

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 1789/20  
**Applicant:** Andrew Wilcox  
**Respondent:** The Flatpack Franchise Pty Limited  
**Date of Determination:** 29 June 2020  
**Citation:** [2020] NSWCC 214

The Commission determines:

1. The applicant sustained a psychological injury in the course of his employment with the respondent with a deemed date of injury being 12 August 2019.
2. The respondent has failed to establish a defence pursuant to section 11A of the *Workers Compensation Act 1987*.
3. The applicant had no current work capacity from 13 August 2019 to 21 March 2020.

The Commission orders:

1. The respondent is to pay the applicant weekly payments of compensation as follows:
  - (a) \$2,085.91 per week from 13 August 2019 to 12 November 2019 pursuant to section 36 (1) of the *Workers Compensation Act 1987*;
  - (b) \$1,756.56 per week from 13 November 2019 to 21 March 2020 pursuant to section 37 (1) of the *Workers Compensation Act 1987*.
2. The respondent is to pay the applicant's reasonable medical expenses for treatment for his psychological injury pursuant to section 60 of the *Workers Compensation Act 1987*.

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

John Isaksen  
**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 ISAKSEN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker  
Senior Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant, Andrew Wilcox, commenced employment with the respondent, The Flatpack Franchise Pty Limited, as an Operations Manager in June 2017.
2. The applicant was transferred to the position of Operations/National Manager in April 2019 and had his employment terminated on 13 August 2019.
3. The applicant claims that he was subjected to bullying, harassment and intimidation while in the position of Operations/National Manager, which caused him to sustain psychological injury.
4. The applicant ceased work due to this psychological injury on 29 July 2019 and received sick pay until his employment was terminated on 13 August 2019. The applicant claims weekly payments of compensation from 13 August 2019 on the basis of having no current work capacity. The applicant also claims the cost of medication to treat his psychological injury.
5. The respondent admits that the applicant sustained psychological injury in the course of his employment with the respondent but disputes liability to pay compensation on the grounds that the psychological injury was caused wholly or predominantly by reasonable action taken with respect to performance appraisal, discipline and dismissal.

### ISSUES FOR DETERMINATION

6. The parties agree that the following issues remain in dispute:
  - (a) Whether the psychological injury sustained by the applicant was wholly or predominantly caused by reasonable action taken or proposed to be taken by the respondent with respect to performance appraisal, discipline or dismissal (section 11A of the *Workers Compensation Act 1987* (the 1987 Act));
  - (b) The extent of the applicant's work capacity as a result of injury sustained in the course of his employment with the respondent (sections 32A, 33, 36 and 37 of the 1987 Act);
  - (c) Whether medical expenses incurred by the applicant for treatment result from the injury and are reasonably necessary (section 60 of the 1987 Act).

### PROCEDURE BEFORE THE COMMISSION

7. The parties attended a conference and hearing on 19 June 2020. 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.
8. Mr Horan appeared for the applicant, instructed by Ms Survery. Mr Beran appeared for the respondent, instructed by Ms Walsh and Ms Raymond, with Ms Huang from icare also in attendance.
9. The hearing was conducted by telephone in accordance with the protocols set out by the Commission as a result of the coronavirus pandemic.

## **EVIDENCE**

### **Documentary evidence**

10. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) Application to Resolve a Dispute and attached documents;
  - (b) Reply and attached documents;
  - (c) Application to Admit Late Documents filed by the respondent on 30 April 2020.

### **Oral evidence**

11. There was no application to cross-examine the applicant or to adduce oral evidence.

## **FINDINGS AND REASONS**

### **The applicant's case**

#### ***The applicant's evidence***

12. The applicant has provided two signed statements dated 29 August 2019 and 20 March 2020.
13. The applicant commenced employment with the respondent as an Operations Manager in June 2017.
14. The applicant states that in January 2018 he was asked by William Flew, a director of the respondent to become a Quasi-Director. The applicant understands that this was because the Australian company of the respondent's business needed an Australian citizen to be a director. He states that as a Quasi-Director he could approve payments for the company. He also states that he was required to undertake frequent interstate travel and accumulated travel points which provided a cost saving to the business.
15. The applicant states that in his position as Operations/National Manager he was overseeing 40 franchisees across Australia, ran the day to day operations and finances of the whole business in Australia, and supervised 11 staff based at Wetherill Park. He states that the owners of the business were based in New Zealand. He states that he was never given a position description for this role.
16. The applicant states that in early 2019 a lady named Nina attended the warehouse from New Zealand to assist in training for customer service but claims that she was there to do fact finding for the director of the business.
17. The applicant states that William Flew constantly called him to terminate the employment of a trading employee and another employee.
18. The applicant states that about 1.00pm on 26 July 2019 he made a phone call to another director of the respondent, Jennifer Lees, who is the partner of William Flew. He states that he asked Ms Lees why another admin person was being sent from New Zealand to oversee the Wetherill Park office. He states that Ms Lees began aggressively and verbally attacking him for asking why he was objecting to this.

19. The applicant states that Ms Lees then verbally attacked him for terminating the employment of an employee that day and putting the company at risk by this action. The applicant states that he assured her that there was due process for this termination due to poor work performance. The applicant states that he then ended the conversation.
20. The applicant states that when he got off the phone he was shaking, and three employees of the respondent saw this. He states that he told them he needed to leave.
21. In his first statement dated 28 August 2019, the applicant states that he saw Dr Wynn that day and told her about the phone call he had with Ms Lees. In submissions, Mr Horan for the applicant conceded that this consultation did not occur until the following morning, being Saturday 30 July.
22. The applicant states that at about 4.00pm on 26 July 2019 he received a letter by email from Mr Flew informing the applicant to attend a meeting on Monday 29 July 2019 at 10.00am at the Wetherill Park office to seek his explanation in relation to allegations that the applicant engaged in inappropriate comments of a sexual nature, bullying, apparent inequitable favouritism in the Australian team, and unfair dismissal of employees. He states that he was shocked and upset upon receiving this letter and rang his wife in tears.
23. The applicant states that when he saw Dr Wynn he was given a medical certificate to be off work for two weeks and sent it by email to Ashani Abeyakoon, the Financial Accountant for the respondent.
24. The applicant states that although he was still anxious and depressed, he attended the scheduled meeting with Mr Flew on 29 July 2019. He states that he cannot recall a lot of the questions asked by Mr Flew, but notes were taken by Ms Abeyakoon. He states that Mr Flew said he would come back to the applicant in 24 hours.
25. The applicant states that the next day he accessed his work email and saw an email from Ms Lees announcing the appointment of her son, Liam Flew, to the position of National Business Development Manager for Australia, which surprised the applicant as it had only been about a week since he was told by William Flew to terminate the employment of Leo Relva, who was the National Business Development Manager.
26. The applicant states that during the next two weeks he continued to be asked by Ms Abeyakoon to authorise bank payments because he was a co-signatory to the respondent's bank account. He states that during this two week period he transferred 185,000 credit card points to his own credit card so that he could use that to travel to Melbourne for work purposes once he had returned to work.
27. The applicant states that he did not hear from Mr Flew regarding the outcome of the meeting on 29 July 2019.
28. The applicant states that he was anxious about returning to work after two weeks but arrived at work at about 8.00am on Monday, 12 August 2019. He states that he was met by William Flew in the car park and asked to go for coffee with him. The applicant states that Mr Flew accused him of theft in transferring the credit card points to his own credit card. He states that he explained to Mr Flew that the transfer was to use those points for travel to Melbourne for work.
29. The applicant states that Mr Flew said that the applicant could either resign or his employment would be terminated for theft. He states that he told Mr Flew he would not resign as he had not done anything wrong. He states that Mr Flew then said he was terminating the applicant's employment.

30. The applicant states that he was shocked, in tears and dumbfounded, and thought of jumping in front of a truck. He states that he went to see his usual general practitioner, Dr Youssef, and obtained a Certificate of Capacity for being unfit for work for a further two weeks.
31. The applicant states that the following day he received a letter by email from Mr Flew informing him of his termination of employment with the respondent effective as of 13 August 2019 due to unauthorised transfer of company credit card points.
32. The applicant states that he was instructed during the course of his employment to cut costs for the company and make staff redundant when the business needed new staff. He states that he was asked to terminate an employee's position so that it would be made available to the director's son.
33. In his second statement dated 18 March 2020, the applicant states that he continues to have extreme anxiety and low self-esteem. He states that he is no longer confident in being able to work and focus and apply himself to the same ability as he had done before. He states that his sleep is disturbed, has continual nightmares and wakes up in cold sweats.
34. The applicant states that because his medical expenses ceased, he cannot see his psychiatrist and psychologist, whose treatment was significantly helping him with his psychological injury.

***The applicant's medical evidence***

35. The entry for the clinical notes of Dr Wynn on 27 July 2019 includes:

"Feeling low for a months  
Stressors at work – had to terminate someone recently which resulted in vexatious claims against him eg sexual harassment, bullying etc"
36. The notes indicate that a mental health assessment was undertaken, and a referral provided to Riverlands Therapy Centre.
37. The applicant attended Dr Youssef on 10 August 2019, being the Saturday before he attended work, and the notes include:

"A lot of anxiety lately because of work  
Had 2 weeks off  
A bullying lady at work who accused him with bullying and sexually harassing her"
38. Certificates of Capacity that are issued in August and September 2019 state that the relationship of the injury to work is:

"False claim by employee of bullying and sexual harassment and inequitable favouritism which was the main reason for high blood pressure and depression with PTSD."
39. Dr Youssef records on 8 October 2019 that the applicant has seen a psychologist twice. There is no report or clinical notes in evidence from a treating psychologist.
40. The applicant attended Dr Bhavanishankar, consultant psychiatrist, at the request of his solicitors on 21 November 2019, although the report from the consultation is dated 14 February 2020.

41. Dr Bhavanishankar records a history of Ms Lees being verbally abusive to the applicant in a phone call in July 2019; the applicant's receipt of a letter from Mr Flew regarding allegations of sexual harassment and bullying on that same day; the applicant being required to terminate another employee's service and then learning that the position was to be filled by the son of a director of the respondent; and the meeting between the applicant and Mr Flew on 12 August 2019 when Mr Flew accused the applicant of theft and demanded his resignation.
42. Dr Bhavanishankar records that the applicant appeared anxious and distracted and that his speech lacked spontaneity.
43. Dr Bhavanishankar opines:
 

“Andrew presents with biological symptoms of Major Depressive Disorder with Generalised Anxiety Disorder and agoraphobia. This clearly appears to be in the context of work-related bullying, harassment and intimidation. Though Andrew has a history of previous depressive episodes, he was clearly well, functional and coping when he took on this position with his most recent employer. Andrew has a good track record in his work and has been self-employed and very industrious in the past. The series of events at work including suggestion to take a senior role without any proper contract, job description and unrealistic expectation to heed the managements advice regarding dismissal of employees and then being blamed for the same. There is also lack of transparency in following due diligence and procedure in work performance review. He has been treated unfairly and victimized.”
44. Dr Bhavanishankar opines that the applicant does not have any current capacity for work given his depressive symptoms, anxiety and avoidance. Dr Bhavanishankar opines that once the applicant reaches a period of stability then he is more likely to engage in a return to work program with support, which might take another four to six months. Dr Bhavanishankar writes that the applicant has been applying for several employment positions but has not had any success, which continues to dent his confidence.

## **The respondent's case**

### ***The respondent's lay evidence***

#### ***Jennifer Lees***

45. Jennifer Lees has provided a statement dated 30 September 2019. Ms Lees states that she is a director of Kitset Assembly Services NZ Ltd, and its parent company, Flatpack Global GPNZ Ltd, includes the respondent as one of its companies.
46. Ms Lees states that on the morning of 26 July 2019 she sent an email to the applicant informing him that a lady named Rose was coming from the New Zealand company to the Wetherill Park office to spend some time in customer experience. She states that within minutes of sending this email she received a phone call from the applicant questioning why Rose was coming to the office in Sydney. Ms Lees states that the applicant sounded flustered despite providing her reasons.
47. Ms Lees states that she also spoke to the applicant during this phone call regarding his termination of the employment of Madison Grech that day. She states that she asked the applicant if he had followed due process and whether it was true that he conducted the meeting in which this employee was terminated even though she was on sick leave. Ms Lees states that the applicant was reluctant to provide any information in regard to this and accused her of having animosity towards him, which she denied. She states that she just wanted to ensure that the respondent was not exposed to any unfair dismissal accusations.

48. Ms Lees denies that she was angry, aggressive, or raised her voice or attack the applicant during this phone call, and states that it was the applicant who was very assertive and almost arrogant.
49. Ms Lees states that in late July 2019 she found out that the applicant had terminated the employment of Leo Relva, the National Development Manager in Australia without the knowledge of Flatpack Global. She states that this is a critical position and that Liam Flew, the son of her partner, was appointed to this position on a temporary basis. Ms Lees states that within 45 minutes of sending the email announcement of this appointment on 31 July 2019, the applicant sent a disparaging email about the announcement to all franchisees and staff. The email is in evidence and includes:

“This news is sudden we were not consulted in Australia we thought the role was redundant and that’s why I was told to get rid of Leo.

When was the decision made?”

50. There is also a file note made by Ms Lees regarding the phone call between herself and the applicant on 26 July 2019, although there is no indication as to when that document was created by Ms Lees. Ms Lees writes that the applicant said “you have animosity” when he was asked about the dismissal of Ms Grech.

### ***William Flew***

51. William Flew has provided a statement dated 20 September 2019. Mr Flew states that he is a director of Flatpack Global in New Zealand.
52. Mr Flew states that part of the applicant’s role as Country Manager and Director of the respondent was to safeguard the company and its employees against risk and to guide the employees through the formation of appropriate policies. He states that since the applicant’s departure from the respondent those policies are either non-existent or missing, including the applicant’s employment contract and position description.
53. Mr Flew states that on 26 July 2019 he was provided with an email from Madison Grech, which provided details of her termination of employment by the applicant and inappropriate behaviour by the applicant towards staff.
54. Mr Flew states that due to the serious allegations made by Ms Grech he sent an email to the applicant for a formal meeting to be conducted at 10.00am on 29 July 2019 at the Wetherill Park office.
55. Mr Flew states that on the morning of Saturday, 27 July 2019 he received an email from the applicant. That email is in evidence and reads:

“I am currently at the doctors severely stressed at the allegations and what took place yesterday.

I will attend Monday at 10 am and will seek leave after I defend myself to seek legal advice to these Vexatious claims.

I will not stand by and have my reputation slandered and will take appropriate action once I’m cleared of any misconduct.”

Mr Flew states that a medical certificate was attached to the email.

56. Mr Flew states the applicant attended the meeting as arranged on 29 July 2019, and Ms Abeyakoon attended as the applicant's support person. He states that he cannot recall the exact details of the meeting but there is a copy of minutes taken by Ms Abeyakoon in evidence.
57. Mr Flew states that he told the applicant at the end of the meeting that he would consider the applicant's responses and inform him "of my decision of the outcome."
58. Mr Flew states that on or about 1 August 2019, Ms Abeyakoon informed him that the applicant had transferred 165,000 points from his company credit card to his personal travel account. Mr Flew states that there are no policies relating to the use of these points but because the credit card is a company card, he determined that this action by the applicant was theft.
59. Mr Flew states that he decided he would meet the applicant on the applicant's return to work on 12 August 2019. He states that on that morning he suggested that he and the applicant go for a coffee at a nearby coffee shop. He states that he told the applicant that he considered the transferring of points was theft. He states that the applicant denied this and that the applicant said that Mr Flew just wanted to get rid of him. Mr Flew denies that the applicant suggested that they go to the police and have the applicant charged with theft. He states that he did give the applicant the choices of resignation or termination of employment due to theft.
60. Mr Flew states that the meeting went for no more than 10 minutes, during which time the applicant appeared surprised and angry.
61. Mr Flew states that the next day he emailed a letter of termination of employment to the applicant for theft of credit card points.
62. Mr Flew states that in view of the applicant's termination of employment, he had not made a determination regarding the allegations that were discussed at the meeting on 29 July 2019.
63. Mr Flew also states that he did not at any time tell the applicant to dismiss Mr Relva and that Mr Flew found about this termination of employment when Mr Relva rang and told him.

### ***The respondent's medical evidence***

64. The applicant attended Dr George, psychiatrist, on 23 September 2019 and has provided a report dated 1 October 2019.
65. Dr George commences "Presenting Complaints" in his report as follows:

"When asked about the reasons why he was terminated from his position he said that it has been alleged that he is guilty of "theft of frequent flyer points". He said he was not guilty of this allegation."
66. Dr George records that the applicant said he believed that due to a change of ownership in the company in April there was a move to "get rid of me."
67. Dr George does take a history of the phone call between the applicant and Ms Lees and records that the applicant felt "shaken up" following this call. Dr George also takes a history of the letter accusing the applicant of bullying and sexual harassment and records that the applicant was "gobsmacked" about these allegations.
68. Dr George records that the applicant subsequently saw his general practitioner because his sleep became disturbed and he had started to become anxious and agitated.

69. Dr George makes a diagnosis of adjustment disorder with mixed anxiety and depressed mood.
70. In answer to a question of his understanding as to when the applicant's symptoms first occurred, Dr George replies: "He was accused of stealing frequent flyer points and other subsequent allegations were made against him." Dr George opines that the applicant's condition relates directly to the allegations made against him and which the applicant believes were totally unfounded.
71. When Dr George examined the applicant in September 2019, he considered that the applicant did not appear to have a capacity for employment and that it may be several months before the applicant was capable of work.

## **Determination**

72. The respondent admits that the applicant sustained psychological injury in the course of his employment with the respondent but disputes liability to pay compensation on the grounds that the psychological injury was caused wholly or predominantly by reasonable action taken with respect to performance appraisal, discipline and dismissal.
73. Section 11A (1) of the 1987 Act provides:

"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."
74. Mr Beran for the respondent did not address on the defence of performance appraisal and I do not consider that the evidence in this dispute fits the application of performance appraisal given what has been set out, and subsequently followed, by Geraghty CCJ in *Irwin v Director of School Education NSWCC* no.14068/97 (18 June 1998, unreported) (*Irwin*):

"...performance appraisal is a process, an established process involving various steps. Perhaps it will involve the completion of questionnaires and forms. It requires discussion between various parties about performance, written appraisal, sometimes even self-appraisal, maybe even a score. It is a process in which parties are engaged and knowingly engaged."
75. Mr Beran submits that the applicant's psychological injury was caused wholly or predominantly by reasonable action taken with respect to discipline. Mr Beran refers to the phone call between Ms Lees and the applicant regarding the applicant's procedure in terminating the employment of Ms Grech as coming within the definition of "discipline" and that it was reasonable for Ms Lees to raise this matter with the applicant.
76. Mr Beran submits that the letter sent to the applicant regarding his alleged misconduct and the subsequent meeting on the following Monday with Mr Flew certainly amounts to discipline. He submits that it was reasonable for serious allegations to be investigated and that the process adopted by Mr Flew was also reasonable.
77. Mr Beran submits that the psychological injury sustained by the applicant crystallises after he receives the letter regarding misconduct on the afternoon of 26 July 2019. This is evident from the record taken by Ms Wynn the following day that the applicant was stressed because he had to terminate someone recently which resulted in vexatious claims against him; the applicant's email to Mr Flew while at the doctor's surgery stating that he was severely

stressed at the allegations and what took place yesterday; the record made by Dr Youssef on 10 August 2019 of a bullying lady at work who accused him of bullying and sexually harassing her; and the Certificates of Capacity issued by Dr Youssef which states the cause of injury to be a false claim by an employee of bullying and sexual harassment and inequitable favouritism

78. Mr Beran submits that the email from the applicant to Mr Flew on the morning of 27 July 2019 identifies the allegations made against the applicant as being the cause of his psychological injury, but that the investigation of those complaints by the respondent was reasonable.
79. Mr Beran also submits that the dismissal of the applicant was reasonable action taken by the respondent. He submits that the applicant had stolen from the respondent by the transfer of credit card points to the applicant's personal account and that the respondent was well within its rights to summarily dismiss the applicant.
80. Mr Horan for the applicant submits that the psychological injury which the applicant has sustained is not limited to symptoms arising from the incidents on 26 July 2019 but cover a broad range of events, so that the incidents on that day did not wholly or predominantly cause the applicant's psychological injury. Mr Horan further submits that the incidents on 26 July 2019, the meeting on 29 July 2019, and the meeting on 12 August 2019 were not reasonable.
81. I consider that it was reasonable for Mr Flew, on behalf of the respondent, to investigate allegations of sexual harassment, including putting the applicant on notice of allegations made about him and conducting a meeting with the applicant in the presence of a support person. A redacted copy of the complaint made by Ms Grech is in evidence, which includes allegations of sexual harassment, which a responsible employer should investigate. It may well be that many of the allegations made by Ms Grech were motivated by her own termination of employment, but it was entirely reasonable for the respondent to undertake its own investigation.
82. Those actions on the part of the respondent did amount to discipline in that the respondent needed to determine the behaviour of the applicant while he worked for the respondent.
83. I also consider it was reasonable for Ms Lees to question the applicant as to whether due process had been followed by the applicant when he dismissed Ms Grech. Ms Lees was understandably concerned about the implications of an unfair dismissal claim, especially as she understood that Ms Grech had her employment terminated while on sick leave.
84. The applicant and Ms Lees provide different accounts of how the phone call on 26 July developed. I consider it more likely that it was the applicant who became upset during the phone call because it was he who initiated the call for a different issue, but had to address the concerns raised by Ms Lees of the dismissal of Ms Grech. It was not Ms Lees who made the phone call to interrogate the applicant.
85. I consider that the enquiries made by Ms Lees during that phone call did amount to discipline because the respondent needed to know if the applicant had followed due process in the dismissal of Ms Grech.
86. Although I accept that the phone call between the applicant and Ms Lees, the letter to the applicant on 26 July 2019, and the meeting conducted on 29 July 2019, were reasonable actions taken by the respondent in respect to discipline, the question remains as to whether those actions wholly or predominantly caused the applicant's psychological injury, and whether what actually happened during the process of that disciplinary action was reasonable.

87. There is not a lot of medical evidence and opinion on the cause of the applicant's psychological injury. The respondent relies upon the entries made by Dr Wynn on 27 July 2019 and Dr Youssef on 10 August 2019, the cause of injury set out in the Certificates of Capacity, and the applicant's own statement in his email to Mr Flew on 27 July 2019, that the whole or predominant cause of the injury was the applicant's response to the respondent's reasonable steps to investigate some of the applicant's actions in the workplace.
88. However, caution is required when relying on clinical notes in evidence in proceedings. In *Nominal Defendant v Clancy* [2007] NSWCA 349 (*Clancy*), Santow JA observed:
- “While clinical notes, as McColl JA observes, may in common experience be the raw data on which diagnosis and opinions are based, it does not follow that they will be comprehensive... clinical notes are written in the course of a busy practice where the clinician is primarily there to observe and administer treatment. They should not be construed with the minute attention one might give a formal legal document.”
89. It should also be noted that the entry made by Dr Wynn on 27 July 2019 for a few months, which is consistent with the applicant feeling under pressure at work.
90. As is now so often the practice when a patient first presents with psychological symptoms, Dr Wynn provided the applicant with a referral to a psychologist. Dr Youssef records on 8 October 2019 that the applicant had seen a psychologist on two occasions and Dr George records on 23 September 2019 the applicant having seen Ms Ash, psychologist, on one occasion. The applicant states that he was seeing both a psychiatrist and psychologist, who he states were “significantly helping” him, but does not provide their names.
91. It is unfortunate that a medical report or clinical notes from the applicant's treating psychologist are not in evidence. The details recorded by a treating psychologist, especially on an initial consultation, are often very valuable in the determination of cause of injury. I am left with the opinions of two independent medical experts, although both of them saw the applicant within four months of the applicant's onset of symptoms.
92. Dr Bhavanishankar does take a comprehensive history of the events which the applicant found to be stressful while working for the respondent. Dr Bhavanishankar then opines that it was a series of events at work which caused the applicant's psychological injury.
93. Dr Bhavanishankar refers to the applicant being required to dismiss employees and then being blamed for it. The applicant states that he was constantly called by Mr Flew to terminate the employment of Leo Relva. Mr Flew disputes this. I would accept the applicant's evidence on this issue. There is no evidence from Mr Flew or Ms Lees that they questioned the applicant once they were aware of this employee's dismissal as Ms Lees in regard to Ms Grech, and no evidence of any attempts to re-employ this employee if they were so concerned by the applicant's action.
94. Dr Bhavanishankar refers to the applicant having a senior role with the respondent despite a proper contract or job description. Mr Flew does not explain why the applicant was a director of the respondent, or challenge the assertion made by the applicant that it was because the respondent needed an Australian citizen as a director. A director of a company should have a role in the running of the company he is director of. Mr Flew states that part of the applicant's role was to safeguard the company and its employees against risk and to guide the employees through the formation of appropriate policies. I would expect the role of a director of a company to be more than that.

95. I would again prefer the evidence of the applicant on this issue and accept that he was being required to undertake a senior role with the respondent without the necessary support from the other directors of the business. I also query that Mr Flew, as an active director of the parent company of the respondent, did not have his own copies of the applicant's employment contract or position description. The difficult position which the applicant found himself in as a director is also revealed by him being required to continue to authorise payments on behalf of the respondent after the meeting with Mr Flew on 29 July 2019.
96. Dr Bhavanishankar also refers to the lack of transparency in following due diligence and procedure in work performance review. I read this to be a rather clumsy way of referring to the actual actions taken by the respondent in regard to discipline and dismissal.
97. While I accept that it was reasonable for Mr Flew to investigate the allegations made by Ms Grech, the process undertaken by the respondent involved incidents that could not be regarded as reasonable.
98. In *Irwin*, Geraghty CCJ considered the use of the term "reasonable" in the context of section 11A of the 1987 Act and said:
- "... The question of reasonableness is one of fact, weighing all the relevant factors. That test is less demanding than the test of necessity, but more demanding than the test of convenience. The test of 'reasonableness' is objective and must weigh the rights of employees against the object of the employment. Whether an action is reasonable should be attended, in all the circumstances, by questions of fairness."
99. In *Northern NSW Local Health Network v Heggie* [2013] NSWCA 255 (*Heggie*), Sackville AJA said at [59]:
- "A broad view is to be taken of the expression 'action with respect to discipline'. It is capable of extending to the entire process involved in disciplinary action, including the course of an investigation."
100. Mr Flew states that at the end of the meeting on 29 July 2019 he would consider the applicant's responses and inform him "of my decision of the outcome." He does not state any time for that but the notes from the meeting record that Mr Flew would provide a response between 24 and 48 hours. The applicant states that he expected a response in 24 hours. I agree with the submission made by Mr Horan that it was unreasonable on the part of the respondent to inform the applicant that he would receive a response to some serious allegations that would affect the applicant's employment within two days and never bother to provide that response.
101. I also agree with the submission made by Mr Horan that it was unreasonable for the meeting to be conducted while the applicant was on sick leave. At the very least, Mr Flew could have waited several days from the time that he received the applicant's medical certificate on 27 July 2019 to conduct the meeting. Mr Flew provides no explanation for the apparent urgency for the meeting to occur.
102. Mr Beran refers to another part of *Heggie*, where Sackville AJA said at [61]:
- "Ordinarily, the reasonableness of a person's actions is assessed by reference to the circumstances known to that person at that time, taking into account relevant information that the person could have had obtained had he or she made reasonable enquiries or exercised reasonable care."
103. I have agreed with Mr Beran that it was reasonable for the respondent to investigate the allegations made by Ms Grech, but from a review of the evidence I do not agree that the entire process involved in the disciplinary action was reasonable.

104. Nor do I accept that the action taken by the respondent with respect to dismissal was reasonable. Serious allegations which formed the basis of the applicant's termination of employment were put to the applicant by Mr Flew in a coffee shop and without a support person being offered to the applicant. The applicant provided a reasonable explanation for the transfer of points. Ms Abeyakoon writes in the report from which Mr Flew acted upon:
- "I am not accusing Andrew Wilcox of anything. This transfer of AMEX points could have been made to a company frequent flyer account...or been used for business purposes."
105. The response from the applicant and information from Ms Abeyakoon should have at least caused Mr Flew to review the situation before moving to the termination of the applicant's employment. I would add that is apparent from the evidence of both the applicant and Mr Flew that the applicant was dismissed at that meeting on 12 August 2019, even though the letter of termination is dated 13 August 2019 and states that termination is effective as of 13 August 2019.
106. While it may be that what the applicant did justified summary dismissal, the action with respect to that dismissal was not reasonable.
107. I prefer the opinion provided by Dr Bhavanishankar over that of Dr George because Dr George provides an opinion based on an inaccurate understanding of the events which led to the applicant sustaining psychological injury. Dr George commences his report by asking the applicant the reasons for his termination of employment rather than engage in a chronological record of the events which led to the applicant sustaining injury. Dr George opines that the applicant's symptoms first occurred when he "was accused of stealing frequent flyer points and other subsequent allegations were made against him" when this was not the sequence of events revealed by the evidence.
108. Having considered all of the lay evidence, and finding the opinion of Dr Bhavanishankar to be the best medical evidence to assist in the determination of the cause of injury, I consider that it was a series of stressful events at work which caused the applicant to sustain a psychological injury. The actions of discipline and dismissal which I have referred to were not the whole or predominant cause of the injury, and furthermore some of the disciplinary action and the dismissal of the applicant was not reasonable.
109. As the injury has been the result of a series of events, the deemed date of injury should be 12 August 2019, being the last day of the applicant's employment with the respondent and the last day when the applicant was exposed to a stressful event which was a cause of his injury.
110. All of the medical evidence supports a finding that the applicant has had no current work capacity since 13 August 2019, the date upon which the applicant now claims weekly payments of compensation from. However, there is no medical evidence which supports such a finding from the early part of 2020 onwards.
111. The Certificates of Capacity that are in evidence do not go beyond the end of September 2019. When Dr George sees the applicant in September 2019, he considers that the applicant did not appear to have a capacity for employment and that it may be several months before the applicant was capable of work.
112. Dr Bhavanishankar opines that once the applicant reaches a period of stability then he is more likely to engage in a return to work program with support, which might take another four to six months. Although the report of Dr Bhavanishankar is dated 14 February 2020, he actually saw the applicant on 21 November 2019, so that the four to six month period would extend to mid-March to mid-May 2020.

113. I do not consider that it is appropriate to award weekly compensation beyond 21 March 2020, being four months after the applicant saw Dr Bhavanishankar, without there being some concrete evidence of the applicant's capacity for work thereafter. That end date for the award that I intend to make is also broadly consistent with the opinion on capacity for work expressed by Dr George.
114. It might be that the applicant continues to have no current work capacity. It might be that the applicant has yet to reach a period of stability referred to by Dr Bhavanishankar that allows the applicant to have some capacity for work. However, it is incumbent upon the applicant to provide evidence in regard to this. It is not appropriate to make an award after mid-March of this year without some evidence of what the applicant's capacity for work might be.
115. The applicant's solicitors have prepared a Wages Schedule, which the respondent has not disputed. There will be an award of weekly compensation to the applicant as follows:
- (a) \$2,085.91 per week from 13 August 2019 to 12 November 2019 pursuant to section 36 (1) of the 1987 Act;
  - (b) \$1,756.56 per week from 13 November 2019 to 21 March 2020 pursuant to section 37 (1) of the 1987 Act.
116. The applicant has only claimed the cost of medication to treat his psychological injury, however I consider it reasonable that there should be an order that the respondent meet the reasonable costs that the applicant has incurred for treatment of his psychological injury pursuant to section 60 of the 1987 Act.