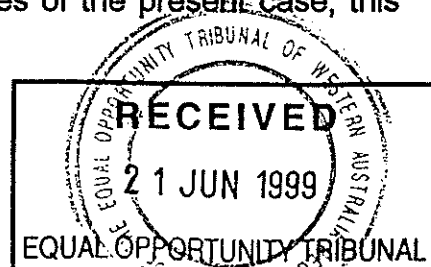
If the matter had rested there, that is to say, with a disagreement between the receptionist and the parents of the prospective patient, then it is doubtful whether a complaint of discrimination would have been brought, for differences of this kind are simply part of the traffic of human affairs. It might seem unreasonable for Mrs Evans to have ordered Mrs Thompson to leave the premises in this context but, if nothing further had occurred, it could be persuasively argued that



such an outcome had more to do with misunderstandings and irritability than with considerations based on race. Unfortunately, however, the matter took a different turn when Dr Evans appeared on the scene.

The Tribunal is satisfied on the balance of probabilities that Mr Thompson had not acted in an unseemly manner and had not directed any abuse of the kind alleged at Mrs Evans. The Tribunal finds as a fact that Dr Evans arrived on the scene without having heard any such abuse and without having observed any untoward behaviour on the part of Mr Thompson. He came out to the waiting room, being aware of some disagreement between his wife and those in the waiting room, but once there, without taking any effective step to find out what was going on, he acted impulsively and simply presumed that the fault lay entirely on the side of Mr Thompson. He completed the process of eviction by proceeding to abuse Mr Thompson in the manner alleged by Mr Thompson which included the phrase "piss off. You rock ape." In the absence of any innocent explanation for his determination to evict Mr Thompson, and against the background of these offensive expressions, the Tribunal is satisfied that he acted in a discriminatory manner, knowing that Mr Thompson was a person of Aboriginal descent because that fact was immediately apparent to him. It follows that the Tribunal will uphold the claim advanced by Mr Thompson.

The Tribunal is also satisfied that, after Mr Thompson had left the premises, Dr Evans made the various remarks attributed to him by Mrs Thompson during the course of the consultation. It was apparent to the Tribunal that Dr Evans is garrulous by nature and it is possible that in the privacy of his own mind he believed that he was simply engaging in some form of dialogue about social issues with another citizen who shared views similar to his own. Nonetheless, a monologue that might be acceptable in a coffee shop or a common room could easily sound unpleasant and intimidating to a mother of a sick child, and one can presume that the vast majority of medical practitioners would be sufficiently intelligent to recognise this fact. In the circumstances of the present case, this

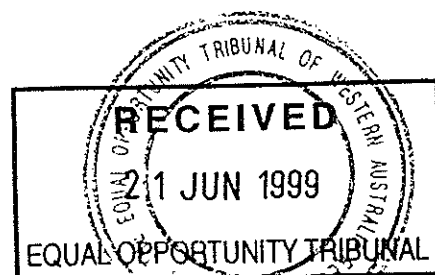


was entirely thoughtless behaviour, especially when steps had already been taken to have the child's father removed from the premises for no good reason. In these circumstances it was almost inevitable that both Mr Thompson and his wife would conclude that the removal was related to Mr Thompson's Aboriginality, and that the somewhat offensive remarks subsequently made in Mrs Thompson's presence were related to her husband's racial background also. The Tribunal is satisfied that, in being subjected to an entirely inappropriate diatribe about Aboriginal issues and matters reflecting adversely upon Aboriginal people and their families, Dr Evans treated Mrs Thompson less favourably than he would treat others coming to his premises in her position as a parent of a sick child, and this was on the ground of her husband's race. Accordingly, the Tribunal upholds this complaint also. It seems that, although Dr Evans has devoted time and personal expense to indigenous health issues, on this occasion he allowed his annoyance about some recent break ins at his property to get the better of him, but the result was that both Mr & Mrs Thompson were treated less favourably than other patients on the ground of race.

Damages

This brings the Tribunal to the question of relief. Section 127 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.

In a number of previous decisions the Tribunal has reviewed the principles relevant to the application of this provision and noted that awards should not be minimal because this would tend to trivialise or diminish the respect for public policy implicit in the legislation.



In *Oakley's* case (supra) the Aboriginal patron evicted from a bar recovered \$800 by way of damages, but it is important to note that the incident in question involved a degree of misunderstanding. In *Elliott v Perlon Holdings Pty Ltd* (1993) EOC 92-523 an Aboriginal complainant was awarded \$2,000 damages on the ground of racial discrimination where she was unable to buy alcohol with the same freedom and at the same price allowed to non-Aboriginal customers of the licensed premises in question, this restriction bringing with it a degree of humiliation. In *Chesson v Buxton* (1990) EOC 92-295 an award of general damages in the sum of \$500 was obtained by an Aboriginal passenger who was abused by a taxi driver without cause.

The Tribunal considers that the circumstances of the present case are more serious than any of the cases just mentioned. Mr Thompson was concerned about the welfare of his child but, as a result of the eviction, he suddenly found that he was unable to give any support to his child and, additionally, he could not provide his son with any reasonable explanation as to why they were forced to leave the premises. This was undoubtedly an extremely humiliating experience and it is apparent from the evidence that he felt the hurt acutely. Mrs Thompson was obliged to endure an offensive monologue that was clearly related to her husband's removal from the premises, and this left her with a feeling that she was being characterised as a second class citizen because of her husband's race. The Tribunal accepts the account given by Mr Thompson and his wife as to the strain the incident placed upon their marriage and the consequential effects that followed.

The Tribunal notes that no special damages are sought to be recovered by the Complainants. Having regard to the matters just mentioned, the Tribunal will award Mr Thompson the sum of \$2,500 by way of general damages and Mrs Thompson the sum of \$1,500 by way of general damages.



