Local Court
New South Wales

Case Name:	Stephanie Blanch -v – Kirralie Smith and Gender Awareness Australia Limited t/as Binary Australia
Hearing Date(s):	7 February 2025
Date of Decision:	5 December 2025
Jurisdiction:	Civil
Before:	Deputy Chief Magistrate S. Freund
Catchwords:	Transgender vilification, Public Act, Damages, Costs
Cases Cited:	*Burns -v- Sunol [2012] NSWADT 246* *Carter -v- Brown [2010] NSWADT 109* *Commissioner of Police, NSW Police v Mooney (No 3) (EOD) [2004] NSWADTAP 22* *Eatock -v- Bolt (No2) [2011] FCA 1103* *Eatock -v- Bolt (No2) [2011] FCA 1180* *Grass-v- McIntosh [2024] NSWCATAD 224* *GSY V Western Sydney Local Health District [2025] NSWCATAD 219; BC202513537* *Hall &Others -v- A & A Sheiban Pty Limited and others (1989) 84 ALR 503* *Jones and harbour Radio Pty Limited -v- Trad (EOD) [2011] NSWADTAP 19* *Malenha -v- Sullivan [2017] NSWCATAD 222* *Margan -v- Taufaaov [2017] NSWCATAD 216* *Richardson -v- Oracle Corporation Australia Pty Limited (2014) 223 FCR 334* *Southey -v- Australian Press Council [2023] NSWCATAD 145* *Tickle -v- Giggle for Girls Pty Ltd (No 2) [2024] FCA 960* *Trad -v- Jones (No 3) [2009] NSWADT 318* *Yelda -v- Sydney Water Corporation; Yelda -v- Vitality Works Australia Pty Limited [2021] NSWCATAD 107*
Legislation Cited:	*Anti-Discrimination Act 1977 (NSW)* *Civil and Administrative Tribunal Act 2013 (NSW)*

Representation:	Plaintiff: Mr C. Gregory of Counsel instructed by Ruth Nocka, solicitor Dentons Australia Limited Defendant: Mr Maghami of Counsel instructed by Mr Kutasi solicitor of Solve Legal Attorney General – Mr Moretti of Counsel instructed by Mr Bartley, Crown Solicitors office.
File Number:	2024/78280

Judgment

1. On 26 August 2025 I handed down my decision in these proceedings and made the following orders, namely:

   a. That I was satisfied that the First and Second Defendants unlawfully vilified the Plaintiff pursuant to section 38S of the *Anti-Discrimination Act 1977 (NSW)* ("**the Act**") by the following acts:

      i. the Social Media Posts; and

      ii. the January 2023 Article,

   b. Sections 38R and 38S of the *Anti-Discrimination Act 1977 (NSW)* are <u>not</u> invalid on the grounds that they exceed the legislative power of the NSW Parliament by reason of the operation of the implied freedom of political communications contained in the Commonwealth Constitution.

2. In relation to the orders sought by the Plaintiff pursuant to section 108 of the *Anti-Discrimination Act* 1977 (NSW) ("**the Act**") I requested further submissions from the parties and made the following orders for the filing of those submissions, namely:

   a. The Plaintiff file and serve its submissions by 12 September 2025.

   b. The Defendants' file and serve their written submissions by 3 October 2025; and

   c. The Plaintiff to file any submissions in reply by 10 October 2025.

   At that time, I fixed a date for the handing down of this decision, namely 4 November 2025.

3. The Defendants did not comply with the timetable referred to in the preceding paragraph, and I only received their submissions on 21 October 2025. They did not seek leave at any time to amend the timetable.

4. The Plaintiff filed their submissions in reply on 3 July 2025.

5. Accordingly, I rely on the following submissions for this decision:

   a. Plaintiff's submissions on damages dated 12 September 2025

   b. Defendant's submissions on damages dated 21 October 2025.

   c. Plaintiff's submissions in reply dated 3 November 2025.

6. The Plaintiff pursuant to paragraph 54 of the Statement of Claim filed 18 September 2025 claimed:

   a. Damages

   b. An order enjoining the First and Second Defendants from continuing or repeating any future public acts identifying the Plaintiff

   c. An order that the first and second Defendants publish an apology in respect of the conduct the subject of these proceedings, and remove any acts the subject of these proceedings from all public forums, including from all social media platforms

   d. An order that the First and Second Defendants develop and implement a program or policy aimed at eliminating unlawful discrimination and transgender vilification in relation to any future public acts of the First and Second Defendants; and

   e. An order that, in default of compliance with any of the orders referred to at (b) to (d) above, within 2 months from the date the orders are made the First and Second Defendants pay the Plaintiff damages not

exceeding $100,000 by way of compensation for failure to comply with the order or orders.

7. I note that the Plaintiff no longer presses for the order sought in paragraph 54(d)of the Amended Statement of Claim, namely that the First and Second Defendants develop and implement a program or policy aimed at eliminating unlawful discrimination and transgender vilification[1].

8. Section 108 of the Act states:

(1) In proceedings relating to a complaint, the Tribunal may—
(a) dismiss the complaint in whole or in part, or
(b) find the complaint substantiated in whole or in part.
(2) If the Tribunal finds the complaint substantiated in whole or in part, it may do any one or more of the following—
(a) except in respect of a matter referred to the Tribunal under section 95 (2), order the respondent to pay the complainant damages not exceeding $100,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct,
(b) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations,
(c) except in respect of a representative complaint or a matter referred to the Tribunal under section 95 (2), order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant,
(d) order the respondent to publish an apology or a retraction (or both) in respect of the matter the subject of the complaint and, as part of the order, give directions concerning the time, form, extent and manner of publication of the apology or retraction (or both),
(e) in respect of a vilification complaint, order the respondent to develop and implement a program or policy aimed at eliminating unlawful discrimination,
(f) make an order declaring void in whole or in part and either ab initio or from such time as is specified in the order any contract or agreement made in contravention of this Act or the regulations,
(g) decline to take any further action in the matter.
(3) An order of the Tribunal may extend to conduct of the respondent that affects persons other than the complainant or complainants if the Tribunal, having regard to the circumstances of the case, considers that such an extension is appropriate.
(4) The power of the Tribunal to award damages to a complainant is taken, in the case of a complaint lodged by a representative body, to be a power to award damages to the person or persons on behalf of whom the complaint is made and not to include a power to award damages to the representative body.
(5) In making an order for damages concerning a complaint made on behalf of a person or persons, the Tribunal may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons.
(6) If two or more vilification complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated in whole or in part, the Tribunal must not make an order or orders for damages that would cause the respondent to pay more than $100,000 in the aggregate in respect of that public act.
(7) If the Tribunal makes an order under subsection (2) (b), (c), (d) or (e), it may also order that, in default of compliance with the order within the time specified by the Tribunal, the respondent is to pay the complainant damages not exceeding $100,000 by way of compensation for failure to comply with the order.

[1] Plaintiff's submissions dated 12 September 2025 at [12]

9. I was satisfied on the balance of probabilities that the Plaintiff's complaint was substantiated in part having:

   a. Found that the following public acts vilified the Plaintiff on the grounds she was transgender:

      i. Social Media Posts; and

      ii. An article authored by the First Defendant dated 29 January 2023 titled "A Bloke in a frock is playing women's soccer on the Mid North Coast" ("**January Article**").

   b. That the following acts did <u>not</u> vilify the Plaintiff namely:

      i. The article authored by the First Defendant titled "soccer campaign for women and men who pretend to be women" dated 14 February 2023;

      ii. The Newsletter published by the First Defendant on 1 March 2023;

      iii. The gathering of men in wigs at the Taree Football ground; and

      iv. A report authored by the First Defendant and sent to Football Australia.

10. The evidence of the Plaintiff, with respect to how the Social Media Posts and article dated 29 January 2023 affected her can be summarised as follows:

   a. The Plaintiff had been playing with the Wingham Football Club since she was 17 years old[2];

[2] Exhibit 1 at [16]

b. After she transitioned and came out as a woman she commenced playing on the women's team and at the time of affirming the affidavit had been playing on the women's team for 7 years[3];

c. Her time playing for Wingham FC had been pretty good and she considered that almost all the women in the competition had come to accept her as transgender and are comfortable with her playing in the competition[4]

d. On 20 January 2023, she received a phone call from Bruce Potter, the Director of Football Mid North Coast, who alerted the Plaintiff to the Social Media posts of the which included photos of the Plaintiff. The Social Media Posts made the Plaintiff feel:

   i. Angry[5]

   ii. Singled out[6];

   iii. Attacked for her gender identity[7]; and

   iv. Somewhat depressed[8]

e. She kept track of the Social Media Posts and read the comments in order to see what people were saying about her so she could discern whether her safety was at risk[9]; She observed hundreds of comments, the majority of which were about her appearance[10].

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[3] Ibid at [19]
[4] Ibid at [24]
[5] Ibid [36] and [38]
[6] Ibid at [35] and [38]
[7] Ibid at [35] and [38]
[8] Ibid at [40]
[9] Ibid at [38]
[10] Ibid

f. She was looking at the Social Media posts daily in order to see what was being said about her[11];

g. As at 18 September 2024, the date she affirmed Exhibit 1, she did not check the social media accounts of the First and Second Defendants as frequently but did so about once per week[12].

h. The Plaintiff feared for her safety and as such:

i. She created a safety plan with her teammates[13] and Wingham FC[14]; and

ii. She sought and was ultimately granted an Apprehended Personal Violence Order ("**APVO**") against the First Defendant[15];

iii. Advised her employer, a nursing home in Wingham as she was concerned supporters of the First and Second Defendants would turn up there[16];

i. In 2023, the Plaintiff was enrolled at TAFE studying a Diploma of Nursing. As a result of Social Media Posts, she was unable to concentrate and focus on her studies[17].

11. It is significant to note that the Plaintiff's evidence in the preceding paragraph is corroborated by the letter from Raewyn Juteram, her TAFE Counsellor dated 21 September 2023 that letter states inter-alia that:

a. That the Plaintiff had 6 counselling sessions between 6 April 2023 and 21 September 2023.

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[11] Ibid at [39]
[12] Ibid at [42]
[13] Ibid at [54]-[55]
[14] Ibid at [56]
[15] Ibid at [70]
[16] Ibid [74] and [75]
[17] Supra note 2 at page 132 exhibit 1

b. That the Plaintiff had been falling behind in her theory assessments.

c. That the Plaintiff had a number of "significant stressors" and she was "currently dealing with a person in the community who was harassing her social media and starting a campaign against her due to her transgender identity".

d. That the Plaintiff was considering withdrawing from the course despite almost being finished and on reflection said that the experience, of the harassment had heightened her awareness of the hatred for transgender people.

e. That the counsellor was concerned that the Plaintiff was exhibiting avoidance and it was undermining the career she had chosen.

12. The Plaintiff was not cross-examined by the Defendants nor was her evidence challenged.

Claim for Damages

13. The plaintiff makes a claim for damages, including aggravated and exemplary damages.

14. In determining the Plaintiff's claim for damages pursuant to s108(2) of the Act I must be satisfied on balance that the loss and damages suffered by the Plaintiff were "by reason of" the Defendants' conduct.

15. In essence, Mr Kutasi, solicitor for the First and Second Defendants submitted that, while the Court found the Defendants' conduct unlawfully vilified the Plaintiff the Court should not be satisfied that any damages follow and in the alternative nothing more than nominal damages[18].

[18] Defendants' submissions on quantum dated 21 October 2025 at [9] and [28]

16. He contended that:

a. The Court should have regard to the plain language of s108(2)(a) of the Act which states:

"*If the Tribunal finds the complaint substantiated in whole or in part, it may do any one or more of the following—*

(a) except in respect of a matter referred to the Tribunal under section 95 (2), order the respondent to pay the complainant damages not exceeding $100,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct"

b. That the Court "*must be satisfied on the evidence that the Plaintiff has established their loss, and the quantum sought would restore them to the position they would have been but for the Defendant's conduct*"[19]; and

c. That the evidence of the Plaintiff:

i. Does not establish loss and is at best vague[20]

ii. Fails to marshal evidence on quantification[21]; and

iii. Does not establish causation[22].

17. In support of his submissions inter- alia that the Plaintiff's evidence is at best vague[23] and had failed to "marshal evidence on quantification"[24] Mr Kutasi argued that there was no direct evidence of:

a. the contents of a "safety plan"[25].

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[19] Ibid at [7]
[20] Ibid at [10] and [14]
[21] Ibid at [15]
[22] Ibid at [21]-[24]
[23] Ibid at [10]
[24] Ibid at [15]
[25] Ibid at [11(b)]

b. any impact that the Defendant's Social Media Posts had on the Plaintiff's ability to play football[26].

c. "any loss of either daily amenity or professional life"[27] .

d. Any loss of employment capacity either during or after the Defendant's social media posts[28]. and

18. Moreover, the Defendants also submitted that:

a. There was no expert evidence before the Court in relation to the psychological harm suffered by the Plaintiff[29].

b. The Plaintiff failed to call evidence to support the submission that "other people" who read the First Defendant's Social Media Post dated 19 January 2023 at 9.27am[30], were concerned that there was a potential for the First Defendant would commit an act of violence against the plaintiff[31].

c. It was never put to the First Defendant that the Social Media Post dated 19 November 2023 at 9.27am "suggested the commission of an act of violence"[32].

d. The Plaintiff conceded that "she was able to go to work and do her work properly"[33].

e. At its highest there are "nebulous" references by the Plaintiff that the Social Media Posts impacted her by:

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[26] Ibid
[27] Ibid at [11(c)]
[28] Ibid
[29] Ibid at [11(e)]
[30] Supra note 2 at Annexure SB-1 at page 23
[31] Supra note 18 at [10] and [11(a)]
[32] Ibid
[33] Ibid at [11(c)]

i. "beginning to avoid things"

ii. Reigned about her lot in life"

iii. "her study started slipping"

And there was no evidence as to what the things were that the Plaintiff avoided or what the nexus was between the conduct and the effect[34].

19. The evidence of the Plaintiff was not challenged by the Defendants.

20. Despite the Defendants' submissions to the contrary, the unchallenged evidence of the Plaintiff was in my view supported in many respects, including:

a. The Plaintiff's fear for her safety was corroborated by:

i. the creation of a safety plan. I note a copy/ screenshot of the safety plan is attached to Exhibit 1 at SB-33.

ii. The Plaintiff making an application and ultimately being granted an APVO against the First Defendant;

and

b. The impact on the Plaintiff's mental health was verified by the letter of Raewyn Juteram, TAFE Counsellor dated 21 September 2023[35] who was the Plaintiff's treating counsellor who stated that:

i. That the Plaintiff had 6 counselling sessions between 6 April 2023 and 21 September 2023.

[34] Ibid at [11(f)]
[35] Supra note 2 at SB-36

ii. That the Plaintiff had been falling behind in her theory assessments.

iii. That the Plaintiff had a number of "significant stressors" and she was "currently dealing with a person in the community who was harassing her social media and starting a campaign against her due to her transgender identity".

iv. That the Plaintiff was considering withdrawing from the course despite almost being finished and on reflection said that the experience, of the harassment had heightened her awareness of the hatred for trans people.

v. That the counsellor was concerned that the Plaintiff was exhibiting avoidance and it was undermining the career she had chosen.

21. It was held by SM Mulvey in *Southey -v- Australian Press Council*[36] that:

> *"Damages may be awarded for economic and non-economic loss. Damages for non-economic loss may be awarded for hurt, humiliation and distress. Hall v A & A Sheiban Pty Ltd [1989] FCA 72; (1989) 20 FCR 217 . Damages are compensatory in nature. Aggravated and exemplary damages may also be awarded. The applicant must establish on an evidentiary basis that damage has been suffered to warrant compensation and that the damage was suffered 'because' of the contravention of the AD Act"*[37]

22. The award of damages should recognize the seriousness of the hurt feelings or pain and suffering, and any stress, anxiety and depression caused by the contravention of the Act. The onus is on the Plaintiff to establish on balance that damage was suffered to warrant compensation and that damage was suffered "by reason of" the contravention of the Act. It was held in *Yelda -v-*

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[36] *[2023] NSWCATAD 145*
[37] Ibid at [66]

Sydney Water Corporation; Yelda -v- Vitality Works Australia Pty Limited[38] (*"**Yelda**"*) that:

> *The main issue separating the parties is the question of whether or not, particularly after 2016, the applicant has made out a causal connection between the contravening conduct of the respondents and Ms Yelda's condition, including her perceived inability to return to work at Sydney Water.*
> *In deciding whether loss or damage is caused "by reason of" conduct in contravention of the ADA will involve normative considerations which is primarily to be found in the purpose and object of the statute and as related to the circumstances of a particular case: see I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd (2002) 210 CLR 109 at 119 [25]–[26] (HTW Valuers); more generally, Allianz Australia Insurance Ltd v GSF Australia Pty Ltd (2005) 79 ALJR 1079; 215 ALR 389 ; Travel Compensation Fund v Robert Tambree t/as R Tambree & Associates (2005) 224 CLR 627 at [28] –[30] per Gleeson CJ; Richardson v Oracle Corporation Australia Pty Ltd [2014] FCAFC 82 at [130] –[132] , per Besanko and Perram JJ.*
> *The object of the ADA is to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. The notion of "discrimination" and "equality of opportunity" for persons of different status, including sex or gender, are not precise concepts. In respect of discrimination on the grounds of sex, the provisions of the ADA are in near identical terms to those contained in the Commonwealth Sex Discrimination Act 1984 (Cth) . The latter Act gives effect to international human rights conventions that Australia has ratified, in particular, the UN Convention on the Elimination of all forms of Discrimination against Women (18 December 1979) 1249 UNTS 13. In such circumstances, the position at international law can inform the object and purpose of the ADA with respect to sex discrimination: see Lyttle v Everglades Country Club Ltd [2021] NSWCATAD 52 at [64] –[72] .*
> *In such circumstances, it is generally accepted that the ADA is important beneficial legislation designed to protect and advance the rights of persons of different status, including in this case that of sex or gender. Generally speaking, the meaning to be given to the phrase "by reason of the respondent's conduct" in s.108(2)(a) should be read generously and not narrowly to benefit victims of sexual harassment or sexual discrimination.*
> *Nevertheless, the burden of proof always remains with the applicant and a causal link must be able to be demonstrated between the loss or damage suffered and the respondents' conduct. Further, we accept the general principle enunciated by Kenny J in Richardson at [33] that loss arising from an employer's lawful conduct — in that case its investigation into Ms Richardson's allegations of sexual harassment — is not compensable unless it was also loss sustained because of the harasser's unlawful conduct. Similarly, the plurality held at [155] in Richardson that for Mrs Richardson's claim for psychological injury flowing from Oracle's investigation into her allegations while the unlawful conduct of her harasser provided the setting for what followed, as a matter of "common sense and experience" it was not the cause of the manner in which Oracle conducted its investigation.*[39]

23. Damages under s 108(2)(a) of the Act must be assessed according to 'compensatory' principles for which the equivalent principles within tort and contract law provide a guide, but are not 'controlling': see *Commissioner of Police, NSW Police v Mooney (No 3) (EOD)*[40] However, the authorities provide little specific guidance on the approach to be adopted in cases where

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[38] *[2021] NSWCATAD 107*
[39] Ibid at [262]-[266]
[40] *[2004] NSWADTAP 22 at [23–27], [48]).*

unlawful vilification has been established and the harm to be compensated is 'non-pecuniary' harm within the realm of injury to feelings: *Burns -v- Sunol*[41] ;

24. The Tribunal in *Burns -v-Sunol*[42] provides a succinct analysis of the law in relation to damages in vilification cases as at 2012, stating:

> *As far as we are aware, in most of the Tribunal cases of this kind, the public act or acts held to constitute vilification comprised material aimed only at the complainant. This was the situation, for instance, in Burns v Dye [2002] NSWADT 32; Kimble & Souris v Orr [2003] NSWADT 49 and Carter v Brown [2010] NSWADT 109. But in at least two cases, damages have been awarded to complainants who were not named or otherwise identified and were not the sole target of the vilification.*
> *In Cohen v Harguos; Karelicki v Harguos [2006] NSWADT 209, the Tribunal held that remarks made by the respondent in a loud voice in the presence of one of three complainants amounted to unlawful vilification of a racial group to which the complainants (and others of those present) belonged. The complainant who was present told the other two complainants what the respondent had said. His remarks did not mention by name, or otherwise identify, the complainants or any other individuals, but contained only offensive generalisations about the racial group. Having received submissions about the relief to be granted, the Tribunal then held, in Cohen & anor v Harguos; Karelicki v Harguos (No 2) [2006] NSWADT 275, that the orders to be made under the provision then equivalent to s 108 should include an award of damages of $1,500 to each of the three complainants. It stated at [8] that the complainants had given evidence of being 'deeply distressed and offended' on hearing, or hearing about, the respondent's remarks and his refusal to withdraw them; that one of the complainants 'required medical assistance'; and that another 'was so upset that she was forced to go home from the social event that she was attending and felt deeply upset for months'.*
> *In Trad v Jones (No 3) [2009] NSWADT 318, the Tribunal found that a number of statements made on air by a prominent radio broadcaster, Alan Jones, about riots that occurred at Cronulla during 2005 amounted to vilification of Lebanese Muslims, who are a group recognised under the Act as a 'race', on the ground of their race. The complainant, a high-profile member of this group called Keysar Trad, was not named or otherwise identified in these statements. The Tribunal then held, at [234–241], that the remedies granted should include an award of $10,000 damages to Mr Trad on the ground that he had suffered 'hurt, humiliation and distress' on account of the broadcast. In deciding on this amount, it took account of evidence that he appeared to be 'a reasonably resilient character'.*
> *On appeal, the Appeal Panel held that this award of 'a modest sum' was 'not beyond the bounds of a permissible exercise of a discretionary judgment': see Jones and Harbour Radio Pty Ltd v Trad (EOD) [2011] NSWADTAP 19 at [96].*
> *It has been observed that the awards of damages by this and other tribunals in Australia for non-pecuniary harm caused by vilification have varied between sums in the vicinity of $20,000 (for example, in Carter v Brown) and significantly smaller sums such as the amount of $1,500 awarded to each complainant in Cohen & anor v Harguos; Karelicki v Harguos (No 2) and the amount of $1,000 awarded to Mr Burns in Burns v Dye.*
> *We are not aware of any awards of damages for vilification published on the internet. The closest analogy in the cases that we have just discussed would be the vilification published on air by Alan Jones. Although potentially the number of readers of internet publications vastly exceeds the number of people who listen to Mr Jones's broadcasts, there are in our opinion several reasons why the injury to feelings inflicted by vilification communicated in such broadcasts should be regarded as more serious than the injury that would be inflicted through the publication by Mr Sunol of equivalent material on the internet.*

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[41] *[2012] NSWADT 246*
[42] Ibid

We hold this opinion even though an internet publication may remain easily accessible to users for an indefinite period. This is not the case with a radio broadcast by Mr Jones, even if it can be retrieved for a short period via the internet.[43]

25. Mr Gregory, Counsel for the Plaintiff also referred me to the more recent decisions of *Margan -v- Taufaaov*[44] and *Yelda*[45] and submitted inter-alia[46]:

a. In *Margan -v- Taufaaov*[47] *an award of $10,000 was made, in relation to one act of vilification at Arq nightclub at Oxford Street during which the respondent said to the applicant "fuck you faggot" and "I'm going to kill you faggot" and "assaulted the applicant's friend"*[48]*; and*

b. *In Yelda*[49] *the Plaintiff was awarded $70,000 for hurt feeling and psychological injury for sexual harassment. In this case the plaintiff's face was included on a poster which included a subheading that evinced sexual overtones and the poster was placed around the Plaintiff's workplace.*

26. Mr Kutasi argues that the decision of *Yelda*[50] *can be distinguished from the present facts before the Court. He states that:*

"For example, in respect of "injury to feelings" alone, the Tribunal considered at [209] there to be evidence of "serious hurt to her feelings and pain and suffering over a number of years through to 2020". This was supported by (i) a detailed witness statement from Ms Yelda ; (ii) three corroborative statements from witnesses; (iii) contemporaneous documents, such as emails exchanged; (iv) case notes and medical evidence of psychological conditions caused by the discriminatory conduct of the Defendants; and (v) an expert report of Ms Yelda's psychologist treatment. This also grounded the submissions made by Ms Yelda, as to both psychological injuries and loss of income, which led to quantification of the Applicant's case"[51]

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[43] Ibid at [114] to [120]
[44] *[2017] NSWCATAD 216*
[45] *[2021] NSWCATAD 107*
[46] Supra note 1 at [38] and [39]
[47] *[2017] NSWCATAD 216*
[48] Ibid at [101] to [102]
[49] *[2021] NSWCATAD 107*
[50] *[2021] NSWCATAD 107*
[51] Supra note 18 at [18]

27. I have considered *Yelda*[52] in detail. The tribunal:

a. Found that the poster which was the subject of the claim was displayed at least at three separate depots out of a total of seven and were displayed over a period of two months[53];

b. Accepted Ms Yelda's evidence of injury to hurt feeling and humiliation or embarrassment as set out in her witness statement[54];

c. Were not satisfied that the stress caused by the unlawful treatment of the Respondents could and indeed did exacerbate the applicant's pre-existing conditions[55] without direct expert evidence in that regard which was not before the court; and

d. They accept the submission that the respondents "must take their "victim" as they find her and that it is no answer that others more robust may not have been so troubled by the poster as Ms Yelda evidently was"[56]

28. Accordingly, I am satisfied that the circumstances in *Yelda* are somewhat analogous to what occurred in the facts of this case. In particular, the unlawful acts of the First and Second Defendant:

a. Occurred over the period 20 January 2024 and 27 March 2023, just over 2 months. In *Yelda* the unlawful acts involved the displaying of posters which included a photograph of the Applicant, also over a period of two months; and

b. Like in *Yelda*, the Plaintiff was identified by her photograph as well as other comments by the First and Second Defendants.

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[52] Ibid
[53] Supra note 38 at [308]
[54] Ibid at [309]
[55] Ibid at [305]
[56] Ibid at [307]

29. The Defendants also contend that the Plaintiff cannot establish causation namely that their conduct, that is the unlawful vilification of the Plaintiff caused the injury to the Plaintiff as:

a. Firstly, that the Defendants communications were not directed at the Plaintiff they were made "*via public expression in publication*"[57];

b. Secondly, the Plaintiff "*bears responsibility for their own trauma in circumstances where it was open to them to look away, by simply putting the phone down or blocking the social media profiles of the Defendants*"[58];

c. Thirdly, the Plaintiff conceded that she previously had "depression" and the lack of expert evidence which would attribute the Defendant's conduct as a cause or exacerbation of that depression[59]; and

d. Finally, the Plaintiff's hurt feelings are "*repeatedly described by reference to the comments of third parties, and not those of the Defendants*"[60]. Any loss or damage would need to be proved to flow from "*the substance of the Defendant's communications and/or conduct, … not by the reactions or conduct of third parties*"[61]

30. It is trite law that I must be satisfied that the relevant conduct of the Defendants caused the damage or loss claimed by the Applicant. In the recent decision of *GSY V Western Sydney Local Health District*[62] the SM MacIntyre summarised the law as to causation in discrimination matters:

> *In CPJ v University of Newcastle [2017] NSWCATAD 350, Hennessy LCM, Deputy President said, at [24]–[25]:*
>
> > *When interpreting the words "by reason of" in EQ and Office of the Australian Information Commissioner (Freedom of information) [2016] AATA 785 at [47] the AAT*

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[57] Supra note 18 at [22]
[58] Ibid
[59] Ibid at [23]
[60] Exhibit 1 at [40] Defendants submissions dated 21 October 2025
[61] Ibid at [25]
[62] *[2025] NSWCATAD 219; BC202513537*

adopted the following principles relying, to some extent, on the common law principles in March v Stramare (E and MH) Pty Ltd [1991] HCA 12; (1991) 171 CLR 506:

- *(a)causation is ultimately a question of common sense and experience, determined on the facts of each case;*
- *(b)in law, causation is a question identifying where legal responsibility should lie, rather than examine the cause of event from a scientific or philosophical viewpoint, policy issues and value judgements have a role to play in determining whether, for legal purposes, a circumstance we found to be causative of loss;*
- *(c)a 'but for' analysis is not a sufficient test for causation, although it may be a guide; and*
- *(d)where there are multiple elements, each one sufficient on its own to have caused the loss, the causation test may be considered satisfied by each one of them.*

The words "by reason of" in the Commonwealth privacy legislation convey the same meaning as the words "because of" in the NSW statute. Despite my conclusion in FM v Vice Chancellor, Macquarie University [2003] NSWADT 78 at [103], I agree with the AAT summary of the relevant principles and acknowledge that a 'but for' analysis is not a sufficient test for causation.

..

The Applicant said that he had a depressive condition. He said that the Respondent's conduct caused him to suffer exacerbated treatment resistant depression, stress and anxiety. He said that he also experienced frustration. The Respondent, however, said that the Applicant had not shown that the delay in issue caused damage, loss or harm.

The consequences of a psychological condition in the context of a compensation claim were set out in the following terms in JD v NSW Dept of Health [2007] NSWADT 219 , at [57]:

> *Thus, the fact that JD may be susceptible to mental illness does not affect any entitlement to compensation he may have. In Rummery, a decision under the Privacy Act 1988 (Cth), the AAT, including the President of the Tribunal, Justice Downes, relied on the decision of the Federal Court in Hall v A & A Sheiban Pty Ltd (1989) 20 FCR 217, a decision involving the assessment of damages under the Sex Discrimination Act 1984 (Cth). The Federal Court considered that where a complaint is substantiated and loss or damage has been suffered, some form of redress is contemplated. Relevantly, awards should be restrained but not minimal, compensation should be assessed having regard to the complainant's reaction (including injury to feelings, distress and humiliation) and not to the perceived reaction of the majority of the community or of a reasonable person in similar circumstances, and in an appropriate case aggravated damages may be awarded.*

A pre-existing psychological condition, in other words, should not prevent a claim for compensation where the conduct in issue is found to aggravate that condition.

However, the evidence before the Tribunal did not include any medical evidence such as a report from a medical practitioner to support the Applicant's claim for the psychological harm or aggravation of the psychological condition he said he suffered as a result of the Respondent's conduct. The Respondent submitted that the Tribunal should not be satisfied that the Applicant suffered from any such condition or aggravation of a pre-existing condition from the Applicant's assertions alone. The Respondent's submissions have some force.[63]

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[63] Ibid [60] – [65]

This is clear authority that the fact that the Plaintiff conceded that she had suffered depression in the past[64], is not a bar to a claim for compensation where the conduct in issue if found to aggravate that condition. The evidence before the Court in relation to the impact of the Defendants' unlawful vilification on the Plaintiff comes most potently from her Counsellor Raewyn Juteram who stated:

a. "*..she is currently dealing with a person in the community who was harassing her on social media and starting a campaign against her due to her transgender identity*"

b. "*..I was not concerned regarding her wellbeing until more recently when Stephanie disclosed that she had been very close to withdrawing from the course despite being almost finished. When I queried this, Stephanie said that she did not know what she was going to use her diploma of Nursing for, and that she no longer wanted to work at the hospital at Taree....She said that she believed that she would experience a lot of discrimination from patients due to being "trans", and that she did not think she would be able to cope with this*"

c. The harassment had caused Stephanie "*to have a heighted awareness of the hatred of trans people*" and

d. Admitted that there "*were places she does not go because she is worried about other's reactions to her*".

31. I also reject the submission by Mr Kutasi that the Plaintiff's hurt feelings were as a result of the conduct of third parties and was outside the control of the Defendants and the actions of the third parties are too remote for the following reasons:

a. The Defendants by way of their respective social media accounts (Facebook and X (formerly known as twitter) accounts) and websites

[64] Supra note 2 at [7]

upon which third parties commented were in the control of the Defendants.

b. He provides no authority for the proposition that the Defendants should not be liable for the hurt caused to the Plaintiff by the action of third parties roused to action by the unlawful acts of the Defendants. To the contrary, the fact that the Act provides a remedy by way of apology or correction notice pursuant to section 108(7) in my view contemplates this very issue; and

c. Finally, the unlawful vilification of the Plaintiff occurred online. As set out in [80] of my decision dated 26 August 2025, the Defendants posts were commented on sometimes hundreds of times and some were shared and viewed thousands of times.

32. Finally, I do not accept the Defendants' submission that the Plaintiff bears the responsibility for her own trauma, and it was open to her to "look away" by simply "putting her phone down or blocking the social media profiles of the Defendants"[65]. The evidence of the Plaintiff was that it was impossible for her to look away, for her own safety. This evidence was never challenged by the Defendants.

33. French J in *Hall & Others -v- A & A Sheiban Pty Limited and others*[66] determined that the rules of tort would be of no avail if they conflicted with the Act[67]. He stated:

> *The damage which may be so compensated extends by force of s 81(4) to "injury to the complainant's feelings or humiliation suffered by the complainant". Its measure is to be found, not in the law of tort, but in the words of the statute which require no more to attract the exercise of the Commission's discretion than that the loss or damage be "by reason of" the conduct complained of. That is not to say that every adverse consequence, however remote, is to be compensated. For in this context, as in the wider reaches of the law, "causation is to be understood as the man in the street, and not as either the scientist or metaphysician would understand it": Yorkshire Dale Steamship Co Ltd v Minister of War Transport [1942] AC 691 at 706 (Lord Wright). And within the cause-effect framework created by the words of the statute, the selection of effects which give rise to liability may be*

[65] Supra note 18 at [20]
[66] *(1989) 84 ALR 503*
[67] Ibid at 570

influenced by policy and not merely by logic. In this regard the reasoning of Gummow J in relation to s 82 of the Trade Practices Act 1974 (Cth) is of assistance: Elna Australia Pty Ltd v International Computers (Australia) Pty Ltd (1987) 75 ALR 271 at 279 see also Munchies Management Pty Ltd v Belperio (1988) 84 ALR 700 and Pavich v Bobra Nominees Pty Ltd (Federal Court of Australia, French J, 4 August 1988, unreported) .

There are decisions on anti-discrimination legislation which treat its contravention as a species of tort and approach the measure of damages accordingly: Allders International Pty Ltd v Anstee (1986) 5 NSWLR 47 at 65 (Lee J); Australian Postal Commission v Dao (1985) 3 NSWLR 565 at 604 (McHugh JA). Whether that classification is strictly correct or not, the measure of damages is to be governed by the statute and the rules applicable in tort can be of no avail if they conflict with it. It may be that while there are events for which the conduct complained of is a sine qua non, they would not be recognised in any practical sense as arising "by reason of" it. Exclusion principles analogous to concepts of remoteness, and failure to mitigate may then be seen to operate. In the end however, these are to be subsumed in a practical judgment of cause and effect. In the case of sex discrimination and sexual harassment the identification of compensable loss and damage suffered is not to be assessed by reference to the reasonableness of the victim's response to the conduct in question. And in this regard, in my respectful opinion, the President erred in judging Hall's reaction to Sheiban's behaviour by reference to "common sense and reasonable community standards and expectation". The question to be addressed so far as injury to feelings and humiliation is concerned is the factual one — what was the effect on the complainant of the conduct complained of? There is no general principle of "reasonableness" by which the existence of loss or damage is to be judged.

34. This approach to damages was endorsed by Besanko and Perram JJ in *Richardson -v- Oracle Corporation Australia Pty Limited*[68].

35. I am satisfied on the balance of probabilities on the evidence available to the Court that the Social Media Posts and the January Article caused the Plaintiff hurt feelings, embarrassment and humiliation, to fear for her safety as a transgender woman and caused her to be somewhat depressed.

36. I am also satisfied that the unlawful acts of the First and Second Defendants:

    a. were numerous, involved 27 separate social media posts, and that they occurred over a sustained period namely just over 2 months; and

    b. the impact of the Social Media Posts had profound impact on the Plaintiff in terms of her safety and mental health.

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[68] *(2014) 223 FCR 334*

37. I have examined a number of awards of damages made under the Act over recent years and note the following:

a. In *Burns -v- Sunol*[69], the applicant was awarded $3000 for homosexual vilification in respect of posts the respondent made on the internet. These posts were about homosexuals generally but did not refer to the applicant specifically unlike the circumstances of this case.

b. In *Carter -v- Brown*[70] the applicant was awarded damages of $20,000 relating to three acts of vilification by one respondent, when the respondent made threatening statements to the applicant outside or near the applicant's home. I am satisfied that the acts of unlawful vilification in this matter which do not involve threatening statements were distributed to a much larger audience as a result of social media and thereby more objectively serious.

c. In *Trad -v- Jones (No 3)*[71], the tribunal found that a number of statements made on air by the prominent radio broadcaster, Alan Jones, about the 2005 Cronulla riots vilified Lebanese Muslims. The Applicant was not named by Mr Jones but he was awarded damages of $10,000 for the "hurt, humiliation and distress" he had suffered on account of the broadcast. On appeal the Appeal Panel held that the award was of "a modest sum" and was "not beyond the bounds of permissible exercise of a discretionary judgment"[72]. The facts before the Court in this case involve the direct vilification and identification of the Plaintiff and therefore is once again in my view more serious.

d. In *Margan -v- Taufaaov*[73] an award of $10,000 was made, in relation to one act of vilification at Arq nightclub at Oxford Street during which the respondent said to the applicant "fuck you faggot" and "I'm going to kill

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[69] [2012] NSWADT 246
[70] *[2010] NSWADT 109*
[71] *[2009] NSWADT 318*
[72] *Jones and harbour Radio Pty Limited -v- Trad (EOD) [2011] NSWADTAP 19 at [96]*
[73] *[2017] NSWCATAD 216*

you faggot" and "assaulted the applicant's friend"[74]. Like in *Carter -v Brown*[75], I am of the view that as a result of the wider audience the unlawful vilification of the Plaintiff in these proceeding is significantly more serious; and

e. *In Yelda*[76] *where the Plaintiff was awarded $70,000 for hurt feeling and psychological injury for sexual harassment. In this case the plaintiff's face was included on a poster which included a subheading that evinced sexual overtones and the poster was placed around the Plaintiff's workplace.*

38. I am satisfied that the unlawful vilification by the Defendant was more serious than the circumstances in *Burns-v- Sunol*[77], *Carter-v-Brown*[78], *Trad-v- Jones*[79] and *Margan-v-Taufaaov*[80], and accordingly I award the Plaintiff the sum of $40,000 in general damages.

Claim for Aggravated Damages

39. Mr Gregory submitted that the conduct of the Defendants between the date of contravention and trial was such as to increase the hurt suffered by a complainant which justifies an award for aggravated damages. He contended that "the conduct need not be malicious but must be unjustifiable, improper or lacking in bona fides"[81]. He relied on the following conduct of the Plaintiff to support the Plaintiff's claim for aggravated damages:

a. The Defendants continued to post images of the Plaintiff.

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[74] Ibid at [101] to [102]
[75] *[2010] NSWADT 109*
[76] *[2021] NSWCATAD 107*
[77] Supra note 41
[78] Supra note 70
[79] Supra note 71
[80] Supra note 72
[81] Supra note 1 at [41]

b. The First Defendant considers all transgender women to be liars about being women and therefore that they may well be lying about other things; and

c. The First Defendant continued to refer to the Plaintiff as a male or a man or a male soccer player including in Court while the Plaintiff was listening and despite Counsel for the Plaintiff asking the First Defendant to refer to the Plaintiff by her preferred pro nouns

40. Mr Kutasi simply asserted that the Plaintiff's claim for aggravated damages must fail for want of particulars.

41. Bromwich J, in *Tickle -v- Giggle for Girls Pty Ltd (No 2)*[82] considered claims for aggravated damages in discrimination cases and held as follows:

> *The first observation is that aggravated damages are not an unbounded path to seeking compensation for all harmful conduct by the respondents that falls outside the proceeding that has been brought, even if peripherally related to them. There must be some kind of nexus between the unlawful discrimination and the further hurt arising from that discrimination for which the aggravated damages further compensates. That nexus will be clearest where the further hurt arises from the way in which the unlawful discrimination occurred.*
>
> *The nexus may arise because the actions of the respondent at trial, or perhaps in relation to the conduct of proceedings (see Taylor, especially at [538]–[539]), cause further harm to the applicant. In Taylor, which involved sexual harassment and victimisation claims brought under the SDA, aggravated damages were awarded on the basis of improper, unjustifiable and non-bona fide accusations by the respondent against the complainant in the course of the trial and in letters from the respondent's solicitors to the complainant's solicitors: at [525], [538]–[539]; see also the Full Court's upholding of aggravated damages in similar circumstances in Hughes v Hill at [57] –[64]. Those accusations bear a clear link to the nature of the unlawful discrimination found.*
> *[249]*
> *The second observation is that it remains unclear how s 46PO(3), which requires unlawful discrimination alleged in applications to this Court to be the same as, or in substance the same as, those contained in the applicant's original complaint to the AHRC, affects the award of damages founded on conduct that occurred subsequently to the filing of the AHRC complaint. As noted above, the Court's power to award compensatory damages is statutory, created by s 46PO(4)(d) which allows an award of damages to be made only where the Court has found unlawful discrimination, as limited by s 46PO(3). None of the authorities in which aggravated damages have been awarded have addressed that question. Neither party provided submissions related to that question.*
> *[250]*
> *I draw from the authorities a number of minimum threshold requirements before the present claim for aggravated damages could be entertained. There would need to be:*
> - *(a)a compelling evidentiary basis for attributing the conduct said to give rise to the claim for aggravated damages to either or both respondents;*

[82] *[2024] FCA 960; Bc202411734 at [247] – [250]*

- *(b)a clear nexus between that conduct and this proceeding, which in turn must be tethered to the complaint to the AHRC which gives rise to this Court's jurisdiction; and*
- *(c)clear evidence of separate or additional harm caused by that conduct.*

42. In the circumstances of this case, I am not satisfied that any of the minimum threshold requirements as set out by Bromwich J have been met, therefore the claim for aggravated damages fails.

Enjoinder of the First and Second Defendants

43. The Plaintiff also seeks an order enjoining the First and Second Defendant from "continuing or repeating any future public act identifying the Plaintiff"[83].

44. Mr Kutasi submitted that an order enjoining the Defendants should not be made for the following reasons:

a. Firstly, that the Plaintiff is seeking an injunction, which power is not available to the Local Court.

b. Secondly, the Defendants engage in public advocacy against transgender participation in women's sport and an order enjoining the Defendants would be a "complete stultification of their legitimate political advocacy"[84].

c. Thirdly, the purpose of the order needs to be clear and is not to create burdens of a general nature. The First Defendant is already bound by an APVO which prevents any identification of the Plaintiff and therefore any "remedy sought to be achieved by enjoining the First and Second Defendants would be practically negated by the APVO; and

[83] Statement of Claim at [39(b)]
[84] Supra note 18 at [49(a)]

d. Finally, there has been "no repetition of the conduct impugned in these proceedings by the Defendants and their advocacy has moved on"[85].

45. These proceedings were initially brought by the Plaintiff in the NSW Civil and Administrative Tribunal ("**NCAT**") and were subsequently removed from NCAT because of the Defendant's raising a Constitutional issue. Accordingly, pursuant to section 34 C of the *Civil and Administrative Tribunal Act 2013 (NSW)* the Local Court has, and can exercise, all of the jurisdiction and function in relation to the substituted proceedings that the Tribunal would have had if it had been able to exercise its Federal jurisdiction. As a result of finding the Plaintiff's claim substantiated in part the Local Court may make any one or more of the orders as set out in s108(2) of the Act which includes an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by the Act[86].

46. The Defendants are entitled to continue to advocate around the ability of transgender women participating in women's sport. They can continue to do so without unlawfully vilifying the Plaintiff. I am satisfied that the First Defendant showed no real intention to cease using the Plaintiff's image and stated in evidence inter-alia that depending on the circumstances she might post photos of the Plaintiff online again[87].

47. Accordingly, I am satisfied that an order enjoining the First and Second Defendants from conduct which might continue or repeat any conduct which I have found has vilified the Plaintiff is appropriate in the circumstances. The order includes posting anything online or in correspondence that identifies the Plaintiff (by way of photograph or otherwise),

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[85] Ibid at [50]
[86] Section 108(2)(b).
[87] Transcript 7/02/25 at 38.45

Apology or Public Notice

48. The Plaintiff seeks an apology or in the alternative a corrective notice from the Defendants pursuant to section 108(2)(d) of the Act.

49. The Defendants oppose such an order stating inter-alia that:

a. Firstly, that the First Defendant does not evidence any remorse for her actions as such there is no basis for the Court to conclude that either of the Defendants should be compelled to issue an apology that would not be genuinely held.

b. Secondly, there is little basis to conclude that an apology or publication order would be of assistance; and

c. Thirdly, in circumstances where the Plaintiff alleges that they fear the public attention, such orders will bring fresh attention to the Plaintiff.

50. It was held in Bromberg J in *Eatock -v- Bolt*[88]

> *There is force in the contention of HWT that an apology should not be compelled by an order of the court because that compels a person to articulate a sentiment that is not genuinely held. An apology is one means of achieving the public vindication of those that have been injured by a contravention of s 18C. The power granted to the court to require a respondent to redress any loss or damage is a wide power. There are other means by which public vindication may be achieved.*
> *Public vindication is important. It will go some way to redressing the hurt felt by those injured. It will serve to restore the esteem and social standing which has been lost as a consequence of the contravention. It will serve to inform those influenced by the contravening conduct of the wrongdoing involved. It may help to negate the dissemination of racial prejudice.*
> *Whilst I will not order HWT to apologise, in the absence of an appropriate apology, I am minded to make an order which fulfils the purposes which I have identified.*[89]

51. Bromberg J elucidated further in *Eatock-v- Bolt (No 2)*[90] stating:

> *In her claim for relief, Ms Eatock sought an apology from HWT. As I said in my earlier reasons for judgment at [465], I am not persuaded that I should compel HWT to articulate a sentiment that is not genuinely held. I noted, however, that an apology is but one means of*

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[88] *[2011] FCA 1103*
[89] Ibid at [465] – [467]
[90] *[2011] FCA 1180*

addressing the public vindication sought by those who have been injured by the contravention of s 18C.

I indicated in my earlier reasons for judgment that I held the preliminary view that an order should be made by the court requiring HWT to publish what I called a corrective notice. I identified at [466] four purposes which such an order would serve to facilitate. Those purposes are:
•redressing the hurt felt by those injured;
•restoring the esteem and social standing which has been lost as a consequence of the contravention;
•informing those influenced by the contravening conduct of the wrongdoing involved; and
•helping to negate the dissemination of racial prejudice.[91]

52. It is clear from the evidence of the First Defendant that she has no remorse with respect to the Social Media Posts and January Article and maintains the view that the communications were necessary to promote her advocacy with respect to opposing transgender women playing on women's sport teams. Accordingly, I am satisfied I should not order the Defendants to "articulate a sentiment that is not genuinely held". However, applying the reasoning of Bromberg J in *Eatock -v- Bolt (No 2)*[92] I am of the view that publication of a notice would:

a. Redress the hurt felt by the Plaintiff.

b. Inform those influenced by the unlawful vilification of the wrongdoing; and

c. Help negate the dissemination of transgender vilification

53. Accordingly, I make an order for a correction notice to be displayed in terms of Annexure A ("**the Notice**").

Order for damages in default of compliance

54. Finally, the Plaintiff seeks pursuant to section 108(7) of the Act that in the event the Defendants default in compliance with any of the orders made, within 2 months from the date the orders are made the First and Second

[91] Ibid at [14]-[15]
[92] Ibid

Defendants pay the Plaintiff damages not exceeding $100,000 by way of compensation for failure to comply with the order or orders.

55. The Defendant's unsurprisingly oppose the making of such an order and argue that is wholly disproportionate and would subject the Defendants "in essence, to an automatic double recover in the event of default". They further submit that:

a. A failure to comply with any court orders would constitute a contempt of Court; and

b. The provision states that such an order for damages is not to punish the non-compliance, nor to reprimand the Defendants but rather to provide the plaintiff with "compensation for failure to comply with the order" therefore, the Plaintiff bears the onus in establishing why the quantum sought to be imposed pursuant to section 108(7) is compensatory in nature. In this case the order and the sum sought is entirely punitive and therefore the Court should not exercise its discretion.

56. In referring to a number of authorities[93] it was noted by SM Andelman in *Grass-v- McIntosh*[94] *that an order pursuant section 108(7) of the Act was "mostly been evoked by Tribunals contemporaneously with the making of order(s) under subsection (2)(b), (c), (d) or (e)"*[95]

57. Moreover, *Malenha -v- Sullivan*[96] is precedent for the sum ordered for default mirrored the sum awarded for damages, the Defendants have provided no evidence to otherwise order.

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[93] See *Burns v Sunol [2014] NSWCATAD 2 ; Burns v Sunol (No 2) [2014] NSWCATAD 44 (Tribunal determining non-compliance); Lamb v Campbell [2021] NSWCATAD 103 and Malenha v Sullivan [2017] NSWCATAD 222 ; Cohen v Harguos; Karelicki v Harguos (No 2) [2006] NSWADT 275*
[94] *[2024] NSWCATAD 224*
[95] Ibid at [28]
[96] *[2017] NSWCATAD 222*

58. Accordingly, I am satisfied that an order pursuant to section 108(7) against the First and Second Defendant is appropriate in the circumstances.

DECISION AND ORDERS

For the reasons set out in this decision I make the following orders:

1. The First and Second Defendants pay the Plaintiff the sum of $55,000 by way of compensation within 28 days;

2. Within 28 days the First and Second Defendants are to remove the following material from any website or social media account they control:

    a) Any post containing a link to the January Article; and

    b) Any post containing a photo of the Plaintiff.

3. Forthwith, the First and Second Defendants are to refrain from publishing on social media or otherwise:

    a) anything that identifies the Plaintiff or her football team; and/or

    b) the January Article.

4. Within 28 days the First and Second Defendants are to publish a public statement in the terms of Annexure A, on all social media pages and websites over which they have control, including Facebook, Instagram and X (formerly known as twitter and websites of Binary Australia and ensuring that:

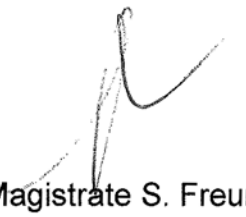
    a) On any Facebook page the notice is designated as a feature post;

    b) On any Instagram or Twitter page the post is pinned to the top of the Defendants' profiles; and

c) On any website the notice is published prominently on the front page of the website.

5. In the event that the First and Second Defendants do not comply with orders (1) – (4) above, the Defendants are to pay the Plaintiff $55,000 by way of non-compliance.

6. I order the First and Second Defendants pay the Plaintiff the ordinary costs of the proceedings.



Deputy Chief Magistrate S. Freund

5 December 2025

Annexure A

PUBLISHED BY ORDER OF THE LOCAL COURT OF NSW

Following proceedings by Stephanie Blanch, the Local Court of NSW has declared that Kirralie Smith and Binary Australia contravened section 38S of the *Anti-Discrimination Act 1977(NSW)* by making and publishing various social media posts between 19 January 2023 and 27 March 2023 and a newsletter dated 19 January 2023 that incited hatred towards, serious contempt for, or severe ridicule of Stephie Blanch on the ground that she is a transgender person.

Public acts that incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground that the person or group are transgender are unlawful under the *Anti-Discrimination Act 1977 (NSW).*

The Local Court of NSW has ordered Kiralie Smith and Binary Australia to pay damages and to remove the offending posts and to not repeat or continue the offending behavior.