WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **3659/19**
Applicant: **Lynnette Gibson**
Respondent: **Holcim (Australia) Pty Ltd**
Date of Direction: **14 October 2019**
Citation: **[2019] NSWWCC 330**

The Commission determines:

Orders

1. The respondent is entitled to credit, pursuant to s 50(3) of the *Workers Compensation Act 1987*, for sick leave paid during the period 1 August 2018 to 24 August 2018, limited to a maximum of the weekly compensation order for the same period.

2. The respondent did not pay salary and only paid annual leave for the period from 24 August 2018.

3. The respondent is not entitled to any credit for the period from when annual leave commenced on 24 August 2018.

4. The application pursuant to s 350(3) of the *Workplace Injury Management & Workers Compensation Act 1998* to rescind the Consent Orders is refused.

JOHN HARRIS
Arbitrator

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

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Ms Gibson (the applicant) was employed by Holcim (Australia) Pty Ltd (the respondent) and alleges she suffered psychological injury deemed to have occurred on 1 August 2018.

2. The respondent denied liability to pay compensation for various reasons including a denial of injury pursuant to s 4 of the *Workers Compensation Act 1987* (the 1987 Act) and a defence under s 11A of the 1987 Act.

3. The respondent is self-insured for the purposes of the 1987 Act.

4. Proceedings were commenced by the applicant against the respondent in matter number 545/19 (the prior proceedings). This matter was settled during the course of an arbitration hearing on 5 April 2019. Both counsel and the applicant signed a document headed "terms of settlement/heads of agreement".[1]

5. The Commission then issued Consent Orders in accordance with the terms of settlement (Consent Orders). The Consent Orders provided:

> **Orders**
>
> **1.** Award for the Applicant at $2,218.50 per week from 1 August 2018 to 30 September 2018 and at $2,145.30 per week from 1 October 2018 to 30 October 2018 with an award for the Respondent thereafter.
>
> **2.** Respondent to pay s 60 expenses to date up to $3,000 on production of accounts, receipt and medicare charge with an award for the Respondent thereafter.
>
> **Notations**
>
> A. The Applicant admits and the parties agree that after 30 October 2018 the Applicant has no incapacity.
>
> B. The Applicant admits and the parties agree that the Applicant has no further need for treatment.
>
> C. On payment of the above sums, the Applicant admits that she has received her full entitlements under the Act.

6. This is an application by the applicant pursuant to s 350(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) to reconsider and set aside the Consent Orders or otherwise seek orders that the respondent was not entitled to deduct various payments from that owing under the Consent Orders.

THE PROCEEDINGS BEFORE THE COMMISSION

7. This matter was listed for arbitration hearing on 17 September 2019. Mr Boulton appeared for the applicant and Mr Allen Parker appeared for the respondent. The same counsel appeared in the prior proceedings.

[1] Respondent's late Application, p 25

8. The documentation admitted into evidence was:

    (a) Miscellaneous Application (Application) registered on 23 July 2019;

    (b) Late Application filed by the Respondent dated 14 August 2019, and

    (c) Late Application filed by the Respondent dated 23 August 2019.

9. There was no objection to any document.

EVENTS SUBSEQUENT TO THE ISSUING OF THE CONSENT ORDERS

10. The present dispute between the parties concerns the amount that the respondent could properly credit pursuant to s 50 of the 1987 Act on the monies owing by it pursuant to the Consent Orders. The dispute appeared to be limited to:

    (a) The respondent's contention that the applicant received salary for the period from 15 August 2018 to 11 September 2018 (the disputed period), and

    (b) Sick leave paid in excess of the weekly compensation order.

11. The parties agree that the respondent is entitled to credit for sick leave paid to the applicant during the period covered by the Consent Orders. However, the applicant contended that the maximum amount of the credit is the amount of weekly compensation ordered in respect of the same period in which sick leave was paid.

12. The parties are in dispute as to whether the applicant was paid a salary by the respondent in the disputed period.

13. The dispute appears to have arisen seven weeks subsequent to the entry of the Consent Orders. The reason for this delay is unclear.

14. On 27 May 2019, the respondent's solicitor wrote to the applicant's solicitors as follows:[2]

    > "Further to our conversations earlier today, please find attached a schedule prepared by our client. It would appear your client continued to be paid a salary (in addition to leave entitlements). Those payments have been deducted from the settlement money as noted in the attached schedule, except for the annual leave payment received. Our client is ready to make payment, subject to any issues raised by your client. I confirm your preference to hold off payment pending your client's instructions."

15. The schedule prepared by the respondent appears to be the document at page 27 of the respondent's late Application as it immediately follows the respondent's email of 27 May 2018 (the Schedule).

16. The Schedule states that it is based on payslips and asserts that the applicant received the following pay in August and September 2018:

    - Sick leave of $4639.61 for the period from 1 August 2018 to 15 August 2018;

    - Salary of $5061.39 for the period from 16 August 2018 to 30 August 2018;

    - Salary of $4850.50 for the period from 1 September 2018 to 15 September 2018, and

[2] Miscellaneous Application, p 3

- Annual leave of $4850.50 for the period from 16 September 2018 to 30 September 2018.

17. On 27 May 2019, the applicant's solicitor responded as follows:[3]

> "I note your client proposes to deduct salary and sick leave from the workers compensation settlement amount. They have a legal right to not pay workers compensation during any periods that my client received sick leave. However, it appears they have mistakenly sought to claim an additional 'credit' for payments made during the 'Entitlement' column. There is no basis to deduct $191.30 from other weeks as it appears they are seeking to do. As such, we ask that this be removed from their calculations.
>
> With regard deductions for salary, this was never discussed nor raised during settlement discussions by anyone. My client settled the claims on a compromises basis and if this was to be deducted the it should have been raised at the time settlement discussions were occurring. Given the amount now sought to be deducted, it is most definitely likely that this would have had a significant bearing on my client accepting the offer that was the basis of the settlement.
>
> There is no legal basis for your client to deduct these alleged salary payments from the workers compensation settlement. Nothing in the legislation allows for this. Should your client continue to press for this to be deducted the we will ask to have the matter relisted in the WCC for the issue to be agitated there and, if need be, seek to have the settlement set aside so that the matter can proceed to hearing."

18. On 4 June 2019, the respondent's solicitor wrote to the applicant's solicitor in the following terms:[4]

> "The amount of $15,809.18 less taxation will be paid to your client and $137.35 will be paid to Medicare in accordance with the Notice of Charge received from you. The amount of $15,809.18 being made up as follows:
>
> > 01.08.2018 – 14.08.2018 (2 weeks) in which your client was paid sick leave totalling $4,639.60. Our client has confirmed that the amount of $1,208.28 was paid by your client to Holcim in respect of an overpayment of sick leave during that period. The payment was made at the time of your client's redundancy. Thus, your client received a net amount of $3,431.32 from Holcim during this period. The entitlement to weekly payment during the period 01.08.2018 – 14.08.2018 was $4,257 of which your client received $3,431.32. The entitlement during this period being the difference of $825.68.
> >
> > 15.08.2018 – 11.09.2018 (4 weeks) in which your client was incorrectly paid salary payments at the rate of $2,425.25 per week. The entitlement to weekly payments during this period being at a rate of $2,218.50 per week. The entitlement during this period being $0.00.
> >
> > 12.09.2018 – 30.09.2018 (2 weeks) in which your client was paid annual leave entitlements. Your client remains entitled to $2,185.50 per week, the entitlement during this period being $4,257.00.
> >
> > 01.10.2018 – 31.10.2018 (5 weeks) at the rate of $2,145.30 per week. The entitlement during this period being $10,726.50."

[3] Miscellaneous Application, p 2
[4] Miscellaneous Application, p 2

DOCUMENTARY EVIDENCE

19. Despite the voluminous nature of the material before me, counsel submissions were limited to the background material and the following documentation.

20. The pay slip for the period 1 August 2018 to 31 August 2018 refers to a pay date of 14 August 2018 and includes the following particulars of pay for that period:[5]

Sick Leave	$4369.61	83.60 units
Salary	$5061.39	91.20 units.

21. At the base of the pay slip there is a reference to sick leave of 83.6 hours for the period from 1 August 2018 to 15 August 2018.

22. The pay slip for the period 1 September 2018 to 30 September 2018 refers to a pay date of 14 September 2018 and to the following particulars of pay during the period:

Salary	$4850.50	76.00 units
Ann Leave	$4850.50	76.00 units.

23. I agree with the applicant's submission that the obvious inference from the pay slips is that the pay for any month is estimated in the middle of the month specifying what had occurred until that date and an estimate of what will occur for the balance of the month. Thus, in August, the respondent was aware that the applicant was on sick leave from 1 August 2018 to 15 August 2018 and it was assumed that the applicant would work for the balance of the month.

24. Unlike the August payslip, the September payslip does not specify when the annual leave was taken in that month.

25. A document headed "Schedule of Leave" with the respondent's solicitors title (Schedule of Leave) provides the following particulars in relation to leave paid to the applicant during August and September:[6]

1.8.18 – 15.8.18	Sic	83.6 hours
16.8.18 – 22.8.18	Sic	38.0 hours
23.08.2018 – 23.08.2018	UPS	1.8742 hours
23/08/2018 – 23.08.2018	Sic	5.7258 hours
24.08.2018 – 24.08.2018	UPS	1.5823 hours
24.08.2018 – 24.08.2018	Sic	1.4577 hours
24.08.2018 – 24.08.2018	Ann	4.56 hours
27.08.2018 – 14.09.2019	Ann	114.00 hours
17.09.2019 – 25.09.2019	Ann	53.20 hours

(26.09.2019 – 30.09.2019 – various LWP and AL)

[5] Miscellaneous Application, pg 163
[6] Respondent's late Application, 14 August 2019, pg 24

26. The Schedule of Leave continues up until 18 January 2019. The reference in the document to “Sic” would probably be to sick leave, “UPS” would be to unpaid sick leave and “Ann” would be annual leave.

27. The applicant in her written submissions otherwise referred to the evidence which established that she did not work in August and September 2018.

ORAL EVIDENCE

28. The applicant gave short oral evidence. She stated that she was aware that she could not receive her full wages and weekly compensation. She said that she was unaware of the payslips for the period from 1 August 2018 to 30 September 2018 and that she provided these documents, as part of various material, to her solicitor.

29. It was not put to the applicant in cross-examination that she knew she was obtaining a benefit she was not entitled to or was otherwise aware that she would be required to repay money back to the respondent for the period from 15 August 2018 to 11 September 2018. It was not put to the applicant that she had been paid her salary during the relevant period.

SUBSEQUENT DIRECTION

30. The respondent’s counsel took issue with a portion of the applicant’s submissions concerning the respondent deducting sick leave in excess of the agreed weekly compensation. The respondent’s objection to this submission was based on the failure by the applicant to plead this in the Miscellaneous Application.

31. That issue was clearly raised in the parties’ correspondence. Accordingly, to cure any perceived prejudice to the respondent, I granted leave to the parties to make further submissions on that part of the dispute as follows:

    1. The Respondent is to file and serve written submissions by close of business, 27 September 2019 limited to;

        (a) The Applicant’s application to rely on its correspondence that the Respondent is seeking to deduct sick leave payments in excess of the agreed weekly compensation figure from the settlement (Miscellaneous Application, pg 3-4); and

        (b) That it can deduct from the settlement or otherwise seek to recredit payments of sick leave in excess of the amount of weekly compensation.

    2. The Applicant is to file and serve written submissions in reply by close of business, 4 October 2019.

32. The parties filed written submissions outside the scope of the direction and largely directed to the issue of whether the applicant was paid salary in the disputed period.

33. The respondent submitted that the Schedule “has the potential to be misleading” in respect of what was paid. That submission was made despite the fact that the Schedule was prepared by the respondent’s solicitors as a summary of how much and why it was entitled to credit against the Consent Orders.

34. The respondent made no submissions on the accuracy of the Schedule of Leave. It was that document that was the thrust of the applicant’s submissions, both at the arbitration hearing and in subsequent written submissions.

35. The respondent further submitted:

> "It is of course obvious that both the Applicant and her Legal Advisors when they filed the initial ARD would or should have been aware that during the period claimed the Applicant received part of that period [by] sick pay or wages."

36. As I previously noted, the proposition that the applicant was aware that she was paid a salary during the period was not put to the applicant during cross-examination. When asked about this at the arbitration hearing, the respondent's counsel stated that he could not put this proposition to the applicant because she stated in her evidence that she was unaware of what was contained in the payslips. Despite making that concession at the hearing, the respondent's counsel then asserted in the written submission that she "would or should have been aware" of this fact.

REASONS

37. The principle issue in dispute relates to the respondent's assertion that the applicant was paid wages for the period from 15 August 2018 to 11 September 2018 (the relevant period) and whether the respondent could have credit for this payment pursuant to s 50 of the 1987 Act.

38. The respondent has also asserted in subsequent written submissions that the applicant was or should have been aware that she received wages during the relevant period.

39. The applicant's counsel asserted in oral submissions, and it was agreed by the respondent's solicitor at the telephone conference, that the issue that the applicant was paid wages during the relevant period was not raised during the settlement discussions. In oral submissions, the respondent's counsel stated that he could not remember whether it was or was not raised.

40. I note that at the telephone conference the respondent's solicitor accepted that the issue of payment for the relevant period was not raised with or by her counsel as she was unaware of it at that time.

41. The first correspondence raising this issue was on 27 May 2018. Accordingly, I find that the suggestion that the applicant was paid salary during the relevant period was not mentioned between the parties at or prior to the signing of the terms of settlement.

42. Leave was granted to the respondent to cross-examine the applicant on the issue of knowledge of the pay during the relevant period. The respondent 's counsel did not put to the applicant that she knew she had been paid for the relevant period when it clearly had the opportunity to make that suggestion.

43. Having seen the applicant in the witness box, I accept that she did not turn her mind to this issue and otherwise examine the payslips for the relevant period. For reasons subsequently provided, I otherwise do not accept that the applicant was paid wages during the relevant period.

44. The respondent's written submission that the applicant and/or her legal advisers should have been aware that she was paid wages during the relevant period because the payslips were before the Commission seems ironic in circumstances where the respondent and its legal advisers were also unaware at that time and did not raise the issue.

45. I also observe that the wages schedule filed by the respondent in the prior proceedings did not make that assertion although the wages schedule in the present proceedings has now raised this issue.[7]

46. The standard of presumed knowledge asserted by the respondent against the applicant and her legal advisers appears far higher than the standard that it seems to have imposed on itself.

47. There is otherwise a dispute as to whether the applicant was paid her salary during the relevant period.

48. The only basis relied upon by the respondent in supporting its assertion that the applicant was paid wages during the relevant period are the payslips for August and September 2018. These payslips were created on 14 August 2018 and 14 September 2018.

49. The reasonable inference from the dates of the payslips is that they show an actual statement as to what has occurred in the first half of the month and a forecast of what is expected to occur for the second half of the month.

50. The August payslip, issued on 14 August 2018, indicates that the applicant was paid sick leave from 1 August 2018 to 15 August 2018 and salary for the balance of the month. I agree with the applicant's submission where she submitted:[8]

> "It is clear from the payslips that the respondent pays its employees in approximately the middle of each month (14 August and 14 September). It is patently clear that the first half of the month is paid in arrears and the (approximately) second half in advance and on the basis that the employee continues to earn salary (i.e. pay for attending work). Adjustments are made later if it turns out that the employee has not worked the second half of the month."

51. The August payslip is contrasted with the precise details contained in the Schedule of Leave which indicates that the applicant was paid annual leave from 24 August 2018 to 25 September 2018 and then either annual leave or leave without pay.

52. The September payslip specifies that the applicant was paid 76 hours of annual leave and 76 hours of salary. The payslip does not specify when the annual leave in the September payslip was paid during that month.

53. As I noted, the Schedule of Leave specifies that the applicant was on annual leave until 25 September 2018, then had some leave without pay and annual leave periods for the balance of the month.

54. Consistent with the fact that the payslip is dated 14 September 2018, and that the Schedule of Leave states that the applicant was paid annual leave until 25 September 2018, the likely inference from the September payslip is that the reference to "annual leave" is for the first half of the month and that it is forecast that the applicant would be paid salary for the balance of the month.

55. The respondent could not explain in its oral submissions at the arbitration hearing the precise details contained within the Schedule of Leave which was contrary to its case. It did not address this document in its written submissions.

[7] Respondent's late Application dated 23 August 2018, p 279
[8] Applicant's written submission, paragraph 8

56. The applicant otherwise submitted that she was absent from work from 1 August 2018. That submission accords with the applicant's statement dated 14 September 2018 and the provision of WorkCover certificates during this period[9] that the applicant had no current work capacity. That uncontradicted evidence means that it is highly unlikely that the applicant worked in that period and unlikely that the applicant was paid her salary, other than by other benefits such as sick or annual leave.
57. This submission supports the accuracy of the Schedule of Leave.

58. It doesn't matter, as the respondent subsequently submitted, that the document referred to in these reasons as the Schedule was "misleading". The applicant's principle contention, to which the respondent made no adequate response, was that the Schedule of Leave was accurate.

59. For these reasons, I accept the precise details recorded in the Schedule of Leave where they are different from the forecast figures contained in the payslips.

60. I am satisfied that the respondent did not pay salary for a portion of the relevant period, that is for the period from 24 August 2018 to 11 September 2018.

61. In written submissions, the respondent submitted that the applicant and her legal advisers "would or should have been aware that during this period claimed the Applicant received during part of that period sick pay or wages". That submission is apparently based on the August and September payslips.

62. It was common ground that the applicant and her legal advisers were aware of the potential issue of re-creditation of sick leave pursuant to s 50 of the 1987 Act.

63. Section 50(3) of the 1987 Act relevantly provides:

> "(3) If a worker, in respect of any period of incapacity for work in respect of which the employer is liable to pay compensation to the worker, is paid wages for sick leave by the employer and either an award is made afterwards for the payment of compensation to the worker in respect of that period or the employer agrees afterwards that compensation be paid to the worker in respect of that period:
>
> (a) the employer's liability to pay compensation in respect of that period shall, to the extent of the wages paid, be deemed to have been satisfied by that payment, and
>
> (b) the wages shall, to the extent of the compensation, be deemed for the purposes of subsections (4) and (5) to have been paid as compensation and not as wages."

64. In these reasons, I have used the term "credit" to reflect the wording in s 50(3)(a), that is "to the extent of the wages paid, be deemed to have been satisfied by that payment".

65. As previously noted, the respondent's counsel did not put the proposition to the applicant that she was aware that wages had been paid in the relevant period even though this was the precise reason why cross-examination was allowed.

66. In relation to the proposition that the applicant and her legal advisers "should have been aware", this same knowledge appeared to escape the attention of both the respondent and its legal advisers.

[9] See WorkCover Certificates dated 1 August 2018 and 15 August 2018

67. The signed terms of settlement, presumably drafted by the respondent in accordance with the common practice in the Commission, did not state that it was relying on salary paid during this period and did not provide a notation or an order that there would be credit for payments made.

68. In my view, it is unreasonable to assume that that the applicant would appreciate that, apart from the deduction of sick leave payments, she would have further payments deducted during the relevant period in addition to the paid sick leave.

69. For the reasons previously provided, I otherwise do not accept that the applicant was paid salary during the relevant period.

70. The applicant also contended that the respondent was seeking a credit on sick leave paid above the amount of the agreed weekly compensation order. The applicant referred to the principles discussed in *Bellamy v Albury City Council*[10] (*Bellamy*) and submitted that "no credit is given for any excess of sick leave payments over and above compensation payable in respect of any period where compensation is payable."[11]

71. In *Bellamy* Nelson J stated:[12]

> "On a mere construction of the words used in section 50(3) the employer's credit can only be for the actual liability to pay compensation during the period which the sick leave was paid. The credit therefore is for the actual liability to pay compensation of $21,532.80 and not for a greater sum which would give the employer credit for sick leave to be deducted from the award outside the period during which sick leave payments were made."

72. In *Bellamy* Neilson J made declarations reflecting the correct amount that the employer was entitled to claim as a credit against the award of the Compensation Court.

73. The applicant submitted that the respondent was attempting to recredit the amount of $191.30 per week for the period from 1 August 2018 to 14 August 2018 in excess of the compensation agreed to be paid during that period.

74. The sick leave paid to the applicant during this period was $2,319.80 per week. The weekly amount of compensation was agreed at $2,128.50.

75. The respondent sought a further deduction of $191.30 in accordance with the Schedule, that is the difference between $2,319.80 and $2,128.50.[13]

76. I agree with the applicant's submission that the respondent has incorrectly sought a credit in the sum of $191.30 for those two weeks in the sum totalling $382.60. For the avoidance of any doubt, the maximum amount for which the respondent can claim credit in any week is the sum of $2,128.50.

77. I also find that, during the disputed period the applicant was not paid a salary or wage within the meaning of s 50 of the 1987 Act. During August and September 2018, the applicant was paid the following monies:

1.8.18 – 15.8.18	Sick leave	83.6 hours
16.8.18 – 22.8.18	Sick leave	38.0 hours

[10] (1997) 15 NSWCCR 534
[11] Applicant's written submissions, paragraph 2
[12] at 536
[13] Reply, p 27

23.08.2018 – 23.08.2018	Unpaid sick leave	1.8742 hours
23/08/2018 – 23.08.2018	Sick leave	5.7258 hours
24.08.2018 – 24.08.2018	Unpaid sick leave	1.5823 hours
24.08.2018 – 24.08.2018	Sick leave	1.4577 hours
24.08.2018 – 24.08.2018	Annual leave	4.56 hours
27.08.2018 – 14.09.2019	Annual leave	114.00 hours
17.09.2019 – 25.09.2019	Annual leave	53.20 hours

(26.09.2019 – 30.09.2019 – various leave without pay and annual leave)

78. Sick leave was paid from 1 August 2018 to 22 August 2018, for 5.7258 hours on 23 August 2018 and for 1.4577 hours on 24 August 2018. Accordingly, the respondent's entitlement to credit for sick leave paid is for the period from 1 August 2018 to 24 August 2018.

79. The respondent is entitled to credit for the sick leave paid, limited to a maximum of the compensation payable for the same period. The sick leave that can be credited, is limited to the amount of the weekly compensation order for the period 1 August 2018 to 24 August 2018. The respondent has no entitlement to seek credit for the period from when annual leave commenced on 24 August 2018.

80. Consistent with what Neilson J did in *Bellamy*, I make findings in accordance with the amounts for which the respondent can claim credit pursuant to s 50.

81. At the arbitration hearing the applicant also pursued its application seeking an order rescinding the Consent Orders in light of the respondent's refusal to properly pay the settlement monies.

82. I refuse that request for the following reasons.

83. The objectives of the system include the provision of an efficient and effective workers compensation system that is fair, affordable and financially viable.[14] The re-litigation of settled matters would impose an inefficient drain on a system designed to deal quickly and efficiently with workers compensation claims.

84. My decision to refuse the applicant's application in no way reflects on the merit of the respondent's position. Indeed, it is precisely for the reason that the respondent's position is incorrect that I decline the applicant's request to set aside the Consent Orders. The applicant's entitlements are properly protected because I have set out my findings which clarify her entitlement under the Consent Orders and the limit of the respondent's credit.

85. I otherwise observe that if there was merit in the respondent's position that it was entitled to deduct the amount of salary it alleged was paid, then I would have considered setting aside the Consent Orders because the right to deduct these monies was clearly not contemplated by the parties when they entered into the agreement. In *Atomic Steel Constructions Pty Ltd v Tedeschi*[15] Roche DP discussed in detail the type of settlements where the Commission may intervene to set aside consent orders.[16]

[14] Section 3 of the 1998 Act
[15] [2013] NSWWCCPD 33
[16] At [83]-[111]

86. My present findings should conclude the present dispute. The applicant appreciated that sick leave paid during the period covered by the Consent Orders was potentially repayable. The respondent's entitlement to credit is limited to the sick leave paid up to the maximum of the weekly compensation order. My finding only reflects what was contemplated by the applicant and her legal advisers. In those circumstances, there has been no unfairness visited upon the applicant.

87. The applicant otherwise requested that the respondent's conduct, as a self-insurer, be referred to "SIRA as being not fit to be a self-insurer".[17]

88. The applicant's request is recorded. I observe that my reasons indicate that the respondent's position in maintaining its argument, particularly when the Schedule of Leave was specifically brought to its attention in the present proceedings, is incorrect.

89. My orders are set out in the Certificate of Determination.

[17] Applicant's written submissions, paragraph 38