

ANTI- DISCRIMINATION COMMISSION
NORTHERN TERRITORY

COMPLAINANT: BRETT FUNNELL

RESPONDENT: KUNBALLANJNJA COMMUNITY
GOVERNMENT COUNCIL

NUMBER: 3/1996

HEARING COMMISSIONER: ROBERT BRADSHAW

COUNSEL ASSISTING: TONY YOUNG

COUNSEL FOR
THE COMPLAINANT: LYN BOND

COUNSEL FOR THE
RESPONDENT: JOHN DUGUID

GROUNDS OF COMPLAINT: VICTIMISATION - SECTION 23 OF
THE ANTI-DISCRIMINATION ACT

DATE OF DECISION: 24 OCTOBER 1996

ANTI DISCRIMINATION COMMISSION

Senior Constable Brett Funnell v Kunbarllanjja Community Government Council

What is the complaint?

Snr Constable Bruce Funnell has complained to the Anti Discrimination Commissioner that he has suffered detriment because the Kunbarllanjja Community Government Council victimised him.

The alleged victimisation is that the Kunbarllanjja Community Government Council complained to senior police officers and others about the fact that Snr Constable Funnell had previously lodged a complaint of discrimination against the Kunbarllanjja Community Government Council.

The alleged detriment is that Constable Funnell was notified of his transfer (in November 1995) and was later transferred (July 1996). This notification and then actual transfer is said to have caused monetary loss as well as stress, anxiety and feelings of uncertainty.

The hearing of the complaint.

The hearing of this complaint was conducted at Kunbarllanjja (formerly known as Oenpelli), NW Arnhem land on 2 and 3 September 1996. At the hearing evidence was given by Senior Constable Funnell, Superintendent McCadie (who at the time was Senior Constable Funnell's immediate supervisor), Commander Burgdorf (who at the time was Superintendent McCadie's supervisor), Constable Nixon (who both at present and at the time of the complaint was the other police officer at Kunbarllanjja), Lothar Siebet (an elected and executive member of the Kunbarllanjja Community Government Council) and Tom Kairupan (town clerk for the Council).

The other key players in the chain of events were unavailable through either death (in the case of the former President of the Council) or because they were not called by the parties, could not be located or were perhaps unwilling to be of assistance. These people included John Pianta and Mike Owen.

Outline of the history of events

Snr Constable Funnell is a police officer who worked as the Officer in Charge at Kunbarllanjnja for the period from November 1992 until June 1996. He was responsible for a station comprising one other police officer and a number of police aides.

Until the time of the local government elections (mid 1995) there were, to the outside world, no obvious signs of out of the ordinary tension between Snr Constable Funnell and either the local community or the Kunbarllanjnja Community Government Council.

This lack of any obvious tension is illustrated by the September 1995 supervisor's report given by Superintendent McCadie concerning Snr Constable Funnell. In this report Superintendent McCadie commended Senior Constable Funnell for *"being respected within the community at Kunbarllanjnja. He enjoys good relationships with the local aboriginal community and has developed good cross cultural skills"*.

These views were confirmed in evidence given at the hearing by Superintendent McCadie. Superintendent McCadie said that he formed his positive views about the cross cultural skills of Snr Constable Funnell when he talked to a *"fairly wide cross section of people"* at the formal opening of the police station. These views of Superintendent McCadie can, however, be contrasted with evidence given by the former Town Clerk, Mr Kairupan. He listed the following incidents (as told to him by a member of the community):

- *"Mr Funnell had entered peoples homes without permission"*. Mr Kairupan gave evidence variously that he had first heard of this allegation either 2 weeks or 12 months prior to the date of the hearing (ie in September 1996)
- *"He had fired shots chasing people around"*. Again Mr Kairupan said that he had first heard of this allegation some 2 weeks prior to the hearing.
- *"bashing incidents"* Mr Kairupan said that he first heard of this one month before the hearing.

In addition Mr Kairupan mentioned the following:

- *police failing to act in response to problems at the club*. No real details were provided by Mr Kairupan
- *criticisms of the Police in the Gumbung report*. Again no evidence was provided that links the alleged criticism to the writing of the letter or the discussions with the Police.
- *letter from Snr Constable Funnell setting out the Police position dealing with call outs concerning nurses in dangerous positions*. Under cross examination Mr Kairupan could not identify any actual problems with this letter.

- *lack of police support in dealing with the problem of petrol sniffing.* Mr Kairupan advised that he had never taken this matter up with the Police because he considered it to be a community matter.
- *failure to organise fire drills for the use of the fire engine.* Again, Mr Kairupan did not complain about this to the Police and when asked why (by Counsel assisting) said ".....general feeling that Mr Funnell was superior".
- *picking on the Council in respect of minor traffic offences (eg cracked windscreen, driving of unregistered rider-mower on the road)*
- *following the complaint to the Anti-Discrimination Commissioner people were too frightened to walk the streets*
- *firing of a pistol during a disturbance*

Other possible occasions were cited as follows:

- *involvement in local controversy over the running of the health centre.* Commander Burgdorf gave evidence that he formed, at the November meeting with John Pianta, the view that Snr Constable Funnell may have been involved in a conflict over the issue of the transfer of responsibility of the health clinic from the Territory Government to the Community Government. Mr Lothar Siebet, a member of the community, gave evidence to the effect that there was no involvement of Snr Constable Funnell in the health centre dispute. It can be noted that Senior Constable Funnell now believes that there was a community perception that he was against the Council taking over the health clinic. In this regard Commander Burgdorf gave evidence that he had received some kind of complaint from Dr Mike Owen, an employee of the Kunbarllanjnja Community Government Council. This complaint came to nothing.
- *involvement in factional infighting.* Commander Burgdorf formed the perception that there was factional infighting at Kunbarllanjnja and that Constable Funnell was involved with one group and the Council with the other group.
- *underlying friction arising from action taken a few years ago to remove the takeaway licence held by the Sports and Social Club.* Senior Constable Funnell stated that this friction existed. The existence of this friction was also confirmed by Lothar Siebet, a former close friend of Snr Constable Funnell.

In mid 1995 local government elections were conducted by the NT Electoral Commissioner. In the course of these elections there was some kind of dispute about the right of Snr Constable Funnell to vote at the elections. This dispute stemmed from the fact that only people who have lived in the area for 5 years or who are members of a local clan are entitled to vote.

No evidence was given at the hearing about the nature of this dispute or as to the people who were involved. In any event on 27 July 1995, Snr Constable Funnell complained to

the Anti-Discrimination Commissioner that he had been discriminated against on a racial basis in so far as he had been denied a vote by the NT Electoral Commissioner.

On or about 10 October 1995, this first complaint was dismissed under section 102(c) of the Act by the Delegate of the Anti-Discrimination Commissioner. The reason being that the electoral scheme was authorised by an Act of the Northern Territory Parliament and was thus outside the scope of the Act - see section 53(a) of the Anti-Discrimination Act.

By letter dated 27 October 1995 a man who is now deceased but whom at the time was the President of the Council wrote to Snr Constable Funnell's immediate Superior, Superintendent McCadie. This letter was in the following terms:

"Unfortunately since the arrival of Snr Constable Funnell there has been continuous friction ranging from petty annoyance to serious confrontation. Recent notable instances include his:-

- writing to the Ombudsman to complain against being prevented from voting in Local Government elections. This despite being advised by the Electoral Officer of his ineligibility on the grounds of no being a member of a clan group and not having been a permanent resident of Kunbarllanjnja during the proceeding five-year period as required and*
- writing to the Commonwealth Discrimination Board sighting (sic) the Kunbarllanjnja town clerk, Mr Kairupan, as having discriminated against him by not permitting him to vote at the said council elections despite said elections having been conducted by the NT Electoral Office in accordance with the NT Local Government Act. The issue was dismissed under section 52 of the relevant Commonwealth legislation.*

Council has resolved therefore to request that Snr Constable Funnell be re-deployed to a post where his opinions do not run so contrary to those of the people whom he is charged to serve."

A copy of this letter was also sent to the Chief Minister of the Northern Territory, the Hon Shane Stone MLA. Mr Stone was (and remains) also the Minister for Police.

In respect of this letter it should be noted that there is no evidence of any involvement of the Ombudsman or the Commonwealth anti discrimination authorities.

The letter of 27 October 1995 was discussed in early November 1995 by Superintendent McCadie (who, at the time, was in charge of the Northern Division [which included Kunbarllanjnja] of the Central Region) with his superior officers - including Commander Burgdorf (who was in charge of the whole of the Central region).

As a result Superintendent McCadie wrote to the Council seeking a meeting. This meeting did not take place as, in the meantime, Commander Burgdorf visited Kunbarllanjnja on or about 13 November 1995 and spoke with John Pianta. At that time Mr Pianta was the acting town clerk. Most of the other key participants - ie the town

clerk (Tom Kairupan), the former President and Lothar Siebet - were, at this time, out of town and in attendance at a major local government conference in Canberra.

On the basis of that interview with John Pianta Commander Burgdorf formed the opinion that Snr Constable Funnell was perceived as being involved in conflict in the community. Accordingly he advised his superior (Assistant Commissioner Chalker). As a consequence the decision was made by the Police that Snr Constable Funnell be transferred out of the community. Snr Constable Funnell was advised of this on or about 20 November 1995 by Superintendent McCadie.

Following this there were various meetings between Snr Constable Funnell and senior police officers concerning the timing and manner of the transfer.

On 29 March 1996 Police Deputy Commissioner Moore advised Constable Funnell that in mid June 1996 he would be transferred from Kunbarllanjnja to a police station in the Darwin region (either Darwin station or Casuarina station). This transfer actually took place on 1 July 1996.

Statement of the complaint

Constable Funnell seeks an order seeking compensation for loss and damage (as referred to in section 88 of the Act) and for costs (as referred to in section 96(2)) in respect of the following:

1. The letter caused an investigation by senior police officers based on unsubstantiated allegations reflecting unfavourably on Constable Funnell's conduct and character.
2. By sending a copy of the letter to the Chief Minister of the Northern Territory Constable Funnell's reputation was damaged, his continuing employment as officer-in charge of Kunbarllanjnja Community Government Council Police Station was brought into question and his position as the Chairman of the Jabiru branch of the Country Liberal party was compromised.
3. Constable Funnell's performance at a promotion board's interview panel on 20 November 1995 was detrimentally affected due to distress and inability to concentrate following being advised of the fact of the letter from the former President of the Council.
4. Constable Funnell was seeking a transfer by way of promotion to a position acceptable to him, not as a compulsory move. The career prospects of Constable Funnell have been affected, reducing the likelihood of promotion in the near future with consequent loss of earnings.
5. Future loss of call-out overtime earnings as officer in charge of a remote police station.

6. Stress, anxiety and feelings of insecurity caused by the uncertainty over several months as an outcome of the outcome of the transfer proposals and the date of the transfer.

It should be noted that the consequences (if any) of the copying of the former President's letter to the Chief Minister were not the subject of any evidence at the hearing. Accordingly, I take the view that Senior Constable Funnell has not satisfied me that the mere copying of the letter to the Chief Minister has caused him any actual detriment.

Conciliation

Attempts to conciliate the complaint failed.

What are the issues that need to be resolved?

Section 23 of the Anti-Discrimination Act provides as follows:

"(1) A person shall not victimise another person because that other person -

(a) has made, or intends to make, a complaint;

...

(c) has alleged, or intends to allege, that a person has committed an act which would amount to a contravention of this Act ...

(2) Victimisation takes place if a person subjects or threatens to subject another person or an associate of the other person to any detriment".

Victimisation is "*prohibited conduct*" (as defined in section 4 of the Act). This means that acts of victimisation can be the subject to complaints to the Anti-Discrimination Commissioner in accordance with section 60 of the Act.

In considering the application of this section I have attempted to work out what is its purpose. The main purpose would appear to be that of punishing a person who attempts to take revenge on another person because a complaint has been or may be made.

This case does not thus fit within the general run of cases that attract the attention of sections like section 23. That is:

- There is no real evidence that the existence of the first complaint ever caused the Council much stress.
- The Council had no real power of its own to directly cause any damage to Snr Constable Funnell.

In other words there is nothing in the Act which purports to stop a person from complaining or whingeing about the fact that another person has lodged a complaint. the

Act is only attempting to stop a person from causing detriment because of the complaint. Basic rights of free speech are not affected.

Accordingly, in dealing with this complaint I have attempted to make sure the Council is not being punished because it may have simply complained about the fact that Snr Constable Funnell made an unsubstantiated complaint.

With that background observation in mind, the issues that arise from the application of section 23 of the Act or which were otherwise raised during the course of the hearing are as follows:

1. **Did the Kunbarllanjja Community Government Council write the letter of 27 October 1995?**
The issue being whether the Council is responsible for the letter sent by the former President of the Council.
2. **If the answer to issue 1 is "yes", did the Kunbarllanjja Community Government Council commit these acts because of the earlier complaint that had been made by Snr Constable Funnell.**
The issue being that of whether in sending the letter the Council referred to the complaint as a mere example of the problems or whether the making of the complaint was the reason for the writing of the letter.
3. **Did the Kunbarllanjja Community Government Council, in sending the letter, intend to cause detriment to Snr Constable Funnell?**
4. **Assuming that the answer to issues 1, 2 and 3 is "yes", did the act of sending the letter actually cause any detriment to Snr Constable Funnell.**
5. **If the answer to issue 4 is "yes" what compensation should be paid regarding that detriment**

Issue 1 - Did the Kunbarllanjja Community Government Council write the letter of 27 October 1995?.

The Kunbarllanjja Community Government Council is a person for the purposes of section 23 of the Act. This is made clear by section 19 of the Interpretation Act. This means that it is capable of being affected by section 23.

Counsel for Kunbarllanjja Community Government Council argued that Kunbarllanjja Community Government Council is not responsible for the actions because there is no evidence that the Council formally expressed any displeasure with Snr Constable Funnell or that it actually resolved that the letter be sent.

However there was evidence from Mr Kairupan that the Council made decisions that are not documented in the formal meetings. Thus the absence of a minuted resolution is not decisive. It can also be noted that in the copies of the minutes of many meetings of the Council there is no real suggestion that the meetings of the full Council dealt with the writing of letters. There is much other evidence that significant decisions were made by either the Executive Members or as an outcome of discussions between the key people.

The evidence about the actual sending of the letter was somewhat scarce. Lothar Siebet suggested that the sending of the letter was not supported by Mr Kairupan and there is some implication from his evidence that Mike Owen and John Pianta were responsible for the sending of the letter. Mr Kairupan made it quite plain that he did not support the sending of the letter of 27 October 1995.

Regardless of whether or not there was a formal resolution it is clear that the letter was sent by the former President with the assistance or one or other of the senior employees of the Council. The former President, together with these senior advisers, represented the "mind or will" of the Council. Rightly or wrongly they committed acts on behalf of the Council. Thus the Council must take responsibility for these acts. I say this based on the proposition that breaches of sections such as section 23 are akin to tortious acts and that, in tort, the master (in this case the Council) is responsible for the acts of its servant (in this case the former President and whichever senior official who was involved in the sending of the letter. In making this statement I rely on decisions in *Bennett v Everitt* (1988) EOC 92-244 (Einfield J) and *Australian Postal Commission v Dao* (1985) 3 NSWLR 565 at 604-605 (McHugh JA).

I also note that the NT Anti-Discrimination Commissioner took the view that there is room for vicarious liability of corporate bodies for the prohibited conduct of their employees. See *Winder v McDermott & Gona Nominees* (case No 1 of 1996, unreported decision 13 June 1996).

Nor do I consider that, in terms of responsibility, it matters whether the elected members of the Council participated in the decision to send the letter. In other words it is acceptable that, in the absence of some specific direction to the contrary from the Council, the President and senior officials take on roles in regard to matters such as the relationship between the community and the Police. It is up to the Police to work out the weight that they give to any statements that are made by the elected and employed officials.

Issue 2 - Was the letter written and sent because of the earlier complaint?

There are 2 interpretations of the facts.

The first interpretation is that there was community unhappiness with Snr Constable Funnell and that this unhappiness was the reason the letter of 27 October 1995 was sent to the Police. Within this interpretation the mention in the letter of the complaint to the Anti-Discrimination Commissioner was either a whinge or an unfortunate seizing upon of

the most public sign that there was some conflict between Snr Constable Funnell and the Council.

The second interpretation is that the letter was sent because, at least in part, of the fact that Snr Constable Funnell had complained to the Anti-Discrimination Commissioner. That is, that this complaint was, of itself, one of the critical issues that poisoned the relationships between Snr Constable Funnell and some members of the community.

Notwithstanding the one and half days of evidence and the documents produced for the hearing no particularly convincing evidence was produced as to why the letter was sent. In saying this I note:

- the Anti-Discrimination Commissioner complaint had been resolved in favour of the electoral system. The Council had won the debate - why was there a need to take the issue further?
- that the evidence of other community wide conflict, as given by Mr Kairupan, was extremely flimsy.

I find that the main reason for the sending of the letter was that of the conflict between Snr Constable Funnell, on one side, and, on the other side, the former President of the Council and some or all of the senior officials of the Council. Most probably this conflict came about because of the challenge to the electoral system and the perceptions about Snr Constable Funnell's position concerning the taking over by the Council of the Health Centre. In addition various people have had various (and different) minor gripes that probably exist in all relationships between Police and communities.

Notwithstanding this view that it was the conflict over a range of issues that led to the sending of the letter, the issue remains as to whether the letter would have been sent if Snr Constable Funnell had not lodged the complaint with the Anti-Discrimination Commissioner.

In my view the answer is "no" - the letter would not have been sent. The reason for my view being that the Council and its employees had no hard evidence on which they could suggest that there was community wide conflict. All they may have had was the random collection of rumours, gossip and half truths (as set out earlier in my description of the points made by Mr Kairupan). Mr Kairupan said in fairly clear terms that he did not believe that there is any point in complaining unless there is supporting evidence.

However, I find that the complaint to the Anti-Discrimination Commissioner and its dismissal by the delegate of the Anti-Discrimination Commissioner were identified by someone at the Council and agreed to by the former President as a reason for writing to the Commissioner of Police seeking the removal of Snr Constable Funnell. The complaint was seen, somewhat foolishly, as providing solid evidence that there was conflict.

Thus whilst the complaint to the Anti-Discrimination may well not have been the main reason for the seeking the removal of Snr Constable Funnell, the making of the complaint was seized upon as a reason for seeking the removal.

Accordingly, in terms of section 23 of the Act, I find that the Council subjected Snr Constable Funnell to the detriment of seeking his transfer on the basis of alleged "continuous friction" because he had made the complaint to the Anti-Discrimination Commissioner.

The lawyer for the Kunbarllanjja Community Government Council suggested that the real cause for the decision to transfer Snr Constable Funnell was the Police response to the information provided to Commander Burgdorf by John Pianta at their meeting on 13 November 1995 in Kunbarllanjja. However, Commander Burgdorf gave evidence that this meeting only took place because of the letter of 27 October 1995. In my view the letter (and the allegations in it) were the cause of this meeting and of any events that flowed from the meeting.

Issue 3 - did the Kunbarllanjnja Community Government Council intend to cause detriment to Snr Constable Funnell

In posing this as an issue consideration must be given to whether an intention to cause detriment is an element to the operation of section 23 of the Act. In my view section 23 is worded in such a way that a person is only in breach of section 23 if there is an intention to cause the detriment. This is relatively plain to be seen if the definition in section 23(2) is transposed into section 23 (1) so that section 23(1) reads:

"A person shall not subject another person to any detriment because of a complaint ...".

This is drafted like an offence (and indeed may well create an offence) and, in my view, should be interpreted as if it were an offence clause. Thus there needs to be an intention to do the wrong that is contemplated in the section. This wrong is the inflicting of detriment.

See in support of this view *Bhattacharya v Department of Public Works (1994) EOC 92-117*. Contrast this with the view expressed by the Hearing Commissioner in *Bailey v Australian National University (1995) EOC 92-744* at 78, 552.

In my view there is no doubt that the person who sent the letter wanted the outcome that Snr Constable Funnell be moved out of the community. This is obvious from the fact that the letter contains a request for this transfer. Assuming that such a transfer is a detriment it is plain that a detriment was intended.

Issue 4 - did Snr Constable Funnell suffer any detriment because of what the Council did?

The first alleged detriment is that Snr Constable Funnell was transferred out of the community earlier than would otherwise have been the case.

In respect of the transfer out Kunbarllanjnja Superintendent McCadie gave evidence to the effect that Snr Constable Funnell would have, in the usual course of events, have been transferred out of Kunbarllanjnja sometime during the dry season of 1996 (ie between May and the end of October 1995). Snr Constable Funnell gave evidence that the agreement was not quite that certain.

Both Commander Burgdorf and Superintendent McCadie gave evidence that Snr Constable Funnell was not transferred because of the complaint to the Anti-Discrimination Commissioner. They say that he was transferred because of the view that he was or possibly was in conflict with the community. Superintendent McCadie says that he consciously disregarded the reference to the complaint to the Anti-Discrimination Commissioner because he was aware of the existence of section 23.

It is not possible to say for certain when Snr Constable Funnell would have been transferred but for the sending of the letter. I find, however, that the most likely time of the transfer would have been 31 October 1995. This finding is based on the fact that by

that time Snr Constable Funnell would have been in the community for a few days less than 4 years. Also by that time the Police Force would, by one means or another, have become aware that there was, in fact, conflict or a perception of conflict, between the senior council officers and Snr Constable Funnell. Once this would have been worked out a transfer would have followed.

Thus the position appears to be that Snr Constable Funnell was transferred 4 months early because the Police Force took the view that he was in conflict with the community. The reasons advanced for believing that there was conflict in the community were very scant.

What appears to have happened is that the Police heard of allegations of disquiet with those allegations being, in the end, a sufficient reason for the transfer. Whether or not Snr Constable Funnell was given adequate opportunity to contest the allegations is not a matter on which I am in a position to pass judgment.

The letter from the former President was instrumental in the Police becoming aware of the rumours. Accordingly, it can be said that the act of sending the letter was, at least in part, the cause of the chain of events that ended with Snr Constable Funnell leaving Kunbarllanjnja on 1 July 1996.

It seems irrelevant that the Council had no legal power to cause any detriment to Snr Constable Funnell. It is enough that it set in course a series of events that led to the detriment occurring. Similarly, it does not appear relevant to work out whether they were the major or minor part of the chain of causation - see *Harrison v Department of Technical and Further Education (1992) EOC 92- 429*.

Issue 5 - what would be the appropriate level of compensation for the detriment?

The 2 types of detriment that Snr Constable Funnell says that he has suffered and on which he gave evidence are:

- financial - ie that Snr Constable Funnell's income has dropped because of the transfer to Darwin
- offence, embarrassment, humiliation or intimidation

Financial loss

By the end of 1995 Senior Constable Funnell had been at Kunbarllanjnja for over 3 years. Commander Burgdorf gave evidence that 3 years is a fairly long posting in a small community and that postings are usually reviewed every 2 or 3 years. In this case there had, until the letter of 27 October 1995, been no consideration given to the transfer. Superintendent McCadie gave evidence that he had discussed with Senior Constable Funnell his transfer out of Kunbarllanjnja sometime during the 1996 dry season. The inference from Superintendent McCadie's evidence is that Senior Constable Funnell agreed to such a transfer taking place.

Snr Constable Funnell gave evidence about the respective amounts of overtime that he would work in Darwin compared to Kunbarllanjnja. Based on that evidence I consider that Snr Constable Funnell is likely to receive \$509.29 less per month working in Darwin compared to working at Kunbarllanjnja. This base figure appears to have been accepted by Counsel representing the Kunbarllanjnja Community Government Council.

As I have found that the period by which Snr Constable Funnell's period in Kunbarllanjnja was reduced was 4 months this means that the financial loss of employment earnings was \$2037.16.

In addition Snr Constable Funnell gave evidence that he was not expected to pay for the costs of electricity at Kunbarllanjnja whereas he would be expected to do so. Whilst this may in fact be the case I am not satisfied that, overall, the costs of living in Darwin are higher than those for Kunbarllanjnja. Accordingly, I do not accept that there is any entitlement for compensation arising from the fact of overall cost of living increases due to now living in the Darwin region. Nor am I prepared to accept that it is valid to simply pick on one cost that may be less in Kunbarllanjnja than in the Darwin region.

Snr Constable Funnell also gave evidence that he or his wife would lose money because they would no longer have the right to perform the cleaning contract for the local police station. Again, I am not convinced that the inability to perform this second job necessarily led to any loss. No reason was advanced as to why such second jobs could not be obtained in the Darwin region.

Offence, embarrassment, humiliation or intimidation

Senior Constable Funnell has been a policeman for some 14 years. During that time he has some 6 or 7 years working in aboriginal communities in various parts of the Northern Territory.

Senior Constable Funnell first heard of the existence of the letter of 27 October 1995 and of the decision that he be transferred whilst, during a period of on recreation leave, he visited a Darwin police station for the purposes of attending a promotions hearing. I accept that he would have been upset at being provided on such an occasion with a package of information containing first news of both the allegation and the negative outcome to the investigation of the allegation.

Over the following 3 or 4 months there were discussions with a number of senior police officers about his future.

In all, Senior Constable Funnell says that the decision to transfer had the following personal effects:

- lack of concentration at the November 1995 promotions hearing
- uncertainty of the future caused family problems - particular as Senior Constable Funnell's wife was 7 months pregnant in November 1995
- difficulty of remaining in charge of the Kunbarllanjnja police station knowing that some people in the community were complaining about him
- stress and bitterness
- general understanding in the Police Force that he had been transferred because of differences with the local community
- effect on career which had been going in the direction of management level control of bush stations
- general belief in the police force that his current position (general duties at Casuarina) has less status than that of officer in charge of a small station. In my view it is possible for Snr Constable Funnell to have this view even if there are others in the Police Force who may regard general duties in Darwin as having higher status than running a small station in the bush parts of the Northern Territory.

I accept that Snr Constable Funnell has suffered all of these consequences.

Section 88 of the Anti-Discrimination Act provides for a range of orders that can be made if I am satisfied that the complaint has been substantiated. In this case, the order sought by Snr Constable Funnell is that of the payment of compensation. He claims \$20,000 in respect of the damage of the kind referred to in section 88(3) of the Anti-Discrimination Act (ie "offence, embarrassment, humiliation ...).

The maximum amount of compensation that can be paid under section 88(1)(b) of the Anti-Discrimination Act is \$60,000. Having regard to that maximum amount, the nature of the victimisation and the size of awards of compensation made previously in the Northern Territory (ie of \$1500 and \$3500) and elsewhere my finding is that the appropriate amount is \$1000.

Order

I find that Snr Constable Funnell has substantiated the complaint that the Kunbarllanjja Community Government Council has victimised him in terms of section 23 of the Anti-Discrimination Act.

I order that the Kunbarllanjja Community Government Council pay to Snr Constable Funnell by 1 January 1997 the amount of \$3037.16 (comprising \$1000 for offence, humiliation and embarrassment) and \$2037.16 for loss of overtime.

Costs under section 96 of *Anti-Discrimination Act*

In accordance with the request made by one of the parties the issue of costs will be determined at a later time.

I do, however, indicate that my general position is that, subject to any argument that might be put by the parties, parties should bear their own costs excepting where costs have had to be unnecessarily incurred because of some unreasonable action of one or other of the parties.

ROBERT BRADSHAW
NORTHERN TERRITORY ANTI-DISCRIMINATION HEARING COMMISSIONER

EXE/FURNELL3,DOC