

ANTI-DISCRIMINATION COMMISSION
NORTHERN TERRITORY

COMPLAINANT: CHRISTINA HOSKING

RESPONDENT: CHRIS FRASER
CENTRALIAN RECRUITING

NUMBER: 2 of 1996

TRIBUNAL: DAWN LAWRIE
HEARING COMMISSIONER

COUNSEL ASSISTING: SALLY GEARIN

GROUNDS OF COMPLAINT: SEEKING UNNECESSARY
INFORMATION

DATE OF DECISION: 17 JULY 1996

BACKGROUND

On 11 March 1994 the Office of the Anti-Discrimination Commissioner received a complaint from Ms Christina Hosking against Mr Chris Fraser, trading as Centralian Recruiting, alleging prohibited conduct by seeking unnecessary information on which unlawful discrimination might be based, contrary to *S.26* of the *NT Anti-Discrimination Act 1992* (the 'Act').

In letters dated 16 May 1994 a delegate of the Commissioner advised the Complainant that the complaint had been accepted, and wrote to the Respondent Mr Chris Fraser of Centralian Recruiting outlining the substance of the complaint and seeking his response.

Telephone conciliation conferences were held on 6 February 1995 and 24 February 1995.

The matter was not able to be conciliated, and was referred to the Commissioner for a Hearing pursuant to *s.83* of the Act.

A Hearing was convened in Alice Springs 21 August 1995.

Mr Sean Stewart sought leave to represent the Respondent, Mr Fraser, and raised questions regarding *s.66* of the Act and the Commissioner's jurisdiction to hear the matter.

The Complainant, Ms Hosking, was unrepresented, and opposed leave being given for the Respondent to be represented.

Submissions by both parties, and Counsel Assisting were considered. Having considered those submissions, I ruled that the Hearing could proceed. I published separately my reasons for that decision.

THE COMPLAINT

The Complainant, Ms Hosking, alleged that in February 1994 she made enquiries with Centralian Recruiting about a position as a remote area nurse at Ramingining Community. She alleged that she was told that she must be the subject of a Police history check to establish her criminal record. In addition she alleged that Centralian Recruiting sought unnecessary information from her concerning her age, sex, marital status, parental status and number of dependants. In support of this allegation Ms Hosking attached a Centralian Recruiting application form and "Authority to Release Criminal History".

It was further alleged by Ms Hosking that she suffered detriment on the basis that her application was not forwarded to the Ramingining Community. In addition, Ms Hosking alleged that she felt intimidated, humiliated and disempowered by the way she was spoken to by the Respondent Mr Chris Fraser of Centralian Recruiting. Ms Hosking also alleged that she suffered a loss of self-esteem and confidence. Ms Hosking further alleged that Mr Fraser's refusal to place her on Centralian Recruiting's database constituted further detriment.

In his defence, Mr Fraser stated that Centralian Recruiting is specifically set up to recruit top quality staff for Aboriginal communities and to provide the best and most competent people to work on the communities. The Respondent stated that it is their role to screen out the criminal, inept and incompetent elements so that they do not manage to gain positions of trust. The Respondent also stated that the information requested of applicants is essential in the context of Aboriginal social mores and customs and the realities that these disadvantaged people face on a daily basis.

The Respondent stated that questions relating to age, sex, marital status, number of dependents etc are relevant to Aboriginal communities because the following cultural restraints apply:

- male Aborigines do not wish to seek medical treatment, especially relating to sexually transmitted diseases, from a female nurse;

- Aborigines generally consider it inappropriate for young persons, male or female, who do not have children to give advice to them regarding childrearing etc; and
- Aboriginal communities generally have limited housing stock therefore couples with dependants may be faced with inappropriate housing.

In a letter dated February 1995, Mr B McKain (previously the Coordinator Trainer/Bookkeeper at Ramininging) substantiated Centralian Recruiting's statement that Ms Hosking's application had been forwarded to the Ramininging Community and that ultimately the position was not filled by the Community.

THE NT ANTI-DISCRIMINATION ACT

Seeking unnecessary information on which unlawful discrimination might be based is prohibited conduct under the Act.

The relevant section reads as follows:

"UNNECESSARY INFORMATION

- (1) A person shall not ask another person, whether orally or in writing, to supply information on which unlawful discrimination might be based.
- (2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by –
 - (a) a law of the Territory or the Commonwealth;

- (b) an order of a court;
- (c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
- (d) a provision of an industrial agreement; or
- (e) an order of the Commissioner.

(3) Subsection (1) does not apply if the person proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination."

s.26

In the area of work, makes it unlawful to discriminate –

- in deciding who shall be offered work
- in the terms and conditions of work that is offered
- in failing or refusing to offer work

on specified grounds including –

- sex
- marital status
- age (other than minimum/maximum uniform age limits)
- irrelevant criminal record
- parenthood.

Further, s.34 of the Act states:

"DISCRIMINATION IN EMPLOYMENT AGENCY AREA

A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers shall not discriminate –

- (a) by failing or refusing to supply a service of the business, whether to a person seeking work or an employer seeking a worker;
- (b) in the terms and conditions on which a service is offered or supplied;
- (c) in the way in which a service is supplied; or
- (d) by treating a person seeking work or an employer seeking a worker less favourably in any way in connection with a service."

THE EVIDENCE

The Complainant, Christina Hosking, gave evidence that in January 1994 she saw an advertisement for a "Remote Area Nurse Level 3B" at Ramingining in the NT.

Ms Hosking went to a CES office and rang Centralian Recruiting asking to be sent an application package.

Ms Hosking received the package which included information specific to the position of Outstation Nurse/Midwife at Ramingining, and a document entitled "Centralian Recruiting - Application to join Employment Database."

This document states, *inter alia*, that people applying for positions will be required to agree to police history checks.

An 'Authority to Release Criminal History' was also enclosed.

Ms Hosking's evidence was that she objected to filling out some of the information required by application to go on the database, including:

- date of birth
- marital status
- sex
- names and ages of dependents
- ID photograph.

Ms Hosking wrote across the Authority to Release Criminal History words to the effect "I do not have a criminal record" and signed it.

Ms Hosking then received a letter from Mr Fraser dated 21 February 1994.

The letter stated:

"Thank you for your application for the Remote Area Nurse Position with the Ramingining Outstation Resource Centre. However as stated in the advert all applicants for positions must agree to Police History Checks before being eligible for employment. Unfortunately these screens are necessary in order to protect our clients from the criminal elements that seek to gain access to the communities and to maintain the reputation of Centralian Recruiting and the staff we forward as being of the highest quality. This involves doing scrupulous background checks on ALL persons who apply for positions with us and the clients we serve. I have enclosed another copy of the Police History release form for you to complete. I will forward your Resume to the community and confirm your

application with the community on receipt of the completed Police History form."

On receipt of that letter Ms Hosking went to the CES Office in Atherton (Qld) where she spoke to the Manager "Peter" and discussed both the letter and a form entitled "A Guide to your Rights Under Anti-Discrimination Laws". Ms Hosking stated that while at the CES office she phoned the Respondent, Mr Fraser, to ascertain whether Mr Fraser would accept her application, and in particular would accept it as she had not signed the "Police Criminal History Release Check" form.

Ms Hosking said in evidence:

"Mr Fraser said all prospective applicants for all jobs through Centralian Recruiting must submit to a Police History Check. If I don't submit to a Police History Check, and fill out all the relevant details of the form that they requested, I would not be entered onto Centralian Recruiting database. ...

He went on to explain to me that no applicant would be considered for any position unless they were on, entered onto the Centralian Recruiting database. ..."

Ms Hosking stated she made several telephone calls to Mr Fraser, during which she read out sections of the pamphlet prepared by the Queensland Anti-Discrimination Commission and the Human Rights and Equal Opportunity Commission.

When asked what was the response, Ms Hosking stated:

"Mr Fraser couldn't understand what I was talking about. He couldn't, he couldn't believe that what I was saying was that the form was asking questions which were unnecessary and asking questions which could be used to discriminate in the matter of employment. He said, "The form had been approved by his legal advice" (sic) and he said as far as he was

concerned he was well within his rights to ask all of those questions on that form. He proceeded to tell me a long story about, um, we had a long conversation about various problems that had occurred on Aboriginal communities to his knowledge in the past where store owners and other people responsible for accounting for money, have stolen money from the communities, many thousands of dollars. People with criminal records have come back after doing these criminal acts and got jobs on other communities, and the intention of Centralian Recruiting is to stop this, and to vet out these sort of people. ...

The most, the most prominent discussion in my mind, in my memory, just right now as I speak to you was talking about the Police Record form, and I said to Mr Fraser, "What's this got to do with me?" when he was telling me the stories about the other people who had stolen money from the Aboriginal communities. I said "But what has that got to do with me, working as a registered nurse on Ramingining Outstation?" ...

He said, we have to, we have to screen all people that go onto the database. I said, well, for a registered nurse and midwife with a current annual practicing certificate, for me as a registered nurse, my current annual practicing certificate is to me a record of my conduct, a record of my nursing practice and my nursing integrity. I said that if I had had any criminal record, or if I had had any involvement whatsoever, there is very little chance that I would be sending you a current practicing certificate in any State of Australia."

Ms Hosking alleged Mr Fraser said:

"It seems to me you might have something to hide. What have you got to hide?"

Mr Hosking was asked by Counsel Assisting how she felt and responded:

"I was devastated, because as I have just said my current annual practicing certificate in nursing, to me is a statement of my character and a statement of my good nursing practice. I don't have a criminal record in the Northern Territory or any State and I was devastated to think that someone should accuse me of wanting to hide something on the basis of not filling out a form to go onto a recruitment agency's database."

Ms Hosking believed that because she had not completed the Police Criminal History Release Form she would not be entered onto the Centralian Recruiting database, and consequently would not have her application forwarded to Ramingining for consideration.

Ms Hosking also believed that by not being entered onto the database she would be further disadvantaged by not being considered for any other similar position.

She then lodged her complaint with the NT Anti-Discrimination Commission.

Subsequent to the lodging of the complaint, Ms Hosking received a copy of a letter, dated 6 June 1994, from the Ramingining Homelands Resource Centre Aboriginal Corporation addressed to Centralian Recruiting.

The letter is as follows:

"I wish to acknowledge that our organisation received and retains on file an application for the position of nurse/midwife by Christina Hosking. Christina's application was at the time considered however it was decided to recruit a nurse from another agency.

We wish to thank you for your high standard of service in assisting with our recruitment."

Centralian Recruiting had not previously advised Ms Hosking that her application had been forwarded to Raminging - this was the first indication the Complainant had that her application had been forwarded to the community for consideration.

The Respondent cross examined Ms Hosking, and asked:

"Why, if she considered it to be unnecessary (and perhaps discriminatory) details of her age had been included in the application form."

Ms Hosking advised that Kimberley Health Region had included her age in their statement of service, which was included in her application.

Evidence as to the number of phone calls between the parties was a matter of dispute. However, the evidence clearly indicated the telephone calls between Ms Hosking (CES Atherton) and Mr Fraser (Alice Springs) were acrimonious

- Ms Hosking alleging she felt "crushed and threatened" by Mr Fraser's "derogatory tone and the way he was belittling my concerns."
- Mr Fraser alleging that Ms Hosking was the aggressive party, that he had obtained legal advice from the Privacy Commission (sic) and that a ten minute phone call would not cause the distress claimed.

The Hearing was then closed to the public and evidence was given going to the distress suffered by the Complainant.

The Public Hearing resumed.

Mr Fraser and Ms Hosking gave conflicting evidence as to (oral) statements made to each other on the issues of relevant information, and Aboriginal culture, and Mr Fraser questioned Ms Hosking's length of nursing service in the Sudan, which had been included in her application.

Mr Fraser's evidence was that Centralian Recruiting commenced in November 1992, predominantly dealing with recruitment for particular positions on Aboriginal communities, including nursing positions.

Centralian Recruiting had developed a questionnaire to assist in this process.

Centralian Recruiting maintained a database for the purpose of "matching employers with employees".

Mr Fraser stated that a pre-requisite to going on the database was the "Police history check" - but then qualified that statement by saying that he wouldn't necessarily require a medical practitioner to have a police history check. Mr Fraser indicated that the police history checks were to protect Aboriginal communities from being "plundered" by unscrupulous employees.

The letter to Ms Hosking dated 21 February 1994, which had been admitted in evidence was again referred to.

Mr Fraser stated that when his business partner read the letter on the computer screen she was "very angry" with him for having written (and sent) it to Ms Hosking.

His evidence was that all applications including that of Ms Hosking, were then bundled up and sent to Ramingining.

In Ramingining there were two sets of nurses - Nurses employed by NT Health Department employed at the clinic, and an outstation nurse funded through ATSIC, which was the position Ms Hosking had applied for on the second day of the Hearing.

At this stage of the proceedings Mr Fraser indicated that he would consider settling the matter by conciliation, and the Hearing was adjourned.

On resumption, it was indicated that the parties had agreed to a conciliated outcome, and the matter was adjourned sine die.

After several months the Complainant alleged the terms of the Conciliation Agreement were not met, and the Complainant sought a resumption of the Hearing - as conciliation had failed.

The Hearing resumed in Alice Springs 14 May 1996 with the respondent Mr Fraser giving evidence - outlining why Centralian Recruiting required potential applicants to provide information on age, sex, marital status, police history. Mr Fraser stated that Centralian Recruiting used "police history checks" as a way of screening people - to keep "criminal elements" away from Aboriginal communities - Mr Fraser described this as "preventative medicine".

In relation to "age" Mr Fraser stated that it was very important to the Aboriginal Communities - "It's a mark of respect, it's a mark of knowledge, it's a mark of power, it's a mark of authority and whether we like it or not Aboriginal people put great store by age."

As to the requirement to state an applicants sex - Mr Fraser referred to the division between the sexes in terms of ceremonial business and health care - particularly in the case of treating sexually transmitted diseases.

It was Mr Fraser's evidence that in the case of Ramingining, if there was a female nurse based at the clinic, they may require a male nurse at the outstation, and that this would be a reasonable requirement.

Mr Fraser related the requirement to provide information on a person's marital status with the accommodation which was available.

In the case of Ramingining, the information from the Community indicated a three bedroomed house was available, but Mr Fraser stated that such information from Aboriginal communities was unreliable.

He also referred to possible "unrest" if a married person was recruited, and their spouse was unable to obtain work - and in regard to "parental status" and number of children he referred to educational facilities which may or may not be available.

Mr Fraser stated that he became the owner of Centralian Recruiting in November 1992, before the *Anti-Discrimination Act* came into operation, and that prior to that time he had been involved in the recruitment of registered nurses.

Mr Fraser indicated that he was unaware of the commencement of the NT *Anti-Discrimination Act* in August 1993, and although he agreed it was his responsibility as a recruitment agent to keep abreast of current laws, he was unaware of the NT Anti-Discrimination Commission's existence.

There was considerable evidence that the information sought by Centralian Recruiting from Medical Officers (Doctors) differed from the amount of information sought from registered nurses - far less being required from the Doctors.

Mr Fraser agreed that there was no gender specific request from the Ramingining Community with regard to the outstation nurse.

Mr Fraser stated there had been considerable difficulty in keeping a registered nurse at Ramingining outstation - with one (male) nurse leaving after a month.

Mr Fraser stated he had drawn up the duty statement for this particular position, and, on his evidence, had had it approved by Ramingining.

The duty statement was tendered in evidence.

"DUTIES:

Primary/Clinical Health

Work as a member of a multi-disciplinary health team and in conjunction with other members.

a) Deliver Primary Health Care –

- Involve Yolngu Health Workers in all aspects of health care deliver.
- Treatment of acute illness.
- Treatment and monitoring of chronic medical conditions.
- General medicine.
- Pre and post natal care Birthing.
- Immunization.
- Provision of in-patient care as required.
- Collection and transfer of pathology specimens.
- Notification of notifiable diseases.
- Patient health education.
- Assessment and referral of social welfare issues.

b) Day to day administration of clinical activities

- Notification of notifiable diseases.
- Ordering and monitoring of drugs and medical supplies.
- Ordering of non-medical supplies, e.g. office, cleaning.
- Patient evacuation, referral and transfer arrangements.
- Maintenance of up to date medical records.
- Upkeep of general clinic environment.
- Maintenance of general communications with staff, clients and relevant agencies.

c) Use standard NT Health Dept. procedures:

- Assist with preparation of three monthly objectives and achievements for **Ramingining Health Committee**.

- Follow treatment Protocols within appropriate Standard Treatment Manual and to assist with the update of this manual every twelve months.
- Standard Drug Imprest list and to update this list every twelve months.
- Administer Schedule 8 Drugs according to Medical Officers instructions and NT Health Dept. D.D.A. protocols.

Public and Environmental Health

- School Screening Programme.
- Infants and Under 5's screenings.
- Womens Screening.
- Mens Screening.
- Public Health Surveying and Programmes.
- Dog Programme.
- Nutrition.
- Waste Removal.
- Working Facilities.
- Substance Abuse.
- Education and Screening.
- General Education, support and training for Yolngu Health Workers.
- Facilitating the education of Yolngu Health Workers through clinical experience.
- Assist with the implementation and evaluation of Health Workers curriculum.
- Preparation of specific community health programme e.g. School Programmes.
- New staff orientation and on going staff education.
- General Community Education and the promotion of Health and prevention of illness.

Limits of authority:

The job holder must seek council approval before the purchase of any Capital items. Must ensure that recurrent expenditure is within Budget line items.

Supplementary Information

Ramingining is situated 400 Kms East of Darwin. It has a population of approx. 800 people in the community and 200 in surrounding 10 homelands or outstations. The community was established 1978-79. The seasons are the "wet" and the "dry" with some outstations becoming cut off during the wet season.

The community is alcohol free and is serviced by barge from Darwin. English is widely spoken but the Yolngu people are very traditional in outlook."

This was the same duty statement as had been given to the previous (male) nurse.

Mr Fraser stated that his recruitment form for entry on his database was a "generic" form. He further gave evidence that Centralian Recruiting provided advice, where necessary, on Industrial Relations matters such as appropriate awards.

Mr Fraser called as witness (by telephone) a Mr Brian McKain, who had been co-ordinator, trainer, book-keeper at Ramingining Homelands Resource Centre during 1993 and 1994.

Mr McKain's evidence was that he originally asked Centralian Recruiting to provide appropriate resumes for the outstation nurse, but that subsequently a contract was entered into with NT Health Department to recruit the nurses for the homeland people, funding being provided by ATSIC.

Mr McKain was asked a series of questions relating to the information needed from applicants, and when asked if gender specific issues were relevant, stated:

"None whatsoever. The most relevant situations we're looking for were cross cultural skills. And an ability to maintain and deliver a health service for the community."

Mr McKain stated that the age and gender of applicants was not relevant, but that the number of dependents was relevant, as was a "police check" as they wanted to be sure the person employed had no history of misappropriation of funds.

There was considerable information sought as to the particular requirements of the nursing position and as to whether the registered nurse would be in a position to handle (or misappropriate) funds as the nurse's direct supervisor was the book-keeper.

It was Mr McKain's evidence that it was important to ensure the recruited nurse would be of good morale and high integrity, that (they) wanted to stabilise the position as they had already gone through five nurses in five months. He gave evidence that the community had asked for police checks, and that the community itself had approved the duty statement.

Mr McKain stated that if a spouse of the person employed by the community had particular skills the community would look to utilise those skills, but if they were not able to be given a job the spouse would suffer stress.

Dr Scrimgeour was called as a witness (by telephone) by Mr Fraser.

Dr Scrimgeour is a medical practitioner with a masters degree in public health and is a Fellow of the Faculty of Health Medicine.

Dr Scrimgeour had extensive experience in the arid zone of Central Australia - mainly the Western Desert region, but Dr Scrimgeour had no experience of the Ramingining community.

Dr Scrimgeour's evidence was, that "if it's reasonably required it appears that Aboriginal people prefer to have people of a more mature age working in that kind of role within a community." Dr Scrimgeour also stated:

"I think most communities accept that often the applicants are a bit under age and are prepared to accept people of a younger age."

Dr Scrimgeour gave evidence as to the gender preference relating to nurses.

"The general conditions which would be called women's business, which refers mainly to obstetric and gynaecological conditions should be managed by women in Aboriginal communities. If there is no woman available to provide the health care, women will avoid presenting for health care, which means that women would not have adequate anti-natal care. They might not have the kind of women's screening that would otherwise be available. Conversely, men's issues such as conditions relating to the genital areas in men are much less likely to present to the clinic if there's only a woman health person there. Now in general, the amount of women's business which is required in the community is greater than the amount of men's business, men's health business is required. Which is why most communities would prefer to have a woman, rather than a man in a single nurse post. But for comprehensive health care, it's preferable to have both genders available."

His evidence relating to "spouse" was essentially the same as the evidence given by Mr McKain.

Dr Scrimgeour gave evidence of the concern of Aboriginal communities to ensure employees could not misappropriate funds - stating that the concern was not relevant

to nursing sisters but there was a concern relating to the possibility of illegal use of dangerous drugs.

Dr Scrimgeour was working in Sudan at the time the Complainant, Ms Hosking was employed there on short term contract - some ten years prior to the Hearing, and there was evidence (in dispute) as to the actual time Ms Hosking worked in Sudan.

SUBMISSIONS

Counsel Assisting referred to s.26 of the Act (Seeking Unnecessary Information) and outlined the requirements of the section, including sub-clause (3) which provides a defence if it can be shown, on the balance of probabilities, the information was reasonably required for a purpose that did not involve discrimination.

The respondent, Mr Fraser, drew my attention to the difficulties faced by small businesses in keeping abreast of new laws. He had approached the Privacy Commission (Sydney) for advice on the application forms, and also sought private legal advice.

Mr Fraser stated that it had never been Centralian Recruiting's intention to discriminate against anybody, the intention was to raise the quality of staff on the communities, and that he had apologised to Ms Hosking.

Ms Hosking drew my attention to the distinction between the information required from medical staff such as medical practitioners, and registered nurses.

Ms Hosking outlined the chronology of the complaint - her original application, the request that she complete the "police record form" - her telephone calls to Mr Fraser, and her feeling threatened and frightened by Mr Fraser's manner. She felt her professional integrity was under threat.

Parties drew my attention to the fact that the original form had in fact been changed, and it was put forward by Ms Hosking that the change in itself was of significance.

Mr Fraser put his view that the change indicated his goodwill in the matter.

I regard this issue as largely irrelevant. The matter before me relates to the original form requesting certain information, which it was alleged sought unnecessary information on which unlawful discrimination might be based, and my finding relates only to that matter.

FINDING

Aboriginal communities who are employers are bound by the provisions of the NT *Anti-Discrimination Act* - that is, their recruitment and employment practices must not be unlawfully discriminatory. Any agent acting on their behalf must also ensure that the agency itself acts in a non-discriminatory way and does not contravene the provisions of the Act, and cannot accept unlawful instructions from a client.

The defence to an allegation of seeking unnecessary information on which unlawful discrimination may be based is that a person proves, on the balance of probabilities that the information was reasonably required for a purpose that did not involve discrimination.

"Discrimination" is defined in the Act as

"any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity" s.20(1)(a)

and

"harassment on the basis of an attribute" s.20(1)(b)

The grounds on which unlawful discrimination can take place are: race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association activity, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record, association with a person who has, or is believed to have, an attribute referred to in this section.

On Mr Fraser's own evidence, the Centralian Recruiting form was designed to elicit information from a prospective applicant relating, *inter alia*, to sex, age, marital status and criminal record.

I find Mr Fraser's defence of wishing to accommodate "Aboriginal social mores and customs" cannot, of itself, remove the application of non-discriminatory recruitment practices to recruitment for remote communities.

There was no evidence produced to substantiate any "inherent requirement" in relation to the nursing position at Ramingining, in fact there was evidence that the position had been filled by both male and female nurses, and that their sex was irrelevant.

The evidence that a police history check was an inherent requirement of the nursing position at Ramingining was unconvincing.

While Mr Fraser's wish to protect Aboriginal communities from unscrupulous persons is admirable, a general requirement for "police checks" without any reference to the relevance of any check, the relevance of any criminal record and to such matters as "spent convictions" cannot be considered reasonable.

Recruitment forms, and the information they elicit, must be relevant to the duties to be performed, couched in non-discriminatory terms, and based on non-discriminatory practices.

The fact that, in this matter, the Complainant's form was sent to Ramingining, and the position filled by a completely different mechanism, does not negate the prohibited conduct complained of.

I find that Mr Chris Fraser, of Centralian Recruiting, sought unnecessary information on which discrimination may be based, contrary to s.26 of the NT *Anti-Discrimination Act*.

S.88 of the Act states:

- (1) If, after the hearing of a complaint, the commissioner finds the prohibited conduct alleged in the complaint is substantiated, the Commissioner may make one or more of the following orders:
 - (a) an order requiring the respondent not to repeat or continue the prohibited conduct;
 - (b) an order requiring the respondent to pay to the Complainant or another person, within a specified period, an amount, being an amount not more than that prescribed, that the Commissioner considers appropriate as compensation for loss or damage caused by the prohibited conduct;

- (c) an order requiring the respondent to do specified things to redress loss or damage suffered by the Complainant or any other person because of the prohibited conduct;
 - (d) an order declaring void all or part of an agreement made in connection with the prohibited conduct, either from the time the agreement was made or subsequently.
 - (2) In this section, the specified things a respondent may be required to do, include, but are not limited to the following:
 - (a) employing, reinstating or re-employing a person;
 - (b) promoting a person;
 - (c) moving a person to a specified position within a specified time.
 - (3) In this section, "damage", in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.
 - (4) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is not substantiated the commissioner shall make an order dismissing the complaint."
- On the evidence placed before me, the Complainant, Ms Hosking, did not suffer any loss of earnings due to the nursing position at Ramingining being filled by another mechanism - the NT Health & Community Services Department.
 - It is not possible to determine whether or not Ms Hosking suffered detriment by not being referred to any other nursing position Centralian Recruiting may or may not have had on their books.

- From my observations of the Complainant, and her evidence, I accept that she suffered a measure of stress and humiliation caused by the Respondent seeking unnecessary information on which unlawful discrimination might be based.
- I make the following Order pursuant to *section 88* of the NT *Anti-Discrimination Act 1992*.

Chris Fraser pay Christina Hosking the sum of \$1,500 -
for hurt, humiliation and distress.

DAWN LAWRIE
Commissioner

17 July 1996