

# WORKERS COMPENSATION COMMISSION

## STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

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<b>Matter Number:</b>	<b>M1-6709/19</b>
<b>Appellant:</b>	<b>Louise Wolfe</b>
<b>Respondent:</b>	<b>Secretary, Department of Education</b>
<b>Date of Decision:</b>	<b>8 September 2020</b>
<b>Citation:</b>	<b>[2020] NSWCCMA 144</b>

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<b>Appeal Panel:</b>	
<b>Arbitrator:</b>	<b>Carolyn Rimmer</b>
<b>Approved Medical Specialist:</b>	<b>Dr Douglas Andrews</b>
<b>Approved Medical Specialist:</b>	<b>Dr Patrick Morris</b>

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### BACKGROUND TO THE APPLICATION TO APPEAL

1. On 6 July 2020, Louise Wolfe (Mrs Wolfe) made an application to appeal against a medical assessment (the appeal) to the Registrar of the Workers Compensation Commission (the Commission). The medical assessment was made by Professor Nicholas Glozier, Approved Medical Specialist (the AMS) and issued on 11 June 2020.
2. The respondent to the appeal is the Secretary, Department of Education (the respondent). The appellant was insured at the relevant time by Allianz (Australia) Limited agent for NSW (TMF).
3. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
  - the MAC contains a demonstrable error.
4. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
5. The Workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.
6. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment*, 4<sup>th</sup> ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> ed (AMA 5).
7. The Appeal was made within 28 days of the date of the medical assessment.

## RELEVANT FACTUAL BACKGROUND

8. Mrs Wolfe developed a primary psychological injury in the course of her employment as a special education teaching assistant employed by the respondent with the deemed date of injury being 27 September 2019.
9. The matter was referred to the AMS, Professor Nicholas Glozier, on 23 April 2020 for assessment of whole person impairment (WPI) of Mrs Wolfe's psychological/psychiatric disorder attributable to the injury deemed to have occurred on 27 September 2019.
10. The AMS examined Mrs Wolfe on 27 May 2020 via Zoom and assessed 5% WPI in respect of the psychological/psychiatric disorder as a result of the injury deemed to have occurred on 27 September 2019.

## PRELIMINARY REVIEW

11. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.
12. Neither party sought an opportunity to make oral submissions to the Appeal Panel. The Appeal Panel does not consider it would benefit by hearing oral submissions from the parties. The Appeal Panel shall therefore determine the Appeal without an Assessment Hearing.
13. Mrs Wolfe requested that she be re-examined by an Approved Medical Specialist, who is a member of the Appeal Panel.
14. As a result of that preliminary review, the Appeal Panel determined that it was unnecessary for Mrs Wolfe to undergo a further medical examination because there was sufficient evidence on which to make a determination.

## Fresh evidence

15. Section 328(3) of the 1998 Act provides that evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to a medical assessment appealed against may not be given on an appeal by a party unless the evidence was not available to the party before the medical assessment and could not reasonably have been obtained by the party before that medical assessment.
16. The admission of 'fresh evidence' into an appeal was considered by Deputy President Fleming in *Ross v Zurich Workers Compensation Insurance* [2002] NSWCC PD7 (*Ross*). The principles set out in *Ross* are relevant and have been applied to the admission of fresh evidence by a panel (see discussion in *Australian Prestressing Services Pty Ltd v Vosota* WCC10798-04). In *Ross* the Deputy President stated:

"A number of authorities have considered the tests at common law for the introduction of fresh evidence in appellate proceedings before the Courts. The relevant tests are firstly, that the evidence which is sought to be admitted on appeal was not available to the Appellant at the time of the original proceedings or could not have been discovered at that time with reasonable diligence, and secondly that the evidence is of such probative value that it is reasonably clear that it would change the outcome of the case (*Wollongong*

*Corporation v Cowan* (1955) 93 CLR 435; *McCann v Parsons* (1954) 93 CLR 418; *Orr v Holmes* (1948) 76 CLR 632). These tests are addressed to the underlying principle of the need for finality in litigation and the importance of the ability of the successful party to rely on the outcome of the litigation. They are also addressed to the fundamental demands of fairness and justice in the instant case.”

17. The appellant seeks to admit the following evidence:
  - (a) Statement of Mrs Wolfe dated 24 June 2020.
18. The appellant submitted that the examination “was not conducted in a manner inappropriate for an Approved Medical Examination [sic]”. The Appeal Panel assumed that this was, in fact, intended to read as the examination “was conducted in a manner inappropriate for an Approved Medical Examination”. As noted above, the examination was conducted via Zoom on 27 May 2020. Mrs Wolfe alleged that there was a lack of privacy online from the AMS’s location and interruptions occurred. She alleged that there were a number of inaccuracies in the MAC. She stated that she was not “on her own” and had family member present when the examination was conducted which inhibited her from reporting a full and proper history.
19. The respondent submitted that Mrs Wolfe sought to introduce by way of her criticism of the AMS’ assessment fresh evidence, namely the ‘Statement of Louise Wolfe dated 24 June 2020.’ The respondent did not consent to the admission of the fresh evidence.
20. The issue concerning “additional relevant information” which is a separate ground of appeal under s 327(3)(b) was addressed by Hoeben J in *Petrovic v BC Serv No 14 Pty Limited t/as Broadlex Cleaning Services* [2007] NSW SC1156 (*Petrovic*). Hoeben J held that a statutory declaration addressing the way in which an AMS carried out his examination was not “additional relevant information” as it was not information of a medical kind or which directly related to the decision made by the AMS. At [31], Hoeben J said:

“In my opinion the words ‘availability of additional relevant information’ qualify the words in parentheses in s327(3)(b) in a significant way. The information must be relevant to the task which was being performed by the AMS. That approach is supported by subs 327(2) which identifies the matters which are appealable. They are restricted to the matters referred to in s326 as to which a MAC is conclusively taken to be correct. In other words, ‘additional relevant information’ for the purposes of s327(3)(b) is information of a medical kind or which is directly related to the decision required to be made by the AMS. It does not include matters going to the process whereby the AMS makes his or her assessment. Such matters may be picked up, depending on the circumstances, by s327(3)(c) and (d) but they do not come within subs327(3)(b).”

32. It follows that the statutory declarations which related to the way in which the AMS carried out his examination and the way in which questions and answers were interpreted during the examination were not ‘additional relevant information’ for the purposes of subs 327(3)(b) and should not have been treated as such by the Registrar.”
21. Hoeben J noted that once the matter came before an Appeal Panel, the matter in the statutory declaration could be considered by the Appeal Panel.

22. As noted in *Pitsonis v Registrar of WCC & Anor* (2008) NSWCA 88 (*Pitsonis*) at [48] an appeal under section 327 is not an opportunity for an application on the basis of fresh evidence tendered without any constraint and/or on the basis of no more than an Appeal Panel being invited to decide an application afresh. Allowing the introduction of the fresh evidence is not consistent with the statutory process of resolving medical disputes. The purpose of referral to an AMS is to bring finality to medical disputes, other than where there are legitimate grounds of appeal. It is expected that the parties will place all relevant documents before an AMS in the referral documents.
23. In *Lukacevic v Coates Hire Operation Pty Ltd* [2011] NSWCA 1122 (*Lukacevic*) at [78], Hodgson JA said:

“A dispute by the workers as to the history set out in the certificate, or the observations made by the AMS, can be readily raised; and it could be raised honestly or dishonestly, on strong or flimsy grounds. Having regard to the matters I have set out, in my opinion it would be reasonable for an AP not to admit evidence raising such a dispute unless that evidence had substantial prima facie probative value, in terms of its particularity, plausibility and/or independent support. ...”
24. Allowing the evidence to be admitted would unfairly prejudice the respondent, who would not be capable of adducing evidence to respond to the allegations concerning the manner in which the assessment was undertaken.
25. Although Mrs Wolfe had filed a statement dated 18 December 2019 in the proceedings, she did not address in detail in that statement matters such as daily activities, household activities and chores, shopping, travel, the relationships with her husband, family and friends. These were all matters that could have been addressed by her in a statement before the examination and assessment by the AMS. Such statement concerning observations as to Mrs Wolfe’s functioning could reasonably have been obtained from her before that medical assessment.
26. Although the statement of Mrs Wolfe came within the literal definition of “fresh evidence” as referred to in s 328(3) in that it contained comments as to what took place in the examination by the AMS, the Appeal Panel decided to disregard that evidence since it was quite contrary to the purpose of the Act. The Appeal Panel does not understand the intention of the legislature to be that such criticisms of an AMS ought to be admitted as fresh evidence. The Appeal Panel believes that the purpose of the legislation is to give some prima facie credence to the opinion of an AMS in situations where he has examined the worker and all the competing medical views. The system would not be able to operate properly if the AMS’s view could be overturned merely because of some untested documentary evidence as to the events that occurred during the examination. It should also be noted that Mrs Wolfe in her statement said, for example, that she “believed” she told the AMS that she did not do the reported activities daily or even regularly. Her statement was prepared nearly a month after the examination by the AMS. Mrs Wolfe’s statement also addressed her Globus symptoms. However, she is not a medical practitioner and no real weight could be attached to her views on Globus. In those circumstances, the Appeal Panel considered that her evidence concerning the details of the examination by the AMS and the MAC would have little, if any, probative value.
27. The Appel Panel determined not to admit the statement of Mrs Wolfe dated 20 June 2020. The Appeal Panel decided that the statement of Mrs Wolfe was not evidence of such probative value that it was reasonably clear that it would change the outcome of the case.

28. The Appeal Panel should add that it was significant no complaint was made by Mrs Wolfe about the way in which the examination conducted immediately or shortly after the examination took place. Any complaint could have been made at that stage when such a complaint could have been addressed by the AMS rather than after the issue of the MAC.
29. The Appeal Panel noted that Mrs Wolfe stated that she was “not on her own” and had family members present when the examination was conducted which inhibited her from giving a full and proper history. In April 2020, the Commission issued e– Bulletin 101 which set out the procedures to be followed in relation to case management and resolution of medical disputes. In cases such as this, where the examination involved an assessment by video. The e-Bulletin provides (on page 3):

“The worker must undertake the following measures in preparation for a video consultation:

- The worker should be in a quiet room, where the door can be closed. This will ensure that no children, pets or others will interrupt the assessment.
- Before commencing the assessment, the worker must inform other persons in the premises that they must not interrupt the consultation or enter the room for any other purpose unless it is an emergency.
- The room lighting must be adequate, and the light source should face the worker.
- The mobile phone (or laptop or desktop computer) should be placed on a stable surface and not held. Movement requires more bandwidth and reduces both video and audio quality.
- The device should be plugged into an AC adapter (power point). Battery operation should be avoided as videoconferencing equipment can quickly deplete batteries. This is particularly relevant in psychiatric interviews, which can extend over 1.5 – 2 hours. Where possible, the worker should practise videoconferencing with another person beforehand to familiarise themselves with the process.
- The worker should be dressed as if he or she was going to see the doctor in person. It is not acceptable to wear pyjamas or unsuitable attire.

The worker should ensure the camera and microphone are switched on and working prior to the video consultation.”

30. It appeared that Mrs Wolfe was unable to fully undertake the measures required for a video consultation. However, Mrs Wolfe and her solicitor should have been aware of the measures to be undertaken for the examination and complied with the requirements. If Mrs Wolfe found that she could not comply with the requirements this should have been raised with the Commission before the examination or with the AMS at the examination. In any event, the Appeal Panel was not satisfied on balance that there were problems during the examination that precluded the AMS from taking an adequate history. The AMS in the MAC provided a thorough history and comprehensive reasons for his assessment. Indeed, the MAC was far more detailed than the reports than that provided by the Independent Medical Examiners in this matter.

## **EVIDENCE**

### **Documentary evidence**

31. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

### **Medical Assessment Certificate**

32. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

## **SUBMISSIONS**

33. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.
34. The appellant's submissions include the following:
  - (a) The AMS conducted the examination in a manner that was not appropriate for an Approved Medical Specialist Examination. In particular, there was a lack of privacy online from the AMS's location and interruptions occurred. Mrs Wolfe alleged that there were a number of inaccuracies in the MAC. She stated that she was not "on her own" and had family member present when the examination was conducted which inhibited her from reporting a full and proper history.
  - (b) The AMS discounted Mrs Wolfe's Globus symptoms as a symptom of her psychological injury and treated it as a "physical disorder". The AMS reported it as a condition unable to be rated as a somatoform disorder, It can, however, impact PIRS categories. It was not the role of the AMS to make findings on injury.
  - (c) The AMS discounted the effects of her injury stating that "many of her social problems are caused by others avoiding her rather than the other way around" which is contrary to the history given by Mrs Wolfe.
  - (d) In respect of self-care and hygiene, Mrs Wolfe said that she gave a history of often not washing for 4-7 days and that she often does not change her clothes for days. She did not give a history of washing or bathing daily and undertaking a full range of domestic chores within her physical limitations. Mrs Wolfe stated that she had the physical capacity to do so, but not that she did these activities, because she cannot because of her psychological condition.
  - (e) In respect of social and recreational activities, the AMS reported Mrs Wolfe daily going to the beach or for a swim as well as seeing a few friends. The AMS misreported the history given by Mrs Wolfe. Mrs Wolfe alleges that she said she tried to (but often failed) to go to the beach daily and only did so if pushed and accompanied by a family member. She said she saw friends rarely and they came to her. Mrs Wolfe did not say she goes out daily to see a few friends and does not go out to see friends at all. She says that she did not tell the AMS that others avoid her but that she avoids them and does not answer calls or invite people over and that the thought of deciding anything makes her sick.

- (f) In respect of travel, the AMS noted that Mrs Wolfe reported no psychiatric limitations on travel whereas Mrs Wolfe claimed that she will not even travel locally if she can avoid it, only sees family if pressured and will not go anywhere alone. She reported a lack of decision making skills that impact on her capacity to travel and a loss of desire to go anywhere. She reported that she cannot see family interstate anymore contrary to the report of the AMS.
- (g) In respect of social functioning, the AMS reported that she was “well- supported by her husband”. Mrs Wolfe said she gave a contrary history to the AMS and that she and her husband fight over his lack of support and that he tries to do household jobs as well as go to work and get her to appointments. This should be rated as severely affected.
- (h) In respect of concentration, persistence and pace, Mrs Wolfe has an inability to concentrate, make decisions or undertake cognitive tasks such as reading, doing crosswords, pay bills, budget or do banking. She has an inability to undertake day to day cognitive tasks. She blocks out with obsessive counting and performs no cognitive tasks. She is severely affected.
- (i) In respect of employability, Mrs Wolfe is totally unfit for work. She is unable to leave the house unaccompanied, cannot travel, cannot concentrate or make decisions and engages in obsessive counting to block out the outside world.

35. The respondent’s submissions include the following:

- (a) A demonstrable error is an error which is readily apparent from an examination of the MAC and the document referring the matter to the AMS for assessment; *Merza v Registrar of the WCC* [2006] NSWCC 939.  
Mrs Wolfe has failed to establish how the AMS’ application of PIRS categories constitute a demonstrable error within the meaning of sections 327(3)(d) of the 1998 Act.
- (b) The AMS was required to carry out an assessment of Mrs Wolfe’s impairment as she presented on the day. An AMS may have regard to other medical opinions, but he is not bound by them and is entitled to rely on his own assessment; any inconsistency between the clinical findings of the AMS and the clinical findings from previous assessment is not a basis for an appeal; (*Pitsonis*).
- (c) To the extent that Mrs Wolfe raises issues about the manner in which the AMS undertook the assessment, there is a presumption of regularity in respect of conducting the medical assessments (*Bjkov v ICM Property Services Pty Limited* [2009] NSWCA 175; *Jones v The Registrar WCC* [2010] NSWSC 481). An AMS is required to undertake an assessment of a worker as they present on the day of the assessment, and not at any other time. The Guidelines provide that assessing permanent impairment involves a clinical assessment of a worker as they present on the day of assessment taking into account relevant medical history and all available relevant medical information (Guidelines at [1.6]). The presumption of regularity extends to consideration of the various documents referred to the AMS. The weight given to the documents referred to the AMS is a matter that is within his or her discretion when undertaking the assessment and exercising clinical judgment.

- (d) The examination was conducted in an appropriate manner pursuant to the Certificate of Determination dated 14 April 2020 and the current Guidelines which confirmed that the AMS appointment was to be conducted by Video Assessment via SKYPE. The AMS' s comment that 'her social problems are caused by others avoiding her rather than the other way around' was consistent with the evidence in Mrs Wolfe's statement at page 2 of the ARD dated 18 December 2019. Mrs Wolfe stated: 'I felt excluded as none of the staff I had developed friendships with had made any contact with me during this difficult time'. Mrs Wolfe's submissions are inconsistent with the evidence on file.
- (e) With respect to self-care and personal hygiene, the AMS's findings were consistent with the evidence available at page 12 of the Application to Admit Late Documents (AALD) dated 20 March 2020 and page 155 of the Reply dated 9 January 2020. The evidence available at page 12 of the AALD is a report of Dr Aman Suman, who noted that Mrs Wolfe indicated that she continues to manage her activities of daily living including daily shower and attending to her personal hygiene. Dr Suman further reported at page 6 of the AALD that Mrs Wolfe was 'well -dressed and kempt'. The evidence available at page 155 of the Reply is an Initial Workplace Assessment Report dated 21 June 2017. The report states that Mrs Wolfe advised that she continues to complete domestic tasks despite the pain she experiences. The AMS assessed Mrs Wolfe's self -care and personal hygiene correctly and in line with the evidence available.
- (f) With respect to social and recreational activities the AMS's findings with respect to social and recreational activities were consistent with the evidence available at page 12 of the AALD dated 20 March 2020. Dr Suman noted that Mrs Wolfe reported to be able to attend social events without the need for a support person, although wouldn't get involved.
- (g) The AMS assessed Mrs Wolfe's social and recreational activities correctly and in accordance with the guidelines. With respect to travel, the AMS's findings were consistent with the evidence available at page 12 of the AALD dated 20 March 2020 and page 127 of the Reply dated 9 January 2020. At page 12 of the AALD, Dr Suman reported that Mrs Wolfe could travel to local shops on her own. At page 127 of the Reply, Dr Teoh reports that Mrs Wolfe was able to travel on her own with some apprehension.
- (h) The AMS assessed Mrs Wolfe's ability to travel correctly and in line with the evidence available.
- (i) With respect to social functioning, the AMS's findings were consistent with the evidence available at page 12 of the AALD dated 20 March 2020. At page 12 of the AALD, Dr Suman reported that Mrs Wolfe's relationship with her husband was strained although the couple were supportive of each other.
- (j) Table 11.4 of the guidelines note Class 2 for social functioning to be 'Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships.'
- (k) In respect to concentration, persistence and pace, the AMS's findings were consistent with the evidence available at page 123 of the Reply dated 9 January 2020. The AMS reported Mrs Wolfe to be able to provide a good and detailed history of injury and was able to correct some aspects of different reports. At page 123 of the Reply, Dr Teoh reports that Mrs Wolfe's speech was coherent and she was not thought disordered. He considered her cognitive functions to be intact and noted there to be no evidence of any short term or long term memory impairments.



- (l) As per *Pitsonis*, the AMS was required to carry out an assessment of Mrs Wolfe's impairment as she presented on the day, and the AMS can give regard to other medical opinions, but he is not bound by them. On this basis, the AMS made the rating of Class 2 for concentration, persistence and pace based on Mrs Wolfe's impairment as she presented on the day, and this does not constitute a demonstrable error, and any inconsistency between the clinical findings of an AMS from previous assessments is not a basis for appeal.
- (m) In respect of employability, the AMS's findings were consistent with the evidence available at page 12 of the AALD dated 20 March 2020. At page 12 of the AALD, Dr Suman reported that Mrs Wolfe could trial going back to an alternate role less than 20 hours per week.
- (n) The AMS has assessed Mrs Wolfe's employability prospects correctly and in line with the evidence available.
- (o) The AMS applied the correct criteria, that being PIRS. Mrs Wolfe's complaint is that her symptoms are more severe than assessed by the AMS.
- (p) The appeal should be dismissed and the MAC confirmed.

## FINDINGS AND REASONS

- 36. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.
- 37. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 (*Vegan*) the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.
- 38. Though the power of review is far ranging it is nonetheless confined to the matters that can be the subject of appeal. Section 327(2) of the 1998 Act restricts those matters to the matters about which the AMS certificate is binding. Section 327(2) was amended with the effect that while the appeal was to be by way of review, all appeals as at 1 February 2011 were limited to the ground(s) upon which the appeal was made. In *New South Wales Police Force v Registrar of the Workers Compensation Commission of New South Wales* [2013] SC 1792 Davies J considered that the form of the words used in s 328(2) of the 1998 Act being, 'the grounds of appeal on which the appeal is made' was intended to mean that the appeal is confined to those particular demonstrable errors identified by a party in its submissions.
- 39. In this matter the Registrar has determined that he is satisfied that at least one of the grounds of appeal under s 327(3)(d) was made out, in relation to the AMS's assessment of Mrs Wolfe's psychological injury.

## Discussion

- 40. The Panel reviewed the history recorded by the AMS, his findings on examination, and the reasons for his conclusions as well as the evidence referred to above.

41. Ms Wolfe's first ground of appeal related to the manner in which the AMS conducted the examination. However, the Appeal Panel did not admit the statement of Mrs Wolfe dated 24 June 2020. The Appeal Panel was satisfied after considering the considerable detail provided by the AMS in the MAC that even if there were some interruptions, the AMS was able to take an adequate history and make a proper assessment of WPI.
42. To the extent that Ms Wolfe raised issues about the manner in which the AMS undertook the assessment, there is a presumption of regularity in respect of conducting the medical assessments (*Vegan; Bjkov v ICM Property Services Pty Limited* [2009] NSWCA 175; *Jones v The Registrar WCC* [2010] NSWSC 481). An AMS is required to undertake an assessment of a worker as they present on the day of the assessment, and not at any other time. The Guidelines provide that assessing permanent impairment involves a clinical assessment of a worker as they present on the day of assessment taking into account relevant medical history and all available relevant medical information (Guidelines at [1.6]).
43. The Appeal Panel was satisfied on balance that the examination by the AMS was conducted in an appropriate manner. The MAC was very detailed and comprehensive.
44. Mrs Wolfe submitted that the AMS discounted Mrs Wolfe's globus symptoms as a symptom of her psychological injury and treated it as a "physical disorder". Mrs Wolfe argued that the globus symptoms could impact PIRS categories. She submitted that it was not the role of the AMS to make findings on injury.
45. The Appeal Panel did not consider that the AMS made findings as to injury. He made a diagnosis of chronic adjustment disorder and noted that Mrs Wolfe had developed globus. The AMS was required to make an assessment of Mrs Wolfe's psychiatric and psychological disorder in accordance with the Guidelines.
46. Clause 11.4 of the Guidelines provides:

"The impairment rating must be based upon a psychiatric diagnosis (according to a recognised diagnostic system) and the report must specify the diagnostic criteria upon which the diagnosis is based. Impairment arising from any of the somatoform disorders (DSM IV TR, pp 485–511) are excluded from this chapter."
47. The AMS in the MAC under "Summary of injuries and diagnoses" wrote:

"The medical literature on the treatment for and causes of globus is consistently inconsistent. It is viewed by ENT and other GI surgeons as a physical disorder for which there are interventions such as the dilation Ms Wolfe had. Psychiatrists and psychologists tend to view this as a somatoform disorder. As we are unable to rate somatoform disorders (now termed somatic symptom disorders under DSM-5) within the workers compensation scheme, or include physical disorders in our calculation of the PIRS I cannot rate the impairment from the globus."
48. The Appeal Panel were satisfied that the AMS adopted the correct approach and followed the Guidelines as he was required to do. The AMS reported globus as a condition unable to be rated as it is a somatoform disorder and the Appeal Panel agreed with this approach.

49. Mrs Wolfe submitted that the AMS discounted the effects of her injury stating that “many of her social problems are caused by others avoiding her rather than the other way around” which was contrary to the history given by Mrs Wolfe.
50. The AMS in commenting on Dr Teoh’s report (page 8 of the MAC) wrote:
- “This fairly scanty report identifies the symptoms I identified. Dr Teoh diagnoses a chronic Adjustment Disorder with Mixed Anxiety and Depressed Mood with which I would concur. I would disagree with many of his classes in his whole person impairment assessment, and some of his ratings are inconsistent with the guidelines. In terms of social and recreational activities, she is primarily limited due to her shoulder injury and continues to go out daily to the beach or for a swim as well as see a few friends. Most of the social avoidance is avoidance by others of her. There is some loss of interest and motivation equating to a mild impairment as she is able to go out and see her remaining friends on her own.”
51. The AMS also noted that “there is some loss of interest and motivation mainly due to how she views others as avoiding her” (Table 11.8, page 11 of the MAC). He noted under present symptoms (page 4 of the MAC) that: “There is some mild avoidance of Department of Education related triggers as a result but not of people or any other specific events”.
52. On page 5 of the MAC, under “social activities/ADL”, the AMS wrote:
- “Her social life mainly revolved around school colleagues.  
....  
She has lost a lot of her social life because her friends were primarily from school. She is fairly convinced that they have been told not to contact her. Seeing people walk away from her avoid her has confirmed this.”
53. Ms Cipolia, Rehabilitation Consultant from i-Health Concepts in the Workplace Meeting Minutes dated 24 October 2017 noted that Mrs Wolfe advised that she would be required to utilise lunch and recess breaks as personal and private time as she felt it is important that she spend time to herself during her lunch breaks. Ms Cipolia noted that Mrs Wolfe said that she enjoyed spending time alone and would benefit from time to herself during these periods, however, was happy to attend lunch within the staff room, when she felt she would like to attend.
54. In her statement dated 18 December 2019 Mrs Wolfe wrote: “I felt excluded as none of the staff I had developed friendship with had made any contact with me during this difficult time. I was told that I am not to have any contact with staff.... I am scared to go out in public for fear of bumping into staff who were once my friends. When I have bumped into staff they look away.” The statement was evidence that Mrs Wolfe perceived that staff who had been her friends avoided her.
55. Ms Wolfe’s submissions did not explain how the allegation that the AMS discounted the effects of the injury specifically affected the assessment made by the AMS. The AMS’s statement that most of the social avoidance is avoidance by others of her was not inconsistent with the evidence and acknowledged that some of the social avoidance was avoidance by Mrs Wolfe of people that she knew. The Appeal Panel was not persuaded that the AMS made a demonstrable error in stating that most of the social avoidance was avoidance by others of her. Further, the Appeal Panel was satisfied that the AMS did not discount the effects of Mrs Wolfe’s injury

56. The appellant submitted that the AMS's WPI assessment of Ms Wolfe, was incorrect although there was no reference made to the criteria in the PIRS tables within the Guidelines. In particular, the appellant submitted that there was a demonstrable error made in respect of the following ratings:

- (a) Self-care and personal hygiene;
- (b) Social and recreational activities;
- (c) Travel;
- (d) Social functioning;
- (e) Concentration, persistence and pace, and
- (f) Employability.

57. In *Ferguson v State of New South Wales & Ors* [2017] NSWSC 887 (*Ferguson*), Campbell J referred to a decision of a Medical Appeal Panel in *NSW Police Force v Daniel Wark* [2012] NSWCCMA 36, stating at [33]:

“By reference to *NSW Police Force v Daniel Wark* [2012] NSWCCMA 36, the Appeal Panel directed itself that in questions of classification under the PIRS: ‘... the pre -eminence of the clinical observations cannot be underrated. The judgment as to the significance or otherwise of the matters raised in the consultation is very much a matter for assessment by the clinician with the responsibility of conducting his/her enquiries with the applicant face to face’.

[24] The Appeal Panel accepted that intervention was only justified: if the categorisation was glaringly improbable; if it could be demonstrated that the AMS was unaware of significant factual matters; if a clear misunderstanding could be demonstrated; or if an unsupportable reasoning process could be made out. I understood that all of these matters were regarded by the Appeal Panel as interpretations of the statutory grounds of applying incorrect criteria or demonstrable error.

One takes from this that the Appeal Panel understood that more than a mere difference of opinion on a subject about which reasonable minds may differ is required to establish error in the statutory sense.

[25] The Appeal Panel also, with respect, correctly recorded that in accordance with Chapter 11.12 of the Guides ‘the assessment is to be made upon the behavioural consequences of psychiatric disorder, and that each category within the PIRS evaluates a particular area of functional impairment’ ...

[37] The descriptors, or examples, describing each class of impairment in the various categories are ‘examples only’ ...”

58. In *Parker v Select Civil Pty Ltd* [2018] NSWSC 140 (*Parker*) Harrison AsJ at [66] said:

“66. In relation to Classes of PIRS there has to be more than a difference of opinion on a subject about which reasonable minds may differ to establish error in the statutory sense...

70. To find an error in the statutory sense, the Appeal Panel’s task was to determine whether the AMS had incorrectly applied the relevant Guidelines including the PIRS Guidelines issued by WorkCover. Even though the descriptors in Class 3 are examples not intended to be exclusive and are subject to variables outlined earlier, the AMS applied Class 3. The Appeal Panel determined that the AMS had erred

in assessing Class 3 because the proper application of the Class 2 mild impairment is the more appropriate one on the history taken by the AMS and the available evidence.

71. The AMS took the history from Mr Parker and conducted a medical assessment, the significance or otherwise of matters raised in the consultation is very much a matter for his assessment. It is my view that whether the findings fell into Class 2 or Class 3 is a difference of opinion about which reasonable minds may differ. Whether Class 2 in the Appeal Panel's opinion is more appropriate does not suggest that the AMS applied incorrect criteria contained in Class 3 of the PIRS. Nor does the AMS's reasons disclose a demonstrable error. The material before the AMS, and his findings supports his determination that Mr Parker has a Class 3 rating assessment for impairment for self-care and hygiene, that is to say, a moderate impairment of self-care and hygiene..."

59. The Panel reviewed the appellant's submissions and the evidence in this matter.

#### **Self-Care and Personal Hygiene**

60. The appellant's submissions are based on Mrs Wolfe's statement dated 24 June 2020. In that statement Mrs Wolfe said that she gave a history of often not washing for four - seven days and that she often does not change her clothes for days. She did not give a history of washing or bathing daily and undertaking a full range of domestic chores within her physical limitations. Mrs Wolfe stated that she had the physical capacity to do so, but not that she did these activities, because she cannot because of her psychological condition. This statement has not been admitted as late evidence.
61. In the submissions, the appellant did not identify any other evidence relied on in the appeal in relation to the assessment made for self-care and personal hygiene. The Appeal Panel, however, proceeded to review the evidence in relation to the assessment made in this category.
62. The examples under Table 11.1 in the Guidelines for Class 1 for self-care and personal hygiene are: "No deficit, or minor deficit attributable to the normal variation in the general population" The examples for Class 2 are: "Mild impairment: able to live independently; looks after self adequately, although may look unkempt occasionally; sometimes misses a meal or relies on take-away food."
63. In the PIRS Rating Form, the AMS assessed the appellant as Class 1 and wrote:
- "She washes or bathes daily, and undertakes a full range of household chores within her physical limitations".
64. On page 36 of the MAC under "Findings on Mental State Examination" the AMS wrote:
- "Ms Wolfe was casually dressed and well-kempt."
65. In her statement dated 18 December 2019, Mrs Wolfe wrote:
- "I had shoulder surgery in January 2019. Subsequently I developed adhesive capsulitis of my left shoulder."

I continue a daily struggle with anxiety. I have not been able to work or drive since August 2018. I have only just started to be independent in dressing myself, although it is difficult and painful.”

66. In his report dated 18 September 2019, Dr Teoh rated Mrs Wolfe as Class 1 for self-care and personal hygiene providing the following reasons:

“She has been lacking motivation to care for herself.”

67. Dr Suman in a report dated 30 December 2019 described Mrs Wolfe as well-dressed and kempt. He rated Mrs Wolfe as Class 2 for self-care and personal hygiene providing the following reasons:

“Ms Wolfe indicated that she continues to manage her activities of daily living including daily shower & attending to her personal hygiene. She does need help due to her physical health limitations although remains motivated to look after self. She denied missing any meals. Ms Wolfe indicated that “very occasionally” she struggles with her functioning due to low mood and anxiety symptoms.”

68. The AMS commented on Dr Suman’s report and wrote:

“In terms of self-care and personal hygiene his description that she ‘very occasionally struggles with her function’ did not match that reported today. We all ‘very occasionally struggle with function’ due to the vicissitudes of life and this constitutes part of the normal range of human function.”

69. The Appeal Panel considered whether the AMS had erred in making a Class 1 rating for self-care and personal hygiene. Dr Teoh rated Mrs Wolfe as Class 1 for self-care and personal hygiene. Dr Suman rated Mr Ardern as Class 2 for self-care and personal hygiene
70. The AMS gave detailed reasons for the rating in this category. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 1 for self-care and personal hygiene.

### **Social and Recreational Activities**

71. The appellant submitted that the AMS reported Mrs Wolfe daily going to the beach or for a swim as well as seeing a few friends. Mrs Wolfe alleged that the AMS misreported the history and that she said she tried to (but often failed) to go to the beach daily and only did so if pushed and accompanied by a family member. Mrs Wolfe said she saw friends rarely and they came to her and she did not say she goes out daily to see a few friends and did not go out to see friends at all. She said that she did not tell the AMS that others avoid her but that she avoids them and does not answer calls or invite people over and that the thought of deciding anything makes her sick.
72. As noted above the statement dated 24 June 2020 was not admitted as fresh evidence and Mrs Wolfe did not specifically identify any other evidence in support of her submission.
73. The AMS had placed Mrs Wolfe in Class 2 for social and recreational activities.

74. The examples under Table 11.2 in the Guidelines for Class 2 for Social and Recreational Activities are: “Mild impairment: occasionally goes out to such events without needing a support person, but does not become actively involved (e.g. dancing, cheering favourite team).” The examples for Class 3 are: “Moderate impairment: rarely goes out to such events, and mostly when prompted by family or close friend. Will not go out without a support person. Not actively involved, remains quiet and withdrawn.”
75. In the PIRS Rating Form, the AMS wrote:
- “Ms Wolfe told me that she can attend social events alone (without need for support person) although won’t get involved “I am not the same person. Don’t enjoy it as much.”
76. On page 4 of the MAC under “Present symptoms” the AMS wrote:
- “Her social life revolved around work but she thinks people there have been told not to talk to her. She continues to motivate and push herself to do activities but many are physically uncomfortable and at times, she lacks motivation.”
77. On page 5 of the MAC, under “social activities/ADL”, the AMS wrote:
- “She was very focused on outdoor activities, going to the beach, enjoying fishing, kayaking and camping for the weekends, often just the two of them. She was not a ‘sit inside’ person, not particularly interested in reading or indoor activities. She had no problems travelling in any modalities. She used some IT at work, but rarely at home, was late into mobile phones, not on social media but did some phone banking. She had worked with the head teacher and some parents to establish a local charity for children. Her social life mainly revolved around school colleagues.
- ....
- She has lost a lot of her social life because her friends were primarily from school. She is fairly convinced that they have been told not to contact her. Seeing people walk away from her avoid her has confirmed this. She has a small group of old friends whom she will see, although says this can be infrequent because they are so busy. They occasionally go to family events and she goes for walks with Michael but says that bushwalking is now physically uncomfortable with her shoulder.”
78. In commenting on Dr Teoh’s report on page 8 of the MAC, the AMS wrote:
- “In terms of social and recreational activities, she is primarily limited due to her shoulder injury and continues to go out daily to the beach or for a swim as well as see a few friends. Most of the social avoidance is avoidance by others of her. There is some loss of interest and motivation equating to a mild impairment as she is able to go out and see her remaining friends on her own.”
79. In her statement dated 18 December 2019, Mrs Wolfe wrote:
- “I am scared to go out in public for fear of bumping into staff that were once my friends. When I have bumped into staff they look away...I have lost my friends and my job ...I am not able to do the things I enjoy and that would be good for my mental health like swimming and long walks.”

80. In his report dated 18 September 2019, Dr Teoh rated Mrs Wolfe as Class 3 for social and recreational activities providing the following reasons:

“She reports significant loss of interest in her usual activities and social isolation. She has been lacking motivation and interest in her usual activities.”

81. Dr Suman in a report dated 30 December 2019 rated Mrs Wolfe as Class 2 for social and recreational activities providing the following reasons:

“Ms Wolfe told me that she can attend social events alone (without need for support person) although won't get involved. “I am not the same person. Don't enjoy it as much”.”

82. The Appeal Panel considered whether the AMS had erred in making a Class 2 rating for social and recreational activities. Dr Teoh rated Mrs Wolfe as Class 3 for social and recreational activities. Dr Suman rated Mrs Wolfe as Class 2 for social and recreational activities.

83. The AMS gave detailed reasons for the rating in this category. Both the AMS and Dr Suman reported that Mrs Wolfe stated that she could go out to social events or see friends on her own. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 2 for social and recreational activities.

## **Travel**

84. The appellant submitted that the AMS noted Ms Wolfe reported no psychiatric limitations on travel whereas she claimed that she will not even travel locally if she can avoid it, only sees family if pressured and will not go anywhere alone. She submitted that she reported a lack of decision making skills that impact on her capacity to travel, a loss of desire to go anywhere and cannot see family interstate anymore contrary to the report of the AMS.

85. As noted above the statement by Mrs Wolfe dated 24 June 2020 was not admitted as fresh evidence and Mrs Wolfe did not specifically identify any other evidence in the medical report or her statement dated 18 December 2019 in support of her submission.

86. In the PIRS Rating Form, the AMS assessed Mrs Wolfe as Class 1 and wrote:

“She described no psychiatric limitations to her ability to travel widely, or symptoms whilst doing so, although has little reason or reason or interest to do so except to see family interstate.”

87. The AMS noted on page 5 of the MAC under “social activities/ADL”:

“She has no psychiatric problems driving or avoidance but says she has poor wheel control because of her shoulder limitations and thus feels unsafe. She can also feel physically uncomfortable when being driven e.g. when they went down to Melbourne this Christmas, and also found it uncomfortable on the trams.”



88. Under Table 11.3 in the Guidelines, in Class 1 for travel the examples are: “No deficit, or minor deficit attributable to the normal variation in the general population. Can travel to new environments without supervision. The examples for Class 2 for travel, are: “Mild impairment: can travel without support person, but only in a familiar area such as local shops, visiting a neighbour.”
89. In his report dated 18 September 2019, Dr Teoh rated Mrs Wolfe as Class 2 for travel providing the following reasons:
- “She is able to travel on her own with some apprehension.”
90. Dr Suman in a report dated 30 December 2019 rated Mrs Wolfe as Class 2 for social and recreational activities providing the following reasons:
- “Ms Wolfe highlighted that she can travel to local shops on her own although feels anxious on her own. She is able to interact with her neighbours.”
91. In commenting on Dr Suman’s report on page 8 of the MAC, the AMS wrote:
- “In terms of travel, she described no psychiatric limitations to her ability to travel, although has little reason or reason or interest to do so, but physical limitations to her driving.”
92. The Appeal Panel considered whether the AMS had erred in making a Class 1 rating for travel. Dr Teoh rated Mrs Wolfe as Class 2 for travel as did Dr Suman.
93. The AMS gave detailed reasons for the rating in this category. The Appeal Panel noted that the AMS, Dr Teoh and Dr Suman all reported that Mrs Wolfe was able to travel on her own in a familiar area. However, the AMS considered that limitation in respect of travel were attributable to the shoulder injury rather than her psychiatric condition. This was a matter of clinical judgment and on balance and, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 1 for travel.

### **Social Functioning**

94. The appellant submitted that the AMS reported that she was “well- supported by her husband” but she gave a contrary history to the AMS and that she and her husband fight over his lack of support and that he tries to do household jobs as well as go to work and get her to appointments. The appellant submitted that this category should be rated as severely affected.
95. As noted above the statement by Mrs Wolfe dated 24 June 2020 was not admitted as fresh evidence and Mrs Wolfe did not specifically identify any other evidence in the medical reports or her statement dated 18 December 2019 in support of her submission.
96. The examples under Table 11.4 in the Guidelines for Class 2 for social functioning are: “Mild impairment: existing relationships are strained. Tension or arguments with partner or close family member, loss of some friendships”. The examples for Class 3 are: “Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children.” The examples for Class 4 are: “Severe impairment: unable to form or sustain long term relationships. Pre-existing relationships ended (eg lost partner close friends). (Unable to care for dependants (eg own children, elderly parent).”

97. In the PIRS Rating Form, the AMS assessed Mrs Wolfe as Class 2 and wrote:
- “She remains well-supported by her husband, although says he is not natural at doing this. There is some tension within the family but her sisters come to see her and she still has some close friends.”
98. The AMS noted on page 5 of the MAC under “social activities/ADL”:
- “She continues to live with Michael and her younger son. She said that he is supportive, although this is not natural for him... Although she has two sisters, she said that they are not particularly supportive due to their difficulties. Her elder sister will come and stay with her for a few weeks. Whereas previously she would be the one to offer them emotional support and the roles have now changed. There are times where there is some tension in the family where she says she is expecting support and sympathy but it does not come. However, there are other friends who understand and support her.”
99. Mrs Wolf in her statement dated 18 December 2019 wrote: “I feel bad for my family who have had to put up with me. I am a burden on them, and although they are supportive of me, I hate being a burden.”
100. In his report dated 18 September 2019, Dr Teoh rated Mrs Wolfe as Class 3 for social functioning providing the following reasons:
- “She has a strained relationship due to irritability and lacking communication. She reported depressed and irritable mood.”
101. Dr Suman in a report dated 30 December 2019 rated Mrs Wolfe as Class 2 for social functioning providing the following reasons:
- “Ms Wolfe highlighted that she has lost a most [sic] of her friends. She feels her relationship with her husband is strained although the couple is supportive of each other. She can relate to her kids.”
102. In commenting on Dr Teoh’s report on page 8 of the MAC, the AMS wrote:
- “In terms of social functioning, his reasoning is incompatible with a moderate impairment and supports the same mild impairment that I have rated. The same is also true of concentration, persistence and pace.”
103. The Appeal Panel considered whether the AMS had erred in making a Class 2 rating for travel. Dr Teoh rated Mrs Wolfe as Class 3 for social functioning while Dr Suman rated her as Class 2.
104. The AMS gave detailed reasons for the rating in this category. The Appeal Panel noted that the AMS, Dr Teoh and Dr Suman all reported that Mrs Wolfe’s relationship with her husband was strained. There was evidence that she has lost some friends. Mrs Wolfe described her family as supportive. On balance, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 2 for social functioning.

## **Concentration, Persistence and Pace**

105. The appellant submitted that she has an inability to concentrate, make decisions or undertake cognitive tasks such as reading, doing crosswords, pay bills, budget or do banking. She has an inability to undertake day to day cognitive tasks. She blocks out with obsessive counting and performs no cognitive tasks. She is severely affected.
106. As noted above the statement by Mrs Wolfe dated 24 June 2020 was not admitted as fresh evidence and Mrs Wolfe did not specifically identify any other evidence in the medical reports or her statement dated 18 December 2019 in support of her submission.
107. Under Table 11.5 in the Guides, the examples for Class 2 for concentration, persistence and pace are: "Mild impairment: can undertake a basic retraining course, or a standard course at a slower pace. Can focus on intellectually demanding tasks for periods of up to 30 minutes, then feels fatigued or develops headache." The examples for Class 3 are: "Moderate impairment: unable to read more than newspaper articles. Finds it difficult to follow complex instructions (e.g. operating manuals, building plans), make significant repairs to motor vehicle, type long documents, follow a pattern for making clothes, tapestry or knitting." The examples for Class 4 are: "Severe impairment: can only read a few lines before losing concentration. Difficulties following simple instructions. Concentration deficits obvious even during brief conversation. Unable to live alone or needs regular assistance from relatives or community services."
108. In the PIRS Rating Form, the AMS assessed Mrs Wolfe as Class 2 and wrote:
- "She showed a good and detailed recall of the history, despite second guessing herself and was able to correct some aspects of the reports of others. She says she can be distractible but is able to undertake the cognitive demands of the tasks she has to do day to day."
109. The AMS noted on page 4 of the MAC under "present symptoms" that "she has reduced confidence and at times, perceives that she is not focusing as well as previously although distracts herself with Sudoku."
110. Under "Findings on mental health examination", at page 6 of the MAC, the AMS noted that "she continues to motivate herself for many activities, but has some reduced energy and at times, feels as though she is distracted and not able to focus".
111. In his report dated 18 September 2019, Dr Teoh noted that Mrs Wolfe had poor concentration, her cognitive functions were intact and there was no evidence of short or long term memory loss. He rated Mrs Wolfe as Class 3 for concentration, persistence and pace providing the following reasons:
- "She has poor concentration and persistent preoccupation with negative thoughts."
112. Dr Suman in a report dated 30 December 2019 rated Mrs Wolfe as Class 3 for concentration, persistence and pace providing the following reasons:
- "Ms Wolfe indicated that she is struggling with any tasks requiring concentration. She told me that she has not been reading or writing as before 'I get frustrated very easily. Don't have good concentration or retention.'"

113. In commenting on Dr Teoh's report, the AMS on page 8 of the MAC wrote:

"In terms of social functioning, his reasoning is incompatible with a moderate impairment and supports the same mild impairment that I have rated. The same is also true of concentration, persistence and pace."

114. In commenting on Dr Suman's report on page 8 of the MAC, the AMS wrote:

"In terms of her concentration, persistence and pace, she showed a good and detailed recall of the history, despite second guessing herself. She reports little interest in cognitive activities even previously and is able to undertake the cognitive demands of the tasks she has to do day to day, which is the most mild impairment."

115. The Appeal Panel considered whether the AMS had erred in making a Class 2 rating for concentration, persistence and pace. Dr Teoh rated Mrs Wolfe as Class 3 for concentration, persistence and pace as did Dr Suman. However, the AMS considered the ratings made by Dr Teoh and Dr Suman and explained why his assessment differed from the assessments made by Dr Teoh and Dr Suman. Further, it was the role of the AMS to assess Mrs Wolfe as she presented on the day of examination. The AMS gave detailed reasons for the rating in this category. In particular, the AMS had the opportunity to make an assessment in his examination of her focus and recall. On balance, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 2 for concentration, persistence and pace.

### **Employability**

116. The appellant submitted Mrs Wolfe was totally unfit for work. The appellant argued that she was unable to leave the house unaccompanied, cannot travel, cannot concentrate or make decisions and engaged in obsessive counting to block out the outside world.

117. Under Table 11.6 in the Guidelines, Class 3 for employability, the examples are: "Moderate impairment: cannot work at all in same position. Can perform less than 20 hours per week in a different position, which requires less skill or is qualitatively different (e.g. less stressful)." The examples in Class 4 are: "Severe impairment: cannot work more than one or two days at a time, less than 20 hours fortnight. Pace is reduced, attendance is erratic." The examples for Class 5 are: "Totally impaired: Cannot work at all."

118. In the PIRS Rating Form, the AMS assessed Mrs Wolfe as Class 2. The AMS wrote:

"She can only work part-time due to intermittent anxiety, stress and low self-esteem symptoms and in particular, her poor sleep pattern, and returning to her previous workplace would significantly exacerbate her anxiety."

119. In his report dated 18 September 2019, Dr Teoh noted that Mrs Wolfe's condition was caused by the initial injury to the left shoulder in 2016 followed by multiple stressors in relation to harassment and unfair treatment. He was of the view that incapacity for work was due to the work injury and work-related stress. He rated Mrs Wolfe as Class 5 for employability providing the following reasons:

"She is not fit to work at all as a result of her mental and physical condition."

120. Dr Suman, in a report dated 30 December 2019, rated Mrs Wolfe as Class 3 for employability providing the following reasons:

“Ms Wolfe could be trialled going back to an alternate role, less than 20 hr/week. Employer would need to be supportive towards her in regards her physical and psychological injuries.”

121. Dr Suman expressed the opinion that Mrs Wolfe was currently unfit to go back to her pre-injury duties at Endeavour High School. Dr Suman considered that Mrs Wolfe in terms of her psychological health was fit to go back to work in a suitable/alternate job utilising her skillset at an alternate location. She should start on a part-time basis approximately three hours per day, two days per week which could be gradually increased as per her response. He noted that Mrs Wolfe’s current incapacity for work was related to her physical and psychological injury and considered that her psychological injuries contributed approximately 50% to the current incapacity for work.

122. The AMS commented on Dr Teoh’s assessment as follows:

“In employability, he has incorporated her physical condition into his assessment that she is unable to work. Ms Wolfe herself says she is able to work, wants to work, is certified to work, although only part-time but is currently prevented from work by the organisational aspects.”

123. In commenting on Dr Suman’s report on page 8 of the MAC, the AMS wrote:

“I agree that she can only work part-time due to intermittent anxiety, stress and low self-esteem symptoms and in particular, her poor sleep pattern.”

124. The Appeal Panel considered whether the AMS had erred in making a Class 3 rating for employability. Dr Teoh rated Mrs Wolfe as Class 5 for employability while Dr Suman rated her as Class 3.

125. The AMS gave detailed reasons for the rating in this category. The Appeal Panel noted that Mrs Wolfe has not worked since July 2018 when she sustained another workplace injury to her left arm and shoulder. Dr Suman considered that Mrs Wolfe could only work part-time. Dr Teoh did not exclude the injury to the shoulder in his assessment of employability. On balance, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 3 for employability.

## **Conclusion**

126. The Appeal Panel has found no error in the PIRS ratings or in assessment made by the AMS. Determining the various classes of the PIRS within which Mrs Wolfe fell was a matter for the AMS’s clinical judgment on the day of examination. Having regard to the documents that were before the AMS and the record of his assessment, it cannot be said that there was an error in the AMS’s classification of the appellant. The appellant, in the view of the Appeal Panel, seemed to simply cavil at matters of clinical judgment made by the AMS without evidence of any error.

127. In conclusion, the Appeal Panel did not consider that there has been any demonstrable error in the AMS’ assessment.

128. For these reasons, the Appeal Panel has determined that the MAC issued on 11 June 2020 should be confirmed.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

*L Funnell*

Leo Funnell  
Dispute Services Officer  
**As delegate of the Registrar**

