WORKERS COMPENSATION COMMISSION

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

Matter Number:	**M1-464/20**
Appellant:	**Belinda McPherson-Connor**
Respondent:	**State of New South Wales (NSW Police Force)**
Date of Decision:	**3 September 2020**
Citation:	**[2020] NSWWCCMA 141**

Appeal Panel:	
Arbitrator:	**Jane Peacock**
Approved Medical Specialist:	**Dr Julian Parmegiani**
Approved Medical Specialist:	**Dr Douglas Andrews**

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 1 June 2020, Ms Belinda McPherson-Connor (the appellant) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Christopher Bench, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 5 May 2020.

2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):

    - the assessment was made on the basis of incorrect criteria, and
    - the MAC contains a demonstrable error.

3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.

4. The Workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.

5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th* ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment,* 5th ed (AMA 5).

PRELIMINARY REVIEW

6. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.

7. The appellant worker asked for a re-examination to take place by way of face to face assessment. As a result of the Appeal Panel's preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination. This is because the panel did not find, for the reasons explained below, that the AMS had erred in his assessment. Absent error by the AMS, the panel cannot require a re-examination.

EVIDENCE

Documentary evidence

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

Medical Assessment Certificate

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

SUBMISSIONS

10. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.

FINDINGS AND REASONS

11. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.

12. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

13. The matter was referred by the Registrar to the AMS as follows:

> "The following matters have been referred for assessment (s 319 of the 1998 Act):
>
> - Date of injury: 19 February 2013 (deemed)
> - Body parts / systems referred: Psychiatric and Psychological Disorders
> - Method of assessment: Whole Person Impairment"

14. The AMS issued a MAC certifying as follows:

Body Part or system	**Date of Injury**	**Chapter, page and paragraph number in NSW workers compensation guidelines**	**Chapter, page, paragraph, figure and table numbers in AMA5 Guides**	**% WPI**	**WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality** (expressed as a fraction)	**Sub-total/s % WPI** (after any deductions in column 6)
1. **Psychiatric and psychological disorders**	**19 February 2013 (deemed)**	**Chapter 11, pages 54 – 60, paragraphs 11.1 to 11.20**	**n/a**	**9%**	0%	**9%**
2.						
3.						
4.						
5.						
6.						
Total % WPI (the Combined Table values of all sub-totals)					**9%**	

15. The assessment was based on an assessment by the AMS conducted under the permanent impairment ratings scale (PIRS), as set out in the following table:

Table 11.8: PIRS Rating Form

Name	Belinda McPherson-Connor	Claim reference number (if known)	Not known
DOB	24 July 1977	Age at time of injury	35 years of age
Date of Injury	19 February 2013 (deemed)	Occupation at time of injury	Sergeant
Date of Assessment	30 April 2020	Marital Status before injury	Married

Psychiatric diagnoses	1. Posttraumatic Stress Disorder, chronic	2. Persistent Depressive Disorder
	3.	4.
Psychiatric treatment	Mental health care monitoring: Dr Caitlin Raschke Psychotherapy: Ron Farrell Psychiatric Supervision: Dr Alexander Murray Current Medications: Nil	
Is impairment permanent?	(Yes)	

PIRS Category	Class	Reason for Decision
Self-Care and personal hygiene	1	The applicant is living on an independent basis in her own home in Medowie with her two children. She noted she bathes “every night”. She brushes her teeth twice a day. She will wear clean underwear and a clean shirt; however, may wear the same pants for a couple of days in a row. She

		makes her bed every morning. She does housework such as vacuuming, laundry and the dishes. She noted, “I do cook … most days … I don’t like takeaway”. As such, it is the evaluator’s opinion this is most consistent with minor deficit attributable to the normal variation in the general population.
Social and recreational activities	2	The applicant spends some time prior to getting out of bed praying and reading Christian readings of the Bible. She looks after her four baby goats and an Alpaca. She is walking regularly with two friends “so we can actually catch up” (in the context of the shutdown due to the COVID pandemic). She reads the Bible regularly. She is also reading “Scream-Free Parenting”; however, noted she has been reading the same book for the last couple of years having been re-reading it. She attends Bible study on most Tuesday nights encouraged by her children. She described her nightly bars as “relaxation”. She spends a lot of time with her children playing matchbox cars, exercising, eating dinner together or going to church. Prior to the shutdown, she was attending church “most weeks” and is now doing so through Facebook. She is very interested in Lego and goes to a Lego Club every other month; however, such has been put on a hold due to the COVID virus. She noted she last attended Lego Club in January 2020 at Anna Bay. She has a couple of close friends. She will go to their homes, have a coffee or “whatever”. She enjoys holidays and last went on a holiday with her children in September 2019, along with her neighbours on a cruise for four nights. As such, this is most consistent with a mild impairment.
Travel	1	The applicant noted that she has recently travelled the ninety-minute trip from Medowie to Forster with her children. In February 2020, she travelled from Medowie to Sydney to visit family, also with her children. She has never been one to use public transport regularly. As such, in spite of her significant anxiety, there are no functional impairments and this is most consistent with a minor deficit attributable to the normal variation in the general population.
Social functioning	2	The applicant noted she is able to provide appropriate supervision to her children. She described her relationships with the children as “really good”. She has a “very good” relationship with her father. She is close to her two siblings. She specifically denied there being any loss of friendships. She is single. She was specifically questioned with regard to the separation from her husband. She noted she separated from her husband “due to my non-tolerance of his alcoholism … if he didn’t touch drinking, we would have got through anything”. With some significant exploration, she felt that her own mental health

		issues played little to no role in the marital separation. As such, this is most consistent with a mild impairment.
Concentration, persistence and pace	3	The applicant noted she has particular difficulties with her attention and concentration. She stated she very much enjoys Lego and has built Legos for displays in the past; however, has not displayed for twelve months noting that she has been building an Eiffel Tower for the past twelve months. She reads the Bible for up to ten minutes. She reads Christian readings. She might read half a chapter of a book lasting approximately thirty minutes every other day. On the other hand, she noted she generally has to re-read such at times. She noted the only other activity she is currently partaking that requires attention and concentration is home schooling her son Caleb in the context of the coronavirus shutdown. On the other hand, she stated "I'm effectively home schooling at the moment. I can help them. I'm smart enough to help them … I probably help him (Caleb) for five minutes here, five minutes there, hardly anything at all". It is the evaluator's opinion, the applicant would be unable to complete a basic retraining course or a standard course at a slower pace and this is most consistent with a moderate impairment.
Employability	5	The applicant reported she has been certified unfit for employment. She wholly agrees with such. It is the evaluator's opinion, the applicant is unfit for employment in full or part-time employment in pre-injury or alternate duties.

Score

1	1	2	2	3	5

Median Class

=2

Aggregate Score Impairment

+1	+1	+2	+2	+3	+5

Total	WPI
14	7

Less pre-existing impairment: 0%

Adjustment with effects of treatment: 2%

Final whole person impairment: 9%

16. The worker appealed.

17. The complaints on appeal concern the assessments made by the AMS under the PIRS in respect of three of the categories, namely Self Care and Personal Hygiene, Social and Recreational Activities, and Social Functioning. There was no complaint by either party on appeal about the adjustment of 2% WPI made by the AMS for the effects of treatment. Similarly, there was no complaint on appeal by either party about no deduction under s 323.

18. In summary, the appellant submitted that the AMS erred as follows:

- in his assessment of class 1 for self-care and personal hygiene and submitted it should have been class 2;
- in his assessment of class 2 for social and recreational activities and submitted it should have been class 3, and
- in his assessment of class 2 for social functioning and submitted it should have been class 3.

19. In summary the State of NSW (NSW Police Force) (the respondent) submitted that the AMS did not apply incorrect criteria nor did he make a demonstrable error and that the MAC should be confirmed.

20. The assessments by the AMS in respect of three of the categories under PIRS were complained about on appeal.

21. The role of the AMS is to conduct an independent assessment on the day of examination. The AMS is required to take a history, conduct a mental state examination, make a psychiatric diagnosis and have due regard to other evidence and other medical opinion that is before the AMS. The AMS must bring his clinical expertise to bear and exercise his clinical judgement when making an assessment of impairment under the PIRS categories. The assessment is not to be based upon self-report alone. An appeal panel cannot disturb ratings under the PIRS scale for mere difference of opinion but must be satisfied as to error.

22. The Panel notes that the AMS has taken a detailed history of injury which he recorded as follows:

> "As soon as I commenced a discussion with regard to the work injury, the applicant noted she has great difficulties talking about such. She noted having had innumerable traumatic exposures across the twenty plus years of employment with the New South Wales Police Force. She was asked to provide the briefest of accounts of those more sentinel incidents that have been causative of her condition.
>
> The applicant noted there was a particularly traumatic incident in 1997 on her third day at Cabramatta Police Station. She noted, 'Joe Arena was a real estate agent and got stabbed … we got on scene while the offender was still on the scene and Joe Arena was bleeding to death in the alley … I had to provide first aid to Joe Arena, but he was in pretty poor shape already'. The victim expired. *(Comment: The applicant was quite distressed when discussing such).*
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> The applicant noted she has had been exposed to innumerable other traumas. She noted she attended numerous suicides such as 'just coming across teenagers at the bottom of the cliff in Newcastle'. She noted there was a particular incident where there was a young girl around age seven, who had been poisoned with a medication 'we tried to resuscitate her - she died'. She noted this incident occurred around 2011.
>
> Given her level of distress, she was asked as to provide a summary of other traumatic incidents. She noted the most significant was being exposed to numerous individuals following traumatic deaths when booking bodies into the morgue in Newcastle such as car crash victims, light plane crashes or other deceased. With regard to why she had ceased work in November 2016,

she reported having been off work for a period of time. She returned to work on light duties. She reported having been subjected to significant bullying and harassment in the workplace ‘they were pretty nasty to me’. She noted the bullying and harassment greatly exacerbated her Post-traumatic Stress Disorder and she ceased work. She has not returned to work since November 2016. She was subsequently medically discharged in July 2017.

However, the applicant in fact noted the onset of mental health symptoms dating back to the incident in 1997. She reported having had the onset of nightmares at that time. She would awaken sweating, hyperalert, being fearful of returning to the nightmare. She had intrusive thoughts and images associated with psychological distress. She became easily startled and hypervigilant. She avoided, ‘that street’ where the murder occurred in spite of her partner (later husband) living in the same street. She noted, ‘it took years before I would drive down that street again’. She would avoid thinking about the trauma. She noted however, ‘I probably didn’t think of it then’ with regard to having a mental illness.

The applicant noted from 1997 to the present time, she has had a waxing and waning of symptomatology. At times, she has been particularly hypervigilant and overly cautious with regard to her children. Similarly, she is always expecting the worst outcome. She noted in 2007, members of the Nomads Motorcycle Club moved into a house across the street from the family, ‘they were aware, we were police … it was full-on intimidation because we were police … Strike Force Raptor was involved with us … we were hypervigilant, big time’. Such brought significantly increased symptomatology such that she was off work for approximately three months. However, she returned to her pre-injury hours and pre-injury duties. The applicant further noted having greatly increased symptoms of Posttraumatic Stress Disorder in the lead up to her ceasing work in November 2016 seemingly being provoked by the bullying and harassment.

The applicant further noted having had long-term difficulties with depression. In addition to a depressed and anxious mood, she has had difficulties with insomnia especially initial insomnia secondary to ruminations. She has had difficulties with lethargy ‘I’m exhausted … I’m always tired’. She had a lack of appetite, decreased libido and inability to enjoy activities. She has had suicidal ideation. She denied forming any suicidal plan or intent. She denied having engaged in deliberate self-harm or made a suicide attempt. She noted in December 2019, she took four tablets of temazepam ‘I was not trying to kill myself’; however, she was trying to sleep as she had been particularly disturbed by an independent medical examination. Her children called an ambulance and she was transported to Cabramatta Hospital. She was not admitted.

The applicant noted the onset of mental health care in 2009. She saw a psychologist, Skye (unknown surname) through the Employee Assistance Program for ‘not long’. She was unsure of the diagnosis made. She also saw her general practitioner at the time, Dr Leanne Laut. She was unsure of the diagnosis. She was not prescribed any medication. At some stage, she was referred to a psychologist, Roslyn Goold who she saw a couple of years. She was unsure of the diagnosis. After moving to Medowie, she changed general practitioners to Dr Caitlin Raschke. She noted Dr Raschke diagnosed her with ‘an Adjustment Disorder or a depressive disorder’. She referred the applicant to the psychologist, Ron Farrell. She has been treated with

antidepressants including Pristiq and Luvox. She noted having been referred to psychiatrist Dr Doug Wade and was diagnosed with Posttraumatic Stress Disorder. Dr Wade continued her on the Luvox for three years. She has never had a higher dose than 50mg of fluvoxamine. She was unable to tolerate a trial of prazosin. She had been treated with the antipsychotic Neulactil. Dr Wade retired such that she was referred to psychiatrist Dr Alexander Murray whom she has been consulting with for approximately twelve months. She is unsure of the diagnosis of Dr Murray. He has continued her on Luvox and Neulactil. She has not had any other treatment such as vocational rehabilitation of which she is aware."

23. The AMS noted that the appellant had gone "cold turkey" on her psychiatric medications due to running out of medication in the context of the COVID 19 pandemic.

24. The AMS took a history of the workers self-reported present symptoms as follows:

> "Present symptoms:
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> The applicant is not on any psychiatric medications. She noted following the abrupt cessation of her antidepressant and antipsychotic, she had 'major, major withdrawals' including nausea, headaches and aching bones. Moreover, she had a significant exacerbation of her psychiatric symptomatology most significantly with regard to the recurrence of suicidal ideation. She reported, 'I wish I wasn't here'. On the other hand, with exploration, it was evident she in fact had active suicidal ideation of taking an overdose of temazepam with a glass of wine in the bath. She noted moreover, 'I got my will together … I needed to get some things in check first'. She noted her friends somehow learnt of her difficulties and intervened. She adamantly denied any ongoing active suicidal ideation, plan or intent. She stated she has had no suicidal ideation in two weeks. The most significant protective factors are her two children. She is future orientated and has a number of plans in place at the moment. Following the evaluation, she will clean the house. She has an appointment with Ron Farrell at 2pm. She will check her children's schoolwork. She noted on the weekend following the clinical evaluation, given the easing of restrictions with regard to the shutdown, she will catch up with two good friends. She has invited one friend over the day after the evaluation with her child and on Sunday has another friend with their child coming over. She described her recent mood as 'at the moment, it is good … I'm having a good week'. She has ongoing difficulties with middle insomnia especially due to nightmares. She has eight hours of broken sleep a night. She noted her energy is 'a bit tired'. Her libido is non-existent. Her appetite is intact and her weight is stable.
>
> The applicant has nightmares most nights and at least every other night. She continues to awaken hyper-alert and sweating. She has intrusive thoughts and images 'more often when I'm reminded of them'. She is triggered by independent medical examinations, the name of particular victims and numerous geographical locations. She has ongoing difficulties with insomnia, irritability and being easily startled. She is hypervigilant especially being overly cautious with her children. She constantly expects the worse outcome from any situation. She has ongoing difficulties being able to enjoy activities. She avoids numerous geographical locations, especially around Newcastle. She avoids thinking or talking about the trauma. She avoids crowds."

25. In addition, the AMS recorded a detailed history of impact of the injury on the appellant's activities of daily living (ADLs) as follows:

> "Social activities / ADLs:
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> The applicant is a middle child in a family of three. She is close to her two siblings who live in Sydney. Her mother worked in homecare; she died in 2005. Her father lives in Forster. She has a 'good, very good' relationship with her father who is in good health. He retired from Centrelink. Her parents separated in early-2000. She denied there being any domestic violence in their relationship. The applicant denied any adverse consequences through her childhood and adolescence such as physical, sexual or emotional abuse. She noted her sister went 'off the rails' including having her first child at age eighteen such that she would help raise her niece. She is very close to her niece, Halvey.
>
> The applicant completed her year twelve and higher school certificate at Macarthur Girls High School. She denied any history of special education or having to repeat any grades. She denied any history of suspensions or expulsions. The applicant was in a relationship with Anthony for eighteen months. The couple have no children. There was no domestic violence. She was in a relationship with Matt for twenty-one years from age twenty up until 20 November 2018, including being married for nineteen years. The couple have two children: Korie aged fourteen and Caleb aged twelve. The applicant has a hundred percent custody of her children in a formal Family Court order. She denied there being any domestic violence in their relationship. She specifically refuted the information report of Dr Snowdon. She is currently single. She is living with her two children on a full-time basis in her own home in Medowie.
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> The applicant's paternal grandfather was an alcoholic. She denied any other family history of psychiatric illness, substance-abuse or suicide.
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> The applicant started drinking alcohol at age eighteen. She denied having ever been a daily drinker. She drinks a glass of wine on an approximately six-monthly basis. She denied any history of adverse consequences from alcohol use. She denied the abuse of any illicit, synthetic or prescription drugs. She denied any participation in detoxification or rehabilitation. She denied any history of pathological gambling.
>
> With regard to day-to-day functioning, the applicant is living on an independent basis in her own home in Medowie with her two children. She noted she bathes 'every night'. She brushes her teeth twice a day. She will wear clean underwear and a clean shirt; however, may wear the same pants for a couple of days in a row. She makes her bed every morning. She does housework such as vacuuming, laundry and the dishes. She noted, 'I do cook … most days … I don't like takeaway'.
>
> The applicant spends some time prior to getting out of bed praying and reading Christian readings of the Bible. She looks after her four baby goats and an Alpaca. She is walking regularly with two friends 'so we can actually catch up' (in the context of the shutdown due to the COVID pandemic). She reads the Bible regularly. She is also reading 'Scream-Free Parenting'; however, noted she has been reading the same book for the last couple of years having been re-reading it. She attends Bible study on most Tuesday nights encouraged by her children. She described her nightly bars as

'relaxation'. She spends a lot of time with her children playing matchbox cars, exercising, eating dinner together or going to church. Prior to the shutdown, she was attending church 'most weeks' and is now doing so through Facebook. She is very interested in Lego and goes to a Lego Club every other month; however, such has been put on a hold due to the COVID virus. She noted she last attended Lego Club in January 2020 at Anna Bay. She has a couple of close friends. She will go to their homes, have a coffee or 'whatever'. She enjoys holidays and last went on a holiday with her children in September 2019, along with her neighbours on a cruise for four nights.

The applicant noted that she has recently travelled the ninety-minute trip from Medowie to Forster with her children. In February 2020, she travelled from Medowie to Sydney to visit family, also with her children.

The applicant noted she is able to provide appropriate supervision to her children. She described her relationships with the children as 'really good'. She has a 'very good' relationship with her father. She is close to her two siblings. She specifically denied there being any loss of friendships. She is single. She was specifically questioned with regard to the separation from her husband. She noted she separated from her husband 'due to my non-tolerance of his alcoholism … if he didn't touch drinking, we would have got through anything'. With some significant exploration, she felt that her own mental health issues played little to no role in the marital separation.

The applicant noted she has particular difficulties with her attention and concentration. She stated she very much enjoys Lego and has built Legos for displays in the past; however, has not displayed for twelve months noting that she has been building an Eiffel Tower for the past twelve months. She reads the Bible for up to ten minutes. She reads Christian readings. She might read half a chapter of a book lasting approximately thirty minutes every other day. On the other hand, she noted she generally has to re-read such at times. She noted the only other activity she is currently partaking that requires attention and concentration is home schooling her son Caleb in the context of the coronavirus shutdown. On the other hand, she stated 'I'm effectively home schooling at the moment. I can help them. I'm smart enough to help them … I probably help him (Caleb) for five minutes here, five minutes there, hardly anything at all'.

The applicant reported she has been certified unfit for employment. She wholly agrees with such."

26. The AMS conducted a mental state examination by video-link and recorded his findings as follows:

"The applicant was evaluated via audio visual link from the office of JustMinds. She was in her home in Medowie. She confirmed there was no one else present at the time of the evaluation. Unfortunately, there were a couple of minor technical issues due to the audio-visual link, such that we had to call back a couple of times. On the other hand, the applicant was specifically questioned at the end of the evaluation with regard to her having had the opportunity to fully express herself during the evaluation.

With regard to the *Mental State Examination*, the applicant was casually dressed, wearing glasses. She had no make-up and minimal jewellery. There was no evidence of any motor disturbance. She was calm, settled and cooperative throughout the evaluation. She was able to attend throughout the ninety-minute evaluation without the need for a break or interruption. Her speech was of normal

rate, rhythm and volume, but somewhat monotonous. Her thought processes were logical, relevant and coherent throughout. She described her recent mood as 'at the moment it's good … I'm having a good week'. Her observed emotional tone was mildly constricted within the anxious and dysphoric range. She choked up when talking about the traumatic incidents. She was appropriately preoccupied with matters at hand. There was no overt delusional material elicited. She denied any auditory or visual hallucinations. She denied any suicidal ideation, plan or intent."

27. The AMS summarised the injury and his diagnosis as follows:

> "The applicant suffered a work injury as a result of her twenty-plus years of employment in the NSW Police Force. It is the evaluator's opinion, she meets diagnostic criteria in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition for Posttraumatic Stress Disorder and Persistent Depressive Disorder. With regard to the Posttraumatic Stress Disorder, clearly the numerous traumatic exposures noted in the collateral materials and during the clinical evaluation would meet criterion A for Posttraumatic Stress Disorder. There was no evidence that the applicant has been subject to any other stressors outside the New South Wales Police Force that could have been causative of the same. She has subsequently gone on to have re-experiencing phenomena in the form of nightmares, intrusive thoughts and images with associated physiological symptoms of arousal and psychological distress. Moreover, the applicant has had difficulties with avoidance including avoiding various geographical locations or other triggers that would provoke reminders of the trauma. She has persistent negative alterations in cognitions and mood including believing that the worst outcome will happen. She has decreased interest and enjoyment of activities. She has marked alterations in arousal including hypervigilance, exaggerated startle response, poor concentration and insomnia. In this context, it is the evaluator's opinion, her Posttraumatic Stress Disorder was caused by her employment.
>
> The applicant's depressive symptoms rise above that purely seen in Post-traumatic Stress Disorder. She reported having had persistent symptoms of depression dating back to at least 2016 (but likely a lot longer). She has typical symptoms of depression including depressed and anxious mood, lethargy, lack of libido, impaired appetite, inability to enjoy activities and at times suicidal ideation. It is the evaluator's opinion, her Persistent Depressive Disorder was similarly caused by her work injury."

28. The AMS's role is to make an independent assessment on the day of examination. He must not base his assessment on self-report alone but must make a clinical judgment using his clinical expertise. The AMS commented on the appellant's consistency of presentation as follows:

> "consistency of presentation
>
> The only inconsistency during the clinical evaluation and collateral materials was that of Dr Snowdon noting a history of domestic violence in the marital relationship. The applicant noted she has far too much self-esteem or self-worth to allow herself to be subjected to violence and she had separated from her husband prior to such occurring. She certainly noted he was an alcoholic. There were no other significant inconsistencies identified.
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> There was no surveillance footage presented for review."

29. The AMS has had regard to the other evidence before him including the appellant's statement dated 20 January 2020. In this regard he commented:

> "The Statement of Belinda McPherson, dated 29 January 2020, was duly read and noted. It was noted she separated from her husband. In addition to numerous traumatic exposures during her employment, it was noted she had been subjected to bullying and harassment in her employment especially by Shane Buggy and Sue Kimber. It was noted she had been diagnosed with chronic Posttraumatic Stress Disorder by her psychiatrist, Dr Wade and Dr Alexander Murray had subsequently diagnosed Posttraumatic Stress Disorder and Major Depressive Disorder / Persistent Depressive Disorder. She has been certified as having no capacity for work in any form. It was noted she rarely goes out anywhere socially alone without her children. She would attend her hairdresser twice per year, no longer bothering putting on makeup and wearing the same clothes for more than a day. She would cook for herself and her children. She is able to drive locally. On an independent basis 'whenever I travel for longer distances even to Newcastle, East Maitland, Nelson Bay I consistently worry about the fatalities and serious car accidents and I'm constantly watching other vehicles on the road'. It was noted she had taken her children on holidays. She noted having been unable to focus on intellectually demanding tasks for than thirty minutes or undertake a basic training course. She took an overdose of temazepam in November 2019. It was noted she was unable to continue to home school her son Caleb and as such had enrolled him for the 2020 academic year back at school."

30. The AMS has had regard to the other evidence that was before him and has explained where his opinions differed from the appellant's ~~IME~~ Independent Medical Examiner (IME) Dr Snowdon highlighting the reasons for the difference in opinion as follows:

> "The medico-legal report of Dr Peter Snowdon, dated 4 September 2019, was duly read and noted. Dr Snowdon noted the applicant's husband was an ex-New South Wales Police Force officer who had suffered Posttraumatic Stress Disorder and Major Depressive Disorder as hurt on duty injuries, subsequently being medically discharged. There was an extensive account of the workplace injury which is much more elaborated than that presented during the clinical evaluation. There was more emphasis on the bullying and harassment that she was subjected to. Dr Snowdon noted the applicant was driving to Dr Murray greater than an hour's drive away. It was noted she had no past psychiatric history. She would attend Lego Club every two months with the children. Dr Snowdon diagnosed Post-traumatic Stress Disorder. He did not believe she met diagnostic criteria for a major depression. He completed an assessment of whole person impairment of twenty-four percent. *(Comment: I would not agree with the assessment of mild impairment in Self-Care and Personal Hygiene. Dr Snowdon noted she was bathing on a daily basis, changing her jeans every few days, but otherwise wearing clean clothes daily. It was noted she was cooking for herself and her children and her weight was stable. He noted given her clothes obviously needed iron and looked crumpled, such was consistent with a mild impairment. It is the evaluator's opinion, such is inconsistent with a mild impairment and more consistent with a minor deficit attributable to the variation in the community. I would not agree with the assessment of moderate impairment in Social and Recreational Activities in that not only has the applicant travelled to Disneyland and Legoland in February 2019, she has had a number of other holidays. Furthermore, the applicant noted she is frequently catching up with friends such as to go walking. Such is one of the only activities she is able to do due to the coronavirus shutdown. She was continuing to attend church on a weekly basis up until the shutdown and now has been attending via Facebook. She was attending Lego Club with her children up until three months ago. She will visit*

friends for coffee. In this context, such is consistent with no more than a mild impairment in Social and Recreational Activities. I would not agree with the assessment of a mild impairment in Travel. Although it is certainly indicated the applicant has significant distress when driving. She in fact has minimal impairment provoked by same. She is able to drive to Sydney or Forster having last done so only quite recently. Such is again more consistent with the minor deficit attributable to the normal variation in general population. I would not agree with the assessment of moderate impairment in Social Functioning. Dr Snowdon in fact noted this is a particularly complex issue in the context of her husband's psychopathology. He noted she felt that her intolerance had contributed to the separation and accorded a moderate impairment. On the other hand, when specifically reviewed during the clinical evaluation, the applicant noted her mental health issues did not contribute to the separation. It was in fact her husband's mental health issues, but most notably substance abuse, that had caused their marital breakdown. She continues to provide appropriate supervision to her children. She specifically denied the loss of any friendships. She has close relationships with her siblings and father. Such is more consistent with a mild impairment)."

31. The AMS had regard to the other evidence that was before him and made brief comment as follows:

> "Dr Matthew Jones noted in a report, dated 18 April 2016, an account of the injury in accord with that presented during the clinical evaluation. It was noted at that time, she was working her contracted hours of twenty-four hours per week. Dr Jones diagnosed chronic Posttraumatic Stress Disorder and suggested she should have permanently modified duties.
>
> Dr Jones noted in a report, dated 26 April 2017, the applicant met diagnostic criteria for chronic Posttraumatic Stress Disorder and chronic depression. He opined she would be unable to return to the New South Wales Police Force in operational or non-operational role.
>
> Dr Jones noted in a report, dated 20 December 2019, the applicant would get her children ready for school. She was doing housework including dishes, clothes washing and cooking most nights. It was noted she would visit her family in Sydney every other month, although will speak to them weekly. It was noted she had a number of friends and would drop in at their place or they would visit. She would worship at church on most Sundays. It was noted she has never been one to catch public transport. She was noted to be independent with regard to her Self-Care and Personal Hygiene. He diagnosed chronic Posttraumatic Stress Disorder and chronic depressive disorder both in partial remission and stable. Dr Jones completed an assessment of whole person impairment of eight percent. *(Comment: I would not agree with the assessment of mild impairment in Concentration, Persistence and Pace in that although the applicant is assisting her children in their schooling, she noted such takes minimal amount of time. She is able to read for less than thirty minutes and has to frequently re-read information. It is the evaluator's opinion, she would not be able to complete a basic retraining course and this is more consistent with a moderate impairment. I would not agree with the assessment of a severe impairment in Employability. On her current presentation, it is the evaluator's opinion she is unfit for employment on a full or part-time basis).*
>
> Dr Naresh Verma, Police Medical Officer, noted in a letter, dated 17 May 2011, the applicant was fit for full operational duties.

Dr Doug Wade noted in a letter, dated 24 February 2016, he did not believe there was any issues preventing her from carrying a firearm.

Dr Doug Wade noted in a letter, dated 15 March 2017, the applicant met diagnostic criteria for chronic Posttraumatic Stress Disorder. Dr Wade opined the applicant's husband's suicide attempt was unlikely to have provoked a significant aggravation of her injury. He opined she would unlikely ever be fit to return to work as a police officer due to her chronic Posttraumatic Stress Disorder and secondary major depression.

The Patient Health Summary of Medowie Medical Centre printed 10 September 2019 was duly read and noted. The records commenced on 14 October 2010. Dr Raschke noted on this date, the applicant had recently started the antidepressant Lexapro. On 13 May 2013, Dr Raschke noted the applicant had been having significant general anxiety in relation to her workplace. On 21 May 2013, Dr Raschke noted the applicant had been subjected to 'terrible episode being bullied by Shane Buggy'. It was noted she had an on-going WorkCover matter. She was prescribed the antidepressant Pristiq. On 27 April 2015, Dr Raschke noted the applicant had developed Posttraumatic Stress Disorder and referred her to the psychiatrist Dr Doug Wade. On 26 September 2016, Dr Raschke noted persistent bullying and harassment in the workplace. She noted, 'her husband's suicide attempt seems to me to be clearly related to her mistreatment at the hands of the police service'. Dr Raschke referred the applicant to the psychiatrist, Dr Alexander Murray on 13 June 2019.

Ron Farrell noted in a letter, dated 27 September 2013, the applicant had a diagnosis of an Adjustment Disorder with anxiety. Nonetheless, he in fact notes symptoms including anxiety, flashbacks, nightmares and disturbed eating with insomnia.

In a letter, dated 11 July 2014, Mr Farrell diagnosis Posttraumatic Stress Disorder.

Mr Farrell noted in a letter, dated 7 February 2017, the applicant had no capacity for work due to her Posttraumatic Stress Disorder.

The Patient Health Summary of Central Health Alliance printed 8 August 2019 was duly read and noted. On 28 February 2019, Mr Farrell noted the applicant's husband was drinking heavily and had now bought his own home in Medowie. It was noted the applicant had decided to live separately from her husband. Mr Farrell noted the applicant went on a holiday in Tasmania in a note dated 2 May 2019. In a note, dated 11 July 2019, he noted the applicant had been planning on attending a holiday at Fraser Island the following week.

The IMC File Review – EML, dated 8 November 2016, was duly read and noted. It was noted the independent medical consultant's opinion was that the applicant should engage in permanently modified duties for pre-injury hours. It was noted she had reached maximum medical improvement.

There were innumerable WorkCover NSW - Certificates of Capacity presented for review that are highly in accord. In the last one presented for review, dated 13 June 2019, Dr Raschke noted the applicant had a diagnosis of an Adjustment Disorder with anxiety and Posttraumatic Stress Disorder as a result of 'accumulation of critical incidents over time and challenging work relationships with colleagues; bullying'. She opined the applicant had no capacity for employment from 13 June to 13 September 2019."

32. The panel, after careful review, can discern no error in the ratings ascribed by the AMS to each of the categories complained about on appeal. There was no application of incorrect criteria. Each of the ratings were open to the AMS in accordance with the correct application of the criteria in the Guides. The AMS has given reasons for each rating. He has given a clear and reasoned explanation, that is based on the application of his clinical expertise, for why his impairment ratings differ from that of the IME qualified on behalf of the appellant Dr Snowdon in the categories of Self-care and Personal Hygiene, Social and Recreational Activities, and Social Functioning. The ratings ascribed by the AMS in each of these categories accord with the criteria for each class. The Panel cannot interfere with these ratings absent error by the AMS.

33. In respect of Self-Care and Personal Hygiene, Table 11.1 of the Guidelines provides as follows:

Class 1	No deficit, or minor deficit attributable to the normal variation in the general population
Class 2	Mild impairment: able to live independently; looks after self adequately, although may look unkempt occasionally; sometimes misses a meal or relies on take-away food.
Class 3	Moderate impairment: Can't live independently without regular support. Needs prompting to shower daily and wear clean clothes. Does not prepare own meals, frequently misses meals. Family member or community nurse visits (or should visit) 2–3 times per week to ensure minimum level of hygiene and nutrition.
Class 4	Severe impairment: Needs supervised residential care. If unsupervised, may accidentally or purposefully hurt self.
Class 5	Totally impaired: Needs assistance with basic functions, such as feeding and toileting.

34. The AMS rated the appellant as Class 1 with the following explanation:

> "The applicant is living on an independent basis in her own home in Medowie with her two children. She noted she bathes 'every night'. She brushes her teeth twice a day. She will wear clean underwear and a clean shirt; however, may wear the same pants for a couple of days in a row. She makes her bed every morning. She does housework such as vacuuming, laundry and the dishes. She noted, 'I do cook … most days … I don't like takeaway'. As such, it is the evaluator's opinion this is most consistent with minor deficit attributable to the normal variation in the general population."

35. The IME Dr Snowden who was qualified on behalf of the appellant had rated the appellant at Class 2 (mild impairment). The AMS specifically explained why his opinion differed from that of Dr Snowden as follows:

> "I would not agree with the assessment of mild impairment in Self-Care and Personal Hygiene. Dr Snowdon noted she was bathing on a daily basis, changing her jeans every few days, but otherwise wearing clean clothes daily. It was noted she was cooking for herself and her children and her weight was stable. He noted given her clothes obviously needed iron and looked crumpled, such was consistent with a mild impairment. It is the evaluator's opinion, such is inconsistent with a mild impairment and more consistent with a minor deficit attributable to the variation in the community."

36. The Panel can discern no error in the assessment by the AMS of Class 1 in the category of self-care and personal hygiene. He has taken a detailed history including the appellant's self-report and he has exercised his clinical judgment. the panel considers the Class 1 rating was open to the AMS on the evidence and the panel can discern no error.

37. In respect of Social and Recreational Activities Table 11.2 of the Guidelines provides as follows:

> Table 11.2: Psychiatric impairment rating scale – social and recreational activities

Class 1	No deficit, or minor deficit attributable to the normal variation in the general population regularly participates in social activities that are age, sex and culturally appropriate. May belong to clubs or associations and is actively involved with these.
Class 2	Mild impairment: occasionally goes out to such events e.g. without needing a support person, but does not become actively involved (e.g. dancing, cheering favourite team).
Class 3	Moderate impairment: rarely goes out to such events, and mostly when prompted by family or close friend. Will not go out without a support person. Not actively involved, remains quiet and withdrawn.
Class 4	Severe impairment: never leaves place of residence. Tolerates the company of family member or close friend, but will go to a different room or garden when others come to visit family or flat mate.
Class 5	Totally impaired: Cannot tolerate living with anybody, extremely uncomfortable when visited by close family member.

38. The AMS has rated the appellant at Class 2 Mild impairment explaining his reasoning as follows:

> "The applicant spends some time prior to getting out of bed praying and reading Christian readings of the Bible. She looks after her four baby goats and an Alpaca. She is walking regularly with two friends 'so we can actually catch up' (in the context of the shutdown due to the COVID pandemic). She reads the Bible regularly. She is also reading 'Scream-Free Parenting'; however, noted she has been reading the same book for the last couple of years having been re-reading it. She attends Bible study on most Tuesday nights encouraged by her children. She described her nightly bars as 'relaxation'. She spends a lot of time with her children playing matchbox cars, exercising, eating dinner together or going to church. Prior to the shutdown, she was attending church 'most weeks' and is now doing so through Facebook. She is very interested in Lego and goes to a Lego Club every other month; however, such has been put on a hold due to the COVID virus. She noted she last attended Lego Club in January 2020 at Anna Bay. She has a couple of close friends. She will go to their homes, have a coffee or 'whatever'. She enjoys holidays and last went on a holiday with her children in September 2019, along with her neighbours on a cruise for four nights. As such, this is most consistent with a mild impairment."

39. The AMS explained why his opinion differed from that of Dr Snowden, who had rated the appellant as moderately impaired at Class 3, as follows:

> "I would not agree with the assessment of moderate impairment in Social and Recreational Activities in that not only has the applicant travelled to Disneyland and Legoland in February 2019, she has had a number of other holidays. Furthermore, the applicant noted she is frequently catching up with friends such

as to go walking. Such is one of the only activities she is able to do due to the coronavirus shutdown. She was continuing to attend church on a weekly basis up until the shutdown and now has been attending via Facebook. She was attending Lego Club with her children up until three months ago. She will visit friends for coffee. In this context, such is consistent with no more than a mild impairment in Social and Recreational Activities."

40. The Panel considers that the rating of a mild impairment in this class was open to the AMS on the evidence, accorded with the criteria in Table 11.2, and the panel can discern no error in the exercise of the AMS's clinical judgment in rating a mild impairment in the class of Social and recreational Activities.

41. In respect of social functioning, the Guidelines provide at Table 11.4 as follows:

Table 11.4: Psychiatric impairment rating scale – social functioning

Class 1	No deficit, or minor deficit attributable to the normal variation in the general population: No difficulty in forming and sustaining relationships (e.g. a partner, close friendships lasting years).
Class 2	Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships.
Class 3	Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children.
Class 4	Severe impairment: unable to form or sustain long term relationships. Pre-existing relationships ended (e.g. lost partner, close friends). Unable to care for dependants (eg own children, elderly parent).
Class 5	Totally impaired: unable to function within society. Living away from populated areas, actively avoiding social contact.

42. The AMS rated the appellant as Class 2 Mild Impairment with the following explanation:

"The applicant noted she is able to provide appropriate supervision to her children. She described her relationships with the children as 'really good'. She has a 'very good' relationship with her father. She is close to her two siblings. She specifically denied there being any loss of friendships. She is single. She was specifically questioned with regard to the separation from her husband. She noted she separated from her husband 'due to my non-tolerance of his alcoholism … if he didn't touch drinking, we would have got through anything'. With some significant exploration, she felt that her own mental health issues played little to no role in the marital separation. As such, this is most consistent with a mild impairment."

43. The AMS explained why his rating differed from Dr Snowden who assessed Class 3 as follows:

"I would not agree with the assessment of moderate impairment in Social Functioning. Dr Snowdon in fact noted this is a particularly complex issue in the context of her husband's psychopathology. He noted she felt that her intolerance had contributed to the separation and accorded a moderate impairment. On the other hand, when specifically reviewed during the clinical evaluation, the applicant noted her mental health issues did not contribute to the separation. It was in fact her husband's mental health issues, but most notably substance abuse, that had caused their marital breakdown. She continues to provide appropriate supervision to her children. She specifically

denied the loss of any friendships. She has close relationships with her siblings and father. Such is more consistent with a mild impairment."

44. The Panel can discern no error in the exercise of the AMS's clinical judgment in the assessment of a mild impairment in the class of social functioning. The AMS has specifically explored with the appellant the factors contributing to the marital separation and his findings whilst different to that of Snowden accord with the appellant's self-report on the day of assessment. The AMS has exercised his clinical judgment on the day of assessment taking appropriate account of the appellant's self-report and having due regard to the other evidence and medical opinion that was before him. In these circumstances, the panel can discern no error in the assessment of mild impairment in this category.

45. The ratings the AMS has ascribed in each of the classes of Self-care and Personal Hygiene, Social and Recreational Activities, and Social Functioning accord with the criteria in the Guides. The panel cannot disturb these ratings absent error by the AMS which the Panel cannot discern. The ratings for each of these categories are well-reasoned, not based on self-report alone and have had due regard to the history taken by the AMS, the mental state examination conducted by him, and having due regard to the other evidence that was before him. The AMS has exercised his clinical judgment on the day of examination and the Panel can discern no error.

46. For these reasons, the Appeal Panel has determined that the MAC issued on 1 June 2020 should be confirmed.

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

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar