

## WORKERS COMPENSATION COMMISSION

### CERTIFICATE OF DETERMINATION

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

**Matter Number:** 6396/19  
**Applicant:** Paul Domathoti  
**Respondent:** Hyne & Son Pty Ltd  
**Date of Determination:** 7 April 2020  
**Citation:** [2020] NSWCC 108

The Commission determines:

1. The applicant sustained psychological injury arising out of or in the course of his employment with the respondent with deemed date of 24 February 2017.
2. From 11 February 2020, the applicant has had no capacity for employment as a result of his injury.

The Commission orders:

3. The respondent to pay the applicant weekly benefits from 11 February 2020 at the agreed rate.
4. The matter is remitted to the Registrar to be referred to an Approved Medical Specialist pursuant to section 321 of the *Workplace Injury Management and Workers Compensation Act 1998* for assessment of whole person impairment as a result of psychological injury with deemed date of 24 February 2017.
5. The materials to be referred to the Approved Medical Specialist are to include:
  - (a) The Application to Resolve a Dispute and attachments;
  - (b) The Reply and attachments;
  - (c) Application to Admit Late Documents filed by the applicant on 11 February 2020 and attachments;
  - (d) Application to Admit Late Documents filed by the respondent on 10 March 2020 and attachments.

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

Jill Toohey  
**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 JILL TOOHEY, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

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



## STATEMENT OF REASONS

### BACKGROUND

1. Mr Paul Domathoti claims lump sum compensation for psychological injury sustained in the course of his employment with Hyne and Son Pty Ltd (the respondent) with a deemed date of 24 February 2017. Mr Domathoti claims he suffered post-traumatic stress disorder, depression and anxiety as a result of bullying and victimisation.
2. The respondent accepted liability for a primary psychological injury and paid weekly benefits compensation accordingly.
3. By letter dated 8 May 2019, Mr Domathoti's solicitors claimed lump sum compensation for 24 per cent whole person impairment. They relied on the opinion of Associate Professor Michael Robertson who assessed Mr Domathoti as having 24 per cent whole person impairment as a result of his injury.
4. Dr Peter Whetton, psychiatrist, qualified by the respondent, diagnosed Mr Domathoti with major depressive disorder with symptoms of post-traumatic stress disorder as a result of the incidents he complained of at work. Dr Whetton agreed with Associate Professor Robertson's assessment of 24 per cent whole person impairment, although his method of calculation varied slightly.
5. Mr Domathoti subsequently underwent neuropsychological assessment by Dr Paul Phillips who reported that his results indicated Mr Domathoti was malingering and he did not satisfy the criteria for a valid diagnosis of post-traumatic stress disorder.
6. The respondent's solicitors asked Dr Whetton whether Dr Phillips' report caused him to alter his opinion. Dr Whetton replied that it did not.
7. Subsequently, information came to the attention of the respondent's solicitors relating to a claim by Mr Domathoti for psychological injury in 2007. Documents about that claim including medical reports were provided to Dr Whetton who advised that, having read them, he had reconsidered his opinion. He said in light of this new information he could not make a psychiatric diagnosis and he would not now make an assessment of whole person impairment.
8. By a notice issued under s 78 of the *Workers Compensation Act 1987* (the Act) on 18 October 2019, the respondent denied liability to compensate Mr Domathoti. The respondent cited material in the documents from the 2007 claim which indicated he had an extensive psychiatric history which he had not disclosed to treating or qualified doctors or others in the course of the present claim.
9. The respondent denied that Mr Domathoti had suffered a psychological injury within the meaning of s 11A(3) of the Act; that his injury had arisen out of or in the course of his employment; that he had suffered an injury to which his employment was a substantial contributing factor as required by s 9A; that he had suffered a disease injury to which his employment was a main contributing factor as required by s 4(b); and that he was entitled to lump sum compensation.
10. On 10 December 2019, the respondent issued a further s 78 notice to correct an erroneous reference in the earlier notice to stay proceedings.
11. On 18 December 2019, the respondent issued a further s 78 notice denying liability in respect of medical and related treatment with effect from 16 December 2019, and weekly payments with effect from 11 February 2020.

12. The present proceedings were commenced by an Application to Resolve a Dispute registered with the Commission on 4 December 2019. It included a claim for weekly payments from 4 December 2019. At a telephone conference on 15 January 2020, parties agreed that the claim for weekly payments was from 11 February 2020, and the Application to Resolve a Dispute was amended accordingly.

### **ISSUES FOR DETERMINATION**

13. The parties agree that the issues remaining in dispute are:
- (a) whether Mr Domathoti suffered a psychological injury within the meaning of s 11A(3) of the Act;
  - (b) whether he suffered an injury to which his employment was a substantial contributing factor or the main contributing factor: s 9A, s 4(b);
  - (c) whether he is entitled to lump sum compensation;
  - (d) whether he is entitled to weekly benefits compensation.

### **PROCEDURE BEFORE THE COMMISSION**

14. The parties attended a hearing on 11 March 2020. Mr Bruce McManamey of counsel appeared for Mr Domathoti. Mr Howard Halligan appeared for the respondent.
15. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

### **EVIDENCE**

#### **Documentary evidence**

16. The following documents were in evidence before the Commission and taken into account in making this determination:
- (a) The Application to Resolve a Dispute and attached documents;
  - (b) The Reply and attached documents;
  - (c) Application to Admit Late Documents filed by the applicant on 11 February 2020 and attachments;
  - (d) Application to Admit Late Documents filed by the applicant on 10 March 2020 and attachments.

#### **Oral evidence**

17. The respondent sought leave to cross-examine Mr Domathoti. There was no objection. Leave to cross-examine was allowed.

## FINDINGS AND REASONS

### Mr Domathoti's written evidence

18. Mr Domathoti provided a detailed statement dated 22 May 2017 which ran to 70 pages, and a supplementary statement of eight pages dated 3 December 2019. He provided a further 17 pages comprising various awards, certificates and references dating from 1983 to 2017.
19. The first statement includes a great deal of detail with particulars of alleged safety violations, failure to stop bullying and harassment directed at him, and favourable treatment of other workers while working for the respondent. The following is a summary of the salient points.
20. Mr Domathoti was born in India and is 48 years old. He is single. He has two daughters who live with their mother overseas. They keep in regular contact. He had an active sporting life and, for the first three months of his employment with the respondent, he was happy and energetic, and was well-liked. Apart from psychological injury, he had not suffered any significant medical conditions in the previous two years. He has not suffered anxiety or depression prior to February 2017. Prior to his employment with the respondent he had never lodged a complaint of bullying, harassment or discrimination with an employer.
21. Mr Domathoti spent some years working overseas before returning to Australia and undertaking various higher education courses. At the time of his statement he was studying for a bachelor degree in psychology. He referred to an email to Barry Sargent, his supervisor, which indicated he is a practising psychologist. He said his intention was to remind Mr Sargent to be mindful of his demeanour, not to suggest that he is registered or officially working as a psychologist. He is a Buddhist and volunteers at the local monastery.
22. He started work with the respondent on 3 November 2016 as a casual process operator. He had no problems with any supervisors apart from Mr Sargent.
23. He was encouraged to apply for a position as process controller by James Lace, one of the managers, even though the cut-off date for applications had passed. He attended an interview in January 2017 conducted by Mr Lace and another manager Robert Thompson, at the end of which Mr Lace indicated the job was his. However, Mr Thompson, who was not qualified, got the position. Mr Lace then offered him a permanent position as a process operator or another supervisor position, and asked him to prepare his references. Again, he was not given the job and it went to another inexperienced person.
24. He was passed over for these promotions after making a complaint on 27 February 2017 about Mr Sargent and after reporting safety issues in the work place. It became clear that Mr Lace and Mr Sargent were planning his "constructive dismissal". Management were well aware that he was suffering from anxiety and depression.
25. On 14 February 2017, he volunteered with others to stay back for the night shift. He missed a piece of timber on the conveyor belt and another employee picked it up and threw it in his trolley. Another employer threw another length of timber but it missed his trolley, nearly hitting him in the eye. A verbal altercation broke out between the other employee and Mr Domathoti, and the supervisor asked both to go to his office. The other employee refused, saying if he went he would "smack the cunt". The managers overlooked the incident and Mr Lace asked him not to report it to the police.
26. Following this incident he started to have panic attacks. He would wake during the night perspiring, with his heart racing and seeing flashback of the incident. He became fearful of being around the other worker.

27. About two weeks later, he was told he had to return to the night shift, prompting him to send emails complaining about Mr Sargent's behaviour and failure to comply with safety standards, such as forcing him to operate the grader without safety checks.
28. On 23 February 2017, he sent the first of two emails to Mr Lace complaining about Mr Sargent's behaviour towards him and his failure to comply with safety standards. He also pointed out the company's policy on shift rotation and need for breaks. Just after lunch that day, Mr Sargent approached him and said he wanted to talk about the email. He said the email had upset him terribly, and accused him of trying to create trouble. He felt intimidated and started to wonder what Mr Sargent would do to him. Mr Sargent looked angry and was raising his voice. During a discussion about an unrelated matter some hours later, Mr Sargent told him he was "not a good operator" whereas a few days earlier his night shift supervisor had given him a "Great Work Card".
29. On the night of 24 February 2017, he became physically and mentally very ill because of Mr Sargent's threatening and intimidating behaviour. He felt "stalked" by Mr Sargent who appeared to be watching him and making notes about him. The next morning he contacted the Employee Assistance Program and spoke with a psychologist who said Mr Sargent's behaviour was bullying. He also started seeing a general practitioner, Dr Nadesh, who ultimately said he was suffering work-related stress, anxiety, depression and panic attacks.
30. On 27 February 2017, he sent Mr Lace a formal complaint about Mr Sargent and gave further examples of discriminatory conduct towards him and failures to meet safety standards. Mr Lace explained to him why Mr Sargent was making notes but it did not give him any relief as he was the only one under scrutiny. He understood from their conversation that Mr Lace would investigate his complaint.
31. At a meeting on 28 March 2017, he told Mr Lace that his therapist/psychologist had said he should not go to the night shift and "knowingly put [himself] in harm's way". He also raised the issue of the employer's duty of care and obligation to provide him with a safe working environment. He had obliged previously and it was someone's else's turn (to do the night shift). This bullying went on for one hour despite his pleas, and he could not believe he was being made to work with someone who had abused and threatened to assault him. He felt nauseous after the meeting and had to go home.
32. Union representatives who were at the meeting agreed that Mr Lace was "co-ercing" him and had not discussed "the set agenda" which was about harassing and bullying behaviour by Mr Sargent and other employees. He did not get an apology from Mr Lace who, if he had his interests at heart, would have put an end to Mr Sargent's bullying, victimisation and harassment. Instead, he "hijacked" the meeting and was working on his "constructive dismissal" because Mr Sargent was his mate.
33. On 30 March 2017, he sent a further email about being required to work on the night shift.
34. At a meeting on 12 April 2017, he again asked Mr Lace if Mr Sargent would apologise for calling him a "bad operator". In his mind, it was "a simple matter" of Mr Lace taking a firm stand with Mr Sargent but he would not. On 14 April 2017, he lodged a formal complaint about harassment and threat of assault by another worker but Mr Lace ignored it. In retrospect, he can only conclude that it was because Mr Lace wanted to terminate him because it was getting close to the six months when he would otherwise have to confirm him as a permanent employee under the relevant industrial agreement.

35. On 20 April 2017, he was dismissed for entering a restricted area in the workplace. In fact he did not enter the area because he had been told that the manager of that area was away. Moreover, “tags” were required to go into that area but the practice was policed in a discriminatory way. At the time of his dismissal, his complaint was still being investigated. He is a victim of raising safety violations and making a formal complaint of workplace bullying and harassment.
36. His dismissal was not the cause of his psychological problems. His claim for compensation relates to the events leading up to it. He had an excellent performance record in the nearly six months he was employed by the respondent. No performance issues were ever raised to justify Mr Sargent’s comment about him being a “bad operator”. Since he was dismissed, the respondent and its insurer have failed to deal fairly and expeditiously with his claim.
37. I note at this point that the termination letter dated 20 April 2017 confirmed verbal advice that his termination was “effective immediately ...due to the misalignment with our Values of ‘safety’ and ‘be responsible’.” The separation certificate issued some time later cited “unsatisfactory performance”.

#### *Supplementary statement*

38. In a “Supplementary Statement” dated 3 December 2019, after the 2007 claim had come to light, Mr Domathoti recounted his employment history and his 2007 claim for compensation for “significant workplace bullying”. He said the claim was settled without a hearing but he did not understand anything about the process. He said to his mind it was a claim for unfair dismissal and that is how he always referred to it. Sometime after the claim had been finalised (it was finalised in 2010), he was completing an employment application which asked whether he had made any workers compensation claims. He contacted his lawyer, Paul Curtis, to clarify whether he had. His lawyer said he had not, because the matter was settled without a claim being lodged, and the payment he received was for lost wages and was not compensation. He has since been informed that this is not correct, but it was his understanding at the time.
39. After that claim resolved, he was determined to put it behind him and move on with his life. He worked hard for two years at various Buddhist monasteries with senior monks. After two years of therapy, he met his wife who helped him turn his life around. They married and moved to Estonia, where she was born, and he completed qualifications in IT and worked as a systems analyst. He returned to Australia about five years later and completed a Diploma in Human Resources Management and an Advanced Diploma in Leadership and Management. He “completely put the events of 2007” behind him and moved on with his life. He set out to obtain a Bachelor Degree in Psychology and successfully completed the first year. He took up the job with the respondent to help pay for his fees and books.
40. Mr Domathoti stated he was physically and psychologically extremely fit before working for the respondent. He described his daily exercise regime which included running, cycling, swimming, going to a gym and yoga. He said no performance issues were raised with him and he received a letter from Head Office commending him for his work. He recounted the incidents of bullying and victimisation, and unsafe work practices at the respondent’s work place.
41. The remainder of the Supplementary Statement is directed to why Mr Domathoti failed to disclose to his treating and assessing doctors matters relating to his previous claim and its effects on his mental health. His oral evidence under cross-examination about this is summarised below.

42. Mr Domathoti stated that, as a result of his treatment, he started drinking “to dampen the injustice and unfair treatment”. He found himself “virtually on the streets”. He had to go on unemployment benefits to pay his rent. In his separation certificate, the respondent stated the reason as “unsatisfactory performance” which “effectively denied [him] welfare”.
43. Mr Domathoti then referred to his appointment with Associate Professor Robertson on 17 April 2019. He said he did not recall being specifically asked about any prior psychiatric injury and he did not raise anything about the events of 2007. It was over 10 years ago and he had not raised it with any of his treating doctors as any injury from that period “had long since resolved without any residual effect.” He maintained he had three different solicitors from Slater and Gordon acting for him and he told the third, whom he named, about his 2007 claim before he saw Dr Whetton. He became dissatisfied with them and changed solicitors who did not assist him. He told Dr Whetton, about his “unfair dismissal claim”.
44. Mr Domathoti stated that he was not attempting to hide his history. Had he been trying to do so, he would not have mentioned the previous claim at all. He had spent “years of [his] life” putting that period behind him and had managed successfully to get on with his life including working in Europe and Australia, marrying and having a child, regaining a social life, successfully undertaking further study, looking after himself with exercise, and working long hours while studying.

## **Medical reports**

### *Dr Adesanya*

45. Dr Adesanya, psychiatrist, first saw Mr Domathoti on 24 July 2017 on referral from his general practitioner, Dr Nadesarajan Pakkiyathiura (referred to as Dr Nadesh). Dr Adesanya took a history of events at work followed by symptoms of recurring memories and flashbacks, panic attacks, nightmares, agitation, insomnia and social withdrawal which had progressively worsened. He noted Mr Domathoti had been seeing a psychologist who had diagnosed him with adjustment disorder, anxiety and depressed mood, and possible post-traumatic stress disorder. Dr Adesanya considered he was unfit for work and recommended further psychiatric and psychologist treatment sessions.
46. Dr Adesanya noted “He denied any past psychiatric history prior to his employment [with the respondent].”
47. On 21 August 2017, Dr Adesanya reported that Mr Domathoti’s symptoms had flared again with stress over his claim and delay in receiving payments. He saw him again on 18 September 2017 when he noted some improvement in his symptoms with medication and increased his dosage. Dr Adesanya continued to see him at fortnightly or monthly intervals through to July 2019 during which time he provided regular reports to Dr Nadesh and to the insurer. He diagnosed Mr Domathoti as suffering post-traumatic stress disorder and major depressive disorder, and noted that his symptoms increased with stress over dealings with the insurer whom he perceived as bullying and harassing him.

### *Dr Sowden*

48. Mr Domathoti saw Dr Susette Sowdon, clinical psychologist, regularly from 13 July 2017 on referral from Dr Nadesh. In her first report she recounted a detailed history from Mr Domathoti and noted it “suggests he has not suffered any pre-existing psychological injuries”. He presented with symptoms of anxiety and depression in the extremely severe range. She diagnosed Adjustment Disorder with Anxiety and Depressed Mood and wondered whether he also had post-traumatic stress disorder. In her opinion, his psychological injuries had been “substantially caused by his exposure to the reported workplace psychosocial stressors involving what appears to have been some critical incidences.”



49. Dr Sowden saw Mr Domathoti weekly or fortnightly. By late 2017 she had seen him 23 times. She continued to see him throughout 2018 and 2019 and reported regularly to Dr Nadesh and the insurer. She noted that he was “finding it difficult to process” what he perceived to be the injustice of his treatment by his employer given his performance, and his continuing stress at dealings with the insurer. She noted he was severely functionally impaired, with some improvement in his symptoms around the end of 2018.

*Dr George*

50. Mr Domathoti saw Dr Graham George, psychiatrist, at the request of the insurer. Dr George reported on 25 June 2018. Under “Previous Claims” and “Psychiatric History” he noted “Nil”. He diagnosed major depression with anxiety. He recorded “On face value, it does appear he has been a victim of bullying and harassment.”
51. Dr George did not agree that massage and yoga, as requested by Mr Domathoti, would assist, and recommended a referral to the Black Dog Institute. Dr Adesanya disagreed with Dr George about this, but nothing turns on this.
52. Dr George thought Mr Domathoti would benefit from resuming employment with a different employer and would need a rehabilitation provided once his symptoms had settled.

*Associate Professor Robertson*

53. Associate Professor Robertson, psychiatrist, qualified on behalf of Mr Domathoti, saw him for assessment on 18 April 2019. He had Dr Adesanya’s and Dr Sowden’s reports, and records from Dr Nadesh’s practice. He took the same personal history and history of events at work and resulting symptoms, as Dr Adesanya and Dr Sowden. Under Past Psychiatric History, he recorded “Denied”.
54. Associate Professor Robertson diagnosed chronic major depressive disorder. He noted he was subjected to bullying in the workplace and seemed “victim to a constructive dismissal” just before his probationary period expired and which effectively precluded him from remedies in the Fair Work Commission and disadvantaged him with respect to Centrelink. He said Mr Domathoti had experienced this as “quite a targeted and personal form of bullying, which he believes has a racist undertone” and “this interpretation of events is endorsed by his treating clinicians.” He said Mr Domathoti’s “experience of bullying behaviour by his line manager and the alleged constructive dismissal was the primary cause or substantial contributing factor to the onset of his condition.”
55. Associate Professor Robertson assessed Mr Domathoti’s whole person impairment as 24 per cent, with no grounds for deduction under section 323.

*Dr Whetton – first report*

56. Dr Peter Whetton, psychiatrist, qualified by the respondent, saw Mr Domathoti on 19 August 2019 and diagnosed him as suffering Chronic Major Depressive Disorder with Symptoms of post-traumatic stress disorder and Alcohol Abuse Disorder. Dr Whetton said his prognosis was guarded.
57. As to causation, Dr Whetton said “from the history that he gives his psychiatric state has been an understandable and direct result of the incidents described.” In response to the question whether there had been “any previous injuries or injuries due to any pre-existing condition or abnormality, as recorded in the history taken or reported” Dr Whetton said, “No previous injuries or pre-existing conditions were discovered.”

58. Dr Whetton agreed with Associate Professor Robertson's assessment of 24 per cent whole person impairment and made "no apportionment for previous injury for pre-existing condition" although his calculation for travel and social functioning varied. He agreed with Associate Professor Robertson that Mr Domathoti was "mentally ill".

*Dr Phillips*

59. On 30 August 2019, Dr Paul Phillips, neuropsychologist, administered a range of tests which he said indicated Mr Domathoti was malingering, and he said "a practitioner should not be prepared to accept that Mr Domathoti has a valid diagnosis" of post-traumatic stress disorder in accordance with the DSM-IV and DSM 5. He reported:

"If one were to trust the clinical examination alone Mr Domathoti does present as someone who is distressed by what has allegedly occurred to him and has consequently had a decrease in his ability to function. On clinical interview he does impress as someone who is having a genuine mental illness which, depending on how the assessor interprets the alleged stressor, would suggest adjustment disorder. However, on the scales that are present in the [tests administered] he has indicated symptoms that genuinely mentally ill people do not endorse. This is crucial. As these represent his direct input, not filtered by any assessors' opinion, theories or experiences, measured against scientifically established criteria, they supersede the impression an assessor makes based on their interview and observations alone."

60. Dr Philipps said a "reasonable alternative hypothesis" was that the malingering scales were incorrect, and that Mr Domathoti's scores should be accepted as being forthright representations of his mental illness in which case he would have to be suffering from paranoid schizophrenia "or worse". However, even if he had thought himself, during clinical examination, that Mr Domathoti may suffer a psychological disorder, he would still defer to the test results, given their "established accuracy and reliability".

*Dr Whetton – second report*

61. The respondent provided a copy of Dr Phillips' report to Dr Whetton for comment. Dr Whetton said Dr Phillips' report did not cause him to alter his opinion. He said his own opinion was based on a psychiatric examination by a medically qualified psychiatrist, rather than a psychological assessment, and the two methods are different. He confirmed his agreement with Associate Professor Robertson.

*Reports relating to 2007 claim*

62. Subsequently, information came to the insurer's attention concerning Mr Domathoti's 2007 injury. The information included WorkCover Certificates of Capacity throughout 2007 and into 2008; a Workers Compensation Claim Form and related documents; treating reports of doctors including Dr Omar Marwat, psychiatrist, and independent medical reports from psychiatrists Dr Monir Younan and Dr Klass Akkerman, and psychologist Dr Greg Anning.
63. It is not necessary to set out the reports in detail. In summary, they document Mr Domathoti's complaints about bullying and harassment while working at TeleTech International and its serious psychological consequences. He suffered depression, anxiety and panic attacks. He was prescribed antidepressants. He stopped going out, and stopped exercising and going to the gym.

64. In November 2007, Dr Younan assessed whole person impairment as 19 per cent resulting from his workplace injury. In January 2008, Dr Akkerman recorded that he had not worked in nearly a year. He was drinking up to a bottle of whiskey a day and had made suicidal threats. He had not been paid and had lived on the streets. He was unkempt. Dr Akkerman thought he had Abnormal Personality Traits, Not Otherwise Specified, unrelated to his employment. In March 2010, Dr Akkerman saw Mr Domathoti again at which time he was living on the streets and still drinking heavily. Dr Akkerman thought his condition was constitutional and unrelated to his employment. "For completeness" he assessed whole person impairment as 22 per cent.

*Dr Whetton – third report*

65. Having considered this new information, Dr Whetton said he had reviewed his earlier reports. He said it was clear that Mr Domathoti did not give him an accurate history, particularly his psychiatric history including his admission to a detoxification unit. Given his lack of accuracy in his reporting and hence an incomplete history given, the opinions he had given "no longer hold" because they were "based on honest reporting by the claimant". He said:

"With the information you now provide his condition when examined by me is most likely a continuation of his earlier psychiatric problems which may or may not be related to his most recent employment."

...

"It is more likely that he has chronic mental problems and his current complaints may or may not be related to employment but may be part of the natural history of his mental problems."

66. Dr Whetton said, for these reasons, he could not make a psychiatric diagnosis and he would not now make an assessment of whole person impairment.

*Associate Professor Robertson - further report*

67. On 24 January 2020, Associate Professor Robertson provided a report of a further interview with Mr Domathoti. He had Dr Whetton's reports, the documents provided to Dr Whetton about the 2007 claim, and Dr Phillips' report. He said he had a clear recollection of asking Mr Domathoti in the interview whether he had "any previous problems with your mental health or sought treatment from a psychiatrist or psychologist" and that he "specifically denied any previous psychiatric history".
68. Having reviewed the documents, Associate Professor Robertson said it was evident that Mr Domathoti has been treated for a previous depressive illness with severe alcohol use including an inpatient detoxification unit. It was evident he had developed reactive depression as he alleged he was harassed in the workplace by his supervisor, and Dr Younan, psychiatrist, in November 2007 had noted workplace bullying and "victimisation and the injustice he received at work were substantially traumatic to his ego. As a result, he suffered from a depressive disorder compounded by anxiety attacks".
69. Associate Professor Robertson noted that, in 2008, Dr Klaus Akkerman, psychiatrist, noted Mr Domathoti's excessive use of alcohol and provided "a superficial formulation" of "abnormal personality traits" that he determined were constitutional. Regardless, Dr Akkerman assessed he had 22 per cent whole person impairment based on his presentation at the time.
70. Associate Professor Robertson further noted that Dr Phillips "seemed to focus his opinion on the question of the reliability of responses." Dr Phillips noted:

"If one were to trust the clinical examination alone Mr Domathoti does present as someone who is distressed by what has allegedly occurred to him and consequently had a decrease in his ability to function. On clinical interview he does impress as someone who is having a genuine mental illness which depending on how the assessor interprets his alleged stressor would suggest adjustment disorder."

71. In Associate Professor Robertson's opinion, Dr Phillips then appeared to effect "a volte face" stating that, on scales under various tests, Mr Domathoti had indicated symptoms that "genuinely mentally ill people do not endorse". He noted that Dr Whetton was "unmoved" by Dr Phillips' assessment but, presented with the information about the 2007 claim, he resiled from his opinion because he had "no confidence" in Mr Domathoti's truthfulness and so would not offer any further professional opinion.
72. Associate Professor Robertson reported that, at his interview with Mr Domathoti on 23 January 2020, he sought to revisit the circumstances of the original psychological injury. When he asked Mr Domathoti why he had responded in the negative to his question about previous mental health, he said he had "blocked it out" because he "wanted to move forward" and he felt that he had "forgotten about it". He said he had "not understood the significance of his previous problems to his current presentation"; the earlier episode was dominated by his alcohol problem which he did not consider a psychiatric disorder although he did acknowledge mood and anxiety symptoms. He said he misunderstood the difference between an unfair dismissal, payment dispute and a workers compensation claim. He had only vague recollection of his time as an inpatient, although he had a sense of gratitude to the detoxification facility to the point that he had a Maltese cross tattooed on his forearm. After that, his life had "returned to its normal trajectory". He had spent time in a Buddhist monastery, remarried and lived overseas, maintained employment and study, and not sought any psychiatric treatment in that time.
73. Associate Professor Robertson considered Mr Domathoti's answers at interview to be "internally consistent and genuine and he seemed truthful in his narrative". In conclusion, he remained of the view that Mr Domathoti presented with chronic major depressive disorder and nothing in the new information caused him to question his original diagnosis or its relationship to his employment with the respondent.
74. Of Dr Whetton's opinion, Associate Professor Robertson said there appeared to have been "a rush to judgment" regarding Mr Domathoti's truthfulness and "the selective use of psychometric batteries to essentially repudiate" his, and Dr Whetton's (original) opinions. He said he sympathised with Dr Whetton but he did not share his "total refutation of the history".
75. Associate Professor Robertson said:

"The critical issue is the reliability of the history. In my experience many claimants will seek to de-emphasise previous aspects of their history, which appears part of the limitations and frustrations of the medicolegal assessment. Selective interpretation and reporting of the facts is not the same as lying, malingering or deceitfulness, which appears to be the accusation levelled at Mr Domathoti. I reject the idea that the situation must be categorised as one of malingering. There are multiple explanatory hypotheses for why patients provide histories of variable probative value or legitimacy. Malingering is an extremely small subset of this group and malingering is usually one of several fraudulent offences perpetrated and consistent with an antisocial pattern of behaviour. There was no such indication of this being the case with Mr Domathoti.

The reasonable middle ground here is that Mr Domathoti provided what he believed was a good faith history and that his failure to report his previous history was based on multiple factors. Mr Domathoti seemed somewhat ashamed of his previous problems with alcohol, which seems inconsistent with what he believed to be a well-adjusted life trajectory otherwise. While there are certainly some grounds for scepticism on some aspects of the history, the overall gestalt of this man is that he presents with a depressive illness that emerged in the course of his previous employment.

76. Having said that, Associate Professor Robertson said he thought it reasonable to make a one-tenth deduction from his assessment of whole person impairment. He said he accepted Dr Whetton's opinion that "the episode represents an exacerbation or his previous depression particularly given the apparent severity of the illness".

*Dr Sowden - further report*

77. On 26 February 2020, Dr Sowden reported that she had seen Associate Professor Robertson's reports. She concurred that Mr Domathoti was suffering from a chronic Major Depressive Disorder in response to workplace bullying and harassment. She said Mr Domathoti's opinion was that it had racist undertones and it appeared his perceptions were "reality-based".
78. Dr Sowden said there was no evidence Mr Domathoti was malingering. There was no evidence he was suffering any adverse psychological symptoms when he started work for the respondent. She was aware of his reported exposure to bullying in 2007 and that he had lodge a workers compensation claim. She said it was "important to note" that his exposure to events at work in 2016 and 2017 resulted in severe functional impairment.

**Mr Domathoti's oral evidence**

79. Mr Halligan cross-examined Mr Domathoti at length about his failure to disclose his psychiatric history and his previous claim for compensation. Mr Domathoti agreed with the following history put to him by Mr Halligan although he could not always recall precise dates. He did not dispute the doctors' accounts of what he told them, but said he could not always recall having said what they attributed to him.
80. In 2007, he complained of bullying and harassment by his supervisor while working for TeleTech International. From mid-2007, he went on sick leave. In 2010, his employment was terminated. In June 2007, his general practitioner, Dr Desai, referred him to a psychiatrist, Dr Marwat, who prescribed medication for depression and panic attacks. He saw Dr Marwat once or twice. He saw a solicitor, Stephen Smart, who made a workers compensation claim, and later saw another solicitor, Paul Curtis. In November 2007, he saw Dr Younan, psychiatrist, for a medico-legal opinion. In December 2008, he saw a psychologist, Greg Anning, for medico-legal opinion. All three took detailed histories of Mr Domathoti's difficulties at TeleTech International and their effects on him psychologically.
81. Around this time, he started drinking heavily. He admitted himself to a detoxification unit at Gorman House followed by further observation for 30 days. He ended up on the street and homeless, without income because his claim for compensation had been denied. In response to questioning, Mr Domathoti said his problems were caused by the insurer's denial of liability, rather than what happened at Teletech International, but he acknowledged they originated in what happened at Teletech.

82. In March 2008, he saw Dr Akkerman, psychiatrist, for assessment. He told Dr Akkerman he had been bullied at Teletech International, and about his drinking. Dr Akkerman recorded he had suicidal thoughts. Mr Domathoti did not deny he had a “significant psychiatric condition” at that time. His claim ended up in the Workers Compensation Commission. His solicitor at the time was Angelo Benaro from Paul Curtis solicitors.
83. In 2017, he suffered depression due to his treatment at Hyne & Son and the termination of his employment. He saw general practitioner, Dr Nadesh, who referred him to Dr Adesanya. Dr Adesanya prescribed medication and thought he had PTSD. He had anxiety and panic attacks. A psychotherapy plan was instituted. He saw Dr Adesanya from mid-2017 to 2019. He acknowledged the doctors he saw were doing their best to look after his psychiatric wellbeing but he did not tell any of them about what happened in 2007 until recently.
84. Asked why he did not go back to any of the treating doctors he saw around 2007, Mr Domathoti said he went to the doctors Dr Nadesh referred him to. Asked why he did not ask Dr Nadesh to refer him to the doctors he saw previously, he said he had recovered, his life had changed, and he had put those events behind him and moved on.
85. Mr Halligan put to Mr Domathoti that his 70-page statement made no reference to his 2007 employment. Further, that it stated he had not suffered anxiety or depression before 2017. Mr Domathoti disagreed that statement was a lie. He said he had “put 2007 behind him”; it was not “anywhere in his memory”; he had “no recollection of 2007 when he made that statement”. When he saw Dr Nadesh, he had forgotten “altogether” that he saw a solicitor in 2007 and that he saw various doctors. He “forgot the whole 2007 incident”.
86. With respect to his 2007 claim for compensation, he recalled receiving money for “loss of wages settlement”. He could not recall how much. His solicitor finalised the matter for him; he could not recall signing documents. He recalled the 2007 matter was settled, that was all. When it came to his 2017 claim, he did not go back to his 2007 solicitors. He was referred to his current solicitors by Maurice Blackburn. He did not recall the 2007 claim until recently after he read “certain reports”. He had “put it in a box and filed it away” and moved on with his life.
87. He did not recall Associate Professor Robertson asking him in 2019 about the 2007 matter when he first saw him, and he did not tell him. He agreed he told Associate Professor Robertson details of his personal history and that he had worked for various employers (but not Teletech International).
88. He saw Dr Whetton once, in August 2017, and told him there had been “an issue about unfair dismissal” in 2007 but he did not tell Dr Whetton he had a previous workers compensation claim. His solicitor told him the claim was “withdrawn”. He asked his solicitor about it when an employment application asked if he had any prior workers compensation claims. His solicitor, Angelo Benaro, told him it was a “loss of wages” claim, and the Certificate of Determination issued by the Commission in 2010 showed compensation for loss of wages. He is not a solicitor and did not know what type of claim his solicitor made.
89. Mr Domathoti strenuously denied that he deliberately misled Dr Whetton when asked about any previous workers compensation claim.
90. Mr Halligan put to Mr Domathoti that what he told Dr Sowden “suggested he had not suffered from any pre-existing psychological injury”. Mr Domathoti said that was correct at the time; he had fully recovered, put the past behind him and moved on. He did “not see any utility in carrying baggage” from 2007. He disagreed he was selective in then history he gave to Dr Sowden.

91. Asked what he meant by he “put 2007 behind him”, Mr Domathoti said he spent two years recovering in a Buddhist monastery after he left TeleTech International. He came to an agreement with his wife to put the past behind them; 2007 to 2010 is “total history” to him; he “put it in a box”. He showed a tattoo on his forearm of a Maltese Cross, the emblem of the Order of Malta which runs the detoxification facility he admitted himself to. He had it done the day after he left the facility as a permanent reminder of what he had been through after the events of 2007. He said he knows “2007 is there, that something happened then” but it was behind him. He agreed it was a conscious decision to put it behind him. He said he was “in denial”. He saw no reason to bring those events up to his doctors in 2017 because he had fully recovered. He was “100 per cent physically and psychologically healthy” before he started work for the respondent. It is too “overwhelming” because of his mental illness to “open the box”. Doing so would bring up memories of his homelessness, soup kitchens, drinking and drug use, it would trigger anxiety and make him suicidal.
92. Mr Domathoti denied he has been dishonest or gone out of his way to misrepresent his case for financial gain.
93. I asked Mr Domathoti what brought him out of “denial” so that he recalled the events of 2007 and what followed. He said he understood that, after he told Dr Whetton in August 2019 about the “loss of wages settlement” from 2007, the insurer obtained documents about the 2007 claim and provided them to his solicitors. The first time he remembered everything was when he read the file with all the documents. It “triggered issues” for him and he has been very unwell. The only doctor he has seen since was Dr Sowden, on one occasion, and he told her about the earlier claim. He also told Associate Professor Robertson about it in detail.
94. In re-examination, Mr Domathoti said he was living in Sydney in 2007 and saw doctors in Sydney. In 2017 he was in Wagga. He maintained he understood his 2007 claim was for loss of wages. He thought it was an unfair dismissal claim and that is what he told Dr Whetton.

## **Other evidence**

### *Statement of Peter Enright*

95. Mr Peter Enright provided a statement dated 4 February 2020. He said he met Mr Domathoti in about 2007 and rented his spare room to him for about three years to 2010. He was neat and tidy and easy to get on with. When he moved in, he seemed somewhat down and depressed and said he had had some issues with a former employer but he did not say much about them. He was “probably drinking too much”. He knew Mr Domathoti had some sort of court case about his unfair dismissal.
96. In about 2010, Mr Domathoti went to live in a Buddhist monastery. They kept in touch over the years. He was aware that Mr Domathoti had married in Estonia and was living there with his wife and daughter. He worked in IT in Europe. In about 2015 he returned to Australia and moved back in. He seemed settled and was planning to study and bring his family to Australia. He was fit, eating well and exercising. His drinking had improved. He seemed to love life.
97. Mr Domathoti found casual work at Hyne and Son and moved to live elsewhere. In April 2017, Mr Domathoti told him he had been sacked. He had been marched out of the office and humiliated. His condition seemed to deteriorate after this and he became much worse than in 2007.

## *Certificates*

98. Mr Domathoti submitted a large bundle of documents which included a Foundation Certificate in Software testing issued in Estonia on 9 September 2011, a Diploma of Human Resources Management issued by Conwal Institute Queensland on 20 January 2016, and an Advanced Diploma of Leadership and Management issued by Martin College Queensland on 29 April 2016, both three-month courses.

## **The respondent's submissions**

99. Mr Halligan submits that the cross-examination encapsulates the respondent's entire case. There is no argument, for present purposes, that a condition "accrued to the applicant" during the period of his employment with the respondent, by which he meant Mr Domathoti had a serious psychological condition, but not a compensable injury. In 2007, he was "significantly injured" from a psychiatric point of view. Dr Akkerman assessed him in 2008 as having 22 per cent whole person impairment. He was under the care of his general practitioner, a psychologist and a psychiatrist. He had subsequent alcoholism.
100. In 2017, Mr Domathoti suffered a further very significant psychiatric injury, also as a result of bullying and harassment. He saw another series of doctors and told them nothing about his earlier history. I would not accept that he had a legitimate reason not to tell them because he had "put it behind him", or "put it in a box" and was looking to the future. I would not believe what Mr Domathoti says. I would find he has gone out of his way to be dishonest and to lie, for which there can be no other purpose but financial gain.
101. Mr Halligan submits that it is not up to a patient to decide what to tell a treating doctor. To be selective in that way means the doctor has a misplaced history and misplaced opportunity to diagnose the condition. Further, I would not believe his explanation for why he told Dr Whetton he had not made a previous workers compensation claim. His explanation of his conversation with his solicitor is implausible.
102. If I was satisfied there were two separate injuries giving rise to an assessment of WPI, it invites an apportionment under section 22 of the Act, although Mr Halligan acknowledged the earlier employer is not a party to the present proceedings and any question of apportionment would be for another day.
103. Mr Halligan submits that I cannot be satisfied, in the absence of a clear and concise history, that Mr Domathoti suffered a psychiatric injury as a result of his employment with the respondent.
104. With respect to Dr Whetton's final report, in which he says Mr Domathoti's condition was most likely a continuation of his earlier psychiatric problems which "may or may not be related to his employment", Mr Halligan submits that "take away point" is that Dr Whetton could not believe what he said and could not make any psychiatric diagnosis.

## **The applicant's submissions**

105. Mr McManamey submits the respondent has not challenged in any way that Mr Domathoti made a complete recovery after 2010. Mr Enright's statement supports him. Mr Enright had the benefit of living with him before, then seeing him on his return to Australia in 2015 at which time he was fit, eating well and exercising. He was not drinking alcohol. That evidence is not challenged.



106. There is no dispute about what happened at Hyne Pty Ltd. Liability was accepted. There is no challenge to the events Mr Domathoti claims. The respondent has not challenged him about his symptoms or disability during that time, or suggested he was exaggerating his condition during that time. The challenge is to the fact that he did not disclose his history.
107. Mr McManamey submits that I will either accept Mr Domathoti's explanation or not but, considering his history, I can believe it. He went to a monastery for two years and came back a better person. When he was ultimately confronted with his history in 2019 when he read the documents, he found it shocking and confronting.
108. Ultimately, Mr McManamey submits, the fact that Mr Domathoti did not disclose his history is immaterial. Objectively, there was an episode during the time of his employment with the respondent before which there had been a period of five to seven years of recovery or remission.
109. Mr McManamey submits that Associate Professor Robertson and Dr Whetton came to the same view about diagnosis and WPI. Dr Phillips' testing changed nothing. Dr Whetton effectively dismissed it. It is not necessary to analyse it in any detail but it is notable that Dr Phillips said Mr Domathoti's presentation was entirely consistent with the psychiatric diagnosis. It was only once he administered the tests that his view changed. It may be that the problem is his testing. None of the tests for malingering has ever been validated.
110. Mr McManamey submits that Mr Domathoti's failure to disclose his history to Dr Whetton is actually of little consequence. Dr Whetton did not see him again after he was given the reports from 2007, and he did not have the crucial history of some seven years of remission. The last report he had was from Dr Akkerman in 2010. He needed the full history in between. In contrast, Associate Professor Robertson had the benefit of seeing him again, discussing the history with him, and making a clinical evaluation. His opinion was unchanged. Knowing the history did not change his diagnosis. He discounted malingering. He accepted Dr Whetton's "notion" that there could have been an exacerbation in 2017 but, even if it was, it was occasioned by the undisputed events a work.
111. Dr Sowden also saw Mr Domathoti after material from 2007 came to light. She says she is aware of it. She affirmed her opinion that he suffers from chronic major depressive disorder caused by his employment with the respondent work. The history did not cause her to change her opinion about his present diagnosis.
112. Mr McManamey submits that what we are ultimately left with is that Mr Domathoti's injury was accepted by the treating and assessing doctors for two years. Associate Professor Robertson and Dr Whetton conclude Mr Domathoti has a psychiatric condition, and the treating psychiatrist and psychologist agree. Associate Professor Robertson and Dr Sowden maintained their opinions when made aware of Mr Domathoti's history. At the highest, Dr Whetton expressed doubts about the relationship to his employment with the respondent.
113. With respect to the claim for weekly compensation, all of the reports support a finding that Mr Domathoti had and continues to have no current capacity. Dr Whetton's final report makes no reference to incapacity. The evidence supports the conclusion that Mr Domathoti has no current capacity and there is no evidence to the contrary.

## **Reply**

114. In reply, Mr Halligan submits that I would not accept Mr Enright's statement as evidence of Mr Domathoti's recovery in between about 2010 and 2017. He made his statement in February 2020. There is no medical evidence to say his condition had resolved before starting work for the respondent. It would have been an easy matter to ask his doctors about that and obtain evidence to confirm his recovery.

## Consideration

115. Section 4 of the Act provides that "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,  
...”

116. Section 9A(1) of the Act provides that no compensation is payable in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.

117. There is no dispute that Mr Domathoti suffered a significant psychological injury as a result of bullying and harassment in the course of his employment in 2007. Until the earlier claim came to light, there was no dispute that he suffered a significant psychological injury as a result of bullying and harassment in the course of his employment with the respondent.

118. Mr Halligan submits that the respondent's case is encapsulated in Mr Domathoti's evidence under cross-examination, that his explanation for failing to disclose his history cannot be believed, and that the medical opinions supporting his present claim of injury are based on a false history.

119. I do not find Mr Domathoti's explanation for failing to disclose his previous injury and its aftermath persuasive. I accept the notion of a person "putting a matter behind them" and "moving on" but that is not the same as forgetting "altogether" that it occurred. His explanations appear inconsistent. He was "in denial", but also "saw no reason" to disclose his history to the doctors because he had put it behind him, suggesting it was in his mind but he did not consider it relevant to disclose. In any event, by his own evidence, the large tattoo he had done the day after he left the detoxification facility was for the very purpose of reminding him every day of his drinking and homelessness due to the insurer's handling of his claim.

120. To say the doctors did not ask, and he did not volunteer, information about his psychological history is no explanation. Mr Domathoti is clearly an intelligent man with a keen interest in psychology. I do not accept that he did not know the purpose for which treating and assessing doctors asked about his history. Whether or not they asked specifically about any prior *workplace injury*, their reports indicate they asked about his psychological history.

121. In his statement of evidence, Mr Domathoti volunteered that he had not suffered anxiety or depression before February 2017 and stated he had never lodged a complaint of bullying, harassment or discrimination with an employer prior to his employment with the respondent. Neither statement was true.

122. I accept that a worker might not appreciate the difference between a claim for unfair dismissal and one for workers compensation and I seriously doubt Mr Domathoti did not know he had claimed workers compensation after 2007. It is improbable that a solicitor, asked whether his client had claimed workers compensation, would give the advice Mr Domathoti claims.

123. I find it implausible, and I do not accept, that Mr Domathoti had no recollection of past events until late 2019 when confronted by the documents about his earlier claim.
124. The difficulty for the respondent's case is that it does not necessarily follow that Mr Domathoti did not suffer psychological injury in 2017 as a result of his employment with the respondent.
125. There is no challenge to Mr Domathoti's account of bullying and harassment while employed by the respondent, or to his symptoms or disability during and after his employment. The respondent does not suggest he was exaggerating his condition during that time.
126. Dr Nadesh, Dr Adesanya, Dr Sowden, Dr Whetton and Associate Professor Robertson all considered that Mr Domathoti had a psychological condition. Dr Adesanya and Dr Sowden saw him weekly or fortnightly from around June 2017 to February 2029 (Dr Sowden) or July 2019 (Dr Adesanya). Their diagnoses were consistent. Dr Adesanya and Dr Sowden diagnosed Adjustment Disorder with Anxiety and Depression; both questioned whether he also had post-traumatic stress disorder. Associate Professor Robertson and Dr Whetton both diagnosed chronic major depressive disorder, and Dr Whetton also thought he had symptoms of post-traumatic stress disorder and alcohol disorder.
127. I find it improbable, if Mr Domathoti was manufacturing or exaggerating his symptoms, that neither Dr Adesanya nor Dr Sowden would have picked up something in his presentation to make them question him.
128. Dr Phillips' report noted that, if one were to trust Mr Domathoti's presentation alone, he presented as someone distressed by what had happened to him, with resulting decreased ability to function, and as someone with "a genuine mental illness". It was the test results, rather than his clinical examination, that led Dr Phillips to conclude that Mr Domathoti was malingering and that he did not meet the criteria for a diagnosis of post-traumatic stress disorder.
129. I do not think anything turns on whether or not Mr Domathoti had post-traumatic stress disorder as none of the doctors in fact made that diagnosis. Dr Whetton came closest in saying he had "symptoms of PTSD". However, even when provided with Dr Phillips' detailed neuropsychological assessment, Dr Whetton did not alter his opinion. He was confident in his own "psychiatric examination by a medically qualified psychiatrist" and he confirmed his agreement with Associate Professor Robertson who subsequently also discounted Dr Phillips' assessment.
130. Associate Professor Robertson's opinion was also unchanged by the information about Mr Domathoti's previous injury. He said he had a "clear recollection" of asking Mr Domathoti about any previous mental health problems or whether he had sought treatment from a psychiatrist or a psychologist. He asked Mr Domathoti why he had responded in the negative and noted his explanations. He remained of the opinion that he presented with chronic depressive disorder as a result of his employment with the respondent. He shared Dr Whetton's "frustrations about the reliability of Mr Domathoti's narrative" but not his "total refutation of his history".
131. Associate Professor Robertson considered a range of possible explanations for Mr Domathoti's failure to disclose his history. He said, "selective interpretation and reporting of the facts is not the same as lying, malingering or deceitfulness". He found no indication of malingering. While there were "certainly some grounds for scepticism", a "reasonable middle ground" was that Mr Domathoti provided what he believed was a good faith history and his failure to report his previous history was based on multiple factors. His "overall gestalt" was that presented with a depressive illness that emerged in the course of his previous employment.

132. Dr Sowden also saw Mr Domathoti after the material from 2007 came to light. She did not suggest an explanation for his failure to disclose it, but it did not cause her to change her opinion about his present diagnosis. She affirmed her opinion that he suffers from chronic major depressive disorder caused by his employment with the respondent work.
133. In contrast, Dr Whetton did not have the benefit of seeing Mr Domathoti again, as Associate Professor Robertson had. He did not have the opportunity to examine him in light of the new information or to ask him why he did not disclose his history. Dr Whetton does not appear to have considered any possibility other than that Mr Domathoti was entirely untruthful. Rather than express an opinion about any diagnosis, he said he could not now make a psychiatric diagnosis. It appears that he inferred that everything in Mr Domathoti's presentation was false. I prefer Associate Professor Robertson's more considered opinion to that of Dr Whetton.
134. Even though Dr Whetton considered Mr Domathoti to be untruthful about his past and said he would not now make a diagnosis, he nevertheless thought Mr Domathoti had a psychiatric condition. He said:
- "With the information you now provide his condition when examined by me is most likely a continuation of his earlier psychiatric problems which may or may not be related to his most recent employment."
- ...
- "It is more likely that he has chronic mental problems and his current complaints may or may not be related to employment but may be part of the natural history of his mental problems."
135. Associate Professor Robertson said he accepted Dr Whetton's opinion that "the episode represents an exacerbation or his previous depression particularly given the apparent severity of the illness".
136. The question arises whether Mr Domathoti's psychological state in 2017 was a continuation of his 2007 injury, unaltered by anything that occurred while employed by the respondent, or whether he had in fact recovered from his 2007 injury and suffered a further injury, or exacerbation, as a result of his employment.
137. Mr Domathoti's evidence that he had recovered before starting work for the respondent is unchallenged except for Mr Halligan's submission that I would not accept the very recent statement of Peter Enright. Given Mr Domathoti's failure to disclose his true history, his claim to have recovered has to be approached with some scepticism.
138. I place little weight on Mr Enright's unsworn statement. However, I accept that Mr Domathoti underwent detoxification and moved overseas around 2010, married and worked overseas. I accept he successfully undertook two courses of study, albeit short, in 2016 and that he enrolled to study psychology.
139. Despite his differences with his supervisor, there is no evidence that Mr Domathoti was unable to perform his work or was suffering a psychiatric condition when he started working for the respondent. He appears to have performed his work without difficulties until he complained about Mr Sargent and the bullying and harassing conduct of some fellow workers. His claim that he was given a "Great Work Card" is uncontradicted.
140. Considering all of the evidence, I find, on the balance of probabilities, that Mr Domathoti had recovered from his earlier injury or it was in remission, and that he sustained further psychological injury within the meaning of s 11A(3), or an exacerbation of his previous injury, arising out of or in the course of his employment with the respondent.

141. The section 78 notice of 16 December 2019 stated that, if Mr Domathoti's claim for lump sum compensation were successful, then orders ought to be made confirming that a significant part of any assessment of impairment resulting from the injury with the respondent should be apportioned to the previous injury. Mr Halligan acknowledged that the former employer has not been joined in these proceedings and that any question of apportionment is for another day.

### **Claim for weekly benefits**

142. Up until Dr Whetton's last report, the respondent accepted that Mr Domathoti was entitled to weekly benefits compensation, and payments were made to 10 February 2020. All of the evidence from treating and assessing doctors is that he has had no current work capacity.

143. The respondent has not raised any argument that Mr Domathoti has any current work capacity. I am satisfied that he is entitled to weekly payments at the agreed rate as from 12 February 2020.

### **CONCLUSION**

144. In conclusion, I determine that:

- (a) The applicant sustained psychological injury arising out of or in the course of his employment with the respondent with deemed date of 24 February 2017.
- (b) From 11 February 2020 the applicant has had no capacity for employment as a result of his injury.

145. The matter is remitted to the Registrar to be referred to an Approved Medical Specialist pursuant to section 321 of the *Workplace Injury Management and Workers Compensation Act 1998* for assessment of whole person impairment as a result of psychological injury with deemed date of 24 February 2017. The materials to be referred to the Approved Medical Specialist are to include:

- (a) The Application to Resolve a Dispute and attachments;
- (b) The Reply and attachments;
- (c) The Application to Admit Late Documents filed by the applicant on 11 February 2020 and attachments;
- (d) The Application to Admit Late Documents filed by the applicant on 10 March 2020 and attachments.