WORKERS COMPENSATION COMMISSION

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

Matter Number: **2487/18**
Applicant: **Mrinal Datta**
Respondent: **Universal Consultancy Services Pty Limited**
Date of publication: **28 September 2018**
Citation: **[2018] NSWWCC 223**

STATEMENT OF REASONS

Introduction

1. This matter was the subject of unsuccessful conciliation. An arbitration hearing was held on 25 July 2018.

2. The Commission has undertaken to deal expeditiously with applications lodged under section 39 of the *Workers Compensation Act 1987* (1987 Act) and the determination and reasons in this matter were delivered orally on 25 July 2018.

Background

3. This case turns on the meaning of section 39 of the 1987 Act. The provision was introduced into the 1987 Act by the *Workers Compensation Legislation Amendment Act 2012* (the 2012 Amending Act). The 2012 Amending Act dramatically altered the entitlement of workers to weekly payments of compensation.

4. The precise area of disputation is the meaning of subsections 2 and 3 of section 39. Section 39(1) provides that a worker who is incapacitated as a result of an injury has no entitlement to weekly compensation after an aggregate period of 260 weeks. The headnote to section 39 refers to the cessation of weekly payment after five years.

5. Section 39(2) creates an exception to the regime limiting weekly payments to five years. It states:

> "This section does not apply to an injured worker whose injury results in permanent impairment if the degree of permanent impairment resulting from the injury is more than 20 per cent."

6. Subsection (3) of section 39 at first blush appears to provide a means or mechanism for assessment of permanent/whole person impairment. It states:

> "For the purposes of this section the degree of permanent impairment that results from an injury is to be assessed as provided by section 65 (for an assessment for the purposes of Division 4)."

7. By way of a brief factual background, Mrinal Datta, whom I shall refer to as the worker, suffered injury in the course of his employment with University Consultancy Services Pty Limited, who I shall refer to as the employer, on 3 February 2001. The worker was assaulted while travelling between premises at which the employer carried on its business.

8. It is unnecessary to reiterate the circumstances surrounding and following the worker's injury as they are recorded in detail in the Presidential decision of *Universal Consultancy Services*

Pty Limited v Datta [2008] NSWWCCPD 87, a decision of Deputy President Roche of 19 August 2008. The worker suffered significant physical injuries including bilateral displaced fractures of the lower jaw in the assault. He underwent several surgical procedures in respect of his physical injuries. He has not recovered from those injuries.

9. On 23 February 2018, Professor David David, an oral and maxillofacial surgeon, saw the worker on behalf of the employer. He expressed the opinion that the worker suffered 17 per cent whole person impairment (WPI) as a consequence of his facial injuries.

10. It is not disputed that the worker also suffered a primary psychological injury as a result of the assault. He continues to suffer from the sequelae of the psychological injury. On 21 February 2018, he was assessed by Dr Patrick Morris, a psychiatrist on behalf of the employer. Dr Morris expressed the opinion that the worker "has Post-Traumatic Stress Disorder and depressive symptoms that are so severe and disabling that he cannot work at all".

11. Dr Morris had been asked to assess the worker's degree of WPI by the employer. He carried out that assessment in accordance with the regime for the assessment of impairment resulting from psychological injuries set out in the NSW Guidelines for the evaluation of permanent impairment, 4th Edition, 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition* (AMA5). He expressed the opinion that the worker suffered 44 per cent WPI as a result of the subject injury.

12. On 26 February 2018, the worker was examined by Dr Martin Allan, a psychiatrist, at the request of his solicitor. Dr Allan also assessed the worker in accordance with the Guidelines and AMA5. He also concluded that the worker was totally incapacitated from a psychological perspective and could not work at all. He opined that the worker suffered 26 per cent WPI as a result of psychological injury.

13. By operation of the transitional provisions to the 2012 Amending Act, the period of 260 weeks of weekly compensation limited by section 39 came to an end in this case on 25 December 2017.

14. The worker has not been in receipt of weekly compensation since 25 December 2017. He maintains that he is entitled to receive continuing weekly payments either because of the exception created by subsection (2) of section 39 or by other provisions of the 1987 Act. In order to crystallise his potential entitlement to weekly payments, he seeks an assessment by an Approved Medical Specialist of the degree of his permanent impairment resulting from psychological injury.

Employer's section 74 notice

15. On 18 April 2018, the employer issued a section 74 notice by which it informed the worker that although his WPI for psychological injury exceeded 20 per cent, he had no entitlement to weekly payments. The letter stated the following:

> "We consider you may only be entitled to continue to receive weekly payments after five years if your permanent impairment arose from an injury in respect of which you have had entitlement to lump sum compensation pursuant to section 65 and section 66 of the 1987 Act. You are not entitled to your lump sum compensation for your psychological injury and, therefore, we are unable to deem you as having greater than 20 per cent permanent impairment based upon your psychological injury."

Proceedings before the Commission

16. The circumstances of this case are similar to those in *Dreis v Aussie Bush Pubs Pty Limited* matter 2333/18 where the respondent's insurer has denied liability to pay weekly compensation beyond the 260 weeks limited by section 39 for the same reason. I conducted telephone conferences in both matters on the same day. It was apparent at each telephone conference that the parties were unable to agree on the threshold issue of statutory interpretation. I ordered that both matters be listed for arbitration hearing on 25 July 2018. They have been heard together. The employers have served written submissions on the issues of statutory construction.

The Employers' Submissions

17. The employers' submissions in both cases have been prepared by Dr Lucy of counsel who appeared and spoke to those submissions in both matters at the arbitration hearing. As the employer's submissions are either in writing or recorded, I do not propose to reiterate all that Dr Lucy argued in her exceedingly well-organised and eloquent submissions.

18. She submitted that the key question that had to be resolved to determine the dispute was the meaning of the expression "the degree of permanent impairment" which appears in subsections (2) and (3) of section 39. Was this to be understood, in the context of the 1987 Act, as meaning the degree of compensable permanent impairment or did it extend to permanent impairment for which a worker is not entitled to lump sum compensation pursuant to Division 4 of Part 3 of the 1987 Act?

19. On Dr Lucy's analysis of the 1987 Act and the transitional and savings provisions and regulations which accompanied the 2012 Amending Act, a worker who was entitled to lump sum/permanent impairment compensation pursuant to section 66 prior to 1 January 2002 also had an entitlement to weekly payments beyond five years if the worker's degree of permanent impairment was greater than 20 per cent. Conversely, Dr Lucy contended that "they do not confer on a worker with no entitlement to lump sum compensation an entitlement to weekly compensation". By weekly compensation, Dr Lucy was referring to a right to weekly compensation beyond 260 weeks.

20. The words "for the purposes of Division 4" in section 39(3) must be construed so that they are consistent with the language and purpose of all the provisions of the legislation. Dr Lucy concluded that this means that the restrictions which apply to assessing entitlements to lump sum compensation also apply to assessing entitlements to ongoing weekly benefits. The words "for the purposes of Division 4" in section 39(3) indicate that the degree of permanent impairment for ongoing weekly benefits is to be assessed as if for the purposes of the lump sum compensation provisions. There is no entitlement to compensation for permanent impairment arising from a pre-2002 psychological injury. The scheme simply does not conceive of permanent impairment in relation to such an injury.

21. Dr Lucy submitted that the phrase “degree of permanent impairment” is a technical concept which only applies where the Workers Compensation Acts authorise the assessment of impairment. They do not do so for a psychological injury which occurred in 2001. Accordingly, each of the claimant's entitlements to weekly compensation ceased after 260 weeks in accordance with section 39(1).

22. In her oral submissions, Dr Lucy emphasised three different principles of statutory construction by reference to case law referred to in her written submissions:

(a) First, I was reminded that the text of the legislation was important.

(b) Secondly, on the basis of the reasoning in *Project Blue Sky Inc. v Australian Broadcasting Authority* [1998] HCA 28, it was the role of a court or tribunal interpreting statutory provisions to reach a harmonious outcome which was consistent with all of the provisions of the legislation.

(c) Thirdly, that the legislation must be construed in its context including its historical context, and by that I mean the legislative history of the matter. Dr Lucy referred to *Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross & others* [2015] HCA 52 (17 December 2015) and a number of other cases.

The Worker's Submissions

23. The worker was represented by Mr Stanton of counsel who also provided an outline of written submissions. He reviewed the relevant sections of the legislation, and submitted the following:

> "It is submitted that the statutory issue of whether the applicant has a degree of permanent impairment resulting from the injury on 3 February 2001 which (is more than 20 per cent) is different to the issue of whether the applicant may also have an entitlement to lump sum compensation. That is because there is nothing in section 39(2) which clearly states that this is a requirement. If the legislator had intended it to be a requirement it could have clearly stated this."

24. The argument of the workers thus relied on the words of section 39, and the fact that the section does not state that an assessment of permanent impairment could only be undertaken where the injured worker had an entitlement or a right to permanent impairment compensation.

25. By permanent impairment compensation both sides were referring to permanent impairment compensation in a broad manner. The phrase was utilised to address an entitlement to lump sum compensation under the 1987 Act in any of the forms that lump sum compensation has taken over the last 20-plus years. The worker then submitted that the words in section 39(3) which directed that a worker be assessed as provided for by section 65 (for an assessment for the purposes of Division 4) was a clear direction by the legislature that the degree of permanent impairment be assessed in accordance with Division 4 of Part 3.

26. Mr Stanton argued that Division 4, Part 3 had many purposes and one of them was simply to set out in detail the methodology by which whole person impairment was to be assessed. It did that by reference to the *Workplace Injury Management and Workers Compensation Act 1998* and that in turn imported the Guidelines and AMA5 as the method of assessment. Mr Stanton also argued that the construction contended for by the employer would lead to draconian and discriminatory outcomes.

27. It was argued that a small group of quite seriously injured workers with psychological injuries or with physical injuries which were not compensable under the Table of Disabilities provisions of the 1987 Act would have no right to weekly payments after five years and would have curtailed rights to medical and hospital treatment.

28. Mr Stanton also referred to a particularly tragic circumstance of a paraplegic who suffered injury before 30 June 1985 who would, on the employer's argument, not be entitled to

medical expenses by reason of the operation of section 59A(5)of the 1987 Act. Whether that latter illustration is correct is not entirely clear.

29. Mr Stanton concluded by stating:

> "It is submitted that the relevant provisions should be interpreted so as to conclude that a worker who suffered a primary psychiatric injury before 1 January 2002 can attain the section 39(2) threshold if the symptoms from that injury are assessed pursuant to the relevant guidelines as producing a degree of permanent impairment that is more than 20 per cent."

30. In his oral submissions, Mr Stanton stated that his client was also able to rely upon the definition of worker with high or highest needs which can be found in section 32A of the 1987 Act. A worker with high needs is defined as a worker with a degree of permanent impairment assessed for the purposes of Division 4 to be more than 20 per cent, and a worker with highest needs to be more than 30 per cent.

Discussion

31. The relationship between section 39(3) and the definitions of worker with high needs or highest needs in section 32A of the 1987 Act is not easy to understand. I at one stage was of the view that section 39(3) may have been otiose in that section 32A, introduced from 4 December 2015, seemed to do much of the same work as section 39(3). Whether that is so is not entirely clear.

32. What is clear is that there are a number of provisions in the 1987 Act that rely upon an assessment of the degree of whole person impairment before compensation or further compensation is payable. If there is a dispute between the parties about the degree of impairment, these provisions require an assessment by an Approved Medical Specialist. The provisions are not limited to section 32A or section 39(3). They extend to provisions in section 151H for common law claims, and provisions in section 87E for commutation applications. Section 87EA of the 1987 Act, for example, provides the pre-conditions to commutation. One is that the injury has resulted in a degree of permanent impairment of the injured worker that is at least 15 per cent, assessed as provided by Part 7 of Chapter 7 of the 1998 Act. As I pointed out in the matter of *Robin-True v Stella Marist College*, matter number 00400/16, the language of each of the sections that require an assessment of permanent impairment in the form of whole person impairment is slightly different in each case. That undoubtedly leads to confusion and may, in part, have led to the dispute in this case.

33. In construing the workers compensation legislation, I have attempted to apply the principles of statutory construction set out in *Alcan(NT) Alumina Pty Ltd v Commissioner of Territory Revenue* [2009] HCA 41 (30 September 2009), *Project Blue Sky v ABA* [1998] 194 CLR 355 and the other cases to which Dr Lucy has referred in her written submissions. The task of construction commences with a consideration of the text of the legislation. It is necessary, however, to consider the text in the legislative context including the purpose and policy of the Act. It is necessary to give the legislation a coherent and harmonious operation. That may necessitate, as the recent case law from the New South Wales Court of Appeal demonstrates, construing some provisions as dominant and other provisions as subservient.

Abu-Ali

34. In analysing the workers compensation legislation. and in particular section 39, both parties referred to the reasoning of Deputy President Snell in *Abu-Ali v Martin-Brower Australia Pty*

Limited [2017] NSWWCCPD 25. In that case the worker sought an order referring a consequential or secondary psychological injury to an Approved Medical Specialist for the purposes of determining the threshold issue of whether he was a worker with high or highest needs as defined in section 32A of the 1987 Act.

35. The employer quoted part of the decision of the learned Deputy President in its written submissions. The Deputy President relevantly said this:

> "In my view, the preferable construction of the relevant definitions in section 32A is that assessment 'for the purposes of Division 4' involves assessment consistent with the process of assessment of permanent impairment for the recovery of compensation for non-economic loss. Such a construction is consistent with the text - the purposes of Division 4 are consistent with assessment for the recovery of non-economic loss. The construction is consistent with the heading of Part 3, Division 4 'compensation for non-economic loss' which forms part of the text of the Act.
>
> I do not regard the language of the relevant definitions in section 32A and Part 3, Division 4 as being 'doubtful or ambiguous'. If it were, then such construction is consistent with the heading of Part 3, Division 4 (see the third of the 'rules' identified in *Ragless* at [64] above."

36. The learned Deputy President went on to conclude that the structure of the scheme, including the Acts and the guidelines, was inconsistent with the proposition that permanent impairment can be assessed in respect of a secondary psychological injury.

37. The employer argued that for the same reasons the structure of the statutory scheme was inconsistent with the proposition that permanent impairment may be assessed in respect of a primary psychological injury which was sustained before 1 January 2002. Mr Stanton on the other hand took issue with that argument. He pointed out that the determination of Deputy President Snell on this issue was obiter and in any event, what the Deputy President said was at least ambiguous.

38. In my opinion, the employer's reliance upon the paragraphs of *Abu-Ali* quoted above is not persuasive. In the claim with which the Deputy President was dealing, a secondary psychological injury, there is no statutory apparatus or methodology to facilitate an assessment of permanent impairment. It is true that section 65A(1) prohibits the payment of compensation in respect of such an injury but, equally importantly, the guidelines provide no basis for assessment of a secondary psychological injury.

39. Relevantly, the guidelines state;

> "A primary psychiatric is distinguished from a secondary psychiatric condition or psychological condition which arises as a consequence of, or secondary to another work-related condition (e.g. depression associated with that injury). No permanent impairment assessment is to be made of secondary psychiatric and psychological impairments."

40. In refusing to refer the secondary psychological injury for assessment, the Deputy President emphasised that this type of injury was simply incapable of assessment as the scheme contains no provision for assessment of permanent impairment in the case of such an injury. There was, as I have already stated, no mechanism in the guidelines by which to carry out an assessment.

41. That same reasoning cannot apply to a primary psychological injury. A primary psychological injury is patently capable of assessment in accordance with Part 3, Division 4 of the 1987 Act

and the statutory provisions and guidelines which are imported by the language of Division 4 to facilitate such an assessment. The Deputy President characterised the phrase "for the purposes of Division 4" as involving an assessment consistent with the process of assessment of permanent impairment for recovery of compensation for non-economic loss. I emphasise the words consistent with the process of assessment of permanent impairment. A primary psychological injury occurring before 1 January 2002 can be assessed “consistent with” the process of assessment of permanent impairment for the recovery of compensation for non-economic loss.

42. It is true that permanent impairment compensation cannot be recovered in respect of such an injury; however, in marked contra-distinction to a secondary psychological injury, it can readily be assessed in the same way as a primary psychological injury occurring after 1 January 2002.

Second Reading Speech

43. The employer then argues that its contention is consistent with the purposes of the 2012 Amending Act as stated by the Hon Mike Baird MP in the second reading speech to the Workers Compensation Legislation Amendment Bill 2012.

44. The passage quoted in the employer's submissions, however, suggests at least two fundamental purposes. I accept the primary purpose of the legislation was the reduction in the deficit confronting the scheme. However, it is perfectly clear from the words used by Mr Baird MP that there was to be a "fundamental shift" of compensation fund or employer's premiums towards properly meeting the needs of seriously injured workers.

45. I do not understand the employer to contend that the workers in these cases are not seriously injured, using that terminology in the general sense. I do not propose to ultimately rely upon the second reading speeches to the 2012 Bill or the subsequent Bills dealing with workers of high or highest needs. Statements of ministers are not always considered to be a reliable guide to the intention of Parliament.

46. I accept that the statements can provide valuable insight into categorising the mischief which the amending legislation aims to rectify. The employer's argument, however, does not seem to me to be consistent with the stated purpose of properly meeting the needs of seriously injured workers. That said, the litany of catastrophic possibilities canvassed by Mr Stanton may not be an accurate reflection of the results of the employer's view of the scheme.

47. However, it is clear that, by this interpretation, existing recipient workers who suffer from profound psychiatric disturbances, catastrophic cardiovascular conditions, HIV/AIDS before 1996, or any other physical condition which did not attract lump sum compensation pursuant to the table of disabilities in force prior to 1 January 2002, would then cease to be entitled to any weekly payments on or about 25 December 2017. That does not seem consistent or fair. But my view of the correct construction of the legislation does not ultimately turn on notions of fairness.

48. In *Project Blue Sky*, the following appears at [69]:

> “The primary object of statutory construction is to construe the relevant provisions so that it is consistent with the language and purpose of all of the provisions of the statute. The meaning of the provisions must be determined by reference to the language of the instrument viewed as a whole. In *Commissioner for Railways NSW v Agalianos*, Dixon CJ pointed out that:

> ‘The context, the general purpose and the policy of the provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed.
>
> *Thus, the process of construction must always begin by examining the context of the provision that is being construed*.’” (My italics)

49. In my opinion, the language of subsections (2) and (3) of section 39 of the 1987 Act facilitates the assessment of permanent impairment in the manner set out in Division 4. For the reasons previously provided in *Robin-True v Stella Marist College*, an entitlement to make a claim for permanent impairment compensation is not a prerequisite for assessment of permanent impairment. Similarly, the subsections do not limit the class of workers who can be assessed for the purposes of section 39 to those who historically had a right to such compensation.

50. The words of section 39 and the other sections of the Act, and the associated transitional provisions and regulations, do not explicitly state that an assessment pursuant to section 39 is limited to those who have a right to permanent impairment compensation. In my opinion, it is unnecessary that the workers have an entitlement to receive compensation for non-economic loss before there is a referral for a determination of the extent of permanent impairment under any or all of these sections.

51. While there may be some force in the argument presented by Dr Lucy that such a restriction can be implied by a reference to the Act, in my view this interpretation does not result in the harmonious operation of the Act taken as a whole. Division 4 of the 1987 Act is concerned with compensation for non-economic loss. As discussed in *Abu-Ali*, it also provides a scheme by which such compensation can be assessed. In section 32A, section 39, section 59, section 87E and section 151H, the legislature has sought to utilise the method of assessing permanent impairment to provide benchmarks or thresholds by which a worker's entitlement to weekly compensation or some other statutory benefit, an entitlement to a commutation or an entitlement to commence at common law or an entitlement to compensation for the cost of care, can be accessed.

52. At the risk of prolonging the matter, section 60AA of the 1987 Act which provides for compensation for domestic assistance sets out a series of prerequisites for the entitlement to be accessed. One of them is 60AA(1)(c); the injury to the worker has resulted in a degree of permanent impairment of the worker of at least 15 per cent. I assume on Dr Lucy's argument that a worker with a profound psychological disability who was injured before 1 January 2002 would not be entitled to an assessment of the degree of permanent impairment and would not be able to access domestic assistance.

53. As is evident from the parties’ submissions in this case, the scheme of the Act is unnecessarily complex. An expanded scheme of lump sum benefits was introduced by the 1987 Act. It might be described as a trade-off or quid pro quo for the significant reduction of the common law rights of injured workers contained in other provisions of the 1987 Act. The 1987 Act contained a table of disabilities. Oddly, entitlement to compensation was assessed as loss or loss of use of "a thing" in that table.

54. The present scheme for compensation of non-economic loss was introduced by the Workers Compensation Legislation Amendment Act number 61 2001 and the Workers Compensation Legislation Further Amended number 94 (the 2001 amendments). They operate from 1 January 2002. The transition from the 1987 scheme which provided for compensation by reference to loss of a thing in the table and the present scheme of permanent impairment is

analysed in the decision of BP *Australia Limited v Greene* [2013] NSWWCCPD 60 and the decision of then Senior Arbitrator Snell in *Hogan v Mercy Care* Centre [2014] NSWWCC 349. I adopt his analysis of the interrelationship between the two schemes for lump sum compensation.

55. From the analysis contained those decisions, it is evident that the 2001 amendments introduced the concept of permanent impairment compensation for the first time. The transitional provisions accompanying the amendments made provisions in Schedule 6, Part 18C, clause 4(1) for the assessment of claims for lump sum compensation in respect of injuries prior to 1 January 2002 by Approved Medical Specialist. The clause allows for the matter referred for assessment to be dealt with as if it were a medical dispute as defined by section 319 of the 1998 Act.

56. The 2001 amendments introduced for the first-time permanent impairment compensation in respect of psychiatric or psychological injury. By Schedule 6, Part 18C, clause 3 the transitional provisions provided that:

> "There is to be a reduction in the compensation payable under Division 4 of Part 3 as amended by the lump sum compensation amendments for any proportion of the permanent impairment concerned that is a previously non-compensable impairment.
>
> This subclause does not limit the operation of section 323 of the 1998 Act or section 68B of the 1987 Act."

Clause 3 envisages that there can be permanent impairment as a result of an injury prior to 1 January 2002 in the form of a primary psychological injury. It provides, however, that proportion of the permanent impairment the Commission finds is attributable to the injury prior to 1 January 2002 is not compensable.

57. The transitional provisions and regulations accompanying the 2012 Amending Act also address the issue of the assessment of injuries occurring prior to 1 January 2002. By Schedule 6, Part 19H, clause 23, the amendments specifically provided that the degree of permanent impairment of an injured worker whose injury occurred before 1 January 2002 could be referred for assessment in accordance with Division 4. Saliently, the regulations which were published following the 2012 amendments facilitate the referral of seriously injured workers to a medical assessment to establish their degree of permanent impairment. There are a number of relevant clauses in the Workers Compensation Regulations 2016. Clause 13 of Schedule states at subclause (1):

> "The fact that a worker's injury was received before the commencement of the 2001 lump sum compensation amendments does not prevent the degree of permanent impairment of the injured worker from being assessed for the purposes of determining whether the worker is a seriously injured worker under Division 2 of Part 3 of the 1987 Act."

58. This clause is not directly applicable to the present case. However, it seems to me to be relatively plain from this provision that the legislature did contemplate that there might be an assessment of whole person impairment, or permanent impairment in the form of whole person impairment, when there was no associated right to permanent impairment compensation. In fact, the consideration of section 39 and other provisions which I have referred to leads to the conclusion that the harmonious operation of the legislation requires workers who do not have an entitlement to compensation for permanent impairment to be assessed from time to time for some of the purposes that I have referred to above.

59. I will not reiterate those sections or instances again but I have concluded that the words which Dr Lucy argued were at the heart of the dispute must mean that the permanent impairment be assessed in accordance with, or consistently with, the provisions in Part 3, Division 4. Otherwise, the Act would not function effectively. There would be workers who would not be able to access certain of the compensation benefits that are available under the Act. Seriously injured workers, again using the term in a general sense, or workers of the highest needs, would not be able to avail themselves of an entitlement to compensation for more than five years. Ultimately, they would lose the right to reimbursement or indemnity in respect of their medical expenses. That does not seem to me to be a harmonious outcome. In my view, the scheme of the Act is such that the weekly benefits that are available in Division 2, Part 3 are to be measured by benchmarks or thresholds that are contained in Division 4.

60. This approach means that the use of Division 4 to measure entitlements to compensation effectively completes the scheme, and causes it to function as a whole. In those circumstances, I decline the employer's application to strike the matter out and I will refer it to an Approved Medical Specialist.

Determination

61. The determination is as follows:

    1. Refuse the employer's application to strike out the Application for Assessment by an Approved Medical Specialist.

    2. Remit the matter to the Registrar for referral to an Approved Medical Specialist to assess the worker's degree of whole person impairment resulting from primary psychiatric injury on 3 February 2001 for the purposes of section 39 of the *Workers Compensation Act 1987*.

    3. Approved Medical Specialist to have access to the Application, the Response, the Application to Admit Late Documents and the documents attached to each.

I CERTIFY THAT THIS PAGE AND THE PREVIOUS PAGES ARE A TRUE AND ACCURATE RECORD OF THE SUMMARY OF THE DETERMINATION AND REASONS DELIVERED ORALLY BY ARBITRATOR PAUL SWEENEY ON 25 JULY 2018.

Parnel McAdam
A/Director Legal

28 September 2018