

Reference No. HRRT 041/2020

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN AFFRICA MORGAN

PLAINTIFF

AND THE PUBLIC SERVICE COMMISSIONER

DEFENDANT

AT WELLINGTON

BEFORE:

Ms GJ Goodwin, Deputy Chairperson

Ms PJ Davies, Member

Ms SM Kai Fong, Member

REPRESENTATION:

Ms A Morgan in person

Ms E Watt and Mr J Trevella for defendant

DATE OF HEARING: 8, 9 June 2022

DATE OF DECISION: 25 October 2022

DECISION OF TRIBUNAL¹

INTRODUCTION

[1] Ms Affrica Morgan says she was verbally offered a position of employment in the Employment Relations team at the then State Services Commission, now Te Kawa Mataaho/Public Service Commission (Commission). She says that the employment did not proceed when the Commission became aware that Ms Morgan's mother also worked in the Employment Relations team.

¹ [This decision is to be cited as *Morgan v Public Service Commissioner* [2022] NZHRRT 38.]

[2] Ms Morgan alleges that the Public Services Commissioner (Commissioner) breached Part 2 of the Human Rights Act 1993 (HRA) by omitting to employ her, by reason of her family status. She claims \$145,000 for loss of income and \$40,000 damages for humiliation, loss of dignity or injury to feelings. She also seeks to be appointed to the position she applied for or to an equivalent position.

[3] The Commissioner denies any breach of HRA, Part 2 and says that Ms Morgan was not offered the role because of the potential perceived conflict of interest between Ms Morgan and her mother, which made Ms Morgan unsuitable for the position.

Background

[4] In January 2020 the Commission advertised for an assistant advisor, workforce and employment relations (the role) in the Employment Relations team.

[5] The nature of the role was to support the Employment Relations team as a whole. This included preparing reports, helping with formatting and IT issues, helping to manage the time of the team's manager and prioritising workflows. The person appointed to the role would have access to personal information such as the salary and HR details of team members and would also have access to the emails of the manager of the Employment Relations team.

[6] Ms Morgan's mother, Ms Stein, worked (and at the time of the hearing was still working) in the Employment Relations team.

[7] Ms Morgan applied for the role on 5 February 2020.

[8] Ms Morgan was interviewed on 25 February 2020 by Ms Borrell the manager of the Workplace, Employment Relations and Equity team at the Commission. During the interview Ms Morgan did not refer to having a family member working at the Commission. While Ms Morgan was asked in the interview if there was anything else the Commission should know about her that was relevant to the role, her evidence was that she did not raise the fact that Ms Stein was her mother, as she felt that was not relevant.

[9] Ms Borrell informed Ms Morgan that she was the preferred candidate for the role during the week of 27 February 2020. Thereafter, the referee process started. That process took until 13 March 2020, as Ms Morgan initially supplied her aunt as one of her referees. Ms Borrell's evidence was that on 9 March 2020 she explained to Ms Morgan that the public service requires a high degree of independence to avoid conflicts of interest or even appearances of conflicts of interest. Ms Morgan acknowledged during the hearing that she and Ms Borrell did have a conversation about conflicts of interest during that time.

[10] On 17 March 2020 Ms Borrell left a voicemail message for Ms Morgan saying:

Sarah

"Hi Africa, Sarah Borrell speaking, I'll text as well, good news. We've crossed our T's and dotted our I's here. I can now formally write up an offer and get that out to you so will look to do that in the next 24 hours but good to talk to you ah before I do that about how you would like to receive that etcetera. [redacted]. Thank you."

[11] On the same day Ms Borrell also sent a text message to Ms Morgan saying:

"Hi Affrica. Good news, all sorted this end and we are formalising the offer paperwork. Can you give me a ring when free. Sarah"

[12] Ms Morgan rang Ms Borrell on 17 March 2020, and they discussed notice period and salary expectations. No specific figure was agreed on. While Ms Morgan said words to the effect that she would let her employer know she was resigning straight away, Ms Borrell advised her to wait until the offer was received in writing.

[13] There was then a second call between Ms Morgan and Ms Borrell on 17 March 2020. In that call Ms Morgan asked Ms Borrell whether she knew Ms Morgan was related to a person who worked at the Commission. Ms Borrell said she was not aware of this and asked who it was. Ms Morgan informed Ms Borrell that her mother was Ms Stein. Ms Borrell's evidence was that she told Ms Morgan she would need to take advice on this, as it was a late notification and a significant piece of information.

[14] Ms Borrell spoke to Ms Farrar (the then Deputy Commissioner, Workforce, Employment and Equity Group) on the same day and to Ms McHardy (the Chief People Officer of the Organisational Capability and Performance Group) on 18 March 2020. It is the evidence of Ms McHardy and Ms Farrar that they were surprised to learn that Ms Morgan had not disclosed her relationship with Ms Stein earlier in the recruitment process.

[15] Ms Borrell advised Ms Farrar that she was concerned about a real or perceived conflict of interest within the Employment Relations team. Ms Borrell said she saw a conflict of interest in having a mother and daughter working in the same Employment Relations team, as the role included access to and management of confidential and sensitive personal information concerning members of that team. There was some discussion about the possibility of a work around management plan. It was Ms Borrell's evidence that she could not identify any mitigations that would effectively manage the conflict, without significantly reducing the scope of the role.

[16] There was then a discussion between Ms Borrell and Ms McHardy as to what stage the recruitment process was at. Ms Borrell was clear that, notwithstanding the voicemail message and text referred to at [10] and [11] above, no verbal offer had been made to Ms Morgan.

[17] Ms McHardy encouraged Ms Borrell to 'sleep on it' overnight and that they would touch base the next morning. In the meantime, Ms McHardy considered other possible current and future vacancies within the Commission that might have been suitable for Ms Morgan. When they met the next day, Ms Borrell advised Ms McHardy that, given the small size of the team and the nature of the role, it was her view that the conflict could not be managed. Ms McHardy supported this decision. Ms McHardy also concluded that there were no suitable vacancies for someone of Ms Morgan's experience at that time or in the near future.

[18] The decision was made not to continue with the employment process. Ms Borrell communicated that decision to Ms Morgan on 19 March 2020. Ms Borrell also separately communicated this to Ms Stein.

[19] It was Ms Morgan's and Ms Stein's evidence that Ms Borrell had said to them (separately) that while Ms Morgan was the best candidate the Commission was too small and that staff would not view Ms Morgan's employment well, due to Ms Stein being Ms Morgan's mother. It is Ms Borrell's evidence that she would not have said the same

thing to Ms Stein and Ms Morgan, given the different levels of experience between them. It is also Ms Borrell's evidence that she explained to Ms Morgan that the Commission believed there was a conflict of interest, that they had considered alternatives or mitigations, but they could see no way to manage the conflict.

[20] We accept that Ms Borrell would have referred to a conflict of interest when speaking to Ms Morgan and Ms Stein. We also accept Ms Morgan's and Ms Stein's evidence that, when speaking to them, Ms Borrell did make reference to their family status.

[21] Following her conversation with Ms Morgan, Ms Borrell completed the employment process by appointing another person to the role.

THE LAW

[22] Under HRA, s 22 it is unlawful to refuse or omit to employ an applicant for employment, who is qualified for that work, by reason of any the prohibited grounds of discrimination. Family status is a prohibited ground of discrimination. Section 22 provides:

22 Employment

- (1) Where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, or any person acting or purporting to act on behalf of an employer,—
- (a) to refuse or omit to employ the applicant on work of that description which is available; or
 - ...
 - by reason of any of the prohibited grounds of discrimination.

[23] There are then statutory exceptions, allowing an employer to have restrictions on the employment of relatives, as follows:

32 Exception in relation to family status

Nothing in section 22 shall prevent restrictions imposed by an employer—

- (a) on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, another employee if—
 - (i) there would be a reporting relationship between them; or
 - (ii) there is a risk of collusion between them to the detriment of the employer; or
- (b) on the employment of any person who is married to, or in a civil union or in a de facto relationship with, or who is a relative of, an employee of another employer if there is a risk of collusion between them to the detriment of that person's employer.

MATTERS TO BE DETERMINED BY THE TRIBUNAL

[24] It is accepted by the Commissioner that Ms Morgan was an applicant for employment and that she was qualified for the role. The issue for determination is, therefore, whether the Commissioner refused or omitted to employ Ms Morgan by reason of her family status, in breach of HRA, s 22.

[25] The onus is on Ms Morgan to prove, on the balance of probabilities, that she was not employed by reason of her family status. If Ms Morgan succeeds in this and the Commissioner wishes to rely on the exception in HRA, s 32 he must convince us, again to the civil standard, that either of the limbs in HRA, s 32(a)(i) or (ii) applies.

Submissions of the parties

[26] Ms Morgan said that it is clear she was not employed by reason of her family status. She says there was no conflict of interest as there would be no reporting lines between her and Ms Stein, that Ms Morgan and Ms Stein would both behave professionally, and it would not be a problem for them to work together.

[27] The Commissioner said:

[27.1] In light of its conflicts of interest policies, there is a high expectation of the management of conflicts in the public sector, particularly the Commission.

[27.2] In accordance with its conflicts of interest policies the Commissioner determined that the close relationship between Ms Morgan and Ms Stein would give rise to a perceived conflict of interest that would not be possible to manage due to the nature of the role and the tasks it entailed.

[27.3] Ms Morgan was not offered the role because the potential perceived conflict rendered her unsuitable. The relationship was part of the context in which that perceived conflict arose. It was not, however, the reason for or a material ingredient in the Commission's actions. Had Ms Morgan applied for a different role in a different team, the conflict may have been managed.

[28] As the Commissioner said Ms Morgan failed to satisfy the "by reason of" test in HRA, s 22 he did not address the Tribunal on the applicability, or otherwise, of HRA, s 32.

Conflicts of interest policies

[29] Because the Commissioner's policies in relation to conflicts of interest are central to the arguments in this case they are briefly described below.

[30] At the time Ms Morgan applied for the role the relevant legislation in relation to conflicts of interest was the State Services Act 1988. Under s 57 of the State Services Act the Commissioner had the power to set minimum standards of integrity and conduct that applied to the public service. Those standards were set out in the State Services Commission Standards of Integrity and Conduct (Code), published in 2007. The Code required State Services organisations to maintain policies and procedures consistent with, inter alia, trustworthiness, which included ensuring actions were not affected by personal interests or relationships.

[31] The documents articulating the policies and procedures in relation to conflicts of interest issued in accordance with the Code were, at the time of Ms Morgan's application, the Conflict of Interest Policy and the Model Standards regarding Conflicts of Interest (together the Conflicts Policy). Those documents record that:

[31.1] Conflicts can arise where a public servant's duties overlap with private or personal interests.

[31.2] Conflicts include actual, potential or perceived conflicts.

[31.3] Conflicting interests may be personal (whether relating to family, friends, or associates), financial or related to external activities.

[31.4] An organisation may need to take a potential conflict of interest into account when considering an individual's suitability for a role.

[31.5] The main goal of identifying and managing conflicts of interest is to ensure that all operational decisions are made, and are seen to be made, legitimately, justifiably, independently and fairly.

[32] The Conflicts Policy states that it should be read alongside with other relevant rules and standards, including the Office of the Auditor-General's guidance.

The "material ingredient" test

[33] As referred to at [25] above, to succeed in her claim, Ms Morgan must satisfy us that, on the balance of probabilities, she was not employed "by reason of" her family status.

[34] The phrase "by reason of" was considered by the Supreme Court in *McAlister v Air New Zealand Ltd* [2009] NZSC 78, [2010] 1 NZLR 153 (*McAlister*), where it was determined that this phrase required consideration of whether the prohibited ground was "a material ingredient in the making of the decision". The material ingredient test has also been adopted by the Tribunal in *Meulenbroek v Vision Antenna Systems Ltd* [2014] NZHRRT 51 (*Meulenbroek*) at [115]-[117] and *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 (*Nakarawa*) at [63].

[35] The application of the "material ingredient" test was discussed in *Meulenbroek* as follows:

[115]...The correct question raised by the phrase "by reason of" is whether the prohibited ground was a material ingredient in the making of the decision to treat Mr Meulenbroek in the way he was treated. See *Air New Zealand Ltd v McAlister* [2009] NZSC 78, [2010] 1 NZLR 153 at [49] per Tipping J. In so holding His Honour rejected the *Eric Sides Motors* interpretation ("a substantial and operative factor") because such formulation is capable of being read as requiring too strong a link between the outcome and the prohibited ground. He pointed out that the policy of the legislation is that a prohibited ground of discrimination should play "no part" in the way people are treated.

[116] It follows that the submission by Vision that refusal to work on the Sabbath must be "the" material ingredient in the decision to terminate is unsupported by authority and wrong in principle as requiring too strong a link between the dismissal and the prohibited ground of discrimination.

[117] The more stringent test would also be inconsistent with the purpose of the Human Rights Act (better protection of human rights) and with the fact that the materiality test has been adopted in related contexts. See *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456 at [109] and *Child Poverty Action Group Inc v Attorney-General* [2013] NZCA 402, [2013] 3 NZLR 729 at [53] to [64].

[36] The important point from the above discussion, is that Ms Morgan needs only to satisfy us, to the civil standard, that her family status was a material ingredient in the decision not to employ her. She does not need to satisfy us that her family status was "the" material ingredient the decision not to employ her.

The Conflicts Policy in the context of case authorities

[37] In each of *McAlister*, *Meulenbroek* and *Nakarawa* it was held that a prohibited ground of discrimination was a material ingredient in the decision to dismiss the plaintiff. Counsel for the Commissioner invited the Tribunal to distinguish Ms Morgan's case from *McAlister*, *Meulenbroek* and *Nakarawa* case on the basis that, in each of those cases,

the policy or requirement underpinning the decision (in the case of *McAlister* age, and in the cases of *Meulenbroek* and *Nakarawa* a requirement to work on a Saturday) could not be separated from the prohibited ground.

[38] By comparison, the Commissioner said that:

[38.1] The Conflicts Policy simply provides that conflicts must be avoided or managed. Its terms are neutral. It does not necessarily apply where any prohibited ground of discrimination, such as marital status, family status, sex or age is engaged.

[38.2] The Conflicts Policy is not inextricably linked to a prohibited ground of discrimination. It is not directed at disqualifying relatives from employment within the Commission.

[38.3] The Conflicts Policy might apply to prevent an applicant's employment to a particular role because a conflict arises from a relationship with a relative or spouse which cannot be worked around. Equally, however, it might be that family or marital status would not prove to be a factual difficulty in that given the areas where the relevant persons worked, the conflict, or perceived conflict, could be managed.

[39] First, we note that HRA, s 22(1)(a) does not require there to be any comparator. Accordingly, that the application of the Conflicts Policy might lead to an applicant being declined for reasons not related to family status, for example close friendship, is not of direct relevance in this case.

[40] Secondly, we are concerned with the application of the statutory regime in the HRA preventing unlawful discrimination on the basis of family status. That statutory regime must be applied to the facts of this case. Section 22 of the HRA clearly makes it illegal to refuse or omit to employ someone by reason of family status. If there has been conduct which would otherwise be unlawful discrimination by reason of family status, there are then statutory exceptions, allowing an employer to have restrictions governing the employment of relatives, as prescribed by HRA, s 32.

[41] Even if we accept that the Conflicts Policy is not directed to family status, or to any other prohibited ground of discrimination, the HRA statutory regime cannot be displaced by the application of a facially neutral Conflicts Policy. Indeed, we do not understand that to be the Commissioner's submission. Rather, we understand that the Commissioner's submission is that Ms Morgan was not employed "by reason of" the application of the Conflicts Policy and that her family status was not a material factor in a causative sense. The Commissioner says the relationship between Ms Morgan and Ms Stein was only the "occasion or trigger" for the application of the Conflicts Policy and that the Tribunal should find Ms Morgan's relationship with Ms Stein was not a material ingredient in the decision not to employ Ms Morgan.

WHETHER MS MORGAN WAS UNLAWFULLY DISCRIMINATED AGAINST

[42] We accept that the range of conflicts considered under the Conflicts Policy is wider than that arising just for reasons of family status. That does not mean, however, that the Conflicts Policy is not directed at conflicts arising out of the employment of close family members, nor that the Conflicts Policy is not inextricably linked with family status. A key plank of the Conflicts Policy is to consider whether the employment of close family

members might give rise to a conflict of interest and how any such potential conflict should be managed or mitigated.

[43] In this case, the relationship between Ms Morgan and Ms Stein was the factual context in which the question of Ms Morgan's employment arose. It is accepted that the relationship between Ms Morgan and Ms Stein was the occasion or trigger for the application of the Conflicts Policy. However, once the Commission became aware of the relationship between Ms Stein and Ms Morgan, that relationship underpinned the whole approach of the Commission in considering Ms Morgan's potential employment and in applying the Conflicts Policy.

[44] Ms Borrell's evidence was that the role involved operational decisions including a determination as to how incoming emails might be dealt with and to which team member the questions raised in those emails should be referred. Ms Borrell noted her concern that there could be a perception that Ms Stein's work was being prioritised or that other team members work was not being prioritised. This concern arose in Ms Morgan's case because of the family relationship between Ms Morgan and Ms Stein.

[45] Family status was not only the trigger but also underpinned application of the Conflicts Policy. It influenced the Commission's determination in relation to Ms Morgan; were it not for her relationship with Ms Stein, Ms Morgan would have been appointed to the role.

[46] We are satisfied that the relationship between Ms Morgan and Ms Stein was a key factor in the determination not to employ Ms Morgan. It would be artificial to conclude otherwise. On the evidence before us, we therefore find that a material ingredient in the decision not to employ Ms Morgan was Ms Morgan's family status.

[47] In reaching this decision, we have also considered the Commissioner's argument that finding Ms Morgan's family status was a material factor in the decision would mean that the Commission could not consider its Conflicts Policy when assessing the suitability of applicants for work where the factual context included circumstances that fall under HRA, s 21. Such a finding, the Commissioner argued, could undermine the ability of the Commissioner to exercise the statutory function of giving effect to the public service values of integrity, accountability, and transparency, as now required under the Public Service Act 2020.

[48] In response to this we note that we are tasked with applying the HRA provisions to the facts of this case. In cases where a decision has been made not to employ someone by reason of family status, this may be for a reason which comes within the application of the Conflicts Policy and within a statutory exception to the non-discrimination provisions, for example that there is a risk of collusion between persons in a family relationship to the detriment of the employer; see HRA, s 32(a)(ii).

[49] In this case, however, the evidence of Ms Borrell was that she was concerned at the width of information that the role gave access to and that there could be a perception of favouritism between Ms Morgan and Ms Stein. Had the collusion exception been argued, on the evidence before us we would have found it difficult to conclude that there was a risk of collusion to the detriment of the Commissioner. A perception of favouritism cannot automatically be equated with a risk of collusion. There needs to be a risk of collusion and we are not satisfied that the wide access to information that Ms Morgan would have had was sufficient, in and of itself, to give rise to such a risk.

Were Ms Morgan to be employed in a more senior role, we might have been able to reach a different view.

CONCLUSION

[50] As referred to at [46] above, we are satisfied that the relationship between Ms Morgan and Ms Stein was a key factor in the determination not to employ Ms Morgan. We therefore find that a material ingredient in the decision not to employ Ms Morgan was Ms Morgan's family status.

REMEDY

Remedy sought

[51] We have found that the Commissioner breached HRA, s 22. We therefore consider the remedies available to Ms Morgan.

[52] Ms Morgan seeks:

[52.1] A declaration that the Commissioner breached HRA Part 2, s 92I(3)(a).

[52.2] Damages of \$145,000, being 2 years' loss of income, pursuant to HRA, s 92M(1)(b).

[52.3] Damages of \$40,000 for humiliation, loss of dignity and injury to feelings pursuant to HRA, s 92M(1)(c).

[52.4] An order that the Commissioner employs Ms Morgan in the role or an equivalent position, pursuant to HRA, s 92I(3)(d).

Declaration

[53] We first address the question of a declaration. In *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 (Kos J, Ms SL Ineson and Ms PJ Davies) at [107] and [108] it was held that while the grant of a declaration under the Privacy Act 1993, s 85(1)(a) (now Privacy Act 2020, s 102(2)(a)) is discretionary, the grant of such declaratory relief should not ordinarily be denied and there is a "very high threshold for exception". Given that the jurisdiction to grant a declaration under HRA, s 92I(3)(a) is indistinguishable from the remedy possessed by the Tribunal under the Privacy Act, we see no reason why the same principle should not apply; see also *MacGregor v Craig* [2016] NZHRRT 6 at [131].

[54] On the facts of this case there is nothing that could justify the withholding from Ms Morgan of a formal declaration that the Commissioner has committed a breach of HRA Part 2, in that Ms Morgan was unlawfully discriminated against in breach of HRA, ss 22.

Damages for loss of benefit

[55] The Tribunal may award damages for a loss of benefit, whether or not of a monetary kind, that Ms Morgan might reasonably have been expected to obtain, but for the breach; see HRA, s 92M(1)(b).

[56] We assume that the \$145,000 claimed by Ms Morgan equates to what she says would have been her salary for a two-year period, had she been employed by the Commissioner. There is no evidence before us as to the salary associated with the role. In addition, at the time the decision was made not to employ Ms Morgan, she was already in employment with a third party. There is no evidence before us as to what Ms Morgan's salary was in that employment. It was Ms Morgan's evidence that she resigned from her then existing employment in June or July of 2020, due to worsening health. There was no evidence as to the cause of her worsening health, so it is not inconceivable that, should she have been appointed, Ms Morgan may also have resigned from the role due to worsening health.

[57] Overall, there is no clear link between the claimed loss of benefit of \$145,000 and the Commissioner's employment decision in relation to Ms Morgan.

[58] Ms Morgan was, however, not appointed to the role. Ms Morgan's enthusiasm to take up the role was evidenced by her proposal to resign from her then current employment, even before receiving a formal offer from the Commissioner. The lack of appointment could be viewed as a loss of benefit but in this case, we consider that such loss is best seen as giving rise to feelings of humiliation, loss of dignity and injury to feelings, compensation for which is referred to at [59] to [62] below.

Damages for humiliation, loss of dignity and injury to feelings

[59] The Tribunal may also award damages for a breach of HRA, Part 2 in respect of humiliation, loss of dignity and injury to feelings; see HRA, s 92M(1)(c). Ms Morgan is seeking damages of \$40,000. Such an award would be towards the upper end of the middle band as set out in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (*Hammond*).

[60] There must be a causal connection between the breach of HRA, s 22 and the humiliation, loss of dignity and injury to feelings suffered; see *Singh v Singh & Scorpion Liquor (2006) Limited* [2016] NZHRRT 38 (*Singh*) at [100]. Once a causal connection is established damages must be such as to adequately compensate the plaintiff for the behaviour to which he has been subjected rather than to punish the defendant; see *Singh* at [101]. Any award of damages imports a subjective element to its assessment. The circumstances of each aggrieved individual will be specific to them and unique: *Hammond* at [177.2].

[61] Ms Morgan said that she was distressed at the withdrawal of the offer of employment, but she was unable to seek mental health assistance as New Zealand entered a five-week lockdown, due to Covid 19. She also said that her stress caused depression, so that she could not seek other employment. Ms Morgan provided a brief doctor's report dated 4 June 2021 (over a year after the event in question) which merely referred to unspecified employment issues adversely affecting Ms Morgan's health, contributing to an exacerbation of illness. It was Ms Morgan's evidence that, while she was already in employment, she was also applying for numerous other employment positions around the time she applied to the Commission. The doctor's report is not

specific as to Ms Morgan’s employment issues. It does not link Ms Morgan’s employment application to the Commission to the symptoms suffered by Ms Morgan.

[62] Nevertheless, we accept that Ms Morgan did suffer a measure of humiliation, loss of dignity or injury to her feelings causally connected to her not being accepted for the position. In all of the circumstances, we are of the opinion that an award for Ms Morgan in the top end of the first band in *Hammond* is appropriate.

[63] No other remedy sought by Ms Morgan will be granted.

COSTS

[64] While no submissions as to costs were made, applying the principles recently adopted by the Tribunal in relation to costs, we are of the view that this is not a case where costs should be awarded; see by way of example of the Tribunal’s decisions on costs in *Beauchamp v B & T Co (2011) Ltd (Costs)* [2022] NZHRRT 30 at [14] to [16].

[65] In any event, as a self-represented litigant, the only costs recoverable by Ms Morgan would be the disbursements incurred by her in preparing and presenting her case; see *Scarborough v Kelly Services (NZ) Ltd (Costs)* [2016] NZHRRT 3 at [8.1].

[66] Costs are to lie where they fall.

FORMAL ORDERS

[67] For the foregoing reasons the decision of the Tribunal is that:

[67.1] A declaration is made under s 92I(3)(a) of the Human Rights Act 1993 that the Public Services Commissioner committed a breach of s 22(1) of the Human Rights Act by unlawfully discriminating against Ms Morgan by reason of her family status.

[67.2] Damages of \$10,000 are awarded against the Public Services Commissioner under ss 92I(3)(c) and 92M(1)(c) of the Human Rights Act for humiliation, loss of dignity and injury to the feelings of Ms Morgan.

.....

Ms GJ Goodwin
Deputy Chairperson

.....

Ms PJ Davies
Member

.....

Ms SM Kai Fong
Member