Local Court
New South Wales

Case Name:	Riley Dennis -v – Kirralie Smith
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:	2024/220187

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 the Defendant unlawfully vilified the Plaintiff with respect to the Social Media Posts dated between 29 March 2023 and 31 March 2023 which:

      i. Referred to the Plaintiff as a male or a man; and

      ii. Posted a link or a screenshot to the leaderboard that referred to the Plaintiff by name and/or her football club.

   ("**the Defendant's Social Media Posts**")

   b. Sections 38R and 38S of the *Anti-Discrimination Act 1977 (NSW)* are not 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 quantum dated 21 October 2025.

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

6. The Plaintiff pursuant to paragraph 39 of the Statement of Claim filed 18 September 2025 claimed:

   a. Damages.

   b. An order enjoining the Defendant from continuing or repeating any future public acts identifying the Plaintiff.

   c. An order that the Defendant 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; and

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

7. 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.

8. In essence the Plaintiff alleged that the Defendant's Social Media Posts caused:

a. Stress and anxiety[1];

b. Worry and concern for her safety and that of her family[2];

c. Damage to her self-esteem and self-worth[3];

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[1] Exhibit 1, Affidavit of Riley Denis affirmed 14 October 2024 at [17], [30]-[32], [39]-[42] and [45]-[46]
[2] Ibid at [17], [30]-[32], [40]-[42] and [46]
[3] Ibid at [40]-[41] and [43]

d. Damage to her reputation within the football community[4]; and

e. Loss of enjoyment in playing football[5].

9. The evidence of the Plaintiff, in this regard was:

a. The Plaintiff became concerned about her personal safety and that of her family as the Social Media Posts identified her by sharing an image of the leaderboard of the competition in which she participated, that imaged identified the Plaintiff by name and also the club where she played[6];

b. She constantly refreshed the Defendant's social media pages to see what the Defendant was posting about her[7];

c. At one point the Plaintiff could not concentrate on anything other than what the Defendant was posting online[8];

d. Between 31 March 2023 and 6 April 2023, the Plaintiff took a week of stress leave from her job as a result of the Defendant's Social Media Posts[9];

e. The Plaintiff feared that the attention the Defendant's Social Media Posts were gaining online, coupled with the Defendant's encouragement of people to identify the Plaintiff would lead to the publication of the location of the Plaintiff's games or where she lived[10]. Moreover, this concern became a reality when the Defendant's followers started tweeting out

[4] Ibid at [34], [47] and [50]-[51]
[5] Ibid at [30], [34], [46] and [51]
[6] Ibid at [17]
[7] Ibid at [17]
[8] Ibid
[9] Ibid
[10] Ibid at [23]

the locations of the Plaintiff's games[11]. The Plaintiff worried that someone may physically attack her[12] ;

f. The Plaintiff made a compliant to NSW police which led to an Apprehended Personal Violence Order ("**APVO**") being taken out by police against the Defendant[13]. The APVO was subsequently withdrawn[14];

g. Prior to April 2023 (when the Defendant's Social Media Posts, gained attention) there were very few spectators at the football games, it was usually only partners, families or friends of players. After the Defendant's Social Media Posts gained traction:

   i. Football NSW and Football Australia arranged for security at the Plaintiff's games due to the risk of harassment[15];

   ii. When security was present at a game they checked everyone entering the grounds both players and spectators and were often stationed around the field[16];

   iii. NSW police were on standby to attend the game[17];

   iv. On one occasion she observed NSW Police patrolling the sidelines of the game[18]

   v. On one occasion while training, a person unknown to the Plaintiff drove around the soccer field when the Plaintiff was training and shouted the words "fucking homo" at her from the window of their car. This scared the plaintiff. The plaintiff was

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[11] Ibid at [37]-[38]
[12] Ibid at [35]
[13] Ibid at [24]-[25]
[14] Ibid at [28]
[15] Ibid at [32]
[16] Ibid at [34]
[17] Ibid
[18] Ibid

worried that the person was waiting for her to finish training and would follow her home[19];

vi. The Plaintiff was told that on two separate occasions security:

1. Refused entry to a spectator; and

2. Removed spectators mid game.[20]

h. The Plaintiff was also worried that some someone might physically attack her[21];

i. As a result of the security arrangements put in place:

i. the Plaintiff felt obliged to come out as a transgender to her team[22]; and

ii. resulted in the games becoming very tense as opposed to fun and energetic[23];

j. The Defendants Social Media Posts were on the Plaintiff's mind constantly for 12 or so months[24], and the Plaintiff found it very difficult to relax and enjoy her free time[25];

k. The Plaintiff now fears interacting with her local community as she does not want people to recognise her from the Plaintiff's Social Media Posts and other negative media attention that came from those posts[26];

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[19] Ibid at [31]
[20] Ibid at [35]
[21] Ibid
[22] Ibid at [33]
[23] Ibid at [34]
[24] Ibid at [39]
[25] Ibid
[26] Ibid [40]

l. The Plaintiff is a lot more reserved and isolated from her community than she was prior to the Social Media Posts[27].

m. She suffered from stress and anxiety as a result of the Social Media Posts particularly the post that identified her[28]. She has become fearful of further retaliation.[29] As a result, she has required additional emotional and psychological support from her friends and family and has become conscious of the impact her needs were having on her personal relationships[30]. Moreover, she has observed that her partner became withdrawn from daily activities as a result of the public reporting of the Defendant's Social Media Posts and as the Plaintif's participation in women's football attracted more attention[31].

n. The Social Media Posts have severely hurt the Plaintiff's self-esteem and self-worth[32];

o. The Plaintiff also gave evidence that the Defendant's Social Media Posts have harmed the Plaintiff's participation in women's football an activity from which she previously derived a great deal of enjoyment, in that:

    i. She is of the view that the conduct of the defendant has irreparably harmed her enjoyment in playing.

    ii. The Defendant's conduct (namely, the Social Media Posts) have caused damage to her reputation as a result of the false allegation that the Plaintiff has hospitalised a fellow footballer; and

    iii. The Defendant's misgendering of the Plaintiff has been used to suggest that the Plaintiff was obtaining an unfair advantage in the game and was dangerous towards women players and as a result

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[27] Ibid
[28] Ibid at [42]-[44]
[29] Ibid at [42]
[30] Ibid at [43]
[31] Ibid
[32] Ibid

that the Plaintiff obtained a reputation within Football NSW of being a dangerous player. The Plaintiff believes she is a very safe and cautious player and has had very few fouls called against her[33];

iv. The Defendant's Social Media Posts also impacted on the Plaintiff's ability to play in League One after the season during which the Defendant posted the Social Media Posts[34].

v. The plaintiff reached out to many representative football teams to request a trial but was unsuccessful at making representative team for the 2024 season[35].

vi. The Plaintiff feels that her reputation was impacted to the point where other teams do not want her to play for them or do not want to risk the media and online attention they may attract if they let her join the team[36].

Damages

10. The Plaintiff makes a claim for damages.

11. 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 Defendant's conduct.

12. Mr Kutasi, solicitor for the Defendant submitted that, while the Court found the Defendant's conduct unlawfully vilified the Plaintiff the Court should not be satisfied that any damages follow[37], there is no basis for the conclusion that it would be proportionate to award $100,000 in circumstances where it is the maximum award available and for the worst cases of vilification and this is not

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[33] Ibid at [50]
[34] Ibid at [51]
[35] Ibid
[36] Ibid
[37] Defendant's submissions on quantum dated 21 October 2025 at [9]

such a case and there is no evidence to suggest that it is "considered even close to being so"[38].

13. 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*"[39]; and

c. That the evidence of the Plaintiff:

i. Does not establish loss and is at best vague[40]

ii. Fails to marshal evidence on quantification[41]; and

iii. Does not establish causation[42].

14. In support of his submissions inter- alia that the Plaintiff's evidence is at best vague[43] and had failed to "marshal evidence on quantification"[44] Mr Kutasi

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[38] Ibid at [34]
[39] Ibid at [7]
[40] Ibid at [10]
[41] Ibid at [15]
[42] Ibid [22]-[30]
[43] Ibid at [10]
[44] Ibid at [15]

argued that there was no corroborative or expert evidence to support the Plaintiff's assertion that Defendant's Social Media Posts:

a. Had a "long term impact on the Plaintiff's life"[45];

b. Were the reason why the Plaintiff took a week of stress leave from work between the period 31 March 2023 and 6 April 2023.

c. Caused the Plaintiff to have a 12-month long state of concern and anxiety[46]

d. "Irreparably harm her enjoyment of playing women's soccer"[47]; and

e. To her reputation as a soccer/ football player[48].

15. Mr Kutasi argued that in the absence of expert of evidence the Court should be "*reluctant to attribute any mental anguish solely to the Defendant*" and "*it follows that the mental harm alleged to have been caused by the Defendant, be they depression, anxiety or any other diagnosable state ought to have been supported by expert opinion which competently evidence the Defendant's conduct to have been the cause*"[49]

16. Moreover, the Defendants also submitted that:

a. The Defendant cannot control the actions of third parties, the loss (if any) caused by the conduct of others cannot be attributed to the Defendant[50];

b. The fears and concerns of the Plaintiff as to:

i. Safety; and

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[45] Ibid at [11(a)]
[46] Ibid at [11(d)]
[47] Ibid at [19(e)]
[48] Ibid at [11(f)]
[49] Ibid at [25]
[50] Ibid at [11(b)]

ii. Being harassed at training and football games

Was "entirely hypothetical" and "did not eventuate"[51] and the one particular instance she gives details of, was wholly uncorroborated.

17. The Plaintiff was cross-examined by Mr Maghami, counsel for the Defendant. It is significant to note that the Plaintiff was not challenged by Mr Maghami with respect to the following evidence that:

a. She feared for her personal safety and that of her family.

b. The Defendant's Social Media Posts caused her stress and anxiety.

c. The week she took off work was as a result of stress attributable to the Defendant's Social Media Posts.

d. Her self-esteem and self-worth were severely affected by the Defendant's Social Media Posts; and

e. That she had become more reserved and isolated from her community.

18. Moreover, the Plaintiff never asserted that she suffered from a diagnosable mental health concern, which could or can be corroborated by expert evidence. She simply gave evidence of the effect of the Social Media Posts on her and what her experience was.

19. Finally, in my view the Plaintiff's evidence that she felt that she was in potential danger of a personal attack as a result of the Defendant's Social Media Posts was corroborated by the fact that she reported her fears to police, who took out an Apprehended Personal Violence Order on her behalf.

20. It was held by SM Mulvey in *Southey -v- Australian Press Council*[52] that:

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[51] Ibid at [11(c)]
[52] *[2023] NSWCATAD 145*

"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"[53]

21. The award of damages should recognise 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- Sydney Water Corporation; Yelda -v- Vitality Works Australia Pty Limited*[54] *("**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'

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[53] Ibid at [66]
[54] *[2021] NSWCATAD 107*

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.[55]

22. 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)*[56] However, the authorities provide little specific guidance on the approach to be adopted in cases where 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*[57] ;

23. The Tribunal in *Burns -v-Sunol*[58] 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

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[55] Ibid at [262]-[266]
[56] *[2004] NSWADTAP 22* at [23–27], [48]).
[57] *[2012] NSWADT 246*
[58] Ibid

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.
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.[59]

24. Mr Gregory, Counsel for the Plaintiff also referred me to the more recent decisions of *Margan -v- Taufaaov*[60] and *Yelda*[61] and submitted inter-alia[62]:

a. In *Margan -v- Taufaaov*[63] *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"*[64]*; and*

b. *In Yelda*[65] *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.*

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[59] Ibid at [114] to [120]
[60] *[2017] NSWCATAD 216*
[61] *[2021] NSWCATAD 107*
[62] Plaintiff's submissions on damages dated 12 September 2025 at [38] and [39]
[63] *[2017] NSWCATAD 216*
[64] Ibid at [101] to [102]
[65] *[2021] NSWCATAD 107*

25. Mr Kutasi argues that the decision of *Yelda*[66] *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"*[67]

26. I have considered *Yelda*[68] 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[69];

b. Accepted Ms Yelda's evidence of injury to hurt feeling and humiliation or embarrassment as set out in her witness statement[70];

c. That the Tribunal was not satisfied that the stress caused by the unlawful treatment of the Respondents could and indeed did exacerbate the applicant's pre-existing conditions[71] 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"[72].

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[66] *[2021] NSWCATAD 107*
[67] Supra note [37] at [18]
[68] Supra note 66
[69] Ibid at [308]
[70] Ibid at [309]
[71] Ibid at [305]
[72] Ibid at [307]

27. In comparing the circumstances/facts in *Yelda*[73] with those in these proceedings I note as follows:

a. In *Yelda*, the complainant was identified by her picture and a salacious tag line, she was not identified by name; unlike the unlawful vilification in this matter where the Plaintiff was identified by name along with football club where she played;

b. The offending posts were only posted by the Defendant over a short duration, namely 3 days. However, remained able to view by others over an indefinite period, similar to *Yelda*. There is no evidence before the Court that the Defendant's Social Media Posts have been removed to date;

c. The Tribunal in *Yelda* accepted the complainant's evidence of hurt feelings based solely on her own evidence; and

d. Finally, in my view the audience or people who could view the posters in Yelda was limited to the complainant's work colleagues (who may or may not have known her) where the audience in these proceedings was vast as the posts were on the internet and reached an unknown and unlimited audience. I note there is evidence before the court that the Defendant's Social Media Posts were viewed in some cases over 8,000 times[74].

28. The Defendant also argued that the Plaintiff cannot establish causation, namely that their conduct, namely 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"[75].

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[73] Supra note 66
[74] Exhibit 1, Annexure RD-7
[75] Supra note 37 at [23]

b. Secondly, the "impugned communications were not made to the Plaintiff, they were made via public expression in publication and for "a political purpose"[76].

c. Thirdly, 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"[77].

d. Finally, even if the Court was satisfied that some damage was caused by the Defendant, the Court cannot be satisfied that the loss was foreseeable to the Defendant as a consequence of the posts.

e. Finally, the Plaintiff's hurt feelings are "repeatedly described by reference to the comments of third parties, and not those of the Defendants"[78]. 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"[79].

29. It is trite law that I must be satisfied that the relevant conduct of the Defendant caused the damage or loss claimed by the Applicant. In the recent decision of *GSY V Western Sydney Local Health District*[80] 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 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;*

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[76] Ibid
[77] Ibid at [24]
[78] Exhibit 1 at [40] Supra note 37
[79] Ibid at [25]
[80] *[2025] NSWCATAD 219; BC202513537*

- *(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.[81]

30. I 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

[81] Ibid [60] – [65]

Defendants and the actions of the third parties are too remote for the following reasons:

a. The Defendant's social media accounts (Facebook and X (formerly known as twitter)) and websites upon which third parties commented were in the control of the Defendant at all times.

b. He provides no authority for the proposition that the Defendant should not be liable for the hurt caused to the Plaintiff by the actions of third parties roused to action by the unlawful acts of the Defendant. 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.

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

31. Further, I also do not accept the Defendant's 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"[82]. The evidence of the Plaintiff was that it was impossible for her to look away, for her own safety[83]. This evidence was never challenged by the Defendant.

32. French J in *Hall & Others -v- A & A Sheiban Pty Limited and others*[84] determined that the rules of tort would be of no avail if they conflicted with the Act[85]. 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

[82] Supra note 37 at [20]
[83] Exhibit 1 at [14] and [42]
[84] *(1989) 84 ALR 503*
[85] Ibid at 570

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 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.

33. This approach to damages was endorsed by Besanko and Perram JJ in *Richardson -v- Oracle Corporation Australia Pty Limited*[86].

34. I am satisfied on the balance of probabilities on the evidence available to the Court that the Defendant's Social Media Posts caused the Plaintiff hurt feelings, embarrassment and humiliation, to fear for her safety as a transgender woman and had a negative effect on her enjoyment of the sport she regularly participated in.

35. I am also satisfied that the unlawful acts of the Defendant:

[86] *(2014) 223 FCR 334*

a. Despite only being posted over a short period of time the Defendant's Social Media Posts remained visible on social media and were shared, reposted and commented on over an extended period of time[87]; and

b. The impact of the Defendant's Social Media Posts had a negative impact on the Plaintiff in terms of her fear for her safety and caused her stress and anxiety.

36. I have examined a number of awards of damages made under the Anti-Discrimination Act 1977 (NSW) over recent years and note the following:

a. In *Burns -v- Sunol*[88], 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*[89] 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 which do not involve threatening statements, were in fact distributed to a much larger audience as a result of social media and thereby more objectively serious.

c. In *Trad -v- Jones (No 3)*[90], 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

[87] Exhibit 1 at [14]
[88] *[2012] NSWADT 246*
[89] *[2010] NSWADT 109*
[90] *[2009] NSWADT 318*

of a discretionary judgment"[91]. The facts before the Court in this case involve the vilification and identification of the Plaintiff (via the posting of her name and identifying the Plaintiff on the leaderboard and the club which she played) and therefore is once again in my view more serious.

d. In *Margan -v- Taufaaov*[92] 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"[93]. Like in *Carter -v Brown*[94], I am of the view that as a result of the wider audience the unlawful vilification of the Plaintiff in these proceedings is significantly more serious; and

e. In *Yelda*[95] 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.

37. I am satisfied that the unlawful vilification of the Defendant was more serious than the circumstances in *Burns-v- Sunol*[96], *Carter-v-Brown*[97], *Trad-v- Jones*[98] and *Margan-v-Taufaaov*[99], and accordingly I award the Plaintiff the sum of $40,000 in general damages.

Claim for Aggravated Damages

38. Mr Gregory submitted that the conduct of the Defendant between the date of contravention and trial was such as to increase the hurt suffered by a

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[91] *Jones and harbour Radio Pty Limited -v- Trad (EOD) [2011] NSWADTAP 19 at [96]*
[92] *[2017] NSWCATAD 216*
[93] Ibid at [101] to [102]
[94] *[2010] NSWADT 109*
[95] *[2021] NSWCATAD 107*
[96] Supra note 57
[97] Supra note 87
[98] Supra note 88
[99] Supra note 89

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"[100]. He relied on the following conduct of the Defendant to support the Plaintiff's claim for aggravated damages:

a. The Defendant continued to use the Plaintiff as a case study.

b. The Defendant admitted in evidence that:

   i. she did not think about the Plaintiff as an individual in doing the Social Media Posts, and did not accept the Plaintiff was hurt by her actions[101]; and

   ii. she considered all transgender women to be lying about being women[102];

c. The Defendant refused to refer to the Plaintiff by the Plaintiff's preferred pronouns.

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

40. Bromwich J, in *Tickle -v- Giggle for Girls Pty Ltd (No 2)*[103] 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*

[100] Supra note 62 at [34]
[101] Supra note 62 at [34(b)]
[102] Ibid at [34(c)]
[103] *[2024] FCA 960; Bc202411734* at [247] – [250]

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;*
- *(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.*

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

Order enjoining the Defendant

42. The Plaintiff seeks an order enjoining the Defendant from "continuing or repeating any future public act identifying the Plaintiff"[104].

43. Mr Kutasi submitted that an order enjoining the Defendant 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[105];

b. Secondly, the Defendant engages in public advocacy against transgender participation in women's sport an order enjoining the

[104] Statement of Claim paragraph 39
[105] Supra note 37 at [52]

Defendants would be a "complete stultification of their legitimate political advocacy"[106]; and

c. Thirdly, the purpose of the order needs to be clear, it is not to create burdens of a general nature. The mere mention of the Plaintiff is "not in itself unlawful"[107];

d. Fourthly, the risk that is sought to be addressed in respect of the Defendant is not a real one, as there is no evidence of either any further conduct nor any intention to continue with posts about the Plaintiff"[108]

e. Finally, the Plaintiff seeks an order to enjoin the Defendant from referring to the Plaintiff as a "male" or "man", as the Defendant's "use of pronouns and gendered language based on biology is, of itself, legitimate. Of itself, referral to the Plaintiff by their biological sex, is not and cannot be an act of vilification"[109]

44. 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[110].

[106] Ibid at [52(a)]
[107] Ibid at [52(b)]
[108] Ibid
[109] Ibid at [52(c)]
[110] Section 108(2)(b).

45. The Defendant is entitled to and can continue to advocate around whether or not transgender women should be allowed to participate in women's sport. However, she can continue to do so without unlawfully vilifying the Plaintiff. There is no evidence before the Court that satisfies me that the Defendant has any intention to stop using the Plaintiff as a case study or example to make her point as "part of her advocacy". I am satisfied that the Defendant showed no real intention to stop using the Plaintiff as a case study or example to make her point as "part of her advocacy".

46. Accordingly, I am satisfied that an order should be made enjoining the Defendant from posting anything online and in correspondence, that identifies the Plaintiff as a transgender woman playing on a women's sports team, which might continue or repeat any conduct which I have found has vilified the Plaintiff.

Apology or Public Notice

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

48. The Defendant opposes such an order stating inter-alia that:

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

49. It was held in Bromberg J in *Eatock -v- Bolt*[111]

> *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.*[112]

50. Bromberg J elucidated further in *Eatock-v- Bolt (No 2)*[113] 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 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.*[114]

51. I am satisfied that the Defendant has no remorse with respect to her Social Media Posts 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)*[115], I am of the view that publication of a notice would:

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[111] [2011] FCA 1103
[112] Ibid at [465] – [467]
[113] *[2011] FCA 1180*
[114] Ibid at [14]-[15]
[115] Ibid

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.

52. 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

53. Finally, the Plaintiff seeks pursuant to section 108(7) of the Act that in the event the Defendant defaults in compliance with any of the orders made, within 2 months from the date the orders are made the Defendant pay the Plaintiff damages not exceeding $100,000 by way of compensation for failure to comply with the order or orders.

54. Mr Kutasi unsurprisingly opposes the making of such an order and argues that it is "badly disproportionate"[116] and would subject the Defendant "in essence, to an automatic double recover in the event of default"[117]. He further submits that:

a. A failure to comply with any court orders would constitute a contempt of Court[118]; 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

[116] Supra note 37 at [55]
[117] Ibid
[118] Ibid at [57]

nature. In this case the order and the sum sought is entirely punitive and therefore the Court should not exercise its discretion[119].

55. In referring to a number of authorities[120] it was noted by SM Andelman in *Grass-v- McIntosh*[121] that an order pursuant section 108(7) of the Act has *"mostly been evoked by Tribunals contemporaneously with the making of order(s) under subsection (2)(b), (c), (d) or (e)"*[122]

56. Moreover, *Malenha -v- Sullivan*[123] is precedent for the sum ordered for default mirrored the sum awarded for damages, the Defendants have provided no evidence to otherwise order.

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

DECISION AND ORDERS

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

1. The Defendant pay the Plaintiff the sum of $40,000 by way of compensation within 28 days.

2. Within 28 days, the Defendant is to remove the Social Media Posts that contain screenshots and links to the leaderboard referencing the Plaintiff from any website or social media account they control and not make any future social media posts that identify the Plaintiff as a transgender person playing on a women's sports team.

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[119] Ibid
[120] 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*
[121] *[2024] NSWCATAD 224*
[122] Ibid at [28]
[123] *[2017] NSWCATAD 222*

3. Within 28 days the Defendant is to publish a public statement in the terms of Annexure A on all social media pages and websites over which she has control, including Facebook, Instagram and X (formerly known as twitter) ensuring that the Notice:

   - Is designated as a feature post on the feature page.
   - Is pinned to the top of any Instagram or Twitter page of the Defendants' profiles; and
   - Is published prominently on the front page of any website the Defendant controls.

4. In the event that the Defendant does not comply with orders (1) – (3) above, the Defendant is to pay the Plaintiff $40,000 by way of non-compliance.

5. Unless otherwise agreed by the parties, I order the Defendants pay the Plaintiff's 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 Riley Dennis, the Local Court of NSW has declared that Kirralie Smith contravened section 38S of the *Anti- Discrimination Act 1977(NSW)* by making and publishing various social media posts between 29 March 2023 and 31 March 2023 that incited hatred towards, serious contempt for, or severe ridicule of Riley Dennis 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 to pay damages and to remove the offending posts and to not repeat or continue the offending behavior.