

REASONS FOR DECISION

The Complainant, Chantal Gliddon, claims that she was subjected to unlawful sexual harassment contrary to the provisions of the Equal Opportunity Act 1984 ("the Act"). The complaint arose out of her employment as a secretarial assistant with the Respondent, Terry Woodley, who practises as a self-employed accountant at Waroona, a country town in the south-west of Western Australia. Ms Gliddon also alleges that Mr Woodley discriminated against her on the ground of her sex in the area of employment by treating her less favourably than, in the same or similar circumstances, he treated or would treat a person of the opposite sex. Mr Woodley denied liability in respect of both these heads of claim. The nature of the allegations obliges the Tribunal to look carefully at the credibility of the respective parties and their witnesses, and this in turn requires that a careful inquiry be undertaken into the nature of the employment and the surrounding social circumstances of the parties.

Procedural Matters

On 8 August 1997 Ms Gliddon lodged a complaint with the Commissioner of Equal Opportunity in respect of alleged infringements of the Act occurring within the period August 1995 to September 1996. It was apparent from the way in which she filled in the printed form that her allegations embraced claims of sexual harassment and discrimination on the ground of sex in the area of employment, and those matters have been in issue throughout these proceedings. The complaint form was accompanied by a lengthy statement by Ms Gliddon setting out the matters giving rise to her complaint, and in due course her statement was supplemented by signed statements obtained from her mother, Norma

Gliddon, and from Mr Woodley's wife (as she then was), Lynda Woodley. The latter has now divorced her husband and remarried. Nonetheless, bearing in mind that she was married to Mr Woodley at the relevant time, the Tribunal will call her Mrs Woodley, this being her status while the controversial events were taking place.

The Commissioner referred the allegations to Mr Woodley for comment and he provided a detailed response. Further exchanges took place between the parties but in the end the Commissioner was unable to resolve the dispute and the matter was then referred to this Tribunal on 5 November 1998 together with a copy of the Commissioner's report in the manner allowed for by the Act. The Commissioner's report included the statements made in support of the complaint mentioned earlier plus some additional statements ("the complaint documents") and Mr Woodley's response and related documents ("Mr Woodley's response").

As a consequence of procedural directions formulated by the Tribunal at an early stage of the proceedings, Ms Gliddon, by her counsel, brought into existence Points of Claim reflecting the allegations contained in the complaint documents. Mr Woodley filed and served Points of Defence reflecting the denial of liability previously set out in Mr Woodley's response. At the commencement of the hearing an application was made to amend the Points of Claim. This amendment was allowed on the grounds that the amendment, in essence, amounted to a reformulation of the claim but with the omission of certain allegations which were no longer being pursued. The amendment did not contain any new allegations likely to take Mr Woodley by surprise.

Prior to the hearing, directions had also been given for the parties to file and serve written statements by their witnesses to the intent that these statements would be received in

evidence in due course so long as the witness in question was available to be cross-examined. These directions were complied with on both sides and, as foreshadowed, most witnesses were cross-examined. It follows from this summary of procedural matters that the Tribunal was able to identify various matters that seemed to be common ground between the parties and the Tribunal will therefore begin by looking at the relevant circumstances in general terms before moving to particular areas of controversy.

At the initial preliminary hearing Mr Woodley indicated that in due course he would be represented by a legal adviser and he was encouraged by the Tribunal to obtain assistance of that kind as soon as possible. In the event, he was not represented at the hearing and this fact, of itself, made it necessary for the Tribunal to ensure that he was fully acquainted with his procedural entitlements. It was apparent from the written evidentiary materials just mentioned that for some years prior to the hearing he and Mrs Woodley (his former wife) had been involved in lengthy proceedings in the Family Court and, being an accountant with tertiary qualifications, he was generally familiar with and capable of understanding legal procedures. Accordingly, against this background, the Tribunal granted leave to Mr A. Macdonald to appear as counsel for Ms Gliddon and determined that the hearing should proceed.

Background

Mr Woodley was born at Yarloop, near Waroona, on 5 July 1966 and was therefore 29 years of age as at mid-1995 when the matters in issue in the present proceedings commenced. He attended school in Waroona and Pinjarra and went on to obtain a Bachelor of Commerce

Degree from the University of Western Australia. He returned to Waroona to set up an accountancy practice and in December 1990 married Mrs Woodley. She was employed as a primary school teacher and had an Arts degree from Murdoch University. Waroona is a comparatively small rural community, having a population of about 2500, and Mr Woodley soon became active in various community organisations. The Woodleys' first son, Hayden, was born in February 1993 and their second son, Regan, in January 1995.

As at mid-1995 Mr Woodley was carrying on his business as an accountant from his domestic residence situated at lot 285 McDowell Street, Waroona. Horses could be agisted on open land lying to the rear of the property. Inside the house, Mr Woodley had created an office space adjacent to the kitchen and in proximity to the lounge room. A bedroom with en suite bathroom was situated nearby and, further along the corridor, a laundry area and a small toilet cubicle. Mr Woodley said in evidence that he had a successful accountancy practice and was "highly respected" in his community. He had various sporting interests although, as a result of a broken collarbone in his late teens, he had lost some strength and co-ordination in his right arm, an injury that brought his sporting career to a premature end. He had a firearms' licence and was accustomed to going on shooting and fishing trips with his parents and friends.

The complaint documents establish that as at mid-1995 the Gliddon family had been living in Waroona for about five years. Ms Gliddon was born in Perth on 12 May 1978 and was therefore 17 years of age when her employment with Mr Woodley commenced. She had four brothers and one sister, she being the youngest in her family. The mother, Norma Gliddon, had long since parted company with Ms Gliddon's natural father and as far as Ms

Gliddon was concerned her parents were her stepfather, Mr Kevin Gliddon, and her mother, Mrs Norma Gliddon. The Gliddons lived at 33 Millar Street, Waroona which was only a short distance away from Mr Woodley's property. According to Norma Gliddon, her first contact with Mr Woodley was when he attended to her taxation returns in 1994, but she did not know him on a personal level at that time.

Ms Gliddon said in evidence that as at mid-1995 she was in year 12 at Pinjarra Senior High School. According to her, she and her fellow students were assigned work experience for one week in August of 1995 and this resulted in her working for Mr Woodley at his domestic office premises in McDowell Street. This was also the first time she had met his wife, Lynda, and their two children. She was put in charge of the telephone and began learning some computer and basic procedures. Her employer insisted that she call him and his wife by their first names, but she did not think that this was unusual in a comparatively small country town. He then asked her parents if she would like to work for him on Sundays. As work for young people is extremely hard to find in Waroona, and as her parents were persuasive in encouraging her to take advantage of his offer, she started working for Mr Woodley on that basis in early September 1995. She was in close proximity to him in the small office, which included an annex to one side of the main office space, but it did not occur to her to be wary of him as his wife and children were coming and going in the nearby kitchen area.

She said that at about this time she was invited to go shooting with Mr Woodley and two of his friends who, for present purposes, it will be sufficient to call by the Christian names, Kim and David, the latter being the uncle of one of Ms Gliddon's friends. Mr Woodley came to Ms Gliddon's house on several occasions to explain to her parents what was going to happen

on the trip. The participants would go to Meekatharra and to Wiluna. According to Ms Gliddon, he was extremely charming to her parents and came across as a responsible adult with whom she would be safe. She agreed to go on the excursion. The Tribunal will return to the Wiluna shooting trip in due course.

Ms Gliddon started working for Mr Woodley full time in late November 1995. She did the typing, answered the phone and dealt with client inquiries. Mr Woodley created a space in the dining room adjoining the main office area to accommodate her at a desk with a computer. He also gave her a mobile phone and told her he wanted it on at all hours. She signed a written contract of employment providing for her to be employed in the position of "assistant accountant/office manager" and defining her daily duties. These included such matters as filing, collecting and distributing mail and playing a part in the preparation of financial statements and tax returns. She was to be remunerated at the rate of \$4.52 per hour with the agreement being said to expire on 12 May 1996, being the employee's date of birth. Most of the other clauses are of a conventional kind but it is important to note at this stage that provision was made for professional development of the employee including the undertaking of an Advanced Diploma of Accounting at TAFE in the shortest manageable time.

According to Ms Gliddon, in these early months of employment there were already some signs that Mr Woodley was becoming overly familiar. She said in evidence that he suggested she ask him to be her partner at the school ball but she refused on the grounds that he was too old and she was not interested in going out with him. Mr Woodley accepted in evidence that some discussion took place about the school ball. On his version, he simply said that if

she did not have a partner and was desperate then he would be prepared to take her. When asked, during the course of cross-examination, whether he was seriously proposing that he, as a 29-year-old married man, should accompany a 17-year-old schoolgirl to the school dance, he responded that indeed he was serious. It seemed to him that if she did not have a partner he would be doing her a favour. It was apparent from this passage of cross-examination that the proposal did not strike him as unusual or as something that could be detrimental to the reputations of those involved in a small community.

Ms Gliddon also referred to an occasion when Mr and Mrs Woodley both attended her year 12 graduation in November 1995. According to her, Mr Woodley made her have her photographs taken with him but would not allow Mrs Woodley to join in the photograph. Mr Woodley denied her account of what took place although he agrees that he and his then wife did attend the graduation ceremony. It was at about this time that Mr Woodley began calling in on the Gliddon household with greater frequency and formed a friendly relationship with her parents. At a later stage, arrangements were made for Norma Gliddon to do some ironing for Mr Woodley.

According to the Complainant, the familiarity being displayed by Mr Woodley went further and various incidents occurred which are now relied upon to substantiate her complaints of sexual harassment and discrimination on the ground of sex. The Tribunal will turn to the details of these allegations in a moment. For the time being, it is sufficient to notice, as a matter of common ground between the parties, that in early 1996 various differences began to emerge between Mr Woodley and his wife which led to Mrs Woodley leaving the matrimonial home with the two children on 18 March 1996 after an altercation. The

Tribunal will look at this incident in more detail shortly. For the time being, it is sufficient to notice that Mr Woodley's account of the separation in the written statement comprising his evidence in-chief was in these terms:

"The events leading up to our separation were that Lynda became very jealous of the fact that I had a secretary, the Complainant. She accused me of being unfaithful and propositioning clients. She went on with this sort of behaviour repeatedly over several months. Eventually it got to the stage where the Complainant came crying to me on numerous occasions saying that she could not bear the hostility that Lynda was showing her and that she felt very uncomfortable. I tried to encourage the Complainant, who had a low opinion of herself, her abilities, her physical appearance as well as suffering from premenstrual tension. I used the skills I gained from an all-day motivational seminar I attended at Burswood Casino several months earlier to try and rectify this situation as well as my understanding as a male to try and work around the issues...On the 18 March 1996 I was so frustrated at trying to constantly calm Lynda that I told her she would end up destroying all that I had achieved for the children. At 6 pm I was preparing to go to Mandurah and lecture in accountancy as well as go shooting with (Kim) ... when she left abruptly. I finished packing and followed her. She had gone to my secretary's house. I kept driving past. I lectured at Mandurah then returned to Waroona to go fox shooting with Kim. When I returned home I found a note to say that she had left..."

Not long after Mrs Woodley left home, Mr Woodley telephoned Ms Gliddon on a Sunday and asked her to come over to his house to discuss certain matters. Each party has a different version of what then occurred but it is common ground that there was some discussion about the contents of a diary kept by Mrs Woodley. This led to an angry exchange with the result that Ms Gliddon left the premises abruptly and began running back to her parents' house in Millar Street. Mr Woodley got into his vehicle and reached the house in Millar Street first with the result that Ms Gliddon's mother was presented with two versions of what had taken place. Ms Gliddon then decided that she could not go back to work for Mr Woodley.

According to Ms Gliddon, Mr Woodley began coming round to the Gliddon house pleading with Ms Gliddon and her mother that Ms Gliddon return to work for him. He referred to the fact that she was contractually bound to work for him. She was unable to find any other work in Waroona and eventually decided to return because of the employment contract and the recognition that she had no other place or job to go to. Arrangements were also made for her mother to work for Mr Woodley, not only by doing ironing, but by doing other jobs at his domestic office premises, with the result that Ms Gliddon felt that this would give her some protection. As it turned out, however, according to the Complainant, Mr Woodley did not change his ways and she began to get depressed.

The Tribunal will look at the details of this phase of the employment later but for present purposes it is sufficient to note that in mid-September 1996, at a time when Mr Woodley had set off for a holiday at Shark Bay with his parents, Ms Gliddon told her employer that she could not continue and she then left his employment. For a period of two months she had difficulty finding any settled employment, although she was in receipt of some intermittent income. Eventually, having moved to Perth to be out of the way of Mr Woodley, she was able to obtain employment. She visited her family at Waroona from time to time but continued to feel the strain as a result of what had taken place. While looking at the matter in overview, the Tribunal pauses to note that, as appears from his Points of Defence, Mr Woodley denied that there was anything improper in his conduct. He has, from the outset of the dispute, put up matters for consideration which, on his submission, support his contention that at all times his relationship with his employee, although friendly, did not exceed the bounds of propriety. He contended throughout that his actions were consistent with his constant concern for the well-being of his young employee and his wish to advance

her professional development.

The evidentiary materials show that Ms Gliddon returned to Waroona approximately 18 months prior to the hearing before the Tribunal. By that time she was in a steady relationship with the result that she and her fiance had built a house in Waroona. She said that she wishes to continue living in Waroona close to her family. The Tribunal was told that she and her companion agist horses on open land to the rear of Mr Woodley's property. The Respondent referred to this state of affairs as an indication that she is not and has never been upset by his actions or his presence.

It is against this background that the Tribunal must now turn to the details of the various allegations with a view to making findings about the matters in issue. It follows from the narrative thus far that, for ease of reference, it will be convenient to divide the sequence of events into an initial phase, to be called "the pre-March 1996 events", and a subsequent phase of the employment, to be called "the post-March 1996 events", bearing in mind that Mrs Woodley was only on the domestic office premises at lot 285 McDowell Street, Waroona during the former phase of the employment. It will also be convenient, having regard to the structure of the amended Points of Claim, and the way in which the matter was argued at the hearing, to turn initially to the complaint of sexual harassment and the incidents relied on in that regard and then to the complaint of discrimination on the ground of sex. Before doing so, however, it will be useful to look at a number of legal principles bearing upon the present dispute and at matters relevant to credibility.

Principles Concerning Sexual Harassment

Section 24 of the Equal Opportunity Act 1984 provides that it is unlawful for a person to harass sexually an employee of that or any other person. A person shall, for the purposes of the section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person and (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work; or (b) as a result of the other person's rejection of the advances, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work.

By section 25(4) a reference to conduct of a sexual nature in relation to a person includes a reference to the making to or in the presence of a person of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

A number of decided cases indicate that a person can be said to be disadvantaged in his or her employment as a result of conduct amounting to sexual harassment if the environment at the workplace becomes so unpleasant or unfriendly that the person subjected to the harassment is disadvantaged in comparison to other employees or to the conditions normally enjoyed by employees. It follows that a sexually permeated work environment is sufficient to

constitute a detriment. Further, the decided cases indicate that it could amount to sexual harassment for a female to have the ardour of her male employer constantly pressed upon her if such declarations of love or admiration were unwelcome and she apprehended that any protest might jeopardise her continued employment. See *Navidad v Myer Fashions* (1987) EOC 92-189; *Freestone v Kosma* (1989) EOC 92-248; *Mills v Bennett* (1994) EOC 92-60. The decided cases also indicate that social gatherings outside the premises constituting the workplace can be regarded as an extension of the employment if they are sufficiently related to or manifest a desire by the employer to use such social occasions to advance the interests of the employer or where there are other sufficient connections to the employment. *Chief Constable of the Lincolnshire Police v Stubbs* (1999) IRLR 81 EAT; *Jones v Tower Boot Co Ltd* (1997) IRLR 168 CA.

The decided cases also indicate that where an allegation of sexual harassment is made the Tribunal should apply the ordinary civil standard of proof requiring the Complainant to establish her case on the balance of probabilities, although it is permissible to take account of the gravity of the allegations and the serious consequences to a Respondent following any adverse findings in determining whether the evidence meets that standard. In *O'Callaghan v Loder* (1984) EOT 92-024 the Tribunal pointed out at page 75-513:

"It is an exceedingly difficult task for a Tribunal to attempt to make factual findings about matters which, by their very nature, occurred in private. It is all the more so when the two participants have given such divergent accounts of what took place as has occurred in this inquiry. For this reason, we think that the only practicable method of trying to determine what took place between them is to take the evidence of each of them in relation to each alleged incident or series of incidents, to assess how that evidence measures up to standards of consistency and probability, and to test it against any independent evidence which might be available."

The Tribunal will follow this approach in the present case. In doing so, however, it notes also that in *Fenwick v Beveridge Building Products Pty Ltd* (1985) 62 ALR 275 the Human Rights Commission held that the complainant bears the onus of proof of making out the complaint but, in doing so, he or she may, in the absence of direct evidence, use in support inferences drawn from the primary facts. The question of whether the sexual conduct complained of is "unwelcome" must be viewed objectively and cannot be determined simply by reference to the complainant's subjective response to an advance. Thus, one must look for evidence that the employee took steps to make known to the employer that she was not a willing participant in the conduct complained of.

Credibility

It follows from earlier discussion that in looking at the various incidents and matters relied on the Tribunal must inquire into the credibility of each party, and, in doing so, must take into account, wherever possible, the presence or absence of corroborative evidence. In the present case, as to some aspects of the matter, corroborative material was scant. Nonetheless, when one looks at the contemporaneous documentation there are several documents that have a bearing upon the findings to be made.

It is an undisputed fact that in February 1996 for a brief period, Mr Woodley made entries in a diary in his own handwriting which he admits related to Ms Gliddon's menstrual cycle. On any view of the matter this is an unusual and offensive step for an employer to take. Ms Gliddon stoutly denied that she ever raised any such matter with him. He contended that she

volunteered the information and he took an interest in it as something that might explain her changeable moods and might have a bearing upon her work performance. Mrs Woodley confirmed that her husband expressed an interest in the subject but there is nothing in Mrs Woodley's evidence to suggest that Ms Gliddon was responsible for his interest in this matter. Other entries in the diary seem more consistent with an employer who has decided to keep a private note of his employee's habits and movements than someone who is simply and innocently keeping a record of information volunteered by an employee, being the explanation for the entries put up by Mr Woodley.

It is also an undisputed fact that on one occasion Mr Woodley left a pair of shoes upon his employee's desk with a handwritten note by him attached which was in these terms:

"Chantal. I found these shoes under my bed. I'm only a size 7. These are a size 9 more your size."

Under cross-examination he denied that this was a veiled invitation to Ms Gliddon to become involved with him. He said it was simply an innocent "office joke" arising from his discovery of a small pair of shoes under his bed belonging to one of his children. The note bears a notation in her hand:

"You can wish, you can pray, but there is no way in hell that you will find my shoes under your bed or anywhere near you. The answer is 'no!'."

She said in evidence that she wrote this on the note as soon as she found it, but this was denied by Mr Woodley. There was also another memorandum in Mr Woodley's hand

containing, amongst other instructions, a suggestion to Ms Gliddon that she should "look pretty".

It is also material to note that after Ms Gliddon left Mr Woodley's employment in September 1996 Mr Woodley took steps to provide her with a reference. The letter written by Mr Woodley enclosing the reference contains this passage:

"You can't believe how hurt and disappointed I am that you left under the circumstances at the time. I do not begrudge you for leaving as time in Perth will be a very valuable experience to you and hopefully you will be better off for it in the long run. Deal with life's challenges, Chantal. Don't push them aside to be dealt with later, it never happens...I would like to say so much to you and listen to what you have to say. Don't prejudge me and my actions. Everything has a simple explanation. After all, I am an accountant. What can I say? I wish you were here, I wish we could really really talk, just like we used to as best friends...The diary in question is here for you to look at. I kept some very brief notes, not all about you, for seven days. It's a non-event. The contents of the diary have been immensely overstated and misrepresented. Someone is trying to make something out of nothing. Don't let her win. Find out for yourself...I've always said that we had a communication problem but that has to stop for both our sakes. So please find it in your heart to talk or visit me. I remember all the good times we had, the times we laughed and carried on. They far outweigh any bad times. There is a job here for you with great prospects for both of us. Don't hurt yourself, your parents and me. We only wish the best for you...I'll leave it up to you, you know best...I know of several accounting jobs going. Please ask if you're interested...running a muck, wish you were here to control me, it's not a pretty sight...Regards."

It would immediately strike an independent observer that this letter contains a tone of both contrition and entreaty, hinting at some emotional upset on the part of the author, and some dissatisfaction with, and possibly dismay about, the quality and wisdom of his previous actions.

When one looks at the evidence of witnesses other than the parties, it is correct, as Mr Woodley submitted in his closing address, that there was no witness able to say positively that he or she had seen Mr Woodley touch or approach Ms Gliddon in a sexual or suggestive manner. Mrs Woodley was in and about the house frequently in the pre-March 1996 phase of the employment and under cross-examination she agreed that she saw nothing of that kind. Likewise, there was no evidence to suggest that Ms Gliddon did anything to encourage a sexual or suggestive approach and, in any event, Mr Woodley himself made no such allegation. Indeed, in the course of denying that he was interested in her he said:

"Why would I be chasing an inexperienced 17-year-old when for three bourbons and Coke and a bit of charm and charisma I could go to a nightclub and pick up someone and have sex in 23 positions?"

This brings the Tribunal directly to matters of demeanour and credibility. The Tribunal did not find Mr Woodley to be a convincing witness. As the passage of testimony just mentioned indicates, he was prone to exaggeration and to dismiss matters put to him with extreme, and at times coarse, expressions, leaving an impression that he was not inclined to search his memory carefully and recall exactly what had happened on some occasions. Further, as illustrated by the passage of testimony just mentioned, and by the incident concerning the school ball in November 1995, even on his own account of what took place, Mr Woodley's testimony before the Tribunal often revealed a disturbing lack of sensitivity to viewpoints other than his own. This was consistent with an impression he left with the Tribunal that, although he was an educated man, he often saw things from an entirely self-interested viewpoint, and was therefore not an accurate or credible observer of the events he was involved in. The only explanation he could give as to why Ms Gliddon might have

advanced her complaints (based on versions of events he claimed she had invented) was that she was being urged on by his embittered former wife or because she was seeking exorbitant compensation. By the end of the hearing it was quite apparent that there was nothing to support these contentions.

By way of contrast, the Tribunal found Ms Gliddon to be a reliable witness. Although young, she was steady under cross-examination and did not resile from any of her allegations. Those allegations were consistent with testimony given by other witnesses and with the contemporary documents. Further, her account of events was supported in many respects by the evidence given by her mother Norma Gliddon and by Mrs Woodley. There were no signs apparent to the Tribunal that she had at any stage harboured any malice or ill-will towards Mr Woodley which might have coloured her testimony. It seems that this was her first full-time job and she was determined to do well, and it is partly for that reason, plus the presence of the contract, that she persevered for so long. It was also apparent to the Tribunal that Mr Woodley made a determined effort over many months to avert any suspicions that Ms Gliddon's mother might have had about the situation. Put shortly, Ms Gliddon was thereby deprived of the one line of support - parental support - which might have enabled her to cope with the situation she was in. It should therefore not be thought surprising that she continued with her employment, notwithstanding the matters which, on her case, were causing her increasing distress. Accordingly, the Tribunal does not consider that her continuance of her employment, even during the post-March 1996 phase of her employment, after Mrs Woodley's departure, should be regarded as a matter adverse to her credibility, although a suggestion of this kind was advanced by Mr Woodley at the hearing. The Tribunal also notes that in various respects her account of certain key events - although

not the physical encounters she relied upon - was corroborated by witnesses such as her mother, her boyfriend, Ross Shepherd, and Dr Ong, a local medical practitioner.

It is against the background of this discussion regarding the relevant legal principles and a number of general observations about credibility, that the Tribunal now turns to the specific allegations concerning sexual harassment set out in the amended points of claim.

Sexual Harassment

Ms Gliddon pleads that Mr Woodley subjected her to unwelcome sexual advances and unwelcome conduct of a sexual nature during the course of her employment with him within the meaning of section 24 of the Equal Opportunity Act.

First, she said in evidence that frequently, almost daily, Mr Woodley asked her whether or not she loved him. He told her on many occasions that he loved her. She told him repeatedly that she did not love him. According to her, he gave the impression to others that he and she were lovers, or married. For example, on one occasion he called in at a car dealer with her whilst they were on a work-related trip and spoke to the salesman as if he and Ms Gliddon were married.

This allegation is supported principally by the testimony of Ms Gliddon. It is corroborated to some extent by the documents mentioned earlier which suggest that Mr Woodley had feelings about her that went beyond a normal working relationship, although the corroborative evidence, such as it is, does not directly support an emotional interest which

might persuade Mr Woodley to describe them as lovers or as being married. The Tribunal pauses to note, and to make a clear finding - this being a common ground between the parties at the hearing - that there was certainly no consummated sexual relationship between the parties. Nonetheless, it follows from the Tribunal's earlier observations concerning credibility that, on the balance of probabilities, the Tribunal prefers the testimony given in support of this allegation by Ms Gliddon to Mr Woodley's denial. Accordingly, the Tribunal finds that the matters comprising the allegation just mentioned, including the conversation with the car dealer, did occur as alleged.

Second, Ms Gliddon said that on one occasion, when she was assisting Mr Woodley with his teaching at Rockingham TAFE, he switched off the lights after a class and attempted to kiss and cuddle her. He told her he had an erection. Further, on two other occasions, when Ms Gliddon and Mr Woodley were returning to Waroona from TAFE, he allegedly slowed his vehicle down and started to pull over. She told him to keep going or she would get out of the car.

For the reasons previously enunciated, the Tribunal finds that these matters happened as alleged and constituted an unwelcome advance within the meaning of the Equal Opportunity Act.

Ms Gliddon alleged that on two occasions, Mr Woodley cornered her in her office at his house. He held her against the wall whilst rubbing his penis. He also tried to make her rub his penis. He told her to look at his penis and said that he had ejaculated.

For the reasons previously given, the Tribunal finds that the incidents complained of did occur as alleged and constitute sexual harassment.

Ms Gliddon alleged that on numerous occasions, Mr Woodley asked her about her relationship with her boyfriend, or would comment on the relationship. He told her that she was hiding her true feelings for him. Also, on numerous occasions, Mr Woodley attempted to cuddle her.

For the reasons previously given the Tribunal finds that, as with the previous allegations, the case for Ms Gliddon has been made out on the balance of probabilities. Each of the pleaded issues of itself is sufficient to constitute sexual harassment having regard to the statutory provisions and the related principles. Further, and in any event, it follows from the Tribunal's review of the relevant principles, that if the incidents are considered in combination then Ms Gliddon has been subjected to a detriment in being required to carry out her duties in a sexually permeated work environment. All of these incidents are sufficiently connected to her work and place of employment because, in the circumstances of this case, it is apparent that the employer conducted his business in a free-wheeling and informal manner. In that regard, the Tribunal finds as a fact that, having equipped her with a mobile phone, he used the phone to ring her incessantly, even on weekends, and this can be regarded as an extension of the employment. The same thing can be said of his many visits to her parents' house which, even on his own admission, was said to be referable to his general concern for the well-being of his employee. It follows that all his actions in the circumstances of the present case can essentially be regarded as related to or as an extension of the matters the subject of the employment contract.

The Tribunal is also prepared to find that as a result of Ms Gliddon's rejection of, and taking objection to, Mr Woodley's unwelcome advances and the conduct mentioned earlier, she was disadvantaged in her employment. She was obliged to endure a sexually permeated working environment and was eventually obliged to resign her employment in circumstances that can be regarded as a constructive dismissal. The various events complained of, individually, and considered in combination, clearly caused her acute distress.

Sex Discrimination

By section 8 of the Equal Opportunity Act a person discriminates against another person on the ground of the sex of the aggrieved person if, on the ground of the sex of the aggrieved person, the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.

By section 11 of the Act it is unlawful for an employer to discriminate against an employee on the ground of the employee's sex in the terms of conditions of employment that the employer affords the employee, by dismissing the employee or by subjecting the employee to any other detriment. By section 5 of the Act the matter complained of need not be the dominant or substantial reason for the doing of the act. The decided cases establish that a causal connection must be established between the conduct complained of and the adverse effects, such a connection being implicit in the concept of something being done "on the ground of sex". In other words, to give proper weight to the words "on the ground of"

appearing in section 8 of the Act the aggrieved person has to satisfy the Tribunal that the conduct complained of was based on or is referable to the unlawful consideration of sex.

University of Ballarat v Bridges (1995) 2 VR 418 at 436.

Having regard to these provisions, Ms Gliddon pleads that Mr Woodley unlawfully discriminated against her on the ground of her sex in the area of employment, by treating her less favourably than, in the same or similar circumstances, Mr Woodley treated or would treat a person of the opposite sex. The Tribunal pauses to note that in some cases, where the work practices in question are not coloured by overtly sexual conduct, it is necessary to make a careful comparison between the circumstances of a female worker and her male counterpart. In the present case, however, the Tribunal takes the view that the findings made below, self-evidently, exposed Ms Gliddon to less favourable treatment amounting to a detriment.

Ms Gliddon alleges that Mr Woodley gave her a mobile telephone and required her to have it turned on at all times. He frequently called her, including on weekends, and made personal inquiries about her. For example, where she was and with whom. Further, he frequently called in at her house unannounced, parked outside her house in his car late at night and waited for her to come home. Further, it is alleged that he frequently drove past her house at night and then discussed with her the next day at work the observations he made whilst driving past her house.

The Tribunal is satisfied on the balance of probabilities, having regard to the matters of credibility mentioned earlier, that these matters occurred as alleged. The Tribunal found the

testimony given by Ms Gliddon directed to these matters was compelling and to be preferred as against the testimony given by Mr Woodley. The finding as to this matter is consistent with findings against Mr Woodley made earlier.

Second, a number of allegations concerned Mr Woodley's wish to be involved in party activities. Ms Gliddon alleged that on one occasion at work he asked if he could accompany her to a party she had been invited to in Mandurah. On another occasion, in or around January 1996, he visited a party at her sister's house, after first driving by and noticing that she was at the front of the house talking to a friend. Further, in or around July 1996, it is alleged, late on a Saturday night, he followed her from a party at her brother's house to her sister's house nearby, and insisted that she take a battery for her mobile phone.

The Tribunal finds that these matters occurred as alleged. As to the party at the sister's house, Mr Woodley said at the hearing, quite emphatically, that he had been invited to the party and, in any event, as he was on his way home to Mandurah, calling by represented only a short detour from the main route, and therefore his visitation could not be described in any way as oppressive. It is significant, however, that Mrs Woodley, who was in the car, expressed surprise that they should stop to make such a call. The weight of the evidence, and the preferred credibility of Ms Gliddon, combined to suggest that Mr Woodley, again, was taking an improper interest in the out of hours social activities of his employee.

It is not a sufficient answer to these allegations for Mr Woodley to point to the fact that early in the employment Ms Gliddon accompanied him on a shooting trip and to assert that the parties had a social relationship of sorts. The relationship, such as it was, had been initiated

by Mr Woodley and was not encouraged by Ms Gliddon. The Tribunal is satisfied on the balance of probabilities that it formed part of a pattern of conduct amounting to discrimination on the ground of sex.

Third, Ms Gliddon alleges that in February 1996, Mr Woodley telephoned her on her mobile phone and requested that she telephone him and invite him, but not his wife, over to her house. She refused to do this and he yelled at her at work the next day for not doing as he asked. After this incident he told her that she was not allowed to talk to his wife.

The Tribunal finds in favour of Ms Gliddon in regard to this incident.

Fourth, Ms Gliddon said that Mr Woodley asked about her menstrual cycle and whether or not she was having a period. On one occasion, he called her on her mobile phone and demanded that she come to his house immediately. He accused her of leaving spots of menstrual blood on the toilet floor. He demanded on two occasions that she clean up the blood.

The Tribunal is satisfied that this incident occurred as alleged. The presence of the diary, mentioned earlier, corroborates Mr Woodley's prurient interest in this subject and, at the hearing, he himself did not dispute that he demanded of her that she clean the toilet floor. In regard to this matter it is quite clear that a male employee would not have been subjected to treatment of this kind and this, very graphically, illustrates the manner in which Ms Gliddon was subjected to less favourable treatment on the ground of her sex.

Ms Gliddon alleged that on an occasion outside his house in or around February 1996, Mr Woodley said to her and to others in attendance that he wanted his wife to leave him and for Ms Gliddon to stay and continue working for him. The Tribunal finds that this incident occurred as alleged.

Ms Gliddon alleges that in or around March 1996 Mr Woodley assaulted her in her office, following an argument about his separation from his ex-wife.

Both parties presented different versions of what occurred on this occasion. The Tribunal prefers the account of the relevant events provided by Ms Gliddon. According to her, not long after Mrs Woodley had left the matrimonial home, on a Sunday Mr Woodley telephoned her and asked her to come over to his house to discuss a work-related matter. In fact, he drove around to pick her up.

She said that they then sat down in his dining room and she asked him what the problem was. He tossed over Mrs Woodley's diary with a lock on it and said, "Read it." Ms Gliddon replied that she did not want to. She opened it up but again stated that she did not want to read it. He said that he would read it to her. He read out an entry that Mrs Woodley had written about loving her husband. Ms Gliddon asked that what that had to do with her.

Mr Woodley then said that he had lost Mrs Woodley and it was all because of Ms Gliddon. She then said that she was not going to listen to this and made to leave, but he demanded that she did listen. He started coming towards her, guarding the open door. The other doors were shut. He grabbed her shoulders and pushed her against a wall, using his hands. Ms

Gliddon then yelled at him to let her go and he told her to sit down and shut up. She began to panic because she did not know what he might do so she pressed her thumb into his neck, which caused him to back off. She then made her escape and began to run home.

According to Ms Gliddon, by the time she got home to her parents' house, Mr Woodley was already there. He was telling her mother that she had gone crazy and had tried to bash him up. She told her mother what had happened and it was then that she decided that she could not go back to work. The Tribunal is satisfied that the sequence of events described by the Complainant occurred as alleged.

Fifth, Ms Gliddon alleged that Mr Woodley, notwithstanding that he made disparaging comments about her appearance, told her mother that he and she were in a sexual relationship and in love. The Tribunal is satisfied that this occurred as alleged. The unfortunate consequence of these activities on the part of Mr Woodley, and his habit of ingratiating himself with Ms Gliddon's mother, meant that, tragically, Norma Gliddon was left in a state of some confusion about what was going on, with the result that her daughter was deprived of parental guidance and advice at a time when she needed it most. Ms Gliddon had to bear the solitude and strain of her position without this source of parental comfort and support. It was quite clear to the Tribunal that Ms Gliddon was eventually reduced to a state of acute personal misery as a result of Mr Woodley's persistent conduct and advances. She said in evidence that : "around August or September 1996, I became so depressed by Terry's actions towards me that it was making me physically ill. I had headaches and nausea. I visited my family doctor, Dr Ong". That in turn, led to another incident.

Ms Gliddon alleged that in or around September 1996 Mr Woodley called on her doctor at his surgery to inquire whether or not she had an appointment there.

Again, having regard to the Tribunal's earlier observations about credibility, the Tribunal is satisfied that this incident occurred as alleged. Mr Woodley confirms that he did call at the surgery. He says that this was a brief call, and done innocently, as he was in a hurry to leave for a holiday at Shark Bay. Dr Ong confirmed that the call was brief but he regarded Mr Woodley's conduct on the day in question as somewhat unusual. It was after this incident, in September 1996, that Ms Gliddon finally determined to leave the employment once for all, whereupon she resigned on 18 September 1996. The Tribunal is satisfied that the hurt suffered by Ms Gliddon has been severe. Her loss of enjoyment of life during the period under consideration was rendered especially poignant by the fact that the employment in question was her first full-time job after leaving school.

Relief

By section 127 of the Act the Tribunal has power to award damages up to a limit of \$40,000 by way of compensation "for any loss or damage suffered by reason of the Respondent's conduct." This provision also shows that there must be a causal connection between the conduct complained of and the loss.

The decided cases show that in the case of sexual harassment it is permissible to award damages for humiliation, emotional distress, embarrassment, hurt feelings and the like, where

and to the extent that the injury asserted and the loss claimed for can be shown to be caused by the wrongful act and are sufficiently proximate to it. It is important that awards compensating for injured feelings should not be minimal because that would tend to trivialise or diminish the respect for public policy implicit in the legislative provisions. *Hall v Sheiban Pty Ltd* (1989) EOC 92-250.

In a number of previously decided cases this Tribunal has awarded significant amounts by way of general damages within the range of \$8000 to \$16,000 in circumstances where the sexual harassment complained of was severe. See *Lyon v Godley* (1990) EOC 92-287; *Smith and Mitchell v Sandalwood Motor Inn* (1994) EOC 92-577; *Horne v Press Clough Joint Venture* (1994) EOC 92-591. In a case where there was an element of calculation and predatory design on the part of the employer which caused the female employee acute distress this Tribunal awarded \$30,000 by way of general damages. *Holden v Anther Pty Ltd and Abuothman* (1997) unreported.

The Tribunal has already noted that in the circumstances of the present case, on the Tribunal's findings, Mr Woodley behaved in an unreasonably persistent manner which did cause acute distress, and in circumstances where a young employee was deprived of the guidance that might otherwise have been available to her from her parents. Accordingly, the Tribunal will award the Complainant the sum of \$16,000 by way of general damages of which three fourths represents compensation for the facts and matters comprising sexual harassment and one fourth represents compensation for discrimination on the ground of sex. To this must be added the sum of \$466.15 by way of special damages representing her loss of income during the two-month period before she was able to re-establish herself.

The award in total against Mr Woodley therefore amounts to \$16,466.15.

Suppression Orders

The findings of the Tribunal make it absolutely clear that Ms Gliddon has been the victim of a serious form of sexual harassment, and without any impropriety or misconduct on her behalf whatsoever. She is entirely the innocent party. At the commencement of the hearing and at a time when it was not known what the outcome of the case would be the Tribunal exercised its powers under section 121 and 122 of the Act to require that the names of the parties and any information by which they might be identified should not be published. The application for a suppression order in these terms was made by Ms Gliddon and opposed by Mr Woodley. In subsequent newspaper reports of the hearing the parties and their witnesses were identified by initials only and Waroona was described as a south-west country town. In making a suppression order of that kind the Tribunal was conscious, having regard to the decided cases, that it was required to balance the prejudice likely to occur to a party with the public interest in open justice. Having regard to the youth of Ms Gliddon, and the nature of the allegations, in that context it seemed desirable and appropriate that a suppression order should be made.

Somewhat different considerations apply, however, once the Tribunal has made its determination. The exercise of powers under the Equal Opportunity Act is intended to have a broad educative function within the community by establishing certain norms of behaviour as a consequence of policies advanced by the Commissioner and rulings made by the Tribunal. This view of the legislation was recognised in *Murphy v Ramus Pty Ltd* (No.2)

(1990) EOC 92-309. In that case the Tribunal held that the respondent was liable for acts of sexual harassment. The Tribunal held that whilst the original order prohibiting publication was appropriate at that stage of the proceedings while the hearing was in progress, in order to protect the identity of the parties having regard to the nature of the allegations and the adverse effects which could have been caused by disclosure of the parties, this was changed by the findings of the Tribunal subsequently. The circumstances of the acts of discrimination were such that it was proper for them to be available for the purpose of publication should the media so desire. There was a public interest in knowing the identity of those who are guilty of unlawful discrimination under anti-discrimination legislation and there was no material before the Tribunal which would require the orders previously made prohibiting publication to be continued.

The Tribunal sees the matter in the same light in the circumstances of the present case. It is also undesirable that there be speculation about the identity of the Respondent, as this could have a damaging effect on the reputations of people having no association with the events in question. For these reasons the Tribunal will now lift the suppression order previously made so that the media is free to provide to the public a fair report of the proceedings. If the parties were still to be identified by initials only then it might leave the public with the impression that one side or the other was being protected or that there was some aspect of the matter which had to be shrouded in secrecy. The Tribunal considers that it is far better for all the matters that were the subject of evidence to be out in the open so that any person with a legitimate interest in this matter can debate the outcome knowing exactly who and what was involved.
