

**CITATION:** *Rintoul v State of Queensland & Ors* [2016] QCAT 211

**PARTIES:** Jennette Rintoul  
(Applicant)  
v  
State of Queensland  
Doug Quadrio  
Peter Lemon  
(Respondent)

**APPLICATION NUMBER:** ADL047-13

**MATTER TYPE:** Anti-discrimination matters

**HEARING DATE:** 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> November 2015. Written submissions filed 21 January 2016, 2 March 2016 and 15 March 2016

**HEARD AT:** Cairns

**DECISION OF:** **Member Favell**

**DELIVERED ON:** 11 July 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **The application is dismissed.**

**CATCHWORDS:** HUMAN RIGHTS - DISCRIMINATION-DIRECT DISCRIMINATION - INDIRECT DISCRIMINATION - GROUNDS OF DISCRIMINATION - RACIAL DISCRIMINATION - where applicant a relief teacher- where complaints of discrimination on the basis of race or association - where applicant rated as “unsuitable” after suitability assessment interview-whether allegations of racial comment occurred-whether applicant treated less favourably because of her race or association- whether racial questions were asked in a suitability assessment interview - whether decision to rate the applicant as “unsuitable” was because of discrimination on the basis of race

*Anti-Discrimination Act 1991 (Qld) ss 7, s8, s 9, s10, s 11,s15*

*Haines v Leves* [1987] 8 NSWLR 402 at 471  
*Boehringer Ingelheim Pty Ltd v Reddrop*  
 [1984]  
 2 NSWLR 13  
*IW v City of Perth* (1997) 71 ALJR 943 at 975  
*Sharma v Legal Aid Queensland* [2002] FCAFC 196  
*Department of Health v Arumugam* [1998] VR 319.  
*Purvis v New South Wales (Department of*  
*Education and Training)* [2003] 217 CLR 92  
*Forbes v Australia Federal Police (Cth)* [2004]  
 FCAFC 95  
*Tate v Rafin and Others* (2000) FCA 1582  
*Ware v OAMPS Insurance Brokers* [2005]  
 FMCA 664  
*Waters v Public Transport Corporation* (1992)  
 173 CLR 349 at 392.  
*Ebner v Official Trustee in Bankruptcy* [2000]  
 205 CLR 337;  
*Hot Holdings Pty Ltd v Creasy* [2002] 210 CLR  
 438.

## **APPEARANCES:**

**APPLICANT:** Jennette Rintoul

**RESPONDENT:** Mr John Farren of Counsel instructed by Ms N. Smith (Crown Law)

## **REASONS FOR DECISION**

- [1] The applicant complains of seventeen incidences which she believes amount to separate acts of discrimination.<sup>1</sup> She contends that the issues have arisen because Mr Lemon and Mr Quadrio believe her to be Aboriginal or perceived her to be closely associated with Aboriginal people and their culture.
- [2] Ms Rintoul was employed by the Department of Education, Training and Employment at the Atherton State High School (ASHS) as a supply teacher.
- [3] Mr Lemon was employed by the Department of Education, Training and Employment as the Head of Department, English Department at the ASHS.
- [4] Mr Quadrio was employed as Principal Project Officer and was the Chair of a suitability assessment interview panel that interviewed Ms Rintoul.

- [5] The applicant contends that there is conduct which constitutes unlawful discrimination under section 7(g) and or 7(p) of the *Anti-Discrimination Act 1991* (Qld) (the Act). She also contends that there is a presumption she held an attribute of race under section 8(c) of the Act. She contends that the discrimination was both direct<sup>2</sup> and indirect<sup>3</sup> and was “a contravention of the ‘Act’ in the area of work” pursuant to section 15 of the Act.
- [6] The respondents deny that they have unlawfully discriminated against the Applicant as alleged or at all.
- [7] The respondents sought to identify the issues as: whether the multiple events complained of by Ms Rintoul with respect to Mr Lemon’s treatment of her occurred; if the events did occur whether Mr Lemon treated Ms Rintoul less favourably than he would have treated another staff member and the less favourable treatment was because of Ms Rintoul’s race; whether the suitability assessment occurred as alleged in that questions were asked as to whether Ms Rintoul identified as Aboriginal and if it did whether the answers given by Ms Rintoul influenced the outcome of the suitability process.
- [8] Section 7 of the Act relevantly provides:

***Discrimination on the basis of certain attributes prohibited***

*The Act prohibits discrimination on the basis of the following attributes—*

...

(g) *race;*

...

(p) *association with, or relation to, a person identified on the basis of any of the above attributes.*

- [9] Section 8 provides:

***Meaning of discrimination on the basis of an attribute***

*Discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of—*

(a) *a characteristic that a person with any of the attributes generally has; or*

(b) *a characteristic that is often imputed to a person with any of the attributes; or*

(c) *an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or*

(d) *an attribute that a person had, even if the person did not have it at the time of the discrimination.*

*Example of paragraph (c)—*

*If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have.*

- [10] It is important to note in section 8(c) that the attribute that a person is presumed to have must be a presumption by the person discriminating. For that section to apply here there the applicant will need to prove that the respondents or one of them had a presumption that the applicant was of aboriginal descent or associated with, or relation to, a person identified on the basis of aboriginality.
- [11] The Act prohibits direct discrimination and indirect discrimination.<sup>4</sup>
- [12] Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.<sup>5</sup>

*Example—*

*R refuses to rent a flat to C because—*

- *C is English and R doesn't like English people*
- *C's friend, B, is English and R doesn't like English people*
- *R believes that English people are unreliable tenants.*

*In each case, R discriminates against C, whether or not R's belief about C's or B's nationality, or the characteristics of people of that nationality, is correct.*

- [13] It is not necessary that the person who discriminates considers the treatment is less favourable.<sup>6</sup>
- [14] The person's motive for discriminating is irrelevant.<sup>7</sup>
- [15] Whilst it is not necessary that the person who discriminates considers the treatment is less favourable and a persons motive for discrimination is irrelevant, motive may nevertheless be relevant to determining whether or not an act is done "on the basis of" a person's attribute.<sup>8</sup>
- [16] If there are two or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment.<sup>9</sup>

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<sup>8</sup> *Forbes v Australia Federal Police (Cth)* [2004] FCAFC 95 at [69] per Black CJ, *Teamberlin and Sackville JJ* and *Ware v OAMPS Insurance Brokers* [2005] FMCA 664

- [17] Direct discrimination involves differential treatment.<sup>10</sup>
- [18] Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term—
- (a) with which a person with an attribute does not or is not able to comply; and
  - (b) with which a higher proportion of people without the attribute comply or are able to comply; and
  - (c) that is not reasonable.
- [19] Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example—
- (a) the consequences of failure to comply with the term; and
  - (b) the cost of alternative terms; and
  - (c) the financial circumstances of the person who imposes, or proposes to impose, the term.
- [20] In *Waters v Public Transport Corporation*<sup>11</sup> Dawson and Toohey JJ expressed a statement of principle as:
- A distinction is often drawn between two forms of discrimination, namely “direct” or “disparate treatment” discrimination and “indirect” or “adverse impact” discrimination. Broadly speaking, direct discrimination occurs where one person is treated in a different manner (in a less favorable sense) from the manner in which another is or would be treated in comparable circumstances on the ground of some unacceptable consideration (such as sex or race). On the other hand, indirect discrimination occurs where one person appears to be treated just as another is or would be treated but the impact of such “equal” treatment is that the former is in fact treated less favorably than the latter.
- [21] Whether there is a differential treatment therefore must be analysed in terms of how a person (the comparator) without the attribute (different race or association with, or relation to, a person identified on the basis of race) would be treated in circumstances that are the same or not materially different. The relevant attribute in this case is said to be the complainant’s race or her association with a person identified on the basis of race.
- [22] A relevant question here is whether the Applicant was treated less favourably compared to another person who did not have the attribute of the applicant in the same and not materially different.<sup>12</sup>

- [23] The words 'less favourably' as used in section 11 require a comparison of the actual treatment in a hypothesised case.<sup>13</sup>
- [24] There must be a causal link between the ground of discrimination alleged and the decision or action complained of – the discrimination must be 'on the basis of' the relevant attribute.<sup>14</sup>
- [25] There must be an objective characterisation of the discriminators 'ground' for his conduct, for which subjective intention may be relevant but is not decisive.<sup>15</sup> It is for the applicant to make out each element of her case on the balance of probabilities<sup>16</sup>.
- [26] Because the allegation of discrimination is a serious matter, the higher standard in *Briginshaw v Briginshaw* applies. The Tribunal must 'feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality ...it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal.'<sup>17</sup>
- [27] The burden of proof remains with the applicant.<sup>18</sup>
- [28] The alleged discriminator must know of the attribute.<sup>19</sup>
- [29] The word "discrimination" is defined in part, in the oxford dictionary as unfavourable treatment based on prejudice, especially or regarding race, religion, gender, age or sexual preference.(4) A distinction made with the mind or an action.
- [30] The term 'discriminate' appears in the dictionary to the Act as 'means discriminate whether by direct discrimination or indirect discrimination'. Direct discrimination has a meaning given by section 10 and discrimination on the basis of an attribute has a meaning given by s 8.
- [31] Ms Rintoul articulates the less favourable treatment of her for the allegation of direct discrimination as, "Mr Lemon's behaviour toward the applicant was overtly hostile" at a time she was "unaware of the racial overtones of his behaviour".<sup>20</sup> Ms Rintoul submitted that it only became apparent to her that racial overtones were in play during the first interview due to the racially loaded lines of questioning used by Mr Quadrio.<sup>21</sup>
- [32] Ms Rintoul identifies the attribute relied on for the purposes of section 7(g) as her aboriginality. She said she "does have features analogous to aboriginal people in that she had dark hair and dark sign".<sup>22</sup> It is not obvious by simple observation that Ms Rintoul is of aboriginal descent. In the complaint to the Anti Discrimination Commission Queensland (the

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<sup>13</sup> *Boehringer Ingelheim Pty Ltd v Reddrop* [1984] 2 NSWLR 13 at 19; *Haines v Leves*

<sup>17</sup> *Sharma v Legal Aid Queensland* at [40]; *Victoria v Macedonian Teachers Association of Victoria Inc.* [1999] FCA 1287 at [15].

<sup>19</sup> *Tate v Rafin and Others* (2000) FCA 1582 at [65] per Willcoxs CJ and *NSW (Department of Education and Training) v Human Right and Equal Opportunity Commission* (2001)186

ADCQ) when talking about what happened in a suitability interview the applicant wrote “I was clearly mistakenly identified as aboriginal”<sup>23</sup> In her final argument the applicant wrote that she had said to the ADCQ “I’m actually not aboriginal at all”. She explains that statement by saying that she was born into a European family and she did not identify as aboriginal because she was unaware until she was over 50 that she had a genetic link to aboriginal people. When she worked in Atherton she became interested in “the Davies link to the Tablelands” and began investigating that link with Mr Joseph who told her after seeing a photo of her father <sup>24</sup> that her father was a “rain forest murri”. She wrote that when she wrote, “I’m not actually Aboriginal at all”, she meant that she did not identify as such at that time.<sup>25</sup> She continued, “Finding out this information as anyone can imagine was rather a shock and has taken some getting used to. I now, because of Mr Joseph’s acceptance of me as “kin”, combined with the knowledge that my grandfather was probably “stolen” from the Mareeba area, identify as someone of Aboriginal descent from the stolen generations.” That explanation was not entirely the subject of evidence. It is something, in my view, to be taken into account in determining whether any of the respondents regarded or perceived the applicant as of aboriginal descent or associated with aboriginal persons.

- [33] Mr Lemon said he did not think she was indigenous and he did not treat her any differently. <sup>26</sup> Mr Lemon did not know that Ms Rintoul had a qualification in Aboriginal Studies.<sup>27</sup>
- [34] The evidence of Mr Quadrio was that he did not ask Ms Rintoul if she identified as Aboriginal or indigenous. It did not occur to him to ask that question<sup>28</sup> Mr Quadrio knew of Ms Rintoul’s qualifications in Aboriginal Studies as he was provided with a copy of her resume during the interview.<sup>29</sup>
- [35] Ms Rintoul identifies Mr Joseph as the person relevant for the purposes of section 7(p).<sup>30</sup> That was raised late and was not the subject of evidence.
- [36] Ms Rintoul identifies the term imposed on her for the purposes of the allegation of indirect discrimination as “undue and unreasonable criticism without recourse to respond or the right of reply.”<sup>31</sup>
- [37] It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination. In this section— **term** includes condition, requirement or practice, whether or not written. In my view, there is no credible evidence of any term imposed as contemplated by section 11 of the Act.
- [38] Subject to sections 205 and 206 of the Act the applicant must prove on the balance of probabilities that one or more of the respondents contrived the Act.<sup>32</sup>

- [39] It is necessary to set out as follows the general claims and allegations made by Ms Rintoul before dealing with the evidence.
- [40] Ms Rintoul claimed that at the end of term one 2010 Mr Peter Lemon complained to Ms Helen Carne, the Deputy Principal, about Ms Jennette Rintoul not attending English Department staff meetings. The respondents say that no such complaint was made by Mr Lemon to Ms Carne or anyone else at Atherton State High School (**ASHS**).<sup>33</sup>
- [41] Ms Rintoul believes that she did not have to attend such meetings as she had not commenced her full-time relief work contract nor had she been asked to attend the meetings. Ms Rintoul submits that Mr Lemon's complaint has damaged her professional standing.
- [42] Ms Rintoul claims that prior to term two 2010 Ms Rayanne Chalk approached Ms Rintoul and told her that Mr Lemon "did not like her". Mr Lemon denies that occurred.<sup>34</sup>
- [43] Ms Rintoul claims the conduct of Mr Lemon in this situation is unprofessional and discriminatory. She says it is direct discrimination as Mr Lemon disliked Ms Rintoul because he perceived her to be of Aboriginal descent and because he disliked her he treated her differently to other staff members. The respondents deny that Mr Lemon "disliked" Ms Rintoul or that he said to anyone that he did not like her. Any view held by Mr Lemon of Ms Rintoul was based solely on his assessment of her professional abilities.
- [44] Ms Rintoul claims that when Mr Lemon shared his opinion of Ms Rintoul he essentially belittled her and assumed a position of authority within the workplace.
- [45] Ms Rintoul says that early in term two of 2010 Ms Rintoul asked for assistance from Mr Lemon in regard to poor student behaviour. Mr Lemon observed one of Ms Rintoul's classes and took notes. Later, Mr Lemon organised a meeting in which he critiqued Ms Rintoul's teaching style and classroom management.
- [46] Ms Rintoul claims Mr Lemon's observation and critique of her was not in accordance with performance management at Atherton State High School (**ASHS**). She claims that was discriminatory behaviour as Ms Rintoul was treated unfavourably by Mr Lemon because of her aboriginal heritage. She was subject to a performance review that no other staff member had to endure.
- [47] Ms Rintoul says that the result of the performance review was that Ms Rintoul was no longer confident in her performance as a teacher and resigned from the position.
- [48] The Respondents deny that in or around early term two 2010, the Applicant approached Mr Lemon for assistance. The approach was made
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in term three 2010. The Respondents deny that Ms Rintoul approached Mr Lemon for assistance with students misbehaving during lessons and say she requested some feedback on her performance. The Respondents deny that Mr Lemon asked the Applicant to attend a meeting with him during which he critiqued the Applicant's teaching style and classroom management. The Respondent says that a day or so after Mr Lemon met with Ms Rintoul to give her some feedback. The Respondents deny that the observation by Mr Lemon and subsequent meeting with Ms Rintoul were not in accordance with performance management at ASHS. Ms Rintoul was not the only teacher that Mr Lemon observed in the classroom.

- [49] Further, Ms Rintoul said that she was denied access to the notes that Mr Lemon made in the performance Review. At this stage Ms Rintoul made a written complaint to Mr Jason Pascoe the acting Deputy Principal at ASHS. She says Mr Pascoe explained to her that Mr Lemon had not followed the appropriate performance management procedure. The issue was not addressed any further by Mr Lemon or ASHS. Ms Rintoul claims this is evidence of Ms Rintoul being treated unfavourably by ASHS as she was not provided with an avenue of redress.
- [50] The Respondents admit that Mr Lemon made some notes during his observation of the Applicant's teaching, however, say that these were not performance review notes. The Respondents deny that Mr Pascoe said that Mr Lemon had not followed the appropriate performance management procedure. Mr Pascoe offered to help Ms Rintoul formalise her complaint or to arrange for a mediation between Ms Rintoul and Mr Lemon. Ms Rintoul declined both these offers. The Respondents say the way that the Applicant's concerns were handled were no different from how concerns reported by another staff member, who also did not want to proceed with a complaint, would have been handled in the circumstances.
- [51] Ms Rintoul says that during term two 2010 she was told by Janice Delooze and some other teachers at ASHS that she would "never get another day's work here (at ASHS), not even supply teaching." She says it is apparent from these comments by teachers at ASHS that they were aware of and perhaps discussed the appraisal of Ms Rintoul with Mr Lemon. She submitted that discussions of the appraisal with other staff members are not only inappropriate but also discriminatory as Ms Rintoul was treated unfavourably as she was not afforded confidentiality. Because of the lack of confidentiality given to Ms Rintoul she was subjected to a 'smear' campaign which she says resulted in her resignation from the position.
- [52] The Respondents say that Ms Delooze did not make this statement to Ms Rintoul. The Respondents say that Mr Lemon did not discuss his observations of the Applicant's teaching practices with any staff in the English department other than the Applicant.
- [53] On 1 November 2010 Ms Rintoul made another written complaint to ASHS about the conduct of Mr Lemon and Mr Pascoe. The school did not

initiate any formal action against Mr Lemon. Ms Rintoul says her complaint was not addressed correctly by the school as she was not offered any form of dispute resolution. Ms Rintoul says she was expected to accept Mr Lemon's conduct towards her if she wished to maintain her position.

- [54] Late in term two 2010 Ms Rintoul refused to allow two students into her classroom because of their poor behaviour. She says the students were sent back to Ms Rintoul's classroom by Mr Lemon. Further, two students were sent to the staffroom to collect a key for the laptop computers and the students were sent back by Mr Lemon who had informed them he "didn't know where the key was" despite the key being kept in the staffroom at all times. Ms Rintoul says was treated unfavourably in this situation by Mr Lemon as he undermined her authority.
- [55] On or about 20 May 2011 Mr Rintoul took a day off work and when she returned she was told by staff members that Mr Lemon had said he had had a good day because "Rintoul wasn't here." Ms Rintoul contends was treated unfavourably by Mr Lemon when he stated that the office environment was improved without her. Ms Rintoul believes she tried to foster a respectful and collegiate relationship with Mr Lemon. On or about 23 May 2011 Ms Rintoul reported these comments to Mr Pascoe. ASHS took no action on the complaint by Ms Rintoul. Ms Rintoul contends this is discriminatory behaviour because Ms Rintoul complaints were not resolved unlike other staff members. She says this impacted further on Ms Rintouls confidence, health and wellbeing.
- [56] In or around term three of 2011 Mr Pascoe offered Ms Rintoul a full-time relief work contract. Ms Rintoul says a few days later Mr Pascoe withdrew the offer because 'Peter (Lemon) would not have her.' She contends that such behaviour is discriminatory as she was refused the position not because of her skills and abilities but because of Mr Lemon who treated Ms Rintoul unfavourably because of her heritage. Ms Rintoul says she was unable to further her employment opportunities at ASHS.
- [57] In or around term three of 2011 Ms Rintoul says she was informed that Mr Lemon had criticised her work and her ability to teach in the open staffroom. She says such behaviour by Mr Lemon is inappropriate and discriminatory as no other staff member endured such treatment.
- [58] In or around June of 2011 Ms Rintoul had increased the number of hours she was working at ASHS and says she was therefore entitled to a desk in the staffroom. When she asked Mr Lemon for the desk she says he stated that he would rather Ms Rintoul have a desk in the business staffroom. She contends that this comment clearly shows Mr Lemon's negative opinion of her and it also further demonstrates the level of discrimination Ms Rintoul was subjected to as all other English teachers had desks in the English staffroom.
- [59] On 12 September 2011, Ms Rintoul attended a suitability interview with the Department of Education to enable her to teach on a full-time basis in

Queensland. During this interview Ms Rintoul was asked a series of questions by Mr Doug Quadrio which she says seemed to focus more on her race than her teaching ability. Ms Rintoul says she was treated unfavourably during the course of the interview, given the questioning undertaken was largely in relation to Ms Rintoul's race and not in relation to her teaching skills, abilities and experience in line with Ms Rintoul's expectations and other individuals experience of a suitability interview.

- [60] Ms Rintoul contended that on 13 September 2011, Mr Lemon approached Ms Rintoul in the staffroom and forcibly laughed at her while standing in front of her and making direct eye contact. She says Mr Lemon attempted to humiliate her in the staffroom and she perceived it to be because of the interview she had had the day before. Ms Rintoul suspected that Mr Lemon had been involved in the way she was treated in the suitability interview.
- [61] On 16 September 2011, Ms Rintoul was informed that the outcome of her interview was that she was classed as 'unsuitable'. She said the decision could not be appealed. Ms Rintoul believed this outcome to be inconsistent as she followed a precedent application and has extensive experience in the industry. Because Ms Rintoul was asked questions about her race she believes it can be logically inferred that she was treated unfavourably because of her race. Ms Rintoul was allowed to retake the interview with a new panel and was this time graded a 'high sound'. Thus, she said, the original decision must have been procedurally flawed.
- [62] Ms Rintoul says that on or about 18 September 2011 Mr Shaun Joseph, a teacher's aide at ASHS told Ms Rintoul that Mr Lemon had made comments about her to the effect of 'pretend Aboriginal', 'dangerous and incompetent', and 'coon lover'. Further, Mr Joseph had overheard Mr Lemon say 'why do we have to learn about these coons, it all happened over 200 years ago.' She says those comments are derogatory and offensive and amount to direct discrimination.
- [63] Despite Ms Rintoul retaking the interview she says she was unable to find fulltime employment. Because of her financial situation and now poor reputation in Queensland she says she and her family were forced to relocate. The applicant submits that the failure of the Department to offer work is a direct result of the discrimination of the applicant and is further unfavourable treatment. Further, she contends that the Department of Education is responsible for failing to offer opportunities to the applicant following the outcome of the second suitability interview.
- [64] Overall, Ms Rintoul says she has suffered emotionally from the discrimination and is undertaking psychological treatment for nervous shock. She has suffered financial hardship as her reputation, confidence and spirit have been destroyed due to the discrimination. Ms Rintoul says she is unable to work fulltime.

- [65] The applicant seeks loss of income for term 4 of 2011, unpaid holiday leave, relocation costs, loss of future earning capacity, medical and legal costs.
- [66] The applicant in respect of each of the alleged incidents of discrimination identified them as unlawful discrimination as follows:

*“The conduct complained of constitutes unlawful discrimination under s 7(g) and/or s 7(p) of the Act. It is the position of the Applicant that Mr Lemon believed her to be aboriginal or perceived her to be closely associated with aboriginal people and their culture. The applicant has physical features analogous with an aboriginal person including dark hair, eyes and skin and has a qualification in aboriginal studies. The conduct of Mr Lemon it is submitted is a direct result of the presumption the applicant held this attribute consistent with s 8(c).”*

- [60] In some of the instances, the reference to Mr Lemon was omitted.
- [61] The following paragraphs set out Ms Rintoul’s seventeen complaints as they appear in her Final Argument.

### **First complaint**

- [62] At the end of term two 2010, Mr Lemon raised complaints to Deputy Principal Helen Carne that I had not attended any English department meetings, even though I was not due to start the contract for Rayanne Chalk's long service leave until the next term (term 3)

### **Second Complaint**

- [63] Prior to third term (previously incorrectly stated second term but in any case it was the Rayanne Chalk contract) Mrs Chalk approached the Applicant and informed me that Mr Lemon "did not like" me.

### **Third Complaint**

- [64] Mr Lemon, in line with his status as my HOD for the Mrs Chalk contract in term 3, 2010 was approached by the Applicant as she was having difficulties with the behaviour of another staff member's son (and his two friends) and requested he attend the class and speak with the misbehaving boys. Instead, Mr Lemon did not speak to the boys but sat and took notes and observed the Applicant teach. This was not the purpose of his visit to the class and was not understood by the Applicant as such.

### **Fourth Complaint**

- [65] On 2 August 2010, subsequent to being refused a copy of the performance review notes undertaken by Mr Lemon, the Applicant made a written complaint to Mr Jason Pascoe, acting Deputy Principal at ASHS.

### **Fifth Complaint**

- [66] After 2 August, during term 3 (incorrectly stated as term 2) the Applicant immediately commenced alternate supply duties offered by Mr Pascoe. The Applicant was informed by Mrs Morellini (Miss Rookwood) and others that Miss Delooze had stated that "she'll never get another day's work here (ASHS) not even supply teaching". The Applicant understood this view to have been formed as a result of Mr Lemon's assessment in relation to her teaching skills and abilities which had now obviously become common knowledge among other members of the English Department staff.

### **Sixth Complaint**

- [67] On November 1, 2010 the Applicant made a second written complaint in relation to the conduct of Mr Lemon toward her and the failure of the school to address the same. The complaint was addressed and provided to Mr Pascoe and was in relation to Mr Lemon allowing a student to enter her class after she had refused.

### **Seventh Complaint**

- [68] In or around term two 2010 the Applicant refused two students to enter her classroom as a result of their behaviour. The students were subsequently sent back to the classroom by Mr Lemon who contradicted their earlier refusal. The Applicant then sent students to the staffroom to obtain a key for the laptop computers. The students were sent back by Mr Lemon who had informed them he "didn't know where the key was N, this was despite the key being hung on a hook in the staffroom at all times on a large clear pink piece of perspex plastic, easily visible to all.

### **Eighth Complaint**

- [69] On or around the 20 May 2011, the Applicant was absent from work. On her return the Applicant was informed by other English Department staff members that Mr Lemon had told them he had had a 'good day' because "Rintoul wasn't here!" .

### **Ninth Complaint**

- [70] On or around 23 May 2011 the Applicant verbally reported the comments made by Mr Lemon in relation to her absence to Mr Pascoe. No action was taken (as far as the Applicant is aware) in relation to same by ASHS.

### **Tenth Complaint**

- [71] In or around term 3 2011, the Applicant was offered a full-time contract by Mr Pascoe. The Applicant was specifically requested to do Amanda

Morellini's contract as one of the classes included Aboriginal poetry (this was the contract covering her absence for her trip to Africa). A few days following the offer, Mr Pascoe informed the Applicant that the offer was withdrawn because "Peter (Lemon) will not have you.

### **Eleventh Complaint**

[72] In or around term three 2011 the Applicant received a contract teaching students numeracy and literacy off-campus. The Applicant was subsequently informed that Mr Lemon was criticising the work being undertaken by the Applicant and making comments as to the ability of the Applicant to do this work in an open staffroom.

### **Twelfth Complaint**

[73] In or around June 2011 the Applicant had increased her regular working hours at ASHS. As a result the Applicant was 'eligible' for a desk in the staffroom. The Applicant approached Mr Lemon to request that a desk be made available to which Mr Lemon provided he would rather the Applicant take-up a desk in the business staffroom.

### **Thirteenth Complaint**

[74] On September 12, 2011 the Applicant, after significant preparation, attended a suitability interview with the Department of Education to enable her to teach on a full-time basis in Queensland to increase her work prospects. The Applicant was interviewed by a panel including Mr Doug Quadrio. Mr Quadrio was unknown to the Applicant as were the other panel members, nonetheless, Mr Quadrio made a number of comments in relation to racial issues concerning to the Applicant, including: "I see you're an expert in Aboriginal education" "Do you identify as Aboriginal?" Whether the Applicant intended on teaching in a remote Aboriginal community.

### **Fourteenth Complaint**

[75] On or around the 13 or 14 September 2011, a few days after the suitability interview, Mr Lemon approached the Applicant in the staffroom and forcibly laughed in front of her and made direct eye contact.

### **Fifteenth Complaint**

[76] On 16 September 2011, the Applicant was informed that the outcome from the suitability assessment interview undertaken was that she was 'unsuitable'. The Applicant had followed a precedent (sic) in her Application from another teacher who had rated at the 'top of the criteria'. The Applicant was informed that the decision could not be appealed.

### **Sixteenth Complaint**

[77] On or about 18 September 2011 Mr Shaun Joseph, a teacher at ASHS

who identifies as aboriginal, informed the applicant that Mr Lemon, during work, had made comments in relation to the race or perceived race of the applicant, specifically that the applicant was a 'pretend aboriginal'; that the applicant was 'dangerous and incompetent and that the applicant was a 'coon lover'. Further, Mr Joseph informed the applicant he had overheard Mr Lemon making comments to the effect of 'why do we have to learn about these coons, it all happened over 200 years ago.'

### Seventeenth Complaint

- [78] The Applicant, despite the overturning of the original suitability interview outcome, was not offered any permanent work by the Department of Education for a period of approximately twelve months following same. The Applicant had undertaken the interview originally as a result of the need to work on a full-time basis. Facing financial difficulty the Applicant and her family were compelled to relocate as a means to obtaining full-time work and because it was apparent, the Applicant's reputation had become tarnished in the state of Queensland.
- [79] The following paragraphs deal with the evidence given by way of affidavit and subject to cross-examination.
- [80] The applicant during her evidence under cross-examination (about Mr Lemon) said that she, "*Never over heard him say anything of a racist nature either in relation to her or others.*"<sup>35</sup> She also said that she had, "*never in fact heard Peter Lemon utter a racist word to her.*"<sup>36</sup>
- [81] She gave evidence of teaching a class in which there were three disruptive children sometime in term 3 of 2010 in August. She said that she asked Mr Lemon who was the Head of Department, "*to come into the room as any normal Head of Department would and support me as a teacher.*"<sup>37</sup> Her complaint seemed to relate to the conduct of Mr Lemon in observing her teaching. She complained, "*he made no move to address the misbehaviour in the class at all.*"<sup>38</sup> In her evidence contained in exhibit 1 she said,<sup>39</sup> "*I turned to the relevant staff member for support being Mr Lemon...I felt he sat observing the class and taking notes.*" She also said, "*I felt as though he was making an assessment about me. I asked for feedback.*"<sup>40</sup>
- [82] She did not like the feedback because she thought it was unjustified and wrong.<sup>41</sup> She was aggrieved because Mr Lemon observed her under what she said was false pretenses.<sup>42</sup> She was also aggrieved because Mr Lemon took his time to consider his feedback before he gave it to her when she thought it should be given immediately.<sup>43</sup>
- [83] In the complaint to the Anti-Discrimination Commission<sup>44</sup> the applicant had said, "*I was asked on several occasions by administration if I wanted to make a formal complaint against Mr Lemon but I declined because of the casual nature of my status within EQ.*" When asked about any formal
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complaints the applicant said that she had made formal complaints by way of letters to Mr Pascoe the school Principal.<sup>45</sup>

- [84] The applicant accepted during cross-examination that she had an option of continuing with the teaching contract and lodging a formal complaint<sup>46</sup> but she ended the contract herself.<sup>47</sup>
- [85] The applicant admitted that in respect of the interview process for a suitability interview to enable the applicant to apply for permanent work she missed two documents which ultimately carried fifty per cent of the weight when scored.<sup>48</sup>
- [86] In September 2011, the applicant was teaching at the Atherton High School as a contract temporary teacher. That contract was to expire on 16 September 2011. After participating in a suitability reassessment interview with the Department of Education and Training. The applicant received a letter dated 14 September in which she was advised that through the assessment process, she was assigned the ranking of 'unsuitable' applicant and therefore, she did not meet the requirements for employment within the Department of Education and Training in Queensland states schools.
- [87] That letter also advised her, "*you are currently undertaking a temporary contract at Atherton State High School. In normal circumstances, your employment would be terminated immediately. Given the timing of assessment and the impact on student learning needs, it is confirmed that you are able to complete your period of employment at Atherton State High School i.e. end date 16 September 2011). The unsuitable ranking does not impact on payment of leave entitlements at the end of your temporary employment.*"<sup>49</sup>
- [88] The applicant admitted that it was entirely possible that she did not get any offers of employment simply because no vacancy arose for middle school or secondary school teacher in studies of society and environment or English at Atherton High School that was not already filled by an 'outstanding' or 'high performing' applicant.
- [89] The applicant had been assessed as high sound after the second assessment. She also accepted that it was entirely possible she did not receive any offers without any implication of race discrimination at all.<sup>50</sup>
- [90] When the applicant lodged her complaint with the Anti-Discrimination Commission Queensland in September 2012 she made no mention of any allegation of racial discrimination against Mr Lemon. She then contacted Mr Joseph for the purpose of finding out if there was any racial content to the behaviour that she complained of from Mr Lemon.<sup>51</sup>
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- [91] In a letter of 19 September 2013, addressed to Queensland Civil and Administrative Tribunal the then solicitors for the applicant<sup>52</sup> set out an allegation made by the applicant<sup>53</sup> that Mr Lemon had colluded with Mr Quadrio prior to her suitability interview with the result that the interview was not conducted in an impartial and professional manner. That allegation was dealt with in cross-examination and the applicant conceded that there was no evidence of any connection between the school and the interview panel.<sup>54</sup> The applicant agreed that she did not have any evidence of such collusion when she made the allegation but she had a 'gut feeling' and "*when Mr Lemon laughed in her face it was a bit of an indication that something was not right.*"<sup>55</sup> She agreed that she had made a very serious allegation and repeated it on numerous occasions on nothing more than a gut feeling.<sup>56</sup> During cross-examination, the applicant made it clear that she believed, she had been subjected to bullying and had "*experienced three and a half years of the most appalling behaviour.*"<sup>57</sup> That behaviour, she alleged, was at the hands of Mr Lemon who she had earlier described as a manipulative psychopath. She admitted that such a description was inappropriate and had withdrawn that statement and apologised.
- [92] Mr Shaun Joseph was a teacher aide at the Atherton State High School. He gave evidence that Ms Rintoul in late 2010 approached him and spoke about her father and Mr Joseph told her that there was a slight chance he could have aboriginal background.<sup>58</sup> That was said without the backing of any research but rather based on the fact that a number of people in the area had the same last name<sup>59</sup> although he did give Ms Rintoul a letter stating that "there is strong evidence probably that she may be of Aboriginal heritage".<sup>60</sup> He regarded Ms Rintoul as "like family"<sup>61</sup> however they only socialised at school.
- [93] He said in evidence that he prepared his statutory declaration himself<sup>62</sup> although he sent drafts to Ms Rintoul and she provided feedback. The content of the statutory declaration and the oral evidence given by Mr Joseph differ and the content and style of the statutory declaration reflect language and style demonstrated by Ms Rintoul in this application.
- [94] He gave evidence that in 2010 he became aware of Peter Lemon making derogatory comments concerning Ms Rintoul<sup>63</sup> which involved teachers Deluce and Campbell. The comments included "things such as she was a pretend aboriginal, she was dangerous, incompetent, unethical." They were offensive to him because he was Aboriginal. He said he complained to Jason Pascoe, the deputy principal and was told to make a complaint on "one school". He said he did not make such a complaint because he did not have access to "one school" until 2013.
- [95] Mr Joseph said he told Ms Rintoul what he had heard after he was approached by Ms Rintoul and she had told him that she had issues with Mr Lemon and told him "what was happening to her" and that Mr Lemon had said that she was looking at losing her job and that she was
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incompetent at her job. <sup>64</sup> That approach occurred on 18 September 2012.<sup>65</sup>

- [96] He also gave evidence that after a talk given by the mother of Mr Joseph Mr Lemon said to teachers Delooze and Campbell “why do we have to learn about these coons? It all happened 200 years ago.”<sup>66</sup> He said he was “shocked and deeply offended”. He said he heard Mr Lemon refer to Ms Rintoul as a “coon lover” and he said to Mr Lemon “do you realise that that word is illegal? You need to understand that there are indigenous people on staff at this school that are offended by that word” to which Mr Lemon responded “who are you to be challenging me?” He said that later that day he bumped into Mr Pascoe and spoke to him about the use of the word “coon” and Mr Pascoe responded that he would talk to Mr Lemon about it.<sup>67</sup>
- [97] His observations concerned the period between second term 2010 and first term 2011.
- [98] He did not mention any of conduct of Mr Lemon, as described in his evidence, to Ms Rintoul until she approached him canvassing his support in relation to her complaint in 2012.<sup>68</sup> He said in his evidence during cross examination that he had complained to Mr Pascoe “a number of times”<sup>69</sup> but the only mention of Mr Pascoe in his statutory declaration was about when he bumped into Mr Pascoe and spoke to him about the conduct of Mr Lemon after the speech by his mother.
- [99] It is notable that none of the conduct of Mr Lemon the subject of the evidence by Mr Joseph was conduct when Ms Rintoul was present. Despite the explanation proffered by Mr Joseph and the acceptance of a question by Ms Rintoul that he did not tell her because he was trying to spare her feelings,<sup>70</sup> it is difficult to understand why the offensive conduct was not reported earlier to Ms Rintoul or the subject of a formal complaint or a followed up informal complaint when Mr Joseph was shocked and deeply offended and regarded Mr Lemon’s behaviour toward Ms Rintoul to be that of a racist bully.<sup>71</sup> It is also difficult to understand in those circumstances why Mr Joseph would regard what has happened as being “blown out of all proportion”.<sup>72</sup>
- [100] Rayanne Chalk was a teacher at the school in 2010 and supplied a reference to Ms Rintoul. She recalled telling Ms Rintoul at a handover meeting that Mr Lemon did not like Ms Rintoul.<sup>73</sup> She could not recall any conversations in the staff room or anywhere else where there were negative statements about Ms Rintoul in relation to matters of race.<sup>74</sup>
- [101] Amanda Morelli was a teacher at the school who did not have a collegial relationship with Mr Lemon and felt she was intimidated and on occasions bullied by Mr Lemon<sup>75</sup>. She gave evidence that between 2010 and 2011 Mr Lemon said “she’s one of them” when walking past a picture of two aboriginal men on Ms Rintoul’s desk. She also recalled he said “it is going
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- to be a good day” when Ms Rintoul was not present. She recalls Ms Rintoul being offered a contract on front of Mr Pascoe.<sup>76</sup>
- [102] Gilbert Jansen gave evidence that as part of the administration at the school he had not witnessed Mr Lemon behaving in a racist manner or heard him say anything of a racist nature and that he was surprised that there was an allegation against Mr Lemon that he was racist.
- [103] Lucy Dow is a clinical psychologist. She provided a report dated 5 December 2013 concerning Ms Rintoul in which she concluded that Ms Rintoul meets the criteria for Major Depressive Episode which she believes has been triggered by “the frequent negative comments by her colleague while she was working at Atherton State High School, by her negative evaluation and her subsequent period of suspension.”<sup>77</sup> She gave evidence that Ms Rintoul had suffered from anxiety and depression in 1994 and had recovered very successfully and had gone on to study at university and start a new career. She had not seen Ms Rintoul since 25 November 2013 and she does not know how Ms Rintoul has progressed since then.<sup>78</sup> Ms Dow recommended at least 15 sessions at a cost of \$3600 and a compensation payment to allow Ms Rintoul to move on.
- [104] It is noted that the husband of Ms Rintoul suffered serious injury and lost his job after which they moved from Queensland. Ms Dow did not attribute that as a significant factor in the cause of Ms Rintoul’s condition.
- [105] Matthew Baker was the Principal at the Jubilee Christian College. He provided advice to Ms Rintoul in September 2011 about the preparation of a professional portfolio. He considered her folio to be a professional and competent presentation of her reflection and professional abilities and achievements.<sup>79</sup>
- [106] Mr Lemon was the Head of the English department at the school until September 2012. He denies the allegations that he discriminated against Ms Rintoul.<sup>80</sup> He denied the allegation that he said to anyone that “it is going to be a good day” when Ms Rintoul was not in attendance.<sup>81</sup> He also denied saying “she is one of them” while nodding to a photograph of two aboriginal men. He denies seeing such a photograph.<sup>82</sup>
- [107] Ms Rintoul gave evidence that a photograph, a copy of which is at page 69 of exhibit 1, was stuck by blu-tac to one side of book shelf on her desk in the staff room so that it was visible to her.<sup>83</sup>
- [108] He said that he “had no knowledge whatsoever of Ms Rintoul’s racial or ethnic background.
- [109] Mr Lemon denied that he was approached by Ms Rintoul for assistance in relation to any specific students.<sup>84</sup> He believed she was seeking some reassurance about her teaching.<sup>85</sup> He said that Ms Rintoul requested him “to come in and observe “ her.<sup>86</sup> He only observed her teaching once in three and one half years.<sup>87</sup> He said Ms Rintoul asked him to give her “some feedback and how (she) was getting along”<sup>88</sup>.
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- [110] He was astonished about the evidence given by Miss Morelli that she considered that she and Mr Lemon did not have a collegial relationship.<sup>89</sup> He thought he has a collegial relationship with all the staff.<sup>90</sup>
- [111] Mr Lemon denies calling Ms Rintoul a pretend aboriginal at any time,<sup>91</sup> or “a coon lover”, or saying that Ms Rintoul was “dangerous and incompetent” or “unethical”.<sup>92</sup> He denies the words attributed to him by Mr Joseph and finds the words extremely offensive.<sup>93</sup>
- [112] Doug Quadrio was the chair of the interview panel that interviewed Ms Rintoul during the suitability process in September 2012. He denies discriminating against Ms Rintoul and says that Ms Rintoul performed badly during the assessment process because she did not submit all of the required paperwork.<sup>94</sup> Mr Quadrio gave evidence that it was not his responsibility to ensure all relevant documentation was presented at the suitability process.<sup>95</sup> He said that Ms Rintoul was in his view irrational at the interview,<sup>96</sup> she had an unstructured delivery<sup>97</sup> and she presented as angry and bitter.<sup>98</sup>
- [113] Jason Pascoe was the Deputy Principal at the school. He was responsible for organising internal relief teachers at the school. He was the supervisor of Mr Lemon and responsible for engaging Ms Rintoul. He was aware of tension between Ms Rintoul and Mr Lemon following an occasion when Mr Lemon watched Ms Rintoul teach but did not receive any complaint. He was not aware of any discrimination by Mr Lemon.<sup>99</sup>
- [114] Cathy Campbell was a teacher at the school. She shared the same staff room as Ms Rintoul and Mr Lemon. She did not hear Mr Lemon speak about Ms Rintoul in racially offensive or otherwise derogatory terms.<sup>100</sup> She did not notice any difference in the way Mr Lemon treated Ms Rintoul compared to how he treated other teachers.<sup>101</sup> She had not noticed the picture of two aboriginal men said to be on Ms Rintoul’s desk for four weeks.<sup>102</sup> She denied making derogatory and racist and bigoted comments in relation to that picture and Ms Rintoul.<sup>103 104</sup>
- [115] Janice Deluce was a teacher at the school. She also shared the staff room. She says she did not hear Mr Lemon speak about Ms Rintoul in racially offensive or otherwise derogatory terms.<sup>105</sup> Ms Deluce told Mr Lemon that she did not want Ms Rintoul teaching her classes during any of her future absences.<sup>106</sup>
- [116] Gerald Raciti was a head of department at the school and had a desk next (about two and one half metres away)<sup>107</sup> to Mr Lemon’s desk in the staff room. He did not hear Mr Lemon speak about Ms Rintoul in racially offensive or otherwise derogatory terms.<sup>108</sup> He said he would recall if he had as he regards the terms alleged offensive<sup>109</sup>. He did not recall seeing the picture at page 32 of exhibit 1.<sup>110</sup>
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- [117] Helen Carne was the Deputy Principal at the school. She denies receiving any complaint from Mr Lemon about Ms Rintoul or discussing such a complaint with Ms Rintoul.<sup>111</sup> She does not recall any complaints made to her about Ms Rintoul.<sup>112</sup> Ms Crane was not able to recall a complaint or telling Ms Rintoul about such complaints.<sup>113</sup>
- [118] Chris Rigden was the Deputy Principal at the Cairns School of Distance Education and a member of the suitability assessment panel that interviewed Ms Rintoul. He did not recall hearing any racially motivated questions asked of Ms Rintoul.<sup>114</sup> He says that where an applicant like Ms Rintoul does not submit two referee statements it would be extremely difficult for them to receive a favourable suitability assessment ranking.<sup>115</sup> He thought the performance of Ms Rintoul during the interview was poor.<sup>116</sup>
- [119] Alison Bradford was also on the suitability assessment panel She was the Deputy Principal at the Proserpine State School. She confirmed the evidence of Mr Rigden and Mr Quadrio.<sup>117</sup>
- [120] Scott Rogers is a Human Resources Officer in the Education Department. He gave evidence about how the suitability assessment process worked. There were four different components to the process and each component is marked out of five with a total possible score of twenty. The total score determines a ranking from outstanding at the highest and unsuitable at the lowest. The applicants are required to provide two written references with their professional folio in a specific format. Each reference can be worth five points so that those scores can account for one half of the maximum score.<sup>118</sup>
- [121] Ms Rintoul accepted that she did not submit the two required references in the required format. In that case her maximum score could only be ten (although she was given two points for the references she did submit). She was scored six.
- [122] In a subsequent assessment (8 weeks later) Ms Rintoul submitted the two required references in the required form and took a further interview after which she was rated as 'High Sound'.
- [123] The manner in which Ms Rintoul conducted during herself during the hearing was confusing, often without direction and often misleading.<sup>119</sup> On occasions she claimed to be ignorant when clearly that was not so. On occasion she was offensive without cause.<sup>120</sup> She was given every assistance but either chose to ignore guidance or was consumed with a conspiracy theory<sup>121</sup>. I was left with the distinct impression that she was reconstructing to fit her theory. In my view she was so consumed that she refused to follow any logic and accept reason. Her evidence was often contradicted by other witnesses.
- [124] In my view, Ms Rintoul was extremely upset with the suitability selection process. She was devastated by the 'unsuitable' ranking. It seems that the
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process was strictly adhered to and because Ms Rintoul did not strictly comply with the format she received the ranking she did. That strict adherence might be said to lead to some unjust results but that is not what has to be decided here.

- [125] A relevant question here is whether the result occurred because of racial discrimination. I am not satisfied that there is sufficient credible evidence to reach that conclusion. The evidence is to the contrary. Further, there is no evidence to connect Mr Lemon with the decision of the panel.
- [126] In my view the evidence is such that on balance Mr Lemon did not bully Ms Rintoul. Even if it is accepted that Mr Lemon bullied Ms Rintoul it is difficult to see the logic in concluding that because he bullied Ms Rintoul he did so because of her aboriginal origin. His evidence was that he did not consider Ms Rintoul as of Aboriginal descent. I accept that evidence. The fact the he is alleged to have bullied Ms Morrelini tends to support a contention that there was no racial basis for any bullying.
- [127] In her written submissions Ms Rintoul has complained about the workings of the Tribunal and considered that “there was nothing quick or inexpensive about the progression of her case through the tribunal”.<sup>122</sup> To support that assertion she pointed to her successful appeal in the Supreme Court. That decision was an appeal from an appeal decision of the Tribunal which was concerned with earlier orders made by the Tribunal. She asserts that she has had to “endure perceived and actual bias and lack of impartiality in Tribunal decisions”. She said “it has become apparent over the course of the past few years that the applicant can have no confidence in the decision making or impartiality of the Tribunal”. What has happened before this matter was heard in Cairns is not relevant to the matters considered in this decision.
- [128] However, without any notice or without the question being raised during the hearing and without any evidence Ms Rintoul asserted in her final submission that the lack of impartiality of the Tribunal “was clearly demonstrated in the three day hearing in Cairns when member Favell went to lunch with not only Mr Farren (counsel for the respondents) and Nicola Smith from the Crown, but also the respondents witnesses”<sup>123</sup> That assertion needs to be considered.
- [129] In considering the assertion I must ask whether a fair-minded observer might reasonably apprehend bias and whether there is evidence of actual bias.<sup>124</sup>
- [130] The assertion concerning lunching with witnesses and legal representatives of the respondents is untrue. Prior to the hearing, as far as I can recall, I had no contact with Mr Farren or Ms Smith. I have not had lunch with either of them or any witnesses for the respondent. I have not had contact (apart from the hearing and written submissions filed) with ~~any of those persons~~. The allegation made reflects poorly on the

credibility of Ms Rintoul and reflects a certain desperation to advance her claims.

- [131] If Ms Rintoul is claiming a bias against her by me or improper conduct by me, it is rejected. The facts simply do not support such an allegation. Ms Rintoul was given the opportunity to present her case and there is no evidence or as I understand the submissions any basis for contending there was actual or perceived bias.
- [132] Many of the submissions made by Ms Rintoul are not relevant to the matters to be determined in this application. However, she submits that the tribunal should “based on all the available evidence, weighing the totality of the evidence and the unsatisfactory and contradictory evidence of the respondents, find that the applicant was discriminated against” in the manner she has described.”
- [133] That submission and the way the hearing was conducted seeks to have the tribunal make a finding that the respondents were engaged in discriminatory conduct and conclude therefore that they discriminated in the way alleged against Ms Rintoul.
- [134] Apart from the evidence of Ms Morelli and Mr Joseph there is little or no support for the complaints made by Ms Rintoul.
- [135] A comparison of the evidence and the seventeen complaints is appropriate.
- [136] With respect to the first complaint I am not satisfied that complaint is made out. There is no credible evidence to support the complaint. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [137] With respect to the second complaint, I find that it is not made out and it is not supported by credible evidence. I accept the evidence of Mr Lemon to the contrary. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [138] With respect to the third complaint, I accept that Mr Lemon did observe Ms Rintoul teaching at her request and took notes. I accept the evidence of Mr Lemon in this regard over the evidence of Ms Rintoul. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [139] With respect to the fourth complaint, I accept that Ms Rintoul did make a complaint to Mr Pascoe however it was not a formal complaint. I note however the nature of the complaint is not necessarily concerning Mr Lemon except if it meant to be a complaint about the failure to give review notes. In my view that failure has been adequately explained. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

- [140] With respect to the fifth complaint, I do not accept it has been made out. It is not supported by credible evidence. In any event, It is difficult to associate this complaint with conduct by Mr Lemon. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [141] With respect to the sixth complaint, I accept that Ms Rintoul made a complaint to Mr Pascoe but it was not a formal complaint. I accept the evidence of Mr Lemon about his conduct. Further, even if the complaint and the substance of the contents of the second written complaint was made out there is no credible evidence that it occurred because of discrimination.
- [142] With respect to the seventh complaint, I accept that the incidents described in the complaint may have occurred but I accept the general explanation of how the system worked in that regard given by Mr Lemon. Further, even if the sense of the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [143] With respect to the eighth complaint, I do not accept that the complaint is supported by credible evidence. I accept the evidence of Mr Lemon and others above that of Ms Morelli. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [144] With respect to the ninth complaint, I accepted that the report was made but I do not accept the comments the subject of the complaint were made by Mr lemon. There is no credible evidence to support the subject of the complaint. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [145] As to the tenth complaint, I accept that the applicant was offered the full time contract as alleged. I do not accept that Mr Pascoe informed Ms Rintoul that the offer was withdrawn because Peter Lemon will not have Ms Rintoul. That is contrary to available evidence. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [146] As to the eleventh complaint, I accept the fact of the teaching contract but I do not accept that Mr Lemon was criticising Ms Rintoul or her work in an open staff room. That is contrary to the credible evidence. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [147] As to the twelfth complaint, I do not accept that Mr Lemon “provided he would rather the applicant take up a desk in the business staff room. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.

- [148] As to the thirteenth complaint, I accept that the interview by a panel chaired by Mr Quadrio occurred. I accept that Mr Quadrio may have asked a question about whether the applicant would consider going to a remote community. Otherwise I accept the evidence of Mr Quadrio and the other two panel members. I accept the explanation given by Mr Quadrio. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [149] As to the fourteenth complaint, I do not accept the complaint occurred. Further, even if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [150] As to the fifteenth complaint, I accept that what is said in the complaint occurred. However there is nothing to link the content of the complaint with Mr Lemon and there is nothing to suggest that any of the content is incorrect. Further if the complaint was made out there is no credible evidence that it occurred because of discrimination.
- [151] As to the sixteenth complaint, I accept that Mr Joseph may have told Ms Rintoul the content of the complaint but I do not accept the truth of the words attributed to Mr Lemon. I accept the evidence of Mr Lemon over that of Mr Joseph.
- [152] As to the seventeenth complaint, I accept the concerns and content contained therein but there is no link with any of the respondents and there is no credible evidence that what happened occurred because of discrimination.
- [153] I am not satisfied that any of the complaints are supported by credible and reliable evidence. An examination of the concessions made by Ms Rintoul tells against much of her claim.
- [154] I am not satisfied that Mr Lemon engaged in the conduct alleged.
- [155] I am not satisfied that he was of the understanding or perception that Ms Rintoul was of Aboriginal descent.
- [156] Nor am I satisfied that Mr Quadrio was of the understanding or perception that Ms Rintoul was of aboriginal descent.
- [157] I find that the decision of the suitability assessment interview panel was not because of any discrimination because of race or association but because Ms Rintoul did not follow the interview process correctly in that she did not provide necessary references in the approved manner.
- [158] Accordingly, on the facts found there is no basis to make the findings sought.
- [159] Further, even if there was a basis to make such findings there is no basis for a finding that loss flowed from any illegal discrimination.

[160] For those reasons the application is dismissed.