

AUSTRALIA / JUDGMENT

Goldman v Inner West Council

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Civil and Administrative Tribunal

New South Wales

Medium Neutral Citation:

Goldman v Inner West Council [2026] NSWCATAD 288

Hearing dates:

26 - 27 May 2026; last submissions 3 August 2026

Date of orders:

24 September 2026

Decision date:

24 September 2026

Jurisdiction:

Administrative and Equal Opportunity Division

Before:

P Roney KC, Senior Member

Dr M Murray, General Member

Decision:

- (1) The Applicant's complaint against the First Respondent of discrimination on the basis of sex is dismissed.
- (2) The Applicant's complaint against the Second Respondent of victimisation is dismissed.

Catchwords:

ANTI-DISCRIMINATION – SEX DISCRIMINATION – where employer allegedly directly discriminated against a female job applicant on the basis of sex by preferring male candidates for and disadvantaging an employee in the recruitment process for positions as driver in Council waste management operations- whether that was sex discrimination

Legislation Cited:

Anti-Discrimination Act 1977 (NSW)

Civil and Administrative Tribunal Act 2013 (NSW)

Local Government Act 1993 (NSW)

Cases Cited:

Arumugam including Lightning Bolt Co Pty Ltd v Skinner & Anor [2002] QSC 62

Australian Iron & Steel Pty Ltd v Banovic (1989) 168 CLR 165

Chamberlain v The Queen [No.2] (1983–1984) [1984] 53 CLR 521

Cocks Macnish & Anor v Biundo [2004] WASCA 194

Department of Health v Arumugam [1988] VR 319

Gama v Qantas Airways Limited (No. 2) [2006] FMCA 1767

Gurnett v Macquarie Stevedoring Co Pty Ltd (1955) 72 WN (NSW) 261

Jones v Dunkel (1959) 101 CLR 298

Kapoor v Monash University [2001] 4 VR 483

Purvis v New South Wales (2003) 217 CLR 92

Sharma v Legal Aid Queensland [2001] FCA 1699

Sharma v Legal Aid (Qld) [2002] FCAFC 196

Waters v Public Transport Corporation (1991) 173 CLR 349

West Midlands Passenger Transport Executive v Singh [1988] 2 All ER 873

Texts Cited:

None cited

Category:

Principal judgment

Parties:

Clementine Goldman (Applicant)

Inner West Council (First Respondent)

Chris Ryan (Second Respondent)

Representation:

WorkLawyers (Applicant)

Local Government NSW (First Respondent)

Inner West Council (Second Respondent)

File Number(s):

2025/00163424

Publication restriction:

- (1) Pursuant to ss 64(1)(a) and 64(1)(c) of the Civil and Administrative Tribunal Act 2013, the disclosure, publication or broadcast of the names, addresses, mobile phone numbers, email addresses and any other personal information contained in Annexure CR-4 of the Affidavit of Chris Ryan be prohibited.
- (2) Pursuant to ss 64(1)(a) and 64(1)(c) of the Civil and Administrative Tribunal Act 2013, the disclosure, publication or broadcast of the names and addresses of persons contained in Annexure CR-6 of the Affidavit of Chris Ryan be prohibited.
- (3) Pursuant to ss 64(1)(a) and 64(1)(c) of the Civil and Administrative Tribunal Act 2013, the disclosure, publication or broadcast of the names of persons arising from Annexure CR-10 of the Affidavit of Chris Ryan and Annexure WH-1 of the Affidavit of Wayne Hancock be prohibited.
- (4) Pursuant to ss 64(1)(a) and 64(1)(c) of the Civil and Administrative Tribunal Act 2013, the disclosure, publication or broadcast of the names, addresses, mobile phone numbers, email addresses and any other personal information contained in Annexure CR-12 of the Affidavit of Chris Ryan be prohibited.

Reasons for Decision

The Applicant, Ms Clementine Goldman began working with Inner West Council ("the Council") in or around November 2023. At that time, she was employed by an external labour supplier CK Recruitment and worked at the Council's St Peter's depot, as what was called an agency casual. She had previously worked for another Council where she was variously required to perform her duties driving sweepers, rubbish removal vehicles and was operating tipper trucks, utility vehicles and loaders. She impressed as an ambitious and articulate woman who had great confidence in herself.

She was a casual driver working exclusively at the Council's Resource Recovery. She was one of only a few female employees working as drivers. Then in March 2024, she applied for a full-time driver position with the Council's resource recovery section at the depot (the March 2024 recruitment process). She was interviewed for a permanent Team Member Driver position in the March 2024 recruitment process. She did not get that job, she submits, because the Council discriminated against her on the basis of sex.

The feedback she had received following the March 2024 recruitment process was that one of the main reasons she had been unsuccessful was her lack of garbage truck driving experience. The Applicant says she accepted that explanation and then obtained further garbage truck driving experience.

Then the Applicant applied for employment in an August 2024 recruitment process (the August 2024 recruitment process). She applied for, and was interviewed for the Team Member Driver position. That came about because in late July 2024, she became aware that a number of her male colleagues had already been notified that they would be interviewed for the permanent Team Member Driver positions, approximately two weeks later she had received no notification from the Council that she would be interviewed. She contends that at approximately four am on 7 August 2024, whilst commencing her ordinary shift, a superior, Mr Chris Ryan informed her for the first time, about a potential position and said that she was required to return to the depot by 10.30 that morning because she had an interview for the Team Member Driver position.

She says she was therefore required to do her ordinary work before attending the interview and had no meaningful opportunity to prepare or change what she suggests was more appropriate clothing. She complains that the male candidates had received substantially more notice and had been notified by email or text not verbally. There is no dispute that the male candidates had been informed on 3 August 2024 of their impending interviews, whereas the Applicant was only informed on the morning of the interview of 7 August 2024. Mr Ryan accepted when giving evidence that having more notice of an interview constituted an advantage and agreed that Ms Goldman did not have that advantage, however that might be measured. Whether not having that advantage was of any significance is in dispute. Some of the male candidates were offered a full-time job. She was not. No evidence suggests that her performance at the interview was compromised by that short notice or what she wore to the interview, or she would have done better wearing some other attire.

From that position the Tribunal is asked to find that the Applicant was subjected to different recruitment arrangements to those afforded to the successful male candidates. In particular, we are invited to conclude that that the successful male candidates were given an opportunity to prepare for an interview which was not afforded to the Applicant and that this conduct occurred on the ground of her sex. We shall refer to this as the “short notice of the interview” issue.

The Tribunal is also asked to find that the Applicant was subjected to different treatment concerning the medical assessment that was required of her to apply for the job. She contends that after returning from leave, Mr Ryan verbally informed her that she had a medical assessment the following Monday. When she asked where she was required to attend, Mr Ryan briefly showed her the appointment details on his mobile telephone, which she says she hurriedly tried to photograph before he put the phone away. She argues that the successful male candidates had been notified of their medical assessments by email “or whatever” and not merely by being shown the details on a phone. We shall refer to this as the “the medical assessment issue”. Again, whether not having that advantage was of any significance is in dispute.

She contends that the evidence concerning the medical assessment may not establish less favourable treatment, however, she submits that considered together with the fact that she was given the interview notification late, form part of a “broader pattern of differential treatment” during the recruitment process. She asks the Tribunal to take that pattern into account when determining whether the Applicant was treated less favourably than the successful male applicants on the ground of her sex.

It is common ground that the Applicant participated in the August 2024 recruitment process for the Team Member Driver positions and was interviewed by the Council’s selection panel. Following that recruitment process, the panel determined not to appoint the Applicant to one of the available fulltime positions. Instead, the available Team Member Driver positions were offered to male candidates. She received letter of offer for a position as a casual driver. She was displeased.

The Applicant says that when compared with the successful male Applicants appointed to those positions, the Applicant was treated less favourably in the way that the Council determined who should be offered employment. The Tribunal is invited to find that the Council’s decision not to appoint the Applicant, whilst appointing the successful male candidates, constitutes what she calls in submissions the second impugned act of subjecting her to less favourable treatment on the ground of her sex.

No witness for the Council said to her or anyone else, wrote in any letter, record or other document that any of the things that it did was on the basis of her sex. No witness admitted in evidence that he or she did any of those things alleged to have occurred on the basis of her sex. There is, as it is sometimes called, no smoking gun to which the Applicant can point. Put shortly, she has a circumstantial case or one inviting inferences, by which she says that the reason that she did not get either of the jobs on offer and was treated as she was, when those who were offered jobs were men, was because she was female.

What is the formalized character of the Applicant’s case

The Applicant's case is that, throughout the 2024 recruitment processes, she was treated less favourably than male job applicants and denied appointment to a full-time driver position, despite having equal or greater relevant experience than the male job applicants did, in that the Council:

applied inconsistent and shifting selection criteria to her disadvantage;

preferred male Applicants with less relevant experience; and

awarded full-time positions to those male applicants while the Applicant was required to perform the same duties on a casual basis.

The Applicant contends that this differential treatment occurred in circumstances where her sex was a real reason for the outcome.

She alleges that the contraventions of s 25(1) (a)-(b) the AD Act occurred by the Council:

- (a) failing to provide her with appropriate notice of the relevant appointments and information related to her recruitment, including her interview and medical appointment, which differed to the advanced notice the male Applicants were provided;
- (b) advising her garbage truck driving experience was a key criterion to successfully gaining a full-time driver position in relation to the March 2024 recruitment round, but awarding the position to male applicants with no or limited garbage driver experience in the July/August 2024 round, despite the Applicant having obtained that experience;
- (c) advising her that one of the reasons the successful male applicants were appointed was their higher licence category, notwithstanding that she held the required HR licence; and
- (d) awarding the male applicants full-time positions while she was subsequently required to perform the driver role as a casual employee;

Mr Christopher Ryan, who is the named Second Respondent, but against whom there is now no claim advanced, was the interview panel convenor of the driver interviews, and was the primary supervisor of the Applicant whilst she was engaged as an agency casual.

In her final submissions she put it as being that in each recruitment process, the Council discriminated against her on the ground of her sex, both in the arrangements made for determining who should be offered employment and in the Respondent's decision not to appoint her to the position.

It is not controversial that she was an Applicant for employment, within the meaning of s 25(1) of the AD Act, when the events occurred.

The Applicant seeks compensation of \$30,000 for hurt, humiliation, distress and injury to feelings. She also seeks economic loss of \$9,755.73.

Publication Restrictions in relation to identified persons

Orders have been made pursuant to ss 64(1)(a) and 64(1)(c) of the Civil and Administrative Tribunal Act 2013 (NSW), that the disclosure, publication or broadcast of the names, addresses, mobile phone numbers, email addresses and any other personal information contained in Annexure CR-4 of the Affidavit of Chris Ryan, names and addresses of persons contained in Annexure CR-6, the names of persons arising from Annexure CR-10 of the Affidavit of Chris Ryan and Annexure WH-1 of the Affidavit of Wayne Hancock and the names, addresses, mobile phone numbers, email addresses and any other personal information contained in Annexure CR-12 of the Affidavit of Chris Ryan be prohibited.

The scope of that order cannot be easily ascertained. For that reason, the names of job applicants relevant to the complaint have been anonymised in these reasons but not that of the Applicant. No addresses, mobile phone numbers, email addresses and any other personal information appears in these reasons.

The abandoned victimisation case

There was a contested application to join the Second Respondent, Mr Ryan as a party in order for the Applicant to bring a claim of victimisation of her against him. That application was allowed with attendant affidavit material required to be filed. The Second Respondent came represented by a solicitor Ms Dunstan at the hearing.

The Applicant announced at the commencement of the second day of the hearing that that claim would not be pressed. The Second Respondent's legal representative was then excused.

In the circumstances it is appropriate that the complaint against the Second Respondent be dismissed, and we do so.

The March 2024 recruitment process the short notice of the interview, and the medical assessment issue

We have already described how the Applicant contends she was treated in the March recruitment process.

The only evidence advanced on this aspect of the case can be found in paragraphs [14] - [20] of Exhibit A 1 her first affidavit. The evidence given by the Applicant in relation to the actual recruitment process does not identify the successful candidate or candidates, does not identify the recruitment panel, and does not identify with any specificity what differential treatment the Applicant is supposed to have subjected to in that process. The Applicant's closing submissions refer to the successful applicants for the March 2024 recruitment as being male. The evidence referred to in support of this, referable to the transcript of the hearing before us, refers to the successful candidates from the August 2024 recruitment, not the March recruitment.

The evidence is that the Council advertised for Team Member Loader and Team Member Driver roles in January 2024 and Mr Ryan spoke to the Applicant about this when she wanted to discuss the new full-time roles that had just been advertised and asked if he was able to help her out getting one of these roles. He responded to the effect that she had as much chance as anyone else. The uncontroversial evidence from Mr Ryan is that interviews for these roles were conducted in March 2024. He was not on the interview-panel for the March 2024 recruitment and was not sure what role she applied for.

Despite filing some 32 pages of submissions after the hearing, only a brief mention was made of the circumstances surrounding the March 2024 recruitment process, or for that matter, the short notice of the interview issue or the medical assessment issue.

Nowhere in those submissions does the Applicant address the basis upon which she contends that the evidence suggests that her treatment in relation to any of those three issues was that her sex was the ground upon which the Respondent treated her less favourably, or how the short notice of the interview issue or the medical assessment issue involved conduct that was materially less favourable treatment in practical effect.

As we have said already, no witness for the Council said to her or anyone else, wrote in any letter, record or other document or admitted in evidence that the circumstances surrounding the March 2024 recruitment process, the short notice of the interview to permit an opportunity to prepare for the interview, or the medical assessment issue any of the things that it did was on the basis of her sex.

To the extent that she advances a case of discrimination surrounding the March 2024 recruitment process we find that there is no evidentiary foundation for it.

In relation to the short notice of the interview, and the medical assessment issue, we will set out in what follows how she came to be given short notice of the interview, and informal notice of a medical appointment, but for the reasons which follow we do not consider that either material exposed her to disadvantage, nor in either case, was the shortcoming one which occurred on the ground of sex. Clumsy, disorganised or less than optimal management practices they may have been, but none was shown to have occurred consciously or unconsciously on the ground that she was female.

The August 2024 recruitment process claims issue

In June 2024, the Council advertised for permanent loader and driver positions. The Applicant applied for both positions. The Applicant was shortlisted for an interview for the loader position, but was not shortlisted for the driver position. She was offered a different position ultimately.

The position description stated that:

Inner West Council is committed to the principles of Equal Employment Opportunity, Work Health and Safety, sustainability, continuous improvement and business excellence. The community is at the heart of the organisation and Council puts its values of integrity, respect, innovation, compassion and collaboration at the centre of everything we do.

Employees are expected to demonstrate commitment to these values in performing their respective roles. In addition to these, the following criteria outline those that are relevant to this specific position (and then listed specifics) which included

The specific criteria included “demonstrated experience in operating mechanical road plant in a high-density urban environment” and “demonstrated driving and labouring experience preferably in residential waste collection”.

The Council's case is that on or around 7 August 2024, Mr Ryan realised that the convenor of the loader interviews, was not ready to commence interviews and that these would likely occur in mid-August 2024. Mr Ryan decided that this would mean that the Applicant would not be able to be interviewed, as he was aware that the Applicant was to take a period of leave between 10 August and 23 September 2024. Mr Ryan says, and we accept that he then sought permission from Erin White, Manager Waste Services, to include the Applicant in the interviews for the driver position notwithstanding the fact that her application did not progress to the interview stage.

The Applicant was notified by Mr Ryan that she was to be interviewed for the position later that day. The Council concedes that the Applicant performed well in the interviews, but was not among the most meritorious candidates.

Mr Ryan said that he formed the view that other applicants had more significant work experience driving waste vehicles and possessed attractive vehicle and other work licences and qualifications, but considered that the Applicant performed well in the interview and possessed the necessary skills and qualifications to be employed as a driver. Mr Ryan recommended that the Applicant be offered a casual position and be placed on an 'eligibility list'. Placement on the eligibility list would allow the Applicant to be directly appointed to a driver position if a vacancy arose within the next six months. Mr Ryan says, and we accept, that there was no obligation to recommend or appoint the Applicant to an eligibility list.

The Applicant underwent the usual pre-employment checks, including a medical examination and reference checks. She was sent a letter of offer for a Driver (casual) position with the Council on 4 October 2024, and she moved to being a Council employee instead of with the external labour hire company.

It was not realised until later that neither Mr Ryan nor anyone else from the Council communicated to the Applicant that she was unsuccessful for the permanent position by the time she was sent the casual position offer on 4 October 2024. That was unfortunate but not intentional.

The relevant statutory provisions concerning discrimination on the ground of sex

Section 25(1) of the Anti-Discrimination Act 1977 (NSW) (the AD Act) provides:

25 Discrimination against Applicants and employees

(1) It is unlawful for an employer to discriminate against a person on the ground of sex-

(a) in the arrangements the employer makes for the purpose of determining who should be offered employment,

(b) in determining who should be offered employment

Section 24(1)(a) the AD Act provides:

- (1) A person ("the perpetrator") discriminates against another person ("the aggrieved person") on the ground of sex if the perpetrator-
- (a) on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex.

Section 24(1A) the AD Act provides:

(1A) For the purposes of subsection (1)(a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex.

Section 4A of the AD Act provides:

If an act is done for two or more reasons and one of the reasons consists of unlawful discrimination under this Act against a person (whether or not it is the dominant or a substantial reason for doing the act), then for the purposes of this Act, the act is taken to be done for that reason.

The Applicant's case as articulated in her final submissions

The Applicant submits that the Tribunal ought to be satisfied that the less favourable treatment occurred on the ground of the Applicant's sex. She submits that in determining that question, the Tribunal is entitled to examine the entirety of the recruitment processes, including the comparative treatment of the successful male applicants, the consistency of the Council's stated reasons, the contemporaneous recruitment records, and whether the evidence demonstrates that the explanations advanced by the Respondent were the "true reasons" for the impugned decisions.

She relies on Section 4A of the AD Act to contend that it is unnecessary for the Applicant to establish that her sex was the sole, dominant or even principal reason for the Respondent's decisions. It is sufficient if the Tribunal is satisfied, on the balance of probabilities, that the Applicant's sex was one operative reason for the less favourable treatment she received. That proposition can be accepted, on the basis of numerous decisions that have considered that issue, including *Australian Iron & Steel Pty Ltd v Banovic* (1989) 168 CLR 165 (Banovic), *Waters v Public Transport Corporation* (1991) 173 CLR 349 (Waters) *Purvis v New South Wales* (2003) 217 CLR 92 (Purvis).

She submits that the question for the Tribunal is not whether the Council, or any individual, was motivated by animosity towards women or consciously intended to discriminate against Ms Goldman because she is a woman. Rather, the question is whether the reason for the Council's treatment of Ms Goldman during the March 2024 and July/August 2024 recruitment processes was, in whole or in part, due to her sex. We do not consider that proposition to be controversial either.

We find that the comparator here is an applicant who possesses the same or materially similar skills, experience and work record as the Applicant as at July 2024, but who is not a woman.

The drawing of inferences in a case like this

The difficulties which present themselves to an applicant seeking to prove discrimination by circumstantial evidence have been well recognised. Discussion on that topic can be traced to the frequently referenced decision of Fullagar J in *Department of Health v Arumugam* [1988] VR 319 ("Arumugam") where the Court overturned a finding of unlawful discrimination based on inference. The case was one in which there was an allegation of racial discrimination because the applicant had not been successfully appointed to a professional position within a Government Department. Inferences were drawn as to the reason why the candidate was not successful and it was concluded that those were racially based. Fullagar J held as follows:

If the facts before explanation contain no direct proof of discrimination of the kind charged (be it political, sexual, racial, or impairment-grounded), the industrial tribunal may still be able to draw an inference of discrimination of the kind charged; if the proper inference in the absence of explanation is discrimination of the kind charged, and there is either no explanation or an unacceptable explanation, then the inference of discrimination of the kind charged will mean the complaint succeeds.

In *Jones v Dunkel* (1959) 101 CLR 298, Kitto J stated at [305]:

One does not pass from the realm of conjecture into the realm of inference until some fact is found which positively suggests, that is to say provides a reason, special to the particular case under consideration, for thinking it likely that in that actual case a specific event happened or a specific state of affairs existed.

A body of other judicial authority has had cause to consider and apply the approach of Fullagar J in *Arumugam* including *Lightning Bolt Co Pty Ltd v Skinner & Anor* [2002] QSC 62; *Cocks Macnish & Anor v Biundo* [2004] WASCA 194; *Gama v Qantas Airways Limited (No. 2)* [2006] FMCA 1767; *Kapoor v Monash University* [2001] 4 VR 483.

The approach to the drawing of inferences in discrimination cases was the subject of further careful analysis by Kiefel J in *Sharma v Legal Aid Queensland* [2001] FCA 1699 and in that matter on Appeal by the Full Federal Court in *Sharma v Legal Aid (Qld)* [2002] FCAFC196. This too was a case involving alleged discrimination in employment on the basis of national origin. Kiefel J at the trial level, accepted that statistical evidence "may be able to convey something about the

likelihood of being not being advanced because of factors such as race or gender”. She cited the decision in *West Midlands Passenger Transport Executive v Singh* [1988] 2 All ER 873 and noted that ultimately it was “a question of fact in each case”.

In the Full Court, the decision of Kiefel J was upheld, and the following comment was made in the joint judgment of the Court; *Sharma v Legal Aid (Qld)* [2002] FCAFC 196 at [40]– [41]:

It is for the applicant who complains of racial discrimination to make out his or her case on the balance of probabilities. It may be accepted that it is unusual to find direct evidence of racial discrimination and the outcome of a case will usually depend on what inferences it is proper to draw from the primary facts found: *Glasgow City Council v Zafar* [1998] 2 All ER 953, 958.

There may be cases in which the motivation is subconscious. There may be cases in which the proper inference to be drawn from the evidence is that, whether or not the employer realised it at the time or not, race was the reason it acted as it did: *Nagarajan v London Regional Transport* [1999] 3 WLR 425, 433. It was common ground at first instance that the standard of proof for breaches of the RDA is the higher standard referred to in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336, 361–362. Racial discrimination is a serious matter, which is not lightly to be inferred: *Department of Health v Arumugan* [1988] Vic Rp 42; [1988] VR 319, 331. No contrary argument was put on the hearing of the appeal, apart from the comment that there is no binding authority on this Court that *Briginshaw* should be applied in cases of this nature.

In a case depending on circumstantial evidence, it is well established that the trier of fact must consider ‘the weight which is to be given to the united force of all the circumstances put together’. One should not put a piece of circumstantial evidence out of consideration merely because an inference does not arise from it alone: *Chamberlain v The Queen* [No.2] (1983–1984) [1984] 53 CLR 521 at 535. It is the cumulative effect of the circumstances which is important, provided, of course, that the circumstances relied upon are established as facts.

In many such cases there are real issues of proving causation or drawing inferences from proven facts. Without a ‘smoking gun’ a complainant must rely on circumstantial evidence and ask the court to consider the ‘cumulative effect’ of the evidence. The Tribunal can be asked to draw an inference of discrimination based on the evidence adduced, even if, when viewed on its own, none of the evidence would have supported the inference. However, particularly with regard to discrimination complaints, courts have been reluctant to infer discrimination without sound evidence.

On the issue of drawing inferences from the facts, Street CJ in *Gurnett v Macquarie Stevedoring Co Pty Ltd* (1955) 72 WN (NSW) 261 said at [264]:

There must be evidence affording ground for treating it as a matter existing as a matter of inference and not of conjecture ... the existence of a fact may be inferred from other facts when those facts make it reasonably probable that it exists; if they go no further than to show that it is possible that it may exist, then its existence does not go beyond mere conjecture. Conjecture may range from the barely possible to the quite possible. Inferences of probability may range from a

faint probability — a mere scintilla of probability such as would not warrant a finding in a civil action ... to such practical certainty as would justify a conviction in a criminal prosecution.

We adopt and apply those principles here.

What was the recruitment process as described by the Council's Manager?

Ms White, the Manager Resource Recovery and Fleet Services at Inner West Council described what the recruitment process entailed.

Ms White said, and we accept, that typically a recruitment process will commence when an Expressions of Interest request is raised in a recruitment software used by Council. This used to be done by her but is now done by the coordinator responsible for a particular recruitment (known as the Hiring Manager). This change was implemented in 2023. The Hiring Manager then convenes a recruitment panel and filters the candidates. Depending on the number of applications received, a group of Coordinators will usually try to meet to sort through high volumes of applications. The Hiring Manager will then determine the interview dates and the logistics around organising the various interviews.

Ms White's expectation was that a recruitment process would take between six and eight weeks depending on the circumstances. In recent times, recruitment processes had taken as long as four to five months to complete. A slow recruitment process and poor communication meant that positions are not filled and Council is required to rely on casual staff and labour hire agencies to fill gaps in the workforce. Recruitment occurs frequently in the Resource Recovery section of Council. There are approximately 85 Resource Recovery staff. There is a mix of long term and itinerant workers among this group.

Ms White was aware of a recruitment process which occurred on or around March 2024 and knew that John Hendry was the hiring manager of the panel. She was also aware of the June 2024 recruitment for the loader and driver positions.

The loader interviews were going to take place after the driver interviews. Ms White gave evidence, and we accept that there were a number of people who were either on leave or about to commence significant periods of leave at that time, including the Applicant.

In mid-late 2024 Chris Ryan approached Ms White and asked whether he could amend the shortlist of interviewees to include the Applicant. Chris Ryan said words to the effect of "Clementine is about to go on leave and will miss out on the Loader interviews, is it ok if we include her in the Driver interview so she doesn't miss out". Ms White said words to the effect of "Yes, that's ok". Ms White recalls that there was a short turnaround time between this conversation and the interview occurring. Ms White was not sure if this was adequately explained to the Applicant at the time. Ms White not sure that she knew which position she was interviewing for, and why it was being done on such a short turn around.

Ms Erin White was employed as the Manager Resource Recovery and Fleet Services at Inner West Council. Prior to this, she was employed as the Contract Manager - Resource Recovery at the former Ashfield Council. Her role involved the oversight and management of all Council waste operations, including recycling, clean up, contracted waste services and day labour. In addition, she was responsible for the management of Council's fleet, including leasebacks, plant and equipment and Council's mechanics. She had four Resource Recovery Coordinators, one Fleet Coordinator and one Contract Manager who all reported directly to her. Christopher Ryan and Wayne Hancock reported directly to her.

She was aware that CK Recruitment and the other labour hire agencies perform pre-employment fitness for work tests to ensure that the workers can meet the physical requirements of the position. For example, a Loader is required to lift up to 20kg and run behind the garbage truck. The Applicant did not have any issue satisfying this requirement.

She had no direct supervision of the Applicant during her time as an agency casual and had no recall of ever seeing any formal disciplinary or performance concerns with respect to her but was aware that she had been involved in a number of accidents while driving. She was aware that the Applicant and one other male driver appeared to be getting into accidents more frequently than others. This had not been the subject of performance discussions or disciplinary actions.

Ms White swore, and we accept, that the June 2024 recruitment was undertaken on the basis of a merit-based selection system as was required by law. The shortlisting process, assessment of the written application, performance at the interview, and skills and experience of a candidate are all examined as part of this process.

Section 349 of the Local Government Act 1993 (NSW) provides that the merit of a person is determined according to the nature of the duties of the position, and the abilities, qualifications, experience and standard of work performance of those persons relevant to those duties.

We accept her evidence that there is no formal or informal rule at Council which sets out that agency casuals with the longest tenure with Inner West Council are 'next in line' for a permanent position. The Applicant's assertion to the contrary has no evidentiary basis. As Ms White said, external Agency casuals with longer tenure may have an advantage in interview processes as they are already known to Council and they understand Council's processes and operations, but the recruitment must be based on merit.

The evidence is, and we accept that in an interview, each candidate is asked the same questions and each answer is rated by the panel between one and five. A score of five is the highest possible score for a particular question. Ms White recalls receiving feedback from Chris Ryan, who was the convenor of the panel, that the Applicant had interviewed well. She swore that Chris Ryan also gave positive feedback about other candidates who participated in those interviews. Ms White was aware that Mr T, one of the successful candidates, had a Heavy Combination licence and had driven Road Vehicles for councils in Queensland for many years. Ms White recalls that she was impressed with his level of experience. On or around August 2024, Mr Ryan approached her at work and said words to the effect of "am I allowed to include more than one person on the

eligibility list? I would like to include (the Applicant) and (another person Mr L)".

Ms White responded with words to the effect of "Yes, that is not a problem". Mr Ryan was relatively new to recruitment so she considered this was a reasonable question in the circumstances. On or around 20 September 2024, Ms White received the Selection Panel Report which she approved. She did not consider any of the matters raised or identified in the report to be controversial.

The evidence of the Coordinator Special Services on the recruitment process

Mr Christopher Ryan was employed in the position of Coordinator Special Services at Inner West Council and has held this position for approximately five years. He reported to Ms White.

His role was to coordinate the collection of bulky waste across the Local Government Area including the laneways of Newtown, community recycling centres and special entertainment precincts across the local government area. The bulk waste section is divided into four different categories including household items and furniture, branches, metal and whitegoods and mattresses. Mattress collection is contracted out however his team is responsible for collection of all other bulky waste but is not responsible for the collection of garbage bins or green bins.

He had 19 employees who report to him, made up of permanent employees, casuals and labour hire provided by agencies. These employees perform the work of either Loader or Driver.

From her commencement as an agency casual in Resource Recovery until in or around October 2024, the Applicant was supervised by him and primarily worked in the metals and white goods section as well as collecting green waste bundles as either a loader or a driver. From time to time, she would be required to do other work as needed. She mostly reported to him but would sometimes be required to perform work with Mr Wayne Hancock.

The Applicant holds a Heavy Rigid (HR) licence which legally allows her to drive all trucks currently owned by Council in the Resource Recovery section. Council has trucks that are approximately 14 Tonne (15 cube) that require a HR licence. There are also five tonne open wagons that required a Medium Rigid (MR) licence. There are also smaller compactors that are eight cube and six cube that require an MR licence. These trucks are spread across different Council depots. Mr Ryan's recollection was that the Applicant only drove the five-tonne open wagon and the smaller compactors. During the time that the Applicant reported to him, he became aware that she had a quite a few accidents when driving. He recalled that the number of accidents was more than most other employees had been involved in. Council records showed that in 2024, the Applicant had six accidents.

Mr Ryan became involved with recruitment for workers in Resource Recovery following his appointment as a Coordinator. Once vacancies are identified in the Resource Recovery team and the recruitment process is commenced, Council's People and Culture team and Ms White send out expressions of interest for potential applicants.

Mr Ryan swore, and we accept, that the expression of interest will call for applicants to submit their application online. This usually remains active for about three weeks. Once the period closes, an interview panel is convened, and the online applications are scored. The panel is usually comprised of the relevant team leader, who is usually the chair of the panel, an independent person from Council and someone else from that section of Council. The panel will then review the online applications and score them. The best applicants from the online application process will be selected for an interview.

He gave evidence that the Council advertised for Team Member Loader and Team Member Driver roles in January 2024 and that he spoke to the Applicant about this. She wanted to discuss the new full-time roles that had just been advertised and asked if he was able to help her out getting one of these roles. He responded to the effect that she had as much chance as anyone else. We accept that evidence.

Interviews for these roles were conducted in March 2024 however he was not on the interview-panel for the March 2024 recruitment and was not sure what role she applied for.

In or around June 2024, Council advertised for Team Member Loader positions and Team Member Driver positions. He was the convenor of the interview panel for the June 2024 Team Member Driver recruitment.

The other members of the driver recruitment panel were Ms Rachel McKnulty and Mr Sean Lipsett. He understood that the Applicant Goldman applied for both the Driver and Loader positions.

Initially the Applicant was selected for an interview for the loader position. He was not involved and therefore did not know if or when the Applicant was notified that she was successful in an interview for the loader position.

After the panel concluded each member reviewed the online applications and resumes, seven applicants were selected for an interview based on their online application and resumes. The Applicant was not one of the seven. Mr Ryan said, and we accept that she was not selected for an interview because she had an HR Licence but did not have as much driving experience as the candidates that were selected for an interview.

The Team Member Driver interviews were scheduled for 7 August 2024. He called the applicants that were selected for an interview on 3 August 2024 and followed up with a text message or spoke to them in the yard on 7 August 2024. One of them did not turn up for the interview.

Mr Ryan swore and we accept that he understood that the interviews for the Loader positions would likely occur the week following or even two weeks after the driver interviews. He was aware that the Applicant was going away in August but didn't realise until on or around 6 August 2024 that she would be missing the loader interviews. He did not want her to miss out on the interviewing for one of the available positions and so he decided to try to include her in the interview list for the driver position.

We find that on the morning of 7 August 2024, after checking with Ms White, Mr Ryan informed the Applicant that the interviews for the permanent position would be held later that day and asked if she wanted to have an interview later. He does not recall if he told the Applicant that she was interviewing for the Driver position because she would be on leave for the Loader position. He says that she said words to the effect of "Okay, I will come in for an interview" in response to being informed of the interview later that day.

Then at 9.29 am another staff member sent him a text message asking who from the loader list was going to be interviewed for the driver position. Mr Ryan replied by text that he would "interview Clem because she will be off on holidays."

The Applicant was the last interview of the day. Mr Ryan swore and we accept that the Applicant interviewed well for the position and scored third or fourth highest in the interview. He said had concerns with her level of experience given that she had only driven the smaller five-tonne and smaller compactor trucks under my supervision and had a number of accidents since starting with Council. He felt she needed to spend more time driving and gain more experience including experience driving the larger 14-tonne trucks. Mr Ryan swore and we accept that he considered that the successful applicants had more experience driving the larger trucks and over a longer period.

Mr Ryan swore and we accept he decided the Applicant should be offered an Inner West Council casual position, which involved an increase in pay, and that she should be placed on the eligibility list. This would mean that when a permanent vacancy opened up in the future, she would not be required to interview again and would instead be eligible for a permanent position to be offered to her.

The panel prepared a report for Council's People and Culture team. Once the panel report recommendations are made, reference checks, police checks and medicals are completed for all the candidates recommended for a job offer. This includes both permanent and causal job offers. In or around September 2024, he showed the Applicant the details of her medical appointment on his phone, which she took a photograph of on her phone. He did not consider there were any issues with her attending her scheduled medical appointment. We find that nothing about that was done to disadvantage her or done because she was female.

He rejected the proposition that he was discriminatory towards the Applicant the basis of her sex. He said, and we accept that he had a number of female colleagues, including his manager, Ms White and had no issue working alongside women in the workplace. There is no other example that has been pointed to of his having a negative attitude to females being in that workplace or to the Applicant herself. That is, in our view significant because absent that, there is little to explain why he may have engaged in the conduct the applicant accused him of.

The oral evidence of Mr Ryan was that although he had previously and other times sat on a selection panel, he had never chaired one and could not say whether the report which went to numerous members of senior management was inevitably adopted. He did a preliminary report, and then an amended report in September 2024. Both are in evidence from summonsed material.

Page three of the preliminary report identifies the individuals by job title rather than by names. There are five of them. Effectively Mr Ryan was the chair of those making a recommendation. That report makes no reference directly or indirectly to any of the assessment scores that individuals have been given in the interview process.

Mr Ryan gave evidence, which we accept as reliable, of adjustments having been made to initial scoring of individual candidates, in some cases to increase and in others decrease the initial score given by panel members and in the case of the applicant, her final score was reduced to 59 out of a possible 75 points. This still placed her ahead of a number of other candidates, but one point behind one of the candidates who was offered a position. There were, however, others who scored lower in points who were also offered the position.

The Applicant's solicitor did not investigate or carefully scrutinise this process in the course of cross-examination of Mr Ryan nor what role the scores played in the final recommendations in the report.

Mr Ryan showed that he lacked a clear recollection of what the decision-making process had been, and was at times confused about what had occurred. He gave conflicting answers to some of the questions he answered and appeared to lack confidence in what the process had been that led to these positions being offered. The Tribunal found Mr Ryan to be credible, but unclear on occasion; he did not appear to dissemble.

It was put to him that he and the panel had acted in ways which were intended to and deliberately did disadvantage the Applicant and advantage the male candidates, which he vehemently denied.

What do the contemporaneous documents show?

Exhibit A9 was material that was produced under subpoena. It was from one of those on the selection panel that interviewed the applicants for the position that the applicant complains about not having been offered. The material was produced by Sean Lipsett after having been served with a summons. Mr Lipsett also gave evidence.

The evidence discloses that on 2 September 2024 the selection panel sent a report to a number of those who would exercise the discretion as to who to offer the positions to. The identified approver was identified by name. The preferred candidates were identified as Mr B, Mr T, Mr M, Mr J and Mr A.

It identified the ways in which the candidates demonstrated in the interview process how they met the Council's values and also identified those who might go on the so-called eligibility list, which is to identify other candidates who are not to be on the preferred candidate name list, but who might be considered in the future and perhaps offered a position.

Two persons were mentioned in that list, one of which was the Applicant and she was said to have had a good interview, but needed to spend more time loading on waste trucks and driving to gain more experience and at different depots and shifts, but could be made a Council casual. That is what actually occurred.

It seems that of those mentioned in the preferred candidates that Mr M did not wish to take up the position. And on 10 September, a second selection panel report went out which omitted his name but did not include any other preferred candidates. So, the number of preferred candidates had gone from five to four. It said that some of the candidates already worked with the first respondent and demonstrated high quality and volume of work, and an outside candidate had great references and paperwork to support it.

The description of how the candidates displayed the relevant values went to some greater detail to describe the ways in which the four individuals had desirable qualities. Again, the applicant was listed as one of those on the eligibility list.

The entry about the Applicant in the second panel report was identical to that in the earlier report, except that it referred to the fact that in relation to her experience, she had had a few accidents.

Nothing in either report nor indeed any other document or the evidence of anyone involved in that process referenced the fact that she was not male or that she was female or directly or indirectly, suggested or implied that her qualifications or suitability for the position were in some way or another compromised by her being a woman, or that that was in any way, a consideration.

As part of the exhibit, which came from the possession of Mr Lipsett, were numerous interview records for the candidates, including those of each of those who interviewed the applicant and gave her a score out of five for her answers to five specific questions. So that the best possible mark was 25.

The evidence was, although it was not particularly clear from Mr Ryan, that he initially scored her as 20. But on a review of her mark altered it to 19, which gave her 59 points out of a possible 75, and one mark below one of those who was offered a position, whose score was 60. He was cross-examined about precisely why he did that and when in the process, he decided to do it.

Undoubtedly the answers to these questions and the scores given played a part in the decision. However, we cannot discern that the remarking of the Applicant's points by one point was on the basis that she was female or intended to disadvantage her.

His answers when he was cross-examined were confusing and rather unsatisfactory, but they did not persuade us that his doing so wasn't in any way designed to disadvantage hurt or to ensure that she was not offered the position.

The objective evidence is that these scores, although uploaded into the database were not the only or even obvious foundation for any decision made as to whom the job would be offered. Indeed, neither selection panel report which went to others to review and consider before making offers, actually referenced their score or the answers they gave, which led to that score. They referenced discretionary criteria going to merit.

One of the panel Mr Lipsett was unprepared to recommend one of the applicants that the others had proposed be included on the preferred candidate list, a Mr A. He was well down the list of those who were scored after the interview process and after he objected to his inclusion as a preferred candidate, Mr A was removed. This was entirely appropriate course for what was expected to be a consensus report as to who should be preferred candidates. It did not reveal any discernible dissatisfaction with the way the applicant had been treated or whether she should be included as a preferred candidate.

The initial proposed recommended candidates had come in at numbers two three four and seven. Candidate seven was Mr A, who actually walked out of the interview process before it had ended. In cross-examination Mr Ryan accepted that the applicant had interviewed well, but wasn't in the final four and explained that the reasons the four were offered the job was mostly based on performance in the interviews, not so much experience and they knew about the experience from Resumes.

In cross-examination by the Applicant, it was suggested to Mr Ryan that the four offered the job had greater experience than the applicant. He was not prepared to agree.

The evidence shows that after candidate Mr M dropped out, the made the offer to Mr J because he had considerable experience of some ten years. Mr Ryan accepted that the Applicant did have experience and that the Council encouraged existing employees to interview and she got an interview, but in his view, she had a lot less experience than others. He swore and we accept that everyone had a level of experience but it came down to how they performed in the interview and issues such as compatibility. The resume gets a candidate an interview but the interview determines the recommendations based on what he said was a merit review.

The evidence of Mr Innes-marking the Applicant down in the interview process

One of the witnesses called in the applicant's case was Mr Innes. His role is as an operator, and he occasionally acted up to the role of Coordinator. His evidence was of apparent significance because he was expected to have sworn that he heard Mr Ryan tell other Coordinators to mark the applicant down in the interview process. Indeed, his affidavit swore to his hearing that. There he had said that in or around September 2024, while acting up as a Coordinator at the Council he was present in the office located at the St Peters depot of the Council. He said in the affidavit that he observed and heard other Coordinators discussing the interview process concerning the Applicant. He said he heard Mr Chris Ryan say words to the effect of asking the other co-ordinators to mark down their scoring of the Applicant's interview results so that she would not be successful in getting the position.

However, in his oral testimony he said that he had heard no such thing but had overheard some others who were not witnesses called in this proceeding, who said something to that effect.

Mr Ryan rejected the notion that he had said any such thing and Mr Lipsett, the only other member of the selection panel who was called, was not cross-examined for this proposition to have been put however, it is implicit in his evidence that no such thing was said and certainly the co-ordinators did not mark the applicant down at all, they had certainly not been asked to do so by Mr Ryan.

Events in October 2024 after the job offers were made

On 9 October 2024, Ms White met with the Applicant and her support person, Elio Antilly. During this meeting, we find, the Applicant said she would like feedback for the interview so she can get an idea of how she performed and would like to meet with all three members of the panel to receive feedback. Ms White responded with words to the effect that it would not be possible to meet with the entire recruitment panel, that this is not part of the feedback process and Rachel McKnoulty and Sean Lipsett were not involved beyond providing their recommendations for the Selection Panel Report and it would not be appropriate to involve them. Ms White also said words to the effect that the proper procedure is that the request should go through her.

Later, the Applicant followed up with an email where she was seeking information about her rating in the interviews and her placement relative to other candidates. Ms White considered that it was not appropriate to supply information about the other interviewees.

The next day, on 10 October 2024, Ms White responded to that email acknowledging receipt and indicating that she was waiting for Chris Ryan to return to work to progress the matter. Since Chris Ryan was the convenor of the panel, she considered it important to obtain feedback and information from him in line with the Applicant's request. That same day or thereabouts she spoke to Chris Ryan about the June recruitment process. She said that the Driver recruitment process was unsatisfactory. The process seemed lengthy and there had been no communication with the candidates about the outcome of the recruitment process. She did not form the view that the panel had reach the wrong conclusion with the recruitment process, but considered there to be significant room for improvement regarding communicating outcomes to all of the candidates

On 17 October 2024 Ms White sent an email to the Applicant, copying in others where she outlined the components which are assessed as part of a merit-based selection process and invited the Applicant to discuss further with her if she had any outstanding questions.

Findings as to what happened at the meeting that took place on 30 October 2024

We have set out the events that occurred in October 2024 between the Applicant and Ms White after the job offers were made.

The solicitor for the Applicant sought to establish through cross-examination of witnesses for the respondent, including Ms Plunkett, and Ms White, that at a meeting that took place on 30 October 2024 that the Applicant impliedly or inferentially complained that she had been treated in a discriminatory way in the process of being interviewed or in relation to the offers which were made.

A careful examination of what was said at a meeting that took place on 30 October 2024, since it is recorded verbatim in a transcript exhibit A7, reveals that there was, in fact, no such complaint made. It discloses that she was sensitive to having to deal with non-female representatives of the first respondent. She was not happy that she had not been offered the position where others got the job over her, where one had barely driven garbage vehicles and the other rarely.

She believed she was the only female driver the respondent had, and she didn't understand that she did not get the position when she had interviewed well and had all the requirements they needed and that they had a gender equity and strategy plan which she suggested had application to her.

What the transcript of the meeting clearly reveals is that her grievances related to the fact that she believed she had the experience to be offered the job and could not understand why she was not being offered the job, particularly having regard to the gender equity policy, which she believed was in her favour. She felt that Mr Ryan had some sort of negative view about her, but it was not suggested that he had said or done anything to give preference to males or treat her less favourably because she was female.

Nor was anything said by anyone else in the course of that meeting, such as to raise an inference that this was the foundation for the decision which was made as to who would be offered the positions.

Ms Erin White said that at the meeting the Applicant said that she was dissatisfied with the recruitment outcome, that she was no longer able to work with Chris Ryan but I cannot recall if she explained why. The Applicant said words she wanted to be changed to work under Wayne Hancock. Ms White agreed to the request in the moment. The Applicant said they hadn't answered her phone calls, she was not being a good manager, and was basically letting others run the team. Ms White explained again about the merit-based recruitment process which Council is required to undertake. She that the Applicant's appointment to a casual position and placement on the eligibility list would assist with securing a permanent position without the need to re-interview if any future vacancies occurred. Then the Applicant said she had lodged a discrimination complaint about this issue and if Council was prepared to offer her the job, she would withdraw the complaint. Veronique Plunkett replied that they cannot offer her the position, that they had appointed the most meritorious candidates and she was on the eligibility list so there is a possibility that she would be offered a position in the next twelve months if there is another vacancy.

Ms White recalls the Applicant mentioned Council's Gender Equity Policy during the meeting and asked, "Did I not get the job because you don't want a female on staff?" Ms White said that was not correct". We find that although that there are few women in Resource Recovery roles, there are many women, including Ms White who were working in various roles in the operational or "outdoor" workforce.

Did the Council apply inconsistent and shifting selection criteria and prefer male Applicants with less relevant experience.

We find, on the evidence of Mr Ryan, and Ms White that each of the successful candidates had superior experience to the Applicant at the time of the interviews, or were at least genuinely thought to have that superior experience.

The contemporaneous documents show the panel recommending or reporting after the interviews genuinely identified the ways in which the candidates demonstrated in the interview process how they met the Council's values.

The documents also identified those who might go on the so-called eligibility list, which is to identify other candidates who are not to be on the preferred candidate name list, but who might be considered in the future and perhaps offered a position.

Two persons were mentioned in that list, one of which was the Applicant and she was said to have had a good interview, but needed to spend more time loading on waste trucks and driving to gain more experience and at different depots and shifts, but could be made a Council casual. That is what actually occurred.

Nothing in the interviewing panel reports nor indeed any other document or the evidence of anyone involved in that process referenced the fact that she was not male or that she was female. Nothing directly or indirectly, suggested or implied that her qualifications or suitability for the position were in some way or another compromised by her being a woman, or that the fact that she was female was in any way, a consideration.

We accept the evidence of Mr Ryan that the decision to include the Applicant in the panel to be interviewed at the last minute, leading to her being given less notice and less time to get a medical, was him realising late in the piece that she was a candidate who should be interviewed, whereas the others had been notified earlier. He then sought to include her, and she was interviewed, admittedly on shorter notice than others had. There is no evidence that this significantly disadvantaged her and indeed, all parties agreed that she had performed well in the interview process.

We accept the evidence of Mr Ryan that at that time he put her on the eligibility list, he did so to give her preference or an advantage in any further job application that she might have made, including as a driver. She was, in effect, pre-approved, and did not need to be re-interviewed, and gave her improved status in the system. This improved prospect of being employed in such a position in the future, although it did not guarantee it.

In our view it is inherently unlikely that someone who was taking active steps to prevent a person from being employed on the basis of their sex would do things which were consistent with improving their prospects of being employed, albeit in a part casual role rather than a full-time role, and in that regard, a full-time role, albeit at a future time. The Applicant's solicitor did not put to Mr Ryan that he had some reason to have engaged in the conduct the applicant accused him of.

Both Ms White and Ms Plunkett the Acting Senior People and Culture Business Partner who were persons who were part of the decision-making process to offer those jobs and they were persons to whom the selection panel report recommendations had been sent for consideration both gave oral evidence in addition to what they said in their statements.

We accept Ms Plunkett's evidence that based on her experience, a person's skill, experience and suitability, qualifications, previous work experience and soft skills assessed against the essential and desirable requirements of the relevant position description are considered in determining an applicant's merit.

Both Ms White and Ms Plunkett were cross-examined on the processes, although only broadly, rather than by reference to any of the evidence that had given which was adverse to the Applicant. It did not undermine their evidence as to what the processes were designed to achieve, and what they said occurred here. Those questions were designed to suggest that the process might have been unfair if there were additional criteria for appointments to the position which were not set out in the selection criteria for the position. But as was highlighted in the course of the hearing itself, this proceeding is not concerned with general fairness in the process of offering these positions, but is concerned only with whether that process miscarried, because it involved treating the applicant less favourably on the basis of her sex than a comparator, in this case, a male applicant with equivalent qualifications and experience.

It was put to Ms White and Ms Plunkett that the Applicant had been treated differently to male candidates but neither witness accepted that proposition. Both witnesses Ms White and Ms Plunkett were objective and disinterested. We accept their evidence as to the processes and as to what occurred in the Council's dealings with the Applicant. They had no reason to tailor their evidence and they did not present as anything but reasonable and responsible officers working for the Council. We accept their evidence.

Short of engaging in speculation, there is no basis to conclude that Mr Ryan, Ms White, Ms Plunkett or anyone else with the Council who contributed to the relevant decision as to who should be offered the jobs discriminated against the Applicant on the ground of sex.

Did the Council award full-time positions to males making the Applicant perform the same duties on a casual basis?

The Applicant contends that the Council awarded full-time positions to male applicants while she had to perform the same duties on a casual basis. This seems to be another way of saying she was not awarded a full-time Driver position.

The evidence of Mr Ryan set out above shows that this was an example of her being treated favourably, not less favourably as she was getting a permanent position with the Council itself and was paid better for it, as to her previous casual employment.

Ms Plunkett gave evidence which we accept that at the 30 October meeting she told the Applicant that I also advised Ms Goldman words to the effect that "the recruitment panel made a unanimous recommendation" and that "because you are on the eligibility list if there is a vacancy within the next six to twelve months you could be offered the position. However, there is no guarantee that there will be a vacancy or if there is a vacancy, when this will be".

In our view it has not been shown that the offer of a casual position instead of a full-time position was on the ground of her sex.

Compensation sought

Had we upheld the claims which are made it would have been necessary to assess whether to order compensation in the amount the Applicant seeks of \$30,000 or in some other amount for hurt, humiliation, distress and injury to feelings. She also sought economic loss of \$9,755.73. Because of the findings we have made it is not necessary to make findings in relation to the quantum of compensation.

Having regard to the findings we have made, the Applicant's complaints are dismissed.

Orders

The Applicant's complaint against the First Respondent of discrimination on the basis of sex is dismissed.

The Applicant's complaint against the Second Respondent of victimisation is dismissed.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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Decision last updated:

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