

## **(amended) STATEMENT OF REASONS FOR DECISION**

### **BACKGROUND**

1. Mr Burke began with the Respondent in January 1995. Prior to that he was a police officer. In his police work he was exposed to traumatic experiences in the course of normal duties.
2. Early in 1996 Mr Burke acquired a new work colleague, Ms Kerry Crisp. He noted bullying and harassment of other workers by Ms Crisp and reported specific incidents of this to his supervisor.
3. From about 1999 Mr Burke felt himself bullied and harassed by Ms Crisp, and this continued up to the end of 2003 when they both applied for the same more senior position. Ms Crisp was successful in gaining the position over Mr Burke, which shocked and concerned him. He lodged an appeal against the appointment which was heard in the relevant appeal tribunal, but was unsuccessful in that appeal.
4. Incidents continued between Mr Burke and Ms Crisp in 2004 and 2005, which were reported to his supervisors. In May 2006 Mr Burke was asked to work directly with Ms Crisp. He agreed but felt unable to proceed with the new arrangement. He became distressed in June 2006 and consulted his general practitioner and a psychologist. He had time off from 26 June 2006 to 31 July 2006 when he resumed for three hours each day, but he had further time off over the next two weeks. On 11 August 2006 a senior employee informed Mr Burke of an investigation into 'allegations of bullying and harassment raised against Ms Kerry Crisp' and asked him if he would assist. He agreed to the request and at that point he broke down completely and has not returned to work since.
5. Mr Burke lodged a workers' compensation claim on 14 June 2006, which was initially accepted. The insurer denied liability in a notice issued under section 74 of the 1987 Act dated 10 May 2007.
6. Mr Burke claims weekly payments of compensation, with the period claimed being amended at the formal conference to commence from 10 May 2007 to date.
7. The application was also amended by consent to include a claim for a general order for section 60 of the act expenses.

### **ISSUES FOR DETERMINATION**

8. There is no dispute as to injury.

#### *Matters Previously Notified As Disputed*

9. The issues were identified in the Notice issued under s74, and are as follows:
  - Is the employment a substantial contributing factor to the injury? (Section 9A of the Act)?
  - Is the respondent entitled to rely on a defence to the claim, under section 11A (1) of the 1987 Act?

#### *Matters Previously Unnotified*

10. Are the applicant's medical expenses reasonably necessary for the compensable injury?

## **PROCEDURE BEFORE THE COMMISSION**

11. The parties attended a hearing on 22 April 2009 at Sydney. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

## **EVIDENCE**

12. Taken into account have been the documents attached to, and listed in, the Application and the Reply, plus:
- Report of Dr Ben Teoh dated 20 April 2009.
  - File notes, emails and memos of the respondent and the respondent's employees filed under Application to admit late documents dated 24 February 2009.
  - Bundle of materials produced under Direction by Robyn Bartlett and Associates.
  - Materials produced under Direction by Robyn Bartlett & Associates filed under Application to Admit Late Documents filed on 11 March 2009.
  - Materials produced under Direction by HealthQuest.
  - Materials produced under Direction by Calvary Health Care.

13. There was no oral evidence.

## **SUBMISSIONS**

14. Oral submissions were made by the representatives at the hearing, which were recorded. These will be referred to in the discussion below.

## **FINDINGS AND REASONS**

### ***Issue – Was Mr Burke's employment a substantial contributing factor to his injury?***

15. It is insufficient for injury to have arisen out of or in the course of the employment although it is a relevant consideration: Deputy President Byron in *NSW Police Service v Kehoe* [2004] NSW WCC PD 40. An Applicant must establish that the employment is a substantial contributing factor to the injury. There may be other causative factors of an injury, and a substantial contributing factor is sufficient if the overall impression and degree in the circumstances of the case is that the factor is more than minimal: Deputy President Fleming in *Central Coast Area Health Service v Clara Evans* [2004] NSW WCC PD 10.
16. In *Morgan v Coles Myer Ltd* [2005] NSWCCPD 64 Acting Deputy President Handley addressed the issue of substantial contributing factor in a context not dissimilar to the current matter:

‘The Applicant referred to the NSW Court of Appeal decision in *Mercer*. In that case, Mason P, with whom Meagher and Beazley JJA agreed, said:  
“26. The term ‘substantial’ may have various shades of meaning. Having regard to the context, it may mean ‘large or weighty’ or ‘real or of substance as distinct from ephemeral or nominal’ (*Tillmanns Butchery Pty Ltd v Australasian Meat Industry Employees*

*Union [1979] FCA 84; (1979) 42 FLR 331 at 348 per Deane J; Wong v Silkfield Pty Ltd [1999] HCA 48; (1999) 73 ALJR 1427 at [27]).*

27. Here the word ‘substantial’ qualifies ‘contributing factor’. Obviously it is the extent of the causal link which is at issue. Bishop CCJ [at first instance] recognised this. At [29] of his judgment he held that the meaning to be adopted was that ‘substantial’ meant ‘more than minimal, large or great’. In my view, that was the correct approach, remembering that word is used in the relative sense, recognising that other causative factors may be present. Section 9A does not require that the employment must be ‘the’ substantial contributing cause, nor does it attempt to exclude predisposition or susceptibility to a particular condition: cf *University of Tasmania v Cane [1994] TASSC 73; (1994) 4 Tas R 156.*” ‘

17. Acting Deputy President Handley also referred to *Dayton v Coles Supermarkets Pty Ltd [2001] NSWCA 153*:

“48. In *Dayton v Coles Supermarkets Pty Ltd [2001] NSWCA 153*, Meagher JA, in the NSW Court of Appeal, held that an employment related contributing factor that is minor in comparison to a non-employment related contributing factor cannot be regarded as ‘substantial’. The Court emphasised that what constitutes a ‘substantial’ contributing factor is a question of fact for the judge.’

18. The respondent submits that the section 9A issue is not satisfied by the applicant. This is based on the opinion of Dr John Roberts who stated in his report of 26 December 2007, ‘*A differential diagnosis in Mr Burke is between a Malingered presentation in order to obtain what he wants, or alternatively a differential diagnosis of an agitated depressive illness. An agitated depressive illness is an illness of life and in my view has no relation to the circumstances and conditions of employment. If an alternative view is asserted namely that an illness has developed as a result of the circumstances and conditions of employment, whether such would come under section (11A) paragraph (1) in terms of consideration with respect of transfer, i.e. change of duties is a matter for your legal advisers. ... In my view the differential diagnosis is therefore between two conditions, malingering and a non-work related depressive condition.*’

19. Vanitha Moodley, psychologist for the respondent, who was suggested to the insurer by Dr John Roberts as someone to assess and diagnose Mr Burke, expresses an opinion similar to that of Dr John Roberts. She says, ‘*In my opinion I do not believe [sic] that Mr Burke currently meets with any genuine psychological/psychiatric disorder as per the DSM-IV-TR and as a result I believe that work is not a substantial contributing factor to his current condition and essentially there is nothing preventing him from returning to his duties at the RTA.*’

20. Dr Mary Roberts examined Mr Burke for the government medical officer, HealthQuest, on 25 July 2007 and diagnosed Adjustment Disorder with mixed Anxiety and Depression, and went on the say, ‘*Illness is very chronic. He is unlikely to recover in the foreseeable future.*’

21. Dr Christine Salisbury, clinical psychologist for the respondent, in her report of 14 July 2006, says, ‘*It is my opinion the work environment is one factor which has contributed to Mr Burke manifesting a Depressive Episode. Mr Burke has a vulnerability to become emotionally distressed when under pressure. It is my opinion Mr Burke has sustained a work related psychological condition.*’ She also says that, ‘*Mr Burke was asked to do additional work in Ms Crisp’s unit in May 2006 and while he enjoys working in Traffic and wishes to keep his skills current, he was fearful of working closely with Ms Crisp. I have not identified any incidents of recent bullying of Mr Burke, however, Mr Burke is fearful of her and her unpredictable outbursts which he has seen continue in relation to other staff.*’

22. Dr Teoh, for Mr Burke, also sees the work as the cause of psychological work injury, *'His presentation is consistent with a diagnosis of a major depression (DSM IZ diagnostic criteria). He has no past history of psychiatric illness or alcohol/substance abuse. It is my opinion that his major depression is caused by the stressful environment at work.'*
23. Mr Burke in his statement outlines the events he found stressful relating to Ms Crisp. The report of Robyn Bartlett and Associates and the documents attached comprising statements taken as part of the external investigation of complaints against Ms Crisp by other employees tends to confirm the work environment to which Mr Burke was exposed over a long periods of time. That material is not evidence adduced for these proceedings but it generally indicative of serial actions by Ms Crisp towards Mr Burke and others that were eventually found to be breaches of behaviour standards deserving of disciplinary action against Ms Crisp by the respondent.
24. The Bartlett material is extensive and detailed, but does not comprise sworn statements prepared in this jurisdiction, and therefore cannot be given the evidentiary weight it would otherwise carry. It does not of itself establish that the employment was a substantial contributing factor to the injury. However, the circumstances under which the Bartlett statements were obtained were formal and clearly part of a comprehensive external investigation. The purposes of the materials is clear, they are consistent with Mr Burke's own evidence, and with the histories given to the practitioners about the work environment that Mr Burke was obliged to confront for many years in the form of the behaviour of Ms Crisp.
25. Without going into the detail of the unsworn statements attached to it, the detailed report by Ms Bartlett deals with the allegations against Ms Crisp, which lead the respondent to commence disciplinary action against her, at which point she resigned. Ms Bartlett says, for example, *"During interview, when referring to the fact that Ms Crisp would speak to him about other staff in a derogatory fashion, Mr Barelli stated, "Phil (Burke) is a target, an absolute target". During the investigation most of the staff interviewed referred to the poor relationship between Ms Crisp and Mr Burke, in one form or another.'*
26. In respect to whether Mr Burke had complained to the manager, Mr Coman, about Ms Crisp, Ms Bartlett reports that, *'Mr Coman stated that Mr Burke had often complained to him in a general way about Ms Crisp, but that he had never raised specific issues that could be addressed with Ms Crisp.'* She goes on to conclude on that issue that, *'It would appear from the information presented that Mr Coman did not ever raise Mr Burke's concerns with Ms Crisp. However, Ms Crisp does appear to have been well aware of the poor state of her work relationship with Mr Burke.'*
27. Dr Salisbury discusses the fear engendered in Mr Burke when he saw others being bullied by Ms Crisp, and this was an element in addition to the bullying and harassment he himself experienced. At the time of his decompensation in May/June 2006 there does not seem to have been any particular major incident with Ms Crisp, but rather it was the fear of working more closely with her in the context of his own past encounters and of observing her behaviour towards others. The Bartlett materials provide many examples of the Ms Crisp's behaviour towards others, and the lack of action by management after complaints by Mr Burke over a period of years. There was one occasion in November 2003 according to Mr Burke when he was informed by a manger, Mr Charlie Bloomfield, *'that Kerry Crisp had been counselled, that she had changed and that everything would be alright now.'* However, it seems there was nothing effective from local management up to the time of the Bartlett investigation.

28. The respondent submits that Mr Burke's injury only arose due to his perception of events, and this perception was not based on real events in his employment. This submission seems to be that the psychological condition suffered by Mr Burke is not compensable because he had an erroneous perception of external events that caused his condition, on the principle from *Townsend v Commissioner of Police* (1992) 25 NSWCCR 9 discussed by (then) Acting Deputy President Roche in *Lee v Department of Education & Training* [2006] NSWCCPD 179.
29. In support of this approach the respondent submits that there is no contemporaneous evidence that Ms Crisp bullied or harassed Mr Burke. However, it is clear from all the evidence that Ms Crisp's behaviour towards Mr Burke and others was a major issue in the office and beyond for many years. Each incident was small in itself, but the pattern of aggressive behaviour towards Mr Burke and others was such that Mr Burke developed a genuine fear of Ms Crisp. This was reported to the manager, Mr Coman, but he apparently failed to take any decisive action to address the problem, and it was not properly addressed until the Bartlett investigation after Mr Burke was unable to continue at work. The source of the stress was finally from three quarters: Ms Crisp's attitude and behaviour towards Mr Burke; Mr Burke's observation of Ms Crisp's behaviour towards others; and the failure of management to address the issue. There is ample evidence of complaints to his supervisors by Mr Burke about Ms Crisp, and of Mr Burke's colleagues and superiors being aware of the problem of Ms Crisp's behaviour towards Mr Burke.
30. The Bartlett investigation could not find proved many of the smaller issues alleged by Mr Burke and others, comprising one person's word against another, but this does not negate the overall picture of bullying and harassment emanating from Ms Crisp, and affecting Mr Burke. I do not find that Mr Burke misperceived events on the principle from *Townsend*. In contrast to the circumstances in *Townsend* there is ample evidence of real events affecting Mr Burke and confirming his account.
31. I accept Mr Burke's evidence that he felt bullied and harassed by Ms Crisp, that he was affected by Ms Crisp's behaviour towards his colleagues, and that he felt that the response of management to his concerns was inadequate. His statement to this effect is consistent with the history given to the medical practitioners and psychologists. While not necessary for this finding to be made, the Bartlett & Associates investigation materials, although not direct evidence, and not produced as part of these proceedings, do serve generally to confirm the primary evidence, including Mr Burke's statement and the histories and opinions in the preferred medical reports.
32. Dr Teoh comments on the report by Dr Roberts of 30 April 2007, and I agree with his comments about the opinions of Dr Roberts. Dr Roberts does diagnose major depression, but does not appear to have had a full appreciation of the long-term stressors on Mr Burke. Given the stressful behaviour of Ms Crisp, to suggest that the depression is a life event and unrelated to the employment is not consistent with the rest of the evidence, which quite comprehensively supports Mr Burke. Ms Moodley's opinion of there being no diagnosable injury is also difficult to reconcile. Similarly the suggestion that Mr Burke is fabricating symptoms cannot be accepted. Dr John Roberts in his report of 2 June 2008 comments on surveillance footage of Mr Burke, which I have viewed. Dr John Roberts opines that the surveillance confirms his earlier expressed view that Mr Burke is malingering or exaggerating, and supports Ms Moodley's opinion. Given the treatment history and factual circumstances of Mr Burke's series of admissions to hospital due to the severity of his

symptoms and his sometimes suicidal thoughts, I reject that opinion as inconsistent with the weight of the evidence.

33. Dr Lubbe is Mr Burke's treating psychiatrist, and has supervised his admissions to Hyson Green private hospital in Canberra. In her report of 24 July 2007 she says, *'I wish to emphasise that the initial illness was a major depressive illness and was significantly contributed to by his work situation. I think his ongoing difficulty is part of this ongoing illness.* Dr Lubbe also comments on Dr John Roberts' views as to Mr Burke's demeanour when away from Wagga and socialising, saying that, *'I am concerned also that Dr Roberts reports such a difference in Mr Burke's state when he is away from Wagga and when he is there, when he is near workplace reminders and when he is near friends. My report from both patient and wife are that there is no such marked difference in his mood or presentation in these different situations. He is certainly distressed when he sees, for instance, safety features that he was instrumental in place near his daughter's school ... He tries to do whatever activity it is but he is still nowhere near his old self. ... The wife also notes that the whole family is living around Mr Burke with care, "walking on eggshells" to help keep things going; - this is in contrast to a warm mutually supportive family life before Mr Burke's illness.*
34. Dr Roger Blake, Mr Burke's treating psychologist, says, *'In the writer's opinion, Mr Burke's psychological injury/condition injury [sic] is most certainly work related. The writer is at a complete loss, despite lengthy and crafted diagnostic argument to the contrary, as to how this individual has come to be in such a high risk condition, if it is not directly attributable to his work conditions.'*
35. I prefer the opinions of the treating doctors to those of Dr Roberts and Ms Moodley; particularly that of the treating psychiatrist, Dr Lubbe, which is consistent with Dr Teoh, the treating psychologist, Mr Blake, the treating general practitioner Dr Caton, and of Dr Salisbury.
36. In terms of the section 9A (2) examples, the length of the employment is relevant because of the long period of exposure to injurious behaviours. The nature of the work was not significant, but the proximity of Ms Crisp was. There is no other stressful element indicated in the histories or statement to which the development of the condition can be attributed. The respondent submits that the time in the police force should be seen to be a factor, but that employment ceased some 11 years before the injury manifested itself in 2006. The internal memo of Ms Julie Foster of 14 June 2006 includes a comment that Mr Burke said that he had not been coping for the past eleven years since leaving the police force and that he had 'a breakdown' when with the police.
37. However, there is no evidence of any psychological injury or treatment that arose in the period of work with the police. There is a history taken by Dr Roberts and Ms Moodley of Mr Burke saying he had suffered from 'post traumatic stress disorder', but whether or not this was self-diagnosis by Mr Burke in relation to the stressful events he witnessed as a police officer is unclear.
38. In any case there is no evidence before me of any psychological injury diagnosed during the previous employment with the police, or in the period of employment with the respondent before 2006 when the current injury became manifest. The respondent submits that the question as to whether the injury would have occurred regardless of the work is addressed by Dr John Roberts, who is of the opinion that the injury is 'an illness of life'. I do not accept this opinion for the reasons already stated above. There is clear evidence of

identifiable stressors affecting Mr Burke over a long period of time involving Ms Crisp, culminating in his severe depression. The circumstances leading to the inability to continue at work in mid-2006 were that he had been asked by Mr Coman to work more closely with Ms Crisp, and was unable to cope with that prospect given the history of his experience with her behaviour. It would be very much against the weight of the evidence to conclude: first, that the temporal relationship between the new working arrangements Mr Burke feared and his breakdown were merely coincidental; second, that he would have broken down regardless. The nature of the meeting in May 2006 with John Coman and Julie Foster, Mr Burke's evidence, and the preferred medical evidence shows a definite causal connection.

39. For the above reasons I find that Mr Burke's employment with the respondent was a substantial contributing factor to his psychological injury.

***Issue - Is the respondent entitled to rely on a defence to the claim under section 11A (1) of the 1987 Act?***

40. The separate elements of section 11A(1) of the Act to be satisfied before no compensation is payable are whether a psychological injury:

- was wholly or predominantly
- caused by reasonable action taken or proposed to be taken by or on behalf of the employer
- with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.

41. The respondent submits that the management actions relied on were reasonable actions of the employer in respect to one of the categories, without being specific as to the evidence supporting a particular category.

42. I do not see that the defence under section 11A (1) of the Act is available to the Respondent. There is little evidence to support it. The Section 11A defence is only available in the specific categories listed with sub-section (1), and is not invoked by reasonable actions of an employer falling outside the list: *Smith v Roads and Traffic Authority of NSW* [2008] NSWCCPD 130 (ADP Snell at paragraphs 63 and 64).

43. It seems the respondent submits that either the category of promotion or of transfer is relevant. The respondent points to the memo sent by Julie Foster on 14 June 2006 about Mr Burke in support of the contention that the promotion issue is wholly or predominantly the cause of the injury. Mr Foster states in the memo, *'My understanding of the history with Kerry is that Phil and Kerry applied for the position of Road & Traffic Services Manager over 2 1/2 years ago and Kerry was appointed. It appears Phil has not come to terms with this decision to date despite the decision being appealed through the GREAT process by Phil.'* I note in relation to this opinion that Mr Burke states that *'In the later part of 2006 I attended a return to work meeting with Bill Froom and Julie Foster. In the meeting I was confronted by Julie Foster for mentioning that she and Kerry Crisp were friends.'* He also states that, *Julie Foster told me that Kerry was very bitter toward me for appealing her appointment as manager.'*

44. Also, the respondent's medical expert Dr Roberts says of this element: *'I note that the major problem with Mr Burke is that Ms Crisp got a position that he thought should be his, while he might have been unhappy with that circumstance, it cannot be deemed to be the*

*case that such a circumstance could be said to give rise to a mental illness namely a disease of the mind.'*

45. I agree with the opinion as there being no illness caused by the promotion issue in 2003, but I do not accept the history Dr John Roberts gives of it being '*the major problem with Mr Burke*'. While there was a promotion attempt by Mr Burke at the end of 2003, and an appeal by him against the appointment of Ms Crisp, no psychological injury arose from that process, on the evidence.
46. The major problem for Mr Burke was the sequence of bullying and harassment by Ms Crisp that he suffered, and observed being suffered by his colleagues.
47. The preferred medical opinion does not ascribe the injury to the 2003 promotion and appeal, but to the behaviour of Ms Crisp to Mr Burke and his colleagues around him; and to the lack of support of management to Mr Burke's concerns.
48. As far as the suggestion that transfer might be relevant, it does not seem that the proposed duties with Ms Crisp was a transfer for the purposes section 11A (1). Even if it were, then it was not the new work itself that was the problem, but rather the genuine fear of working in closer proximity to Ms Crisp.
49. No other category under section 11A (1) is relevant on the evidence before me.
50. In respect of whether the reasonable actions of an employer wholly or predominantly cause injury, in *Temelkov v Kemblawarra Portuguese Sports & Social Club Ltd* [2008] NSWCCPD 96 Deputy President Roche said at paragraph 79:

"... Acting Deputy President Handley considered the phrase "predominantly caused" in *Ponnan v George Weston Foods Ltd* [2007] NSWCCPD 92 and applied the dictionary meaning (at [24]) of "mainly or principally caused". I agree with that definition and intend to apply it in the present matter."

51. Even if there were an applicable category under section 11A, Mr Burke's illness was not predominantly caused by anything other than bullying and harassment in the workplace by Ms Crisp, in my view. That is the primary source of the illness on the preferred medical opinion.
52. It follows from this, had there been some process fitting the section – although I do not find that there was – the actions of Ms Crisp, and also the failure of management to prevent the impact of her behaviour on Mr Burke, would have made any such process unreasonable.
53. For these reasons I find that there were no action of the employer taken or proposed in relation to Mr Burke were in a category of reasonable action for the purposes of section 11A(1) of the 1987 Act. Section 11A is therefore not applicable, and the respondent's defence claimed under that section fails.

#### ***Issue – Capacity***

54. The respondent submits that Mr Burke is capable of performing work similar to his pre-injury employment; that the conclusions of the rehabilitation report relied on by Mr Burke as based on his self-assessment as unable to work; that Dr Roberts is of the opinion that Mr Burke is fixated on his problem.

55. The preferred medical evidence is of total incapacity for the period claimed. Dr Caton said in his report of 16 July 2007 that, *'In my opinion he is not fit to return to work in any capacity, as his ability to problem solve and concentrate is markedly impaired.'*
56. Dr Teoh states in his report of 23 August 2008 that *'His prognosis is guarded at this stage as it has become chronic. He has persistent symptoms of depression and he is unable to work. I believe that he has achieved maximum medical recovery.'* In the supplementary report of 20 April 2009 he states that, *'In light of the documents that you have provided, I have not altered my opinion regarding Mr Burke's diagnosis and the severity of his condition. In fact, it is my impression that Mr Burke has suffered from a rather severe and treatment resistant depression.'*
57. Similarly, the 'Initial Assessment Report' by rehabilitation counsellor Richard Parks dated 20 June 2008 concludes that occupational rehabilitation was not medically possible at that time, stating that, *'Should Mr Burke's current psychological symptoms settle to the point where he can participate in vocational counselling, the RehabCo will be willing and able to re-engage in this process.'* There is no evidence that the situation has changed since that report. Mr Burke is clearly unable to work. His situation has not improved, and I find that he has been totally incapacitated for work for the period claimed.
58. The weekly rate of \$1354.15, as shown in the applicant's wages schedule, is greater than the statutory maximum after the first 26 weeks under section 37. The insurer made weekly payments to Mr Burke before denying liability for a period beyond the first 26 weeks.
59. At the hearing it was agreed that Mr Burke had **two dependent children up to 10 December 2008 when the eldest child turned 18 years, and thereafter one dependent child for the period claimed.**

*Issue - Section 60 medical expenses*

60. It follows from the above findings that Mr Burke's section 60 of the Act medical expenses are reasonably necessary for the compensable injury. It was agreed at the hearing that if the main findings were in Mr Burke's favour, a general order for medical expenses would be appropriate.

**SUMMARY**

61. In summary the resolution of the issues in dispute is as follows:
- Mr Burke's employment was a substantial contributing factor to his psychological injury.
  - The defence pursuant to section 11A of the 1987 Act is not applicable.
  - Mr Burke is entitled to weekly payments of compensation for the period claimed, at the maximum statutory rate for a worker **with two dependent children up to 10 December 2008, and thereafter with one dependent child**, pursuant to section 37 of the Act, as adjusted.
  - Mr Burke's medical expenses are reasonably necessary for the compensable injury.
  - The issue of section 66 lump sum should be referred to an approved medical specialist.

**ROSS BELL**  
**Arbitrator**

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS  
FOR DECISION OF ROSS BELL, ARBITRATOR, WORKERS COMPENSATION  
COMMISSION.

**REGISTRAR**

# WORKERS COMPENSATION COMMISSION



## (amended) CERTIFICATE OF DETERMINATION

This Certificate is issued pursuant to s 294 of the *Workplace Injury Management and Workers Compensation Act 1998*.

**Matter No:** 009398-2008  
**Applicant:** PHILLIP BURKE  
**Respondent:** ROADS & TRAFFIC AUTHORITY

**Date of Determination:** 10 JUNE 2009

The determination of the Commission in this matter is as follows:

1. That the application is amended to include a claim for section 60 of the Act expenses; and to amend the claim for weekly payments of compensation such that the period claimed is from 10 May 2007 to date.
2. **That the respondent pay to the applicant weekly payments of compensation from 10 May 2007 to 10 December 2008 at the maximum statutory rate for a worker with two dependent children; and thereafter at the maximum statutory rate for a worker with one dependent child, pursuant to section 37 of the 1987 Act.**
3. Such payments to continue in accordance with the Act.
4. That the respondent pay the applicant's section 60 of the Act expenses on production of accounts or receipts.
5. That the Respondent pay the Applicant's costs as agreed or assessed.
6. I certify this matter as complex for the purposes Schedule 6, Table 4, Item 4, of the Workers Compensation Regulation 2003; there is to be 30% increase applied to the costs applicable for both parties.

Reasons for certification as to complexity:

The applicant's representative submitted that the matter is complex for costs purposes due to the difficult legal elements as to section 11A of the Act and the complex factual elements. I agreed with the submissions for the reasons given at the conference, and consider that the increase should be in this instance 30% pursuant to Schedule 6, Table 4, Item 4.

A brief statement of reasons for determination, in accordance with Rule 15.6 of the *Workers Compensation Commission Rules 2006*, is attached.

**ROSS BELL**  
**Arbitrator**

I CERTIFY THAT THIS IS A TRUE AND ACCURATE CERTIFICATE OF DETERMINATION ISSUED BY ROSS BELL, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

**REGISTRAR**

Lisette Clarke  
Dispute Assessment Officer  
**By Delegation of the Registrar**