

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 712/20
Applicant: Robin Lynne Craig
Respondent: Secretary, Department of Education
Date of Determination: 10 June 2020
Citation: [2020] NSWCC 192

The Commission determines:

Findings

1. The applicant suffered injury within the meaning of s 4(b)(ii) of the *Workers Compensation Act 1987* (1987 Act) deemed to have occurred on 10 June 2014.
2. The applicant had no current work capacity from 11 June 2014 to 9 December 2016.

Orders

3. The respondent pays the applicant weekly compensation as follows:
 - (a) \$1320.40 per week from 11 June 2014 to 9 September 2014 pursuant to s 36 of the 1987 Act; and
 - (b) \$1,111.91 per week from 10 September 2014 to 9 December 2016 pursuant to s 37 of the 1987 Act.
4. The respondent has credit, if otherwise entitled, for payments made during this period.
5. The respondent pays the applicant's s 60 expenses on the basis of a general order.
6. The claim is remitted to the Registrar for referral to an Approved Medical Specialist as follows:

Date of Injury: 10 June 2014 (deemed)

Body parts: Psychological injury

Method of Assessment: Whole person impairment

7. The following documents are referred to the Approved Medical Specialist:
 - (a) Application to Resolve a Dispute and attachments;
 - (b) Reply and attachments;

- (c) Application to Admit Late Documents; and
- (d) These Reasons.

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.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

Background

1. Ms Robin Craig (the applicant) was employed by the Secretary, Department of Education (the respondent).
2. This is a claim for weekly compensation, medical expenses and permanent impairment compensation pursuant to the provisions of the *Workers Compensation Act 1987* (1987 Act) based on an allegation of psychological injury caused by bullying and harassment deemed to have occurred on 10 June 2014.
3. The claim made the typical allegations in a psychological case of a worker being “bullied and harassed”. This unfortunate phrase is often amended to one involving that the worker perceived that they were “bullied and harassed” rather than being able to prove that they were the subject of bullying and harassment. The present case is just another example of the rather unfortunate pleading.
4. On this background, I will not make the normal obligatory pretence that the parties made any attempts to conciliate in the matter. As is evident from these lengthy Reasons, the matter was the subject of serious contest over a number of hearing days.
5. The matter was listed for arbitration hearing on 3 April 2020¹, 22 April 2020² and on 29 May 2020. Mr Hallion of counsel appeared for the applicant and Dr Lucy of counsel appeared for the respondent. The parties also filed lengthy written submissions in reply following the second hearing day.
6. The respondent filed an objection to the applicant’s lengthy written submissions in reply. To prevent any prejudice the respondent was granted leave to file further written submissions and orally address these written submissions. The further oral submissions occurred on 29 May 2020.
7. I am required to provide a “brief statement” of reasons³ noting that submissions went over three days and were the subject of lengthy written submissions. The matter was unnecessarily complicated by irrelevant detailed submissions by the applicant on motives by the insurer, and detailed submissions by both parties on whether the actions were “reasonable” when no s 11A defence had been raised.

Evidence

8. The documentation admitted into evidence without objection was:
 - (a) Application to Resolve a Dispute (Application);
 - (b) Reply; and
 - (c) Application to Admit Late Documents dated 12 March 2020 (Late Application).

¹ *Craig v Secretary, Department of Education*, 3 April 2020 (T1)

² *Craig v Secretary, Department of Education*, 22 April 2020 (T2)

³ Section 294(2) of the 1998 Act

9. There was no application by either party to adduce oral evidence or to cross-examine the worker. Counsel were advised during the hearing that if they did not address submissions on material then I was not going to refer to it.⁴ Noting that observation, when the matter was relisted on the third hearing day I drew counsels' attention to what I considered to be relevant material so that they had an opportunity to respond and make any relevant submission.⁵

Issues/Agreements

10. The issue identified by the respondent was whether the applicant suffered injury within the meaning of s 4(b) of the 1987 Act.⁶ It identified the relevant notice issued pursuant to s 78 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) as that dated 2 April 2019.⁷
11. Whilst not articulated in the various notices, the respondent contended during the hearing that the applicant could not establish the underlying facts said to be causative of psychological injury. It also contended that the applicant's psychological condition was pre-existing and otherwise aggravated by non-work causes, specifically an unrelated physical condition. In these circumstances issues arose as to whether the applicant had established that the employment was the main contributing factor to either the cause or aggravation of the applicant's psychological condition within the meaning of s 4(b) of the 1987 Act.
12. The claim for weekly compensation was amended to cover the period from 11 June 2014 to 10 December 2016. The respondent accepted that if the applicant established injury, the deemed date was as pleaded, that is 10 June 2014.⁸ The applicant also claimed a general order for medical expenses and a referral to an Approved Medical Specialist (AMS) for an assessment pursuant to s 66 of the 1987 Act.⁹
13. In her written submissions in reply the applicant accepted the pre-injury average weekly earnings (PIAWE) proposed by the respondent of \$1,389.89.¹⁰
14. The respondent accepted that the applicant had no current work capacity but asserted that "the only issue is the causation, what caused the incapacity".¹¹

EVIDENCE

Witness statements

Applicant

15. The applicant provided a statement dated 28 October 2014.¹² After setting out her extensive work experience, the applicant stated that she initially worked at Elderslie High School in the early 1990's, initially on a casual basis, then on a permanent basis as an establishment teacher.
16. In 1989 the applicant was diagnosed with brittle diabetes. She stated that this condition did not stop her working as a visual arts teacher. After 11 years of teaching at the school the applicant was sent to an examination with a doctor at the request of Ms Meredith Fawcett (the Principal). The Principal apparently made "false claims" to the doctor and ignored his recommendations, imposing a tougher Return to Work program.

⁴ T1, p 14

⁵ *Craig v Secretary, Department of Education*, 29 May 2020

⁶ T1, p 1

⁷ T1, p 2

⁸ T1, p 2

⁹ T1, p 41

¹⁰ Applicant's written submissions in reply, paragraph 77

¹¹ T1, pp 37-38

¹² Application, p 1

17. It was asserted that the medical appointment was arranged after the applicant challenged the manner in which the Principal was bullying staff and a complaint was made to the local member of Parliament concerning the Principal's conduct.
18. The applicant asserted that the changes imposed on her in the Return to Work plan adversely affected her health and caused her embarrassment in front of the school children.¹³ Examples were provided by the applicant in her statement. Another change was not being allowed to go to her car and inject insulin and being directed to go to a "wet and mouldy room".¹⁴
19. The applicant said that she has been assaulted and harassed several times by a group of year 9 and 10 boys while on playground duty "with little or no action being taken at the school level against the boys by the schools executive".¹⁵ The applicant witnessed two year 12 girls injured by this group.
20. The applicant attended her general practitioner following the assault, and this was followed by a further three assaults.¹⁶
21. The applicant stated that she was "pulled out of school on the 10th of June 2014 by WHS without pay and on short notice" and informed that she would need to use her leave entitlements and could not return to work until both she and her doctor signed off on the Return to Work plan.¹⁷
22. The applicant provided another statement also dated 28 October 2014 which repeated portions of the other statement. There was also reference to requirements to work other than in accordance with the Return to Work plan such as being required to undertake recess playground duty when the doctor stated that this should not occur.¹⁸
23. The applicant stated that she suffered depression, stress and anxiety from the constant bullying from the Principal.
24. The applicant prepared a 27-page statement dated 22 January 2020.¹⁹ As part of her extensive curriculum vitae the applicant then stated that she was employed on a casual basis by the NSW Department of Education in 1991 for 10 years as a casual teacher.²⁰
25. In 1998 the applicant was appointed to Eagle Vale High School in Industrial Technology.²¹ During this period the applicant was exposed to student violence and criminal behaviours and became "genuinely very worried for [her] safety and wellbeing, anxious and distressed."²²
26. The applicant stated that students levelled emotional and violent physical abuses and assaults at her.²³
27. The applicant stated that when she was initially appointed, she was known as a retainer, and felt disheartened and distressed. She stated that the Headteacher of Industrial Technology complained about her appointment and she felt unwelcome by her fellow staff members.

¹³ Application, p 2

¹⁴ Application, p 2, paragraph 17

¹⁵ Application, p 2, paragraph 18

¹⁶ Application, p 3, paragraph 20

¹⁷ Application, p 3, paragraph 22

¹⁸ Application, p 4.8

¹⁹ Application, p 6

²⁰ Application, p 7

²¹ Application, p 8

²² Application, p 8

²³ Application, p 8, paragraph 7

28. The applicant worked at Eagle Vale for two years when she was exposed to violent challenging behaviours of the students. One example was when a student threatened to “slam his ... fists down ... [the] applicant’s throat.”²⁴ The applicant took out an apprehended violence order against that student.
29. The applicant was then granted a compassionate transfer to Robert Townshead High School which was in close proximity to the former school. The applicant experienced anxiety at this school and violent incidents and lock-downs were regular.²⁵ On a number of occasions the applicant disposed of used heroin syringes in the student toilets.
30. The applicant witnessed a student throwing rocks at staff cars when they left the school grounds and informed him that she would report the incident. The following day the applicant’s car was smashed.²⁶
31. The applicant was then transferred to Elderslie High School. She said she was depressed by how the employer “mishandled my nominated transfer”.²⁷
32. On the day when Elderslie High School held its orientation day, a student destroyed the applicant’s new motor vehicle. The applicant stated that she was “mentally devastated, felt sick, powerless and distraught.”²⁸ The applicant attended her treating doctor, informed him of the work incident and had awful heart palpitations. She felt “depressed and anxious and fearful of suffering a heart attack.”
33. The applicant described the type of behaviour she was exposed to at the school in the following terms:²⁹

“Every day I felt a relentless fear and nervousness because my work environment and working conditions were not safe; Students swore profanities at me stating *“you are nothing but a fucking slut”, a “cunt”, a “whore”*. Dangerous projectiles were thrown at me multiple times whilst on playground duty and in the classroom, they stole my personal belongings (computer, diabetic food, teaching aids); and would state to me *“go on miss, report it miss, they won’t do anything about it”*. I believe all this ill-treatment way beyond the capacity of any professional of normal fortitude. Plus, as I am a small woman of petite stature, I became a target of violent, big- strong and cruel teenage male mistreatment. My horse slaughtered, my property invaded, and my vehicle destroyed – all needless, all out of my control and all too much for anyone of ordinary resilience to bear.

Additionally, students repeatedly locked my classroom door while I was teaching classes. Collected rubbish bins from around the school and stacked them against my classroom door. Blocking my entrance into my classroom after I had completed my playground duties. Would stand outside my classroom harassing and mocking me while I was teaching my classes which increased my distress and fear for my safety. I was assaulted in the playground by the group of uncontrolled violent teenage boys; they threw hard cricket balls at me with great force with several of them hitting me. A work colleague Ms Gulley took me to a doctor’s office across the road from the school. Battered and bruised the doctor stated to me my blood sugars were dangerously high- over 30 and required I be hospitalised

²⁴ Application, p 11, paragraph 18

²⁵ Application, p 13, paragraph 24

²⁶ Application, p 13, paragraphs 25-26

²⁷ Application, p 15, paragraph 31

²⁸ Application, p 16, paragraph 36

²⁹ Application, p 17, paragraphs 40-42

I did have a few days off work to recover and to stabilise my blood sugars. I became very depressed, super nervous and felt that I may not return to the teaching profession ever again; an accumulation of horrendous work incidents and injuries left me miserable and worried. Extremely hypervigilant, I wasn't sleeping well and when I did; I'd wake up feeling like I had a knot in my stomach and had not slept at all. My employer provided no treatment support, no training, just fobbed me off- there were no responsible behaviour plans for these teenagers; teenagers defiant of all authority even their parents, community leaders and the police.”

34. The applicant provided evidence of her immediate head undermining her in relation to completion of the school reports which she was “extremely distressed about”.³⁰
35. The applicant stated that she refused to sign the Return to Work plan because the conditions in the document “were discriminative and dangerous to my life”.³¹ The allocation of recess and lunch playground duties were inconsistent with the opinion expressed by Dr Cook. She stated that the administrator who allocated the playground duties was “angry” with her and “threw things”³².
36. The applicant stated that her state and overall health deteriorated as a result of the Principal’s “cruel adverse behaviours”. She said that this behaviour commenced after she saw the Principal bully a teacher and then threatened to report the Principal.³³
37. The applicant and a number of other teachers reported the Principal to her local member of Parliament. She said that the Principal screamed at her about a month later in relation to the report.³⁴
38. The applicant stated:³⁵

“The constant unrelenting workplace stressors of student assaults and work manager abuses, plus the toxic work environment causing me to be severely depressed, anxious and restless. Also, despondent because I held grave concern for my job security; all this overwhelming and mentally fatiguing me. I did experience sleeplessness. I'd wake up through the night snapping my teeth together.”
39. The applicant stated that she worked with Ivan Milat for approximately four years when she was employed as a laboratory technician. She said that she did not believe that her condition was associated with that Court case.

Daniel Benzie

40. Mr Daniel Benzie provided a detailed statement dated 10 October 2012³⁶ which addressed ongoing harassment and neglect towards him. That statement was a formal complaint against another teacher, not mentioned in the current proceedings.
41. Mr Benzie also provided a “Complaint Response”.³⁷ The detailed complaint relates to perceptions by Mr Benzie and does not appear to be related to the issues in the present case.

³⁰ Application, pp 19-20, paragraphs 47-52

³¹ Application, p 20, paragraph 53

³² Application, p 22, paragraph 58

³³ Application, p 23, paragraph 60

³⁴ Application, p 23, paragraph 62

³⁵ Application, p 25, paragraph 69

³⁶ Application, p 83

³⁷ Application, p 92

42. A detailed letter from Daniel Benzie undated to Mr Peter Smith³⁸ detailed what he perceived to be intimidating and threatening conduct by the Principal towards him.

*Gordon Clapham*³⁹

43. Mr Gordon Clapham provided a letter dated 21 November 2012⁴⁰ commenting on the referral of the applicant to a medical examination. The teacher stated that the applicant managed her health condition within the demands of the school environment and did not “run into objects” as was asserted by the Principal. He felt the applicant was capable and completed the duties she was charged with in an effective and professional way.
44. In a letter dated 29 October 2012, Ms Gulley and Mr Baylis stated that the applicant was an excellent visual arts teacher in the subject and a talented artist in her own right. The teachers stated that they had never complained of having to give periods to the applicant for her visual arts load.

Steven Esler

45. Mr Steven Esler was the Principal at Elderslie High School from October 1999 until April 2009 and provided a letter dated 15 February 2013.⁴¹ He stated that the applicant taught Visual Arts to Year 7 and 8 students as well as normal supervisory duties in the playground, senior studies, sport and in the morning roll/reading session.
46. Mr Esler stated that the applicant’s students produced outstanding results and that she had a gift for transferring her extensive art knowledge to young students. He also noted that the applicant undertook the establishment and supervision of an equestrian club for some years and was involved in after hours and weekend supervision of participating students at various carnivals.
47. Mr Esler noted that the applicant suffered from diabetes and while her health was somewhat fragile, this condition gave her empathy for students who had diabetes and she campaigned for their interests particularly with regard to an injection space and consideration. Mr Esler felt that the applicant had a strong sense of social justice and was a caring person with a generous spirit.

Criselle Gulley

48. Ms Criselle Gulley provided a letter to a local member of Parliament dated 25 July 2013.⁴² Ms Gully stated that the Applicant had experienced an enormous amount of continual pressure and harassment from the Principal over the past few years and this had continued to cause the applicant “extreme and unnecessary stress”. Ms Gully noted that the applicant was a dedicated teacher and obtained a high standard in her teaching and developed a good rapport with her students. The letter generally discussed the unfairness that the Principal had required the applicant to attend a medical appointment at either Parramatta or Wollongong which was too far for her to travel.
49. Ms Gulley noted that the applicant had been accused of bumping into things at school and testified that this did not occur. She stated that the applicant was an excellent teacher who deserved to be treated with respect and had been targeted from a personal level from the top executive member.

³⁸ Application, p 106

³⁹ Spelling of surname in the Application is unclear

⁴⁰ Application, p 97

⁴¹ Application, p 99

⁴² Application, pp 100-101

Joint letter

50. A letter signed by Mr Daniel Benzie, Dr Celia Finnie and the applicant dated 9 August 2013⁴³ was a complaint to the Acting Director of the Campbelltown Office, Public Schools that there was “serious bullying which is occurring at the school under the leadership of Mrs Meredith Fawcett”. It was alleged that the Principal was exercising a leadership style centred on a culture of bullying and harassment whereby it filtered down to various staff members who were involved on spying on and bullying on behalf of the Principal. It was asserted that the leadership was categorised by transforming small incidents into large full-blown complaints involving yelling at staff members in her office from the door, ignoring staff members and treating the welfare of the staff with cold disinterest.
51. It was asserted that recently the Principal had deprived staff of the right to speak at staff meetings as part of general business and that the Principal lied to the Department in respect of various issues.

Dr Celia Finnie

52. Dr Celia Finnie provided a letter dated 12 January 2014 directed to Senator Rhiannon.⁴⁴ Dr Finnie set out the nature of workplace bullying and lack of professional support directed at her where she felt unsupported leading to depression. She stated that a number of staff at the school had been bullied under the leadership of the Principal. Dr Finnie stated that during “Term 2 this year” the applicant had contacted her saying that she was suffering from the bullying and needed support.⁴⁵
53. I note that the “Term 2” reference could only mean 2013 as the letter is dated January 2014.
54. Dr Finnie noted that the applicant, Daniel Benzie and other staff were constantly being handed allegations in written form for minor things such as being late for playground duty and believed that this was due to the damage her workers compensation case had done to the Principal. Dr Finnie thought that the nature of the bullying at the school would cause someone to end up taking their own life.

Michael Burke

55. Mr Michael Burke provided a statement dated 22 November 2016.⁴⁶ Mr Burke stated that the applicant was already employed at Elderslie High School as a visual arts teacher when he commenced at the school in 2003. He said he was the applicant’s head teacher until she left in approximately mid-2014. He noted that Ms Fawcett became the Principal of Elderslie High School in 2010 and over the following two years there was a restructure in the teaching timetable to provide more time in teaching a mandatory technology course. Mr Burke recalled a Return to Work plan involving the applicant when she sustained a shoulder injury.
56. In December 2013 Mr Burke was asked by Jennifer Lawrence, Deputy Principal to provide details of the incident that had been reported involving the applicant and a year 9 student.
57. A copy of the report provided by Mr Burke is included in the reply.⁴⁷ That report involved a student using “aggressive language” towards the applicant and the applicant using a raised voice. A teacher was required to separate the two.

⁴³ Application, pp 104-105

⁴⁴ Application, p 119

⁴⁵ Application, p 120

⁴⁶ Reply, p 174

⁴⁷ Reply, p 178

58. The student admitted to using aggressive language to the applicant purportedly in response to being called a “bloody idiot”. He also agreed to later approaching the applicant in the Art Quad “when he became angry, that he was standing very close to her and that they both were using raised voices”.⁴⁸
59. There is also a reference to the student having “raised his fist”.⁴⁹
60. Mr Burke also provided a copy of an undated report provided to him by Andrew Mills in relation to concerns between the applicant and another student.⁵⁰ The report by Mr Mills indicated a complaint by the student that he felt victimised by the applicant. The applicant’s response, as recorded by Mr Mills, was that it was “all lies”.
61. There is also a mention in this statement that Mr Burke reported that the applicant was “late for her duty” to which the applicant also said that “it was all lies and that she will be speaking with him”.
62. Mr Burke also provided what he described as a timeline of events beginning in May 2014 relating to incidents involving the applicant not completing reports correction as required as part of her role as a teacher.⁵¹ Mr Burke stated that the timeline is one example of the ongoing concerns he had with the applicant’s performance since becoming her supervisor in 2003.⁵²
63. Mr Burke attended a number of meetings with the applicant as her support person with the Principal between 2013 and June 2014. He stated:⁵³

“During these meetings I observed Meredith to be professional and supportive of Robyn in relation to the specifics to be discussed at the meeting, and she always treated Robyn with respect and spoke calmly to all persons present, including Robyn.”

Meredith Fawcett

64. Ms Meredith Fawcett provided a statement dated 23 November 2016.⁵⁴ She stated she had been the Principal at Elderslie High School since Term 2, 2009 and prior to that, Principal at Granville South High School. Elderslie High School was a large comprehensive school from Year 7 to Year 12 with approximately 970 students, 67 teaching staff and approximately 17 administrative and support staff. She noted that the applicant was already employed as a teacher when she commenced working there in 2009. She said that the applicant was “*Above establishment staff*” at the time which meant that additional or excess staff to the school’s staffing entitlement. The applicant’s timetable was adjusted in 2010 and she continued to teach Visual Arts.
65. The applicant sustained an injury to her shoulder in February 2010 and ceased working for a period of time until she gradually returned to work in approximately July/August 2010 on a Return to Work program. During 2010 and 2011 Ms Fawcett spoke to the applicant regarding her Return to Work program for her shoulder injury. She said at no time during these meetings did she scream or yell or reprimand anybody and that she did not behave like this.⁵⁵

⁴⁸ Reply, p 178

⁴⁹ Reply, p 178.9

⁵⁰ Reply, p 179

⁵¹ The timeline is at Reply, p 180-181

⁵² Reply, p 176, paragraph 16

⁵³ Reply, p 176, paragraph 18

⁵⁴ Reply, p 258

⁵⁵ Reply, p 259, paragraph 15

66. Ms Fawcett said that in the second half of 2011 she started to receive verbal complaints from Year 12 students about the applicant's teaching style. The Principal arranged for either the Deputy Principal or another teacher to handle these issues by speaking to the applicant and the students. She said she did not instruct or encourage students to make complaints about the applicant.
67. Ms Fawcett spoke to the applicant in 2012 about reported restrictions regarding her diabetes and indicated at that time she would involve an Injury Management Advisor.⁵⁶ She said she did this because the applicant failed to provide any medical evidence regarding these restrictions. Meetings occurred throughout 2012 and at no time did she yell or reprimand the Welfare Officer or anyone else and that "there was no complaint made to her by the applicant about my alleged screaming, yelling or reprimanding at this stage".
68. In 2012, the Principal received verbal complaints from parents and teachers from different year groups regarding the applicant's teaching, about her conduct and about the applicant talking to the class about her own personal health and experiences. Examples included that the applicant had diabetes, had been sick and that she had told students that she had been in contact with Ivan Milat.⁵⁷
69. An appointment was arranged for the applicant to see an independent medical examiner in November 2012 regarding the applicant's restrictions for her diabetes. Ms Fawcett said that in August 2012 she received feedback from staff and from the applicant regarding a number of issues at the school involving the applicant. She became concerned about the applicant's reported conduct and behaviour.
70. On 21 August 2012, Ms Fawcett met with the applicant, her support person and her own support person during which time she discussed the applicant's inappropriate conduct and behaviour. She advised the applicant to "adjust her conduct and behaviour when dealing with staff and students".⁵⁸
71. In June 2013, Ms Fawcett received several concerns from staff at the school about the applicant's failure to attend her scheduled playground duties or her arriving late for playground duties.⁵⁹ The applicant was then directed to attend her playground duties punctually.
72. In 2013 and 2014, the Principal received a number of complaints from parents about the applicant's conduct and behaviour towards students.⁶⁰ These complaints were referred to EPAC for appropriate action.
73. A Return to Work plan was developed by Elizabeth Cabrera based on the recommendations of the doctor. A Return to Work plan is dated 1 March 2014 which the applicant refused to sign. The Principal stated that she did not say to the applicant if she was unable to perform her duties in accordance with her Return to Work plan, she would be retired on medical grounds.
74. In 2014 at the school swimming carnival, Ms Fawcett asked the staff at the swimming centre for a suitable area for the applicant to take her medication. She was then advised by the staff that the applicant should use the First Aid Room as it was a private area. The applicant was advised of the arrangements and she was not advised that there were any problems with the room.

⁵⁶ Reply, p 260, paragraph 19

⁵⁷ Reply, p 260,

⁵⁸ Reply, p 260, paragraph 24

⁵⁹ Reply, p 261, paragraph 27

⁶⁰ Reply, p 261, paragraph 29

75. The applicant never reported to the Principal any assaults by students although she was aware that the applicant had reported such incidents to Jennifer Lawrence who took appropriate action.
76. The applicant ceased work in June or July 2014 and she received a WorkCover certificate regarding incapacity from the applicant on 16 October 2014. Ms Fawcett noted that the applicant continued to refuse to sign the Return to Work program which was being managed by staff in the WHS unit of the Department.
77. Ms Fawcett said that a meeting on 18 August 2014 was organised to address the applicant's concerns about the Return to Work plan. At that time the applicant was informed that "her return to work was in accordance with the IME report recommendations, however she continued to dispute this".⁶¹
78. Attached to Ms Fawcett's statement are the minutes of a meeting on 26 June 2012 attended by the applicant, her support person, the Principal and a WHS advisor. During that meeting the applicant is reported to have stated that she "would never go into any detail about the Milat matter as it still distressed her".⁶² The applicant also stated:
- "She is an Ivan Milat survivor and she still gets nervous and upset if she has to discuss it".⁶³
79. A letter from the Principal to the applicant dated 5 September 2013 addressed allegations that the applicant had been "consistently harassed and bullied" a year 9 student.⁶⁴ The letter indicated the Principal's view that there was a pattern of behaviour by the applicant towards the student. The Principal noted that the student had been removed from the roll call class in June 2013 and the information provided to her by the Deputy Principal was that there had been no issues with that student's uniform or interactions with other staff since that time. The Principal held that the applicant's conduct was inconsistent with her professional responsibilities as a teacher.⁶⁵
80. A Return to Work plan number 2 is signed by the Principal and dated 1 March 2014. The applicant did not sign the document.⁶⁶
81. The Principal prepared a report dated 19 November 2014. Relevantly the Principal then noted:⁶⁷
- (a) The applicant did not agree with the offer of suitable duties following the provision of an independent medical examination and liaison with work health and safety implementing the recommendations;
 - (b) There were "many attempts to try and resolve these issues";
 - (c) "Ms Craig was then advised that until there was agreement (including recommendations from the doctor) she would not be able to enter on duty. Ms Craig decided to take leave. This commenced on 10 June 2014";

⁶¹ Reply p 262, paragraph 36

⁶² Reply, p 268

⁶³ Reply, p 269

⁶⁴ Reply, p 291

⁶⁵ Reply, p 295

⁶⁶ Reply, p 305

⁶⁷ Reply, p 308

- (d) A further meeting occurred on 18 August 2014 and there was no agreement at that time;
- (e) A compensation claim was made on 16 October 2014.

Steven Quinn

82. Mr Steven Quinn provided a statement dated 23 November 2016.⁶⁸ Mr Quinn was employed as a temporary teacher at Elderslie High School for four years and prior to that he was the Deputy Principal from 2007 to 2012. His role as Deputy Principal at the High School included a supervisory role for the applicant as he did with all members of staff. He recalled that the applicant was not allocated certain duties such as playground duties in certain parts of the school to avoid her walking there because of her health issues.
83. In his role as Deputy Principal he was present during a few discussions between the applicant and the Principal. He noted that Ms Fawcett asked the applicant to provide medical documentation regarding the applicant's health in relation to her duties and adjustments to those duties. The applicant agreed to provide that documentation. He recalled that the Principal subsequently informed him that the applicant had not provided such documentation.⁶⁹ He recalled various discussions when the Principal reminded the applicant that she required medical documentation in order to justify adjustments to the allocation of her duties.
84. Mr Quinn stated:

“During all discussions between the Applicant and the Principal that he was present at, Meredith was flexible in accommodating Robyn's request for allocation of duties in view of her health/diabetes. During these discussions, I observed Meredith to be courteous and professional towards Robyn. I did not observe any aggressive behaviour or intimidating behaviour or bullying behaviour or harassment behaviour by Meredith towards Robyn”.

85. Mr Quinn never observed the Principal bully, harass, intimidate or yell at anyone. He noted at no point did the applicant report to him that she was assaulted by groups of students when on playground duty.

Andrew Mills

86. Mr Andrew Mills provided a statement dated 23 November 2016.⁷⁰ At that time Mr Mills said he had been a head teacher at Elderslie High School for three years and prior to that he was a classroom teacher since Term 2, 2002.
87. Mr Mills attended various staff meetings at the High School where the Principal allowed the applicant to raise questions or express views about certain matters. The Principal allowed the applicant to express her opinion even when what the applicant was raising was “not relevant to the meeting”.⁷¹ The Principal then informed the applicant that they could speak at a later date about that issue. He stated:

“At all times that I witnessed interactions between Robyn and Meredith, Meredith was courteous and professional towards Robyn. I did not witness Meredith being aggressive, bullying, harassing or intimidating Robyn”.

⁶⁸ Reply, p 326

⁶⁹ Reply, p 327, paragraph 7

⁷⁰ Reply, p 330

⁷¹ Reply p 330, paragraph 5

88. Mr Mills recorded the applicant often talked about difficulties walking from the other side of the school to the library due to her diabetes condition and he was aware that the Principal adjusted the applicant's work location so that students had to go to the applicant's room. Mr Mills noted that the applicant's complaints that she had difficulty walking across the other side of the school for the private studies was in contradiction with the applicant walking to her car in the school carpark six to eight times per day. He witnessed these occasions whilst sitting in the staff room. On occasions he observed the applicant sitting in her car in the school carpark smoking and the distance that she walked to her car was more than the distance she would have had to walk to the library.⁷²

Natalie Martin

89. Ms Natalie Martin provided a statement dated 24 November 2016.⁷³ Ms Martin has been employed as a Deputy Principal at Elderslie High School since term two in 2013. She was present and took notes at a meeting on 4 November 2013 which discussed the applicant reporting late for playground duty on 20 September 2013. During this meeting the Principal was calm and conducted herself in a professional manner towards the applicant and allowed the applicant to respond and provide information at regular intervals. She said that the Principal was not aggressive or angry during the meeting.

90. Ms Martin noted that the applicant explained that she was late for her playground duty by seven minutes because she had to take insulin for her diabetes. The applicant was advised by the Principal that she had been absent for the majority of the playground duty and not just seven minutes.

91. Ms Martin said she had attended monthly staff meetings at the High School which were attended by all staff including the Principal and the applicant. She said that during these meetings the Principal allowed the applicant and other staff to contribute to the meeting or to provide feedback and at that time staff raised issues that were outside the scope of the staff meeting. On occasions the Principal commented that the issues were important but the staff meeting was not the forum for it and she advised the teachers that such issues could be raised through the head teachers who would bring them to her at the fortnightly executive meetings.

92. Ms Martin said she did not witness the Principal bully, harass, intimidate, mistreat or otherwise target the applicant at any time.⁷⁴ She was not involved in the development of the applicant's Return to Work programs but she had to oversee the timetable. The timetable provided certain adjustments to the applicant due to her diabetes.

93. Ms Martin said she received feedback from staff that the applicant was doing activities which were contradictory to the healthcare plan. An example of this was that the applicant maintained that she could not walk to the English block to do roll call class as it would impact on her diabetes condition, yet was seen to walk to the English block and talk to staff during roll call.

94. The applicant did not report to Ms Martin any incidents or assaults on her by students while she was on playground duty.⁷⁵

⁷² Reply p 331, paragraph 7

⁷³ Reply, p 334

⁷⁴ Reply, p 335, paragraph 8

⁷⁵ Reply, p 336, paragraph 13

Jennifer Lawrence

95. Ms Jennifer Lawrence provided a statement dated 24 November 2016.⁷⁶ Ms Lawrence was employed as a Deputy Principal at Elderslie High School since 2013. Prior to that she was a Head Teacher at another high school. She was one of two Deputy Principals at Elderslie High School and observed interactions and discussions between the applicant and the Principal in the Principal's office or in the corridor. Ms Lawrence stated:⁷⁷

"On these occasions I observed Robyn to be hostile towards Meredith and showed clear annoyance with Meredith regarding lack of support in relation to her (Robyn's) duties such as playground duty, her medical condition, classroom requirements and which room she needed to use for lessons. On all these occasions I never once observed Meredith to be unreasonable or aggressive towards Robyn. Meredith was assertive and held Robyn to account in relation to her conduct and her requests, but she treated Robyn equitably and professionally."

96. Ms Lawrence stated that she did not observe the Principal bully, harass, intimate or mistreat the applicant.
97. Ms Lawrence said that in 2013 and 2014 the applicant came to see her on a number of occasions and raised concerns about some of her duties in view of her diabetic requirements, difficulty she was having with students and alleged assault on her by students.⁷⁸ Ms Lawrence stated that she listened to the applicant and took action in accordance with Department policies and investigated the incidences.
98. A document dated 11 December 2013, probably completed by Ms Lawrence, included the following comments:⁷⁹

"On Wednesday 4 December, I examined all of the documents available. It was evidence that Student A had indeed entered into a significant verbal argument with Ms Craig and also that he had hidden her can of drink. There was no further evidence that he had assaulted her other than Ms Craig's statement that he had done so.

...

Late that same day, she felt that Student A had assaulted her again. The basis of this allegation was that Student A had elbowed her and slammed into her back which propelled her forwards. I do not believe that this was the case.... Further, it is my belief that Student A and Ms Craig walked backwards into each other, bumping into each other which does not constitute assault I did explain to Ms Craig that her perceptions of what constituted assault were not accurate but she was absolutely unwilling to hear otherwise.

...

Subsequently to all this occurring, Robyn came to me on Monday 9 December after school. She alleged that a Year 9 student (Student C) had screamed at her in the art quad. She said he had used language such "you fucking slut" in speaking to her. She was quite distressed and I suggested she ring the Employee Assistance Program for counselling support and that she make herself a cup of tea before she left for the day as I did feel she was distressed."

⁷⁶ Reply, p 343

⁷⁷ Reply, p 343, paragraph 6

⁷⁸ Reply, p 344, paragraph 10

⁷⁹ Reply, p 352

Medical Reports

Dr Mark Robertson

99. Dr Mark Robertson, general practitioner, has written a number of short medical reports and his clinical records were the subject of detailed submissions.
100. By letter dated 18 October 2012⁸⁰ Dr Robertson noted that the applicant suffered from diabetes and was quite “brittle” at best and would be “under undue stress” if there were further transfers to other schools. The doctor noted that a transfer would involve going over the previous case involving Ivan Milat to other principals, “as a background to the stress and anxiety”.
101. By letter dated 21 February 2013, the general practitioner noted the applicant suffered from a severe form of diabetes and ongoing chronic anxiety due to the psychological trauma involving Ivan Milat. The doctor recommended, because of the past psychological trauma, that she cannot travel to distant parts of Sydney or Wollongong to attend routine medical examinations. The doctor stated:⁸¹

“[The] stress of constantly being asked to travel to these distant areas has worsened her diabetes control, with sugar levels well above the normal range. She also is suffering from a recurrent skin rash, which has only started since she has been under this acute stress and is needing more intense treatment for this”.
102. A letter from Dr Robertson dated 26 February 2014 is written supportive of the recommendations of Dr Cook and noted that the “school’s RTW plan No 1 attempts to interpret Ms Craig’s medical report as viewed from non-medical personnel.”⁸² Dr Robertson then reported the applicant as fit for work.
103. On 14 July 2014, Dr Robertson stated that the applicant was fit to continue teaching in her current position.⁸³
104. Dr Robertson provided a referral dated 10 December 2014 for “adrenal insufficiency and associated anxiety and depression”.⁸⁴
105. In a report dated 6 January 2015, the general practitioner noted that the applicant was being assessed for a worker’s compensation claim, that her diabetes has not been considered, but that the “anxiety and stress she has been through as part of her injury has worsened her diabetes”.⁸⁵ The doctor noted that the applicant has recently been bedridden and was unable to travel to Sydney or Wollongong for assessments.
106. On 17 February 2015, Dr Robertson reported that the applicant had CFS “for years” and had “been under stress from work.”⁸⁶
107. By letter dated 20 April 2015, Dr Robertson provided the insurer with various links to CFS.⁸⁷
108. By letter dated 29 April 2015, Dr Robertson noted the applicant had chronic fatigue syndrome and had “adrenal insufficiency as an underlying cause”.⁸⁸

⁸⁰ Application, p 274

⁸¹ Application, p 275

⁸² Application, p 280

⁸³ Application, p 281

⁸⁴ Application, p 283

⁸⁵ Reply, p 14

⁸⁶ Application, p 292

⁸⁷ Application, p 288

⁸⁸ Application, p 303nbn

109. Dr Robertson wrote on 11 August 2016 stating that the applicant has fibromyalgia/chronic fatigue syndrome/adrenal fatigue which meant that any exertion results in the applicant requiring sleep “for days after”.⁸⁹

Dr Oisin Byrne

110. Dr Oisin Byrne provided a referral to Professor Pile dated 23 November 2015 noting that the applicant advised that she is suffering from chronic fatigue/fibromyalgia since October 2014 with left sided headaches, rash on the back and migrating joint aches. The doctor noted that it was part of “an on-going work cover issue which is going to the industrial workers commission”.⁹⁰

111. In May 2019, Dr Byrne stated that the applicant suffers from ME and that exertion will exacerbate her condition “for weeks to months”.⁹¹

Dr Peter Cook

112. Dr Peter Cook, Occupational Physician, provided a letter to the respondent dated 5 December 2013.⁹² The doctor was provided with a report from the Principal together with letters from the general practitioner. Dr Cook noted that the applicant had been a visual arts teacher for over 20 years and had been in the current role at Elderslie High School since 2003 working four days a week. The doctor noted a past medical history of type I diabetes and a past problem with severe hypoglycaemic episodes and some eye difficulties. Recent treatment had substantially improved the vision.

113. On assessment, Dr Cook noted that the applicant had near normal vision with glasses and had been a type I diabetic for many years which requires careful management to optimise blood sugar levels. The doctor then noted the five adjustments requested by the applicant to her workplace included regularly checking her blood sugar levels, a predictable routine taking Wednesdays off as leave without pay, no more than four period days, and undertaking blood sugar testing and injecting insulin in her motor vehicle.

114. Dr Cook opined that the applicant required some restrictions as discussed above and that these appear to be “reasonable adjustments”. Included in these restrictions was that the applicant not be given playground duties at recess and the first part of lunch so that she could check her blood sugar levels and give herself insulin.⁹³

115. The Department then requested a supplementary report from Dr Cook posing a series of further questions which was provided by the doctor and dated 17 January 2014.⁹⁴

116. Dr Cook opined that the applicant was fit to participate in school meetings and parent liaison, but the problem was driving home in the dark involving stretches of roads without streetlights. The doctor stated he was unaware and did not specifically discuss with the applicant about restrictions of her driver’s licence although normally people with diabetes have two yearly reviews. In relation to injecting, the doctor noted that the applicant requires privacy and a clean area for injecting in a private room within the school and that one would expect the time required was in the order of about 10 minutes although the applicant does require time to eat.

⁸⁹ Application, p 289

⁹⁰ Application, p 365

⁹¹ Application, p 356

⁹² Application, p 176

⁹³ Application, pp 178-179

⁹⁴ Application, p 181

117. The doctor commented on appropriate management strategies in respect of avoiding a hypoglycaemic episode and noted that the applicant had a good awareness of these symptoms. Dr Cook opined that the problem with taking up casual teaching at short notice was the predictable routine required in the management of blood sugar levels and opined that the applicant could do classes provided she knew what she had to do the day before. He noted the main issue is “predictable physical exertion and mealtimes”. The doctor commented that excursions away from school may be difficult and would depend upon the nature of the excursion and suggested it would be a problem if it required exertion and unpredictable times.
118. Dr Cook observed that the applicant had been undertaking various bushwalking and equestrian activities knowing what she was capable of doing. The doctor ultimately opined that the greater amount of changes that are made to the applicant’s routine, then the more likely it will be that there are difficulties with diabetic control and/or a hypoglycaemic episode.

Dr Canaris

119. Dr Canaris was qualified by the applicant’s solicitors and provided two reports dated 14 September 2015⁹⁵ and 30 April 2018.⁹⁶
120. In his first report, the doctor referred to a history of problems with the Principal involving a series of complaints and her diabetes. He described the Return to Work program for diabetes as “inappropriate because she was not off work on worker’s compensation”.⁹⁷ In this setting the applicant felt harried and harassed and developed chronic fatigue which involved a progression of symptoms including tiredness and being terribly depressed. The applicant stated that she could not sleep, was extremely tired and had difficulty thinking.
121. The doctor noted that the applicant mentioned previous dealings with a notorious criminal but was “prohibited from talking about it” and that this man had some significance with regard to her dealings with the respondent.⁹⁸
122. On medical examination, Dr Canaris noted that the applicant was restricted rather than depressed and gave a history of severe tiredness, forgetfulness, poor concentration, which have been diagnosed as chronic fatigue.
123. Dr Canaris opined that chronic fatigue syndrome and fibromyalgia are poorly understood and possibly related physical diagnoses and are conditions frequently accompanied by depression and anxiety which were, in his opinion, “very much features of your client’s presentation”. He opined that the depressive disorder was as a result of the reported workplace difficulties.
124. Dr Canaris otherwise opined that the applicant was not well enough to work by reason of her reported tiredness, her forgetfulness, and her disengagement from life.
125. In the further report dated 30 April 2018 Dr Canaris opined that the applicant continued to suffer from a severe chronic major depressive disorder with atypical features of severe fatigue.⁹⁹

⁹⁵ Application, p 206

⁹⁶ Application, p 213

⁹⁷ Application, p 207

⁹⁸ Application, p 209

⁹⁹ Application, p 216

Dr Gotis-Graham

126. Dr Gotis-Graham, Rheumatologist and Consultant Physician, provided a report dated 9 March 2016.¹⁰⁰ The doctor noted a history of the applicant witnessing an episode of bullying by the Principal and the applicant then becoming a target of “bullying and discrimination” including making it hard for her to manage her diabetes at work. This led to poor sleeping habits, headaches, panic attacks, and being anxious associated with increased fatigue.
The doctor reported a history of difficulty walking more than 30 metres.
127. The doctor opined that the applicant had significant psychological problems which he expressed he was “not qualified to comment upon” although he then opined that the applicant had a major depressive illness, anxiety, and features of post-traumatic stress disorder. The doctor also opined that the fatigue and widespread pain appeared “secondary to the applicant’s mental health problems”.¹⁰¹
128. In a separate report of the same date, Dr Gotis-Graham opined that the applicant’s impairment was directly due to the depression and anxiety. He did not feel the applicant had an additional diagnosis of chronic fatigue and/or fibromyalgia but rather the symptoms of fatigue and pain were part of her depression and anxiety.

Dr Con Kafataris

129. Dr Con Kafataris, described as an “injury management consultant” and holding a MBBS, provided a report dated 18 February 2015.¹⁰² The doctor noted a somewhat complex scenario in which the worker originally complained of symptoms due to adrenal insufficiency and chronic fatigue syndrome and that there was now a claim for psychological injury due to alleged bullying and harassment. The doctor opined that the applicant was “unfit for work” and that the main barrier for returning to work was poor diabetes control, features of adrenal insufficiency and associated chronic fatigue. The doctor stated:¹⁰³

“The worker is also complaining of psychological symptoms and the relationship of this to employment must be determined as soon as possible. An appropriate IME is recommended for this”.

Ms Eleasa Mullavey

130. Ms Mullavey, Psychologist, provided a lengthy report dated 20 April 2015.¹⁰⁴ The psychologist noted the applicant presented with significant physical health conditions which undoubtedly affected her mental health and psychological functioning. The psychologist stated the underlying medical conditions of adrenal insufficiency and chronic fatigue meant that she was unable to ascertain the applicant’s current psychological capacity for work. The Psychologist concluded:¹⁰⁵

“While it is plausible that workplace stressors triggered a significant level of psychological distress, the severity of current symptoms and subsequent impairment seems disproportionate to the workplace stressors, especially since symptoms continued to worsen for several months after her leave commenced. While Ms Craig did report experiencing psychological symptoms and increasing levels of fatigue prior to commencing leave on 10.06.2014,

¹⁰⁰ Application, p 221

¹⁰¹ Application, p 224

¹⁰² Reply, p 15

¹⁰³ Reply, p 16

¹⁰⁴ Reply, p 22

¹⁰⁵ Reply, p 40

the fact that symptoms continued to worsen requires further examination to determine if this deterioration is better explained by an underlying (non-compensable) medical condition. The possibility that workplace stressors triggered the underlying medical conditions also requires further investigation. There also needs to be a review of Ms Craig's physical capacity prior to a determination of psychological functioning being made. Subsequently due to an underlying medical condition that is likely to be affecting Ms Craig's psychological functioning, a determination on capacity for work cannot be confidently determined at this time."

Dr M Barrett

131. The respondent qualified Dr Barrett, Psychiatrist, who examined the applicant and provided a report dated 25 May 2015.¹⁰⁶ The doctor noted that the applicant was a difficult historian who continued to talk about whatever it was that she wished to discuss. The applicant reported that the symptoms arose in the context of being bullied by the Principal and that there was a conflict regarding the management of her diabetes in the workplace. The applicant denied any past psychiatric history.
132. Dr Barrett stated that the applicant displayed limited cooperation with the assessment, believed she had a psychological injury and reported a range of symptoms of anxiety and other physical symptoms including fatigue, rash, swollen glands, visual abnormalities, and memory impairment. The doctor opined that he was not able to determine whether the applicant was bullied in the workplace as this was an industrial relations issue and that he was not an expert in chronic fatigue syndrome and this question would be better answered by an occupational health physician or immunologist. He opined that the current symptoms met the criteria for an adjustment disorder with anxiety, however that would be oversimplifying the matter because there were prominent physical symptoms and these psychological symptoms were secondary to those. He opined that the physical diagnosis should be better clarified. The doctor noted that there was a significant amount of the applicant's medical file blacked out dating back to 2006 with reference to a Court case and he could not comment on whether or not these issues might be alternative contributions to the current condition as the applicant would not discuss them.¹⁰⁷
133. Dr Barrett opined that the applicant was not able to perform her pre-injury duties in a sustained or consistent fashion currently, but there were some inconsistencies in presentation and raised concerns about the subject of the blacked-out notes. He noted the applicant reported a range of symptoms of anxiety and depressed mood and suggested formal neuropsychological testing and other specialist opinion from an immunologist and one in chronic fatigue.
134. Dr Barrett provided a further report dated 22 June 2015¹⁰⁸ responding to the question of whether the psychological injury was as a direct result of bullying and harassment. The doctor noted that the applicant met the criteria for an adjustment disorder but suggested further medical opinion and that in addition, the applicant was uncooperative at times with the interview process and there were significant sections of the general practitioner's notes which were blacked out. Because of this he opined that it was not possible to determine this issue, that is, whether the bullying was a cause of the psychological symptoms. The doctor noted there were also a number of inconsistencies within the interview process.

¹⁰⁶ Reply, p 43

¹⁰⁷ Reply, p 49

¹⁰⁸ Reply, p 52

Dr Stephen Thornley

135. Dr Stephen Thornley, Endocrinologist, provided a report dated 19 July 2019.¹⁰⁹ The doctor noted that the applicant was a type I diabetic for 31 years who reported no complications with her diabetes. He noted that the school environment deteriorated in late 2013 involving a new principal with allegations of workplace bullying. The doctor noted that there were issues with chronic fatigue and nonspecific diffuse aches and pains in 2014 necessitating cessation of work and that since 2014 there have been significant issues of anxiety and depression.
136. Dr Thornley opined that the applicant had recently controlled type I diabetes mellitus without any evidence of diabetic complications, and secondly a severe chronic major depressive disorder including atypical features which included severe fatigue as per Dr Canaris' diagnosis.¹¹⁰
137. Dr Thornley opined that the diabetes mellitus was not contributing to the applicant's symptoms.

Mr Dino Cipriani

138. Mr Dino Cipriani, Psychologist, provided a lengthy report dated 25 November 2016.¹¹¹ The applicant reported to the psychologist that a big deal had been made out of the association with Ivan Milat and that it was "utter rubbish".¹¹² The psychologist recorded a history that the applicant became ill when she began to experience fatigue and would sleep in a car at the school. This was associated with becoming physically weak, which progressed and developed as a brain fog. The applicant reported that she ceased working in October 2014, but symptoms did not improve upon the cessation of work.
139. The psychologist noted that initial testing commenced and was discontinued after two and a half hours when there was a refusal to attempt a similar questionnaire. The applicant reported being surveyed on at least 13 occasions, and that she was not making a compensation claim for payout but only to get rid of the Principal, who had gotten rid of a number of other staff.
140. Mr Cipriani opined that there was a previous diagnosis of PTSD and anxiety around 2001 as a result of the impact of the Milat investigation, but the applicant minimised the impact on her at the current examination.¹¹³ The psychologist opined that the applicant did not present as severely depressed or anxious at examination, and that the main complaints were related to fatigue, memory impairment, and associated disability. He suggested that specialist opinion was required as to whether these conditions were caused by diabetes "as suggested by the reviewed research".¹¹⁴
141. Mr Cipriani also opined that the applicant was uncooperative with previous examinations (Dr Barrett and Ms Mullavey) and the current examination revealed exaggerated reported pain and physical disability.¹¹⁵

¹⁰⁹ Application, p 226

¹¹⁰ Application, p 228

¹¹¹ Reply, p 123

¹¹² Reply, p 125

¹¹³ Reply, p 145

¹¹⁴ Reply, p 146

¹¹⁵ Reply, p 151

Dr Yajuvendra Bisht

142. Dr Bisht was qualified by the respondent and provided a report dated 18 February 2019.¹¹⁶ The doctor recorded a history that the psychological symptoms started in the context of bullying by the Principal some six to seven years previously, which were associated with symptoms including increased physical tiredness as well as constant low mood, mental lethargy, constant preoccupation, poor concentration, poor sleep and generalised anxiety.
143. The doctor noted a past medical history which included a psychiatric condition related to Ivan Milat.¹¹⁷
144. The applicant denied symptoms substantial enough to qualify as PTSD although the applicant gave a history of symptoms suggestive of adjustment disorder with anxious mood during a time with previous high schools when she was threatened by a student.
145. Dr Bisht opined that the applicant met the criteria for adjustment disorder with mixed anxious and depressed mood caused by bullying and harassment by the Principal at Elderslie High School as the predominant cause.¹¹⁸

WorkCover Certificates

146. WorkCover certificates dated 17 December 2013¹¹⁹ and 20 December 2013¹²⁰ related to an assault by year 9 and 10 students causing post-traumatic stress disorder. A WorkCover certificate dated 26 June 2013 certified the applicant unfit due to “longstanding apparent bullying to patient from principal and others causing great anxiety”.¹²¹

Clinical Notes

147. Dr Robinson's clinical notes commenced on 9 July 2001¹²² noting a past history of anxiety and post-traumatic stress disorder. There are blacked out portions on 9 July 2001, 8 October 2001¹²³ and 5 March 2002. The later references referred to the applicant being tired and not sleeping in 2002 in the context of being referred to a psychologist¹²⁴ in 2005¹²⁵. There are 10 entries over the years 2006, 2008 and 2009¹²⁶, in 2011¹²⁷ and on 18 October 2012¹²⁸.
148. On 21 October 2005, Dr Robertson recorded that the applicant was under stress with a particular class at school and a “smashing vehicle”. A medical certificate for one week was provided at that time. On 10 November 2005 Dr Robertson noted that the applicant had “sores on scalp” which were “probably due to stress from school”.¹²⁹

¹¹⁶ Reply, p 358

¹¹⁷ Reply, p 360

¹¹⁸ Reply, p 362

¹¹⁹ Reply, p 7

¹²⁰ Reply, p 10

¹²¹ Application, p 309

¹²² Application, p 241

¹²³ Application, pp 241-242

¹²⁴ Application, p 242

¹²⁵ Application, p 246

¹²⁶ Application, pp 247-249

¹²⁷ Application, p 260

¹²⁸ Application, p 263

¹²⁹ Application, p 246

149. On 2 August 2012, Dr Robinson reported the following:¹³⁰
- "problems with school esp principal
only just been given computer help with not using shoulder as much
School wants to know about diabetes
awaiting forms to be sent from school"
150. On 18 October 2012, the general practitioner recorded problems with the school/Department of Education and noted that he had written letters recommending against transfers and the applicant not being asked to travel to Wollongong. There is also a blacked-out reference in that consultation.¹³¹
151. On 21 February 2013, Dr Robinson recorded that the applicant was "still fighting Department of Education" and was awaiting a medical examination by the Department doctor. The doctor discussed psychological stress, worsening diabetes and associated rash.¹³²
152. On 21 June 2013, a general practitioner noted the applicant was:¹³³
- "under stress at school
apparent bullying from headmistress
discussed
been anxious++
rash on back
Concern re: coeliac disease possibility
O/E: Psoriasis type rash"
153. On 12 December 2013, Dr Robinson recorded the applicant was assaulted by two students one and a half weeks before and had become anxious and her sugars have become high. A WorkCover certificate was provided but this was disallowed by the insurer.¹³⁴
154. On 26 February 2014, Dr Robertson noted the applicant had undergone a medical appointment, a report had been written and she required a letter to the school.¹³⁵
155. On 2 April 2014, Dr Robinson noted a Return to Work plan number three and a medical certificate was required.
156. On 11 June 2014, it was noted by the general practitioner that the applicant had been speaking to the Acting Director regarding the work plan, that the school wanted her to do casual classes, often away on grounds, expected her to eat sugars to make up for her "hypo's etcetera" and the school expected her to use the sick bay as opposed to the car. There is a reference to "needs work plan changed".¹³⁶
157. On 14 July 2014, the general practitioner noted that the applicant had been put off work and was on long service leave. There is a reference to cannot "compromise diabetes management".

¹³⁰ Application, p 263

¹³¹ Application, p 264

¹³² Application, p 264

¹³³ Application, p 264

¹³⁴ Application, p 265

¹³⁵ Application, p 266

¹³⁶ Application, p 266

158. On 19 September 2014, Dr Robinson recorded the following:¹³⁷

“Not being paid by school; on leave.
Contacted antidiscrimination; Human rights commission.
Now seeing solicitor at Katoomba who only deals with teachers.
Needs to get WC cert.
Been unwell, mid-morning – extreme fatigue; needs go back to bed; then can get up but cycle repeats
Feels bl sugars go up and down
Not able to go back until signed RTW
Discussed
Ankles now swell
IMP: adrenal fatigue discussed.”

159. On 27 April 2015, Dr Robinson noted a compensation case conference that the applicant was under a lot of stress and confined to bed.¹³⁸ On 6 January 2015, Dr Robinson noted the applicant was under anxiety and stress and excessive exercises were worsening her diabetes. The doctor noted the applicant was bedridden and was unable to travel to Sydney or Wollongong for assessments.¹³⁹

160. The applicant first consulted Dr Oisin Byrne at the Queen Street General Practice in August 2015.¹⁴⁰ The doctor recorded a past history of chronic fatigue syndrome and diabetes mellitus. On 6 August 2015, the doctor recorded that the applicant was suffering from chronic fatigue which commenced in October 2014 with a left-sided parietal headache, a rash on the back that was itchy and migrating joint pains. The doctor recorded other references to chronic fatigue syndrome in August 2015.¹⁴¹

161. In November 2015, the doctor noted that the applicant had come around to the idea that she had “fibromyalgia”.¹⁴² In June 2016, Dr Byrne recorded that the applicant was upset due to a panic attack following a meeting with Mr Turnbull.¹⁴³

Other documents

162. The minutes of the meeting between the Principal and the applicant on 21 August 2012 are quite detailed.¹⁴⁴ At the end of the meeting the principal advised the applicant that she was:¹⁴⁵

- Not to discuss or involve herself in conversations that undermine her supervisors or colleagues.
- Not to leave her classes at any time. (RC was not to organise another colleague to supervise her class whilst she followed through on anything).
- Refer all matters to her Head Teacher- not come straight to Deputy Principals or Principal.
- RC was not to ask for statements from students or look into incidents. Needs to be done by her Head Teacher.
- Not to interrupt teacher's lessons or the work of SASS staff.
- Not to approach another staff member's supervisor questioning their actions.
- Follow Principal's directions.

¹³⁷ Application, p 267

¹³⁸ Application, p 294

¹³⁹ Application, p 294

¹⁴⁰ Application, p 357

¹⁴¹ Application, p 359

¹⁴² Application, p 360

¹⁴³ Application, p 361

¹⁴⁴ Reply, p 281

¹⁴⁵ Reply, p 284

- Not to make phone calls to parents about faculty issues or the equestrian event. Needs to be done by Head Teacher or a Deputy.

163. A letter from the Principal dated 27 June 2012 to a medical examiner asked a number of questions pertaining to the applicant's restrictions. Included in this letter was an observation by the Principal that the applicant "has left the school grounds, without signing out, to administer medication".¹⁴⁶
164. There is a reference in the material to an unspecified number of Return to Work plans which the applicant refused to sign. Return to Work plan no 2 is signed by the Principal and dated 1 March 2014. It was not signed by the applicant.¹⁴⁷

SUBMISSIONS

Applicant's oral submissions

165. The applicant submitted that there was no evidence to support the respondent's denial of injury¹⁴⁸ and throughout this matter there has never been any medical support for the propositions put forward by the respondent.¹⁴⁹
166. The first incident was an assault on the applicant by students on 28 November 2013.¹⁵⁰ It was evidenced by a number of WorkCover certificates. The respondent had no basis to deny the claim at this stage and the assertion that anxiety was not a diagnosable injury was a misrepresentation as "a matter of law".¹⁵¹
167. Dr Canaris provided two reports which diagnosed the applicant with persistent depressive disorder from exposure to extraordinary levels of workplace stress. His opinion was that the escalation with the Principal was a culmination over many years.
168. The applicant has provided a detailed statement that addresses various exchanges of what the applicant saw as bullying. The evidence is amply supported by the investigation report.¹⁵² These were real events which fell with the discussion of *Attorney-General's Department v K*.¹⁵³ For example, the applicant was required to attend an examination with Dr Cook and the "construction you would give to those questions is that there is a desire to change the existing work practices that the applicant has".¹⁵⁴ The reports from Dr Cook are important because the doctor was addressing the concerns of the Principal and the applicant perceived that the Principal was trying to change her work arrangement.¹⁵⁵
169. The type of adjustments the Principal wanted to make involved the recurring issue about where the applicant administers the insulin. The applicant was doing this in her car and the Principal wished for it to be done in the sick bay. The applicant objected to this course because she shared the sick bay with the students and it changed her routine.¹⁵⁶

¹⁴⁶ Reply, p 272

¹⁴⁷ Reply, p 305

¹⁴⁸ T, p 2.

¹⁴⁹ T, p 5

¹⁵⁰ T, p 3

¹⁵¹ T, p 5

¹⁵² T, p 9

¹⁵³ [2010] NSWCPD 76

¹⁵⁴ T, p 10

¹⁵⁵ T, p 11

¹⁵⁶ T, p 13

170. The applicant's statement sets out a series of events corroborating her stress, anxiety and decompensation. The respondent has attached a detailed factual report which approached the issue on the basis that what was done was "reasonable in response to management of the school".¹⁵⁷
171. No doctor has questioned the applicant's voracity.¹⁵⁸
172. The medical evidence of Dr Thornley and Dr Gotis-Graham addresses that the applicant's psychiatric condition was not caused by the diabetes.
173. The applicant had an unrelated and isolated episode associated with Ivan Milat. This was disclosed in the clinical notes and referred to by Dr Canaris.¹⁵⁹ Nothing happened to the applicant other than that she was involved in the investigation.
174. The respondent qualified Dr Barrett who provided two reports. In his first report he accepted a diagnosis of adjustment disorder. In his second report he recommended clarification regarding the applicant's psychological symptoms. That opinion does not rebut the applicant's case.¹⁶⁰
175. The respondent then qualified Dr Bisht who "unequivocally supports" the applicant's case.¹⁶¹
176. The insurer repeatedly stated in its dispute notices that the psychological condition was caused by diabetes. There is no evidence to support this "unfounded theory".¹⁶²
177. Dr Cipriani, without a scientific basis, concluded that the directives of the school exacerbated the pre-existing type 1 diabetes and that caused a secondary psychological injury. The doctor did not have the experience or qualifications to express this scientific opinion.¹⁶³ In any event, conditions can have multiple causes.
178. Ms Mullavey, psychologist, expressed a similar view to Dr Barrett, that is, she could not comment upon it without knowing about this diabetes condition.¹⁶⁴
179. The applicant suffered an injury. The respondent has a theory which is not supported by any evidence that cannot be maintained in light of the recent opinions from Dr Bisht and Dr Canaris.¹⁶⁵
180. The applicant relied upon the admission that she had no capacity.¹⁶⁶ The PIAWE was \$1,750 and there had been no payments of weekly compensation.
181. The injury was primarily run pursuant to s 4(b)(i) of the 1987 Act based on years of exposure to stresses in employment¹⁶⁷ and s 4(b)(ii) of the 1987 Act in the alternative. The reference to 2005 was a clinical note saying there was a prescription or an anti-depressant. This related to school stresses. If there was any association with Mr Milat, this pre-existed the period of employment which was of no effect or had ceased.¹⁶⁸

¹⁵⁷ T, p 16

¹⁵⁸ T, pp 18-19

¹⁵⁹ T, p 25

¹⁶⁰ T, pp 26-28

¹⁶¹ T, p 29

¹⁶² T, p 30

¹⁶³ T, pp 31-32

¹⁶⁴ T, p 37

¹⁶⁵ T, p 37

¹⁶⁶ T1, 39

¹⁶⁷ T1, 49

¹⁶⁸ T1, 51

Respondent's oral submissions

182. The respondent's submissions were that the applicant had not established that the employment was not the main contributing factor to either contacting or aggravating the disease.
183. The contemporaneous evidence in 2014 indicates that the main condition was physical and was chronic fatigue and fibromyalgia or aches and pains. There was very little reference in the material to any complaints of depressions or anxiety.
184. The Commission would not be satisfied that the applicant has established her onus by withholding information in three ways, first by blacking out information, secondly, by being uncooperative in assessments and thirdly, in refusing to attend appointments.
185. Many of the medical reports depend upon the experts accepting facts that the applicant had stated which are in issue. For that reason, the opinions should not be accepted. The proper approach is that adopted by Dr Barrett, that is, the matter cannot be decided in favour of the applicant because it is not known whether she had been bullied in circumstances where the applicant had been uncooperative. Ms Mullavey adopted a similar approach.
186. The pleading is vague and the evidence "does not suggest that any of the alleged stresses caused [the applicant] injury" although the statement evidence appears to be directed to bullying by the Principal including over the Return to Work plan. The evidence "changes over time as to what is attributed as the cause" of the injury.
187. The applicant asserts that the Milat involvement was not an issue. The evidence from the general practitioner in 2012 and 2013 is that it was affecting the applicant. This raises some doubt about whether the psychological issue was caused by work when "in fact [it was] caused by something else".
188. There is no mention in the contemporaneous evidence of any anxiety or depression that would keep the applicant from working. Dr Cook examined the applicant in late 2012 and opined that she was fit for work and there was no suggestion of any degree of anxiety or depression at that stage.
189. The clinical records of the general practitioner in 2001 included a degree of material which is blacked out.
190. The clinical records in 2014 are notable in terms of an absence of reference to low mood, anxiety or depression.¹⁶⁹ The first time there was really any kind of reference to this kind of condition was in September 2014 when there was a reference to "extreme fatigue"¹⁷⁰. There was no note of any emotional issues in the context where the applicant was then off work for long service leave.
191. In February 2014, Dr Robinson opined that the applicant was quite fit to perform her duties and was managing her diabetes. There was no mention of depression or anything like that at the time.¹⁷¹
192. In July 2014, the general practitioner noted the applicant was fit to continue at work. In December 2014, the general practitioner referred the applicant to Dr Katrina Langhorn for adrenal insufficiency and associated anxiety and depression and viewed the condition as stemming from adrenal insufficiency and nothing to do with work.¹⁷²

¹⁶⁹ T2, 12

¹⁷⁰ Application, p 267

¹⁷¹ Application, p 280 and T2, 13

¹⁷² T2, 14

193. In January 2015, Dr Robertson noted that the anxiety and stress that the applicant had been through as part of her injury had worsened her diabetes. It is not clear what is meant by “as part of her injury”¹⁷³ and whether that was referring to a shoulder injury. Later on, in this report the doctor referred to the applicant being bedridden as a result of injury and suffering from poor mental concentration capacity and had features of chronic fatigue syndrome. The respondent submitted that the treating doctor was suggesting at least that there was some connection between the chronic fatigue and the diabetes and was also attributing the fatigue as something to do with the adrenal problem.¹⁷⁴
194. There is no reference in any of the clinical notes to anything going on in 2014 about the assaults by students. There was no “independent corroboration” and “she does not seem to tell anyone about evidence of this ... when people at school were interviewed about it”.¹⁷⁵
195. In February 2015, Dr Robinson stated the applicant had CFS for years with reference to ongoing adrenal issues. In April 2015, the general practitioner was referring to the CFS and fibromyalgia and “seems to emphasise the physical rather than [the applicant] having any emotional problems”.¹⁷⁶
196. On 29 April 2015, the general practitioner stated that the applicant had chronic fatigue syndrome which had been present for quite a long time and noted the applicant had “adrenal insufficiency as an underlying cause”. Again, the general practitioner was referring to physical problems rather than to anything like the applicant was experiencing “depression or anything like that”.¹⁷⁷
197. In August 2016, Dr Robinson noted that the applicant had chronic fatigue syndrome and was unable to attend medical assessments for more than three hours because of her condition.
198. In August 2015, the applicant consulted Dr Byrne who reported that the applicant had been suffering chronic fatigue from October 2014 with left-sided headaches and migrating joint aches. The general practitioner was commenting upon physical problems and did not say the applicant was depressed.¹⁷⁸ It is strange that these symptoms developed in 2014 when the applicant was already on leave from school. Similar references were recorded by Dr Byrne in August 2015 and November 2015 referred to fibromyalgia. It was not until June 2016 when “we finally get a reference for something that could be considered some kind of psychological issue” when the applicant presented with a panic attack which had nothing to do with school.¹⁷⁹
199. Overall, looking at these records what stands out is ongoing tiredness, which “can be associated with depression but there is various, many, many other possible causes for it” and very little reference to any psychological distress of any kind.¹⁸⁰
200. In November 2015, the applicant was referred to Professor Pile for chronic fatigue/fibromyalgia¹⁸¹ although there was no subsequent evidence that the applicant attended this specialist.
201. In April 2015, Dr Robertson noted the applicant was under a lot of stress and confined in bed and noted on 30 March 2015 “CFS continues”. On 6 January 2015, Dr Robertson referred to anxiety and stress and extensive exercise worsened the diabetes.

¹⁷³ T2, 15

¹⁷⁴ T2, 15

¹⁷⁵ T2, 20

¹⁷⁶ T2, 22

¹⁷⁷ T2, 23

¹⁷⁸ T2, 24

¹⁷⁹ T2, 25

¹⁸⁰ T2, 26

¹⁸¹ Application, p 365

202. Rule 15.2 of the *Workers Compensation Commission Rules 2011* provides that the evidence should be logical and probative, and that evidence based on speculation and unsubstantiated assumptions is unacceptable. There are two main issues with the expert evidence that the applicant relies upon, that it relies upon assumed facts which the respondent submits should not be accepted, namely that the Principal bullied and behaved unreasonably and secondly that the practitioners expressed opinions which are not based on their specialised knowledge.¹⁸² The underlying facts did not occur and otherwise the doctors expressed opinions beyond their specialised knowledge.¹⁸³

203. It was accepted by both counsel that the applicant had to show a fair climate for the opinion to be accepted.¹⁸⁴ The respondent submitted:¹⁸⁵

“I accept the authority that if she perceived, if the psychological injury happened as a result of her perception of an event that was a real event but she misconstrued it then, then that would, then the causation issue would be satisfied. But in my submission, so what I’m saying is a bit different, is that you cannot rely on the expert’s report because they’re based on a false premise as it were, or the facts that we have been given are not reliable and that those facts are significant, the difference in the fact that they have, the experts have accepted and the true facts are significant enough that you would doubt some of the conclusions in the report. I guess it is a slightly different point.”

204. When you look at the applicant’s statement and compare it to statements made in the investigation by other staff members, “her perception of events generally appears unbalanced and she sometimes misinterprets or it appears she sometimes misconstrue events in quite a significant way”.¹⁸⁶ An example of this is that the Principal said she never screamed at the applicant. The applicant contradicts this and various other people have supported the Principal’s version.

205. In relation to the assaults by students, there is certainly no evidence that it did not happen, “but in my submission the Commission would treat with a degree of scepticism in the sense that it would not would necessarily accept that the student screamed awful profanities at her”.¹⁸⁷

206. When you read the evidence as a whole you would consider that the applicant was not a reliable witness. This was because what the applicant states “does not seem to stand up”¹⁸⁸. The applicant says things that are not necessarily consistent with the other evidence and you would treat the applicant’s evidence with a degree of caution and would not be satisfied that it necessarily happened.¹⁸⁹ It was not easy to “verify or disprove” the various allegations “because no dates are provided” and otherwise there is “no real evidence that any of these incidents had an ongoing effect on the applicant as she kept teaching and she seemed to be functioning”.¹⁹⁰ Whilst the applicant stated that she attributed the constant unrelenting workplace stressors to the student assaults and the toxic work environment which caused her depression and anxiety, there is “no other independent evidence that she felt that way”.¹⁹¹

¹⁸² T2, 34

¹⁸³ T2, 36

¹⁸⁴ T2, 37

¹⁸⁵ T2, 39-40

¹⁸⁶ T2, 41

¹⁸⁷ T2, 41

¹⁸⁸ T2, 43

¹⁸⁹ T2, 43

¹⁹⁰ T2, 44

¹⁹¹ T2, 45

207. The applicant may have relied upon a number of statements from other people but “they are not persuasive”¹⁹² and the complaint made to a member of Parliament was dismissed because it was inconsistent with other evidence. All of these statements simply show that other people had some grievances and it does not necessarily demonstrate that the applicant was bullied in the way that was alleged.¹⁹³ The applicant’s allegations of bullying are quite misplaced and represent a distortion of what in fact occurred.
208. The respondent referred to statements provided by various teachers including that of the Principal. What is significant in Ms Fawcett’s statement is that the chronic fatigue only became bad in October 2014, so that does not seem to be related to the school.¹⁹⁴
209. The respondent noted that there were “various reiterations or iterations of the return to work plan and it kept being amended to accommodate some issues that the [applicant] raised”.¹⁹⁵ There were “six or seven Return to Work plans”, which “it kept changing to try and accommodate [the applicant’s] needs”.¹⁹⁶ The statements given by the various teachers say that they were trying to accommodate the applicant’s needs and Ms Fawcett noted the applicant refused to sign her Return to Work plan which was managed by staff in WHS at the Department. Ms Fawcett said that she had no involvement in this until she met with the applicant, Mr Berry, Ms Gulley, Ms Mee, and Mr Hoole¹⁹⁷ and submitted.¹⁹⁸
- “The point is, well they are certainly trying, they say at least they are trying to accommodate her. They seem to have changed it a lot of times.”
210. The statement of Mr Mills referred to a student approaching him and saying that he had been treated unfairly by the applicant. These matters were brought to the applicant who responded that it was “all lies”. It was submitted that there is “a lot of evidence from different people about the applicant not being able to, or having difficulty with handling of children and people making complaints about her and at the same time the staff were saying Ms Fawcett was behaving politely to her”¹⁹⁹. Mr Mills stressed that the Principal was flexible and accommodated the applicant’s request for allocation and duties and was always courteous and professional and did not observe any aggressive behaviour or bullying.
211. Various staff at times suggested that the applicant was inconsistent about what she sought and actually what she did, such as asserting that she had difficulty walking across to the other side of the school in contradiction with her walking to her car at the school carpark six to eight times a day often for smoking.
212. A statement from Mr Martin supported Ms Fawcett’s version of events. Mr Martin received feedback that the applicant was in fact doing activities which were contrary to the health care plan in her Return to Work plan.
213. The Deputy Principal, Ms Lawrence, observed the applicant to be hostile to the Principal and said the Principal was not unreasonable or aggressive to her and treated the applicant equitably and professionally. Ms Lawrence noted the claimant raised concerns about her duties in view of her diabetic requirements and she listened to the applicant and took actions in accordance with the Department’s policies.

¹⁹² T2, 48

¹⁹³ T2, 49

¹⁹⁴ T2, 59

¹⁹⁵ T2, 61

¹⁹⁶ T2, 63

¹⁹⁷ Reply, p 262, paragraph 35

¹⁹⁸ T2, 65

¹⁹⁹ T2, 70

214. Notes from a meeting on 26 June 2012 include a reference that the applicant “would not talk about the matter because it still distressed her”.²⁰⁰ This is relevant “partly because it goes to, what really is the causation but it also goes to the claimant minimising things that don’t suit her case ... when she chooses to do so. This evidence here is consistent with what her doctor was saying about it being an ongoing issue of anxiety for her”.²⁰¹
215. A letter from the Principal dated 27 June 2012, incorrectly described as being to the Principal, includes the following about the applicant’s health:²⁰²
- “Ms Craig has undergone a great deal of personal suffering as a result of her health and the school has accommodated all the considerations and adjustments suggested in any return to work plans or by Ms Craig herself... Even with all the support, Ms Craig still declines or refuse to accept any variation to her modified duties and the incidents of all of the above concerns are increasing, therefore the school is requesting a medical assessment regarding Ms Craig’s capacity to undertake the inherent duties associated with her teaching position, as a visual arts teacher”.
216. A further meeting between the applicant and the Principal on 21 August 2012 was minuted.²⁰³ The minutes included a concern that staff had reported to the Principal that the applicant was making statements to other staff members in the school including that the Principal was a liar. This suggests that the applicant “constructs versions of the truth which she can deal with and then cannot deal with anything contrary and then calls people a liar”.²⁰⁴ This goes to the applicant’s credibility as well as the reliability of her account. The applicant may not necessarily be constructing them in that way, but this is just something more than a difference of opinion about what happened.²⁰⁵
217. Dr Kafataris noted that the main problem appeared to be poor diabetic control and recommended that there be exploration in relation to the applicant’s psychological symptoms.²⁰⁶
218. Ms Mullavey, psychologist, attributed the current psychological functioning to the applicant’s physical ill health which was consistent with the general practitioner’s notes which suggested that tiredness was the main issue and other psychological issues were secondary.²⁰⁷
219. Dr Barrett was provided with file records which was basically the applicant’s “version of events” and he noted that there were blocked out portions in the patient’s health summary which the applicant refused to discuss. The respondent submitted that the applicant did not cooperate with the interview and thus continued to talk about whatever it was she wished to discuss and otherwise found it very difficult to answer specific questions.²⁰⁸ Dr Barrett noted that the symptoms were “mainly physical” and the psychological symptoms of low mood or anxiety could have a physical cause.²⁰⁹

²⁰⁰ Reply, p 268

²⁰¹ T2, 74

²⁰² Reply, p 273

²⁰³ Reply, p 281

²⁰⁴ T2, 79

²⁰⁵ T2, 79-80

²⁰⁶ T2, 81

²⁰⁷ T2, 82-83

²⁰⁸ T2, 84

²⁰⁹ T2, 84

220. The respondent noted that the relevant time frame was that the symptoms commenced in November 2014 which is when the applicant was on long service leave and that could not be caused by any bullying because it was after the event.²¹⁰ Dr Barrett correctly identified the correct approach that he could not determine whether the applicant was bullied in the workplace and that would “give the Commission confidence in some of the, in the report”.²¹¹ Dr Barrett acknowledged that he was not an expert in chronic fatigue syndrome and recommended an assessment by an immunologist or occupational health physician.
221. There were various efforts by the insurer arranging for the applicant to attend an appointment in the absence of someone knowing more about chronic fatigue syndrome and the applicant refusing to go to see a doctor nominated by the insurance company or an occupational health physician. In those circumstances the Commission would not be satisfied that the employment was the “main cause of her condition”.²¹² It was submitted that it was not possible to “tell what the psychological symptoms are caused by unless you get a better understanding of chronic fatigue syndrome how that is affecting the applicant and then it may be that the depression is secondary to the chronic fatigue syndrome”.²¹³
222. In circumstances where the applicant is blacking out information and not attending appointments, there was insufficient information and the Commission could not be satisfied that the employment was the main contributing factor. That information might show other factors, contributing factors or main contributing factors.²¹⁴
223. Dr Barrett emphasised that the physical diagnosis should be better clarified. The doctor commented that the applicant was uncooperative with the interview and without all of the information, it was not possible to determine the cause of the applicant’s psychological conditions.
224. Dr Canaris noted that the applicant said that she was not entitled to talk about Mr Milat. Whilst the respondent made no submission that the police did not tell her not to talk about it, it submitted that the current matter is many years later and the power of that excuse “drops off a bit”²¹⁵.
225. Objection was taken to Dr Canaris’ opinion that the major depressive disorder appeared to be a result of reported workplace difficulties because the opinion “suggests that he [the doctor] accepted at face value what she has told him and that... means that the Commission will not accept his opinion that the depressive disorder was as a result of the reported workplace difficulties because the expert here, the psychiatrist just simply does not have enough information or the amount of information that is before the Commission to form the view... what any psychological injury is as a result of”.²¹⁶
226. Dr Gotis-Graham is a Rheumatologist and was not qualified to express an opinion about the cause of the psychological injury.²¹⁷ The doctor also takes a history from the applicant and does not have any alternative account. An interesting point is that the applicant is emphasising physical things such as not being able to walk more than 30 metres on a level surface and “these are not symptoms which would necessary or immediately be associated with depression”.²¹⁸ The respondent challenged Dr Gotis-Graham’s expertise in commenting that the fatigue was secondary to the mental health problems.²¹⁹

²¹⁰ T2, 85

²¹¹ T2, 86

²¹² T2, 86

²¹³ T2, 88

²¹⁴ T2, 90

²¹⁵ T2, 94

²¹⁶ T2, 95

²¹⁷ T2, 96

²¹⁸ T2, 96

²¹⁹ T2, 97-98

227. The applicant reported to Mr Cipriani that a big deal had been made out of the Milat thing which she said was “utter rubbish”. This indicates that the applicant is trying to downplay something which she earlier played up such as in the opinion from Dr Robinson saying that the applicant should not be transferred to another school.²²⁰ This gave pause and some reason to question the reliability of the applicant’s evidence and the history that she provides.
228. Mr Cipriani recorded a similar history that the physical conditions arose first that is primarily a physical illness. The psychologist noted under the heading “dysfunctional pain” but the scores for pain severity, life interference and life control were below the cut-offs, suggesting that “emotional factors were not influencing pain complaints”.²²¹ Mr Cipriani noted the applicant would not complete the questionnaire because of its length and he noted this was similar to the refusal to attempt a similar questionnaire from Ms Mullavey. He also noted bizarre complaints by the applicant such as being under ongoing surveillance and drones flying above her bedroom window. This “all seems, at least from the face of it, to have an element of paranoia which, again, which are just some scepticism about her reliability”.²²²
229. Mr Cipriani also noted that the application’s motivation for this claim was not to get a payout but to get rid of Ms Fawcett. This suggests a motivation for making a claim which is unrelated to injury which is an improper purpose and also casts doubt on the applicant’s reliability.²²³ Mr Cipriani recommended that there should be a specialist comment on the chronic fatigue syndrome and adrenal insufficiency which developed in association with the applicant’s diabetes.
230. Mr Cipriani concluded that the psychological injury followed the exacerbation of the diabetes after directives from the school, which again is dependent on the history given by the applicant. He noted there was evidence of pain disability exaggeration which affected the applicant’s reliability and that she did not present as severely depressed at examination. It was submitted that the main symptom, if there was any, was fatigue and that “seems to be caused by something else entirely, by the diabetes, not by anything to do with the employment”²²⁴. It was submitted that Mr Cipriani diagnosed aggravation of diabetes which aggravated the psychological condition which was a case not run by the applicant.²²⁵
231. Dr Canaris’ supplementary report referred to extraordinary levels of workplace stress which again has some sort of acceptance of the applicant’s complaint.²²⁶
232. Dr Bisht’s report again refers to physical tiredness in the first instance which seems to be the dominant problem. It was submitted that the psychiatrist “did not have all the information that is before the Commission and relied on the applicant’s complaint and that would not be accepted”²²⁷.
233. The respondent accepted that the report is in the reply but “did not want to rely on it”, so “cannot really get rid of it”²²⁸. It attacked the underlying history provided by the applicant to the doctor, specifically that the current episode started in the context of bullying by the Principal.
234. The respondent noted that she was not submitting that the applicant does not have a psychological injury and the real issue is what was the cause of it.²²⁹

²²⁰ T2, 99

²²¹ Reply p 139, T2, 101

²²² T2, 101

²²³ T2, 102

²²⁴ T2, 104

²²⁵ T2, 105

²²⁶ T2, 106

²²⁷ T2, 107

²²⁸ T2, 109

²²⁹ T2, 111

235. The respondent referred to the report of Dr Thornley who was an Endocrinologist and expressed an opinion beyond his expertise. Endocrinologists are specialist in diabetes and the recommendation by Dr Barrett was that the applicant should be assessed by an occupational physician.²³⁰
236. In response to my question that diabetes is associated with chronic fatigue, the respondent submitted, “Yeah, but it is a different thing. So chronic fatigue, that is whole, kind of, field of expertise relating to chronic fatigue... Dr Barrett recommends assessment by an immunologist or an occupational health physician”.²³¹
237. The respondent accepted that Dr Thornley could state that the applicant had reasonably controlled type I diabetes without any evidence of diabetic complications²³² but that the statement by the doctor that severe chronic major depressive disorder with atypical features including severe fatigue as per Dr Canaris’ diagnosis was outside the specialist’s field of expertise.
238. It was further submitted that Dr Thornley did not have all the facts so his opinion should not be accepted.
239. The respondent referred to correspondence about appointments (written submissions pages 4 and 5) and submitted:²³³
- “So this goes to causation because she cannot show that employment was the main, was a main contributing factor in circumstances where she refused to cooperate and going ... [to] an appointment when she has shown that something else was a substantial contributing factor, as per the Barrett report.”
240. The applicant has failed to discharge the onus of proof in circumstances where she is withholding evidence and has refused to attend appointments with an occupational physician. The respondent’s written submissions noted that whilst the applicant refused to attend an appointment organised by the respondent, she had attended an appointment with Dr Canaris in April 2018 which was at Ashfield.
241. The respondent referred to various documentation in its written outline under the heading “inability travel” noting that in the past, the applicant said she could not travel due to past psychological trauma or could not travel because she was bedridden but was assessed by video conference with Dr Barrett in 2015 and then saw Dr Canaris in Ashfield shortly thereafter. The applicant said that she could not do a Skype appointment in November 2018 because she had no access to the Internet²³⁴ but organised a Skype appointment with Dr Thornley in July 2019.²³⁵ This all suggests “when you go through all those different references that I have put there is that she is generally not been cooperative and generally not wanting... She is trying to manipulate it so that only certain information gets put forward and that goes to a reliability and credibility”.²³⁶
242. The respondent submitted that the PIAWE was \$1,389.89.²³⁷

²³⁰ T2, 113

²³¹ T2, 114

²³² T2, 114

²³³ T2, 117

²³⁴ Application, p 156

²³⁵ Application, p 228

²³⁶ T2, 119

²³⁷ T2, 120

243. In brief oral submissions in reply, the applicant confirmed that she was not running a case based on diabetes.²³⁸ The applicant otherwise submitted that the respondent's submissions were "different from what I interpreted the section 78 notice to be going to"²³⁹ and sought leave to make written submissions in response. The applicant submitted that there was no contrary assessment that the applicant was not over 15% whole person impairment and asserted that there was no medical dispute.²⁴⁰
244. The respondent noted that it had no objection to the applicant putting written submissions in reply but if new issues were raised then it would make submissions in reply.²⁴¹
245. The applicant filed lengthy submissions in reply. Portions of these sought to impute the Principal²⁴² with motives or otherwise attack the insurer's dispute notices²⁴³ which is entirely irrelevant to the issues for determination. Where relevant, I have addressed the applicant's submissions in reply later in these Reasons.
246. In its written submissions in reply the applicant accepted the respondent's submission on PIAWE.²⁴⁴
247. The respondent then filed objections to the applicant's written submission in reply and was given leave to file both written submissions and make oral submissions in further reply on 29 May 2020.
248. The respondent's written submissions in reply summarised its oral submissions. I refer to these written submissions later in these Reasons.

REASONS

249. The applicant must prove her case on the balance of probabilities.²⁴⁵
250. I observe at the outset that both parties and their witnesses emphasised concepts of reasonable behaviour in their submissions and in their statements. The respondent did not raise a s 11A defence and a determination of whether a particular witness (or the respondent) acted reasonably is not a matter that I have to determine despite submissions on that point.
251. I mention one particular matter. The Principal had concerns about the applicant's diabetes condition and how this impacted on her capacity to perform her duties and how it impacted on work rosters. The respondent arranged for a medical examination on the applicant's diabetic condition and various Return to Work plans were drafted, but not agreed, following the provision of the doctor's two reports.
252. The applicant's case, in part, relies on the circumstances surrounding the organisation of the medical report and the implementation of Return to Work plans following the provision of Dr Cooks' reports. I will not be determining whether the respondent acted reasonably in organising this assessment and implementing the Return to Work plans. However, I am required to analyse whether these events were causative of the applicant's psychological condition.

²³⁸ T2, 124

²³⁹ T2, 125

²⁴⁰ T2, 134

²⁴¹ T2, 138

²⁴² Applicant's written submissions in reply, paragraph 11

²⁴³ Applicant's written submissions in reply, paragraphs 22 - 31

²⁴⁴ Applicant's written submissions in reply, paragraph 77

²⁴⁵ *Nguyen v Cosmopolitan Homes (NSW) Pty Ltd* [2008] NSWCA 246 per McDougall J at [44]- [55], *McColl and Bell JJA* (as their Honours then were) agreeing; *Chen v State of New South Wales (No 2)* [2016] NSWCA 292 per Leeming JA at [33]-[34]; *McColl JA* agreeing at [1].

253. I also observe that the applicant introduced issues of bias and improper intentions in its submissions in reply such as an allegation that there was “collusion between the scheme agent and the employer”.²⁴⁶ These concepts are irrelevant to my determination and will not be considered further.

254. The applicant provided a recent lengthy and disorganised statement addressing a number of matters in her employment. Given the manner in which the respondent ultimately defended the matter, it is necessary to address preliminary issues of the applicant’s credit and whether certain events occurred. I accept that many of these issues are interrelated and it is difficult to separate them under distinct headings.

Legal principles

255. The applicant submitted that the principles in *Attorney-General’s Department v K (A-G v K)*²⁴⁷ applied to the facts in this case. In *A-G v K* Deputy President Roche relevantly concluded:²⁴⁸

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

- (a) employers take their employees as they find them. There is an “egg-shell psyche” principle which is the equivalent of the “egg-shell skull” principle (Spigelman CJ in *Chemler* at [40]);
- (b) a perception of real events, which are not external events, can satisfy the test of injury arising out of or in the course of employment (Spigelman CJ in *Chemler* at [54]);
- (c) if events which actually occurred in the workplace were perceived as creating an offensive or hostile working environment, and a psychological injury followed, it is open to the Commission to conclude that causation is established (Basten JA in *Chemler* at [69]);
- (d) so long as the events within the workplace were real, rather than imaginary, it does not matter that they affected the worker’s psyche because of a flawed perception of events because of a disordered mind (President Hall in *Sheridan*);
- (e) there is no requirement at law that the worker’s perception of the events must have been one that passed some qualitative test based on an “objective measure of reasonableness” (Von Doussa J in *Wiegand* at [31]), and
- (f) it is not necessary that the worker’s reaction to the events must have been “rational, reasonable and proportionate” before compensation can be recovered.”

256. The above statement is well-known and regularly applied in the Commission. Mr Hallion referred by way of example to *Lindsay v IMB Ltd.*²⁴⁹ The principles derive from the observations of the Court of Appeal in *State Transit Authority of New South Wales v Chemler.*²⁵⁰ The respondent did not contest these principles.²⁵¹

²⁴⁶ See for example Applicant’s submissions in reply, p 7

²⁴⁷ [2010] NSWCCPD 76

²⁴⁸ At [52]

²⁴⁹ [2019] NSWCCPD 7 at [37]

²⁵⁰ [2007] NSWCA 249 at [36], [40] and [69]

²⁵¹ T2, pp 39-40

257. Many of the doctors in this matter expressed opinions favourable to the applicant. The respondent submitted that the opinions had no or minimal weight for a number of reasons. These submissions fell under a number of categories including that the doctor did not have the expertise to express an opinion, the underlying facts relied upon by the applicant were not established (the fair climate principle) and a doctor's opinion accepting the applicant's version would not be accepted because I would not accept the applicant's version as provided to the doctor.
258. The principality of admissibility and the weight to be given to expert opinion in the Commission has been the subject of a number of Court of Appeal decisions. The respondent's outline addressed some of these decisions.
259. It is instructive to repeat what was discussed by Beazley JA (as her Honour then was) in *Hancock v East Coast Timber Products Pty Ltd*²⁵² (*Hancock*). Her Honour stated:
- “82 Although not bound by the rules of evidence, there can be no doubt that the Commission is required to be satisfied that expert evidence provides a satisfactory basis upon which the Commission can make its findings. For that reason, an expert's report will need to conform, in a sufficiently satisfactory way, with the usual requirements for expert evidence. As the authorities make plain, even in evidence-based jurisdictions, that does not require strict compliance with each and every feature referred to by Heydon JA in *Makita* to be set out in each and every report. In many cases, certain aspects to which his Honour referred will not be in dispute. A report ought not be rejected for that reason alone.
- 83 In the case of a non-evidence-based jurisdiction such as here, the question of the acceptability of expert evidence will not be one of admissibility but of weight. This was made apparent in *Brambles Industries Limited v Bell* [2010] NSWCA 162 at [19] per Hodgson JA. That is the way that Keating DCJ dealt with Dr Summersell's evidence in this case, so that is not the relevant error.”
260. As her Honour noted, the issue of admissibility of expert opinion does not arise in the Commission as it is not bound by the rules of evidence: *Brambles Industries Ltd v Bell*.²⁵³
261. The requirements of compliance with regards to principles governing expert evidence were discussed by the Commission (as well as numerous other cases) in *STA of NSW v El-Achi*²⁵⁴ when Roche DP stated:²⁵⁵
- “All that is required for satisfactory compliance with the principles governing expert evidence is for the expert's report to set out 'the facts observed, the assumed facts including those garnered from other sources such as the history provided by the appellant, and information from xrays and other tests' (*Hancock v East Coast Timber Products Pty Ltd* [2011] NSWCA 11; 80 NSWLR 43 per Beazley JA (as her Honour then was) at [85] (Giles and Tobias JJA agreeing)).”

²⁵² [2011] NSWCA 11 at [82] – [83], Giles and Tobias JJA agreeing

²⁵³ [2010] NSWCA 162 at [19], [24] and [28]

²⁵⁴ [2015] NSWCCPD 71

²⁵⁵ At [80]

262. The fair climate principles were discussed by the High Court in *Paric v John Holland (Constructions) Pty Ltd*²⁵⁶ and recently discussed by the Court of Appeal in *Booth v Fourmeninapub Pty Ltd*²⁵⁷ when Leeming JA stated:²⁵⁸

“Although a footnote cited the High Court’s decision in *Paric v John Holland (Constructions) Pty Ltd* [1985] HCA 58; 59 ALJR 844 for the reference to “fair climate”, in fact that language, deriving from *Culver v Sekulich* 344 P 2d 146 (1959), a decision of the Supreme Court of Wyoming, was endorsed by this Court’s *ex tempore* judgment in *Paric v John Holland Constructions Pty Ltd* [1984] 2 NSWLR 505 at 509-510. The language concerns the degree of accuracy and specificity required when an expert is asked for an opinion on hypothetical facts. In *Culver*, two men died in a plane crash, and the passenger’s widow sued the pilot’s estate in negligence. Necessarily much of the expert evidence was hypothetical, and in an appeal based on error (rather than rehearing) it was urged that it was wrongly admitted. The passage endorsed by this Court in *Paric* was at 154:

‘From our analysis of the record, it appears to us that there was some evidence to support every hypothetical question to which objection was made. Such evidence was not always complete, was sometimes hazy as to time, distance, and other vital points but in general furnished a fair climate for the consideration of the views of the expert witnesses.’”

263. I set out the separate issues raised by the respondent on the acceptance of medical opinion describing the submissions as both a breach of the fair climate principle and the *Hancock* principle. It may be that the principles are not distinct and that they represent a single basis for rejecting an opinion or otherwise giving that opinion no weight. In *OneSteel Reinforcing Pty Ltd v Sutton*²⁵⁹ (Sutton) McColl JA stated:²⁶⁰

“66. In *Paric v John Holland Constructions Pty Ltd* (at 846) the Court (Mason CJ, Wilson, Brennan, Deane and Dawson JJ) stated:

‘It is trite law that for an expert medical opinion to be of any value the facts upon which it is based must be proved by admissible evidence (*Ramsay v Watson* [1961] HCA 65; (1961) 108 CLR 642). *But that does not mean that the facts so proved must correspond with complete precision to the proposition on which the opinion is based.* The passages from *Wigmore on Evidence ...* to the effect that *it is a question of fact whether the case supposed is sufficiently like the one under consideration to render the opinion of the expert of any value are in accordance with both principle and common sense.*’
(emphasis added)

67. Beazley JA discussed a similar issue in *Hancock v East Coast Timber Products Pty Ltd* (at [70] - [78]), a matter to which the arbitrator referred (at [76]). In that case the employee claimed to have injured his knee when he fell whilst stacking timber in the course of his employment. There were no witnesses to his fall and he did not report the incident. He was off work for a few days after the incident but thereafter continued to work for another

²⁵⁶ [1985] HCA 58

²⁵⁷ [2020] NSWCA 57 at [14]

²⁵⁸ Bell P and White JA agreeing

²⁵⁹ [2012] NSWCA 282

²⁶⁰ At [66]-[68]

two and a half years, save for various periods of sick leave, before remaining permanently off work on sick leave. The employer terminated the employee's employment six months later. The employee claimed that he suffered from permanent incapacity as a result of the injury sustained in the work incident. The employee had also suffered pain in his knee after his fall in a number of non-work related incidents. An arbitrator found in his favour that his employment was a substantial contributing factor to his knee injury and awarded him weekly compensation.

68. The reports of the employee's treating orthopaedic surgeon, Dr Summersell, did not refer to the subsequent non-work related incidents. Beazley JA held (at [88]) that that did not amount to a failure to satisfy the requirement that an expert should 'identify the facts and reasoning process which he or she asserts justify the opinion': *Hancock v East Coast Timber Products Pty Ltd* (at [77]) referring to *ASIC v Rich* [2005] NSWCA 152; (2005) 218 ALR 764 (at [105]) per Spigelman CJ. In her Honour's view '[t]he extent of correspondence between the assumed facts and the facts proved was relevant to the assessment of the weight to be given to the reports'."

264. The observations of Allsop P in *Sutton* (at [2]) are pertinent:

"Nevertheless, as the cases discussed by McColl JA (for example, *Hancock v East Coast Timber Products Pty Ltd* [2011] NSWCA 11; 80 NSWLR 43) show, the Commission is required to draw its conclusions from material that is satisfactory, in the probative sense, in order that it act lawfully and in order that conclusions reached by it are not seen to be capricious, arbitrary or without foundational material."

265. The respondent also referred to the observations of the High Court in *Whisprun Pty Ltd v Dixon*²⁶¹ as support for its submission that if a medical opinion was premised on an acceptance of history and complaints which were rejected, then the medical opinion had no weight.

266. This principle was discussed by Gleeson JA in *Boateng v Dharamdas*²⁶² when his Honour stated:

"The medical opinions were premised on an acceptance of the appellant's account of his history and complaints. Such an opinion would only be as acceptable as the history on which it was based."

267. Whilst these principles are obviously relevant, they must be considered in the context that the respondent accepted that the applicant suffers from a psychological condition. A critical issue was whether non-work factors contributed to the cause or aggravation of the psychological condition such that the applicant had not discharged the onus of proving that the employment was the main contributing factor to the aggravation of the disease.

268. Noting these legal principles and submissions on the applicant's credibility, I address a number of preliminary factual issues.

The applicant's pre-existing psychological condition

269. I am satisfied that the applicant suffered from a pre-existing psychological condition relating to her slight involvement as a co-worker with Ivan Milat. I reject the applicant's recent statement that she was not suffering from a pre-existing condition.

²⁶¹ (2003) 77ALJR 1598 at 1609 [60] per Gleeson CJ, McHugh and Gummow JJ

²⁶² [2016] NSWCA 183 at [148], Leeming JA and Davies J agreeing

270. The applicant's evidence of her reaction to the charges and prosecution of Ivan Milat are addressed over several paragraphs in her statement dated 22 January 2020.²⁶³ The applicant worked at the same company but not closely with Mr Milat many years previously. She said she was shocked and saddened when she read about the case. When interviewed by investigators in the Milat investigation the applicant was told she was not to disclose the information she was told "under any circumstances" and that is why the "information has been redacted in my medical reports".
271. The applicant stated that she did not believe the Milat matters had "anything to do" with the psychological injury from the school and it was "just an attempt by the insurer to muddy the waters".²⁶⁴ The applicant also stated that her acquaintance with Milat was personal for her but "it did not make me depressed".²⁶⁵
272. Dr Robertson provided a report dated 18 October 2012²⁶⁶ in the context of a medical opinion that a transfer was not in the best interests of the applicant. In that report the doctor noted that if transferred, the applicant "would find it far too hard to have to go over her previous case (with Ivan Milat) to other principals".
273. In a further report dated 21 February 2013 Dr Robertson wrote:²⁶⁷
- "Herewith Ms Robin Craig, who has been a patient of mine for many, many years. She suffers from a severe form of diabetes & ongoing chronic anxiety (due to the psychological trauma involving Ivan Milat) – well known to the school & Department of Education. Because of past psychological trauma, she doesn't leave her local area, and hence cannot travel to a medical examination in distant parts of Sydney or Wollongong. ... She also is suffering from a recurrent skin rash, which has only started since she has been under this acute stress & is needing more intense treatment for this. However, she could certainly visit a local doctor, of the Department's choosing, to have her medical examination."
274. The report was written in the context of excusing the applicant from travelling a distance to a medical examination organised by the respondent as part of the applicant's restrictions at work due to the diabetic condition. The report, read in context, is unlikely to be an error as it was written by a doctor who has been the applicant's treating doctor over a number of years and provides a precise reason why the applicant cannot travel distances.
275. The opinion expressed in that report is consistent with the opinion expressed by the doctor some months earlier.
276. This history recorded by the doctor is consistent with the record of the meeting on 26 June 2012. The minutes of that meeting record the applicant as saying that "she is an Ivan Milat survivor and she still gets nervous and upset if she has to discuss it"²⁶⁸ and that "she would never go into any detail about the Milat matter as it still distressed her".²⁶⁹
277. The applicant addressed this issue in her written submissions in reply.²⁷⁰ It was submitted that the context of the letters required consideration and presumably the excuse was used to resist a school transfer. It was also submitted that caution should be exercised in interpreting medical records and the context in which they were generated. It was submitted, without any evidence to support the submission that:²⁷¹

²⁶³ Application, pp 28-29

²⁶⁴ Application, p 29

²⁶⁵ Application, p 29

²⁶⁶ Application, p 298

²⁶⁷ Application, p 299

²⁶⁸ Application, p 269

²⁶⁹ Application, p 268

²⁷⁰ Applicant's written submissions in reply, paragraphs 42-48

²⁷¹ Applicant's written submissions in reply, paragraphs 45

“It appears that the GP uses the Milat issue as a pre-text to excuse her travel rather than arising from any expressed concerns of the applicant”.

278. The principle referred to by the applicant as to the need for caution in accepting notes recorded by medical practitioners has been commented on by a number of superior courts: see for example the discussion by the Court of Appeal in *Davis v Council of the City of Wagga Wagga*,²⁷² *Mason v Demasi*,²⁷³ *Kappadoukas v Fransepp Pty Ltd*,²⁷⁴ *Mastronardi v State of New South Wales*,²⁷⁵ *Hill v Richards*,²⁷⁶ *Container Terminals Austral Ltd v Huseyin*²⁷⁷ and *Gulic v O'Neill*.²⁷⁸
279. The applicant’s written submissions lack any merit and are not based upon evidence because the explanation for the error is given by the applicant’s lawyers and not based upon what the applicant has stated. The submissions otherwise did not address the applicant’s statement at the meeting in June 2012, that she suffered from ongoing anxiety due to the Milat issue.
280. The applicant’s statement in June 2012 is consistent with the general practitioner’s opinion in late 2012 and early 2013. The versions are inherently consistent, that is, the applicant suffered ongoing psychological issues at that time arising from the much earlier Milat investigation.
281. The explanation provided in the applicant’s written submissions lacked an evidentiary basis, that is the assertion that the general practitioner was “mistaken”. It also defies credibility that the general practitioner would make an excuse when the applicant was providing a similar version to teachers at that time. The reports written by the general practitioner and the applicant’s version provided to staff in 2012, seen in context, appear credible.
282. I agree with the respondent’s submission that the denials in the applicant’s third statement²⁷⁹ are inconsistent with contemporaneous versions and were created many years later for the purposes of obtaining a benefit.
283. In *Nominal Defendant v Corbin Davies J* stated:²⁸⁰

“One reason that contemporaneous statements and documents are likely to be more accurate than a recollection of events is that a statement made at the time of an event, particularly when relatively spontaneous, is likely to be more accurate than a later statement made at a time when false memories can intrude. In a minority of cases the false memories are deliberately so because of the contrivance of the maker of the statement. In the majority of cases the false memories are honestly believed either for the reasons such as those outlined by Leggatt J in *Gestmin SGPS S.A. v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) or because the person recalling the events has tried to assemble recollections logically so that what happened can have some rational explanation in the person’s mind. As Leggatt J noted at [17] memories are fluid and malleable, being constantly rewritten whenever they are retrieved.”

²⁷² [2004] NSWCA 34 (*Davis*) at [34]-[36]

²⁷³ [2009] NSWCA 227 at [2]

²⁷⁴ [2006] NSWCA 366 at [56]

²⁷⁵ [2009] NSWCA 270 at [87]

²⁷⁶ [2011] NSWCA 291 at [23]

²⁷⁷ [2008] NSWCA 320 at [8]

²⁷⁸ [2011] NSWCA 361 at [24]

²⁷⁹ Application, p 29

²⁸⁰ [2017] NSWCA 6 at [167], Emmett JA agreeing at [156]

284. The fallibility of human recollection and the importance of contemporaneous records are also referenced in numerous cases including *Coote v Kelly*²⁸¹, *Onassis v Vergottis*²⁸², *Gestmin SGPS S.A. v Credit Suisse (UK) Limited*²⁸³, *Campbell v Campbell*²⁸⁴ and *Watson v Foxman*.²⁸⁵
285. Given the timing of the applicant's statement and the inconsistency with contemporaneous records, I reject the applicant's recent statement on this issue. The applicant's recent statement post-dates the events in 2012 by a number of years. It is a poor explanation in circumstances when there is powerful, compelling and contemporaneous evidence in 2012 that the applicant was still suffering from anxiety due to the Milat issue.
286. I also reject the applicant's versions where she has sought to downplay this issue to various doctors and other health practitioners in this matter. I prefer the powerful and contemporaneous evidence that the applicant was suffering from a pre-existing psychological condition prior to the work incidents.
287. The reference to the Ivan Milat evidence is a matter of concern and provides some insight into the applicant's thinking. In her statement the applicant admitted to redacting matters which "included information" pertaining to the Milat investigation.²⁸⁶ However, the redacted notes are brief and could hardly provide detailed knowledge of confidential information of a very public criminal investigation many years later.
288. The applicant admitted in her statement that she had "redacted" information in the medical reports concerning the Milat information on the basis that she was told by investigators that the information was not to be disclosed.²⁸⁷ It is difficult to know whether the applicant is being untruthful or whether the recent evidentiary statement is a deficiency of memory honestly believed. However, the redacted notes are brief and could hardly include sensitive information from a person who was not a witness at the trial and had no direct knowledge of Mr Milat's criminal conduct.
289. I observe that if the matter had been previously raised as a pre-hearing issue before me then I would have had no hesitation in directing the general practitioner to provide a complete copy of his notes. I also observe that I am unimpressed that the applicant, through her legal advisers, believed that there was an entitlement to determine what can and cannot be disclosed in a contested matter by redacting evidence. However, there was no objection to the notes being admitted and the parties made submissions on what had not been redacted.
290. The redacting was a matter addressed in submissions on the basis that the respondent submitted that they show another cause or otherwise provide an incomplete picture as part of a submission that the applicant had failed to satisfy the onus of proof.
291. The respondent submitted²⁸⁸ that not all of the redacted information would relate to the Milat investigation although it was probable that portions of it did. The respondent observed that I could not draw the inference that all of the redacted information related to the Milat investigation because that was not the applicant's evidence and such an inference was not the most likely explanation.

²⁸¹ [2016] NSWSC 1447

²⁸² [1968] 2 Li Rep 403 at 431

²⁸³ [2013] EWHC 3560 (Comm) at [15]-[22]

²⁸⁴ [2015] NSWSC 784 at [73]-[76],

²⁸⁵ (1995) 49 NSWLR 315 at 319 per McLelland CJ in Eq

²⁸⁶ Application, p 23

²⁸⁷ Application, p 28

²⁸⁸ Day 3 hearing, 29 May 2020

292. In *Caswell v Powell Duffryn Associated Collieries Ltd*²⁸⁹ (*Caswell*), Lord Wright stated:²⁹⁰

“Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty, as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.”

293. This passage has been frequently applied. Examples of its application in New South Wales include *Seltsam Pty Ltd v McGuinness*²⁹¹ and *Council of the City of Liverpool v Turano & Anor.*²⁹²

294. As Spigelman CJ stated in *Seltsam* citing *Layton v Vines*²⁹³ the “test is whether, on the basis of the primary facts, it is reasonable to draw the inference”.²⁹⁴

295. I conclude that significant portions if not most of the redacted information related to the Milat investigation and how that impacted on the applicant’s pre-existing psychological condition. That conclusion is drawn from the applicant’s statement, the fact that it is contained within the notes of the treating general practitioner and would likely relate to an explanation of the applicant’s health. The timing of the redacted notes is otherwise consistent with the notes of the general practitioner and his reports in 2012 that there was an existing anxiety condition. The conclusion is otherwise consistent with statements made by the applicant in 2012 that she was still suffering anxiety due to the Milat investigation.

296. In these circumstances, I conclude that the redaction of various notes within Dr Robertson’s clinical records only confirms my view that the applicant had an ongoing psychological condition over many years relating to the Milat investigation.

The applicant’s credit

297. The respondent made other submissions concerning the applicant’s credit. It referred to some bizarre evidence provided by the applicant that tended to suggest she was unreliable or paranoid, displayed improper behaviour in redacting evidence, refused to attend examinations and the uncooperative manner in which she was perceived to comply with examination requests.

298. I addressed the applicant’s evidence above concerning her denial of the Milat investigation. There are other aspects of the applicant’s evidence that suggest she is prone to exaggeration. The respondent referred to evidence that, when faced with a comment about her behaviour at school, the applicant responded that other people were lying²⁹⁵. There was also contemporaneous evidence establishing that the applicant’s interaction with students and the Principal was inappropriate. It was, as the respondent submitted, an insight into the applicant’s character.

²⁸⁹ [1940] AC 152

²⁹⁰ At 169-170

²⁹¹ [2000] NSWCA 29 (*Seltsam*) at [87]

²⁹² [2008] NSWCA 270 at [405].

²⁹³ [1952] HCA 19; (1952) 85 CLR 352 at 358

²⁹⁴ *Seltsam* at [88]

²⁹⁵ See for example respondent’s submissions paragraph 210 herein

299. The respondent relied on the comments expressed by Dr Barrett, Ms Mullavey and Mr Cipriani that the applicant was not cooperative on examination. Mr Cipriani noted that the applicant refused to comply after two and a half hours of questioning. Given the applicant's overall health and the acceptance that she has no current work capacity for whatever reasons, I do not find Mr Cipriani's comments that the applicant wanted to cease testing after such a prolonged period as persuasive that the applicant was being intentionally uncooperative.
300. I observe that it is not uncommon that opposing medical witnesses assert that a worker is uncooperative or exaggerating because the display of symptomatology is excessive and beyond the norms of a reasonable response. I have no doubt that the applicant portrayed herself as grossly ill and it is not surprising that there were comments by some practitioners that there was a degree of exaggeration. However, that submission must be considered in the context that the respondent accepted, for whatever reason, that the applicant had no current work capacity.
301. The respondent also relied on the applicant's failure to attend appointments and the reasons which were provided. Some of these reasons proffered by the applicant appear inconsistent with the fact that she attended other organised appointments at around that time.
302. Whilst not accepting all of the respondent's submissions on this issue, I am cautious of accepting the applicant's evidence and have analysed it in the context of whether it has been corroborated to a degree by other evidence. By that I am not indicating that the applicant's evidence must be corroborated to be accepted although I have generally only accepted her evidence if it was corroborated or otherwise consistent with contemporaneous accounts.

Allegations of assault by students

303. The applicant provided detailed evidence of distressful interactions with students. Some of the matters are clearly corroborated by contemporaneous evidence.
304. The applicant complained of this issue to Ms Lawrence at the time although she was criticised in submissions because there was no complaint to other teachers. The fact that other teachers were unaware of the assaults is of no significance when there is a clear record by a Deputy Principal and other contemporaneous documents verifying that these assaults were occurring. There is also no doubt that the applicant's car was also trashed by students at an earlier time.
305. A memorandum dated 11 December 2013 completed by Ms Lawrence²⁹⁶ recorded that one student had "entered into a significant verbal agreement" with the applicant in late November and the applicant had complained of being assaulted by that student. The following week the applicant complained of being elbowed by that student although Ms Lawrence did not believe the applicant's account.
306. Ms Lawrence also recorded that the applicant complained that she was called a "fucking slut" and was quite distressed.
307. A letter from Mr Burke dated 11 December 2013 referred to Mrs Chanter overhearing the applicant screaming and seeing "[a student] and Mrs Craig in an argument" and the student "using aggressive language". The student then apologised for swearing.²⁹⁷ Another portion of the report referred to the student using "aggressive language", that he had become angry and "was standing very close to [the applicant] and that they both were using raised voices". The student admitted to approaching the applicant and "was standing very close to her". Another person had reported the same student "had raised his fist".

²⁹⁶ Reply, p 352

²⁹⁷ Reply, p 178

308. The same report refers to another student “calling out things to [the applicant] through the door.”²⁹⁸
309. On 10 December 2013, the applicant attended Dr Chan who provided a WorkCover certificate for “chronic stressors at work”.²⁹⁹ A further certificate dated 17 December 2013 referred to an assault during school hours, seemingly by year 9 and 10 students and listed a variety of dates in November and December 2013.³⁰⁰ The applicant was then diagnosed with anxiety.
310. On 20 December 2013, Dr Robertson recorded that the applicant was recently assaulted by two students, becoming anxious and had elevating sugar levels.³⁰¹
311. The respondent’s submissions questioned whether these events occurred in the context of its submissions that the applicant was an unreliable witness. The respondent’s submissions failed to address cogent evidence, parts of which were contained in the Reply, that established corroboration of assaults by students and evidence of associated distress suffered by the applicant.
312. The applicant in her written submissions in reply asserted that the respondent appeared to “conflate” the issue of assault with a battery.³⁰²
313. The corroborative evidence is compelling that the applicant was subject to repetitive abuse and threats from students in the employ of the respondent. I accept the applicant’s account of the nature of the abuse she suffered from students at the school.

The applicant’s diabetic condition and the Return to Work Plans

314. I agree with the applicant’s submission that “the evidence supports the applicant’s perception that her diabetes became a factor which influenced how she was treated by the Principal and more generally by the executive of the school”.
315. The evidence of the witnesses relied upon by the respondent established that:
- (a) The applicant had a diabetes condition which necessitated injecting insulin during her school hours;
 - (b) The Principal required medical evidence to support the condition and the various work restrictions;
 - (c) The applicant failed to provide medical evidence when requested by the Principal;
 - (d) The Principal then requested that the applicant attend a medical appointment organised by the respondent;
 - (e) The applicant initially did not attend a medical appointment for reasons of travel;
 - (f) The applicant eventually attended an appointment arranged with Dr Cook. Dr Cook then provided two reports to the respondent;

²⁹⁸ Reply, p 178

²⁹⁹ Application, p 321

³⁰⁰ Reply, p 7

³⁰¹ Application, p 265

³⁰² Applicant’s written submissions in reply, paragraph 20

- (g) On provision of these reports the respondent drafted a number of Return to Work plans which were discussed and rejected by the applicant.³⁰³ Indeed the respondent's submissions described the number of Return to Work plans as "six or seven";³⁰⁴
- (h) In June 2014, the applicant was advised that she would not be able "to enter on duty" until there was agreement. The applicant continued to refuse to sign the Return to Work plan³⁰⁵ and remained off work.

316. The general practitioner made clinical notes concerning this matter.³⁰⁶ On 2 August 2012 the general practitioner recorded that the applicant "problems with school esp principal" and "school wants to know about diabetes".³⁰⁷

317. On 18 October 2012, the general practitioner was asked for a second letter concerning "not to be asked to travel to Wollongong re independent medial; can't inject; any specialists can be local".³⁰⁸ This attendance was followed by a letter from the doctor³⁰⁹ which was to the effect that any "further transfers" would adversely affect the applicant's diabetes and the applicant would "be under undue distress".

318. In a report dated 21 February 2013, the general practitioner noted that the stress of being required to travel to distant areas, in the context of the respondent requiring a medical opinion on the applicant's diabetes, was causing the applicant "acute stress" for which she required "intense treatment".³¹⁰

319. On 21 June 2013, the general practitioner recorded:³¹¹

"under stress at school
Apparent bullying from headmistress
Discussed
Been anxious ++
Rash on back"

320. On 26 June 2013, the general practitioner recorded "stress at work; can't go back to work; off rest of week".³¹² The general practitioner then issued a WorkCover certificate. The WorkCover certificate of that day certified the applicant unfit for work for a week and records the following:³¹³

"Longstanding apparent bullying from principal and others causing great anxiety".

321. A statement by Criselle Gulley dated 25 July 2013 noted that the applicant "has experienced an enormous amount of continuous pressure and harassment from our Principal over the past few years".³¹⁴ Dr Celia Finnie wrote in January 2014 that the applicant contacted her in Term 2 (probably a reference to Term 2 in 2013) stating that "she was suffering from the bullying and needed support".³¹⁵

³⁰³ RTW No 2, Reply, p 305

³⁰⁴ T2, 63

³⁰⁵ Principal's report dated 19 November 2014, Reply, p 308

³⁰⁶ Applicant's written submissions in reply, p 6

³⁰⁷ Application, p 263

³⁰⁸ Application, p 264

³⁰⁹ Application, p 274

³¹⁰ Application, p 299

³¹¹ Application, p 264

³¹² Application, p 265

³¹³ Application, p 309

³¹⁴ Application, p 100

³¹⁵ Application, p 121

322. Letters of support were written for the applicant by Gordon Clapham in November 2012³¹⁶ concerning her diabetes management and by the previous Principal, Stephen Esler, in February 2013.³¹⁷
323. On 2 April 2014, Dr Robertson provided a medical certificate. The Return to Work plan number 3 was discussed at that time.³¹⁸ The Return to Work plan was again discussed with the general practitioner on 11 June 2014 and again on 14 July 2014 relating to various restrictions at work.³¹⁹
324. On 19 September 2014, the doctor recorded that the applicant was “not able to go back until signs RTW”.³²⁰
325. Based on this evidence, I conclude that the interaction between the Principal over an extended period from at least mid-2012 to mid-2014 involving the applicant’s diabetic condition and how this impacted on her work duties were the subject of various correspondence, direction and discussions. Clearly the applicant was anxious, distressed and upset by these interactions. She told her general practitioner that she was upset, obtained statements from co-workers supporting her position and had a number of discussions with her general practitioner.
326. Further, the statements from Criselle Gulley and Dr Celia Finnie provide contemporaneous corroboration that the applicant was distressed by the Principal’s actions at that time.
327. There is no doubt, as the applicant submitted, that these were real events. There is also powerful contemporaneous and corroborative evidence that the events were upsetting and distressful to the applicant.
328. I am not required to decide, as the applicant submitted³²¹ that the respondent used the Return to Work plans to “intimidate, harass and bully her as part of [an] agenda to have her leave”.
329. I am also not required to decide, as the respondent submitted, that its actions were reasonable or that it attempted to accommodate the applicant in the various Return to Work plans.³²²
330. The respondent otherwise submitted in its written reply submissions that it was not its contention that it “was not the applicant’s unreasonable refusal to participate in the return to work plans which caused her to stop work.”³²³ This submission was specifically brought to the respondent’s attention on day three of the hearing because, whilst the submissions were phrased in terms of “not its contention”, the evidence from the Principal was to the contrary. In a report dated 19 November 2014 the Principal had stated that the applicant was directed that “until there was agreement ... she would not be able to enter on duty”.
331. The respondent’s response was that there were other reasons why the applicant also stopped work including a planned holiday. The source of that submission was an unidentified history to a doctor. Whilst I could not locate that reference, I clearly accept that the applicant stopped work in mid-2014 for the reason articulated by the Principal in that report. That conclusion is otherwise consistent with what was recorded by the general practitioner on

³¹⁶ Application, p 97

³¹⁷ Application p 99

³¹⁸ Application, p 266

³¹⁹ Application, pp 266-267

³²⁰ Application, p 267

³²¹ Applicant’s submissions in reply, paragraph 51

³²² T2, 61 and 65

³²³ Respondent’s written submissions in reply, paragraph 31

19 September 2014 that the applicant was “not able to go back until signs RTW.”³²⁴ The reference to “RTW” is clearly the latest version of the Return to Work plan. It is also consistent with the applicant’s statement made in November 2014.³²⁵

332. For these reasons I accept that the interaction between the Principal and the applicant concerning the management of the applicant’s diabetes and how it impacted on her duties was an ongoing source of distress to the applicant. The applicant clearly believed that, because of how she was treated, she was bullied and harassed by the Principal. This is a critical finding because it is intimately connected with the issue raised by the respondent of whether various doctors had a fair climate to express an opinion.³²⁶

General allegations of bullying and rudeness by the Principal to the applicant

333. The applicant asserted and pleaded a case based on “bullying and harassment”. She pursued a case based on both actual bullying and one based on perception.

334. I am satisfied on the balance of probabilities that the applicant perceived she was bullied and harassed by the Principal in relation to the management of her diabetes including the requirement to agree to a Return to Work plan.

335. I accept that the applicant’s recollection may not be accurate and reliable. Given the manner in which the case was run I decline to find that the applicant was intentionally dishonest. Where necessary, I have examined the evidence for the purposes of determining whether the applicant’s account should be accepted.

336. Some of the allegations made by the applicant, such as the Principal screaming or grabbing her by the arm are not corroborated by other evidence and generally inconsistent with statements from other teachers that the Principal did not engage in that type of conduct and behaviour.

337. The statements by the other witnesses relied upon by the applicant are often vague in making general allegations of bullying and harassment without any specific details. They are contrasted with specific observations from co-workers that the Principal did not behave in this manner.

338. I have earlier set out my reservations with respect to the applicant’s evidence. Given these reservations I do not accept the applicant’s evidence that she was bullied and harassed by the Principal including allegations of being sworn at and the like.

339. However, I am clearly satisfied on the requisite onus that the applicant perceived that she was targeted, bullied and harassed by the Principal in matters pertaining to her diabetic management over an extended period ultimately culminating in her ceasing work because she had refused to accept the Return to Work plan. That perception was based on the real events that I have earlier set out.³²⁷

Injury

340. I have earlier concluded that the applicant had a pre-existing psychological condition. The applicant’s entitlement to compensation is therefore dependent upon her establishing the test prescribed by s 4(b)(ii) of the 1987 Act.

³²⁴ Application, p 268

³²⁵ Application, p 3, paragraph 22

³²⁶ See for example respondent’s written submissions in reply, paragraph 20

³²⁷ See paragraph [315] herein

341. Section 4 of the 1987 Act relevantly provides:

"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".

342. The respondent's submission concerning the non-work causes to any aggravation of the underlying condition was articulated as follows:³²⁸

"The applicant deals with the possibility that the applicant had an underlying psychological condition broadly attributable to Ivan Milat. Whilst this may be so, the more significant issue is that the primary cause of any exacerbation of the psychological condition is likely to be the applicant's physical condition."

343. The applicant's reply submissions were that "there is no evidence to support an aggravation or cogent evidence other than workplace stressor".³²⁹

344. It therefore became a fundamental issue whether the applicant had an unrelated physical condition in 2014 that was a relevant factor in aggravating her psychiatric condition or whether the physical manifestation of symptoms was the product of the applicant's psychological condition which had been aggravated by work.

345. The respondent contested the medical opinion supporting the applicant essentially on a number of bases, that is, any opinion was based on histories that were not proved (fair climate), the opinion was not properly explained, the expert was not qualified to express an opinion and/or that the opinion was based on acceptance of the applicant's evidence that would not be accepted.

346. I have earlier set out my acceptance of the applicant's evidence that she was subject to stressful behaviour by students and she perceived that she was bullied by the Principal in relation to her diabetic management and the imposition of Return to Work plans.

347. I have otherwise concluded that the applicant had a pre-existing psychological condition.

348. I observe that the respondent accepted that the applicant had a psychological condition³³⁰ and that she was unfit for work at all material times³³¹.

349. Whilst it does not bear the onus, the respondent identified the applicant's physical complaints such as the complaints about chronic fatigue symptoms and the like to her general practitioner in 2014 – 2016 as rebutting the proposition that employment was the main contributing factor to the aggravation of the disease.

³²⁸ Respondent's submissions in reply, paragraph 31 and confirmed on Day 3

³²⁹ Applicant's written submissions in reply, paragraph 69

³³⁰ T2, 111

³³¹ T1, pp 37-38

350. In *AV v AW*³³² the Commission considered competing work and non-work causes as the source of the aggravation of the pre-existing psychological condition. After referring to a number of Presidential decisions, Snell DP stated:³³³

“The following may be taken from the above:

(a) The test of ‘main contributing factor’ in s 4(b)(ii) is more stringent than that in s 4(b)(ii) in its previous form, which applied in conjunction with the test in s 9A. There will be one ‘main contributing factor’ to an alleged aggravation injury.

(b) The test of ‘main contributing factor’ is one of causation. It involves consideration of the evidence overall, it is not purely a medical question. It involves an evaluative process, considering the causal factors to the aggravation, both work and non-work related. Medical evidence to address the ultimate question of whether the test of ‘main contributing factor’ is satisfied is both relevant and desirable. Its absence is not necessarily fatal, as satisfaction of the test is to be considered on the whole of the evidence.

(c) In a matter involving s 4(b)(ii) it is necessary that the employment be the main contributing factor to the aggravation, not to the underlying disease process as a whole.”

351. Following the cessation of employment, the notes of the general practitioner focus on “extreme fatigue”³³⁴. Dr Byrne diagnosed the applicant with chronic fatigue and fibromyalgia in 2015.³³⁵ These notes must be read in context because portions of Dr Robertson’s notes from August 2012 to late 2013 specifically referred to stress as a result of events at school³³⁶ and various notes concerning problems with the Principal³³⁷ and the Return to Work plans³³⁸. The clinical notes are clearly not a complete record of what was discussed and opined by the general practitioner. However, overall and contrary to the respondent’s submissions, they tend to confirm that the applicant complained of ongoing stress and anxiety as a result of specific actions at school over the course of 2012 and 2013.

352. The applicant provided a statement in October 2014 containing complaints of depression, stress and anxiety from the constant bullying.

353. In January 2015, Dr Robertson wrote a short report referring to the applicant’s “anxiety and stressed she has been through as part of her injury”.³³⁹ When this report is read in context with the other clinical notes over the past two years I do not accept that, as the respondent submitted, the doctor was referring to the shoulder injury. The doctor is expressing an opinion that the applicant is suffering from anxiety and stress as a result of the various issues raised at work, particularly the Return to Work plans and to a lesser extent, the assaults from students. That report tends to support the applicant’s claim.

354. Noting that there were prior complaints of stress and anxiety, I accept the respondent’s submissions that the applicant was complaining of overwhelming physical symptoms in late 2014 and early 2015. The respondent referred to the histories recorded by Ms Mullavey³⁴⁰ and the short report from Dr Kafataris confirms the physical symptoms at that time.³⁴¹

³³² [2020] NSWCCPD 9

³³³ At [79]

³³⁴ 19 September 2014, Application, p 266

³³⁵ See for example, Application, p 273

³³⁶ See for example 2 August 2012, 21 February 2013, 21 June 2013 and 12 December 2013

³³⁷ See for example 2 August 2012, 21 February 2013, 21 June 2013

³³⁸ See for example 2 April 2014, 14 July 2014 and 19 September 2014

³³⁹ Application, p 290

³⁴⁰ Respondent’s written submissions in reply, paragraph 32

³⁴¹ Reply, p 16

355. As I identified, and counsel agreed on the third hearing day, a critical issue is whether these physical symptoms were a manifestation of the applicant's psychological condition or, as the respondent submitted, the cause of it such that the applicant had not discharged the onus of proving her case under s 4(b) of the 1987 Act.
356. The opinion expressed by Dr Gotis-Graham is critical in the context of determining the issue of whether the complaints of physical symptoms was independent of a psychiatric injury caused by work. Dr Gotis-Graham is a specialist Rheumatologist and Occupational Physician and clearly had qualifications to comment on the issue of whether the applicant was suffering chronic fatigue and fibromyalgia independently of any work caused psychiatric condition.
357. The respondent submitted that Dr Gotis-Graham could not express an opinion that the physical symptoms were secondary to the psychological condition. I do not accept that submission. Dr Gotis-Graham holds a medical degree with further qualifications in Rheumatology and as a Physician. The fact that he is expressing a view on a medical issue beyond his direct specialty does not place the width of the opinion outside his general medical knowledge. Further, the doctor is expressing an opinion on cause in circumstances where he has accepted that the issue of chronic fatigue was within his relevant speciality. It is a matter of commonsense and logic³⁴² that the doctor has expressed an opinion as to the cause based on discounting another cause within his speciality. I do not reject that part of the doctor's opinion and am entitled to give it appropriate weight. Upon rejecting the physical cause for these symptoms, the doctor is entitled to express an opinion about why the applicant is suffering from these symptoms. The fact that it is based on a psychological basis only affects the weight that should be attached to that part of the doctor's opinion.
358. The respondent submitted that Dr Gotis-Graham relied on the applicant's version without considering an alternative account of the facts. However, the earlier findings establish that there was a prolonged dispute between the applicant and the respondent over her diabetes management in circumstances where the applicant perceived she was bullied. That finding is clearly consistent with the history taken by Dr Gotis-Graham that the applicant was the subject of bullying and discrimination by the Principal in relation to the management of her diabetes at work.³⁴³
359. Dr Gotis-Graham noted an initial history of physical symptoms, consistent with the respondent's submissions and that recorded by the general practitioner in late 2014. The history that she could not walk 30 metres was recorded by the doctor. The respondent submitted that this fact justified a physical diagnosis as the cause although this was expressly rejected by the doctor who was entitled to form that view based on his expertise.
360. Dr Gotis-Graham had clear expertise in rejecting the chronic fatigue explanation and lesser expertise in expressing the opinion that the fatigue and widespread pain were secondary to a psychological condition. He has clearly expressed an opinion based on a fair climate consistent with my earlier findings.
361. The respondent submitted that the analysis of whether the applicant had chronic fatigue had to be undertaken, according to Dr Barrett, a Psychiatrist, by an Occupational Physician or Immunologist. Dr Gotis-Graham stated that his specialist qualifications were as "Rheumatologist and Consultant Physician". I do accept the respondent's submission that Dr Gotis-Graham did not hold the relevant specialist qualifications when he is clearly a credited Physician. Indeed, Dr Barrett never stated that Dr Gotis-Graham was not qualified to comment on the applicant's chronic fatigue.

³⁴² *Tudor Capital Australia Pty Ltd v Christensen* [2017] NSWCA 260 at [364]-[368], McFarlan JA agreeing at [425]

³⁴³ Application, p 221

362. In its written submissions in reply³⁴⁴, the respondent referred to Dr Barrett's conclusion that it was "his understanding that chronic fatigue is within the field of immunologists rather than endocrinologists."³⁴⁵ However that passage was a paraphrase of what he stated directly above that comment.

363. Earlier in his report, Dr Barrett stated:

"I think in order to better clarify her condition it would be important for there to be neuropsychological testing and an opinion from an immunologist, who has an interest in chronic fatigue, or an occupational physician with a similar interest, to comment on her chronic fatigue syndrome, diabetes, and whether or not that explains her reported psychological symptoms.

If it was the opinion of the immunologist or occupational physician that her physical conditions did not explain the extend of her psychological conditions, it would be appropriate for her to be reviewed again by a psychiatrist at that time, with that information."

364. The respondent submitted the applicant refused to be examined by a number of experts qualified by it and submitted:³⁴⁶

"In the absence of any assessment of the applicant's chronic fatigue syndrome from an occupational physician or immunologist, as recommended by Dr Barrett, the Commission could not conclude that the applicant had demonstrated that her employment was the main contributing factor to her disease. Rather, the evidence indicates that physical conditions, such as chronic fatigue syndrome, were the main contributing factor to her psychological condition. That was her view at the time."

365. That submission simply ignores Dr Gotis-Graham's qualifications.

366. I observe that the respondent phrased the submission of the applicant's failure to attend as going to her credit and in the failure to prove her case. To the extent that the respondent relied on the applicant's excuses in refusing to attend, I have accepted and considered this in the context of my reservations in accepting the applicant's evidence.

367. I observe that the respondent did not raise the failure by the applicant to attend any examination as a defence under various provisions such as s 48A of the 1998 Act.

368. Dr Thornley is clearly qualified to comment on diabetes issues as that is his specialty. He has provided the only specialist opinion that the diabetes was controlled and was not contributing to the applicant's symptoms. That opinion, which I accept, was also based on an examination.

369. To the extent that doctors or a psychologist³⁴⁷ not specialised in this field have provided a contrary opinion, I defer and accept the opinion of Dr Thornley that the applicant's diabetic condition was well managed and not contributing to her psychological condition.

370. I observe that this conclusion is consistent with the extensive evidence recorded in the statements of various people, which I accept, that the applicant was conscious of and appropriately managed her diabetic condition.

³⁴⁴ Paragraph 15

³⁴⁵ Reply, p 51

³⁴⁶ Respondent written submission in reply, paragraph 18

³⁴⁷ Mr Cipriani, psychologist has expressed a contrary view

371. Dr Thornley recorded a history of an onset of chronic fatigue and non-specific diffuse aches and pain in 2014. He also noted that the applicant alleges “that she was the victim of workplace bullying by the principal.”³⁴⁸ In my view that history is a fair climate and consistent with my earlier findings.
372. Dr Thornley expressed an opinion that he agreed with Dr Canaris’ diagnosis that the applicant had a “severe chronic major depressive disorder with atypical features including severe fatigue.”
373. I do not accept the respondent’s submission that Dr Thornley was not qualified to provide this opinion as he is a medical doctor. Whilst the psychiatric opinion fell outside his direct speciality, he is otherwise entitled to express a medical opinion. I also observe that the weight to be attached to the opinion is strengthened because he has rejected the diabetes condition as the cause of the symptomatology.
374. I reject that the applicant’s underlying diabetic condition was causative of either the manifestation of any physical symptoms and/or the worsening of the psychiatric condition in 2014.
375. Dr Canaris and Dr Bisht, both Psychiatrists and separately qualified by the parties, expressed opinions favourable to the applicant’s case.
376. Dr Canaris recorded a history that the applicant “felt harried and harassed” by the Principal about her diabetes and the Return to Work plans and noted that in this setting, she developed chronic fatigue.”³⁴⁹ This history is consistent with my factual findings.
377. Dr Canaris noted the Milat involvement but in his first report could not ascertain the significance of the applicant’s involvement to this. In his second report the doctor noted psychological symptoms as far back as 2001.³⁵⁰ Accordingly, the absence of a proper history on the pre-existing psychological condition was somewhat ameliorated by an analysis of the clinical records in the second report.
378. Based on a combination of his two reports I am satisfied that Dr Canaris had a fair climate to express an opinion on the cause of the applicant’s psychiatric condition and the relevance of the symptoms of fatigue.
379. Dr Bisht was qualified by the respondent. The doctor recorded a history of the cause of the condition as relating to the conduct of the Principal and the development of physical symptoms. He also recorded a previous psychiatric history involving Mr Milat.
380. I accept that Dr Bisht recorded a fair climate to express an opinion that the “bullying and harassment” was the predominate cause of the psychiatric condition.³⁵¹ It is otherwise ironic that the respondent submitted that Dr Bisht had insufficient information when he was qualified by the respondent and the material placed before the doctor was determined by it.
381. Dr Barrett expressed reservations in his opinion noting that the psychological condition appeared secondary to physical symptoms. The doctor expressed concerns regarding the relevance of the chronic fatigue syndrome and suggested that this be answered by an occupational health physician or immunologist”.³⁵² In my view the concerns expressed by Dr Barrett seem to be addressed by the opinion expressed by Dr Gotis-Graham.

³⁴⁸ Application, p 227

³⁴⁹ Application, pp 220-221

³⁵⁰ Application, p 216

³⁵¹ Reply, p 362

³⁵² Reply, p 48

382. Mr Cipriani noted that the applicant's main complaints related to fatigue, memory impairment and associated disability and suggested a specialist opinion was required as to whether these conditions were caused by diabetes. In my view Mr Cipriani's queries are answered by the opinions expressed by Dr Thornley and Dr Gotis-Graham.
383. Ms Mullavey raised the issue of deterioration following the cessation of work. That opinion was raised by the respondent in the context that the applicant was fit for work in June 2014 and deteriorated over the following months. The respondent's submission is that the better explanation is that there was another cause for the deterioration in the applicant's condition. The fact that there was a deterioration in symptomatology following the cessation of work does not necessarily mean that there is an intervening event and can simply reflect the progress of the injury.
384. I am satisfied that the expert opinions of Dr Gotis-Graham and Dr Thornley adequately rebut the suggestion of a physical basis aggravating the applicant's psychological condition. During this period the applicant remained off work and the evidence discloses that she could not return until there had been agreement on the Return to Work plan. That did not occur.
385. The respondent's submission that the applicant displayed physical symptoms in 2014 must also be considered in the context that there were recorded complaints of anxiety associated with stress from the school associated with assaults and interactions with the Principal in 2012 and 2013.
386. Accordingly, I accept the applicant's written submissions that there were "no triggering events outside the workplace other than those attributable to the applicant's workplace injury". In that respect I accept that the psychological condition was aggravated particularly by the events associated with the ongoing issue pertaining to the respondent's actions with respect to implementing a Return to Work plan for the applicant's diabetic condition. I am satisfied that the employment was probably the only, and certainly the main, contributing factor to the aggravation etc. of the applicant's underlying psychological condition.
387. I accept the opinions expressed by Dr Thornley, Dr Gotis-Graham, Dr Bisht and Dr Canaris that the physical symptoms evidence in the second half of 2014 were a manifestation of the psychological condition aggravated by the applicant's perception that she was bullied by the Principal in the management of her diabetic condition. I do not accept the tentative expression of opinions from Dr Barrett, Ms Mullavey and Mr Cipriani suggesting a possible physical cause.
388. The applicant has established injury within the meaning of s 4(b)(ii) of the 1987 Act deemed to have occurred on 10 June 2014.

Compensation entitlements

389. The respondent accepted that the applicant had no current work capacity but disputed that there was an issue as to the cause of the incapacity.³⁵³ My findings on injury dispose of this issue.
390. In any event the test is whether incapacity results from injury (s 33 of the 1987 Act). It is a basic principle that the injury does not have to be the sole cause of incapacity.
391. In the unanimous decision in *Calman v Commissioner of Police*³⁵⁴ (*Calman*), the High Court stated:³⁵⁵

³⁵³ T1, p 38

³⁵⁴ [1999] HCA 60; (1999) ALR 91

³⁵⁵ At [39]-[40]

“39. Whether incapacity results from injury is a question of fact. Upon the findings in this case, however, the answer to that question could admit of only one answer. As a matter of law, the Tribunal was bound to find that the incapacity of the appellant resulted from injury within the meaning of s 33 of the Workers Compensation Act. Although the incapacity would not have arisen but for the appellant being told that he was to be transferred, there would have been no incapacity but for the existence of his underlying anxiety disorder. The incident, which was the immediate cause of his incapacity, merely exacerbated the underlying anxiety disorder which continued to exist, notwithstanding that immediately before the incident it manifested no symptoms. In those circumstances, the injury was a contributing cause to the incapacity. As Jordan CJ pointed out in *Salisbury v Australian Iron and Steel Ltd* [20]:

‘It is not necessary that the employment injury should be the sole cause of disability. It is sufficient if it is a contributing cause[21]. It may be the catalyst which precipitates disability in a medium of disease. But when the stage is reached at which the employment injury ceases to produce effects and could therefore no longer be a contributing cause to any incapacity which may then exist, the right to compensation ceases.’

40. In the present case, the underlying anxiety disorder continued and was capable of producing serious effects if exacerbated or aggravated, as the Tribunal's findings showed. That being so, the Tribunal was bound to find as a matter of law[22] that the appellant's incapacity resulted from injury within the meaning of s 33 of the Workers Compensation Act.”

392. *Calman* was referred to in *McCarthy v Department of Corrective Services*³⁵⁶ when Roche DP made observations concerning the appropriate test on causation for establishing an entitlement to weekly compensation. In particular, the Deputy President stated:³⁵⁷

“It is trite law that a loss can result from more than one cause (*ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]; [2009] HCA 28; (2009) 83 ALJR 986). The authority of *Calman* is also instructive on this issue. The Court held (at [38], excluding footnotes):

Once the appellant established that his underlying anxiety disorder was an injury within the meaning of the Workers Compensation Act, he was entitled ‘to compensation ... under [that] Act’ upon proof that his total or partial incapacity for work resulted from that injury. The question then for the Tribunal was whether the appellant’s incapacity was causally connected to the underlying anxiety disorder. It has long been settled that incapacity may result from an injury for the purposes of workers’ compensation legislation even though the incapacity is also the product of other - even later - causes. Indeed, death or incapacity may result from a work injury even though the death or incapacity also results from a later, non-employment cause. Thus, in *Conkey & Sons Ltd v Miller*, Barwick CJ, with whose judgment Gibbs, Stephen, Jacobs and Murphy JJ agreed, held that it was open to the Workers’ Compensation Commission to find from the medical evidence in that case ‘that the death by reason of myocardial infarction when it did ultimately occur, ‘resulted’ from the work-caused injury of the first infarction, even if it could not be said that the final infarction was itself caused by work-caused injury.”

³⁵⁶ [2010] NSWCCPD 27

³⁵⁷ At [148]-[149]

393. My conclusion that the applicant's fatigue was related to the applicant's psychological condition is otherwise relevant and determinative of my conclusion that the applicant's overall psychological symptoms materially contributed to her total incapacity.
394. I would add that the applicant's condition clearly deteriorated following the cessation of work. I note that the respondent did not contest this and accepted that the applicant had no current work capacity throughout the period claimed.
395. There was no issue with respect to the applicant's PIAWE. The applicant is entitled to an award of weekly compensation at 95% of the agreed rate for the first 13 weeks and then 80% of the balance of the 130-week period.
396. The applicant submitted that the respondent was bound to accept the s 66 claim as pleaded. I reject that proposition for a number of reasons including that the assessment does not consider a s 323 deduction which is likely given my finding that the applicant had a pre-existing psychiatric condition, that the assessment needs to be determined on an updated basis and that, as my reasons disclose, I do not accept the entirety of the applicant's evidence.
397. For these reasons it is appropriate that an AMS examine the applicant and assess whole person impairment.
398. The applicant is also entitled to a general order pursuant to s 60 of the 1987 Act.

ORDERS

399. The findings and orders are set out in the Certificate of Determination

