

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 3025/19  
**Applicant:** Ana Todic  
**Respondent:** State of NSW  
**Date of Determination:** 8 October 2019  
**Citation:** [2019] NSWCC 325

The Commission determines:

1. The applicant sustained a psychological injury as a result of the nature and conditions of her employment between 1 January 2014 and 30 August 2016, to which employment was the main contributing factor, pursuant to s 4(b)(i) of the *Workers Compensation Act 1987*.

The Commission orders:

1. The matter is remitted to the Registrar for referral to an Approved Medical Specialist (AMS) for assessment as follows:

Date of injury:	30 August 2016 (deemed)
Body part/system:	Psychological
Method:	Whole person impairment

2. The materials to be referred to the AMS are to include the Application to Resolve a Dispute and all attachments; the Reply and all attachments; and the documents attached to an Application to Admit Late Documents filed on 2 September 2019.

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

Rachel Homan  
**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 RACHEL HOMAN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

*A Reynolds*

Antony Reynolds  
Senior Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. Ms Ana Todoc (the applicant) was employed as a caterer by the State of New South Wales (the respondent) at Fairfield Hospital.
2. The applicant claims that as a result of the nature and conditions of her employment between 1 January 2014 and 30 August 2016, she sustained a psychological injury in the nature of a major depressive disorder.
3. The applicant made a claim for compensation and, on 5 July 2017, the respondent's insurer issued a dispute notice pursuant to former s 74 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act). The insurer disputed liability on the grounds that the applicant had not suffered an injury within the meaning of s 4 of the *Workers Compensation Act 1987* (the 1987 Act) and that employment was not a substantial contributing factor to the alleged injury pursuant to s 9A of the 1987 Act.
4. A claim for lump sum compensation pursuant to s 66 of the 1987 Act was made on 1 February 2018.
5. On 21 June 2019, an Application to Resolve a Dispute (ARD) was filed in the Commission seeking lump compensation pursuant to s 66 of the 1987 Act.

### PROCEDURE BEFORE THE COMMISSION

6. The parties appeared for conciliation conference and arbitration hearing on 2 September 2019. The applicant was represented by Mr Rohan De Meyrick of counsel, instructed by Ms Anna Gordon. The respondent was represented by Mr Fraser Doak of counsel.
7. 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.

### ISSUES FOR DETERMINATION

8. The parties agree that the following issues remain in dispute:
  - (a) whether the applicant sustained a psychological injury pursuant to s 4 of the 1987 Act; and
  - (b) the quantum of any entitlement to lump sum compensation pursuant to s 66 of the 1987 Act.

### EVIDENCE

#### Documentary evidence

9. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) ARD and attached documents;
  - (b) Reply and attached documents; and
  - (c) Documents attached to an Application to Admit Late Documents made by the respondent on 2 September 2019.

10. Neither party applied to adduce oral evidence or cross-examine any witness.

### **Applicant's evidence**

11. The applicant's evidence is set out in written statements made by her on 31 January 2017, 13 February 2017 and 26 February 2019.
12. The applicant stated that she commenced employment at Fairfield Hospital in 2014. At some point she was transferred to a facility called 'Braeside', which was responsible for delivering food to palliative care patients. The applicant said that right from the beginning of the transfer to Braeside she felt unwelcome. In particular, the applicant felt that two colleagues, named Margaret and Michelle, who worked in the same role were bossing her around. The applicant discovered that Margaret and Michelle were asking her to do tasks that were part of their duties. The applicant believed they were taking advantage of her because she was a new member of the team.
13. The applicant put up with this as she wanted to prove herself to be a dedicated team player. The applicant did not raise any concerns as she did not want to damage her relationship with her new colleagues. The applicant said that Margaret and Michelle told her that they did not want anyone new on their team.
14. At some point, the applicant's manager, Kerry, asked the applicant whether she was coping with her job. The applicant was surprised as she felt she was doing fine. Kerry told the applicant that Margaret and Michelle were complaining about her performance, stating that she was too slow. This happened on a couple of occasions. Kerry told the applicant that she was, however, happy with her performance and was getting good feedback about her from the patients, nurses and hospital staff.
15. Later in 2014, the applicant was asked to learn "track driving" duties. Michelle made it clear to the applicant that she was not happy for her to be appointed to this role. From that point on, Michelle constantly picked on, teased, criticised and belittled the applicant. The applicant said she and her colleagues were required to load the track together as part of their duties. The applicant said that often Margaret would pick up some paperwork and let her do the job on her own. The applicant said that Michelle would make comments about the applicant "running the show now".
16. At this point, the applicant was still prepared to tolerate her colleagues' behaviour as she was managing her duties, getting good feedback and liked working morning shifts due to her family circumstances.
17. In 2015, the applicant's manager Kerry left her position and a new manager, Sandra, took over. The applicant said that this is when her real problems started. The applicant said that after Sandra took over, she was guilty of everything and never had a chance to say anything. The applicant would be called into Sandra's office but never given an opportunity to explain her version of what happened.
18. The applicant said Sandra told her that she had visions and psychic powers and her deceased father told her everything. On one occasion, Sandra told her that she had a vision that someone would lose their job. Sandra told the applicant that she would have a fight with a co-worker and said she was scared for the applicant. Sandra told her that her new friends were not very good and that a new manager, Jai, would come in and make huge changes. The applicant also claimed that Sandra would talk to her about other staff. The applicant felt scared that she was going to lose her job.

19. On one occasion, Sandra called the applicant into the office and told her that she had made a mistake in the children's ward. The applicant asked what the mistake was. Sandra would not tell her what she had done and said she should know what the mistake was. The applicant went to the children's ward and asked the nurses what she had done wrong. The nurses said that it was not her fault and they had switched beds. Later, Sandra accused the applicant of not trusting her by going to the children's ward.
20. The applicant also described an occasion when Sandra accused the applicant of not talking to her.
21. The applicant said that the new manager, Jai, made drastic changes but they only affected the applicant. After the applicant returned from a period of leave, she discovered that Sandra and Jai had cut her from the morning shift. The applicant was placed on an afternoon shift. The only explanation given was that Jai needed to be fair to everyone else.
22. On 18 May 2016, the applicant fell in the work carpark and injured her knee. The applicant attended the Emergency Department of the hospital. The applicant told Sandra about the incident and said she needed to complete an incident report. The applicant said Sandra told her she had already filled the form in. The applicant later discovered that no incident report had been prepared or lodged on her behalf.
23. In or around May 2016, the applicant was sick and called a colleague named Marissa to notify her that she would be taking two days off work. When the applicant returned to work, she saw that an entry had been written across her name in Sandra's handwriting on the roster indicating that she had failed to notify her absence. The applicant was upset by this and told Sandra about her phone call to Marissa. Sandra responded that she could not confirm this as Marissa had not been on duty that day. The applicant said the tone used by Sandra was very dismissive and demeaning. The applicant said that Marissa was in fact working and Sandra could verify this with her. Sandra refused to check with Marissa to settle the matter. This made the applicant feel as though Sandra did not like her and did not want to take the steps necessary to resolve the issue.
24. The applicant was always scared that she was going to lose her job and eventually couldn't take anymore and called the Helpline.
25. The applicant said the last straw was when Sandra pulled her into the office and said that she would stop all the "bitching" in the kitchen, starting with the applicant and another lady. Sandra said that the hostile situation had to stop and they had to do their work. Sandra said that the afternoon staff and Leading Hand were fighting. The applicant suggested Sandra call them in but Sandra said it did not matter and had to stop.
26. From that time on, Sandra gave the applicant shifts at all different times which made it very difficult for the applicant to manage her family obligations. The applicant was placed on a shift from 11.00 am to 7.30 pm. Sandra said the applicant could either do the shift or go back to the afternoon shift. Sandra knew how hard the applicant had worked to get the morning shift and no one had wanted to do the morning shift previously. The applicant went to the storage room crying. The next day the applicant was asked by a manager, Rosalind, what had happened. Rosalind told the applicant that she had no right to tell her supervisor what to do.

27. The applicant went off work on 30 August 2016. On that day, the applicant arrived at work at about 6.00 am. Sandra came in and said, "good morning". The applicant said, "good morning" and continued to sign in. The applicant then went into the office and Sandra said, "at least have the good decency to say good morning". The applicant said she had. The applicant asked Sandra what this was all about and told her that she needed to stop bullying her. Sandra then said, "that is enough" and screamed at the applicant to get out. Sandra pushed the applicant out of the office and slammed the door in her face. The applicant went to the hospital chapel crying and then to the toilet. A nurse saw the applicant and asked what happened but she could not stop crying. The nurse took the applicant to her supervisor. The applicant felt sick and could not breathe. The applicant was taken to the Emergency Department and put on oxygen and given a tablet. The applicant could not stop crying. The applicant's sister came and collected her at about 11.30 am.
28. The applicant attended her general practitioner, Dr Wei Lei, and was referred to a psychologist, Ms Evelyn Walker at St Andrews Medical Centre. The applicant had approached Dr Lei to request a week off work to settle down as she could not stop crying. Ms Walker later told Dr Lei that the applicant needed a WorkCover certificate.
29. In February 2017, the applicant attempted a return to work. A work trial was arranged at Campbelltown Hospital. This made the applicant upset as she had worked at that hospital previously and felt staff members might question her reasons for leaving Fairfield Hospital. The applicant could not stop thinking about what might happen if she agreed to work at Campbelltown. The applicant could not stop shaking and crying.
30. The applicant consulted Ms Walker and described her fear about the work trial at Campbelltown Hospital. A few weeks later, the insurer organised a work trial at Liverpool Hospital. The applicant was extremely stressed and anxious about going to work. As a result, the applicant's memory and concentration were affected and she forgot to take her antidepressant medication. The applicant attended work on 3 and 13 March 2017. On 3 March 2017, the applicant felt very anxious and stressed. After dropping her son at school on the way to work, the applicant put her car into reverse and nearly hit some children behind the car. The applicant was shaken and very upset but nevertheless managed to drive to work. The applicant said the day was more or less unremarkable and the staff were very nice to her. The applicant cried a little whilst working on a food line but managed to calm herself down and finish the shift.
31. On 13 March 2017, the applicant returned for a second shift. On that occasion, the applicant was introduced to the manager, Jai, whom she had known at Fairfield Hospital. Jai rose from his chair and said words to the effect of "don't worry, no one will hurt you here, we are all friendly here". His words triggered negative emotions and brought back the applicant's memories of her experience at Fairfield Hospital. The applicant did not feel safe anymore and began crying. The applicant attempted to work but could not stop crying. At one point, the applicant felt a stabbing pain in her chest and had trouble breathing.
32. The applicant went to the toilet and locked herself in. The applicant could not stop crying and said she was in unbearable emotional pain. A colleague took the applicant to the office and tried to calm her down but she was having a panic attack. The applicant was taken to the Emergency Department where she was assessed and later transferred to the Psychiatric Emergency Care Centre. The applicant's general practitioner later referred her to a psychiatrist, Dr Ghada Elbaky.
33. In December 2017, the applicant was diagnosed with bowel cancer and underwent surgery in January 2018. The applicant said she continued to see her psychiatrist once a fortnight but had not seen Ms Walker recently as she had been sick from chemotherapy. The applicant said she was taking Endep 100 mg.

## Evidence from the applicant's treating practitioners

34. Clinical records from the applicant's general practitioners are in evidence, dating from 17 April 2004. On 30 September 2009, the notes reveal that the applicant reported stress and depression. The applicant expressed worry about finding a job and her health issues. The applicant reported crying most of the time, lacking energy and having sleep disturbances.
35. On 7 October 2009, the applicant similarly reported feeling "very down", having health issues and no job and feeling like crying most of the time. The applicant was referred to a psychologist. Similar symptoms were described on 2 November 2009 and 4 December 2009. Low mood, worry and stress were reported again at a consultation on 17 June 2011.
36. The next consultation at which psychological symptoms were reported was on 2 September 2016, on which date it was recorded:

### **"Friday September 2 2016**

Dr Wei Lei

cried

accident/bully in work

MC issued by fairfield hospital on 30/8/2016 till 14/9/2016

ask for more stress leave

denied SI or homicide

K10 41

stress/depressive

### **Actions**

Letter Printed

Letter Created - re WORK CERT > 1 DAY to

Letter Created- re k 10 depression scale to

Letter Printed to Evelyn Walker

Letter Created- re GP mental health CP (Item 2715) to MS EVELYN WALKER

1800 provided

relax

rfv if any concerns"

37. On 12 September 2016, the applicant reported that she could not stop crying, was not sleeping well and lethargic. The applicant was given a prescription for Valdoxan tablets. On 16 September 2016, the applicant described ruminating, not coping, not being ready for work. Similar symptoms continued to be reported throughout September and October 2016. On 21 October 2016, it was noted that Evelyn Walker had suggested the matter should be dealt with under WorkCover.
38. Ms Walker wrote to Dr Lei on 21 October 2016 stating,

"I saw Ana today who presented as very distressed throughout the session crying uncontrollably Ana explained the issues within her workplace which have been ongoing. It is evident that Ana is significantly affected by many incidents within the workplace and that she feels she cannot return to work at this stage. I believe that this should either be referred under WorkCover or that Ana will need some return-to-work plan organised."
39. On 6 February 2017, the general practitioners' clinical notes indicate the applicant reported being teary and anxious at home and during the consultation and thinking about her supervisor bullying her. It was noted that the workplace was investigating the bullying.

40. On 13 March 2017, the clinical notes refer to a phone call from Ms Walker suggesting a psychiatrist referral following an incident the previous Friday when the applicant had not taken Cymbalta for several days, was recognised by someone from Fairfield and became triggered and irritable and went to the Emergency Department. The community Mental Health Team was said to be involved. The notes continued in a similar vein until 28 April 2017.

41. On 9 June 2017, psychiatrist, Dr Ghada Abd Elbaky wrote to Dr Lei, reporting a history as follows:

“Abused at work since 2014, has new abusive manager, took 4 month off work, returned to different area, saw her old manager, relapsed again, couldn't cope.

She reported night mares, flash backs, hyper vigilant, emotional, inability to enjoy things, lost interest, and Lethargic.

She also reported poor appetite

Poor attention and concentration

She cries all the time at home, feels anxious and reported panic attacks...”

42. Dr Abd Elbaky diagnosed depression and “PTSD”.

#### **Dr Canaris**

43. The applicant relies on medicolegal reports prepared by consultant psychiatrist, Dr Christopher Canaris on 1 January 2018 and 15 April 2019.

44. The history taken by Dr Canaris in his first report was of the applicant initially enjoying her job with the respondent and having a supportive manager. Following a transfer to Braeside Hospital, the applicant started to have difficulties with two co-workers. The applicant had replaced a co-worker (Sandra), who had gone on to become a supervisor. The co-workers would give the applicant what was in fact their work. The applicant discovered that the co-workers would also complain to her supervisor that the applicant was not able to finish work. The applicant was told by fellow workers that the co-workers in question would joke about her behind her back and refer to her by a codename.

45. The supervisor, Sandra, became the applicant's acting manager and the applicant found herself subjected to increased criticism. Sandra told the applicant to be careful and that she could lose her job. The applicant said she was accused of having a split personality by her co-workers because she was cheerful with the patients but quiet in the presence of her fellow employees. The applicant reported that Sandra referred to having psychic visions of the applicant fighting with her co-workers. The applicant felt that Sandra and her co-workers were ganging up against her, leaving her to finish their work. The applicant said she had asked Sandra to intervene to get her co-workers to leave her alone but she refused to listen.

46. The applicant said she asked Sandra to stop bullying her just once but Sandra said the applicant was walking around telling everyone that she was bullying her. The applicant reported that on one occasion she was accused of not saying good morning to her fellow workers when she had in fact greeted them. The applicant also described asking Sandra to stop bullying her and Sandra slamming her door on the applicant.

47. Dr Canaris described the applicant's symptoms and presentation on examination and concluded:

“Your client reports a very difficult workplace situation in which she was apparently bullied and harassed by her co-workers and her superior. In this setting, she became very sad and depressed with tiredness, loss of motivation, loss of pleasure in activities that she once enjoyed, high anxiety, irritability, loss of concentration, insomnia, loss of appetite (but with weight gain), and loss of libido coupled with profuse tears and an otherwise depleted demeanour at interview consistent with a depressed affect culminating in her departure from work in August 2016.

Her presentation is consistent with a diagnosis of major depressive disorder, which on the available history is predominantly attributable to her workplace difficulties. As best as I can tell, her depression does not seem attributable to underlying personality difficulties. Your client impressed as a woman who loved her work and being of service to patients thus finding the hostility she encountered from her co-workers and supervisor very psychologically corrosive.”

48. Dr Canaris said he could not find evidence of other factors that might account for the decompensation. Dr Canaris assessed the applicant as having 19% whole person impairment (WPI).
49. In his supplementary report, Dr Canaris stated he had been asked to peruse the applicant’s general practitioner’s medical records. Dr Canaris noted the earlier complaints of stress and feeling depressed and worried but noted that the applicant was not treated with antidepressants. There was some talk of referral to a psychologist under a mental health plan but no indication of whether this had eventuated. Dr Canaris concluded

“It follows from this information that your client may well have had some constitutional vulnerability to depression and that this would have contributed to the emergence of her psychological condition. However, as best as I can tell, she was free of depression over a number of years suggesting that her condition was self-limiting in nature. Moreover, her depression at the time seems to have come on in response to stresses that she identified at the time in question though these are not documented in any detail.

Assuming that your client had otherwise provided a broadly accurate account of her workplace situation and of earlier life, I think on balance that her subsequent depression was still predominantly but certainly not exclusively attributable to her workplace predicament.”

### **Respondent’s evidence**

50. The respondent relies on Factual Investigation Reports prepared by Huxley Hill Group on 9 February 2017 and 20 February 2017. The reports include a number of witness statements, some of which are described in more detail below.

### **Ms Sandra Heafey**

51. Ms Heafey said she found the applicant to be sometimes quite unstable. The applicant had come to her on numerous occasions crying and saying she was being bullied and harassed. The applicant accused just about everyone in the department of this behaviour but Ms Heafey did not perceive this to be the case. Ms Heafey said the other staff were nice to the applicant but “walked on eggshells” with her. The applicant was a very hard person to get along with at the best of times. Ms Heafey said,

“After Ana and I have spoken about things I will ask her if she was fine. As soon as she walked out of the office she would start crying or stand in a corner and start rocking and crying and would tell everyone that I had bullied her and that I was talking about her.”



52. Ms Heafey said that the applicant had approached her many times saying she had problems at home and needed to work day shifts. Ms Heafey accommodated this but was accused of showing favouritism to the applicant by another staff member. When the roster was changed back, the applicant told Ms Heafey that she was discriminating against her. Ms Heafey said that this was when the accusations started and escalated.
53. Ms Heafey said she was constantly accused of harassing and bullying the applicant. When she didn't say good morning, the applicant complained. When Ms Heafey did say hello, the applicant accused her of bullying. Every time the applicant came into the office, Ms Heafey felt she had to have someone with her. Ms Heafey started to record the conversations that she had with the applicant.
54. Prior to 30 August 2016, Ms Heafey said that for about six weeks the applicant had told her daily that she was bullying and harassing her and showing favouritism. Ms Heafey said she was trying to run the department on her own at this point. Ms Heafey decided to speak with everyone in the department and ask them to work as one team. Ms Heafey said she brought some staff into her office and spoke to them and the next day brought the applicant and another worker into the office. The applicant asked why Ms Heafey was picking on them. Ms Heafey said that she had spoken to everyone. The next day, the applicant came in and asked Ms Heafey why she had spoken to her and was harassing her. Ms Heafey said she had spoken to everyone but the applicant maintained that Ms Heafey was harassing her.
55. Ms Heafey said that some days the applicant would come in and would not speak at all. When she said hello, the applicant would grit her teeth and would not talk.
56. Ms Heafey said that on the day prior to their disagreement, the applicant had accused her of ignoring her. The applicant was crying and rocking back and forth as if she was going to hit her head. Ms Heafey asked the applicant what was wrong and she said to leave her alone.
57. With regard to the events on 30 August 2016, Ms Heafey said,

“This morning I said hello. She gritted her teeth and glared at me. I went into the office to get the orders. I turned around and said, 'Ana, sweetheart when someone says good morning it is usual to acknowledge them.' I walked back in the other office. Ana slammed her hand on the door and said that I needed to stop bullying and harassing her. I turned and said to her to stop. I said this several times to her. I asked her to step back. When she was out of the office I closed the door. She had me trapped in the office. She was angry. I thought the best way to diffuse this was to put the door between her.”

58. Ms Heafey said generally,

“I think it got to the stage that the staff thought she was being the favourite and they couldn't understand when she threw things or ran around the department skipping and laughing and the next minute crying why nothing was done. I thought it was all quite bizarre.

If anyone else acted like her they would have been sent home. This has gone on and on. Some of the girls that she had worked with at Braeside would come up crying because of her.

If she was asked to do anything that was not on her job description she would refuse.

If I gave her a job description she would say that I was bullying her.”

59. Ms Heafey confirmed that Margaret and Michelle were Leading Hands. Ms Heafey said that if they pulled the applicant up for not doing her work she would accuse them of bullying and harassing her.

***Ms Michelle Mihos***

60. Ms Mihos said she initially found the applicant to be charming and welcomed her to the team. Ms Mihos said that once they started working together, she found the applicant to be talkative on some days and, on other days, she would have a migraine and would not acknowledge her. Later, Ms Mihos would see the applicant dancing in front of patients.
61. Ms Mihos said there were a lot of jobs, like pushing trolleys, that the applicant did not want to do. Ms Mihos said the applicant was not a team player. Ms Mihos said the applicant wanted to learn to drive the truck and Ms Mihos was asked to teach her. Ms Mihos said she did not have a problem with that. Ms Mihos said that one day the applicant made out that she was picking on her. Ms Mihos said she was doing her job and the applicant's job at the time.
62. Ms Mihos learned that the applicant was complaining about her to the Leading Hand. Eventually, Ms Mihos went to the manager and said she was trying to work with the applicant but she was like "four seasons in one day". It didn't matter what Ms Mihos did, it wasn't right.
63. Ms Mihos confirmed that the applicant always worked the day shift. When she was put on afternoon shift she would cry. When the applicant had to work weekends, she said that her husband would "kill her". Ms Mihos offered to swap with her.
64. Ms Mihos said there was an occasion when she had organised food for a function. The applicant "went crazy" and was crying saying that Ms Mihos hadn't asked her to put in for it. Ms Mihos said that she had asked everyone to contribute.
65. Ms Mihos said there were many times when the applicant would be pacing out the back then accuse them of talking about her when it was not the case.
66. Ms Mihos said there was one occasion when they had to drive the truck to a different location. Ms Mihos said, as a joke, that she did not want to get her hair wet as it was raining. Straightaway, the applicant started crying like something bad had happened and saying that Ms Mihos was so awful to her.
67. Ms Mihos said the applicant had trouble with her job description. If it said two loaves of bread, that was all the applicant would do even if there were five loaves to do. Ms Mihos said when she worked with the applicant on trolleys she would not speak to her and would not push the trolleys. Ms Mihos did the applicant's work as well as her own.
68. Ms Mihos denied seeing anyone bully or harass the applicant and said, if anything, people went out of their way to be nice to her. Ms Mihos said if she did ask the applicant to put in for functions, she would not. If she did not ask, the applicant would cry because she had not been asked. Ms Mihos said the applicant was always invited to functions both at work and outside of work but had never attended functions outside of work.

***Ms Margaret De Wit***

69. Ms De Wit said she found the applicant to be very moody. On some mornings, she would not speak, while other mornings she would be dancing and laughing. Ms De Wit said she did not believe the applicant was being bullied by anyone.
70. Ms De Wit said that if she and Michelle were talking, the applicant would assume they were talking about her. If they asked the applicant to do something that was part of her job, she would take a different route to get out of her work.

71. Ms De Wit said she had a lot of issues with the applicant at Braeside and spoke to the manager about it. The applicant was protected and no action ever taken. Ms De Wit said the applicant would get out of work if she could and never put in a full day's work. She would have favourite members of staff and spend time with them. Ms De Wit said she would go home stressed from working with the applicant and hoping she would not be working the next day.
72. Ms De Wit said the applicant had been a part-timer then got put on "the line". The applicant "kicked up a stink" and complained that other girls were getting more shifts. The applicant was then given all the day shifts.
73. Ms De Wit said she found Sandra to be a very fair manager.

### **Applicant's response to the respondent's witness evidence**

74. The applicant responded to the witness statements above in her most recent written statement.
75. The applicant denied that she had approached Ms Heafey on numerous occasions crying and complaining of being bullied and harassed. The applicant said she did not use the word, "bullying", until 30 August 2016. Prior to that day, the applicant did repetitively question Sandra as to what she was doing wrong so she could rectify it and make it better. The applicant wanted to keep her job and did not want to have any confrontations or problems with her colleagues.
76. The applicant denied accusing "just about everyone in the department" of bullying her. The applicant said she was friendly with all hospital and kitchen staff.
77. The applicant denied disclosing family problems with Ms Heafey and said she was very uncomfortable talking to her and always kept their conversations short and related to work. The applicant denied that Ms Heafey had someone present during their conversations and recorded them.
78. The applicant said the incident described by Ms Heafey of the applicant crying and rocking back and forth was a lie. The applicant also said it was a lie to say that she was angry and trapped Ms Heafey in her office on 30 August 2016.
79. The applicant denied refusing to do anything that was not on her job description. The applicant said she tried very hard to please Ms Heafey and did everything she was asked by her to do.
80. The applicant refuted Ms De Wit's evidence that she would take a different route to get out of her work. The applicant said she was doing many tasks that were not part of her duties and did them to make sure that everyone was happy with her and her performance. The applicant said on many occasions she performed Margaret and Michelle's duties and was too scared to complain about them as they always twisted everything she said.
81. The applicant said that on one occasion she found out that Ms Mihos had arranged a function to which she was not invited. The applicant felt very sad. A manager approached the applicant and invited her to sit with him. The applicant refused as it was obvious that her presence was not wanted. During the function, the applicant sat outside crying as she felt ostracised and excluded but denied "going crazy".
82. The applicant denied ever receiving an invitation to functions. The applicant said she was a "black sheep" who was excluded from every social event both inside and outside of working hours.

83. The applicant denied complaining to everyone that Ms Mihos was bullying her.

#### **Dr Bisht**

84. The respondent relies on medicolegal reports prepared by psychiatrist, Dr Yajuvendra Bisht on 12 January 2017, 13 February 2017, 29 March 2018 and 30 April 2018.

85. In his initial report, Dr Bisht reported that the applicant described her symptoms as starting in reaction to the situation at her workplace. In particular, her manager Sandra had been harassing her and that this had been going on since Sandra's promotion to the manager position. The applicant said that following her transfer to Braeside Hospital she realised that staff there were trying to scare the people they didn't like away. The applicant said that many of the staff would gossip about her behind her back and make unsubstantiated complaints to the supervisor, Sandra, who would not listen to her side of the story and reprimand her based on what other staff had told her. The applicant said that once Sandra was promoted to manager, she started to reprimand the applicant for very minor things like not saying good morning to her properly, in front of other staff. The applicant reported that Sandra would also often pass derogatory comments about her work in front of other staff and exclude her from staff gatherings by not informing her of them. By late August, the applicant could not bear this behaviour from Sandra and the other staff.

86. Dr Bisht noted in his first report that he had not been provided with a factual investigation. After conducting a mental state examination, Dr Bisht diagnosed a major depressive episode consistent with the history provided to him.

87. In the report of 13 February 2017, Dr Bisht, said he had been provided with the factual investigation. Dr Bisht concluded:

“Considering that the factual investigation report could not find any definite evidence of bullying or harassment, I believe that there is insufficient evidence to conclude that Ana's employment is the main contributing factor to her condition. Her perception of bullying and harassed could have resulted from long term thinking patterns (as a part of her personality) rather than actual occurrences of bullying and harassment.”

88. In the report of 29 March 2018, Dr Bisht confirmed that the applicant suffered from a psychiatric injury in the form of major depressive episode and reiterated his previous opinion:

“There was no pre-existing illness. Her psychological injury is related to work experiences. However, the factual investigation report, which was provided to me in February 2017, in relation to a request for a supplementary report from me in regards to Ms Todic, indicated that that there was inconclusive evidence of bullying/harassment. Thus, I would conclude that there is a likelihood that the worker's perception of bullying and harassment arises from her long-term patterns thinking, ie patterns of cognitive appraisal of situations, rather than actual bullying or harassment.”

89. Dr Bisht assessed the applicant as having 17% WPI.

90. In his final supplementary report, Dr Bisht expressly stated that there was insufficient evidence to conclude that employment was the “main contributing factor” to the applicant's condition.

#### **Applicant's submissions**

91. Mr De Meyrick took me through the applicant's evidence including the difficulties the applicant experienced with her co-workers, Margaret and Michelle, and her supervisor, Sandra, culminating in the applicant leaving work on 30 August 2016.

92. Mr De Meyrick said the medical evidence was all one-way in accepting that the applicant had a genuine depressive condition. Mr De Meyrick submitted further that the evidence all indicated that the depressive condition had a nexus with work. Mr De Meyrick noted that Dr Bisht's first report was quite supportive of the applicant's claim. After being briefed with some of the factual investigation material, Dr Bisht took the opinion that there was insufficient evidence to conclude that employment was the main contributing factor to the injury as there was insufficient evidence of bullying and harassment. Mr De Meyrick submitted that in giving this opinion, Dr Bisht had asked himself the wrong question. Mr De Meyrick said the applicant's condition was related to her work experiences, whether or not those experiences constituted bullying or harassment.
93. Mr De Meyrick referred me to the summary of the law in *Lindsay v IMB Ltd*<sup>1</sup> at [33]-[37] and the witness statements set out in the respondent's factual investigation report. Mr De Meyrick submitted that the witness statements confirmed that incidents happened in the workplace that were broadly consistent with the applicant's evidence. The statements just revealed that the incidents were viewed from different perspectives. For example, Mr De Meyrick pointed to Ms Heafey's evidence of having conversations with the applicant which caused her to cry. Ms Heafey's evidence confirmed that there was a perception that changes made to the roster from time to time were unfair. Ms Heafey confirmed that certain routine interactions were interpreted as hostile by the applicant. Mr De Meyrick submitted that Ms Heafey's evidence also gave credit to the applicant's claim that her co-workers, Michelle and Margaret, were bossing her around, notwithstanding that their own evidence was silent on the matter. Mr De Meyrick submitted it was unnecessary to decide whether the interactions were hostile or not. The point was that the events happened and were perceived as such by the applicant.
94. Mr De Meyrick submitted that events of the nature described by the applicant did occur and caused the applicant a great deal of upset and a deterioration in her mental health, causing her to go off work. The witness statements supported the applicant's evidence but just told a different version of the same events. Mr De Meyrick submitted that it was not necessary to prove that the relevant conduct was bullying and harassment. Applying the principles in *Attorney General's Department v K<sup>2</sup> (K)*, Mr De Meyrick said the applicant comfortably succeeded in proving her case.

### **Respondent's evidence**

95. Mr Doak submitted that the applicant's evidence and the evidence of the respondent's witnesses intersected only in very narrow ways. Although the applicant had identified some of those intersections, Mr Doak submitted that it was not sufficient that those events caused the applicant to become upset. Mr Doak referred me to *State Transit Authority of New South Wales v Chemler*<sup>3</sup> (*Chemler*) and said the crucial point was whether the events were causative of a psychological condition. Mr Doak submitted that the question was whether the events were causative of injury in the sense discussed in *Kooragang Cement Pty Limited v Bates*<sup>4</sup>.
96. Mr Doak submitted that Dr Bisht's opinion was that, having considered the factual material, there was considerable doubt about the history given to him. The substance of the witness statements was that no one had bullied or harassed the applicant. Rather, she would become upset for no apparent reason at work. For example, Margaret and Michelle said they went out of their way to help her, in contrast to the applicant's evidence that they went out of their way to undermine her.

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<sup>1</sup> [2019] NSWCCPD 7.

<sup>2</sup> [2010] NSWCCPD 76.

<sup>3</sup> [2007] NSWCA 249; 5 DDCR 286.

<sup>4</sup> (1994) 35 NSWLR 452.

97. Mr Doak submitted that aspects of the history taken by Dr Canaris were also thrown into doubt by the respondent's evidence.
98. Mr Doak submitted that the facts of this case were not dissimilar to *Townsend v Commissioner of Police*<sup>5</sup> (*Townsend*) where there was a rumour about a change which was to occur and the applicant responded to the rumour. Mr Doak said the applicant described people picking on her or ganging up on her, where there was little evidence of such.
99. Mr Doak referred me to the applicant's general practitioner's clinical notes and noted that on 30 September 2009 and 7 October 2009, the applicant reported feeling very down, stressed and depressed, having sleep problems, lacking energy and feeling like crying most of the time. In June 2011, the applicant reported a constant low mood and worrying about her health, children family and financial issues and issues relating to the conflict in the former Yugoslavia. Mr Doak submitted that the behaviour described in these notes was similar to that observed by the respondent's witnesses. Mr Doak noted that there were then no entries in relation to psychological symptoms or work until 2 September 2016. Mr Doak said there was an absence of complaint to the general practitioner about the sorts of behaviours the applicant said were occurring at work since 2014. Mr Doak contrasted this with the reporting of symptoms previously.
100. Mr Doak submitted that Dr Canaris' history also did not stack up against the respondent's witness evidence. Ms Heafey said there was a period where the applicant was accusing her of bullying and harassment almost every day, which she denied. Mr Doak submitted that the labelling of conduct as bullying and harassment does not mean there was a real event causative of an injury. Mr Doak noted that Dr Canaris had the benefit of the clinical notes in his supplementary report and made concessions that there was a history of depressive symptoms. Mr Doak noted, however, that Dr Canaris did not have the benefit of the respondent's witness evidence, and said it was not known whether he would have given the same opinion had he been aware, for example, that the applicant appeared to cry at work for no reason. The respondent's witness evidence was that the applicant was very difficult to get along with, appeared emotional and moody at work and would burst into tears without reason.
101. Mr Doak conceded that there were some real incidents including on around 30 August 2016 but submitted that the whole of the history needed to be considered. There was no medical opinion that the particular events on 30 August alone were causative of a psychological injury.
102. Mr Doak submitted that the doctors' history had to be carefully compared with the applicant's evidence and the respondent's witness evidence. Mr Doak submitted that I would not be satisfied that there had been real events causative of the psychological injury.

### **Applicant's submissions in reply**

103. Mr De Meyrick observed that the respondent's witness statements were prepared by an investigator and were not necessarily responsive to the applicant's evidence, although the applicant had specifically responded to and rebutted those statements. The respondent had not obtained further, more detailed statements from its witnesses to respond to the applicant's specific allegations. In the circumstances, Mr De Meyrick submitted that I would be very slow to reject the applicant's evidence.
104. Mr De Meyrick submitted that the clinical notes did not reveal any competing cause for the applicant's psychological symptoms other than work.

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<sup>5</sup> (1992) 25 NSWCCR 9.

105. Mr De Meyrick quoted from the judgement of Basten J in *Chemler*<sup>6</sup> at [69] and submitted that to focus on the question of whether or not there was bullying and harassment was to ask the wrong question. The evidence indicated that there were interactions which the applicant found to be hostile and which caused her distress.

## FINDINGS AND REASONS

106. Section 9 of the 1987 Act provides that a worker who has received an 'injury' shall receive compensation from the worker's employer in accordance with the Act. The term 'injury' is defined in s 4:

"In this Act:

**injury:**

- (a) means personal injury arising out of or in the course of employment,
- (b) includes a disease injury, which means:
  - (i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and
  - (ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease, and
- (c) does not include (except in the case of a worker employed in or about a mine) a dust disease, as defined by the *Workers' Compensation (Dust Diseases) Act 1942*, or the aggravation, acceleration, exacerbation or deterioration of a dust disease, as so defined."

107. Subsection 11A(3) provides that a 'psychological injury' is:

"an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect of such a disorder on the nervous system."

108. In *Attorney General's Department v K*, Deputy President Roche summarised the principles to be applied in determining causation in cases of psychological injury at [52]:

"The following conclusions can be drawn from the above authorities:

- (a) employers take their employees as they find them. There is an 'egg-shell psyche' principle which is the equivalent of the 'egg-shell skull' principle (Spigelman CJ in *Chemler* at [40]);
- (b) a perception of real events, which are not external events, can satisfy the test of injury arising out of or in the course of employment (Spigelman CJ in *Chemler* at [54]);

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<sup>6</sup> [2007] NSWCA 249.

- (c) if events which actually occurred in the workplace were perceived as creating an offensive or hostile working environment, and a psychological injury followed, it is open to the Commission to conclude that causation is established (Basten JA in *Chemler* at [69]);
- (d) so long as the events within the workplace were real, rather than imaginary, it does not matter that they affected the worker's psyche because of a flawed perception of events because of a disordered mind (President Hall in *Sheridan*);
- (e) there is no requirement at law that the worker's perception of the events must have been one that passed some qualitative test based on an 'objective measure of reasonableness' (Von Doussa J in *Wiegand* at [31]), and
- (f) it is not necessary that the worker's reaction to the events must have been 'rational, reasonable and proportionate' before compensation can be recovered."

109. Further at [54]:

"The critical question is whether the event or events complained of occurred in the workplace. If they did occur in the workplace and the worker perceived them as creating an 'offensive or hostile working environment', and a psychological injury has resulted, it is open to find that causation is established. A worker's reaction to the events will always be subjective and will depend upon his or her personality and circumstances."

110. There is, in this case, a consensus of opinion between the independent medical examiners that the applicant suffered from a major depressive disorder or episode, and I accept that to be the case. The applicant has claimed that her condition was gradually caused by a series of workplace events dating from 2014 until 30 August 2016. The relevant question for determination, therefore, is whether employment was "the main contributing factor" to the applicant's condition for the purposes of s 4(b)(i) of the 1987 Act.
111. It is apparent from the witness evidence set out above that the applicant and her colleagues, Ms Heafey, Ms Mihos and Ms De Wit, had completely different perceptions of their interactions in the workplace. It is unnecessary for me to make any determination as to whether the applicant's perception of events in the workplace was reasonable, rational or correct. It is only necessary for me to determine whether the events complained of in fact occurred and whether they were causative of the applicant's psychological condition.
112. Although Mr Doak has submitted that the evidence of the applicant and the respondent's witnesses intersected in only narrow ways, my own analysis reveals a much more significant degree of alignment. In particular, I find that the evidence of the applicant and the respondent's witnesses was consistent with regard to the following workplace events, which I accept were real:
- (a) The applicant was transferred to a facility called Braeside where she worked alongside Ms De Wit and Ms Mihos.
  - (b) There was disagreement between the applicant and Ms De Wit and Ms Mihos with regard to the tasks that formed part of their respective duties.
  - (c) The applicant was appointed "track" or "truck" driving duties and had to work alongside Ms Mihos in the performance of those duties.
  - (d) Ms De Wit and Ms Mihos would have conversations with each other in the workplace.



- (e) The applicant had discussions and interactions with Ms De Wit and Ms Mihos in the workplace.
- (f) Ms De Wit and Ms Mihos discussed difficulties they were experiencing with the applicant with their manager.
- (g) In 2015, Ms Heafey became the applicant's manager.
- (h) There were numerous interactions between the applicant and Ms Heafey with regard to Ms Heafey's attitude towards the applicant and the applicant's work performance.
- (i) There was a change in the way shifts were allocated and the applicant was placed on an afternoon shift.
- (j) There was an occasion where the applicant and another worker were called into Ms Heafey's office to discuss conflict in the workplace.
- (k) There were functions in and outside the workplace organised by Ms Mihos not attended by the applicant.
- (l) There was an interaction between the applicant and Ms Heafey on 30 August 2016 after Ms Heafey arrived at work and said, "good morning" to the applicant. This was followed by an interaction in the office in which the applicant asked Ms Heafey to stop bullying her. The interaction ended with Ms Heafey closing the office door on the applicant.

113. The applicant has also described a number of events which are not addressed in the respondent's witness evidence, but which I am prepared to accept as real on the basis that they are not inconsistent with the respondent's evidence. These include:

- (a) The applicant had a discussion with her previous manager, Kerry about her performance at Braeside after issues were raised by Ms Mihos and Ms De Wit.
- (b) The applicant had a conversation with Ms Heafey in which she referred to having psychic powers.
- (c) The applicant fell in the work car park in May 2016 and had an interaction with Ms Heafey with regard to the incident.
- (d) There was an interaction with Ms Heafey with regard to an error in the children's ward.
- (e) On one occasion, the applicant took time off work as she was sick and had called a colleague to notify her absence but this had not been communicated to Ms Heafey.

114. I accept that the applicant's evidence did diverge from the respondent's witnesses' evidence in many respects. Some of these differences relate to specific details or context surrounding the events above, including particular language used in certain interactions. Most of the differences relate, however, to the intentions, tone or motivations of those involved in the events, being differences in the way the same events were perceived. Although these differences are such that I am not satisfied that all of the events above occurred in the precise circumstances or manner described by the applicant, none of these differences lead me to the view that the events above did not occur at all or were not real.

115. There are some events described by the applicant which I am not satisfied did occur. This is not to say that the events did not occur at all, but merely that on the evidence before me, I am not satisfied on the balance of possibilities that they did. These include:
- (a) Ms De Wit and Ms Mihos asked the applicant to do tasks that were part of their duties and bossed her around.
  - (b) Ms De Wit and Ms Mihos told the applicant they did not want anyone new on their team.
  - (c) Ms Mihos and Ms De Wit, picked on, teased, criticised or belittled the applicant.
  - (d) Ms Heafey blamed the applicant for everything, criticised her unfairly for minor or irrelevant matters and did not give the applicant an opportunity to explain her version of events.
  - (e) Ms Heafey pushed the applicant out of her office.
  - (f) Ms Heafey, Ms De Wit or Ms Mihos “bullied and harassed” the applicant.
116. Having made these factual findings, I have considered whether the events which I accept did occur were perceived by the applicant as hostile. There is no doubt in my mind that they were. This is confirmed not only by the applicant’s evidence but by the respondent’s witness evidence and the histories taken by the practitioners involved in this case. The evidence paints a clear picture of the applicant becoming teary or distressed by interactions in the workplace even though the same interactions were interpreted or perceived by others as innocuous.
117. The next question is whether those workplace events were causative of the applicant’s psychological condition. The evidence from the applicant’s treating practitioners tends to indicate that they were. The applicant’s psychologist, Ms Walker has said that the applicant was “significantly affected by many incidents in the workplace.” Dr Abd Elbaky identified difficulties at work since 2014 and in particular with her new manager as the only factors precipitating the applicant’s condition. Whilst I am not satisfied that the applicant was “abused”, to use the language of Dr Abd Elbaky, I am satisfied that she considered difficult interactions in the workplace since 2014 and in particular with Ms Heafey to have been causative of the applicant’s condition.
118. Mr Doak has suggested that the opinion given by Dr Canaris was compromised by the fact that he did not have the respondent’s witness statements and therefore an erroneous history. Whilst Dr Canaris’ history included some descriptions of workplace events which I do not accept as correct, I am satisfied that there was sufficient correspondence between the events which I have found were real and the history given to Dr Canaris as to provide a proper basis for the acceptance of his opinion. Dr Canaris gives the opinion that it was the applicant’s difficult workplace situation, which caused the psychological symptoms, which led him to diagnose a major depressive episode.
119. I do not take Dr Bisht to have reached a vastly different conclusion. Whilst Dr Bisht expressed the view that there was insufficient evidence of bullying and harassment, he does appear to accept that the applicant has perceived bullying and harassment in the workplace as a result of her long-term thinking patterns. I do not take Dr Bisht to be saying that the events perceived by the applicant were not real, but merely that he was not satisfied that they constituted “bullying and harassment”. In his 28 March 2018 report, Dr Bisht conceded that the applicant’s psychological condition was related to her work experiences.

120. Mr Doak submitted that the facts of this case were akin to those in *Townsend*. In that case, a police officer who had been transferred believed that his superiors were lying to him about the reasons for his transfer and actually suspected him of corruption in spite of assurances to the contrary. The Compensation Court found that the officer's anxiety state was mainly caused by his irrational internal perception of external events, such as the existence of rumours, which were not proven to have occurred. The Court found that for incapacity to be related to employment the anxiety state must be a reaction to external events. The applicant was found to have perceived unreal externalities.
121. In my view, the facts of *Townsend* are distinguishable from the case. In this case, I have found that there were real events in the workplace. Whilst I am not satisfied that some of the events alleged by the applicant in fact occurred, that does not break the causal nexus. The evidence is consistent in indicating that it was the accumulation of numerous events at work, over time, since 2014 which caused the applicant's psychological condition.
122. In making my determination I have taken into account the evidence of other stressors in the applicant's life. It is apparent that in late 2009 and mid-2011 the applicant experienced psychological symptoms related to her health, finances and family situation. As Dr Canaris has found, the evidence suggests that the applicant was free of any significant depressive symptoms for a number of years prior to 2014. Whilst the respondent's witnesses have referred to difficulties the applicant experienced outside the workplace, it is notable that none of the treating practitioners and neither of the experts in this case have identified any non-work-related causes for the applicant's psychological condition.
123. The failure to report workplace stressors to her general practitioner prior to 30 August 2016 also does not cause me any difficulty in accepting the applicant's claim. It is not the applicant's evidence that any one interaction or event caused a psychological condition. Rather it was the accumulation of events, culminating in the interaction with Ms Heafey on 30 August 2016, which was causative of her condition.
124. Having carefully considered all of the evidence, I am satisfied that the applicant's perception of real events in the workplace occurring between 2014 and 30 August 2016, was the main contributing factor to a psychological injury for the purposes of s 4(b)(i) and s 11A(3) of the 1987 Act.

### **Referral to an Approved Medical Specialist (AMS)**

125. Section 65(3) of the 1987 Act previously provided that,
- "If there is a dispute about the degree of permanent impairment of an injured worker, the Commission may not award permanent impairment compensation unless the degree of permanent impairment has been assessed by an approved medical specialist".
126. Section 65(3) was repealed by the *Workers Compensation Legislation Amendment Act 2018* (the 2018 amending Act) in schedule 2, clause 2. This schedule commenced on the date of proclamation which was 1 January 2019. Savings and transitional provisions were added by the 2018 amending act and appear in the 1987 Act in Schedule 6, Part 19L and clause 2 provides that an amendment made by the 2018 amending Act extends to an injury received before the commencement of the amendment, and a claim for compensation made before the commencement of the amendment. The repeal of s 65(3) applies to the present case.
127. In the second reading speech in relation to the Bill relating to the 2018 amending Act it was stated:

“Schedule 2 to the bill provides for the Workers Compensation Commission to award permanent impairment compensation without referral to an approved medical specialist.

This amendment recognises that, in certain circumstances, the requirement to refer all permanent impairment disputes to an approved medical specialist was unduly delaying proceedings in the Workers Compensation Commission. The amendment will allow arbitrators to make determinations of permanent impairment by removing section 65 (3) from the 1987 Act, which requires all permanent impairment disputes to be referred to an approved medical specialist prior to the Workers Compensation Commission awarding permanent impairment compensation.<sup>7</sup>”

128. Submissions were made at hearing by Mr De Meyrick that this was an appropriate case for me to determine the applicant’s entitlement to lump sum compensation without referral to an AMS, on the basis that the assessments of WPI by Dr Canaris and Dr Bisht varied by only two percentage points and given the consensus of opinion on diagnosis.
129. I am not able to agree. The difference in the assessments between Dr Canaris and Dr Bisht is sufficient for me to consider a referral to an AMS appropriate. It is not open to me as Arbitrator to make my own assessment of permanent impairment, as the Guidelines make clear that this is a matter solely within the purview of an appropriately qualified psychiatrist. There is no sufficiently clear basis on which I would prefer the assessment of one expert’s assessment over the other. As a result, I am satisfied that the appropriate course is to remit the matter to the Registrar for referral to an AMS to assess the degree of permanent impairment.

## SUMMARY

130. The Commission determines:

- (a) The applicant sustained a psychological injury as a result of the nature and conditions of her employment between 1 January 2014 and 30 August 2016, to which employment was the main contributing factor, pursuant to s 4(b)(i) of the Workers Compensation Act 1987.

131. The Commission orders:

- (a) The matter is remitted to the Registrar for referral to an AMS for assessment as follows:

Date of injury:	30 August 2016 (deemed)
Body part/system:	Psychological
Method:	Whole person impairment

- (b) The materials to be referred to the AMS are to include the ARD and all attachments; the Reply and all attachments; and the documents attached to an Application to Admit Late Documents filed on 2 September 2019.



<sup>7</sup> Legislative Council 19 September 2018, Second Reading Speech of the Hon. David Clarke