JURISDICTION	:	IN THE EQUAL OPPORTUNITY TRIBUNAL OF WESTERN AUSTRALIA
LOCATION	:	PERTH
CITATION	:	KAY CHAISTY -v- CITY OF PERTH
CORAM	:	MR R. MAZZA – DEPUTY PRESIDENT MS J. WHEARE – DEPUTY MEMBER PROF. C. MULVEY – DEPUTY MEMBER
HEARD	:	2-5, 8, 9, & 20 SEPTEMBER 2003
ORDERS PRONOUNCED	:	9 FEBRUARY 2004
REASONS DELIVERED	:	25 FEBRUARY 2004
FILE NO	:	ET/2002-000029
BETWEEN	:	KAY CHAISTY Complainant AND CITY OF PERTH Respondent

---

Catchwords:

Equal opportunity – sex discrimination and victimisation – time limitation – damages – apology

Legislation:

Equal Opportunity Act 1984 (WA) SS.5, 11, 67, 83, 89, 90, 93, 107, 120, 127, 161

Result:

Complaint upheld. Compensation ordered.

Representation:

Counsel:

Complainant – Mr M. Kane

Respondent – Mr A. Power

Case(s) referred to in judgment(s):

Commonwealth of Australia & Another v Human Rights and Equal Opportunity Commission & Others (1997) 147 ALR 469 per Sackville J at 485
O'Callahan v Loader & Another (1984) EOC 92-023 at 5,502
Williams v City of Perth ET 2002-000002
Archer v The State School Teachers Union ET Matters 15 and 16 of 1999
Hauthieu Pty Ltd trading as Russell Pathology v McIntosh [2000] WASCA 146
Hall v Sheiban Pty Ltd (1989) EOC 92/350
Zanazzi v Rolf Voulon & Others ET 2001-000042
Everest v New Hampshire Holdings Pty Ltd ET 2002-000039
Smith & Another v Sandalwood Motel Pty Ltd EOT No. 1 of 1993
Grulke v KC Canvas Pty Ltd [2000] FCA 1415

REASONS FOR DECISION

Introduction

1 The complainant alleges that she has been discriminated against in her work by the respondent as her employer on the ground of her sex, contrary to Section 11(2) of the *Equal Opportunity Act 1984 (WA)* ("the Act") and that she was victimised by the respondent for asserting her rights and/or making or proposing to make allegations and complaints pursuant to the Act, contrary to Section 67 of the Act.

2 The respondent denies any unlawful discrimination and victimisation. It further argues that if there was unlawful discrimination and/or victimisation it took all reasonable steps to prevent the doing of the acts which constituted the unlawful discrimination and/or victimisation and thus escapes liability by virtue of the provisions of Section 161(2) of the Act.

The material considered by the Tribunal

3 Prior to the hearing of this matter directions were made to the parties to provide the Tribunal with written statements from the witnesses whom each party proposed to call at the hearing. It was agreed by the parties and the Tribunal that these statements would constitute the evidence in-chief of each witness to be called at the hearing. Of course, each party was free to cross-examine a witness in the usual way. The exception to this course was a witness called by the complainant, Mr Ian Watson, who gave his evidence both in-chief and under cross-examination orally.

4 Further, the parties were encouraged by the Tribunal to agree, as far as they were able, which documents could be tendered to the Tribunal without formal proof. As a result, an agreed bundle of documents was provided to the Tribunal. Not all documents could be agreed by the parties and so each party filed their own respective book of documents.

5 Although these measures were designed to limit the factual and legal issues to be determined by the Tribunal and to reduce the costs to the parties: Section 120(c) of the Act, the hearing nevertheless occupied 7 sitting days and attracted a very considerable quantity of written materials both in statement and exhibit form. The scope of the factual issues put before the Tribunal for its determination was detailed and wide.

Sometimes, it must be said, the evidence was unnecessarily detailed and repetitive and not sufficiently focussed on the real issues. Accordingly, it is unnecessary for the Tribunal to determine each and every factual dispute put before it. If the Tribunal was to embark on the laborious exercise of determining each and every factual dispute, these reasons would be unnecessarily long and the parties and the community would be no better off.

Preliminary issues

6 At the commencement of the hearing on 2 September 2003 the complainant's counsel handed to the Tribunal a document entitled "Further Amended Points of Claim for Complainant". This 16-page document detailed the complainant's case. It is evident from this document that the complainant alleged that she was discriminated against and victimised by a number of employees of the respondent from 1999 through to and including 2002. The document particularises a very large number of factual incidents said to constitute the unlawful discrimination and victimisation. Confusingly, the term "victimisation" is often couched in terms of its everyday meaning and not in its proper statutory context.

7 It became apparent during the hearing (although not all the arguments were put until closing submissions) that the respondent sought to limit the factual scope of the hearing. The respondent submitted that the Tribunal should not take into account events referred to in an Agreement for Discharge and Release entered into by the complainant and the respondent dated 5 October 1999. Further, the respondent says that by virtue of the operation of Section 83(4) of the Act the Tribunal is prohibited from considering any event which occurred more than 12 months prior to the complainant lodging her complaint with the Commissioner for Equal Opportunity Commission ("the Commissioner"). The complaint was lodged with the Commissioner on 31 January 2001 and so the respondent contends that events prior to 31 January 2000 cannot be considered by the Tribunal. The respondent makes another submission. According to it, any complaint lodged with the Commission can only encompass conduct which occurred prior to the actual date of the complaint. The respondent submits that this means that the complainant cannot rely on any allegations that occurred after the filing of her original Points of Claim, namely 31 August 2001.

8 It follows from these submissions by the respondent, that the Tribunal needs to decide, as a preliminary issue, whether it will consider the events as alleged by the complainant which took place between 1999 and 2002 or the time period of events submitted by the respondent, namely 31 January 2000 to 31 August 2001 or some other period.

9 The complaint before the Tribunal is not the first time that the complainant has alleged sex discrimination against her by the respondent. By a letter dated 12 January 1999 from the Australian Services Union to Ms Virginia Miltrup, the respondent's then human resources manager, the complainant made a number of allegations against employees of the respondent. Some of these allegations related to things done and said by employees of the respondent which were referred to in the proceedings before the Tribunal and go back in time to as long as 1992. The complainant's claim was settled by an Agreement for Discharge and Release dated 5 October 1999 (Exhibit 4). The terms of the Agreement included a confidentiality clause but the parties have agreed that for the purposes of these proceedings that clause is waived. The Agreement provided for a sum of money to be paid to the complainant in relation to the "claims for stress relating to sexual harassment and discrimination as detailed in the ASU's letter of 12 January 1999". Thus the Agreement settled those things which occurred prior to 12 January 1999.

10 The agreement was admitted into evidence for two reasons. The first was to provide the Tribunal with some background to the dispute before it, and the second was to limit the events which the Tribunal had to consider to those not referred to in the Agreement. It follows from this that the Tribunal would not consider any events which were covered by the Agreement as constituting unlawful discrimination and/or victimisation as alleged in the present case.

11 Although the evidence at the hearing referred to events which occurred between 1992 and 12 January 1999, the Tribunal has not used those events to determine the claim before it except insofar as those events might help put more current events in context.

12 The Tribunal now turns to the respondent's argument that the Tribunal is limited by operation of Section 83(4) of the Act from taking into account alleged contraventions of the Act which occurred more than 12 months before the date on which the complainant made her complaint to the Commission.

13 Section 83(4) of the Act provides:

"A complaint made under sub-section (1) or (1)(a) shall be lodged within 12 months after the date on which the contravention of this Act which is the subject of that complaint is alleged to have been committed."

14 The operation of Section 83(4) of the Act is subject to the operation of 83(5), which provides:

"Notwithstanding sub-section (4), the Commissioner, on good cause being shown, may accept a complaint which is lodged more than 12 months after the date referred to in that sub-section."

15 To understand how this section may impact on the Tribunal, one needs to examine how it is that a complaint comes to be determined by the Tribunal.

16 Although complaints may be referred to the Tribunal by the relevant Minister (Section 107(1) of the Act), in reality such referrals are rare. Almost all of the Tribunal's jurisdiction derives from Section 107(3) of the Act, which requires the Tribunal to hold an enquiry into each complaint referred to it under Section 90(2) and 93(1) of the Act.

17 Any person who believes that they have been the victim of unlawful conduct under the Act must first lodge a complaint with the Commissioner: section 83 of the Act. Once the complainant is accepted by the Commissioner, the Commissioner is obliged to investigate it: section 84 of the Act. The Commissioner has the power to dismiss a complaint where he or she is satisfied that the complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful: Section 89(1) of the Act. The complainant has the right to require the Commissioner to refer the complaint to the Tribunal if he or she is dissatisfied by the Commissioner's decision to dismiss the complaint. The Commissioner is then obliged to refer the complaint to the Tribunal: Section 90 of the Act.

18 Subject to Section 89(1) of the Act, the Commissioner is not empowered to determine complaints which have not been resolved by conciliation. Where a complaint is not able to be resolved by conciliation or the matter is one in which by its nature should be referred to the Tribunal, the Commissioner must refer the complaint to the Tribunal.

19 In other words, the Act is set up so that all complaints are made initially to the Commissioner, who then endeavours to resolve them by

conciliation. Where the conciliation process fails, the matter is then referred to the Tribunal. The Commissioner is the gateway through which all matters must proceed before they can be determined by the Tribunal and it is the complaint which has been lodged with the Commissioner that the Tribunal hears.

20 Save for those matters referred to in Section 107(1) of the Act, a complaint can only be dealt with by the Tribunal if it is first lodged with the Commissioner and later referred to it by the Commissioner. The respondent argues that the time limit referred to in Section 83(4) of the Act applies not just to complaints made to the Commissioner but to complaints determined by the Tribunal because the Tribunal can only deal with complaints made to the Commissioner. The Tribunal accepts this submission but that is not the end of the matter, because of the operation of Section 83(5) of the Act.

21 The complainant's letter of complaint to the Commissioner dated 31 January 2001 is extensive. The letter itself is 5 pages long but has attached to it another 50 pages of additional material. The letter is not a document of great precision in that whilst it refers to particular incidents which occurred between November 2000 and early January 2001, it also refers to allegedly sexist comments *"...made on numerous occasions over a number of years and continue today"*. The annexures to the letter deal with some things which are said to have occurred between 1997 and 1999 but centre upon events which occurred allegedly in the latter part of 2000 and early 2001. Some statutory declarations from other employees are also contained with the letter. These, particularly the statutory declarations of Phillip Wemm sworn 15 January 2001 and Carole Elaine Jones sworn 10 January 2001 include references to events which occurred in the past but exactly when is difficult to say because the statutory declarations do not specify the dates of particular events. In the case of Carole Jones, she refers to statements allegedly made by Tony Holmes *"a few years ago"*.

22 Looking at the letter of complaint and the attachments as a whole, it appears to the Tribunal that the complainant alleges that there has been systemic discrimination and victimisation against her over a long period of time but the thrust of her allegations involve events which have occurred between 1999 and 2001.

23 The Commissioner accepted the complaint contained in the letter of 31 January 2001 even though there are events alleged in it which occurred outside the 12 month time limit referred to in Section 83(4) of the Act.

While it is true that the Commissioner did not provide any written advice that she had agreed to accept the complaint notwithstanding that portions of it appeared to fall outside the 12 month limitation period, the fact of acceptance combined with an assumption that the Commissioner would be aware of the fundamental provisions of the Act leads the Tribunal to conclude that the Commissioner was satisfied that good cause had been shown and therefore she accepted the complaint notwithstanding that some of the allegations in it may well have been more than a year old.

24 Although this Tribunal cannot ex post facto decide that it is satisfied there was good cause to extend the 12 month time limit, it is not difficult to see why the Commissioner would have regarded the circumstances as demonstrating good cause. In the first place, most of the complainant's allegations were within the 12 month time limit. Insofar as the allegations were outside that period, the respondent would not have been prejudiced because the relevant employees were still employed by it and had been spoken to concerning the particular allegations. Good cause does not require the Commissioner to take into account merits of the claim, rather, what is required is an explanation of the delay and whether that delay has caused prejudice to the respondent: *McAuliffe v Puplick (1996) EOC 92-800.*

25 The Tribunal rejects the respondent's submission that its jurisdiction in this case is limited to those events which occurred within the 12 month time limit. The Tribunal is prepared to consider alleged unlawful discrimination and victimisation which occurred outside the 12 month time limit but it will not consider matters which were included in the Agreement for Discharge and Release dated 5 October 1999.

26 Before leaving the time limitation argument, it is pertinent to observe that this point was not taken in any of the preliminary proceedings before the hearing, nor was it raised by the respondent at the commencement of the hearing nor even when it opened its case. The point was raised for the first time in the respondent's written closing argument at a point when all the factual events had been extensively canvassed.

27 The respondent in its written closing submissions submits that the Tribunal can only enquire into complaints that were lodged with and investigated by the Commissioner. It further submits that if during the course of the enquiry further complaints are made to the Tribunal, which were not before the Commissioner, the Tribunal has no jurisdiction to enquire into those complaints. The Tribunal accepts this submission. Reference has already been made to the wording of Section 107(3) of the

Act. Its plain words clearly support the respondent's contention. This is not to say that the complainant is only restricted to those matters set out in her letter of 31 January 2001.

28 The complaint referred to in Section 107(3) of the Act is the complaint into which the Commissioner enquired: Section 84 of the Act. The complaint is not only the initial complaint but also other complaints made by the complainant during the course of the Commissioner's investigation. In this case, the report of the Commissioner to the Tribunal refers to a number of communications made by the complainant with the Commissioner during 2001 in addition to her original letter of complaint. The last document submitted to the Commission on behalf of the complainant was a letter from Leonard Clifford dated 16 November 2001 making a number of allegations of offensive conduct by employees of the respondent towards the complainant.

29 The Acting Commissioner wrote to the complainant on 3 May 2002 dismissing the complaint. The material before the Tribunal indicates that there was no complaint made to the Commissioner of misconduct by the respondent after 16 November 2001.

30 Turning to the complainant's Further Amended Points of Claim, it is fair to say that, for the most part, that document reflects those matters which were the subject of complaint by the complainant to the Commissioner which were investigated by her. However, there are some matters referred to in the Further Amended Points of Claim which were not complained of to the Commissioner and were not the subject of investigation. Most noticeably, the allegations of victimisation which are said to have occurred in 2002. These are referred to in paragraphs 4.5, 4.6, 4.7 and 5.1(b) of the Further Amended Points of Claim. As these were not the subject of complaint to the Commissioner and investigation by her, the Tribunal does not have jurisdiction to deal with them. In addition, one of the allegations of sex discrimination occurred after 16 November 2001, namely the allegations in paragraph 1.4.

31 It follows from what has been said in previous paragraphs that the scope of this enquiry is limited to those matters raised by the complainant in her letter of complaint dated 31 January 2001 and other communications sent to the Commissioner by her or on her behalf up to 16 November 2001. The Tribunal will not deal with any complaints covered by the Agreement for Discharge and Release. The effect of this ruling is that the Tribunal will enquire into events which occurred subsequent to 12 January 1999 up to 16 November 2001.

The Parties

32 The complainant has been employed by the respondent as a parking inspector and information officer since 10 March 1986. She has worked for the respondent continuously since that date and was still employed by the respondent at the time of this hearing.

33 The respondent is a statutory entity constituted under the Local Government Act 1995. Its role is to administer the affairs of the city and to establish a policy framework that serves the city community. Geographically, the City of Perth incorporates the Perth Central Business District and includes the inner city suburbs of East Perth, West Perth and Northbridge. The respondent's governing body is the Council. The Council comprises the Lord Mayor and a number of councillors, all of whom are elected. The Chief Executive Officer is responsible for the overall day to day management of the respondent and implements the decisions of Council. Below him or her are four divisions, which deal with the various arms of activity of the respondent. Within the division entitled Service Units is a department called Compliance Services. The role of Compliance Services is to ensure compliance with health, planning, building and parking legislation passed by the Council.

34 The events which the Tribunal are concerned with occurred in that part of Compliance Services which enforced the respondent's parking regulations. This area became known as the parking department. This department was where the complainant was at all material times employed.

35 The complainant was one of a number of parking and information officers working in the parking department. The officers were divided up into two teams. In basic terms one team worked the east side of the city and the other the west side. Each team had a designated Team Leader. Each Team Leader was answerable to a supervisor called an Operations Co-ordinator, who was in turn answerable to the manager of Compliance Services.

36. For some, the parking department has not been a happy work environment. For many years the parking department was dominated by men who had a predominantly military background. In fact, for many years the department was run in a quasi-military style under the authority

of the Chief Parking Inspector. Few women were employed. The culture was male dominated and authoritarian.

37. The evidence presented to the Tribunal did not enable it to identify precisely when the winds of change began to blow through the parking department, but it seems evident that by the mid to late 1990's the structure and composition of the parking department changed. The team structure which has previously been referred to was implemented and a less militaristic approach to management was taken. A greater proportion of women were employed and new employees, male and female, were younger.

38. The evidence clearly indicates that some people within the parking department found it difficult to adapt to these changes. Some did not agree with them, some agreed that change was appropriate but did not like the way it was being implemented or the individuals who were implementing it.

39. The situation was further complicated by interpersonal disputes. The complainant and her sister, Annette Lutz, clearly had difficulties in their working relationships with other parking and information officers, and in particular Alex Gibson, Anthony Holmes and Peter Hosking, and later with Operations Co-ordinator William Strong and a team leader, Peter Keogh. The exact origins and reasons for the interpersonal difficulties encountered by the complainant and Ms Lutz on the one hand and Messrs Gibson, Holmes, Hosking, Strong and Keogh on the other hand are difficult to identify and in the end do not really matter. What is very clear to the Tribunal, having considered both the witness statements and seeing the protagonists give evidence, is that the working relationship of these people has been, for some considerable time, strained to say the least.

40. For its part, the respondent has been well aware of the difficulties faced by the parking department over the years. The parties in this enquiry, by consent, provided the Tribunal with a report entitled "City of Perth Parking Services", which was apparently prepared by Ms Josie Brown in early 1997. (Document No. 61 in the agreed bundle of documents) Although the document does not refer to the names of particular employees within the parking department, it is clear that the report is referring to interpersonal problems in the parking department.

41. In 1997 the parking department was fundamentally restructured under the auspices of Charlotte Stockwell. It was Ms Stockwell who put

into place the structure where parking and information officers were divided into teams. She appointed team leaders, namely Peter Keogh and Sadak Hamid, and she appointed William Strong as Operations Co-ordinator. In 1998 she was made the manager of Compliance Services and she held that position until 1999. Her witness statements (Exhibit 16(a) and (b)) gave the Tribunal a valuable insight into the culture that existed in the parking department in the past, the difficulties that were encountered in implementing change and the interpersonal difficulties that existed. The Tribunal will return later in these reasons to the evidence of Ms Stockwell.

42. As the hearing progressed and the witnesses came and went, it became more and more obvious that there was a high degree of animosity between the complainant and in particular Messrs Gibson, Holmes and Hosking. The Tribunal finds without hesitation that prior to the advent of Ms Stockwell, interpersonal difficulties had not been well managed. However, Ms Stockwell, by virtue of her sensitivity and acumen dealt effectively with this dispute. She was very mindful of equal opportunity issues and in 1999 she issued the City of Perth Parking Principles (Document No. 6 in the agreed bundle of documents) which, amongst other things, set out a code of conduct for the workplace. It was Ms Stockwell who negotiated the Agreement for Discharge and Release dated 5 October 1999.

43. Unfortunately, after Ms Stockwell's department from Compliance Services towards the end of 1999, her successor Mr Dennis Stevens was much less successful in his management of the interpersonal disputes.

44. The Tribunal finds that Mr Stevens did not have the same level of personal understanding of the complainant as Ms Stockwell and was much less tolerant of her. It appeared to the Tribunal that Mr Stevens tended to side with Messrs Gibson, Holmes, Hosking, Keogh and Strong. The effects of this were that the complainant lost confidence in management, and the level of interpersonal dispute between the complainant and Messrs Gibson, Strong, Holmes, Hosking and Keogh increased. The procedures which the respondent had in place for grievance resolution became ineffective, partly because individuals (including the complainant) sometimes refused to co-operate, sometimes

those conducting investigations did not perform them properly and sometimes the allegations were incapable of determination because of the inadequacy of the evidence.

45. The Tribunal has gone to some length to set out the context against which the events said to constitute unlawful discrimination and victimisation occurred because in the atmosphere that existed during the period to be considered by the Tribunal it can often be the case that unlawful discrimination and victimisation appear. Having said this, the Tribunal is fully aware that interpersonal disputes in a workplace and/or inadequate management do not per se amount to unlawful discrimination and victimisation. The Tribunal is aware that for the complainant to succeed in her complaint, she must establish sex discrimination and victimisation as proscribed by the Act.

46. Ms Stockwell observed in her witness statement (Exhibit 16(a)) that the complainant was "hyper-sensitive". The Tribunal is of the view that this description is somewhat exaggerated. The Tribunal is of the view that the complainant is a sensitive woman in the sense that she is sensitive to what she perceives are injustices perpetrated upon her in the workforce. It is evident that she is not as resilient to these things as others. However, this is no criticism of her. She has worked for the respondent now for just short of 20 years. Without doubt, she is a loyal and hard-working employee. It did not appear to the Tribunal that she feels animosity towards the respondent across the board. Rather, she feels that injustices have been perpetrated upon her by certain employees in the parking department and that these have not been effectively dealt with by the respondent. It was of interest to the Tribunal that when Ms Stockwell managed Compliance Services she seemed aware of the complainant's sensitivities and used effective one-on-one management skills to deal with them. This was to Ms Stockwell's credit. It is this Tribunal's view that reasonable managers should be able to deal with workers who have certain sensitivities and that Ms Stockwell's performance is a yard stick against which others can be compared.

Claim of sex discrimination

47 The complainant's allegations of sex discrimination as set out in the Further Amended Points of Claim contain a litany of allegations, many of which are patently incapable of amounting to sex discrimination. The complainant seems to have pleaded her case by referring the Tribunal to every workplace disagreement that she could recall and then grouping those disagreements under the banners of sex discrimination and victimisation. The complainant's Further Amended Points of Claim contain some allegations which were too broad, although as the hearing progressed some of the allegations narrowed to the point where the Tribunal could see what the complainant was driving at.

48 Some of the allegations made by the complainant which are symptomatic of interpersonal grievance rather than sex discrimination and victimisation are:

(a) The allegation contained in paragraph 1.4 of the Further Amended Particulars of Claim in which it was alleged that Alexander Gibson had spoken rudely to the complainant in April 2002. This incident was not one investigated by the Commissioner and for the reasons set out in paragraph 31 cannot be considered by the Tribunal. In any event, this incident concerned an argument as to whether or not the complainant had illegally parked a car she was driving to allow a fellow employee to pick up some shoes. Even if the complainant's account of the event is accepted, there is no evidence of discrimination on the basis of gender.

(b) Part of the allegation contained in paragraph 1.9 of the Further Amended Points of Claim alleges that Mr Anthony Holmes *"would step back when the complainant would be entering a lift when there would be ample room for him also in the lift. In addition, Mr Holmes has on numerous occasions walked to the other side of the street on seeing the complainant on the other side of the street as himself."* Even if the Tribunal accepts the complainant's account of these events, and even if the conduct complained of was ill-mannered or unfriendly, it is not discrimination based on gender. Rather, it reflects the poor interpersonal relationship between Mr Holmes and the complainant.

(c) The allegation contained in paragraph 1.10 of the Further Amended Points of Claim. This allegation involved an accusation that Mr Anthony Holmes had called out to a female member of the public whilst on duty in a vehicle owned by the respondent words to the effect of "show us your tits". This allegation was the subject of much evidence. Mr Holmes in cross-examination admitted that he did say "show us your tits" to Mr Leonard Clifford, a fellow parking and information officer but not directly to a female member of the public and only when the window of the vehicle were wound up. The Tribunal did not accept Mr Holmes' evidence on this point and preferred the evidence of Mr Clifford. However, the comments, as disgraceful as they were, were not made in the presence or hearing of the complainant and were not directed to her nor were they about her. Accordingly, they can never be seen to be discriminatory as against the complainant. However, the comments impact adversely against the credibility of Mr Holmes because they indicate a sexist attitude towards women, a finding which had some bearing on the Tribunal's consideration of other evidence involving other incidents involving Mr Holmes.

(d) Allegation 2.1 of the Further Amended Points of Claim. This was another allegation which occupied a lot of the Tribunal's attention for little profit. It was pleaded in this way – *"In September 2000 Mr Gibson refused to pick up the complainant when the complainant requested to be picked up from her vicinity in Northbridge. When investigated, Mr Gibson claimed he was busy and management accepted this. Subsequently Mr Gibson stated to another employee that he hated the complainant and he had no intention of picking her up. As a result, the complainant felt unable to ring Mr Gibson to be picked up on any further occasion"*. Whether this incident occurred in the manner described by the complainant or not, it is at best an example of the break down of the interpersonal relationship between Mr Gibson and the complainant and no more. On its face it is not discrimination on the basis of sex.

(e) Paragraph 2.2 of the Further Amended Points of Claim. This allegation was pleaded as follows – *"Mr Gibson on a number of occasions in 1999 through to and including 2002 would not speak to the complainant and ignored her when the complainant said "Good morning". Furthermore, on a number of occasions when the complainant was following Mr Gibson into a room via door, he would ensure that the*

door would close onto the complainant's face. This happened in Council House usually in the mornings, at meal breaks, or when going to meetings it would occur when management were not present". The Tribunal finds that the antipathy between the complainant and Mr Gibson was such that courtesies, such as saying good morning or keeping a door open, were not observed by either of them. As unfriendly as the behaviour was, it does not amount to sex discrimination.

(f) Allegation contained in paragraph 2.4 of the Further Amended Points of Claim. This allegation is expressed in these terms – *"Mr Holmes did in early 2000 on two or three occasions, if he knew that the complainant was the next person to use the work vehicle, park the work vehicle up against the concrete pillar in the car park so that the complainant would have to get into the vehicle by the passenger side".* Even if this occurred and as unhelpful as such conduct might be, it is not discriminatory conduct based on gender.

Findings on Credibility

49 In general, the Tribunal found the complainant to be a truthful witness, although there were times when she played down her own antagonism and conduct towards Messrs Holmes, Gibson, Hosking and others. There were also times when she appeared a little over-sensitive. Having said these things, the Tribunal at no point believed that she set out to deliberately deceive.

50 The Tribunal was favourably impressed by some of the former employees of the respondent, namely Messrs Flatman, Wemm and Clifford and current employee Watson. The Tribunal was less impressed with Cameron Lawton and has not taken into account his evidence.

51 The respondent sought to criticise Messrs Flatman, Clifford and Wemm on the basis that they were disgruntled former employees. Whilst it is true that they were former employees and that they were unimpressed

by the conduct of the respondent, it did not strike the Tribunal that they were interested in taking revenge upon the respondent.

52 With respect to the witnesses called by the respondent, the Tribunal was impressed with the candour of Ms Stockwell and Ms Heerey. On the other hand, the same could not be said about the evidence of Messrs Holmes, Gibson, Hosking and Keogh. The Tribunal preferred the complainant and her witnesses to these men when it came to deciding the issue as to whether the unlawful discriminatory conduct as alleged by the complainant had occurred. The Tribunal found that these men, whilst seemingly espousing equal opportunity attitudes in the workplace, did not always live up to their own rhetoric.

Essence of Complainant's Case

53 The essence of the complainant's case against the respondent for sex discrimination is that she and sometimes her sister, Annette Lutz, were the subject of degrading, sexist comments. The complainant alleged that the most common sources of these comments were Messrs Holmes, Gibson and Keogh. Other male employees of the respondent made sexist comments which were not specifically directed to the complainant but were about women generally. Messrs Holmes and Gibson were said to have made such general comments, as was Mr Hosking.

54. Some examples of general comments are:-

(a) Mr Flatman heard Mr Holmes say at various times up to late 2001, "the worst thing they ever did to this job was to employ women here, they've ruined it".

(b) Mr Flatman heard Mr Holmes say again in the period up to late 2001, "the only women they employ here are either fat, ugly or dykes".

(c) Mr Flatman heard Mr Hosking say in or around late 1999 to early 2000, "the only thing women are good for was wearing out the carpet between the kitchen and the bedroom".

(d) Mr Wemm heard Messrs Gibson, Hosking and Holmes say in 2000 words to the effect that, "women were useless in the job and it wasn't a place for women".

(e) Mr Wemm heard Mr Gibson say in 2000, "women should not be in this workplace".

55 The Tribunal finds that in addition to the general statements already mentioned certain sexist statements were made about the complainant (and sometimes her sister) which were directed at them, namely:-

(a) Mr Clifford heard Mr Holmes say sometime between May 1999 and January 2000 that the complainant and her sister were "bitches" and "women with balls".

(b) Mr Flatman heard Mr Holmes refer to the complainant on a number of occasions up to late 2001 as a "loose woman".

(c) Mr Flatman heard both Messrs Holmes and Gibson refer to the complainant and Ms Lutz as "the ugly sisters".

(d) Mr Flatman heard Mr Gibson say about the complainant up to late 2001 "I wouldn't touch her with yours".

56. Based on the evidence heard by the Tribunal, the expression which gained the most currency in the parking department and was used the most often, to the point where it was well known to management, was "the ugly sisters". The specific comment made about the complainant, often in conjunction with her sister, was clearly sexist and degrading.

57 The mutual antipathy felt by Messrs Holmes, Gibson and Hosking and the complainant, as the Tribunal has already observed, led to a number of incidents which showed them behaving badly to each other. The Tribunal wishes to make it plain that the complainant was not innocent of wrong-doing in this regard. However, the Tribunal finds that the antipathy that Messrs Holmes, Gibson and Keogh felt towards the complainant sometimes descended beyond a mere interpersonal dispute to the impermissible and unlawful use of gender based abuse directed

personally towards the complainant and her sister, or the complainant herself.

58 The Tribunal heard evidence of at least one occasion where Mr Holmes refused to get into a lift with the complainant. When asked why he would not get in, he replied to the effect "it was not worth it, she may rip her shirt off and cry that I had raped her when I had done nothing of the sort" (statement of Holmes, Exhibit 25(a) paragraph 24). The complainant alleged in her Further Amended Points of Claim at paragraph 1.9 that an incident like this occurred in November and December 2000. The state of the evidence is such that it allows the Tribunal to find that on one occasion, either in 1999 or 2000, Mr Holmes said to another employee, quite possibly Carole Jones, that he would not get into a lift with the complainant for fear that the complainant would make a false allegation of rape against him. This statement illustrates the point to which the relationship between Mr Holmes and the complainant had deteriorated. It is fair to observe that the notion that the complainant would make such an allegation is unjustified and offensive to her. It shows that Mr Holmes, in particular, was prepared to make unjustified comments of a sexual nature about the complainant.

59 Whilst it appears that the sexist comments, both of a general nature about women and of a specific nature about the complainant, were not made to the complainant directly, those comments which were made about the complainant were made frequently enough and to many employees within the parking department, that they gained wide currency and inevitably the complainant's attention was drawn to them, Mr Flatman said as much. In response the complainant went to management. What happened to these complaints will be mentioned later in these reasons.

Comments made by Peter Keogh

60 Peter Keogh was employed by Ms Stockwell and was the complainant's team leader. The complainant makes various allegations about statements made by Mr Keogh. Evidence was presented to the Tribunal from Mr Clifford to the effect that Mr Keogh referred to the

complainant and her sister as "trouble and to be avoided", "bitches" and "women with balls".

61 Ian Watson, a current employee of the respondent who had to be subpoenaed to give evidence on behalf of the complainant, recalled hearing at some point in time after the Parking Department had moved to the lower ground floor in Council House, in perhaps 1999 or 2000, refer to the complainant in these terms "She's a fucking bitch anyway. The sooner we can get rid of her the better".

62 In light of this evidence, and based on the Tribunal's own observations of Mr Keogh when he testified before the Tribunal, the Tribunal finds that Mr Keogh harboured considerable ill-feeling towards the complainant. The Tribunal accepts the evidence of Messrs Clifford and Watson and in particular finds that Mr Keogh referred to the complainant as "a fucking bitch" in a context which the use of those words was sexist and degrading.

63 In November 2000 the complainant's team held a meeting during which the complainant was accused by Mr Keogh of saying at another meeting that some of her colleagues were "suck holes, backstabbers and crawlers". The complainant denied saying those words. Phillip Wemm said that he had in fact said the words. The complainant asked Mr Keogh for an apology but he refused. Whilst this behaviour was not gender based, it was clearly unreasonable for Mr Keogh to refuse to give the complainant an apology, especially when it was clear that the complainant had not made the comment. The Tribunal is aware that Mr Keogh's version of events is different but prefers the version given by the complainant and Mr Wemm. This incident well illustrates the ill-feeling Mr Keogh felt towards the complainant.

The elements of sex discrimination

64 Sex discrimination is defined in Section 8 of the Act. That Section reads:

"(1) For the purposes of this Act, a person in this sub-section referred to as the "discriminator" discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if, on the ground of –

(a) the sex of the aggrieved person;

(b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or not materially different, the discriminator treats or would treat a person of the opposite sex.

(2) For the purposes of this Act, a person (in this sub-section referred to "the discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition –

(a) with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the aggrieved person does not or is not able to comply."

In this case the complainant relies upon Section 8(1) of the Act to ground the allegation of sex discrimination.

65 It is for the complainant to demonstrate a causal relationship between the sex of the aggrieved person (in this case a female), or a characteristic pertaining generally to persons of that sex or a characteristic that is generally imputed to persons of that sex and any alleged less favourable treatment accorded to her: *Commonwealth of Australia & Another v*

Human Rights and Equal Opportunity Commission & Others (1997) 147 ALR 469 per Sackville J at 485.

66 When embarking upon this enquiry, the Tribunal must be mindful of Section 5 of the Act:

"A reference in Part II, IIA, III, IV, IVA or IVB to a doing of an act on the ground of a particular matter it includes a reference to the doing of an act on the ground of two or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act."

An allegation of sex discrimination comes under Part II of the Act.

67 The use by the respondent's employees of such expressions as "bitch", "fucking bitch", "women with balls", "ugly sisters" and referring to the complainant as "a loose woman" are all obvious expressions of abuse which are gender based.

68 Although the evidence before the Tribunal suggested that on occasions similar expressions were used in the context of men talking about men or women talking about men, those instances were very obviously jocular and part of the type of banter that might be heard in workplaces generally. However, the expressions referred to above were directed towards the complainant as terms of derision and abuse. On the evidence before the Tribunal, men were not treated in this manner. The Tribunal finds that the expressions that were used by Messrs Holmes, Gibson and Keogh were deliberately targeted at the complainant and to her gender. Of course, it is not necessary for the complainant to establish that the respondent intentionally discriminated against the complainant on the grounds of her gender. In this case it is difficult to avoid the conclusion that the statements made by Messrs Holmes, Gibson and Keogh were anything other than deliberate and gender based. There were statements specifically made with the complainant in mind. The complainant was the subject of gender based abusive language, which would not have been meted out to a male in similar circumstances.

69 The Tribunal finds that to the extent referred to above, and subject to what is about to be said concerning sub-section 11(2) and Section 161 of the Act, the complainant has suffered sex discrimination at the hands of employees of the respondent.

70 Section 11(2) of the Act provides:

"It is unlawful for an employer to discriminate against an employee on the ground of the employees sex, marital status or pregnancy –

(a) in the terms or conditions of the employment that the employer affords the employee;

(b) by denying the employee access, or limiting the employees access to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

(c) by dismissing the employee; or

(d) by subjecting the employee to any other detriment."

In his written closing submissions, counsel for the complainant relied on sub-sections 11(2)(a) and (d).

71 In *O'Callahan v Loader & Another* (1984) EOC 92-023 at 5,502 it was said:

"The day to day decisions which an employer must make in relation to the workplace and to individual employees ...refer to the conditions, relating to employment which may be imposed by an employer upon an employee during the course of that employment."

With respect to the complainant's counsel, the alleged discriminatory conduct which the complainant was subjected to was not in the form of a term or condition of employment, thus Section 11(2)(a) of the Act does not apply. Turning to Section 11(2)(d), the word "detriment" in this sub-section means that a complainant is placed at a disadvantage in comparison with employees of the opposite sex. The disadvantage must be substantial and not trivial: *O'Callahan v Loader* at page 75, 507. An employee has the right to work in an environment which is free from gender based discrimination. It is clearly a detriment to have to come to

work and suffer gender based abuse, which others do not have to endure. The Tribunal finds that the statements made by the respondent's employees constitute sex discrimination by subjecting her to "any other detriment" within the ambit of Section (2)(d) of the Act.

Vicarious liability

72 Section 161 of the Act is in the following terms:-

"(1) Subject to sub-section (2), where an employee or agent of a person does, in connection with the employment of the employee or with duties of the agent as an agent –

(a) an act which would, if it were done by the person, be unlawful under this Act (whether or not the act done by the employee or agent is unlawful under this Act); or

(b) an act that is unlawful under this Act, this Act applies in relation to that person as if that person had also done the act."

(2) Sub-section (1) does not apply in relation to an act of the kind referred to in paragraph (1) or (b) of that sub-section done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee from doing acts of the kind referred to in that paragraph.

73 The effect of this section is that the respondent will be held liable for the conduct of its employees unless it is able to establish that it took all reasonable steps to prevent the employees from behaving as they did.

74 The words "reasonable steps" are not defined in the Act. The Tribunal accepts as correct the submission made by the respondent that its meaning has to be determined on a case by case basis and what is reasonable will depend on the different circumstances of the employer. For example, larger corporations with more resources would be expected to do more than small businesses in order to be held to have acted reasonably. The respondent could fairly be equated with a large corporation.

75 The evidence presented to the Tribunal by the respondent shows that it has in place a clear equal opportunities policy and, relevantly to this case, a workplace sex discrimination policy. Further, employees at all levels were demonstrated to have had training in equal opportunity and sex discrimination issues. The mere existence of equal opportunity policies and training is not enough. Management who have the responsibility of enforcing policies and implementing training must act effectively to ensure that employees are not only aware of the policies but are actually carrying them out in the workplace.

76 The Tribunal heard evidence about the policies, workshops and other measures put into place by the respondent. Significant work in this regard was carried out by Charlotte Stockwell and Helen Heerey. After Ms Stockwell left Compliance Services, Dennis Stevens took over and was the manager of that section from January 2000 to date. William Strong was the Operations Co-ordinator, whose task it was to oversee the day to day operations of the parking and information officers employed by the City. As has already been pointed out, Mr Peter Keogh was the complainant's team leader.

77 The combined evidence of Ms Stockwell, Ms Heerey and Messrs Stevens, Strong and Keogh enables the Tribunal to conclude that the respondent's management was aware of the unhappy history of the parking department and of the difficulties which the complainant had encountered in the past. These difficulties included conduct which amounted to allegations of sex discrimination. The respondent was aware that the complainant made long-standing allegations of sexual discrimination against Messrs Holmes, Gibson and Hosking. When Ms Stockwell became the manager of Compliance Services, she dealt with the problem to the satisfaction of all protagonists. However, after she left the situation deteriorated again.

78 On the evidence, it appears unfortunately, that one of the respondent's managers, Mr Keogh, himself engaged in conduct which amounted to sex discrimination. His managers, namely Mr Strong and Mr Stevens appear to the Tribunal to have been ineffective in the way that

they dealt with the allegations which were persistently made to them by the complainant.

79 The Tribunal recognises that Messrs Strong and Stevens conducted a number of enquiries concerning the allegations which were made by the complainant.

80 The Tribunal is of the view that in time Messrs Stevens, Strong and Keogh became sick of the persistent complaints which the complainant brought to them. They tended to regard them sceptically.

81 In early January 2001 the complainant lodged her complaint in the Commission. By then it appears, all trust had broken down between the complainant and the respondent and it has to be said that after that the complainant did not assist her own cause when she failed to co-operate in some enquiries, including an independent enquiry conducted by outside consultants.

82 What particularly strikes the Tribunal is that the kind of comments being made by Messrs Holmes and Gibson were in wide circulation, not just in Mr Keogh's team but in the other team headed by Mr Sadak Hamid. Even though the parking information officers were divided into two teams, it is evident that there was frequent contact between members of those teams. It is too much for the Tribunal to believe that competent management would not have heard what was going on and in particular the sorts of things that were being said about the complainant.

83 What was required was effective management of the sort that Ms Stockwell was able to give to the situation when she was manager of Compliance Services. That clearly did not occur after she left. The Tribunal finds, without hesitation, that although the respondent had in place proper policies relating to equal opportunity and communicated those policies to their employees, there was a failure of management in the form of a team leader, the Operations Co-Ordinator and ultimately the manager of Compliance Services to deal effectively with the actions of

Messrs Holmes, Gibson and Keogh. One of the reasons for this may well be that Mr Keogh himself had engaged in discriminatory behaviour. What is clear to the Tribunal is that those required by the respondent to implement the policies and procedures, failed to do so in this case.

84 In the circumstances, the Tribunal finds that the respondent has not taken "all reasonable steps" as required by Section 161(2) of the Act. Accordingly, by virtue of Section 161(1) of the Act, the respondent is liable for the actions of its employees.

Allegation of victimisation

85 Unfortunately, the complainant in her Further Amended Points of Claim used the words "victimise" and "victimisation" in the everyday sense of the word and not in the sense contemplated by Section 67 of the Act. More often than not, the words were used to illustrate behaviour which the complainant regarded as being evidence of sex discrimination.

86 Section 67 of the Act provides:

"(1) It is unlawful for a person (in this sub-section referred to as the "victimiser") to subject, or threaten to subject, another person (in this sub-section referred to as the "person victimised") to any detriment on the grounds that the person victimised –

(a) has made, or proposes to make, a complaint under this Act;

(b) has brought, or proposes to bring, proceedings against the victimiser or any other person under this Act;

(c) has furnished, or proposes to furnish, any information, or has produced or proposes to produce, any documents to a person exercising or performing any function under this Act;

(d) has appeared, or proposes to appear, as a witness before the Tribunal in a proceeding under this Act;

(e) has reasonably asserted, or proposes to assert, any rights of the person victimised or the rights of any other person under this Act; or

(f) has made an allegation that a person has done an act that is unlawful by reason of Part II, IIA, III, IV, IVA or IVB, or on the ground that the victimiser believes that the person victimised has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (f).

(2) Sub-section (1)(f) does not apply if it is proved that the allegation was false and was not made in good faith.

(3) Subject to sub-section (2), the application or continued application of sub-section (1) in a particular case shall not be affected by:

(a) the failure of the person victimised to do any proposed act or thing referred to in any of the paragraphs of sub-section (1); or

(b) the withdrawal, failure to pursue or determination of any complaint, proceeding or allegation under this Act."

In *Williams v City of Perth* ET 2002-000002 delivered, the Tribunal referred to *Archer v The State School Teachers Union* ET Matters 15 and 16 of 1999 at paragraphs 63 and 64 in which it was stated:

"Section 67 is a provision of the Act in the contravention of which the Tribunal has a particular, specific, over-riding and overwhelming interest. Contravention of Section 67 is a grave matter indeed. Any such contravention strikes at the essence of the proper effective and uninhibited operation of the Act and the fulfilment of the objects enshrined and expressed in the Act.

...Any enquiry into contravention of Section 67 is intensely factual. Unlike perhaps some other provisions of the Act, Section 67 presents a few difficult questions of construction or interpretation."

In *Hauthieu Pty Ltd trading as Russell Pathology v McIntosh* [2000] WASCA 146, Justice McKechnie held that the actions of the victimiser had to be intended "to cause detrimental consequences". Such an intention will almost always have to be found, if it exists, by inference.

87 The way in which the complainant put her case with respect to Section 67 is that the sex discrimination was caused or caused in part by the complainant threatening to make a complaint under this Act and because she assisted and defended her sister, who had also made a complaint of unlawful conduct under the Act.

88 In support of this contention, counsel for the complainant referred to the evidence of Mr Hosking, who said that it was common knowledge that the complainant had made a complaint against her supervisors and that the evidence and conduct of Messrs Holmes, Gibson and another employee Graham, was such as to enable the Tribunal to infer that those men knew that the complainant had made a complaint against her supervisors which amounted to complaints of breaches of the Act.

89 The Further Amended Points of Claim made additional allegations in support of the plea that Section 67 of the Act has been breached. In that document the complainant alleged that various complaints which she made against fellow parking information officers and managers at the parking department were inadequately investigated, especially when compared to the investigations undertaken by the respondent with respect to allegations made by other male parking information officers. A great deal of evidence was taken up trying to examine this issue.

90 Dealing first with the argument put to the Tribunal in the complainant's closing submissions, whilst it may have been that other parking information officers were aware of the complainant's complaint, it does not follow that their conduct was caused by any of the matters set out in Section 67(1)(a) to (f). The evidence which the complainant's counsel draws to the Tribunal's attention is insufficient to establish a causal link between the alleged conduct of the parking information officers and any of the matters referred to in Section 67(1)(a) to (f).

91 As to the allegation that the respondent did not properly investigate complaints put to it by the complainant compared to complaints made by others, once again, there is simply insufficient evidence for the Tribunal to conclude a causal link between that alleged conduct and a breach of Section 67(1)(a) to (f).

92 To put it simply, there is no evidence that the respondent through any of its employees did anything with an intention to victimise the complainant in the sense referred to in Section 67 of the Act.

Conclusion

93 It follows that the Tribunal upholds some of the allegations of sex discrimination but dismisses the allegation of victimisation.

Relief

94 In the complainant's Further Amended Points of Claim the complainant sought an array of relief, much of which was unlikely to be granted by the Tribunal. Wisely, in the complainant's written closing submissions the complainant narrowed her claim and sought relief in terms of monetary compensation pursuant to Section 127(b)(i) of the Act and an order for an apology. The latter is presumably based on Section 127(b)(iii) of the Act.

95 As to compensation, the Tribunal accepts that the complainant has suffered much distress, humiliation and embarrassment as a result of the conduct of, in particular Messrs Holmes, Gibson and Keogh. However, not all of the complainant's distress, humiliation and embarrassment were caused by conduct which was unlawful under the Act. As the Tribunal observed on a number of occasions in these reasons, the complainant and others clashed on an interpersonal level and that manifested itself into bad behaviour on the part of some of her co-workers and even herself on occasions. Further, some of her distress stemmed from events which occurred post 16 November 2001.

96 It must also be observed that the unlawful behaviour of the respondent's employees occurred over a lengthy period of time between 1999 and 2001. It is the Tribunal's view that at least Mr Keogh was undoubtedly aware of the unlawful behaviour and if Messrs Strong and Stevens were not, they ought to have been.

97 The Tribunal has had regard to the evidence of Dr Segal (Exhibit 2). Dr Segal was not required to attend before the Tribunal for cross-examination. Dr Segal is a clinical psychologist who has been treating the

complainant since 10 December 2001. He has diagnosed the complainant as suffering from major depressive disorder. He observed that she presented with "...typical symptoms of depression and anxiety – depressed mood and tearfulness; vegetative signs as appetite, concentration and sleeping disturbance (including early morning wakening); loss of motivation and interest in usual activities; socialisation withdrawal; lack of purpose; somatic complaints (including "butterflies in stomach"); low self-esteem, self doubt and chronic worry." He went on to say:

> *"From the time I started seeing Kay, the specific issues/incidents that Kay has spoken about included derogatory references about her behind her back, people not talking to her, having new starters turned against her and rude and aggressive treatment from her supervisor, with decisions about moving to another section or changing her supervisor and tensions at certain meetings (eg. a meeting on 6/6/02 at which she felt humiliated by her supervisor)."*

98 The Tribunal notes from this paragraph that some of the things that she complained about to Dr Segal are not matters compensable under the Act.

99 Since seeing the complainant, Dr Segal has noticed improvements and regressions. One of those regressions was to do with the theft of a jacket on 30 April 1999, which is irrelevant to the matters before the Tribunal.

100 Awards for injured feelings pursuant to the Act should not be minimal because that would tend to trivialise and thereby undermine the aims of the Act: *Hall v Sheiban Pty Ltd* (1989) EOC 92-350.

101 The complainant has claimed that she should receive a very substantial amount of financial compensation, in fact, the complainant says that she should receive the maximum which the Tribunal can award under the Act, $40,000. On the other hand, the respondent says that the complainant should receive no compensation other than a nominal award. The respondent has submitted that awards for distress, humiliation and embarrassment are modest and are within the range of $250 to $3,000. In support of that submission, the respondent cites the Australian and NZ Equal Opportunity Commentary, CCH, Table of Damages Awarded in Reported Equal Opportunity cases 89-960. A perusal of that table does not bear out the respondent's submission but even if it did each case must

be considered on its own facts. Further decisions in this Tribunal have awarded damages for distress outside a range of $250 to $3,000. (See *Zanazzi v Rolf Voulon & Others* ET 2001-000042, *Everest v New Hampshire Holdings Pty Ltd* ET 2002-000039). Even as far back as 1993 this Tribunal in the matter of *Smith & Another v Sandalwood Motel Pty Ltd* EOT No. 1 of 1993 awarded $8,000 by way of general damages to each of the complainants in that case.

102 In all of the circumstances, the complainant is awarded $6,000 for distress, humiliation and embarrassment.

103 As to the apology, the Tribunal was referred to the decision of the Federal Court of Australia in *Grulke v KC Canvas Pty Ltd* [2000] FCA 1415, where Ryan J made an order for damages pursuant to the Sex Discrimination Act 1984 (Commonwealth) against a corporation. In that case the applicant sought a written apology. At paragraph 4, Ryan J said:

> *"In my view, having regard to the fact that the respondent here is not a natural legal person but is a corporation, and the fact that I have endeavoured to compensate for loss or damage suffered by the applicant by making a pecuniary award of damages, it is inappropriate to exercise the discretion reposed in the Court by additionally ordering the making of an apology."*

104 In this case, the respondent is a statutory authority and having made an order for pecuniary damages in the Tribunal's opinion it is inappropriate for the respondent to be required to provide the complainant with a written apology.

Orders

105 The orders of the Tribunal are as follows:-

1. The complainant's allegation of sex discrimination is substantiated.

2. The respondent is ordered to pay the complainant compensation in the sum of $6,000.00.