

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 2430/19
Applicant: Garry Blount
Respondent: Penrith City Council
Date of Determination: 4 September 2019
Citation: [2019] NSWCC 292

The Commission determines:

Findings

1. I am not satisfied that the applicant suffered a psychiatric or psychological injury.
2. In the event I am wrong in that finding, I am satisfied that the respondent has met its onus of proof in establishing that it is entitled to the benefit of the provisions of s 11A of the *Workers Compensation Act 1987*.

Orders

1. There is an award in favour of the respondent.

A brief statement is attached setting out the Commission's reasons for the determination.

John Wynyard
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JOHN WYNYARD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Jackson

Ann Jackson
Acting Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Garry Blount (the applicant) brings an action seeking weekly compensation and s 60 expenses from Penrith City Council (the respondent) in relation to a claimed psychological injury. Notices denying liability were issued from the respondent's insurer on 15 October 2018 and 12 March 2019. The Application to Resolve a Dispute (ARD) was issued on 20 May 2019 and the Reply was issued on 7 June 2019.

ISSUES FOR DETERMINATION

2. The parties agree that the following issues remain in dispute:
 - (a) Did the applicant suffer a psychological or psychiatric injury?
 - (b) If so, do the provisions of s 11A of the *Workers Compensation Act 1987* (1987 Act) apply?

PROCEDURE BEFORE THE COMMISSION

3. This matter was heard at Penrith on 19 July 2019. Mr Dewashish Adhikary of counsel instructed by Messrs Carroll & O'Dea appeared for the applicant and Mr Stephen Flett of counsel instructed by Messrs Hall & Wilcox appeared for the respondent. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

4. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) ARD and attached documents;
 - (b) Wage Schedule lodged by the applicant;
 - (c) Reply and attached documents, and
 - (d) Application to Admit Late Documents (ALD) and attached documents.

Oral evidence

5. No application was made in relation to oral evidence.

FINDINGS AND REASONS

6. Part 4 of the ARD alleged two dates of injury, namely 4 September 2017 and 4 April 2018. The description of the injury was in three parts. It alleged that "During the course of his employment" that there were "various incidents relating to asbestos, public health and safety issues (i.e. erecting goal posts) as a result of which Mr Blount developed stress and anxiety symptoms". The second allegation was that there was a re-emergence of the "stress and anxiety symptoms" in or around 4 April 2018 which had been caused by the respondent's "handling of our client's concern regarding public health and safety issues as well as

workplace health and safety issues". The third charge was that those symptoms re-emerged because Mr Blount's concerns about them were mismanaged and he was accordingly "caused distress".

7. Following discussion with the respondent in conciliation, Mr Blount amended the claim for weekly compensation. The Wages Schedule filed in accordance with the Directions of the Commission originally claimed weekly compensation for two periods; 30 October 2017 - 19 November 2017, and 2 April 2018 - 17 June 2018.
8. Mr Adhikary discontinued the claim in relation to the first period and amended without objection the second period to seek weekly compensation from 5 April 2018 to 4 June 2018. The claim for s 60 expenses related to periods of psychological treatment and medication.
9. There is some overlap between the events that were the subject of the discontinued first weekly claim and the present claim. Although Mr Blount has attempted to restrict the evidence regarding his claim for weekly payments between 5 April 2018 and 4 June 2018 to one specific event, a proper appreciation of his conduct, and whether he has been caused a psychological injury, requires a wider consideration of the history of the relationship between Mr Blount and the Council.
10. Mr Blount brought the present action as he alleges that he suffered a psychological injury because of the conduct of the respondent following the discovery of asbestos on Council land, on 21 December 2017. This, it was alleged, led to his suffering a short-lived adjustment disorder which incapacitated him for employment for the pleaded period.
11. With regard to the period for compensation which has been discontinued, Mr Blount alleged that he had suffered a psychological injury because he was bullied and harassed over his attitude to asbestos on Council property, and because the council allegedly ignored his safety concerns over the removal of goalposts on Council property.

The discovery of asbestos on 21 December 2017

12. Mr Blount made four statements in total, dated 5 October 2017, 23 January 2018¹, 17 July 2018 and 5 November 2018. The first of the statements related to the earlier discontinued claim, and will be considered under that heading.

Mr Blount's statement of 23 January 2018

13. As will be seen, the statement dated 23 January 2018 was taken during the disciplinary meeting of the same date with Ms Christine Woodbury following her investigation into the events of 21 December 2017.
14. Mr Blount explained in that statement that he was approached by another Council employee on the morning of 21 December 2017 and they went to a site in Warrington. Mr Blount said that he was a carpenter and worked freely. He said that he did not ask his supervisor for permission to attend the site "because it was such an important issue." He said that it had so much background that "I needed to set out to the site urgently. There was a childcare centre involved so I needed to get there as quick as possible."
15. Mr Blount said he had instruction from the Union to meet on the site.
16. He said that he attended the location because he was the person who brought the site to attention several months earlier. He indicated that he had told Mr Gordon about the site, but said that he was "dismissed."

¹ Reply 4

17. Mr Blount said that he “knew for a fact” that the material was there, so he “pursued it”. There was a meeting earlier that day in which apparently the union requested that “we all meet” at the site. Whilst Mr Blount conceded that he had told Council employee Mr Payne that the site was wet, he denied that he picked up anything but bark, two coins and a marble. Mr Blount alleged that the Council had no policy or procedure for handling asbestos, or if there were, he had not seen it.

Mr Blount’s statement of 17 July 2018

18. The second statement relevant to the events of 21 December 2017 was taken by an investigator and dated 17 July 2018. Mr Blount said he had been employed by the respondent at the depot in Copeland Street Kingswood for 18 years as a carpenter. He was employed to do maintenance work on Council parks and assets.
19. He said that there had been two prior issues with the respondent Council. He said that he had been off work on compensation in September 2017 due to work-related stress regarding “several asbestos issues” that had been unresolved by Council, and with which he had been involved for “many years.” He said that several of his co-workers had been involved, and that he was responsible for people working under him.
20. He mentioned that there had been another issue regarding the installation of goalposts at Council grounds. He alleged that, having given to the Council management the SafeWork NSW regulations about installation/removal of goalposts, his concerns had been “dismissed”.
21. Mr Blount related that he was certified unfit until 20 November 2017 when he returned to work. This was on condition, he claimed, that industrial negotiations were to take place to resolve the asbestos and goalpost issues.
22. On 21 December 2017, Mr Blount said that Council had been contacted for “urgent action” to clear asbestos from a public reserve. The contact had been made apparently by a Child Care Centre in William Street Werrington. Mr Blount said that he had previously identified that site as needing remediation, and had received an email from a Mr John Gordon that this had been done.
23. In any event Mr Blount said that “an urgent meeting” happened at the site and that he attended along with eight named Council officers. The property was inspected and asbestos was identified.
24. He said that on 18 January 2018, he was contacted and asked to collect a letter from Ms Christine Cleveland in HR. The letter was dated 15 January 2018, and contained four allegations against Mr Blount, all of which were related to his conduct when he attended the site on 21 December 2017.
25. An investigation into the allegations then took place over the next two months during which Mr Blount provided his above statement of 23 January 2018. He said that over that time he was getting increasingly stressed whilst awaiting the outcome of the investigation.
26. During that period, the issue over the goalposts did not resolve, Mr Blount alleged. He said that there were letters between the United Services Union and council on that subject. He said that Ms Di Toffoli, WHS Officer, refused to have mediation, which added to his stress.
27. He said that on 28 March 2018, he received a letter from Ms Christine Woodbury (formally Cleveland) setting a 4 April 2018 date for a meeting to advise the outcome of the asbestos investigation.

28. At that meeting Mr Blount was handed a document showing the outcome, which was that three of the allegations had been substantiated and the fourth partially substantiated. Notwithstanding, the document advised that no disciplinary action would be taken against Mr Blount, who was reminded about Council values and the code of conduct.

29. Mr Blount said:

"I questioned Christine why no disciplinary action would be taken against me in view of the seriousness of their findings. I demanded that they take disciplinary action against me otherwise they need to change their findings..."

30. Mr Blount noted that Christine and a fellow attendee, Joshua Giblin, were surprised. Mr Blount said that the decision "put me over the edge" and he stopped the meeting.

31. Later on 4 April 2018, Mr Blount said that he attended his general practitioner, Dr Chew, who diagnosed and Adjustment Disorder and referred him to a psychologist, Dr David Bosanquet. Mr Blount was certified fit to return to full duties on 4 June 2018, but was unable to return until 18 June 2018 as he developed an unrelated heel condition in the meantime. Mr Blount said that the asbestos and the goalpost issues were now being handled by his solicitors.

Mr Blount's supplementary statement

32. A supplementary statement by Mr Blount was undated but contained a "received" stamp of 5 November 2018.² The purpose of the statement Mr Blount said was to reflect his feelings about how he was coping over the period he described in his statement of 17 July 2018.

33. He said that he had a general sense of unease at the council's attitude to health and safety issues, and that he was incensed as to how he was treated, particularly as Ms Toffoli refused to meet him for mediation. He said that he saw a general practitioner a day after "this ordeal" upon receiving advice from the union. It is apparent that he was referring to the earlier issue regarding the goalposts as he then mentioned that he had seen Dr Sharon Reutens, Psychiatrist, whose report of 26 October 2017 was lodged by the respondent.

34. Mr Blount said, presumably referring to his return to work in 2017, that he had "high expectations and hopes" of amicable resolution with the Council, assisted by his union. He stated that his concerns had only ever been about work health and safety and in particular personal exposure to prosecution if something went wrong as a result, as I understood his statement, of Council not heeding his concerns.

35. Mr Blount said that he also had great concern for his co-workers, many of whom he had worked with for years. He declared that it was his responsibility to look after their health and safety, and indeed he said he was concerned for the general public. He would, he said, feel "exceedingly guilty" if something had happened as a result of work done without "proper expertise" that caused injury.

36. Mr Blount then referred to the letter of 28 March 2018 advising of the outcome of the investigation. He said that he was "outraged" as it was obvious that Council was trying to silence him by bringing personal allegations against him. They were, he said, trying to "sully my name." It was a "scurrilous attack on my reputation," he said.

37. At [19] he said that he had not suffered stress previously, and there had not been any other factors or incidents or activities in his personal life that could have contributed to his condition. He acknowledged the helpful support he had been receiving from Dr Bosanquet, the Psychologist and from his general practitioner, Dr Chew.

² From ARD 7

38. Dealing with his anger that no disciplinary action has been brought against him, Mr Blount said that the Council was trying to avoid further investigation because they knew their accusations would prove to be spurious. He said that he regretted not advising ICAC about the manner in which Council addressed the finding of the asbestos on 21 December 2017. He thought that in hindsight Council management may have exposed the public to asbestos risk, which ought to have been properly appreciated by Council at the time. Mr Blount then said that his treatment had been appalling and criticised the opinion of the medico-legal specialist retained by the respondent, Dr Ben Teoh, who thought that he was simply distressed.
39. Mr Blount then engaged in some advocacy for the opinions of his medical specialists, and suggested it was absurd for the Council to believe it behaved reasonably.

Respondent's answer to Mr Blount's allegations

Chronology of events involving the Industrial Relations Commission

40. The respondent lodged statements from Council employees, and numerous documents relating to Mr Blount's employment over a period of years. Mr Blount's three statements failed to mention that, as a result of a grievance lodged by him, the Council became involved in proceedings in the Industrial Relations Commission. A useful summary, which accurately reflects the evidence, is contained in the report from M & A, Investigators dated 17 July 2018. It said:³

"The claimant's allegations and the insured's responses are as follows:

1. **Allegation** - The insured has not resolved asbestos issues the claimant had been involved in for many years or the issue of the removal and installation of goal posts at the insured's sporting grounds by unqualified personnel.

Response-- Mr. Joshua Fayle, HR Co-ordinator, advised in July 2017 the claimant lodged a grievance relating to the insured not addressing his previous concerns about possible exposure to asbestos at Council maintained parks which he attends to carry out his duties.

On 8 August 2017, Ms Di Toffoli, WHS Safety Officer, and an independent investigator met with the claimant and his support person, Mr Roy Milan, to discuss his asbestos grievance. The claimant identified historical concerns about asbestos relating to four Council maintained parks sites, namely Glenmore Park, Leonay, St Marys and RFS site, Erskine Park. Ms Toffoli advised him Council would look into his concerns.

On 29 August 2017, Mr Fayle attended NSW Industrial Relations Commission to respond to the claimant's claims that Council had not actioned his grievance. He advised the Commissioner that Council had in fact met with the claimant on 8 August 2017 and was in the process of addressing his concerns. The claimant attended this hearing and agreed with this. He also confirmed the four sites he named on 8 August 2017 were all of his concerns and he also confirmed the current practices at Council in relation to asbestos handling were appropriate. The Commissioner requested they report back on action taken on 29 September 2017.

On 20 September 2017, the United Services Union wrote to the insured on the claimant's behalf regarding a number of issues relating to asbestos handling, and named an additional site at Werrington of a stock pile of dirt that might be asbestos contaminated. Mr Fayle provided a copy of this letter as part of his supporting documents.

³ From reply 199

The insured identified it did not have a stock pile of dirt at Werrington, and wrote to the United Services Union accordingly on 25 September 2017. Mr Fayle provided a copy of this letter as part of his supporting documents.

On 27 September 2017, the United Services Union wrote to the insured advising the stock pile of dirt was actually at the Kingsway at St Marys. Mr Fayle provided a copy of this letter as part of his supporting documents.

On 28 September 2017, the insured wrote to the claimant and to the United Services Union providing details of the outcome of his concerns about the original four sites that he raised on 8 August 2017. In this response, the insured provided details of action taken at these sites to address asbestos issues in 2004, 2007, 2008, and 2015. Mr Fayle provided a copy of this letter as part of his supporting documents.

On 29 September 2017 Mr Fayle attended the NSW Industrial Relations Commission, however, the claimant was absent as he was unfit for work due to a workers' compensation claim for a psychological condition. Mr Fayle informed the Commissioner of the action taken by the insured in 2004, 2007, 2008, and 2015 at the sites identified by the claimant which was accepted by the Commissioner.

On 8 November 2017, the insured wrote to the United Services Union advising that the stock pile of dirt at the Kingsway was identified and it was certified to be clear of asbestos. Mr Fayle provided a copy of this letter as part of his supporting documents.

On 13 November 2017, Mr Fayle attended the NSW Industrial Relations Commission, however, the claimant was absent as he was unfit for work due to a workers' compensation claim for a psychological condition. He advised the Commissioner the stock pile of dirt at the Kingsway was identified and it was certified to be clear of asbestos. This was accepted by the Commissioner.

On 24 November 2017, the insured wrote to the United Services Union advising the final outcome of all remaining sites that had been identified as asbestos concerns. Mr Fayle provided a copy of this letter as part of his supporting documents.

On 27 November 2017, Mr Fayle attended the NSW Industrial Relations Commission, however, the claimant was absent as, although he had returned to work he was on annual leave. Mr Fayle advised the Commissioner of the insured's final outcome of all remaining sites that had been identified as asbestos concerns (as shown in the insured's letter to the United Services Union on 24 November 2017). The Commissioner accepted this and closed the matter.

Response - Mr Geoff Payne, WHS & Injury Management Coordinator, advised on the claimant's return to pre-injury duties in November 2017 the insured advised the United Services Union that Ms Di Toffili has refused to meet with the claimant or apologize to him regarding the goal posts issue, and offered for the claimant to meet with Mr Payne and his manager, Ms Linda Ross, Workforce Manager, to address his concerns about the goal posts. This offer has not been taken up by the claimant.

In the meantime, the goal post issues have been addressed by the insured which purchased hydraulic equipment to remove and install goal posts with the use of a Council tractor operated by a Council Tractor Operator. Hence, the claimant will not be involved in this process."

Letter to Mr Blount of 28 September 2017

41. With regard to the involvement of the Industrial Relations Commission, the following extract from a letter from Mr John Gordon to Mr Blount is of relevance. Mr Gordon is the City Presentation Manager of the respondent. He wrote to Mr Blount on 28 September 2017.⁴ He set out the background to the dispute as follows:

“In May 2017, Council requested that the United Services Union ('USU') put in writing its concern regarding the alleged mishandling of asbestos. On 7 June 2017, Council received a letter from the USU identifying four sites; three sites were different to the sites identified in your grievance.

On 19 July 2017, in an outcome meeting regarding another matter, you raised your concerns about asbestos. I attempted to contact you to ascertain the specifics of these Issues but received no response. On 28 July 2017, you filed a formal grievance with Council expressing your concern that (allegedly) Council has not dealt with asbestos issues properly in the past. Council notes that your asbestos concerns were not included in the USU's earlier correspondence.

In response to your grievance, Council included you in an asbestos investigation that was already underway into other asbestos related matters. This Investigation required over 25 people to be interviewed and demanded a significant amount of resources (both internal and external).”

42. Mr Gordon then considered the three sites that were named in Mr Blount's grievance notice. The first site was Glenmore Park Loch, where in 2004/5 an independent hygienist had been engaged to advise where asbestos material had been identified. Mr Gordon said that in 2015 further work was carried out regarding raised garden beds which independent investigators, in 2017, approved as being reasonable.
43. The second site was the Leonay playground where work was done in 2007. Mr Gordon detailed the extensive measures taken including in excess of 775 tonnes of the material being removed and properly disposed of. Mr Gordon then said:

“Council finds it difficult to understand why you were not aware of the status of this matter, given you were working on this site at the time. In any event, if you are still unsure, Council is concerned that this matter was raised some 10 years later and not at the time of the incident.”

44. The letter continued:

“Site 3: St Marys Water Wise Park: Approximate date of Work 2008”

Council undertook the construction of a sustainable water wise garden at St Marys in early 2008. Council has no record of any asbestos material being identified during the course of these works.

There is no evidence that Council mishandled any contaminated material. Council has also conducted a visual inspection of the alleged ‘dumping’ site (Rural Fire Service Compound on the corner of Mamre Road and Luddenham Road). This site is fully fenced and is flat with no mounding evident.

I trust this brings the matters related in your grievance to a close.”

⁴ Reply 79

Letters from Mr Gordon to the General Secretary, United Services Union

45. Mr Gordon wrote to the United Services Union on 8 November 2017, referring to Mr Blount's "additional concerns", which were addressed in detail over seven different topics. I do not propose to reproduce the detail, but Mr Gordon concluded⁵:

"Council takes the safety of our employees, contractors and members of the public very seriously and are concerned with statements made by Mr Blount to the contrary. Council aims to continuously improve in the safety space and welcomes any improvement ideas by our employees."

46. When matters were completed in the Industrial Relations Commission, Mr Gordon wrote to the Union on 24 November 2017:

"Mr Graeme Kelly
General Secretary
United Services Union
Level 7, 321 Pill Street
SYDNEY NSW.2000
BY EMAIL ONLY: Mr Daniell Papps
Dear Mr Papps

Matter No: 2017/258347- Gary Blount and Penrith City Council

I refer to the above matter and Commissioner Seymour's Recommendations.

1. The Kingsway Stockpile

Council provides a copy of a Pavement Investigation and Waste Classification Report from GeoEnviro Consultancy Pty Ltd. This report is for the stockpile that is currently located at the Kingsway. This material is currently being re-used on other projects.

2. Werrington Lake Site

Council provides a copy of the invoice from RMA Group Contracting for the removal of asbestos material at Warrington Lake. The quantity of material removed was less than 10m² and as such RMA Group Contracting were not required to Issue a clearance certificate. This was only brought to the writer's attention recently.

However, the small quantity of material removed can be substantiated by the waste disposal docket which indicates a negligible amount of material was taken to the waste disposal centre. Council trusts this material will be of satisfaction to the union.

1. Rural Fire Service ('RFS') Site (St Mary's Water Wise Park)

In addition to Council's letter dated 28 September 2017, Council provides the following Information:

Mr Blount was not involved in the construction of the St Marys Water Wise Park. Rather, several months after the completion of the Park, Mr Blount attended the site to install signage. At this time, Mr Blount identified asbestos material, which Council managed appropriately (Mr Blount has acknowledged that this matter was dealt with to his satisfaction)

⁵ Reply 83

Mr Blount has no first-hand knowledge, nor has he produced any supporting evidence, to indicate that asbestos was identified during the construction of the Park. As previously communicated to both Mr Blount and the union, Council also has no record of any asbestos material being identified during the course of these works.

Despite this, Mr Blount alleged that soil from the construction of the St Marys Water Wise Park was 'dumped' at the RFS Compound on Mamre Road. As previously communicated to Mr Blount and the union, this is a flat site with no mounding.

The photos produced by the union at the commission on 13 November 2017 are not of the location identified by Mr Blount (being the RFS Site). Rather, these photos are identified as being of mounding adjacent to Mamre Road, on the road corridor, which is not Council-owned land. Council has no knowledge of how, or when, these mounds were created, and for all Council knows, they may be natural gradients.

I trust this now brings the matters raised in your grievance to a close.”

Council witnesses

47. The respondent lodged statements from Geoff Payne, Adrian Estreich, Joshua Fayle, and Christine Woodland. I do not propose to consider Mr Fayle's statement, as its contents have been effectively summarised in the above extract from M & A Investigations.

Mr Geoffrey Payne

48. Mr Payne supplied two statements, one dated 4 October 2017 regarding the goalposts issue which will be considered in due course, and one on 4 January 2018⁶. In the latter, Mr Payne said that on 21 December 2017, he and Mr Estreich were asked by Council to go to a site on William Street in Werrington. Concerns had been raised by the Union that possibly asbestos was at that site.
49. When he arrived, he said that a number of Council employees were on site. He said that two employees were there in their capacity as union representatives, one was acting City Presentation Manager, and two were there with experience of clearing contaminated sites. Mr Payne he did not know why Mr Blount was at the site, or a Mr Garth Podmore, whose surname he was not sure of.
50. Mr Podmore had gloves on and a spray can of marking paint in his hand. Mr Payne noted that some material on the ground had been circled with spray paint, and a further item had been circled outside the fence line of the Child Care centre.
51. Mr Payne saw Mr Blount pick up a piece of rubble with his bare hands. Council procedure was not to touch any material that is suspected of containing asbestos, Mr Payne said. The procedure was to leave it where it was, notify a supervisor and let the professionals deal with it. He told Mr Blount that he was not to pick up or move suspected material, to which Mr Blount responded to the effect that there was no danger because the material was wet.

Mr Adrian Estreich

52. Mr Adrian Estreich made a statement on 17 January 2018⁷, which confirmed the contents of Mr Payne's statement. Mr Estreich saw Mr Blount move a piece of material, and assumed that he and Mr Podmore had made the pile of material within the circles. He said he was surprised to see anyone handling suspected material and said it was blatant non-compliance with Council procedure.

⁶ Reply 1

⁷ Reply 7

Ms Christine Woodbury

53. Ms Christine Woodbury made a statement on 9 July 2018.⁸ She had been employed as a human resources business partner for approximately 12 months. She said that on 4 January 2018 she received an email from Mr Fayle which contained a copy of a letter from Mr Estreich, raising concerns about two staff members handling asbestos on 21 December 2017.
54. As there was some uncertainty regarding the identity of the two Council employees, Ms Woodbury conducted enquiries with witnesses between 5 January and 24 January 2018. She became satisfied that Mr Blount was one of the two employees, during those interviews - presumably as a result of the evidence of Messrs Payne and Estreich.
55. She handed Mr Blount a letter dated 15 January 2018 on 18 January 2018. She requested that Mr Blount attend a meeting on 23 January 2018 to which, after some demur, Mr Blount agreed. At the meeting on 23 January 2018 Ms Woodbury obtained the statement from Mr Blount referred to above.
56. Ms Woodbury was on leave from 29 January 2018 to 19 February 2018. She completed her preliminary assessment, finding that three of the four counts against Mr Blount were substantiated, and one partially substantiated. In late February, she gave her investigation results to Mr John Gordon, without making any recommendations regarding discipline.
57. In early March 2018, she was advised verbally by Mr Gordon that no disciplinary action was to be made, but Mr Blount was to be reminded of Council's values and its Code of Conduct. She was unable to advise Mr Blount of this determination, as he went off work on compensation for a heel condition on 10 March 2018, and did not return until 4 April 2018. On that day a meeting was held, and Mr Blount became "visibly angry" when told there would be no disciplinary action taken.
58. Mr Blount said that HR only supported management. He asked for a copy of the investigation report as he wanted to take the matter further, as the allegations had been wrongly substantiated. Ms Woodbury said:

"I was surprised at Garry's reaction that he wanted the warning as an outcome. I said to Garry to submit a response to the outcome letter requesting further information which he has not. Garry left work after the meeting."

The outcome letter of 15 January 2018

59. The letter to Mr Blount containing the allegations of misconduct dated 15 January 2018 was in evidence.⁹ It said, relevantly:

"Re: Notice to Attend Meeting

Penrith City Council is undertaking an investigation relating to your alleged conduct on 21 December 2017 whilst at a public reserve on Williams Street in Warrington.

You are required to attend a meeting with myself and Christine Cleveland, Human Resources Business Partner on Tuesday 23 January 2018 at 2pm. The meeting will be held in the Civic Centre. The purpose of this meeting is to provide you with an opportunity to respond to the following allegations:

⁸ Reply 24

⁹ Reply 86

1. You attended a public reserve on Williams Street in Warrington on 21st December 2017 without authorisation or justified reason to be at this location on this date.
2. You handled material that may have contained Asbestos.
3. You were not wearing any personal protective equipment.
4. You were told not to touch the possible Asbestos material and responded something to the effect of 'it's okay, it's wet'

These allegations are serious and, if proven, may constitute a breach of your Work Health and Safety Obligations, Council's Asbestos Policy, Council's Values, Council's Code of Conduct and/or Council's expectations regarding the management of Asbestos.

The Investigation will be conducted in accordance with the Clause 36C(I) of the Local Government (State) Award 2017 and the Local Government Industry Guidelines on Workplace Investigations.

You are entitled to have a support person attend the interview with you. The support person must not be involved in the process, or be someone that has been or is likely to be, interviewed in relation to these matters. At any stage, you may be represented by your union or its local representative or delegate.

A written statement will be produced and provided to you as soon as it is available. No other recording of the interview is to be made. If you have any documents which you believe may be of assistance, please bring them with you. All the information obtained will assist in the investigation and the preparation of the final report."

Further council documentation

60. The respondent lodged its asbestos safety manual¹⁰, which had the date "November 2012" at the bottom of each page, but at least one entry was dated March 2012¹¹, so it would seem that the November date is simply the date of printing.
61. On 18 April 2017, Mr Payne wrote to The General Secretary of the United Services Union, advising that Council had adopted the Model Asbestos Policy and further develop its program around that document. All council buildings had been inspected by the Australian Asbestos Management Services and a comprehensive Management Plan had been developed around their findings. The plan had been developed four years earlier and was due for review by the end of December 2017. Mr Payne said that the council:

"Identified staff who are in any way associated with Asbestos undergo asbestos awareness training (last undertaken in June 2016) but as an overarching procedure councils SWMS [safety work method statement] advise all staff that upon discovery of any material may contain asbestos to cease work, isolate the works site and remove themselves from the affected area. A trained Works Coordinator with the appropriate PPE [protective personnel equipment] will attend the site and take the appropriate action to ensure the site's safe and will engage an approved contractor to remove and rehabilitate the site."

¹⁰ Reply 290 – 299

¹¹ Reply 298

The Discontinued Claim

62. Mr Blount made a statement in regard to alleged bullying and harassment regarding asbestos and safety concerns on 5 October 2017. The statement was taken from an operative from Verifact, which organisation was asked on 20 September 2017 to investigate allegations of bullying and harassment brought by Mr Blount. Verifact's findings were produced in a report of 5 October 2017.¹²
63. Mr Blount's statement was dated the same day.¹³ He said that "the most recent problem" concerned a situation where the respondent undertook to remove the goalposts on Council sporting fields for soccer and football. Mr Blount said that before this year, Council had used a contractor for that job, but now wished to use its own workforce.
64. Mr Blount said that on the first day the contractor was still used, but after that Council's own plant and equipment were employed. Mr Wayne Beresford, the supervisor, enquired as to whether "we" (by which I take Mr Blount to mean himself and the workers working under him) had a SWM (safe work method) statement. Mr Blount had one in his Ute and showed it to Mr Beresford, saying that it was old, not comprehensive and needed to be reviewed.
65. Mr Blount said that later Mr Beresford also came out with a new SWM statement, which, Mr Blount said:
- "They are supposed to present to you for you to read it and sign it to say that you understand".
66. Mr Blount had a "quick look" and said it was not comprehensive enough and that "we needed to talk about a few things." The majority of the other workers however signed it, "sight unseen."
67. Noting that there was a sentence that stated that a spotter was needed, Mr Blount took it upon himself to "research that business." He started to look at WorkCover legislation and discovered that a dogman's license was needed, as he and his team were lifting with a machine.
68. Mr Blount stopped work on the job and spoke to the Safety Officer, Mr Sheens. Mr Sheens came to the site with a manager, Mr Morris. Mr Blount was asked how the process works but Mr Blount said he was asked to show that "we" needed a dogman ticket.
69. Mr Blount then called Ms Di Toffoli, the council's Work Health and Safety Officer and tried to arrange a meeting with her, but she said she was too busy. She said that the job could be done using the backhoe driver's qualifications, but Mr Blount then found out that was incorrect, as such a qualification only permitted operation of the machine "and not a dogman ticket".
70. Mr Blount met Messrs Morris and Sheens at another field one morning, and gave a copy of the WorkCover legislation to Mr Morris. Mr Blount said, "I told him the section to read." The impasse as to demonstrating the process was solved when the SWM statement on that day was signed by Mr Morris, who thereby took responsibility. However, Mr Blount then spoke to the union rep, Mr Milan who in turn discussed the matter with Messrs Beresford and Sheens and it was agreed that "we all go to Grey gums Oval" where they would dig around the posts without moving anything "while this was to be sorted out." Mr Blount did not relate what happened to Mr Morris.

¹² Reply 102

¹³ Reply 117

71. Mr Blount then phoned Ms Toffoli again and left a message. He then called her boss, Mr Geoff Payne, who said that he did not know where she was. However, when he called her later and she answered, Mr Blount told her that she was wrong. Mr Blount said that Ms Toffoli got upset and admitted she had it wrong. Mr Blount said that "we" needed to fix it, but she refused to meet with him and refused for him to come and meet her. "She hung up."
72. Mr Beresford called Mr Blount later in the day and said that a dogman had been arranged and to meet at the Werrington depot. The dogman's name, said Mr Blount, was Guy Sheens. They then proceeded to Cook Park St Marys with Mr Payne. When Mr Sheens was asked to pull the posts out, he said that "we" did not have the right equipment.
73. They then proceeded to Peppertree Oval, Erskine Park, where one set of goalposts was pulled out. The next day Mr Blount said Mr Morris came down and personally apologised, saying that they got it wrong and he had been working under instruction from Ms Toffoli.
74. They then went to several other parks and use(d?) the backhoe to do the job with the dogman. The following day Mr Blount said that he met with "Matthew and Wayne" and spoke about the "incompetence, cover-up and protection of existing management." Mr Blount said:
- "I told them I was done with the place."
75. Mr Blount said that he learned from WorkCover that if he was working without the correct licences he would be liable for a huge fine, as would be the Council. The WorkCover representative told him that if anyone had been injured or killed "we would all go to jail." Mr Blount said that he was not prepared to work under those conditions, being that vulnerable.
76. He then went to see Dr Michelle Bond on 16 September 2017, where he was given a WorkCover certificate. He said that his normal doctor, Dr Chew, contacted him and said he was taking over Mr Blount's case. He was putting Mr Blount off for a month as Mr Blount had a lot of trouble with Council over the years and this was the last straw. Mr Blount agreed.
77. As at the date of his statement, Mr Blount had had one session with the psychologist Dr David Bosanquet. Mr Blount said:
- "There are other issues which includes an asbestos issue which is on the same certificate."

Respondent's evidence

Ms Diana Toffoli

78. Ms Diana Toffoli made a statement on 4 October 2017.¹⁴ She confirmed that she was employed by the respondent as the Safety Health and Welfare officer. In a discussion with Mr Mal Sheens, a Council Health and Safety Representative, she learnt that Mr Sheens was reviewing the SWM statement for the goalposts. He said that Mr Blount had a concern as to qualifications needed for the job.
79. Ms Toffoli checked the existing SWM procedure and it would seem made some clarification with her typewriter, but did not change the procedure.

¹⁴ Reply 140

80. The next day Ms Toffoli said she heard that Mr Blount had done some research and thought that a dogman was required to do the job. She then rang a contractor, L B Wires, that the Council had been using to test tag and service its lifting equipment. In response to her question as to whether a dogman was required to lift the goalposts, she was emailed "a current WorkCover guide."
81. Ms Toffoli then contacted WorkCover herself to establish whether a dogman was required for the job. She said:
- "They gave an answer."
82. This answer was passed on by Ms Toffoli to her boss. Ms Toffoli for some reason did not indicate what the WorkCover answer had been.
83. Ms Toffoli said that "then" she received a call from Mr Blount in the period between her review of the SWM statement and her calling WorkCover. I assume she means that she got the call in fact before she rang WorkCover. In any event Ms Toffoli said that she was on a different site at the time of the call from Mr Blount and suggested that he contact either Mr Payne, Mr Sheens or a WHS Support Officer called Eden, although she then told Mr Blount not to call Eden when he indicated that was his intention. She said the first two gentlemen were accessible and should be contacted. She said that the phone call ended "okay."
84. Ms Toffoli said that she did not hear anything more for about a week, and then noticed that she had a missed call from Mr Blount. She was busy at the time and asked her boss to ring Mr Blount.
85. About two hours later she said she received a phone call from Mr Blount and was told that she needed to "come out and fix this." He had "four blokes standing on the side doing nothing," Ms Toffoli said that she was unable to attend as she was caught up in something and was told by Mr Blount that she could not be that busy. She advised Mr Blount to ring her boss, Mr Payne, but Mr Blount insisted that her information was wrong and that:
- "I needed to come to the site NOW and admit that I was wrong and fix this problem. He repeated that multiple times."
86. Ms Toffoli said that Mr Blount was "abusive, nasty and unprofessional." She said that she told him again that she was occupied doing something else. She terminated the phone call and did not hear from Mr Blount again.

Mr Geoffrey Payne

87. In addition to his statement of 4 January 2018 regarding 21 December 2017, Mr Geoffrey Payne made a statement dated 4 October 2017¹⁵. He was employed by the respondent as the WHS and Injury Management Coordinator.
88. Mr Payne said he knew that there was an enquiry about taking soccer goalposts out of the ground, and that Ms Toffoli (whom he called 'Deffoli' - I assume it is the same person) had contacted LB Wires and Worksafe NSW. The information she had been given, as far as Mr Payne could remember, was that if a goalpost was not over 3 tonnes in weight, it was safe to remove the soccer goalposts with the backhoe.
89. Mr Payne said that his real involvement began on Wednesday, 3 September 2017, when he went to the site as Ms Toffoli was otherwise engaged. He had some discussions beforehand with Mr Blount on the telephone to try and understand what the problem was.

¹⁵ Reply 147

90. Mr Payne ordered Mr Blount to cease work whilst he spoke to management. He was attending a meeting when Ms Toffoli interrupted, saying that Mr Blount was demanding that she attend the site. Mr Payne went instead. He said that he met with Guy Sheen, a Council employee with a dogman ticket. Mr Payne was told of the difficulties Mr Sheen saw in lifting out the goalposts, and Mr Payne said that if there was no safe way to attach the sling, the job would be postponed until he could make other arrangements the next day. He said that in the interim the crew moved location and undertook to remove football posts at another site. He said:

"I also left the crew with the understanding that I would write to Worksafe NSW for their advice on the best way to undertake the work and that once this information was available a meeting would be called with staff, HSR's and management to review SWM statements."

91. Mr Payne said as far as he knew, Mr Blount continued to work and remove goalposts for the next two days. He then presented on Monday, 18 September 2017 with a WorkCover certificate.
92. Mr Payne noted that Mr Blount ceased work after attempts had been made to satisfy Mr Blount's concerns, and he was aware that Mr Blount had made a worker's compensation claim for work related anxiety, which had been investigated and declined.
93. Mr Payne also noted that the Union had written to the respondent demanding an apology from Ms Toffoli, which demand had been refused. When Mr Blount returned to work in November 2017, the respondent advised the Union that Ms Toffoli would not be meeting with Mr Blount nor would she apologise to him. An offer was made for Mr Blount to meet Mr Payne and his manager, Ms Linda Ross to address his concerns. This offer was not taken up.
94. Mr Payne concluded by saying that the council had purchased suitable machinery to remove and install goalposts with the use of a council tractor operated by a Council Tractor Operator. Accordingly, Mr Blount would no longer be involved in the process.
95. Statements were also lodged from Mr Blount's fellow employees which emphasised Mr Blount's dedication to being responsible for the safety of his crew. There was corroboration that Mr Blount was upset by the dispute. Some witnesses thought that Mr Blount had gone off work on 18 September 2017 because his daughter was undergoing a caesarean on 19 September 2017.

The medical evidence

Dr Chew, general practitioner

96. Dr Geoffrey Chew issued a report dated 27 September 2017 to the insurer¹⁶. He said that he had only seen Mr Blount on two occasions regarding a psychological disorder. He said:

"..... It is hard to make an exact diagnosis yet. Possible working diagnoses include: An adjustment disorder, early generalised anxiety disorder or early post-traumatic stress disorder. The diagnosis will become obvious over the next few weeks."

97. He said further:

"Garry's employment is the only likely cause of this problem. Garry states that he has had a number of recent interactions with his supervisors at work concerning health and safety issues. This culminated in a major event, when he was instructed to perform

¹⁶ ARD 56

duties which clearly broke the law concerning WorkCover regulations. Since this episode he has suffered anxiety, anger, sleep disturbance and intrusive thoughts”.

98. Dr Chew also noted that Mr Blount was then seeing Mr Bosanquet and had commenced Setraline (which was only taken for one week according to Associate Professor Robertson).

99. Mr Blount was certified as being unfit for work as at that date. A handwritten document in response to a fax from the insurer dated 12 October 2017 was in similar terms.

100. The clinical notes of Dr Chew’s practice were lodged.¹⁷ The first entry of relevance was recorded by Dr Michelle Bond on 16 September 2017. The entry noted:

"Long string of events with work and safety recently an issue with pulling down some goalposts was asked to work outside what he deemed safe limits showed them legislation but was disregarded.

Old issues with asbestos – in court currently"

101. The entry noted that Mr Blount was stressed “++” since that event and ongoing negotiations regarding other issues. He felt that he needed time off, and he was speaking with the union.

102. The next entry was by Dr Chew dated 19 September 2017. Whilst dealing with a long-standing physical problem regarding the neck and shoulder, and in respect of which Dr Chew wrote "needs W/C", Dr Chew also noted:

"Anxiety symptoms, not settling, feels unable to return to work, needs to see psychologist, try D Bosanquet severe anxiety, anger, sleep disturbance, feels unsafe to return to work”

103. The reason for the visit was given as:

“neck – pain
anxiety disorder."

104. On 19 October 2017, Dr Chew diagnosed "adjustment disorder with anxiety."

105. On 6 November 2017, Dr Chew recorded:

"Allianz have rejected claims to psychological injury, suggesting it is an industrial issue not a psychological problem."

106. Mr Blount remained off work according to the clinical notes until 16 November 2017. Dr Chew on that date noted:

"Anxiety a little better industrial issues with Council being negotiated."

107. On 19 December 2017 Dr Chew noted that Mr Blount was back at work. On 18 January 2018, the next consultation, Dr Chew entered:

"problems with asbestos contamination on council owned land has reported to Council this problem feeling v anxious about lack of action from Council feels he is being victimised by Council, about his stance against councils management of asbestos no resolution of industrial issues."

¹⁷ ARD 69

108. On 20 February 2018, Dr Chew noted that Mr Blount was still at work, and entered:

"Lots of stress about asbestos issues, feels he is being victimised by Council feeling anxious."

109. The next entry was dated 5 March 2018, in which Dr Chew noted there had been no developments with workers compensation claim, and that Mr Blount was "feeling v annoyed and stressed." Dr Chew also noted that Mr Blount was complaining of painful heels about which he arranged some imaging.

110. The next entry on 10 March 2018 was concerned only with the pain in Mr Blount's heels.

111. Similarly, complaints were made to Dr Chew on 12 March 2018 and 15 March 2018, by which time Mr Blount was off on compensation because of the difficulty with his heels.

112. On 20 March 2018, Dr Chew noted the condition of Mr Blount's heels, and then said:

"Stress claim not resolved Council investigation not resolved."

113. 4 April 2018 was the date that Mr Blount saw Dr Chew following the disciplinary meeting. Dr Chew noted:

"had disciplinary hearing today, about alleged asbestos handling issues, disappointing outcome, seeking legal advice increased anxiety symptoms due to this episode not fit to go to work.."

114. In a response to the insurer dated 26 June 2018¹⁸, Dr Chew advised that he felt Mr Blount "probably" had an Adjustment Disorder as defined by DSM 5. He felt that employment was the main contributing factor to "the disease", namely, bullying and harassment concerning management of several asbestos sites. Dr Chew said:

"Garry stated that management did not listen to his concerns and falsely accused him of mismanagement."

115. Dr Chew confirmed that Mr Blount had been fit for pre-injury duties since 4 June 2018. Mr Blount still required resolution of the industrial situation and still had "significant" anxiety symptoms. Dr Chew noted that Mr Blount was seeing David Bosanquet, and Dr Chew repeated:

"The most important issue is the resolution of the industrial situation."

116. On 16 May 2018, the entry said:

"Work stress claim ongoing, seeing D Bosanquet, ? Claim rejected lawyer needs new claim from 4/4/18, reflecting new causes for stress symptoms assoc with allegations about mishandling asbestos."

Dr David Bosanquet, psychologist

117. Dr David Bosanquet, Clinical Psychologist, supplied two reports. The first was addressed to Dr Chew dated 11 June 2018¹⁹. Dr Bosanquet said that Mr Blount had attended eight sessions "under WorkCover," presenting with symptoms of stress and anxiety. Mr Blount complained that he had been bullied and harassed by Management at his workplace. Dr Bosanquet specified that the nature of that bullying and harassment, saying:

¹⁸ ARD 238

¹⁹ ARD 60

“..... specifically, he told Management about several asbestos sites that had the potential to cause people harm unless they were properly cordoned off and cleared. Gary said that Management ‘did not listen’ and tried to level several untrue accusations of mismanagement against him.”

118. Dr Bosanquet’s first report was devoid of any reference to dates but in his second report of 11 January 2019, he advised that Mr Blount had been referred by Dr Chew, and that the eight sessions took place between 25 September 2017 and 7 June 2018.²⁰ The history taken on this occasion was:

“Mr Blount reported that these symptoms had come about as a result of being bullied and harassed by the Management at his workplace (i.e. Penrith Council). Specifically, he said that he had told his Management about several sites within the Penrith/Blue Mountains area that had the potential to cause people harm unless they were properly cordoned off and cleared. Mr Blount indicated that reporting on issues such as these were a mandatory part of his Job Description. Mr Blount said that Management ‘did not listen’ to him, and responded by trying to level several accusations of mismanagement against him. As such, Mr Blount said that he was extremely worried as a result of being persecuted by his own Team in the course of performing his duties with integrity.”

119. Dr Bosanquet’s diagnosis on Mr Blount’s presentation on 25 September 2017 was:

“Symptoms of extremely severe stress, severe anxiety and moderate depression (as per DASS)”.

120. Dr Bosanquet said that the sessions of 9 May 2018, 23 May 2018 and 7 June 2018 were for the purpose of "relapse prevention." He said that those sessions were spent revising strategies Mr Blount had already implemented. Dr Bosanquet said that Mr Blount had not experienced a relapse and was reportedly doing well, so that treatment was discontinued.

Dr Sharon Reutens

121. The respondent referred Mr Blount to Dr Sharon Reutens, Consultant Psychiatrist, who assessed him on 17 October 2017²¹. The history given to Dr Reutens concerned the issue of the goalposts “on or about 4 October 2017.”
122. A consistent history was given that the council wished to use its own plant and equipment, a break with its previous practice of using a contractor. There were discussions with supervisors regarding a safe work method statement during which Mr Blount said that the current one was out-dated and not comprehensive.
123. After working for a few days, the supervisor, Mr Beresford, came on site with a new SWMS for signing. Mr Blount said he was busy and there should be a toolbox talk about it. Mr Blount signed the document but still insisted that it was not comprehensive. Dr Reutens recorded that the younger workers having signed the document were not happy when Mr Blount explained what signing the document meant.
124. When researching the document Mr Blount told Dr Reutens that he “stumbled across the legislation” and he formed the view that a dogman/rigger’s license was necessary. Mr Blount then called WorkCover and was warned that if anyone was seriously injured or killed, Mr Blount and the supervisor could go to jail, or at least be fined.

²⁰ ARD 50

²¹ Reply 213

125. Mr Blount then told his colleagues to stop work and advised management. The manager came to the site and was challenged by Mr Blount when he said that he would take advice from "Di," [meaning Ms Di Toffoli, the respondent's Work Safety and Health officer].
126. Work continued under the supervision of the manager Mr Morris, who signed the SWMS statement for both jobs. Mr Blount asked whether Mr Morris had read the legislation and Mr Morris at that stage had not. However, the following day he returned to apologise because he had then read the legislation. Mr Morris was the only person to apologise from management. However, Dr Reutens was then told that Mr Blount had spoken to "Di" who acknowledged that she had "got it wrong."
127. Dr Reutens was then told that a dogman was to be picked up by Mr Beresford and that Mr Payne was to meet them on site. Mr Payne duly did so, and the dogman's advice was that they needed different slings. However, apparently the slings they had were sufficient to pull out the goalposts. This apparently underscored the importance of having a dogman, Dr Reutens reported. She noted that the Union eventually became involved and wrote to management seeking an apology and a "fix", but nothing had been heard back from management. The Union suggested that Mr Blount see a general practitioner, and he saw a Dr Bond, who was not his usual general practitioner. Dr Bond apparently diagnosed "stress" and told Mr Blount to have a few days off.
128. Dr Reutens was given a history of prior disputes Mr Blount had encountered with management. For convenience, I shall list them:
- 2003 and 2004 - Mr Blount was told to "back off" when he complained about people smoking in the workshop. Mr Blount told the manager, presumably at the same time, not to stand over him and the manager replied, "I'll drop you where you stand." Mr Blount said he was victimised as any "problem person" was transferred to become his trade assistant.
 - 2005 Mr Blount's then trade assistant drew a knife across his throat. Management was alerted, the police were told and the Union became involved. 18 months of investigation ensued during which time Mr Blount experienced some psychological symptoms. Mr Blount thought there was a link between the local police stations and Council, and that police had "fobbed him off."
 - These and other instances which time does not permit to be related, caused Mr Blount to feel unsupported by Council.
129. The last issue however that Dr Reutens recorded related to asbestos. Mr Blount referred to an instance in 2004 when he found a site with asbestos about which he said the council did nothing "so I had to persist." Another instance of the children's playground was also mentioned in respect of which Mr Blount had called WorkCover to have fixed. Mr Blount told Dr Reutens that the Council was issued with a clean-up notice and a Health and Safety notice which was not complied with.
130. Dr Reutens diagnosed an adjustment disorder with anxiety (resolved). She said:²²
- "[Mr Blount's feeling that he is unsupported by management] occurs on a background of a long history of Mr Blount's perception that he was unsupported with respect to his personal safety and any issues he raised about his or his colleagues' safety, for example when asbestos was found on sites, with respect to having an assault by a trade assistant and a threatened assault."

²² Reply 222

131. Dr Reutens found that the outstanding issue was an industrial one, and said:

"It is foreseeable that in the event that the industrial issues remain unresolved, if there it was a future stress or similar to the incident of 4 September 2017, Mr Blount might experience a similar episode of adjustment disorder with anxiety based on his persistent belief of lack of support and biased treatment."

132. Just what the incident on 4 September 2017 consisted of, was not clear from Dr Reutens' long and detailed opinion.

Associate Professor Robertson

133. Associate Professor Michael Robertson, Consultant Psychiatrist was retained as Mr Blount's medico-legal referee. He reported on 11 January 2019²³.

134. Associate Professor Robertson noted that at the date of his report and examination Mr Blount was working unmodified duties with the respondent.

135. Associate Professor Robertson took a history that in 2007 Mr Blount and co-workers reported concerns about asbestos deposits in a children's playground. Concerned by the Council's indifferent response, Mr Blount "escalated the matter to WorkCover". The Council was directed to take a costly remediation program, Associate Professor Robertson reported. Mr Blount remained concerned that program had not complied with "all directions".

136. Associate Professor Robertson took a history that Mr Blount felt that three further incidents of asbestos discoveries had been "covered up". Associate Professor Robertson then reported²⁴:

"The conflict appeared to subside, however in late 2017 asbestos deposits were discovered in a public reserve adjacent to a childcare centre. Mr Blount reported that he had made his concerns about this clear to the Council previously. The Council fenced off the site using 'parawebbing' which collapsed over the Christmas period – Mr Blount observed this when driving near the site. When Mr Blount reported this to the employer, he was placed under investigation for allegations of visiting the public reserve and handling asbestos without authorisation. Mr Blount was further distressed by the two months it took to complete the investigation. In March 2018, the Council apparently substantiated three of the four allegations against Mr Blount, but no action was deemed appropriate other than a reminder of the Code of Conduct.

Mr Blount then challenged his supervisor about the inconsistency of the apparent seriousness of the allegations, yet no disciplinary action being taken."

137. Associate Professor Robertson then recorded the history regarding the goalpost issue. He said:

"At the beginning of the 2018 football season, the Council opted to abandon its previous relationship with an independent contractor used to erect goal posts in public parks and playing fields, tasking Mr Blount's team with erecting the posts using a backhoe. Mr Blount considered this dangerous and placed his colleagues at risk without appropriate equipment."

138. Associate Professor Robertson then reported that this situation placed Mr Blount further at odds with his employer and it appeared that his psychological distress escalated. In early April 2018 Mr Blount presented to this local medical officer, Dr Chew.

²³ ARD 42

²⁴ ARD 44

139. Associate Professor Robertson then, using Dr Chew's report, identified the symptoms about which Mr Blount complained to Dr Chew. Associate Professor Robertson noted that Dr Chew prescribed an anti-depressant medication Sertraline which caused Mr Blount side effects, and which he ceased taking after one week. Associate Professor Robertson noted that Dr Chew had diagnosed an Adjustment Disorder.

140. Associate Professor Robertson in his review of the documentation before him said that he had referenced the statements of Mr Blount and the reports of Dr Chew. He then said he had noted the report from Dr Teoh of September 2018 and Dr Teoh's opinion that there was no psychiatric disorder. A mental state examination carried out by Associate Professor Robertson was essentially unremarkable, which is hardly surprising as there was no psychological condition present at the time of the interview.

141. In his assessment Associate Professor Robertson said:

"Mr Blount presents with no current psychiatric diagnosis. In acknowledging the symptoms, he describes at the time he was placed off work in April 2017, he was likely amid an adjustment disorder with anxiety and depressed mood, which is consistent with the diagnosis provided by his treating doctor, Dr Chew."

142. Associate Professor Robertson referred to Dr Teoh's view that it was the disciplinary action that was the predominant cause of Mr Blount's distress. Associate Professor Robertson observed:

"The history [Mr Blount] provides indicates that his distress emerged from a sense of frustration and anxiety about public safety and workplace safety in light of the perception of his employer's failed duty of care to the community.

A psychiatrist cannot take a position as to which version of events should be preferred. Mr Blount preserved as a credible historian who seemed civic minded and had evidently developed psychopathological distress over the issue of workplace safety. He views the disciplinary action taken by the employer as being vexatious or punitive and also likely unsound, particularly given the inconsistency considering the failure to punish what were evidently serious allegations".

143. Associate Professor Robertson said:

"Accepting Mr Blount's version of events, the stressors around discovery of asbestos deposits and his experience of his employers failed duty of care were the main cause of his distress."

144. Similarly, he found that "the intrigue and problems around asbestos deposits and the proposed erection of goal posts in what [Mr Blount] considered an unsafe work practice were the main contributing factors to his injury" - again Associate Professor Robertson gave the rider, "accepting Mr Blount's history".

Dr Ben Teoh

145. Dr Ben Teoh, Psychiatrist, was retained as the respondent's medico-legal referee, and reported on 12 September 2018²⁵. He took a history that Mr Blount had discovered asbestos in 2004 and informed management, which did not do anything about it. Mr Blount then reported to Council about asbestos in a children's playground in 2007, and said that his problems "went on and on". In a reference to the goalposts issue presumably, Dr Teoh took a history that Mr Blount was lifting a crane at work when "the Council had wanted to do it differently, but he was not prepared to take responsibility".

²⁵ Reply 230

146. Mr Blount was concerned that he was putting himself, workers and the public at risk Dr Teoh recorded. Mr Blount then experienced anxiety and stress, and felt that he was not supported by management, which wanted to sweep everything under the carpet.
147. Dr Teoh then reported that at Christmas 2017 Mr Blount had found further asbestos in a children's pre-school. He was working nearby at the time and a worker reported to him and he informed management.
148. Mr Blount acknowledged that he had received an email from management to say that the site was cleaned up but he said, "it did not happen". The Union became involved when Mr Blount became emotionally distressed upon receipt of a letter from the Council saying that he had acted without authority.
149. Dr Teoh then reported the investigation by Council. He noted:
- "[Mr Blount] demanded that the Council take disciplinary action against him because he felt that he did not do anything wrong, but 'nothing happened'".
150. At the time Mr Blount saw Dr Teoh he had been off work since April 2018, Dr Teoh noted. Dr Teoh did not seem to be aware that on the date of consultation, 4 September 2018, Mr Blount had been certified fit for full duties since 4 June 2018.
151. On mental state examination²⁶ Dr Teoh noted that Mr Blount was pre-occupied with negative thoughts and was anxious about returning to work. Mr Blount was "angry with the manner with which he was treated at work".
152. In his opinion Dr Teoh found that Mr Blount's presentation was not consistent with his psychiatric diagnosis but that "reported emotional stress and frustration" as a result of the work-related issues.
153. Dr Teoh noted Mr Blount felt he was unfairly treated and that he disagreed with the allegations that were the subject of the investigation. He was unhappy with the outcome of the investigation "which had found him not guilty, but he was not given the penalty" (it is apparent that the word "not" before guilty was an inadvertent error on behalf of Dr Teoh).
154. When asked whether the disciplinary action was the whole or predominant cause of the injury²⁷, Dr Teoh replied:
- "Mr Blount was unhappy and emotionally distressed about the disciplinary action. The disciplinary action taken by the Council is a predominant cause of his emotional distress."

Submissions

155. Mr Adhikary submitted that the issue for determination was the aggravation of Mr Blount's condition which resulted in incapacity on 4 April 2018. Mr Adhikary confirmed that no claim was being made for the alleged injury of 4 September 2017. He referred to the statements made by Mr Blount and submitted that I would be satisfied there had always been issues pertaining to Mr Blount's concern about asbestos on Council property.
156. Mr Adhikary referred to the circumstances which led to the letter of 15 January 2018 being handed to Mr Blount by Ms Cleveland. It was emphasised that Mr Blount stayed at work until the meeting on 4 April 2018 and I was referred to the passage where the decision by the respondent not to impose any disciplinary action took Mr Blount "over the edge." Mr Adhikary

²⁶ Reply 233

²⁷ Reply 135

submitted I could find that the decision was the “straw that broke the camel’s back” after Mr Blount had been waiting two months.

157. Mr Adhikary referred me to Mr Blount’s supplementary statement in which he expanded on his grievances. I was referred to Mr Blount’s statement that when he returned from workers compensation in September 2017, his symptoms had never abated. Mr Adhikary submitted that I would find that Mr Blount was extremely concerned about the respondent’s attitude during the dispute regarding the removal of goal posts. I would accept Mr Blount’s evidence that he was sleeping poorly because he was outraged that his name had been sullied by scurrilous attacks on his reputation.
158. Mr Adhikary addressed the report of Associate Professor Robertson. He said that the dates recorded were not accurate, but that not much turned on those inconsistencies. He referred to Associate Professor Robertson’s opinion that the main cause of Mr Blount’s distress was not just the proposed dismantling of the goalposts, but the discovery of the asbestos.
159. The cause of Mr Blount’s injury was based, Mr Adhikary submitted, not upon the actual behaviour of the respondent in making him subject to disciplinary proceedings, but because Mr Blount was especially concerned about the presence of asbestos on Council property and, as I understood the submission, that the approach by the Council was singularly lacking in proper and timely procedure regarding this issue.
160. I was referred to the clinical notes of Dr Chew, which, Mr Adhikary submitted, corroborated the course of events described by Mr Blount. Reliance was also placed on the report by Dr Chew of 26 June 2018 which confirmed that Mr Blount had been fit for pre-injury duties since 4 June 2018. At this point Mr Adhikary agreed with me that Dr Chew held no specialist qualifications.
161. Mr Adhikary then referred to the report of Dr David Bosanquet, the psychologist, noting that he too diagnosed a stress and anxiety condition caused by bullying and harassment.
162. I would accordingly, Mr Adhikary submitted, be satisfied that Mr Blount was suffering from a clear and diagnosable psychiatric injury.
163. I was then taken to the medical certificates which, after some confusion Mr Flett kindly indicated covered the closed period.
164. Ms Adhikary referred to the sections 74 and 287A notices. He submitted that I would not accept the opinion of Dr Teoh, who could find no recognisable psychiatric disorder when he examined Mr Blount on 4 September 2018. Injury had clearly been established by the evidence to which he had referred, he said.
165. With regard to the defence pursuant to s 11A of the 1987 Act, he submitted that the respondent had failed to show that the psychological injury was wholly or predominantly caused by reasonable action taken by the respondent. He submitted that the cause of the injury was the simple fact of the ongoing asbestos issues. He submitted that the meeting of 4 April 2018 was “only the straw that broke the camel’s back.”
166. Alternatively, Mr Adhikary submitted if I was against him, that it could not be shown that the conduct by the respondent had been reasonable. The chronology showed that Mr Blount had been notified of the investigation on 18 January 2018 but it was not until 28 March 2018 that he was advised of the meeting on 4 April 2018. This was an unexplained and unreasonable delay, Mr Adhikary said.

167. He referred to the evidence of Ms Woodbury, saying it was unreasonable that she should take leave between 29 January 19 February 2018 when the investigation was “looming” over Mr Blount. Notwithstanding that Mr Blount was on workers compensation for his heel problem from 10 March 2018, it was unreasonable, it was submitted, that the Council had not tried to telephone him. This was particularly so in view of the determination that there would be no disciplinary action. The decision had been taken by 28 March 2018 and was unreasonable that it took the respondent until 4 April to communicate that decision.
168. Further, it was submitted, it was unreasonable for the Council to make serious allegations against Mr Blount which, for all he knew, was putting his employment at risk, and then, having found them mostly established, not to discipline him at all. Mr Adhikary submitted that in any event, given the true history of this matter, the allegations themselves were unreasonable.
169. Mr Flett referred to the evidence of Mr Payne, who was on site on 21 December 2017, and who identified Mr Blount picking up a piece of rubble. Contrary to Mr Blount’s assertion, Mr Payne said there was Council procedure regarding asbestos. Mr Payne told Mr Blount not to pick up suspected material, receiving the reply that there was no danger because it was wet.
170. This evidence was corroborated by Mr Estreich, Mr Flett submitted. Mr Blount now alleged both that he was suffering from a prior psychological problem, and that it was unreasonable for the respondent to have kept him in the dark for a period of two months once he was advised of the investigation.
171. Mr Flett then referred to a number of cases concerning the provisions of s 11A of the 1987 Act.²⁸ Mr Flett submitted that, in considering the actions taken by an employer, a course of conduct can be found to be reasonable action, even if there were blemishes in the decision-making process. A course of conduct can still be reasonable action, he submitted, even if particular steps in that course were not.
172. The cases to which he referred were also authority for the proposition that “disciplinary proceedings” within s 11A include the investigations and the surrounding procedural steps necessary to preparing for the meeting itself.
173. Mr Flett asserted that proof of the fact that it was the disciplinary proceedings that caused Mr Blount’s breakdown came from Dr Chew’s report of 4 April 2018 in the clinical notes, which he said clearly demonstrated that Mr Blount was angry and upset at the way that he had been treated at the disciplinary hearing.
174. If Mr Blount’s reaction were found to be a psychological injury, Mr Flett argued that there could be no doubt that it was wholly or predominantly caused by the disciplinary proceedings that occurred that day. He submitted that the entry of 16 April 2018 in Dr Chew’s notes spoke for itself.
175. Mr Flett submitted that the evidence showed Mr Blount went off work because of his reaction to the disciplinary proceedings. He submitted that a face-to-face meeting was reasonable, referring to a case where apparently it was held that a letter announcing the outcome of an investigation was insufficient, and in the circumstances of the case a face-to-face meeting was necessary.

²⁸ *Department of Education & Training v Sinclair No.2* [2006] NSWCCPD 163, *Kushwaha v Queanbeyan City Council* [2002] NSWCC 25

176. Mr Flett referred to the evidence of Ms Woodbury, saying that Mr Blount had been critical of her. Her evidence however was the gravamen of the case, and her evidence that Mr Blount became visibly angry confirmed that it was the disciplinary meeting that had caused his condition. Mr Flett submitted that the claim had no other features than being for a closed period which began on the day of the hearing and was followed by a swift recovery. There could be no other reason for the claim but that the disciplinary meeting was its cause.
177. Mr Flett submitted that Associate Professor Robertson's report was of little or no value. He had the wrong history, and he confirmed that Mr Blount was not suffering from any psychiatric or psychological condition at the time of his examination. Whilst the same criticism could be made about the opinion of Dr Teoh, nonetheless his opinion that there was no psychiatric or psychological condition was of some weight, as Dr Teoh was fully briefed.
178. Mr Adhikary in response submitted that the delay in advising Mr Blount of the outcome of the investigation by Ms Woodbury was unreasonable. There was no explanation given as to why the outcome could not have been given to Mr Blount by for instance Mr Gordon. Mr Adhikary submitted that the facts of the present case distinguishes it from the cases referred to by Mr Flett.

DISCUSSION

179. The resolution of this dispute requires a common sense evaluation of the causal chain. The often-cited passage by Kirby J in *Kooragang Cement v Bates*²⁹ it is apposite:

“Whether incapacity results from a relevant work injury is a question of fact. the mere proof that certain events occurred which predisposed a worker to subsequent injury ..., will not, of itself, be sufficient to establish that such incapacity ... ‘results from’ a work injury. What is required is a commonsense evaluation of the causal chain. In each case, the question whether the incapacity .. ‘results from’ the impugned work injury (or in the event of a disease, the relevant aggravation of the disease), is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions.”

180. One conclusion that cannot be avoided after considering the hundreds of pages of evidence is that Mr Blount was a strong advocate for his point of view, but that sometimes that advocacy either overcame accuracy, or disposed him to ignore relevant facts and thus give confusing and inconsistent evidence.
181. I indicated earlier that it was necessary to consider the evidence as a whole rather than concentrate on the claim that Mr Blount finally brought, after he discontinued his first claim when the case was called on. It will be remembered that Mr Blount originally sought weekly compensation for the period 30 October 2017 to 19 November 2017, but the discontinuance removed, or rather sought to remove, that dispute as a relevant factor in my determination.
182. An applicant has an absolute right to discontinue, and there is no necessity for any explanation to be made when that occurs. Liability to pay weekly compensation for the earlier period was still in dispute however, as can be seen from the dispute notice of 12 March 2019. An applicant can bring his discontinued action again at any time, so that, technically speaking, that issue remains to be decided on another day.

²⁹ (1994) 35 NSWLR 452; 10 NSWCCR 796

183. However, Mr Adhikary has in effect reinstated the factual background to that earlier claim by submitting, as he had to, that it was relevant to dispel the statutory issue of whether Mr Blount's alleged compensable condition was wholly or predominantly caused by the reasonable actions of the respondent as defined in s 11A of the 1987 Act. Whilst the background to the discontinued claim concerned the goalpost removal history, there was also reference to the asbestos complaints, and perhaps most relevantly, Mr Blount was assessed by a Consultant Psychiatrist, Dr Reutens. Another feature of the earlier claim was Mr Blount's management by Dr Chew.
184. The most remarkable aspect of Mr Blount's evidence is that he did not, in the four statements he made, refer to the significant dispute he had begun by lodging a grievance regarding Council's handling of asbestos. Moreover, that history had not been given to any of the medico-legal specialists.
185. As has been seen, the grievance had major ramifications for the respondent, requiring attendances in the Industrial Relations Commission in August, September and November 2017. The Council, through Mr Gordon, also had to correspond with the United Services Union, pointing out that Mr Blount's allegations were not soundly based.
186. Indeed, on one view of the evidence, Mr Blount's actions were mischievous.
187. The Union was clearly concerned by the allegations made by Mr Blount, and Mr Gordon's letter of 28 September 2017 was an answer to correspondence between Council and the Union to properly identify the particulars of Mr Blount's allegations.³⁰
188. Mr Gordon's letter to Mr Blount (with the Union copied in) related that in May 2017 the Union was requested by Council to particularise its allegations that Council was mishandling asbestos. Mr Gordon referred to a letter received in reply, in which the Union identified four sites.
189. I accept Mr Gordon's evidence, as it has not been challenged, that Mr Blount had expressed his concerns about asbestos at an unrelated meeting on 19 July 2017. I accept that Mr Gordon attempted to contact Mr Blount in that regard, without success. The formal grievance with Council appears to have been lodged on 28 July 2017, and the particulars contained therein were not included in the earlier correspondence from the Union. I accept Mr Gordon's evidence that in response to the grievance Mr Blount was included in an asbestos investigation that was already underway (presumably as a result of the correspondence Mr Gordon referred to with the Union in May 2017).
190. I accept Mr Gordon's evidence of the measures that had been taken in respect of each of the three sites apparently named in Mr Blount's grievance notice. The comment made by Mr Gordon that it was difficult to understand why Mr Blount had not been aware of the issue regarding the Leonay playground because Mr Blount was working on the site in 2007, reflects the respondent's reservations as to Mr Blount's bona fides. Further, the additional comment that it was "concerned" that the matter had been raised 10 years later and not at the time, was indicative of Council's suspicions as to Mr Blount's motivation.
191. I accept that none of the sites mentioned by Mr Blount yielded any evidence of asbestos mismanagement.
192. Council's mistrust of Mr Blount's allegations were also expressed in the conclusion to the letter from Mr Gordon to the Union dated 8 November 2017 when he wrote that Council took the safety of its employees, contract tours and the general public "very seriously" and was concerned at statements made by Mr Blount to the contrary.

³⁰ Reply 76, 77

193. The evidence shows that Mr Blount attended the first hearing in the Industrial Relations Commission on 29 August 2017 and there confirmed the current practices by the respondent in regard to the handling of asbestos were appropriate. However, he did not appear on the next hearing days, 29 September 2017, 13 November 2017 or 27 November 2017. He was off work due to a worker's compensation claim for a psychological condition on the first two days, and was off on annual leave on the third day.
194. I have been hindered to some extent from making further observations as to Mr Blount's involvement in the Industrial Relations Commission proceedings, as no transcript of them was available, and neither party made any submissions regarding them. I am unaware as to whether Mr Blount was named as a party to those proceedings and am limited to the chronology of proceedings, substantiated by the statement of Mr Fayle.
195. The correspondence to which I have alluded was occurring against a background of the continuing appearances by the respondent in the Industrial Relations Commission. The letter of 24 November 2017 from Mr Gordon to the Union at the conclusion of those proceedings is indicative of the respondent's frustration at having to incur the time and cost of answering the allegations before the Industrial Relations Commission, all of which were baseless.
196. I am satisfied that Mr Blount, out of a misguided sense of public responsibility, made accusations about the respondent's management of asbestos. They were based on unsubstantiated rumour and in ignorance of Council's protocols and records concerning asbestos management.
197. Whilst there was some common ground on the issue regarding the goalposts I note that the dispute arose as a result of Mr Blount's thoroughness and perseverance over the issue of whether a dogman/rigger was required in order to remove the goalposts. Mr Blount was proved correct, and received an apology from Mr Morris an admission from Ms Toffoli that she had made an error.
198. I accept that Ms Toffoli had firstly made enquiries from a council contractor and eventually contacted WorkCover with regard to Mr Blount's assertion that a dogman was required. I accept that Mr Blount telephoned her and that she was unable to assist her as she was busy at the time. I accept she did not hear anything more for about a week but at that time, having missed a call from Mr Blount, she received another one about two hours later in which Mr Blount was insistent that she go to the site, admit she was wrong and fix the problem, comments that he made several times in an abusive, nasty and unprofessional manner.
199. I accept the evidence of Ms Toffoli, as indeed it does not deviate significantly from the narrative given by Mr Blount. What it does show is that Mr Blount, in keeping with the conduct he exhibited in the Industrial Relations Commission issue, was an enthusiastic employee whose sense of drama tended to outweigh his common sense.
200. I accept the evidence of Mr Payne in both his statements. With regard to the goalpost issue I accept that Mr Payne first visited the site in answer to Mr Blount's concerns on 3 September 2017 and that Mr Blount continued to work until 15 September 2017, as he produced a WorkCover certificate on the Monday, 18 September 2017.
201. It was this issue that was said to have given rise to an entitlement to weekly compensation between 30 October 2017 and 19 November 2017, arising from an injury on 9 September 2017. It was also, doing the best I can with the evidence, the alleged injury that caused Mr Blount not to be able to attend the Industrial Relations Commission on 29 September and 13 November 2017.
202. There is some inconsistency regarding the date. It was pleaded as 9 September 2017, but referred to elsewhere as 4 September 2017, and I have already referred to Dr Reutens' description of it as 4 October 2017. Whatever the correct date was supposed to have been, here is no evidence of any injurious event on any of them.

203. With regard to this period, the evidence is anything but precise. Only one of the three page WorkCover certificate issued for the injury of 4 September 2017 was lodged (at ARD 285) and the payout schedule lodged by the respondent (Reply 342) is unintelligible without explanatory evidence. The clinical notes from Dr Chew's practice indicate that Mr Blount was off work between 16 September 2017 and 16 November 2017. He was back at work on 19 December 2017.
204. Dr Reutens assessed Mr Blount on 17 October 2017, when Mr Blount was still off work under certification from Dr Chew. Dr Reutens took a consistent history of the goalpost issue. Her diagnosis was an adjustment disorder with anxiety (resolved).
205. Dr Reutens acknowledged that Mr Blount had experienced a number of different problems as an employee, as I indicated earlier. She accepted that there was a long history of perception by Mr Blount that he was unsupported by the employer with respect to issues of personal safety. She spoke of an injury date of 4 September 2017, but I was unable to find in the history what the injurious event was. I note that she reported that the staff were to remove goalposts on "4 October 2017" so that it may just be that she entered the wrong month. Nonetheless, it is difficult to identify the nature of the injury. In summary, Mr Blount identified an error, brought it to the attention of his employer, which rectified it, acknowledging its error.
206. The support Mr Blount gained from Dr Reutens however, came from the history she recorded that the Union eventually became involved and wrote to management seeking an apology and a "fix." As indicated by Mr Payne however, the problem was solved by the purchase of appropriate machinery and the use of the Council tractor. I accept Mr Payne's evidence that the Union was advised that Ms Toffoli would not be apologising, and that Mr Payne offered to discuss the matter, along with Ms Ross, with Mr Blount, but there was no response.
207. I think it significant that Mr Blount failed to advise Dr Reutens that such an offer had been made. I think it is significant also that on that history Dr Reutens found that he had no psychological condition at the time of the assessment on 17 October 2017. She said that Mr Blount had suffered an adjustment disorder with anxiety, but that it had resolved. At that time Mr Blount was still certified as suffering from a psychological condition by his general practitioner Dr Chew.
208. As will be seen when considering the reports of Associate Professor Robertson and Dr Teoh the finding of a psychological condition is dependent upon Mr Blount's version being accepted.
209. I do not accept that Mr Blount was caused a psychological injury because he was unsupported by management. To the contrary the evidence shows that he was supported, and that appropriate members of management apologised to him. Nor do I think this is a case involving perception. The evidence makes it clear that Mr Blount was unhesitating in his enrolling the Union to his causes. The evidence regarding the Industrial Relations Commission issue shows that the respondent was obliged to report not only to Mr Blount but to the Union.
210. I am satisfied on the evidence that Ms Toffoli did admit to Mr Blount that she had been mistaken – indeed that is common to both sides – and I am also satisfied that Mr Blount spoke in an inappropriate manner to her, as she deposed. It was improper to thereafter demand an apology from her, particularly as the respondent accepted Mr Blount's interpretation of the relevant legislation and worked with him on site to deal with the problems that had thereby arisen. The Safety Officer, Mr Mal Sheens attended the site with Mr Matthew Morris, a Manager. The supervisor Mr Wayne Beresford was also present and consulted different times on-site and by telephone during the duration that this issue lasted. Mr Payne also attended.

211. The evidence does not sustain Dr Reutens' finding that there was conduct on behalf of the respondent that could be interpreted as being unsupportive.
212. I note Dr Reutens' opinion that if industrial issues remained unresolved and there was future stress similar to that of 4 September 2017 Mr Blount might experience a similar episode. As I have already indicated, it is not clear what the event of 4 September 2017 was. It was not pleaded as a disease injury pursuant to s 4 (b) of the 1987 Act, and therefore one looks to some event that occurred on that day. There was none.
213. Dr Reutens did not accept that Mr Blount was suffering a psychological condition when she assessed him on 17 October 2017, notwithstanding that he remained off work with such certification until at least 16 November 2017. I concur with that opinion, but I do not accept that at any time from 4 September 2017 to 17 October 2017 that Mr Blount had any such condition.
214. Dr Chew, Mr Blount's general practitioner, had no hesitation in certifying Mr Blount unfit for work on the basis of a psychological disorder. The clinical notes between 16 September 2017 and 16 November 2017 as has been seen show entries recording Mr Blount as variously being stressed ++, having anxiety symptoms, severe anxiety, anger, and sleep disturbance.
215. However, I have some reservations about accepting Dr Chew's opinion. Firstly, he is a general practitioner and does not hold any expertise in psychiatric medicine. Secondly in his report of 27 September 2017 he qualified as opinion by saying that the diagnosis could "possibly" include a number of suggested conditions. Thirdly Dr Chew accepted Mr Blount's version of events in which he said he was instructed to perform duties which clearly broke the law. As I have indicated, that is a simplistic exaggeration of the facts. There was no suggestion that he had been instructed to perform duties which clearly broke the law.
216. I would note in passing that the situation was by no means "clear" and that it took a great deal of enquiry and research by both management and Mr Blount before it was realised that a dogman was necessary to the operation. I regard that allegation as being yet another example of Mr Blount's tendency to prefer drama to obtain advantage, whether it be to ensure the cooperation of the Union, or to obtain a favourable medical certification. Fourthly, and not unusually, the opinion of Mr Blount's general practitioner could not be regarded as being objective. General practitioners have the most contact with their patients and can sometimes be over enthusiastic in espousing their cause. In his 5 October 2017 statement regarding the goalposts issue, Mr Blount said that after he had seen Dr Michelle Bond on 16 September 2017 he said that Dr Chew had contacted him and was taking over his case because Mr Blount had had a lot of trouble with Council over the years. If Mr Blount's narrative is correct, I do not regard Dr Chew's comments as being unbiased or objective. The facts tend to show that the respondent had had a lot of trouble with Mr Blount.
217. That brings us to the present dispute. Mr Adhikary submitted that it could not be said that the disciplinary proceedings with which Mr Blount was involved as a result of his conduct on 21 December 2017, were wholly or predominantly caused by the actions of the respondent, and therefore the provisions of s 11A did not apply. For the above reasons, I am not satisfied that Mr Blount was suffering from any psychiatric or psychological condition on 21 December 2017.
218. That leaves the two issues which I outlined at the start of these reasons for determination. The first issue is as to whether the disciplinary proceedings have caused Mr Blount to suffer a psychiatric or psychological condition in any event.

219. Mr Blount again relied upon the evidence of Dr Chew. The relevant entries in the clinical notes began on 18 January 2018, when Dr Chew noted that there were problems with asbestos contamination on council owned land and that Mr Blount was feeling very anxious about the lack of action from the respondent. This was not correct. Ms Woodbury's evidence is that on 18 January 2018 she handed to Mr Blount the notice to attend a meeting dated 15 January 2018. This was confirmed by Mr Blount himself in his statement of 17 July 2018. Mr Blount made no attempt to tell Dr Chew about this development. The problems with asbestos contamination and the allegation about lack of action from the Council had all been dealt with in the Industrial Relations Commission, and Mr Blount and the Union were well aware of the outcome.
220. There are dangers in placing reliance on the entries in clinical notes to establish causation, although the significance of their content will depend upon the facts of each case.³¹ I regard the entry in the note of 18 January 2018 to be one of several inconsistencies that have led me to be somewhat circumspect about Mr Blount. I acknowledge of course that Dr Chew may simply have written a shorthand version of what he had been told, but in paraphrasing the information, had changed its meaning. The entry that Mr Blount felt he was being victimised is also consistent with the actual facts of that day. It is however surprising that, if Mr Blount had given that history, Dr Chew, in his already exhibited concern for Mr Blount, would not have specifically referred to the notice to attend the meeting of 23 January 2018. The further entry that there was no resolution in industrial issues again would seem to be a reference to the wider allegations made by Mr Blount and considered in the Industrial Relations Commission.
221. Mr Blount repeated that he felt he was being victimised when he saw Dr Chew again on 20 February 2018 and that there were no developments in his "workers comp claim." This presumably was a reference to the claim which was discontinued before me, as the issue actually confronting Mr Blount was not the development of his workers compensation claim, but rather that he had been placed under investigation and was awaiting the outcome. He made no claim in relation to the present matter until 23 May 2018.
222. It was not until 4 April 2018, following the disciplinary hearing, that Dr Chew recorded anything about a disciplinary hearing. Although on 26 June 2018 Mr Blount had been certified fit for full duties since 4 June 2018, Dr Chew nonetheless thought that Mr Blount "probably" had an Adjustment Disorder, which he defined as a disease, and that bullying and harassment by the respondent concerning the management of several asbestos sites was the main contributing factor. Again, that is a referral to the broader enquiry caused by Mr Blount's grievance in July 2017. It did not purport to connect Mr Blount's lingering condition with the disciplinary proceedings.
223. I have already found that I was not assisted by Dr Chew's evidence regarding the events of September 2017 and those comments are applicable to his evidence regarding the current claim. Additionally, for the reasons I have just given, I am not satisfied that Dr Chew had a correct history reaching his tentative opinion.
224. Dr Chew referred Mr Blount to Dr David Bosanquet, as I have related. The history initially taken again concerned the July 2017 grievance which was taken to the Industrial Relations Commission. That history was repeated in Dr Bosanquet's second report of 11 January 2019, I note that Dr Bosanquet was of the opinion that Mr Blount had recovered from his psychological condition by 9 May 2018, and that it and the two subsequent sessions were simply for "relapse prevention". It would seem that Dr Bosanquet's opinion was that in any event Mr Blount was on full duties by 9 May 2018.

³¹ See *Qannadian v Bartter Enterprises Pty Limited* [2016] NSWCCPD 50

225. Again, Dr Bosanquet's history was concerned with the events of 2017 and not helpful regarding the current claim.
226. Associate Professor Michael Robertson's report was dated 11 January 2019. Unsurprisingly, he found that Mr Blount was not suffering from any psychiatric injury at that time, as there has been no allegation that he was. Associate Professor Robertson was therefore reliant upon contemporaneous evidence with which to come to a diagnosis relevant to the claimed period.
227. This method of giving expert opinion is not without its difficulties. Particularly in the realm of psychiatric injury a clinician is dependent upon his face to face interview with a claimant to be able to draw a reliable conclusion. The difficulty with relying on the opinions of other professionals is that such an expert is also relying on the expertise or lack of it that has informed the opinion of the contemporaneous reporter.
228. I have already indicated that the material provided by Dr Chew and Dr David Bosanquet was unhelpful, as they did not take histories that were relevant to the present claim. Insofar as they sought to rely on the grievance of 28 July 2017, it has not been established that Mr Blount suffered from a psychological condition from the proceedings in the Industrial Relations Commission. The evidence is that Mr Blount was given time off by Dr Chew as a result of the goalposts issues, and I already found that those issues did not cause a psychological condition.
229. Associate Professor Robertson was accordingly reliant upon his clinical experience and expertise to determine whether the history given by Mr Blount demonstrated that Mr Blount suffered from a psychiatric or psychological condition. Associate Professor Robinson's report contained some anomalies. He recorded that the goalposts issue arose at the beginning of the 2018 football season, rather at the end of the 2017 season. Another error followed from this which was of course that the goalposts were not being erected, they were being removed.
230. The history given to Associate Professor Robertson relating to the disciplinary proceedings was also incorrect. Associate Professor Robertson reported that when Mr Blount reported that the "para-webbing" with which the respondent fenced off the 21 December 2017 site, had collapsed, Mr Blount was placed under investigation. The history regarding the subject matter of the investigation however was consistent, that is that he had visited the public reserve and handled asbestos without authorisation. Associate Professor Robertson also took the history that when Mr Blount was told that no action would be taken other than a reminder of the Code of Conduct, Mr Blount challenged the supervisor at the meeting.
231. I found Associate Professor Robertson's report to be thorough, well balanced and reasonable. His opinion regarding the relationship between the psychiatric injury alleged and Mr Blount's employment was that employment had been the main contributing factor, and that the Council's "failed duty of care" was the main cause of Mr Blount's distress. I note however the rider to Associate Professor Robertson's opinions, that firstly he could not take a position as to which version of events should be accepted, and secondly that the connection between both the duty of care and the main contributing factor was reliant upon acceptance of Mr Blount's version of events.
232. I have already found that the alleged discovery of asbestos deposits and indeed the grievance procedure in 2017 did not cause any psychological condition. I have been similarly satisfied that the episode with the goalposts did not cause any psychological condition. I have not accepted Mr Blount's version of events regarding either issue, and accordingly reject Associate Professor Robertson's conditional diagnosis that Mr Blount had a psychopathological distress over the issue of workplace safety, that the disciplinary action taken by the respondent was vexatious or punitive, or that there was an inconsistency between the outcome of the enquiry and the decision by the respondent not to impose a warning.

233. I am satisfied that the disciplinary action taken by the respondent, given the vexatious nature of Mr Blount's personality, was reasonable. That personality has not of itself been found to be a pre-existing psychological state. Mr Blount is clearly a man of high standards who takes his position within the respondent seriously. His concern for the safety of others has clearly been a motivating force and has become something of an obsession, looking at the evidence as a whole.
234. As I have earlier indicated however Mr Blount's enthusiasm for safety issues has led him to a combative attitude with his employer, against whom he has been too ready to make unjustified allegations. This has been illustrated in the Industrial Relations Commission history and the history regarding the goalposts issue.
235. In each narrative Mr Blount has been prepared to make provocative statements, and to claim that he has suffered a psychological injury when those statements have proved to be incorrect, or exaggerated. Mr Blount did not suggest he had any special authority from the Council with regard to asbestos or safety questions, but rather took it upon himself to be a vigilant and concerned member of the Council's workforce, with responsibilities beyond his direct concern for those employees for whom he was a leading hand.
236. That attitude carried with it a requirement to be responsible, a good illustration of which was his discussions with management when he discovered that a dogman had to be present. His allegation that he was concerned because he had been told by a WorkCover representative that he could go to jail if he proceeded in contravention of the requisite rules is inherently unbelievable, not because such an outcome could not occur, but because the problem had been solved or was in the course of being solved when Mr Blount had that conversation. It is most unlikely that a person of Mr Blount's experience would have been concerned in those circumstances. Similarly, Mr Blount's somewhat unusual reaction to being told that no disciplinary action would be taken was not the reaction of a person with a psychological condition, but rather, in my opinion, was caused out of frustration that he had nothing to appeal against. Ms Woodbury's evidence was that Mr Blount demanded a warning since the allegations had been substantiated.
237. In the final analysis, I accept the opinion of Dr Ben Teoh. Although his opinion was given on the mistaken basis that Mr Blount was still off work, I accept the force of Dr Teoh's argument that Mr Blount's presentation was not consistent with a psychiatric diagnosis, but that the work-related issues that caused emotional stress and frustration.
238. If I am wrong in that opinion, then the provisions of s 11A provide a defence to a respondent if it can establish they apply.
239. Section 11A of the 1987 Act provides relevantly:

“11A NO COMPENSATION FOR PSYCHOLOGICAL INJURY CAUSED BY REASONABLE ACTIONS OF EMPLOYER

- (1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.”

240. The first issue to be decided is whether Mr Blount's psychological condition is wholly or predominantly caused by the reasonable actions set out in the section. I am satisfied that it was. For the reasons given above I am satisfied that Mr Blount was not suffering from any psychological condition when he was subjected to the disciplinary proceedings. If he had an underlying anxiety it was not sufficient to nullify the statutory requirement.

241. The second issue is as to the nature of the action taken or proposed to be taken by the employer. I am satisfied that the action was concerned with discipline and performance appraisal. I accept Mr Flett's submission that the entry in Dr Chew's clinical notes of 4 June 2018 spoke for itself, that is that it was the disciplinary hearing that caused Mr Blount to seek medical attention. That fact indeed was confirmed by the entry on 16 May 2018. Dr Chew noted that a new claim form was required naming 4 April 2018 as the date of injury, reflecting "new causes" for symptoms associated with allegations about mishandling asbestos.
242. Mr Adhikary's submissions that the delay in notifying Mr Blount of the outcome was unreasonable must be rejected. I do not consider the fact that the investigator, Ms Woodbury, went on leave between 29 January and 19 February 2018 as tainting the process when considering the course of conduct by the respondent in the decision-making process. Mr Blount's conduct occurred on 21 December 2017, and the outcome could have been delivered in March 2018, except that Mr Blount was off himself on workers compensation for his heel condition from 10 March 2018 to 4 April 2018. I am also satisfied that, given the gravity of the allegations, it would have been unreasonable to have simply telephoned them through to Mr Blount. A face-to-face meeting was necessary to both underline the gravity of the charges and also the leniency that the employer was nonetheless extending to Mr Blount.
243. I would accordingly be satisfied that the defence made out by s 11A was made out.

Findings

244. I am not satisfied that the applicant suffered a psychiatric or psychological injury.
245. In the event I am wrong in that finding, I am satisfied that the respondent has met its onus of proof in establishing that it is entitled to the benefit of the provisions of s 11A of the 1987 Act.

Orders

246. There is an award in favour of the respondent.

