

SUPREME COURT OF QUEENSLAND

CITATION: *Robinson v State of Queensland* [2017] QSC 165

PARTIES: **MARY-ROSE ROBINSON**
(Plaintiff)
v
STATE OF QUEENSLAND
(Defendant)

FILE NO/S: SC No 2 of 2014

DIVISION: Trial

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 8 August 2017

DELIVERED AT: Cairns

HEARING DATES: 12-16 September 2016, 1-2 December 2016, 6 March 2017, 21 June 2017.

JUDGE: Henry J

ORDERS: **1. Judgment for the plaintiff in the sum of \$1,468,991.11.**
2. I will hear the parties as to costs, in the event they are not earlier agreed, at 10 am on 1 September 2017.

CATCHWORDS: TORTS — NEGLIGENCE — ESSENTIALS OF ACTION FOR NEGLIGENCE — SPECIAL RELATIONSHIPS AND DUTIES — EMPLOYER AND EMPLOYEE — where plaintiff alleged an accumulation of episodes of potential breach of duty — where employer failed to conduct timely and determinative action regarding vexatious complaints against plaintiff — where plaintiff experienced repeated managerial mistreatment — where plaintiff suffered psychiatric injury — whether the defendant corporation knew or acting reasonably ought to have known of the need to do that which it failed to do — whether the plaintiff has proved that but for the defendant's breaches the plaintiff's psychiatric injury would not have occurred — where the court held such breaches did occur — where court held that plaintiff's psychiatric injury would not have occurred but for the defendant's breaches

Uniform Civil Procedure Rules 1999 (Qld) r 149(1)(e)
Workers' Compensation and Rehabilitation Act 2003 (Qld) ss 305B, 305D, 306O, 306P
Workers Compensation and Rehabilitation Regulation 2014

(Qld) schs 7, 9, 11

Koehler v Cerebos (Aust) Ltd (2005) 222 CLR 44, applied
Nationwide News Pty Ltd v Naidu (2007) 71 NSWLR 471,
 applied

New South Wales v Lepore (2003) 212 CLR 511, cited
Ryan v Ann Street Holdings Pty Ltd [2006] 2 Qd R 486,
 applied

Strong v Woolworths Limited (2012) 246 CLR 182, applied
Tame v New South Wales (2002) 211 CLR 317, applied

*The Corporation of the Synod of the Diocese of Brisbane v
 Greenway* [2017] QCA 103, followed

Vairy v Wyong Shire Council (2005) 223 CLR 422, applied
Wyong Shire Council v Shirt (1980) 146 CLR 40, applied

Wolters v The University of the Sunshine Coast [2014] 1 QdR
 571, applied

COUNSEL: J A Gregory for the plaintiff
 M T O’Sullivan for the defendant

SOLICITORS: Connolly Suthers Lawyers and Organic Legal for the plaintiff
 Crown Law for the defendant

INTRODUCTION

- [1] The plaintiff was the District Director of Nursing for the Cape York Health Service (“the Service”). She was subjected to repeated managerial mistreatment by the Service’s District Chief Executive Officer. This caused a psychiatric injury to the plaintiff with consequent loss of her career.
- [2] She claims for damages in negligence. Liability and quantum are both in issue.

PART A LIABILITY

The plaintiff’s case

- [3] The plaintiff’s second further amended statement of claim (“SOC”) is lengthy. Its basic structure in pleading a pathway to liability may be summarised as follows.
- [4] The plaintiff pleads in her SOC the defendant owed her a non-delegable duty to take reasonable care to avoid exposing her to a foreseeable risk of psychiatric injury in her employment.¹ She also pleads at paragraph 3(e) that the defendant was liable for the acts and omissions of Susan Turner, the District Chief Executive Officer (“CEO”).²
- [5] She pleads:

¹ SOC [3(d)].

² SOC [3(e)].

- “6. Over a period of time from in or about March 2010 to 17 January 2011 the plaintiff was subjected to management action which harassed, mistreated, devalued and undermined the plaintiff in her employment as set forth below: ...”

Listed thereunder are many subparagraphs alleging facts. Many of the facts pleaded in paragraph 6 focus upon concerning conduct towards Mrs Robinson by Ms Turner. The plaintiff pleads she suffered a psychiatric injury in the nature of a chronic adjustment disorder with anxiety and depressed mood, as a consequence of the matters pleaded in paragraph 6.³ She pleads the defendant knew or ought to have known of the plaintiff’s vulnerability to a psychiatric injury as a consequence of many of the matters set forth in paragraph 6.

- [6] As to breach of duty, the plaintiff pleads at paragraph 10 of the SOC that her injury was caused by the negligence of the defendant in the form of 14 various failures of the defendant.

- [7] Many of those alleged failures in effect involve a failure to properly manage so as to prevent Ms Turner from behaving as she allegedly did. It is therefore unsurprising the plaintiff pleads an alternative basis of liability at paragraph 11 of the SOC, namely:

“Alternative liability of Defendant

11. Alternatively, the Defendant is liable for the conduct of Turner set forth in paragraph 10 herein.”

- [8] The meaning attributed to paragraphs 10 and 11 by the plaintiff,⁴ without suggestion of surprise by the defendant at trial, is that by paragraph 10 the defendant is alleged to be directly liable for the various failures attributed to it, principally in connection with Ms Turner’s conduct, and by paragraph 11 is alleged to be vicariously liable for Ms Turner’s conduct pleaded in paragraph 10.

Legal principles – duty and breach

- [9] The attribution of direct liability to the defendant for its failures alleged in paragraph 10 necessarily involves an inference that the defendant, an abstract corporate entity, knew or acting reasonably ought to have known of the need to do that which it failed to do. Where those failures involved conduct by Ms Turner in carrying out her role as CEO the implication of corporate knowledge flows compellingly from the fact she was at the managerial apex of the Service. Her knowledge ought be inferred to be the defendant’s knowledge. As much follows by parity of reasoning from the reasons, explained by

³ SOC [7]. Some of the facts pleaded in paragraph 6 are merely innocuous background facts and are not in themselves instances of harassment, mistreatment, devaluation or undermining. On a literal view that imprecision infects paragraph 7 of the SOC, which pleads the plaintiff suffered her psychiatric injury as “a consequence of the matters set forth in paragraph 6”. It is obvious the innocuous background facts included within paragraph 6 could not in themselves have had such a causal effect. However, it is self-evident from the nature of the many facts listed in paragraph 6 which of them were actually instances of alleged harassment, mistreatment, devaluation or undermining – inferentially the “matters” to which paragraph 7 refers – and which of them merely provide background information.

⁴ See for example Plaintiff’s Outline of Submissions p 15.

Beasley JA in *Nationwide News Pty Ltd v Naidu*,⁵ for the potential attribution of corporate liability, not merely knowledge, to directors or managers representing the directing will of a corporate entity.

- [10] The attribution of vicarious liability to a corporate entity for the wrongful conduct of its employee, requires that there be a sufficiently close connection between that conduct and the type of conduct the employee was engaged to perform, to conclude it was conduct carried out in the course of that employment.⁶ The greater the authority in which an employer clothes an employee, the greater the risk of harm flowing from conduct abusing that authority and the easier it is to infer the conduct was done in the course of employment.⁷ The authority entrusted to Ms Turner as CEO and the fact that all of her conduct alleged in paragraph 10 was purportedly carried out in her performance of that role compels the inference the defendant was vicariously responsible for it. While the nature of the alleged conduct was not conceded, it was not seriously suggested it was conduct beyond the course of Ms Turner's employment and thus conduct the defendant would not be liable for.
- [11] Turning to duty of care, it is well settled the employer's duty of care includes an obligation to take all reasonable steps to provide a safe system of work.⁸ More relevantly to the present case it also includes a duty to take reasonable care to avoid psychiatric injury.⁹
- [12] Where it is alleged a breach of the employer's duty of care has caused psychiatric injury a pre-condition to liability is whether "in all the circumstances, the risk of a plaintiff ... sustaining a recognisable psychiatric illness was reasonably foreseeable, in the sense that the risk was not far fetched or fanciful."¹⁰
- [13] That a person of "normal fortitude" might have suffered the psychiatric injury is not a separate pre-condition to liability.¹¹ As the High Court explained in *Koehler v Cerebos (Aust) Ltd*,¹² the focus is not upon the hypothetical person of normal fortitude but rather upon the particular employee in the case under consideration and "invites attention to the nature and extent of the work being done by the particular employee and signs given by the employee concerned."¹³
- [14] In this case the significant demands of Mrs Robinson's position was not as determinatively significant as the signs she gave. That she held an inherently demanding position, effectively overseeing the activities of a majority of the Service's workforce, was still relevant. However, it was not per se a position suggesting of itself a heightened risk of psychiatric injury.

⁵ *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471, 504-505.

⁶ Per Williams JA in *Ryan v Ann Street Holdings Pty Ltd* [2006] 2 Qd R 486, 490 explaining *New South Wales v Lepore* (2003) 212 CLR 511.

⁷ *Ibid.*

⁸ *Koehler v Cerebos (Aust) Ltd* (2005) 222 CLR 44, 53.

⁹ *Ibid.*

¹⁰ *Ibid.*, 57; *Tame v New South Wales* (2002) 211 CLR 317.

¹¹ *Tame v New South Wales* (2002) 211 CLR 317.

¹² (2005) 222 CLR 44.

¹³ *Ibid.*, 57.

- [15] It is not enough to demonstrate only that a psychiatric injury was reasonably foreseeable and that a defendant's negligence was the cause thereof. The magnitude of the risk and its degree of probability must also be considered.¹⁴ As was explained by Spigelman CJ in *Nationwide News Pty Ltd v Naidu*:¹⁵

“[I]t is now well established that workplace stress, and specifically bullying, can lead to recognised psychiatric injury. That does not, however, lead to the conclusion that the risk of such injury always requires a response for the purpose of attributing legal responsibility. Predictability is not enough. ...

An employer can be liable for negligence because of a failure to protect an employee against bullying and harassment. However, the existence of such conduct does not determine the issue of breach of duty. ...

One of the elements required to be assessed is the degree of probability that the risk of psychiatric injury may occur, even when the reasonable foreseeability test of a risk that is not far fetched and fanciful, has been satisfied.”

- [16] The need to consider the degree of probability of risk of psychiatric injury is enshrined in s 305B of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (“the Act”) which provides:

- “(1) A person does not breach a duty to take precautions against a risk of injury to a worker unless—
- (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.
- (2) In deciding whether a reasonable person would have taken precautions against a risk of injury, the court is to consider the following (among other relevant things)—
- (a) the probability that the injury would occur if care were not taken;
 - (b) the likely seriousness of the injury;
 - (c) the burden of taking precautions to avoid the risk of injury.”

- [17] Whether a reasonable person in the position of the defendant would have taken precautions requires consideration of what a reasonable person would have done in response to the risk.¹⁶ The inquiry is a prospective one.¹⁷ Because degrees of psychological stress and tension are inevitable in any organisation the focus must be upon whether the particular circumstances of the case should be seen on a test of reasonableness as having required intervention.¹⁸ Hence the High Court's emphasis in *Koehler v Cerebos (Aust) Ltd* upon the need to consider the nature and extent of the work being done by the employee and signs given by the employee.

¹⁴ *Wyong Shire Council v Shirt* (1980) 146 CLR 40, 46.

¹⁵ (2007) 71 NSWLR 471, 478.

¹⁶ *Wyong Shire Council v Shirt* (1980) 146 CLR 40, 47.

¹⁷ *Vairy v Wyong Shire Council* (2005) 223 CLR 422.

¹⁸ *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471, 477.

- [18] To those two considerations I add two others of relevance to a case involving an accumulation of episodes of potential breach. Firstly, it is logically necessary to consider the foreseeability of the risk of psychiatric injury by reference to the foreseeable cumulative effect of those episodes. The nature of a single episode may not of itself bespeak a probability of psychiatric injury but the increasingly draining impact of an accumulation of such episodes might.
- [19] Secondly, if the repeated episodes of potential breaches are attributable to a principal perpetrator it is appropriate to consider the perpetrator's position of power in the workplace relative to that of the psychiatrically injured employee. As a general and by no means determinative proposition, repeated potential breaches by a junior employee would not ordinarily be recognised as being as likely to cause psychiatric injury as repeated potential breaches by an employee in a position of managerial power over the injured employee. In the case of the former, there may of course be other elements present in a particular case, including signs given by the injured employee, rendering psychiatric injury foreseeable. In the case of the latter however, the intrinsic power differential is of itself an element tending to increase the probability and thus foreseeability of psychiatric injury. Take for example the case of an employee subjected to a course of managerial mistreatment, humiliation, undermining and isolation by the employee's CEO. The fact that someone with such a powerful influence over the employee's fate in the workplace is so targeting the employee will obviously tend to have such a crushing impact upon the employee as to heighten the inherent risk of psychiatric injury. Sadly, this case involves such conduct by a CEO.

Factual analysis

- [20] The number of episodes and failures alleged in the SOC is significant because the case involves a course of events during about a year in the workplace, commencing with Ms Turner's commencement as CEO in early 2010. The ensuing factual analysis is thus unavoidably lengthy despite the omission of reference to events of minor significance explored by the parties in evidence. Some review of earlier events is necessary to place events during Ms Turner's tenure in context.

Background

- [21] The plaintiff, Mrs Robinson, recently turned 59, having been born on 21 July 1958. She worked as a registered nurse at various locations in north Queensland. She progressed to the positions of Assistant Director of Nursing, Director of Nursing ("DON") and District DON. She transferred at level to become Cape York Health Service ("the Service") District DON based at Weipa in January 2008.¹⁹
- [22] Mrs Robinson's husband, who worked as a maintenance supervisor with Queensland Health, moved to Weipa in March 2008.²⁰

¹⁹ T1-29, Ex 1 p 34.

²⁰ T1-32.

- [23] Mrs Robinson was a member of the district's executive team and accountable to the District Chief Executive Officer ("CEO"). Mrs Robinson was in turn responsible for the DONs based at various Cape York towns and communities.
- [24] She was an apparently competent, well regarded District DON, without any history of psychological or psychiatric problems.

The Holford/Holmes tensions

- [25] The DON at Weipa Hospital was Sharon Holford.²¹ One staff member supervised by Ms Holford was Weipa's Nurse Unit Manager ("NUM"), Barbara Holmes. In the first year of Mrs Robinson's tenure as Cape York District DON, Ms Holford would seek her advice but not her intervention in managing Ms Holmes.²² Ms Holford would also arrange for other Weipa nursing staff to talk to Mrs Robinson when they were disgruntled with Ms Holmes' treatment of them,²³ often in the context of rostering.²⁴
- [26] By January 2009 Ms Holford told Mrs Robinson she had had enough of Barbara Holmes and wanted Mrs Robinson to intervene.²⁵ Around this time Ms Holmes complained to Mrs Robinson about Ms Holford.²⁶ Her complaints were similar to Ms Holford's and Mrs Robinson suspected there was a need for clearer role delineation.²⁷ The apparently dysfunctional working relationship between Ms Holmes and Ms Holford manifested itself in a lack of planning for a move from the old Weipa Hospital to the new Weipa Hospital²⁸ and in a lack of adherence to mandatory training requirements for the nursing workforce at Weipa.²⁹
- [27] Mrs Robinson consulted her then CEO, Paul Stephenson, suggesting there was a need for mediation between Ms Holford and Ms Holmes.³⁰ Mr Stephenson arranged for Ms Erin Davis of the Cairns District Human Resources section to investigate arrangements for potential mediation.³¹ However, after preliminary interviews, Ms Davis concluded mediation was inappropriate because of the deep-seated issues Ms Holford and Ms Holmes had with each other.³²

The PsyCare Report

- [28] Mr Stephenson sought advice and as a consequence an external agency, PsyCare Corporate ("PsyCare") was engaged. Dr Lees, a clinical psychologist with PsyCare,

²¹ T1-34, Ex 2 p 49.

²² T1-34 L37.

²³ T1-34 L44.

²⁴ T1-36 L35.

²⁵ T1-35 L36. To what extent Mrs Robinson should have intervened or did intervene earlier were not issues for consideration in the present proceeding.

²⁶ T1-35 L42.

²⁷ T1-37 L10.

²⁸ T1-35 L17, T2-79 L20.

²⁹ T2-79 LL3-16.

³⁰ T1-37 L20.

³¹ T1-37 L43.

³² T1-38 L2.

conducted a mediation with Ms Holford and Ms Holmes in March 2009.³³ Then in June 2009 PsyCare was appointed to conduct an organisational health review of the Weipa Integrated Health Service.³⁴

- [29] PsyCare wrote two reports styled “Final report – stage 1”, dated 12 August 2009 and 7 September 2009.³⁵ The report of 12 August 2009 was directed to Mrs Robinson with a cc copy to Mr Stephenson. The report of 7 September 2009 was directed to Mr Stephenson. I infer it was this latter report which was the formal report (“the PsyCare report”). The reports were largely identical, each noting, *inter alia*:

“There has been a longstanding history of interpersonal difficulties between the Nurse Unit Manager (NUM) and the Director of Nursing (DON), as well as between the NUM, DON and several staff, in context to performance and leadership concerns across the Department by both the NUM and DON. Despite multiple attempts by management to resolve issues, as well as implement training, support programs, and development plans for both the NUM and DON, little improvement in performance and interpersonal relationships has reportedly been noted.³⁶ ... “

- [30] Both reports were critical of Ms Holmes, saying for example:

“[S]taff raised significant concern regarding the NUM’s management support and behaviour, suggesting that at times the NUM did not engage in effective communication practices and was described as being unpredictable and inconsistent in her management approach, attitude, and behaviour towards staff and senior management. ...

During the course of the Organisational Health Review, PsyCare Consultants observed episodes of like behaviour by the NUM, including emotional outbursts in front of staff, expressions of distress, disengagement in team meetings and frequent periods of emotional lability.”³⁷

- [31] Some similarly critical observations about Ms Holford, appeared in the report of 12 August, but not the report of 7 September.³⁸

- [32] The opinions and recommendations expressed in both reports included:

“4. Results of the initial organisational health review highlighted significant concerns from staff and management regarding the longstanding history of relationship and interpersonal difficulties between the NUM and the DON, which have negatively impacted on staff, morale and culture. Despite multiple attempts at improving this relationship through facilitated discussions and formal mediation over several years, there has been limited improvement in working relationships. As such, from a workplace health and safety psychosocial risk perspective, the results of the organisational

³³ Ex 1 p 41.

³⁴ Ex 1 p 40.

³⁵ Ex 1 p 40 *et sequitur*.

³⁶ Ex 1 p 41 and p 54.

³⁷ Ex 1 pp 42-43, pp 55-56.

³⁸ Ex 1 p 43.

health review suggest that the working relationship between the NUM and DON no longer appears viable. ...

5.1 The results of the organisational health review demonstrates significant psychosocial risks to the Weipa Integrated Health Service, particularly among the nursing staff.”³⁹

*7 September 2009 PsyCare report recommends Holmes be removed*⁴⁰

[33] Both reports recommended Ms Holmes be removed:

“5.2 **Recommendation:** ...

[T]hat the NUM be placed on leave and immediately referred for a ‘fitness for duty’ psychiatric medical assessment to ascertain her fitness and capability to undertake the NUM role within the Weipa Integrated Health Service. ...

5.3 **Recommendation:** ...

[T]he behaviour of the current NUM presents a “significant risk” to the ongoing wellbeing of the unit. As such, it is recommended that immediate action is taken to separate the NUM from the workgroup and that formal performance management and disciplinary processes be instigated regarding possible breaches of the code of conduct. Should the employment contract not be terminated, it is recommended that any subsequent remedial assessment of leadership capabilities and follow-up training and support be conducted at another location away from the present workgroup.”⁴¹ (emphasis added)

[34] Some not dissimilar recommendations about Ms Holford were made in the report of 12 August 2009 but were not included in the report of 7 September 2009.⁴²

[35] By the time of the issue of the PsyCare report Ms Holford was on stress leave in connection with events when she was DON at Kowanyama and the failure of a morgue fridge caused distress to family members of a deceased child. Mrs Robinson recalls she and Mr Stephenson were concerned by the prospect of the report content adding to Ms Holford’s stress⁴³ but it is unclear whether that is why the adverse references to Ms Holford in the report of 12 August 2009 were not included in the otherwise identical report of 7 September 2009.

*@ September 2009 Holmes’ response to the PsyCare report targets Robinson*⁴⁴

[36] Mrs Robinson was present at Mr Stephenson’s request when he gave Ms Holmes a copy of what Mrs Robinson understood was the PsyCare report and a letter giving Ms

³⁹ Ex 1 p 48, p 61.

⁴⁰ SOC [6(a)]. This and ensuing italic sub-headings are, for the parties’ ease of reference, footnoted with the SOC [6] pleading sub-paragraph to which they appear to relate.

⁴¹ Ex 1 pp 48, 49, 61, 62.

⁴² Ex 1 p 50.

⁴³ T1-41 L20.

⁴⁴ SOC [6(b)].

Holmes the opportunity to respond to it.⁴⁵ Mrs Robinson was at this time, in Ms Holford's absence, performing both her role and Ms Holford's.⁴⁶ After the meeting Ms Holmes commented to Mrs Robinson that she should not have gone to Mrs Robinson and Mrs Robinson had caused her to be in the position of now having to prove her ability.⁴⁷

- [37] Mr Stephenson later informed Mrs Robinson that Ms Holmes' response to the PsyCare report had named Mrs Robinson as the cause of a number of things, the detail of which Mrs Robinson cannot recall.⁴⁸ Mrs Robinson was "a bit" worried about that and mentioned her concern to Mr Stephenson and to Nicky Perriman, the Service's Human Resources Manager, whose position was later described as Director of People and Culture.⁴⁹
- [38] After discussions between Mr Stephenson and Mrs Robinson and assistance from the Human Resources section the decision was taken to move Ms Holmes because of the risks to staff identified in the PsyCare report.⁵⁰ She was assigned to a different work unit called "patient safety and quality", working on an accreditation process.⁵¹

December 2009-10 January 2010 Robinson acts as CEO⁵²

- [39] Mr Stephenson left his role as CEO in about October of 2009. Pending the appointment of his eventual replacement, Susan Turner, three other staff acted in his position: Raelene Burke, executive director of Human Resources for the department's northern health services, followed by Karen Jacobs, the director of Primary Health Care and, after Christmas, Mrs Robinson.⁵³

10 January 2010 Turner arrives and is told Robinson is vulnerable⁵⁴

- [40] Susan Turner commenced in the position of CEO on about 10 January 2010.⁵⁵ Mrs Robinson handed over the role, in which she had been acting, to Ms Turner in the CEO's office in the presence of Ms Jacobs.⁵⁶
- [41] The hand-over meeting included an explanation of what had been occurring at Weipa Hospital including in respect of Ms Holford and Ms Holmes.⁵⁷ Mrs Robinson testified of this conversation:

⁴⁵ T1-41 LL30, 34.

⁴⁶ T1-41 L45.

⁴⁷ T1-42 LL1-10.

⁴⁸ T1-42 L29.

⁴⁹ T1-44 LL35-47.

⁵⁰ T1-44 LL1-6.

⁵¹ T1-44 LL20-33.

⁵² SOC [6(c)].

⁵³ T1-45 L30.

⁵⁴ SOC [6(d)].

⁵⁵ T1-45 L22.

⁵⁶ T1-46 LL34-48.

⁵⁷ T6-32 L26.

“I told her how complex it was and that I was also vulnerable because of the behaviours of those people, and I gave her some documents supporting all that...I told her I was vulnerable because of what in the end had felt like this personal attack from Barbara, as opposed to what I originally saw it as just somebody responding.”⁵⁸

[42] In cross-examination Mrs Robinson accepted when it was put, that the effect of what she was saying to Ms Turner was she was emotionally or mentally fragile.⁵⁹ However she resisted the suggestion she felt “very” vulnerable or fragile.⁶⁰ The point of the cross-examination was to highlight Ms Holmes as a pre-existing stressor on Mrs Robinson, an aspect ultimately relevant to the issue of causation of her later psychiatric injury.

[43] Mrs Robinson provided Ms Turner with a copy of the PsyCare report and the associated letter to Ms Holmes and Ms Holmes’ response.⁶¹ Ms Turner testified she read the copy of the PsyCare report she was given at the meeting soon afterwards, within a few days.⁶²

[44] Mrs Robinson, while not purporting to recall the words used, testified of Ms Turner’s response to Mrs Robinson’s concerns about vulnerability as follows:

“She told me that I had no cause for any concern and that she would make sure that nothing untoward happened and that ... I was safe from anything from Barbara Holmes and ... She certainly ... told me I was fine and that ... Barbara didn’t really have any grounds to stand on and that she would keep me safe.”⁶³

[45] According to Ms Turner there was no discussion “to any great extent” at the meeting about troublemakers. She testified:

“I recalled her talking about Holmes and Holford as being difficult and – you know, with their hand over around the PsyCare review and background information around that, that they were difficult staff members, that – things like that, but nothing unusual that I would consider that to be anyway.”⁶⁴

[46] On the other hand this exchange occurred during Ms Turner’s cross-examination:

“And Ms Robinson, you might recall, raised with you her concerns about Barbara Holmes and the background and the need to keep a close eye on her because she felt vulnerable ---?--- Well---

⁵⁸ T1-46 LL10, 35.

⁵⁹ T3-18 L44.

⁶⁰ T3-19 L7.

⁶¹ T1-46 L15.

⁶² T5-40 L44 – T5-41L4.

⁶³ T1-46 L40.

⁶⁴ T4-43 L5.

---for what might happen with Barbara Holmes?--- Yeah, something to that effect, that she was a highly manipulative individual and difficult...⁶⁵
(emphasis added)

- [47] Ms Turner did not agree Mrs Robinson had indicated at the hand-over meeting that as a result of the situation with Ms Holmes she was feeling vulnerable and fragile.⁶⁶ On Ms Turner's account Mrs Robinson only started raising concerns of that kind, including a concern that Holmes and Holford were going to try and get rid of her, once there was a need to enter into return to work programs in respect of Holmes and Holford.⁶⁷
- [48] I accept Mrs Robinson's evidence about what was said during the hand-over process. It appeared Ms Turner deliberately played down the extent to which she was put on notice of Mrs Robinson's concerns about Ms Holmes. Of course, what was said by Robinson was of itself well short of identifying herself as at risk of psychiatric injury. Nonetheless her expression of concern assumes relevance as part of Ms Turner's progressive accumulation of knowledge about Mrs Robinson's mental state. So too does her knowledge that the staff member about whom Mrs Robinson was concerned had been identified in the PsyCare report as an especially troubling staff member.

Turner's inaction on the PsyCare report

- [49] A significant aspect about the timing of Ms Turner's arrival is that the PsyCare Report was then still a recent and important document, particularly in respect of the future management of Ms Holmes. Beyond separating her from the workgroup it had also been recommended, inter alia, that formal performance management and disciplinary processes be instigated regarding possible breaches of the code of conduct and that Ms Holmes be referred for a fitness for duty psychiatric medical assessment. Save for Ms Holmes having been designated to work in the patient safety and quality unit, the recommendations had not been implemented between the report and Ms Turner's arrival, Ms Holmes having been off work with a shoulder injury.⁶⁸
- [50] Ms Turner does not appear to have given any weight to the PsyCare report's recommendations after her arrival. She did not take steps to ensure that disciplinary processes were instigated.⁶⁹ On her recollection there was no psychiatric medical assessment either.⁷⁰ It is extraordinary that the defendant considered it appropriate to have engaged an external agency to review the difficulty in the workplace presented, inter alia, by Ms Holmes and, having learnt from that review that Ms Holmes' behaviours presented a risk to the wellbeing of her work unit, apparently ignored the advice of that review to have Ms Holmes psychiatrically assessed and to instigate disciplinary processes for her possible breaches of the code of conduct.

⁶⁵ T5-42 LL15-22. (The word "eye" in the above quote did not appear in the transcript but was heard by me and is audible in the recording.)

⁶⁶ T4-45 L23.

⁶⁷ T4-45 L17.

⁶⁸ T5-43 L3.

⁶⁹ T7-38 L41.

⁷⁰ T5-43 L47.

- [51] In cross-examination Ms Turner defended her apparent inaction on the report's recommendations by asserting a different course of action to that recommended had been determined and put in a letter to Ms Holmes by the Human Resources Executive Director, Ms Burke, before Ms Turner had arrived.⁷¹ The letter she spoke of was not produced.⁷² She asserted she was advised she "was committed to the letter" and she considered her "hands were tied" to the undertakings given in that letter.⁷³
- [52] This evidence was not credible. Ms Turner may not have had initial involvement in the development plan developed for Ms Holmes. However, an email from Michelle Gaffney, acting Director of People and Culture, to Ms Turner on 25 June 2010, noted Ms Turner was to make the final determination under the development plan and sought a meeting with Ms Turner to "clarify the specifics of the plan" and how Ms Turner "would like to proceed".⁷⁴ The weight to be given to the PsyCare report in how Ms Holmes was to be managed was clearly a consideration within the discretion of Ms Turner's decision-making power.

Patient safety and quality unit to report to Robinson

- [53] Ms Holmes had been off work because of a shoulder injury at the time that Ms Turner started.⁷⁵ It will be recalled that after the PsyCare report she had been assigned to the patient safety and quality unit. That unit used to report directly to the CEO.
- [54] Ms Turner varied that arrangement, so that instead the patient safety and quality unit reported to the District DON, Mrs Robinson.⁷⁶ This arrangement had the potential for Ms Holmes, who was still on leave, to have to report to Mrs Robinson as the line manager of that unit. However, Ms Turner decided and told Mrs Robinson that Ms Holmes would be required to report to Ms Turner.⁷⁷ The new arrangement required Mrs Robinson to work with Michelle Costello, the administrative staff member of the patient safety and quality unit on an accreditation and auditing process, a process Mrs Robinson had not been involved with prior to Ms Turner's arrival.⁷⁸

@ 28 February 2010 Turner delegates credentialing process to Robinson⁷⁹

- [55] When Ms Turner placed the patient safety and quality unit under Mrs Robinson's responsibility she also asked Mrs Robinson to undertake the overseeing of clinical credentialing for medical officers.⁸⁰ Ms Turner testified Mrs Robinson "offered to take over that function".⁸¹ Mrs Robinson conceded she might have offered, but in the context of Ms Turner being overloaded and mentioning she was ignorant of the

⁷¹ T5-43 LL16-25, T5-48 L15.

⁷² T5-82 L1.

⁷³ T5-44 L7, T5-48 L33.

⁷⁴ Ex 21.

⁷⁵ T1-49 L15.

⁷⁶ T1-50 L30.

⁷⁷ T1-50 L45, T5-47 L47.

⁷⁸ T1-51 LL5-47.

⁷⁹ SOC [6(e)].

⁸⁰ T1-51 L18.

⁸¹ T4-45 L29.

process.⁸² This additional role required Mrs Robinson to attend credentialing and scope of clinical practice committee meetings, something she had not been involved with prior to Ms Turner's arrival.⁸³ Mrs Robinson inherited that additional responsibility on about 28 February 2010.⁸⁴

- [56] Ms Turner acknowledged in evidence that Mrs Robinson did not then or ever complain about her workload and the long hours it involved.⁸⁵ Ms Turner also acknowledged when she started at Weipa it appeared to her that Mrs Robinson appeared very capable, hard-working and untroubled by any health concerns.⁸⁶

*23 March 2010 Holmes to return and Robinson not her line manager*⁸⁷

- [57] When the time came for Ms Holmes to return to work after recovering from her shoulder injury the Human Resources Executive Director, Raelene Burke, oversaw the implementation of a three month return to work plan, apparently structured to accommodate Ms Holmes' wish that she not have to report to Mrs Robinson in the wake of the PsyCare report.⁸⁸

- [58] On or by 23 March 2010 Mrs Robinson had become aware Ms Holmes' return to work was imminent and that Raelene Burke would be involved in that process.⁸⁹ Mrs Robinson went to Ms Burke to discuss Ms Holmes' return and expressed her preference against being involved and learned from Ms Burke that it was also Ms Holmes' preference.

- [59] On 23 March 2010 Mrs Robinson emailed the particulars of a meeting for 26 March 2010 with the attendees to be Mrs Robinson, Ms Holmes and Raelene Burke.⁹⁰ Mrs Robinson said in the email to Ms Holmes:

“Raelene Burke will be coming to Weipa this week.
Would you be available to meet with Raelene and I on Friday at 11.30 am to discuss the way forward in regards to the Organisational Health Review Report?
Please feel free to bring a support person if you wish.
Could you let me know if this suits.”

- [60] The email's reference to the Organisational Health Review Report was a reference to the PsyCare report.

- [61] At the outset of the planned meeting between Ms Holmes, Ms Burke and Mrs Robinson on 26 March 2010 Mrs Robinson explained she would not be involved in the process

⁸² T3-22 L2.

⁸³ T1-51 L21.

⁸⁴ Ex 1 p 65, T1-51 L24.

⁸⁵ T5-28 L41, T5-29 L13.

⁸⁶ T5-28 LL28-39.

⁸⁷ SOC [6(h)].

⁸⁸ T2-83 L6.

⁸⁹ Ex 1 p 87.

⁹⁰ Ex 1 p 87.

and left the meeting, handing it over to Ms Burke.⁹¹ On Mrs Robinson's account she thought this was a sensible arrangement with which she was happy because, as she testified:

"I was very threatened by having any dealings with Barbara Holmes at that stage because of the past history. ... Or ... what could develop probably more than anything. But it was a two way street. Barbara and myself were at risk and ... we as the organisation needed to minimise that for both of us."⁹²

- [62] Ms Burke testified the arrangement, which she described as "alternative dotted line reporting", was calculated at making the process of Ms Holmes' return to work easier for both her and Mrs Robinson.⁹³ Ms Burke testified that, while Ms Holmes was keen to return to her substantive position, that was deemed to be inappropriate while the issues arising from the PsyCare report remained to be dealt with.⁹⁴ Ms Burke transferred to Mackay in May 2010⁹⁵ and was thus not in a position to testify to how those issues were progressed, if at all, through the balance of 2010.

*23 March 2010 Holmes submits WIFs*⁹⁶

- [63] Unbeknown to Mrs Robinson, earlier in the week of Ms Holmes' planned meeting with Mrs Robinson and Ms Burke, probably on Tuesday 23 March,⁹⁷ Ms Holmes submitted eight workplace incident forms ("WIFs") making allegations of past bullying and harassment of Ms Holmes by Mrs Robinson.⁹⁸ Mrs Robinson was not to learn of the WIFs' existence until 14 May 2010 or to see them until 7 July 2010, three and half months after they were submitted.
- [64] A WIF is a two sided form, divided into sections containing various labelled boxes for relevant information to be inserted or to be crossed if applicable. It is obvious from its pro forma content that the form is designed to document incidents jeopardising health and safety in the workplace and to document the managerial review of and action taken in respect of such incidents. Ms Perriman explained WIFs were for the purpose of staff reporting a safety risk or hazard in the workplace and, while they could be used to report a conflict that was not their usual use.⁹⁹ Nonetheless, the form's pro forma entries under the heading "Injury/Illness" include "Mental illness/stress" and under the heading "What happened" include "Harassment/bullying". Ms Turner initially implied an allegation of harassment or bullying in a WIF would not trigger the taking of potentially adverse action against the target of the allegation, saying the allegation would have to be in a grievance to prompt such action.¹⁰⁰ However she soon

⁹¹ T1-56 L43.

⁹² T1-57 LL5-10.

⁹³ T2-84 L12.

⁹⁴ T2-85 L16.

⁹⁵ T2-76 L10.

⁹⁶ SOC [6(g)].

⁹⁷ T5-37 L33.

⁹⁸ Ex 1 pp 71-86, Ex 14, Ex 16.

⁹⁹ T7-6 L15.

¹⁰⁰ T4-64 L44.

acknowledged it would be reasonable management action to investigate such an allegation in a WIF, with the potential for escalation into a disciplinary process.¹⁰¹

[65] Ms Perriman testified that WIFs were administered under the occupational health and safety system and would be sent to Helen Reed, the Occupational Health and Safety Manager.¹⁰² Ms Reed explained if a WIF alleged bullying or harassment, advice may be sought from the HR branch as to whether there should be an investigation, because it involves more of a human resource than occupational health and safety issue.¹⁰³ However Ms Reed did not commence in her role until June 2010,¹⁰⁴ well after the submitting of the WIFs. Michelle Gaffney, Acting Human Resources Officer, had in the meantime seen the WIFs.¹⁰⁵ Ms Reed was told by Ms Holmes of the existence of her WIFs and tended to the proper processing of them¹⁰⁶ after being advised by Corporate Office in Brisbane that they should be processed regardless of the delay.¹⁰⁷ On Ms Reed's rather imprecise account of this phase, she consulted Ms Perriman and thereafter discussed with Ms Turner whether the WIFs should be investigated.¹⁰⁸ She testified she thought the WIFs were not serious¹⁰⁹ and raised such trivial incidents it was unnecessary to investigate them.¹¹⁰

[66] According to Ms Turner she did not become aware of the WIFs until Ms Reed informed her of them and that they needed to be addressed.¹¹¹ However she well knew they were coming. Ms Holmes had emailed Ms Turner on 15 March complaining of injustices done to her, requesting that she be returned to her substantive position as soon as possible and announcing she had decided to submit the WIFs.¹¹² On 23 March 2010 Ms Turner acknowledged receipt of Ms Holmes' email and Ms Holmes promptly sent Ms Turner another email thanking her.¹¹³

[67] On Ms Turner's account she signed the WIFs on the date that Ms Reed raised them with her.¹¹⁴ On her account she initially refused to sign them but was told she had to sign them and write a comment.¹¹⁵ She claimed she was reluctant to sign them because she felt they were "just ridiculous" and "vexatious".¹¹⁶ According to Ms Turner:

"I was actually really dismayed at seeing all of these incident forms. I felt that they were actually quite vindictive and vicious ... and vexatious. As a chief executive and my right as Mary-Rose's manager, my preference was to take no further action because I felt that there was nothing of cause for

¹⁰¹ T4-65 L12.

¹⁰² T7-19 L23.

¹⁰³ T7-81 LL25-31.

¹⁰⁴ T7-57 L10.

¹⁰⁵ T1-57 LL13-27.

¹⁰⁶ T7-57 LL26-45.

¹⁰⁷ T7-58 L18.

¹⁰⁸ T7-58 LL29, 39.

¹⁰⁹ T7 -102 L36.

¹¹⁰ T7-59 L24.

¹¹¹ T4-47 L10.

¹¹² Ex 19.

¹¹³ Ex 20.

¹¹⁴ T4-49 L15.

¹¹⁵ T4-51 L6.

¹¹⁶ T4-51 L9.

concern here because I felt that they were going back a number of years and it just seemed quite vexatious to me.”¹¹⁷

- [68] Ms Turner acknowledged in cross-examination she appreciated Mrs Robinson would find the Holmes WIFs particularly distressing because in a malicious and retributive way Ms Holmes had stored up a bunch of vexatious complaints about the most senior nurse in the district, lumping them together before Ms Turner as the new CEO.¹¹⁸ She acknowledged Mrs Robinson, the most senior nurse in the district, headed 80 per cent of the district’s workforce¹¹⁹ and claimed she took quite seriously the fact that a member of the executive with such breadth of responsibility was being maliciously targeted by a NUM from a local hospital.¹²⁰
- [69] On Ms Turner’s account, having been told by Helen Reed that she had to endorse the forms, she would have written something to the effect that they were vexatious and no further action was to be taken upon the forms.¹²¹ This was patently untrue. She wrote nothing to that effect. To the contrary, she endorsed each of the eight forms with the words, “Referred for independent investigation”, dating her signature 10 April 2010.
- [70] When the nature of the endorsement by Ms Turner on the rear of the WIFs was drawn to her attention later in evidence-in-chief, her evidence appeared to evolve:
- “[W]hat’s the comment that was written there by you?--- Referred for independent investigation.
And is that ESU, or---?--- For an independent review of something for this – I actually was – if I can describe a situation, I actually was so upset – I was concerned about these WIFs. I felt, as I said, they were vexatious. I actually didn’t want to sign them; I got told I had to sign them.
Yeah?--- I was advised to [indistinct] the types of things that I had in there for further review of investigation but I don’t believe that anything else was done other than this.”¹²²
- [71] Such evidence fails to explain the obvious point that Ms Turner’s endorsement, had she so chosen and as she earlier falsely suggested in evidence she had written, could simply have been to the effect that the WIFs were vexatious and no further action was to be taken upon them.
- [72] As to Ms Turner’s dating of her endorsement as 10 April 2010, in a statutory declaration by her, given in the context of the WorkCover dispute which followed Mrs Robinson’s ultimate departure from the workplace, Ms Turner stated:
- “The WIFs are not date stamped on the reverse side of each form. I have caused further enquiry to be made about the receipt and management of the WIFs. It appears from an email from Sarah Arndt (Coordinator HR Support) to Raelene Burke (Director People and Culture: Office of Rural

¹¹⁷ T4-50 LL41-48.

¹¹⁸ T5-34 LL25-47.

¹¹⁹ T5-35 L6.

¹²⁰ T5-35 L39.

¹²¹ T4-51 L4.

¹²² T4-75 LL15-25.

and Remote Health) that the WIFs were received by Ms Burke on 23 March 2010 at a time when I was out of the district. Based on the date I placed on the WIFs it is my belief that I first saw them on or about 10 April 2010.”¹²³

- [73] Inconsistently with that declaration Ms Turner testified at trial that she did not receive the WIFs until July but had been advised to write the date as being the date around which the WIFs were first provided.¹²⁴ I did not believe Ms Turner’s evidence that she did not receive the WIFs until July. As will become apparent from the below discussed facts, Ms Turner must have seen the WIFs by no later than mid-May 2010.
- [74] Given Ms Turner’s status as CEO it is reasonable to infer there would have been an independent investigation of the WIFs had Ms Turner passed them on bearing her endorsement, “Referred for independent investigation”. In fact there was no investigation – an anomaly Ms Turner was unable to sensibly explain in cross-examination.¹²⁵ Ms Reed acknowledged of the absence of investigation that at best some of the matters raised by the WIFs were within the incidental range of investigation of other reviews which occurred much later in the year.¹²⁶ Plainly they were not the “investigation” purportedly referenced by Ms Turner’s endorsement. The probability is that Ms Turner did not actually endorse the Holmes WIFs at all, or at least not pass them on bearing her endorsement, until she began to suspect the adequacy of her management in connection with them might come under scrutiny.
- [75] Still later in evidence-in-chief Ms Turner claimed, unbelievably, that she received the Holmes WIFs in June 2010, explaining the gap may have been because Helen Reed’s job as Occupational Health and Safety Manager had been advertised and no-one was filling the role.¹²⁷ She claimed that after her receipt of the WIFs she had been advised by Nicky Perriman and Helen Reed that, despite the fact the WIFs were potentially vexatious, the nature of the complaints in them meant Ms Turner “needed to escalate this up and have it considered by ESU” (the Ethical Standards Unit).¹²⁸ Ms Turner claimed that whilst she had been trained in respect of the department’s various codes of conduct, she relied on the advice of Nicky Perriman and Helen Reed, they being “a lot more experienced” in such matters.¹²⁹
- [76] Ms Perriman’s testimony does not support Ms Turner’s claim that Ms Perriman urged any such escalation. To the contrary Ms Perriman favoured resolving the WIFs by arranging for mediation between Ms Robinson and Ms Holmes.¹³⁰

*23-29 March 2010 Robinson concerned re executive and team building workshop*¹³¹

¹²³ T5-37 LL28-35.

¹²⁴ T4-75 L30.

¹²⁵ T5-56 L10.

¹²⁶ T7-82 LL26-39.

¹²⁷ T5-5 L15.

¹²⁸ T5-4 L42 – T5-5 L5.

¹²⁹ T5-6 LL2-19.

¹³⁰ T7-9 L40.

¹³¹ SOC [6(f)].

- [77] On Mrs Robinson's account Ms Turner expressed the view that the executive was not functioning as a team and that work needed to be done to improve it.¹³² On Mrs Robinson's account there was some friction between team members being critical of others in emails and "marking territory and trying to impress the boss".¹³³ Mrs Robinson expressed concern to Ms Turner because of the way the executive had started to attack each other, saying she was concerned and felt vulnerable because of it.¹³⁴ According to Ms Turner, a few days after the hand-over meeting Mrs Robinson told her she needed to watch her back in respect of some members of the executive who would be happy to stab her in the back.¹³⁵ Ms Turner testified she asked for detail about that but Mrs Robinson did not want to go into detail, to which Ms Turner allegedly said that, unless she could provide detail, Ms Turner did not want to be spoken to about the matter again.¹³⁶ Mrs Robinson testified, and I accept, she did not have a conversation to quite that effect with Ms Turner but explained she probably did talk to her on the theme of persons talking behind each other's backs when later discussing team building with Ms Turner.¹³⁷ That she would have done so rests comfortably with Ms Turner's testimony that it was apparent to her at an early stage that the executive was somewhat dysfunctional in its interpersonal relationships and communication.¹³⁸
- [78] In a leave application dated 18 March 2010 Mrs Robinson applied for eight days' leave in late April and early May.¹³⁹ She needed to attend what she regarded as an unavoidable family holiday event. Ms Turner ultimately signed the approval section of that leave form on 25 March 2010, but not before communications passed between Ms Turner and Mrs Robinson in the interim. For instance, Ms Turner wrote a note to Mrs Robinson upon the leave form, presumably at a time before ultimately approving the leave, indicating that the dates sought were during a team building exercise Ms Turner was planning and that unless there was an urgent reason for taking leave, she needed Mrs Robinson at the training.
- [79] On 23 March 2010 Ms Turner's secretary Cherie Woodham discussed with Mrs Robinson dates when the team building workshop might be changed to, and the following day Mrs Robinson sought clarification from Ms Turner as to who was to attend the team building workshop.¹⁴⁰ The specific issue was whether it would be attendees only from the executive level or whether it included senior managers beneath, which, from Mrs Robinson's perspective, would include the DONs. Mrs Robinson was advised it was confined to the executive team and only a couple of miscellaneous support staff.¹⁴¹
- [80] It appears the latter information was conveyed by Ms Turner to Mrs Robinson at a discussion between them on 24 March 2010, when Ms Turner explained to Mrs

¹³² T1-52 L12.

¹³³ T1-53 L34.

¹³⁴ T1-53 L14, T3-23 LL18-30. This may have been said in the context of discussing a forthcoming team building workshop – T3-23 L14.

¹³⁵ T4-44 L33.

¹³⁶ T4-44 LL31-40.

¹³⁷ T3-20 L16.

¹³⁸ T5-30 L44.

¹³⁹ Ex 1 p 67.

¹⁴⁰ Ex 1 p 68.

¹⁴¹ T1-55 L5.

Robinson that the dates of the training could not be changed and that if Mrs Robinson was unable to attend she would be updated regarding any decisions or outcomes.¹⁴² Mrs Robinson understood from her meeting with Ms Turner that the team building sessions would be about the direction of the district, so that if Ms Turner missed the meeting she could be updated. But because of some things she was told by another staff member she became concerned that more may have been involved.¹⁴³

- [81] The following day, 25 March 2010, the same date Ms Turner approved Mrs Robinson's leave application, Mrs Robinson emailed Ms Turner enquiring about the nature of the proposed team building exercises as follows:

“Are you able to tell me what it is actually about as I thought it was “Team Building” as in the “fuzzy stuff” to assist the team to work better. (Not that I’m saying that is not important)

However, if there are going to be discussions about management strategies, district structure, work practice changes, models of management, (just for examples) or any of those types of things it is very different and I feel I would be failing the district and DDON role by not being there.

I really owe it to my family to continue with the holiday but I feel it is unworkable for my role not to be present if it is more than the fuzzy type team building.

Could you advise so that I can try to reach the right decision.”¹⁴⁴

- [82] Mrs Robinson was at this time contemplating, if the team building exercises did go further than “fuzzy stuff” and involved the implementation of management strategies, practice changes and the like, it may be necessary for her to step aside from her role to allow someone else to act in it during such a transition.¹⁴⁵

- [83] On 29 March 2010 Mrs Robinson, understanding Ms Turner was not in her office, emailed her advising she had arrived at the conclusion she should allow someone else to step into the District DON role to be part of the executive to “implement the way forward as part of [Ms Turner’s executive] team” for four to six months after the workshop, on account of Mrs Robinson’s inability to attend the workshop.¹⁴⁶ She went on to advise of her belief that the executive was “very fragmented (and probably damaged) and unable to work together as one unit” and “in such poor shape that we need to have a forum that just has exec in it”.

- [84] Within a minute or so of Mrs Robinson sending the above email Ms Turner attended at her office, expressing concern about Mrs Robinson thinking she should hand over the reins to somebody else. She indicated she wanted Mrs Robinson to be at the team building workshop and they needed to make arrangements so that she could be there.¹⁴⁷

¹⁴² Ex 1 p 70.

¹⁴³ T1-55 LL40, 45.

¹⁴⁴ Ex 1 p 70.

¹⁴⁵ T1-56 L5.

¹⁴⁶ Ex 1 p 89.

¹⁴⁷ T2-53 L3.

- [85] On the same date Mrs Robinson emailed Ms Turner, expressing concerns about a Cape York business administration review report.¹⁴⁸ The review dealt with the allocation of administrative staff to various work areas including two members of the executive.¹⁴⁹ Mrs Robinson's email expressed dissatisfaction that there had not been a sufficiently broad array of work areas considered in the review, undermining the credibility of the review and the executive team. She expressed the view the process had been a farce and conveyed the view of another executive member that the process was a façade. Mrs Robinson emphasised her criticism was "in no way reflected towards the incoming DCEO" and explained it was what had been presented to Ms Turner that was the concern.¹⁵⁰
- [86] On 7 April 2010 Mrs Robinson cancelled the first four days of her recreation leave at the end of April.¹⁵¹ She did so to try to accommodate the team building workshop.¹⁵² In the end result the dates for the team building workshop were postponed.¹⁵³
- [87] The abovementioned emails are not suggestive of a particularly close or effective communicative relationship between Ms Turner and Mrs Robinson in the early stage of Ms Turner's tenure. On Mrs Robinson's account, which I accept, Ms Turner spoke a lot about her style of management and told staff that if they worked with her their careers would soar, and if they did not their careers would not.¹⁵⁴ Hopefully this did not mean Ms Turner wanted members of her executive to behave as her mere acolytes. Nonetheless it is unlikely Mrs Robinson endeared herself to Ms Turner by describing a review as a farce or a team building workshop as dealing with the "fuzzy stuff" or advancing the elaborate proposal of someone acting in her position for three to four months to accommodate her inability to attend the workshop.

14 May 2010 Robinson learns of the existence of the WIFs¹⁵⁵

- [88] On 14 May 2010 Michelle Gaffney, the Acting Human Resources Officer, asked Mrs Robinson if she would agree to a mediation with Ms Holmes "to move forward". Mrs Robinson indicated she had no problem with that, commenting, "[A]fter all, she's only trying to defend herself in the PsyCare response".¹⁵⁶ Ms Gaffney responded, "[A]nd all the other complaints." Mrs Robinson immediately indicated she did not understand what Ms Gaffney was talking about. Ms Gaffney told her there was a handful of WIFs complaining about Mrs Robinson.¹⁵⁷ Mrs Robinson said she knew nothing of that and that if she was to go a mediation she would need to see what she was accused of. Ms Gaffney responded that she would seek approval from Ms Turner for the forms to be shown to Mrs Robinson, but told Mrs Robinson not to worry "because they were all reasonable management things that were very easily explained".¹⁵⁸

¹⁴⁸ Ex 1 p 88.

¹⁴⁹ T1-60, 61.

¹⁵⁰ Ex 1 p 88.

¹⁵¹ Ex 1 p 91.

¹⁵² T2-50 L17.

¹⁵³ T1-5 L17.

¹⁵⁴ T1-52 L8.

¹⁵⁵ SOC [6(i), (j), (k)].

¹⁵⁶ T1-57 L23.

¹⁵⁷ T1-57 L27.

¹⁵⁸ T1-57 L32.

[89] Mrs Robinson spoke with Ms Turner on the topic that day, explaining what she had been told and that she would need to see the WIFs if she was to go to a mediation.¹⁵⁹ Notably Ms Turner did not respond with any indication she was unaware a mediation was to be held. Mrs Robinson explained to Ms Turner that Ms Gaffney had told her she would contact Ms Turner to organise for copies of the WIFs to be given to Mrs Robinson. Mrs Robinson testified that Ms Turner responded, “[Y]eah, well, that’s not a problem, but, you know, they’re only ... silly things that are no trouble whatsoever explaining [your] management decision over”.¹⁶⁰ On Ms Turner’s account she told Mrs Robinson “that she had nothing to worry about” in respect of the WIFs.¹⁶¹

[90] Mrs Robinson understood from her conversation with Ms Turner, and I am satisfied Ms Turner indicated, that Mrs Robinson would soon be provided with copies of the WIFs.¹⁶² That did not occur.

*WIFs not given to Robinson despite requests*¹⁶³

[91] About two weeks later on 31 May 2010 Mrs Robinson spoke with Ms Gaffney about the WIFs. Mrs Robinson asked Ms Gaffney when she would get the WIFs, Ms Turner having indicated that she could have them. Ms Gaffney said she would “chase it up”.¹⁶⁴ Later that day or soon after, Mrs Robinson testified she told Ms Turner of her contact with Ms Gaffney and noted she still did not have the forms. On her account Ms Turner responded, “[W]ell, it’s not a problem, you know, you can have them”.¹⁶⁵ Ms Turner claimed to have no recall of such a conversation¹⁶⁶ but I accept it occurred.

[92] The month of June 2010 then went by, still without Mrs Robinson being provided with copies of the Holmes WIFs. Mrs Robinson testified, and I accept, she raised the topic multiple times with Ms Turner who continued to say that Mrs Robinson could have them and that Ms Turner would sort it out, and Mrs Robinson could and should have them.¹⁶⁷ Ms Turner told her the matters complained of in the WIFs were quite trivial.¹⁶⁸ Mrs Robinson testified:

“I told her that I was getting more worried about it, because ... I just felt ... this Barbara situation was going to escalate and I wanted to know what it was about, and I asked her a lot of times to actually investigate me. I wanted to be investigated, because I wanted to have my professional – you know, I wanted to be either cleared or told that, you know, you mishandled this or you need to improve this and then work on it, but Susan told me there was no need for any of that and I was overreacting and ... that ... I was very

¹⁵⁹ T1-57 L42.

¹⁶⁰ T1-57 L45.

¹⁶¹ T4-64 L25.

¹⁶² T1-58 L6.

¹⁶³ SOC [6(1-p)].

¹⁶⁴ T1-58 L20.

¹⁶⁵ T1-58 L24.

¹⁶⁶ T5-68 L5.

¹⁶⁷ T1-59 L9.

¹⁶⁸ T3-37 L22.

good at my job and she reassured me that there was no risk to me, because she would keep me safe.”¹⁶⁹ (emphasis added)

- [93] Mrs Robinson also raised the topic with Helen Reed, Manager Occupational Health and Safety, and Mrs Reed told her not to get “so worked up” and “so worried about it” saying, “[W]e’ve looked at them and they’re just things that, you know, you can easily explain”.¹⁷⁰ Mrs Robinson was troubled that, despite being told the matters complained of in the WIFs were readily explicable, no-one ever told her “what they actually were”.¹⁷¹ She told Ms Reed she was “getting more and more worried about not having received the WIFs”.¹⁷²

*Trouble at the team building workshop*¹⁷³

- [94] The team building exercise finally proceeded in Cairns in late June 2010.¹⁷⁴ On the first day of the team building exercise Ms Turner was out of the room for a substantial part of the day, attending to a serious HR matter.¹⁷⁵ She returned only sporadically to the workshop as the day progressed.¹⁷⁶
- [95] Ms Robinson returned to the room at the end of the day when the participants were giving feedback on what they had or had not gained from the day. Ms Turner was present when Mrs Robinson gave her feedback. On Mrs Robinson’s account the feedback she gave was positive in that there had been discussion of an organisational philosophy she had not hitherto been familiar with.¹⁷⁷ In this context Mrs Robinson commented, apparently by way of contrast, that staff often get sent to workshops she referred to as “love-ins”, where they do not hear new things.¹⁷⁸
- [96] This sparked a loud, stern and erroneously founded rebuke from Ms Turner of Mrs Robinson, in front of the rest of the attendees. Ms Turner raised her voice saying “how inappropriate” Mrs Robinson was and how Ms Turner was “sick and tired” of people referring to such workshops as “love-ins”.¹⁷⁹ Ms Hoins, Director of Corporate Services, testified Ms Turner “did snap” and “was terse in her response”.¹⁸⁰ Ms Perriman testified Ms Turner raised her voice.¹⁸¹ Ms Woodham described her as loud and abrupt.¹⁸² In Ms Turner’s testimony she acknowledged she expressed concern about Mrs Robinson’s comment because they were there to try and work effectively.¹⁸³ She did not concede being aggressive but acknowledged speaking “very forthrightly”.

¹⁶⁹ T1-59 L15.

¹⁷⁰ T1-59 L27.

¹⁷¹ T1-59 L29.

¹⁷² T1-59 L30.

¹⁷³ SOC [6(r), (s)].

¹⁷⁴ T1-61 L37.

¹⁷⁵ T1-62 L16, T4-52 L26.

¹⁷⁶ T1-62 L30.

¹⁷⁷ T1-63 L2, T3-39 L46 – T3-40 L14.

¹⁷⁸ T1-63 LL2-8, T3-40 L1.

¹⁷⁹ T1-63 LL9-32.

¹⁸⁰ T6-97 L7.

¹⁸¹ T7-8 L29.

¹⁸² T3-48 L35.

¹⁸³ T4-53 L19,

- [97] It appears from the combined accounts of other witnesses that Ms Turner did by disposition have a very reactive, assertive manner, particularly when perceiving staff were in disagreement with her or her approach, tending to raise her voice and speak tersely to them.¹⁸⁴
- [98] Ms Turner agreed it appeared Mrs Robinson was upset by her comments.¹⁸⁵ Others present also noticed Mrs Robinson was upset.¹⁸⁶ Mrs Robinson said, “I don’t think you’ve understood what I said”.¹⁸⁷
- [99] That evening, when Mrs Robinson attempted to convey a message to Ms Turner, she was abrupt and non-communicative towards her¹⁸⁸ as if they were not on speaking terms. Overnight some of the executive told Ms Turner she had been “quite tough” in her comment to Mrs Robinson and Ms Turner accepted that feedback.¹⁸⁹ During the team building workshop the following day there was a conversation in the presence of all about what had occurred.¹⁹⁰ Ms Turner apologised for how she had reacted the previous day.¹⁹¹ Mrs Robinson then explained it had been difficult for her to go to the workshop and that all they had been doing the previous afternoon was complying with a request to sum up the day and what participants had “got out of it”.¹⁹²
- [100] Paragraph 10(f) of the SOC identifies Ms Turner’s above discussed rebuke of Mrs Robinson as one of a number of instances of Ms Turner “mistreating and harassing” Mrs Robinson. The label of “harassing” is not apt to a single incident in that it connotes repetition. “Mistreating” is an accurate, though broad term. “Humiliation” is a more apt specific description.
- [101] Ms Turner’s unjustified blaming of Mrs Robinson may have resulted from error during a difficult day but on any day it was obviously unacceptable that her purported correction of Mrs Robinson involved an ill-tempered, humiliatingly loud and public dressing down. Ms Turner’s subsequent apology suggests she realised that.
- [102] I readily conclude an employer’s duty to provide a safe system of work requires that when an employer or manager considers it necessary to correct staff the correction should be justified and not executed in an objectively humiliating way. I include the qualification, “objectively”, because an overly sensitive staff member may find any form of correction humiliating. The reality is that the prospect of being corrected is an unremarkable incident of employment. However, unjustified correction involving an intemperate tone or language and carried out in front of others involves qualities which employees of ordinary sensitivity will find humiliating.

¹⁸⁴ T2-91 L38, T6-14 LL32-36, T6-30 L5, T6-80 L14, T6-84 L36, T6-85 L3, T6-85 L26, T6-96 LL37-43, T7-36 L6.

¹⁸⁵ T4-53 L8, L25, L44.

¹⁸⁶ T6-29 L40, T6-82 L8, T6-86 L14, T7-8 L1.

¹⁸⁷ T1-64 L10.

¹⁸⁸ T1-64 LL16-27.

¹⁸⁹ T4-53 L29, T7-9 L8.

¹⁹⁰ T3-41 L12.

¹⁹¹ T1-65 L12, T4-53 L30, T6-86 L27.

¹⁹² T1-65 L15.

*6 July 2010 Reed and Perriman speak with Robinson regarding Holmes*¹⁹³

[103] On 6 July 2010 Ms Reed and Ms Perriman visited Mrs Robinson at her office. The subject of a mediation was again raised in connection with “a way to move forward ... with Barbara Holmes’ situation”.¹⁹⁴ Once again Mrs Robinson indicated she was not opposed to mediation but first needed to know what had been alleged against her.¹⁹⁵ Both Ms Reed and Ms Perriman purported to reassure Mrs Robinson that the WIFs only raised minor management matters that Mrs Robinson could explain.¹⁹⁶ Ms Reed and Ms Perriman indicated they would again approach Ms Turner for approval to give copies of the WIFs to Mrs Robinson.¹⁹⁷ Notably Ms Turner acknowledged in evidence-in-chief that while she could not recall the mediation proposal she would have been told about it.¹⁹⁸

[104] That was an unsurprising concession. It is inherently likely that as CEO she would have been well aware of a proposal whereby one of her executive was to be asked to participate in a mediation with a notoriously problematic staff member. What is surprising is that as CEO she would let the mediation proposal drift for so long if she was as genuinely robust about the vexatiousness of the WIFs as she claimed in evidence. For example, she claimed in evidence to have met with Ms Holmes and Ms Holford separately to indicate to them she was no longer prepared to put up with “this kind of conduct in this health service”.¹⁹⁹ According to her evidence-in-chief, she indicated to them:

“[M]y expectation is that everyone in this place deserves a safe work environment, that – that was not only accorded to them, but it was accorded to Mary-Rose. And I felt, with those WIFs and with Holmes, that they were such a long time ago and that her conduct was exacerbating the situation. And if she wanted to work through solutions, this was not the way to do it. And so, I made it quite clear to both of them that I was not prepared to put up and deal with this type of conduct where it was payback, vindictive, going backwards and forwards, and that I would be dealing with it and they needed to understand that.”²⁰⁰

[105] Ms Turner was vague as to when this alleged conversation occurred. In the context of her evidence-in-chief it appeared she was referring to a relatively early stage after she became aware of Ms Holmes’ eight vexatious WIFs. However, in cross-examination she said it would have occurred at some stage in the latter half of the year.²⁰¹ She was unable to explain why she did not have such a conversation, particularly with Ms Holmes, back in April 2010, back when she first became aware of Ms Holmes’ vexatious WIFs.²⁰² I did not believe Ms Turner’s claims of robustness about her

¹⁹³ SOC [6(v)].

¹⁹⁴ T1-67 L7, T7-7 L40.

¹⁹⁵ T1-67 L12, T7-42 L41.

¹⁹⁶ T1-67 L13, T3-97 L3, T7-59 L42.

¹⁹⁷ T1-67 L15, T7-80 L42.

¹⁹⁸ T4-55 L9.

¹⁹⁹ T4-56 L23, T4-57 L7.

²⁰⁰ T4-56 LL25-32.

²⁰¹ T5-55 L27.

²⁰² T5-55 L30.

approach to Holmes and the vexatiousness of the WIFs, claims which were not reflected in Ms Turner's conduct.

*7 July 2010 Reed emails Robinson the WIFs*²⁰³

[106] By email of 7 July 2010, after seeking Ms Holmes' consent to disclose the WIFs,²⁰⁴ Ms Reed emailed Mrs Robinson the WIFs, writing:

“Please respond to the incident forms by the 21st of July. If you need additional time please let me know. We will then arrange a meeting with yourself, Nicky Perriman and me to discuss. Then a meeting including Barbara Holmes and Karen Bromhead.”²⁰⁵

[107] On Ms Turner's account she had given her approval for the WIFs to then be given to Mrs Robinson because Mrs Robinson had asked to see them and wanted to respond to them.²⁰⁶ That does not explain the long delay in actually approving that course. Nor does it not explain why, when Mrs Robinson was eventually supplied with the WIFs, she was requested to respond to them.

[108] Both points require analysis. Firstly, as to the delay in providing the WIFs, this grounds the allegation of negligence in paragraph 10(a) of the SOC that Ms Turner failed to provide Mrs Robinson with the Holmes WIFs in a timely manner. Mrs Robinson learnt of and was told she would be given copies of the WIFs on 14 May 2010. Despite that and despite her subsequent repeated requests, she was not given copies of the WIFs until eight weeks later.

[109] It is significant Ms Turner knew from the time of her arrival that Mrs Robinson was concerned about Ms Holmes. Against that background Ms Turner would have well appreciated Mrs Robinson would be very concerned at the news Ms Holmes WIFs had targeted her. Moreover, Ms Turner well knew her failure to follow through on Mrs Robinson being given the Holmes WIFs was having an exacting toll upon Mrs Robinson.

[110] Mrs Robinson was evidently so worked up in Ms Turner's presence that Ms Turner told her she was overreacting and purported to reassure her she would keep her safe. That Ms Turner said such things bespeaks her awareness of how peculiarly concerning the situation was to Mrs Robinson. It would have been obvious to Ms Turner against this background and the fact of Mrs Robinson's repeated requests, that not having copies of the WIFs promptly supplied to Mrs Robinson, after having undertaken to do so, would only worsen Mrs Robinson's concerns.

[111] It is unnecessary to consider whether the defendant ordinarily had an automatic duty to supply copies of WIFs alleging workplace bullying or harassment to the alleged perpetrator. That is because the defendant through Ms Turner had indicated to Mrs

²⁰³ SOC [6(w)].

²⁰⁴ T7-103 L27.

²⁰⁵ Ex 1 p 93.

²⁰⁶ T4-55 L23, T4-56 LL1-8.

Robinson on 14 May, and subsequently, that copies of the Holmes WIFs would be supplied to her. Given that undertaking, the knowledge of Mrs Robinson's concerns about Ms Holmes and the knowledge that a failure to promptly honour the undertaking would worsen Mrs Robinson's concerned state (in each instance Ms Turner's knowledge being attributable to the defendant) I conclude the defendant had a duty of care to provide copies of the Holmes WIFs to Mrs Robinson in a timely manner.

[112] The defendant's failure to provide copies of the Holmes WIFs to Mrs Robinson in a timely manner was a potential breach of the defendant's duty of care. While other staff had some involvement in that failure, its substantial cause was the conduct, largely by omission, of Ms Turner, conduct for which the defendant would be vicariously liable.

[113] This potential breach forms the initial stage of what was to become an on-going failure to deal determinatively with the complaints which were raised by Ms Holmes in her WIFs against Mrs Robinson.

[114] As to the fact that, when Mrs Robinson was eventually supplied with the WIFs, she was requested to respond to them, Ms Turner claimed that she did not request or direct that Mrs Robinson be asked to respond to the WIFs.²⁰⁷ That is inherently unlikely but, even if there had been some misunderstanding about that as between Ms Reed and Ms Turner, this was yet another opportunity for Ms Turner to articulate her supposedly strong view that the Holmes WIFs were vexatious and complained of unremarkable, reasonable management action. Just as Ms Turner could have endorsed the WIFs to the effect that they were vexatious and no further action was required, equally she could have specifically directed that in Mrs Robinson being supplied with the WIFs Mrs Robinson was to be told Ms Turner did not require any response from Mrs Robinson because Ms Turner was already of the view that they were vexatious and complained of innocuous management action.

[115] According to Ms Turner, at some subsequent stage she had a conversation to the following effect with Mrs Robinson:

"I was trying to reassure her of my view...I told her that to me this was just a process that we all had to go through; that I felt that they were vindictive, vexatious type of actions; and that she felt compelled that she had to respond. And so, I said, well, if you have – if that's what you want to do, then do it."²⁰⁸

[116] Ms Turner's purported reassurance of Mrs Robinson is at odds with the process over which she was presiding in respect of the WIFs. Staff liaising with her had more than once approached Mrs Robinson about the need for a mediation between her and Ms Holmes and when copies of the WIFs were finally supplied to Mrs Robinson they came under cover of correspondence seeking Mrs Robinson's response to the WIFs within 14 days. Despite her protestations in evidence that she regarded the WIFs as vexatious and not requiring any action Ms Turner was knowingly presiding over a process which drifted on inconclusively, thus knowingly perpetuating the angst Mrs Robinson's awareness of the Holmes WIFs had triggered.

²⁰⁷ T4-65 L18.

²⁰⁸ T4-55 L40.

Content of the WIFs

- [117] Mrs Robinson commenced reading the Holmes WIFs on first receiving them on 7 July, but became distressed and aggravated by their content.²⁰⁹ Because of that and also because in the days following she was to represent the district at a forum attended by Ms Holmes, she postponed reading them.²¹⁰
- [118] On around 17 July Mrs Robinson again tried to read the Holmes WIFs but experienced difficulty. She enlisted the support of a colleague to finish reading them.²¹¹ Mrs Robinson became more distressed because the WIFs were more malicious than she had expected.²¹²
- [119] The eight WIFs finally received by Mrs Robinson consisted in each instance of a two-sided form headed Workplace Incident Report, along with annexures.²¹³ The production of these forms at trial involved a degree of confusion. In the first instance they were included within exhibit 1, but those copies only contained the first page in each instance of the two-sided form. Two-sided versions of the forms were tendered as exhibit 14 at trial. Later still, two-sided copies of those forms along with two further WIFs submitted by Ms Holmes became exhibit 16. The two further WIFs do not appear to have been supplied to Mrs Robinson at any stage.²¹⁴
- [120] WIFs contain two major headings, namely “Workplace Incident Report” at the top of page 1 and “Incident Investigation” one-third of the way down page 2. It is apparent from the form’s content that the Workplace Incident Report component of the form is to be completed and signed by the person reporting the incident. The Incident Investigation section of the report principally consists of the management review section which, in the main, requires the entry of information going to the cause of the incident and the action taken to prevent recurrence of it. The balance of the incident investigation section of the form contains a space for the Department head to indicate whether the Department head concurs with the management review, as well as a space for comments by the OHS Unit, including whether further investigation is required and whether WHSQ has been notified.
- [121] Each of the WIFs in the present case have endorsements in the Workplace Incident Report section of them, addressing the pro forma information sought and are signed by Ms Holmes as the person completing the report. In this section of each WIF the “Nature of injury/illness” column bears a cross against the description “Mental illness/stress”. In each of the forms the “Body part affected” column of the form bears a cross against the description “Psychological”. In each of the forms the “What happened” column of the form bears a cross against the description “Harassment/bullying” and sometimes against the description “Work pressure”. In each

²⁰⁹ T1-68 L14.

²¹⁰ T1-68 LL12-20, T3-28 LL7-15.

²¹¹ T1-68 L30.

²¹² T3-32 L2.

²¹³ Ex 14, 16 (copies without the second page of the form are also contained in Ex 1 from pp 71-86).

²¹⁴ For example, they are not mentioned in Mrs Robinson’s detailed response to the WIFs that she was supplied – see ex 1 p 110 et sequitur. Her reply only deals with the eight WIFs, versions of which appear in both exhibits 1 and 14.

of the forms the “Prime cause” column of the form bears a cross against the description “Violence perpetrator” and, in most of the forms, against the description “Verbal violence”.

- [122] In the Incident Investigation section of each of the WIFs, the management review section and the OHS Unit comments section has not been endorsed in any way. Four of the exhibit 14 forms, bearing identification numbers 401563, 401557, 401556 and 401544, do contain an endorsement in the Department head comments and the other four forms do not. In contrast, all of the WIFs in exhibit 16 bear an endorsement. That is not the only variation apparent on a comparison of page 2 of the WIFs in exhibit 14 to the WIFs in exhibit 16. In some instances it is obvious that the crosses inserted in the risk rating section of page 2 of the forms do not match. In any event, in each of the instances where there is an endorsement in the Department head comments section, excluding a further form submitted on 10 November 2010, the endorsement is by Ms Turner dated 10 April 2010 and states “referred for independent investigation”.
- [123] As to the substance of the incidents complained of in the eight WIFs given to Mrs Robinson, they are in summary:
- (a) WIF ID No 401563
 Incident date: 8 July 2009
 Ms Holmes’ signature date: 15 March 2010
 Ms Holmes alleges that during a meeting with Ms Lees from PsyCare and Mrs Robinson, Mrs Robinson expressed the belief that Ms Holmes showed no leadership and did not contribute sufficiently to the clinical aspect of her role and teaching of her staff. Ms Holmes alleges this meeting immediately preceded a ward meeting which Mrs Robinson also required Ms Holmes to attend. Ms Holmes alleges the two meetings were organised in a deliberate attempt to upset her (presumably at the first meeting) and thus show her in a negative light (presumably at the second meeting).
 - (b) WIF ID No 401557
 Incident date: 24 July 2009
 Ms Holmes’ signature date: 19 March 2010
 Ms Holmes and Ms Holford had a discussion relating to the timing of a generator changeover in connection with a planned electricity outage. When Ms Holford attempted to explain that she and Ms Holmes had no input into the timing of the outage, Mrs Robinson interrupted and told her to “shut up and listen for a change” and went on to state she went home the previous day thinking how she could have “such a stupid DON and NUM”.
 - (c) WIF ID No 401556
 Incident date: 29 July 2009
 Ms Holmes’ signature date: 15 March 2010
 During a meeting between Mrs Robinson and Ms Holford, Mrs Robinson stated she had not called the “DON and NUM stupid” whereas Ms Holmes “was present on 24th when she did”.
 - (d) WIF ID No 401549
 Incident date: 9 September 2009
 Ms Holmes’ signature date: 15 March 2009 (sic)

After a meeting with Mr Stephenson and Mrs Robinson in relation to the lack of progress in preparing for accreditation, Mrs Robinson continued to discuss the topic with Ms Holmes in the presence of other staff, wanting to know why “if the DON and NUM at Cooktown can get it done, why can’t the DON and NUM here do it”.

- (e) WIF ID No 401542
 Incident Date: noted as 15 March 2010 but actually June 2009 and earlier
 Ms Holmes’ signature date: 19 March 2010
 Ms Holmes complains her application to attend a midwifery update course was denied by Mrs Robinson without reasonable explanation. Ms Holford advised her of the denial, saying Mrs Robinson “felt it was not a good time to be going away”. The midwifery course application was 15 June 2009. The WIF also complained of earlier course denials commencing in 2007.
- (f) WIF ID 401545
 Incident Date: noted as 15 March 2010 but the incidents must have been in 2009 or earlier
 Ms Holmes’ signature date: 19 March 2010
 During Ms Holmes’ professional development plan meetings with Mrs Robinson, Mrs Robinson gave Ms Holmes extra work with set timeframes and when Ms Holmes expressed concern she would not be able to perform the work in the time available, Mrs Robinson was unsupportive. Ms Holmes also felt Mrs Robinson was trying to intimidate her by her references to dealings with the Nurses Registration Board regarding problem nurses and their removal. Ms Holmes felt Mrs Robinson was trying to destabilise Ms Holmes’ working relationship with Ms Holford by querying why she had been present as a support person for Ms Holford at a former meeting with Mrs Robinson.
- (g) WIF ID 401534
 Incident Date: 23 March 2010
 Ms Holmes’ signature date: 22 March 2010
 At a meeting with Mrs Robinson, Ms Holmes mentioned the Acting DON had Ms Holmes assist the NUM in the previous week with data entry and Mrs Robinson stated “you’re not to have anything to do with the NUM’s role, it causes blurring of the lines ... your return to work needs to be kept separate from the NUM’s role as there were problems 12 months ago with the same thing and staff had voiced concerns”. Ms Holmes complained she felt this was an attempt to isolate her from her staff.
- (h) WIF ID 401538
 Incident Date: 25 March 2010²¹⁵
 Ms Holmes’ signature date: 25 March 2010
 Ms Holmes was advised by another staff member that a document titled “Proposed performance management strategy – Barbara Holmes” was lying face-up in the printer in the photocopier room within view of three staff there present.

²¹⁵ The incident date is stated to be 25 April 2010 but the relevant work day is stated as 25 March 2010.

- [124] Exhibit 16 contains a further WIF by Ms Holmes dated March 2010, which was not given to Mrs Robinson. That WIF is numbered 401551 and signed by Ms Holmes on 19 March 2010.²¹⁶ It contains an assertion that Ms Holford had gone to Ms Holmes requesting her to be present as a support person for her whenever she met with Mrs Robinson because Ms Holford claimed to feel apprehensive, scared and intimidated in such meetings. The rear of this form, as it appears in exhibit 16, was also endorsed “referred for independent investigation” and also signed by Ms Turner purportedly on 10 April 2010.
- [125] It is self-evident the eight, apparently nine, Holmes WIF’s alleged incidents which were stale, in the sense they preceded or coincided with the PsyCare review, and or were trivial. Given the WIFs’ stale and trivial content, given what the PsyCare Review had found about Ms Holmes’ behaviours and given Ms Holmes had been removed from her substantive position for those behaviours to be addressed, it would have been obvious to any competent manager that the WIFs were likely frivolous and or vexatious. Ms Turner, Ms Reed and Ms Perriman apparently perceived they were vexatious.
- [126] Engaging in “manipulation, such as making frivolous or vexatious complaints against another employee” was identified in the department’s Workplace Harassment Policy as harassment.²¹⁷ Yet no disciplinary action appears to have been initiated against Ms Holmes for her lodging of such complaints in the WIFs against Mrs Robinson. When this feature of the matter was highlighted in cross-examination Ms Turner’s evidence about her endorsement of the WIFs took another remarkable turn. She claimed that in endorsing the WIFs, as she asserts she did, she intended that it was actually Ms Holmes’ vexatiousness and harassment in making the WIFs which she had wanted investigated!²¹⁸ This was an obvious invention, on the run, in cross-examination.

19 July 2010 Robinson’s initial response to the Holmes WIFs²¹⁹

- [127] On Monday 19 July 2010 Mrs Robinson emailed Ms Turner saying, inter alia:
- “I have now read all of the incident forms filed by Barbara Holmes and find these reports to be vexatious, out of context and full of lies. It is my belief that I am both professionally and personally at risk to either line manage her directly or to line manage anyone who directly line manages her. Given my role this leaves me in a very precarious position. I was to fly to Brisbane Sunday but I only made it as far as Cairns and I cancelled the rest of the flight. I’ll meet with Helen Reed and complete a workplace incident form in the am, as I’m very effected by this situation.”²²⁰ (emphasis added)
- [128] As already discussed Ms Turner already knew of Mrs Robinson’s peculiar level of concern regarding the fact of Ms Holmes pursuit of complaints and the delay in them

²¹⁶ There was a second further WIF contained in exhibit 16, numbered 420200, signed by Holmes on 10 November 2010. Its content is returned to below.

²¹⁷ Ex 1 p 323.

²¹⁸ T5-65 LL15-25.

²¹⁹ SOC [6(x, y, z)].

²²⁰ Ex 1 p 96.

being provided to her. Ms Turner conceded in evidence it was no surprise Ms Robinson was distressed by the WIF's content.²²¹ This correspondence made it plain Mrs Robinson's level of already significant concern was continuing to develop, not abating. The "signs given by the employee", of which the High Court spoke in *Koehler v Cerebos (Aust) Ltd*,²²² were becoming increasingly manifest.

[129] The day before that email, Sunday 18 July 2010, Mrs Robinson was supposed to have been going to Brisbane but could go no further than Cairns. On that Sunday she spoke from Cairns by mobile telephone to Helen Reed, sounding upset.²²³ She told Ms Reed she could not go on as her professional career was in tatters.²²⁴ In cross-examination Mrs Robinson accepted she had said that was "primarily" because of the allegations made by Ms Holmes, which had left her crying and distressed.²²⁵ Mrs Robinson could not recall whether in the same communication with Ms Reed she had mentioned Ms Turner's management actions.²²⁶

[130] The point of such cross-examination was to support the defendant's theme at trial that it was Ms Holmes' targeting of Mrs Robinson which was the essential cause of her psychiatric injury. The difficulty for the defendant is that it was within the power of Ms Turner, and through her the defendant, to take timely determinative action in response to the complaints of Ms Holmes against Mrs Robinson. Given the sworn evidence of Ms Turner, Ms Reed and Ms Perriman that the complaints were vexatious it is obvious that determinative action would have favoured Mrs Robinson, quelling her distress and leaving her confident the defendant would indeed protect her against such targeting. Put differently, that outcome is likely what would have occurred but for the failure to take timely determinative action.

Robinson drafts a WIF

[131] On Mrs Robinson's account of the above conversation with Ms Reed on the 18th, Ms Reed suggested that maybe Mrs Robinson ought put in a WIF of her own as against Ms Holmes.²²⁷ Ms Reed testified it was Mrs Robinson who raised the topic, saying she felt her integrity was being questioned and wanted to write out some incident forms.²²⁸ Ms Reid's note of the conversation²²⁹ does not assist in resolving that inconsequential divergence, although it certainly confirms Mrs Robinson's distress:

"Can not go on very upset for professional career is in tatters.
See her in morn 8.30 am.
Incident form.
Spoke with her for a long time.
Take a break.

²²¹ T5-71 L35.

²²² (2005) 222 CLR 44.

²²³ T7-61 L33.

²²⁴ T3-97 L21.

²²⁵ T3-97 LL23-34.

²²⁶ T3-97 L28.

²²⁷ T1-69 L37.

²²⁸ T7-60 L38.

²²⁹ Erroneously dated "Sunday 17/7/10" – that Sunday was the 18th.

No hurry to complete her response”.²³⁰

- [132] On the following day, Monday 19 July 2010, Ms Reed provided Mrs Robinson with a blank WIF or WIFs.²³¹ It was established in cross-examination of Mrs Robinson that Mrs Robinson commented to Ms Reed on that occasion that the matter brought back memories of an occasion when Mrs Robinson worked in the Torres Island District and an administrative officer made an allegation against her through a grievance process which was eventually found to be unfounded.²³² The point sought to be made by that cross-examination was that Mrs Robinson knew unfounded allegations could be identified through the application of the department’s processes. The premise of that point is that the department would actually apply a determinative process. In the case of the Holmes WIFs however it is not apparent that any process of a determinative character was being applied.
- [133] Mrs Robinson subsequently completed a WIF including a seven-page annexure chronicling the psychological toll of Ms Holmes’ behaviours historically and the escalating toll caused by the receipt of Ms Holmes’ “retrospective incident reports against” Mrs Robinson.²³³ However, Mrs Robinson did not then submit her WIF, having reservations as to the appropriateness of such a process.²³⁴

*21 July 2010 Robinson anxious at workshop*²³⁵

- [134] A workshop for the executive and workplace managers such as DONs was held in Cairns on 21 July 2010. Mrs Robinson had to present a contentious paper with the assistance of two DONs at the workshop. On Mrs Robinson’s account, which I accept, she told Ms Turner she was very distressed and not sure she would be able to cope in that forum. She testified she was on the verge of tears and told Ms Turner she could not cope because of the content of the WIFs from Ms Holmes and was “feeling incredibly fragile”.²³⁶ Ms Turner could not recall this when testifying.²³⁷
- [135] On Mrs Robinson’s account Ms Turner offered to present in Mrs Robinson’s place but Mrs Robinson retained responsibility for delivering the paper. While Mrs Robinson testified she told Ms Turner she might just leave the workshop sometimes, Mrs Robinson did remain during the presentation.²³⁸ She did, however, leave the workshop a couple of times because she was becoming anxious and tearful.²³⁹
- [136] Ms Turner could recall a workshop which Mrs Robinson was consistently leaving in tears, although her recollection was that it “might” have been around November.²⁴⁰

²³⁰ Ex 34.

²³¹ T1-70 L9, T3-97 L45, T7-61 L44.

²³² T3-98 L9.

²³³ Ex 1 pp 97-105.

²³⁴ T1-70 L30.

²³⁵ SOC [6(aa)].

²³⁶ T1-71 L23.

²³⁷ T4-57 L17.

²³⁸ T1-72 L2.

²³⁹ T1-71 L44 – T1-72 L1.

²⁴⁰ T4-54 L4.

*28 July 2010 Robinson leaves work early due to high blood pressure*²⁴¹

- [137] By July 2010 Mrs Robinson felt threatened, vulnerable and unwell.²⁴²
- [138] Prior to leaving for Mackay in May 2010, Ms Burke had noticed a gradual decline in Mrs Robinson's confidence in her own ability to make decisions,²⁴³ whereas in previous years it appeared to Ms Burke that Mrs Robinson functioned exceptionally well at a professional level.²⁴⁴ Ms Burke continued to have some contact with Mrs Robinson even after transferring to Mackay. As the year progressed she detected, in Mrs Robinson's manner of speaking and the content of what she said, a steady decline in Mrs Robinson's confidence in her own capability and ability to make decisions.²⁴⁵
- [139] On 26 July 2010 Mrs Robinson informed Ms Reed it was making her ill just looking at the WIFs from Ms Holmes,²⁴⁶ to which Ms Reed responded Mrs Robinson should take time with her response, rest and come back to them at a later date.²⁴⁷
- [140] On the afternoon of 28 July 2010 Mrs Robinson felt dizzy at work and saw Dr Suresh, the medical superintendent. Her blood pressure was found to be excessively high and he suggested she go home.²⁴⁸ She did, telling Ms Reed of the consultation.²⁴⁹ This was the first time Mrs Robinson's blood pressure was ever high.²⁵⁰

*30 July 2010 Turner berates executive*²⁵¹

- [141] On around 30 July 2010 Ms Turner convened and addressed a teleconference meeting of a number of the executive who had been at the team building workshop. Mrs Robinson testified Ms Turner told the meeting it had been "brought to her attention that some people were ... having something to say about who she was friends with and what impact that had on the executive team and that she could ... have whoever she likes as a friend".²⁵² On Mrs Robinson's account, which I accept, Ms Turner said "[I]t was no-one's f-ing business" who she was friends with.²⁵³ The friend to whom Ms Turner was referring was Karen Jacobs, the Director of Primary Health Care.²⁵⁴
- [142] On Mrs Robinson's account Ms Turner swore badly during the meeting and also repeated an often repeated comment of hers to the effect that she was the boss, the one with the power and "if you work with me ... your career will go places".²⁵⁵

²⁴¹ SOC [6(bb)].

²⁴² T1-72 L17.

²⁴³ T2-85 L43.

²⁴⁴ T2-77 L44.

²⁴⁵ T2-85 L44.

²⁴⁶ T3-98 L27.

²⁴⁷ T3-98 L31.

²⁴⁸ T1-72 L30.

²⁴⁹ T3-98 L36, T7-62 L35.

²⁵⁰ T1-74 L47.

²⁵¹ SOC [6(cc)].

²⁵² T1-66 L5.

²⁵³ T1-66 L7.

²⁵⁴ T1-66 L20, ex 8 p 7, T3-64 L33.

²⁵⁵ T1-66 L23.

- [143] On Ms Turner’s account of the meeting there was no profanity.²⁵⁶ On her account she merely said she understood that there had been gossip regarding her and her relationship with other people in the executive team, she wanted it to stop and what she did in her private life and outside of work was her business.²⁵⁷ I accept Mrs Robinson’s account of the meeting.
- [144] This event is also pleaded in the SOC paragraph 10(f) as an instance of the defendant negligently failing to prevent Ms Turner from mistreating and harassing Mrs Robinson. However, it involved no apparently direct reference to Mrs Robinson. It provides some unflattering contextual insight in to Ms Turner’s qualities as a manager but is not in the league of a potential breach of duty.

*2 August 2010 Robinson raises issues with Turner*²⁵⁸

- [145] Mrs Robinson testified Ms Turner was not located in Weipa when participating in the above teleconference. She believed Ms Turner was in Cairns.²⁵⁹ On Ms Turner’s account she had been in Weipa²⁶⁰ but emails of that era suggest otherwise.²⁶¹ Mrs Robinson requested a face-to-face meeting with Ms Turner when she was back in Weipa. That meeting ensued on 2 August 2010.²⁶² On Mrs Robinson’s account she informed Ms Turner at the meeting that the concerns of some of those who had been at the team building workshop were not with Ms Turner being friends with Ms Jacobs, but with Ms Jacobs engaging in bullying behaviour towards a couple of people at the team building workshop and giving the impression that because she was “in with the boss ... she could say what she liked to these people”.²⁶³ Mrs Robinson testified she mentioned to Ms Turner that some people had been in tears, particularly Cherie Woodham, and that the rapport between Ms Woodham and Ms Jacobs had decreased after the team building workshop.²⁶⁴ Ms Turner testified there occurred no such discussion about events at the teleconference,²⁶⁵ but I accept there was and accept Mrs Robinson’s account of that discussion.
- [146] At the same meeting Mrs Robinson told Ms Turner she was still feeling fragile and threatened by her professional integrity being “dragged through the mud”. Mrs Robinson testified Ms Turner purported to reassure her that she was “everything that they needed as a District DON” and that she “was making much more out of it than was ... real”.²⁶⁶ On Mrs Robinson’s account she was very distressed and told Ms Turner it felt like “it was only a matter of time” and it was like Ms Holmes was “hunting” her.²⁶⁷ Mrs Robinson testified and I accept she asked Ms Turner to “please investigate”

²⁵⁶ T4-58 L24.

²⁵⁷ T4-58 L17.

²⁵⁸ SOC [6(dd)].

²⁵⁹ T1-66 L34.

²⁶⁰ T4-58 L4.

²⁶¹ Ex 1 p 106.

²⁶² Ex 1 p 106.

²⁶³ T1-66 L17.

²⁶⁴ T1-66 L45.

²⁶⁵ T4-58 L31.

²⁶⁶ T1-73 L15.

²⁶⁷ T1-73 LL16-23.

because she wanted to be cleared or, if there was something wrong with how she was managing, wanted it corrected.²⁶⁸

- [147] Mrs Robinson testified she told Ms Turner she needed to take time off and they discussed whether it would be sick leave, worker's compensation or time off in lieu of hours worked ("TOIL"). Because of the long hours Mrs Robinson had been working, Ms Turner suggested she take some TOIL, something Mrs Robinson had never done in the past.²⁶⁹
- [148] Ms Turner testified she could recall a discussion of this kind, although her inaccurate recollection was that it was towards the end of 2010.²⁷⁰ She testified it became apparent Mrs Robinson was under a lot of duress and she expressed her concern to Mrs Robinson that Mrs Robinson was under a lot of duress and stress.²⁷¹ On Ms Turner's account she was told by Mrs Robinson that Mrs Robinson was not very well, her blood pressure was up and she had been seeing the doctor and this led to them agreeing on Mrs Robinson taking some leave.²⁷² Of this point in time Ms Turner noticed Mrs Robinson looked unwell, really down and tired.²⁷³
- [149] In the end result Mrs Robinson was off work from around 4 August to 27 September 2010.²⁷⁴
- [150] The very day after Mrs Robinson's above conversation about her difficulty coping with Ms Holmes' targeting of her Ms Turner wrote to Ms Holmes arranging an appointment for 12 August to discuss completion of her development plan and its impact on her return to her substantive position.²⁷⁵

Late July/early August 2010 Robinson requests Holmes and Costello do not share offices

- [151] Prior to Mrs Robinson commencing her leave on 4 August 2010 she spoke with Ms Turner about office-sharing arrangements for the patient safety quality unit which reported to Mrs Robinson.²⁷⁶ The administrative assistant to the patient safety and quality officer, Lisa Fletcher, was Michelle Costello. Ms Holmes shared an office with Ms Costello.²⁷⁷ Mrs Robinson testified she expressed concern to Ms Turner that she would not be able to safely perform her supervisory role in respect of the unit and Michelle Costello while Costello was sharing a room with Ms Holmes. On Mrs

²⁶⁸ T1-73 L25.

²⁶⁹ T1-75 L11.

²⁷⁰ T4-58 L34.

²⁷¹ T4-58 L47.

²⁷² T4-59 LL1-11.

²⁷³ T5-30 LL1-10.

²⁷⁴ T2-5 LL30-37. That period consisted of two weeks' TOIL, followed by a recently applied for one week's recreation leave, followed by three weeks' recreation leave she had been planning to take since April (Ex 1 p 92), followed by a further week's recreation leave applied for on 16 August 2010 (Ex 1 p 108, T1-75 L32 – T1-76 L10).

²⁷⁵ Ex 26.

²⁷⁶ Ex 1 p 132.

²⁷⁷ T2-6 L45.

Robinson's account, which I accept, Ms Turner agreed this was of concern and that there would be a move to separate them.²⁷⁸

- [152] Mrs Robinson's main concern was to house Ms Costello and Ms Fletcher in an office separate from Ms Holmes so that she could have access to Ms Costello and Ms Fletcher without Ms Holmes and Mrs Robinson impacting upon each other.²⁷⁹ Mrs Robinson was concerned at the prospect of Ms Holmes having a corrupting influence upon Ms Costello.²⁸⁰
- [153] On Ms Turner's account Mrs Robinson did raise her concerns with Ms Turner about the potential for Ms Holmes to influence Ms Costello, and Mrs Robinson not wanting Ms Holmes to be sharing a room with Ms Costello.²⁸¹ However, according to Ms Turner, she did not agree to any specific move to separate Ms Holmes and Ms Costello²⁸² and rather, in the context of a broader need to review the allocation of office space in the workplace, she assigned Mrs Robinson the responsibility of reviewing potential workplace moves and, after consulting staff, providing a plan for such moves.²⁸³ Ms Turner testified that after Mrs Robinson provided such a plan, a number of the executive raised concerns and staff consulted by Ms Turner complained they had not been consulted.²⁸⁴ Moreover, according to Ms Turner, she consulted Ms Costello who assured Ms Turner she would not be influenced in any way by Ms Holmes.²⁸⁵
- [154] It appeared obvious Ms Turner tried to bolster this aspect of her evidence by including events relevant to room moves which occurred later in 2010. I accept the true position is as described by Mrs Robinson, namely that before going on leave in August she had been assured by Ms Turner that Ms Holmes and Ms Costello would be separated and that indeed Ms Turner continued to so agree until at least 21 October 2010²⁸⁶ and appears only to have had a change of heart during late October through November of 2010.²⁸⁷
- [155] On 11 August 2010 when Mrs Robinson was on leave, Ms Turner telephoned her and informed her Ms Holmes was unhappy with the office moves.²⁸⁸ On Mrs Robinson's account, Ms Turner alluded to a grievance that either had been or was going to be made by Ms Holmes against the district about the issue.²⁸⁹ Mrs Robinson testified there was then a reiteration of the fact that Mrs Robinson was concerned and at risk and Ms Turner reiterated that the move separating Ms Holmes and Ms Costello would go ahead.²⁹⁰

²⁷⁸ T2-7 LL15, 32.

²⁷⁹ T3-78 L15.

²⁸⁰ T3-77 L41.

²⁸¹ T4-59 L26, T4-60 L15.

²⁸² T4-60 L23.

²⁸³ T4-59 L30, T4-60 LL25-33.

²⁸⁴ T4-60 L40.

²⁸⁵ T4-61 L8.

²⁸⁶ Ex 1 p 127.

²⁸⁷ See the events of 24 October 2010 and 15 November 2010.

²⁸⁸ T2-8 L9.

²⁸⁹ T2-8 L23.

²⁹⁰ T2-8 L29.

12 August 2010 Holmes lodges a formal grievance

- [156] According to Ms Turner, on 11 August 2010 Ms Holmes submitted a formal grievance which targeted Mrs Robinson.²⁹¹ In fact it may have been 12 August, the same date of Ms Turner's pre-arranged meeting with Ms Holmes and her union representative to discuss Ms Holmes' development plan.²⁹²
- [157] Over two months later, on 19 October 2010 Ms Turner engaged Ashdale Workplace Solutions to conduct an independent review in response to the Holmes grievance.²⁹³ According to Ms Turner's terms of reference annexed to her letter to Ashdale Workplace Solutions when engaging them, Ms Holmes lodged a formal grievance on 12 August 2010 and supplied further information on 13 September 2010 relating to the review process conducted by PsyCare.²⁹⁴ Curiously all pages of the grievance bear the date 12 September 2010. The front page also bears the date 15 July 2010 and on the last page immediately below Ms Holmes' signature and before the final words, "CC:- Queensland Nurse Union", appears the date 12 August 2010.²⁹⁵ The heading of the grievance identifies it as a "Stage 2 Grievance relating to unfair treatment prior to and during the Organisational Review assessment by PsyCare Team and Ms Mary Rose Robinson..."²⁹⁶
- [158] According to the Ashdale Review terms of reference signed by Ms Turner, the concerns raised by Ms Holmes in her grievance were:
1. The process used by PsyCare during the review in June 2009 as it related to Ms Holmes, was flawed.
 2. Ms Holmes was treated unfairly throughout the process used by PsyCare during the review.
 3. Ms Holmes was denied the usual Queensland Health support and development prior to undertaking the review.
 4. As the process used by PsyCare during the review is considered flawed and unfair, the review report as it relates to Ms Holmes, should be considered void."²⁹⁷
- [159] These concerns, to be investigated by the Ashdale review, only related to the conduct of the PsyCare review vis-a-vis Ms Holmes. Save for WIF number 401563, none of the Holmes WIFs against Mrs Robinson related to the PsyCare review. Clearly the Ashdale Workplace Solutions review was not, by its terms of reference, to be a review into the array of matters raised by the Holmes WIFs.
- [160] The above quoted concerns about the PsyCare review only dealt with part of the grievance. As the above quoted heading of the grievance suggests, it also complained about Mrs Robinson, mainly in connection with her responsibility for unfair treatment

²⁹¹ T4-61 L13.

²⁹² T5-77 L40.

²⁹³ T4-61 L17.

²⁹⁴ Ex 1 p 166.

²⁹⁵ Ex 1 pp 171-174.

²⁹⁶ Ex 1 p 171.

²⁹⁷ Ex 1 p 166.

in connection with the PsyCare review. Specifically, the grievance sought the investigation of Mrs Robinson “for bullying and harassment and unfair treatment – prior to and during the Organisational Review”.²⁹⁸

[161] If the Ashdale review was not to investigate the grievance’s allegation of bullying and harassment of Ms Holmes by Mrs Robinson, what should have been done about that component of the Holmes grievance? The answer lies partly in Queensland Health’s Workplace Harassment Human Resources Policy and partly in its Grievance Resolution Human Resources Policy”, effective from April 2010.²⁹⁹

[162] The Workplace Harassment Policy identifies typical harassing behaviours as including “unjustified blaming” and “manipulation, such as making frivolous or vexatious complaints against another employee”.³⁰⁰ It provides disciplinary action may be taken “against employees who make malicious, frivolous or vexatious complaints”.³⁰¹ Ms Perriman considered Ms Holmes’ grievance was likely vexatious but no disciplinary action was pursued against Ms Holmes in connection with her grievance.³⁰²

[163] As to the Grievance Resolution Policy, part 8.5 contemplates four steps in managing workplace harassment grievances: Step one – informal process, Step two – formal process, Step three – investigation, Step four – report. The heading of Ms Holmes grievance identified it as a “Stage two grievance”, which is an apparent reference to step two, the formal process which is supposed to occur when informal solutions have failed.

[164] The aforementioned policy provides as to step two:

“Step two – formal process

If all possible local, informal solutions are exhausted or the parties are not willing to resolve the matter informally, a formal grievance or written complaint is to be lodged if it has not already.

If a formal grievance is lodged or a written complaint made, the district CEO (or delegate) is to present the written allegations to the person/s identified (accused) as required under the provisions of Access to Employee Records HR Policy F3 relating to a detrimental record. The person/s is to be given fourteen days to respond to allegations. If responses do not resolve the matter or an investigation is required, the matter is referred to the Workplace Services by the District CEO (or delegate).

Workplace Services is to make an assessment of the grievance. They may discuss the matter with the managers, the employee’s union, and relevant people in the district including supervisors, HR and district CEOs with a view to attempting to reach a resolution. The relevant district may also assist in resolving the matter.”³⁰³

²⁹⁸ Ex 1 p 174.

²⁹⁹ Ex1 pp 330-340.

³⁰⁰ Ex 1 p 323.

³⁰¹ Ex 1 p 325.

³⁰² T7-33 LL11-17, T7-40 L25.

³⁰³ Ex 1 p 338.

[165] Ms Perriman had some recollection of discussing with Workplace Services how to resolve the grievance but was less certain as whether any document was forwarded to them.³⁰⁴ It is unlikely that dealing with Workplace Services involved a referral of the grievance as contemplated in the second paragraph of step two quoted above. As much seems obvious given the absence of documentary evidence of such a referral, the absence of any investigation by Workplace Services,³⁰⁵ and the fact the grievance's allegations were not presented to Mrs Robinson, an earlier procedural requirement of the same paragraph of step two.

[166] Consistently with that earlier requirement, Ms Perriman drafted and gave Ms Turner a letter in Ms Turner's name for Ms Turner to send to Mrs Robinson outlining the grievance's allegations and requesting a written response within fourteen days, as contemplated by step two of the policy.³⁰⁶ The letter was not sent, a fact Ms Turner could not explain in cross-examination.³⁰⁷ The exhibited copy of it shows a post it note dated 29 October affixed to the front page. It is in Ms Perriman's handwriting, as follows:

“Wait for Susan to talk to Barb
Want to ask Barb exactly what she wants from all this.”³⁰⁸

[167] It is not apparent how there was any doubt about exactly what Ms Holmes wanted “from all this”. Her grievance concluded with five clearly expressed outcomes sought by her and one outcome was that Mrs Robinson “be investigated for bullying and harassment and unfair treatment – prior to and during the Organisational Review”.³⁰⁹ Ms Perriman was initially uncertain if her post it note reflected a conversation with Ms Turner or advice received from Workplace Services.³¹⁰ However an email by her over a year later acknowledged she did meet with Ms Turner after drafting the letter and the decision was made not to send the letter and that Ms Turner was to meet with Ms Holmes.³¹¹ Ms Perriman could not recall learning of any ensuing conversation between Ms Turner and Ms Holmes as contemplated by the note.³¹²

*14 September 2010 Robinson forwarded her WIF to Reed*³¹³

[168] Returning back to the narrative of events in September, on 14 September 2010 Mrs Robinson – oblivious to her inclusion as a target of Ms Holmes' grievance and still on leave - emailed Helen Reed her WIF³¹⁴ against Ms Holmes which she had drafted back on 19 July 2010.

³⁰⁴ T7-23 LL19-45.

³⁰⁵ T7-28 L43.

³⁰⁶ Ex 1 pp 129-130, T7-24 L27.

³⁰⁷ T5-111 L43.

³⁰⁸ Ex 1 p 129, T7-24 L30.

³⁰⁹ Ex 1 p 174.

³¹⁰ T7-24 LL35-45.

³¹¹ Ex 33.

³¹² T7-28 L34.

³¹³ SOC [6(ii)].

³¹⁴ Ex 1 pp 97-105.

- [169] The WIF and its annexure drafted by Mrs Robinson complained of historical conduct by Ms Holmes and, to a lesser extent, issues pertaining to Ms Holford's management of the dysfunctional relationship between Ms Holford and Ms Holmes. In the WIF in the space following the question "How exactly did/could the illness, injury or damage happen?", Mrs Robinson wrote:

"From commencement of employment as DDON I have been constantly exposed to increasing levels of victimisation, intimidation, undermining and obstruction."³¹⁵

Then, against the question "What happened unexpectedly?" Mrs Robinson endorsed the form:

"Series of incidents since beginning of 2008 which compounded and escalated following receipt of retrospective Incident Reports against me."³¹⁶
(emphasis added)

In the column under the heading "Nature of injury/illness" Mrs Robinson crossed the entries "mental illness/stress" and "heart/circulatory".

- [170] Of the escalating impact upon Mrs Robinson following her receipt of Ms Holmes' retrospective WIFs, the annexure to Mrs Robinson's WIF wrote:

"The ramifications of this dysfunctional relationship required the DDON to exercise extreme caution due to the invidious situation. This continually caused the DDON a heightened level of apprehension during dealings with the DON Ms S Holford and the NUM Ms B Holmes.

However, whilst the DDON was aware of the caution required, she had not identified at this time that the vindictive, malicious, targeting & victimisation of her personally, would develop to such a level that this would cause her serious health implications at a later date.

The accumulative result of all the events above have resulted in the DDON experiencing the following

Increasing stress levels due to the constant & sustained exposure to extremely difficult & manipulative staff over a long period of time (2008-2010).

The DDON has experienced targeted and repetitive victimisation, undermining, malicious & vindictive behaviours, harassment and bullying over a long period of time, by Ms B Holmes, NUM.

The DDON has now developed health issues relating to the events as described, which are new & related only to the violence in the workplace.

In summary, the abovementioned events have culminated in the development of significant health issues. This decline in my health has resulted from my reputation being brought into disrepute, questioning of my professional credibility & integrity & damage to my reputation."³¹⁷

- [171] Mrs Robinson confirmed the significant health issues referred to in her WIF of 19 July 2010 were her high blood pressure and her mental health, that is to say, her depression

³¹⁵ Ex 1 p 97.

³¹⁶ Ex 1 p 97.

³¹⁷ Ex 1 pp 104-105.

and anxiety.³¹⁸ Ms Turner accepted in cross-examination it was obvious to her that the matters identified in Mrs Robinson's WIF were having an adverse impact on Mrs Robinson's health.³¹⁹

[172] Mrs Robinson wrote in her email forwarding her WIF and annexure to Ms Reed :

“As you know I have found this a dreadful period of time and I'm hoping that I've done this properly. I have listed a number of examples that if the final straw had no (sic) happened I would have continued to manage. However, given that I was unwell with high BP I am not prepared to be at risk when I know that I am not what I've been portrayed to be.”³²⁰

[173] Mrs Robinson, who was on leave, sent Ms Reed an email the following day, enquiring whether she had received the WIF.³²¹ Mrs Robinson told Ms Reed she had concerns about who would see the WIF and Ms Reed informed her it would be Ms Reed and Ms Turner.³²² Ms Turner claimed to have no memory of seeing Mrs Robinson's WIF.³²³ However Ms Reed emailed it to her on 15 September and Ms Turner emailed her back on the same date foreshadowing they would discuss it and possibly initiate a review into the situation.³²⁴ Ms Reed testified she and Ms Turner did discuss it³²⁵ but no action was taken.³²⁶ The exhibited copy of the WIF contains no endorsement in the investigation section.

[174] A point emphasised in cross-examination of Mrs Robinson, echoing an above mentioned theme of the defendant's case, was that none of the conduct identified in her WIF of 19 July 2010 was conduct by Ms Turner.³²⁷ However, as Mrs Robinson testified, Ms Turner had been made aware of the emotional and psychological stress upon Mrs Robinson and witnessed it prior to July 2010.³²⁸ A persistent feature of Ms Turner's contribution to Mrs Robinson's decline to this point was her failure to actually do anything of a determinative character about the WIFs, despite knowing their pursuit of Mrs Robinson was a source of such angst for Mrs Robinson. She could, on her own account, have determined the WIFs were vexatious and no further action was to be taken upon them. That did not occur. She could have seen to it that the WIFs were investigated, whether in house or independently. That did not occur either. It is no answer to point to the eventual instigation of the Ashdale Review in October for it was not concerned with the substance of Ms Holmes complaints against Mrs Robinson.

*27 September 2010 Robinson gives Turner her response to Holmes' WIFs*³²⁹

³¹⁸ T4-8 L18.

³¹⁹ T5-84 L35.

³²⁰ Ex 1 p 109.

³²¹ T3-98 L40.

³²² T3-98 L45.

³²³ T4-63 L5.

³²⁴ Ex 27.

³²⁵ T7-63 L21.

³²⁶ T7-92 L5.

³²⁷ T4-8 L43.

³²⁸ T4-8 LL1-4.

³²⁹ SOC[6(jj)].

- [175] On her return from leave on 27 September 2010 Mrs Robinson gave Ms Turner a signed letter dated 26 September 2010 which Mrs Robinson had prepared whilst on leave.³³⁰ The letter was a covering letter providing summary answers to Ms Holmes' WIFs and annexing more detailed responses. The covering letter also noted that the PsyCare organisational health review had been prompted in part by Ms Holmes' behaviours and that Ms Holmes' "damaging behaviour" had continued unabated.³³¹
- [176] When the exhibited unsigned copy of this response letter was shown to Ms Turner in evidence she testified that, whilst she did recall getting a really detailed response from Mrs Robinson in respect of the Holmes WIFs, she did not actually recognise the letter in evidence.³³² I accept Mrs Robinson's evidence that the signed original of that letter was given by her to Ms Turner on 27 September 2010.³³³ Ms Reed testified she discussed the response letter with Ms Turner.³³⁴ Ms Turner conceded in cross-examination that the letter's content was enough to justify in her mind a determination that the WIFs were vexatious,³³⁵ yet still she let the situation drift without determination.

Reference to the Ethical Standards Unit

- [177] On Mrs Robinson's account Ms Turner told her in their discussion of 27 September 2010 that "everything" had been referred to the Ethical Standards Unit ("ESU") and Mrs Robinson "had been cleared".³³⁶ The detail of what was actually referred to ESU was not explained to Mrs Robinson.
- [178] It was Ms Jacobs who had arranged for a reference to the ESU, when Ms Turner was on leave and Ms Jacobs was acting CEO. On her apparently uncertain recollection it was Ms Holmes' grievance, not her WIFs, which was referred.³³⁷ Ms Perriman, who actually effected the referral of the grievance to ESU, testified while she was not 100 per cent sure of whether the WIFs were sent, her recollection was it was just the grievance which was sent to ESU.³³⁸ Ms Jacobs could not testify as to the nature of the allegation in the grievance which led her to arrange for the referral and could only recall the document had serious allegations in it.³³⁹ I conclude on the whole of the evidence that it was Ms Holmes' grievance, not her WIFs, which was referred to ESU.
- [179] It appears this was the first Mrs Robinson would have known of any reference to the ESU concerning her. She testified she told Ms Turner it was unlikely she had been "cleared" because she was unaware of an investigation having occurred, to which Ms Turner responded, "[W]ell, they've cleared you." Mrs Robinson asked to have that advice in writing and Ms Turner told her she would be given it in writing.

³³⁰ Ex 1 pp 110-126, T2-11 L26, T3-99 L17, T3-99 L27, T7-64 L42.

³³¹ Ex 1 p 112.

³³² T4-82 L44.

³³³ T3-99 LL21-35.

³³⁴ T7-94 L35.

³³⁵ T5-85 L5.

³³⁶ T2-15 L35.

³³⁷ T6-23 L9, T6-34 L16.

³³⁸ T7-21 L26, T7-25 L46, Ex 1 pp 171-174.

³³⁹ T6-34 LL17-31.

[180] In Ms Turner's evidence-in-chief she initially testified she had no discussion with Mrs Robinson about the ESU.³⁴⁰ At a later stage of Ms Turner's evidence-in-chief she alluded to advice having come back from ESU that "they didn't consider it to be serious misconduct".³⁴¹ Ms Turner was then asked if she had any further discussions with Mrs Robinson concerning that and she responded:

"I understand that, if I recall, I had some discussions with her. I tried to reassure her that no further action regarding that would be taken. Karen Jacobs, I believe, formally followed up, because she was the one that initiated that while I was on leave."

[181] On Mrs Robinson's account she explained she felt sure Ms Holmes would not give up and Ms Turner said, "[W]ell, yes, you know what she wants. She wants you to be ... removed from your job."³⁴² Ms Turner testified she did not say that and it was Mrs Robinson who said it.³⁴³ Mrs Robinson testified she said she needed to be kept safe and Ms Turner assured her she would keep her safe.³⁴⁴

[182] In cross-examination of Mrs Robinson it was established that there was also a meeting on 27 September 2010 between Mrs Robinson and Ms Turner – whether the same or a different meeting from the above meeting is unclear – at which Ms Turner enquired after Mrs Robinson's health.³⁴⁵ Mrs Robinson took this to be an enquiry about both her mental and physical health.³⁴⁶ Mrs Robinson indicated she was mentally well, but that if her blood pressure went up further leave would be required.³⁴⁷ She indicated she was very worried about the professional risk to her from Ms Holmes and that, while her blood pressure was fine, she could not guarantee what would happen when Ms Holmes returned to the workplace.³⁴⁸

[183] Mrs Robinson informed Ms Turner she felt she would not be safe working with Ms Holmes or line managing Ms Holmes' line manager, given the content and level of manipulation of the facts in the Holmes WIFs.³⁴⁹ It was put to Mrs Robinson that Ms Turner did not tell Mrs Robinson she would not be placed in any situation involving Ms Holmes, however Mrs Robinson maintained Ms Turner did tell her that.³⁵⁰ It was implicitly suggested Ms Turner would not have said such a thing because Ms Holmes had a substantive position in Weipa and thus the right to return when ready to come back to work to her substantive position.³⁵¹ However, as Mrs Robinson explained, the findings of the PsyCare review, particularly regarding staff being at risk with Ms Holmes in her substantive position, meant Mrs Robinson did not believe Ms Holmes would go back to that position.³⁵²

³⁴⁰ T4-64 L27.

³⁴¹ T5-24 L34.

³⁴² T2-16 L14.

³⁴³ T4-61 L37.

³⁴⁴ T2-16 L30.

³⁴⁵ Ex 8 p 9.

³⁴⁶ T3-68 L30.

³⁴⁷ Ex 8 p 9.

³⁴⁸ Ex 8 p 9, T3-68 L35 – T3-69 L17.

³⁴⁹ Ex 8 pp 9, 10, T3-69 L22.

³⁵⁰ T3-69 L28.

³⁵¹ T3-69 L33.

³⁵² T3-69 L37.

28 September 2010 Robinson learns ESU declined to investigate

- [184] Later on 27 September 2010 Mrs Robinson spoke with Karen Jacobs who also told her that the ESU had cleared her of any wrongdoing.³⁵³ Mrs Robinson told her she did not think that was correct.³⁵⁴
- [185] The following day, 28 September 2010, Karen Jacobs forwarded an email to Mrs Robinson which Nicky Perriman had received from the ESU back on 31 August 2010.³⁵⁵ The ESU email contained no reference to Mrs Robinson and merely indicated, in respect of the Unit's "Assessment of Barbara Holmes matter ESU ref 90244", that the complaint did not raise a suspicion of official misconduct and therefore did not fall within the jurisdiction of the ESU. Ms Perriman testified she would also have sent a copy of that email to Ms Turner.³⁵⁶
- [186] Mrs Robinson subsequently spoke with Nicky Perriman, who confirmed the ESU email did not mean Mrs Robinson had been cleared and, rather, it meant that it was for the district to do their own internal investigation.³⁵⁷ The only investigation which followed in connection with a known complaint of Ms Holmes was the Ashdale review.
- [187] There was no investigation in response to Ms Holmes' WIF's or of Mrs Robinson's response to them or of Mrs Robinson's WIF triggered by them.

First category of breach

- [188] Paragraphs 10(b) and (c) of the SOC allege negligence by the defendant in unreasonably failing to investigate the Holmes WIFs and failing to investigate the WIF lodged by Mrs Robinson. Such actions are alleged to be requirements of the departmental policies, to which I have already made some reference.
- [189] It is apparent from the defendant's Occupation Health and Management System Implementation Standard,³⁵⁸ including its "Action Required Table", that some form of determinative action is to be taken on receipt of WIFs. As much is clear from the "Incident Investigation" section on the rear of the defendant's WIFs. That section is simply structured, easy to follow and, if followed, should ensure determinative action is taken on the matters raised in the WIF. The defendant failed to comply with it.
- [190] It is conceivable one action taken in respect of a WIF raising an allegation of bullying or harassment would be to deal with it under the defendant's Workplace Harassment Human Resources Policy,³⁵⁹ coupled with its Grievance Resolution Human Resources Policy.³⁶⁰ But there is no evidence suggesting that is what was decided. In any event,

³⁵³ T2-17 L4, T6-25 L39.

³⁵⁴ T6-25 L46.

³⁵⁵ Ex 1 pp 124-125.

³⁵⁶ T7-22 L41.

³⁵⁷ T2-17 L14.

³⁵⁸ Ex 1 pp 352-363.

³⁵⁹ Ex 1 pp 321-329.

³⁶⁰ Ex 1 pp 330-340.

while those policies involve nuanced decision-making and potentially some ambiguity, there is nothing in them to suggest that an absence of genuine action is an option.

- [191] The elementary point is that an employee used one of the defendant's systems available to staff to make complaints to the defendant of workplace bullying and harassment and that placed a clear onus on the defendant to actually deal with the complaints submitted to it and not let them drift on unresolved.
- [192] In light of what was known about Mrs Robinson's heightening emotional state the individual circumstances of this case meant the defendant had a duty to take timely and determinative action in response to the Holmes WIFs, to guard against the risk of psychiatric injury to Mrs Robinson. By determinative action I mean some authoritative form of action culminating in a timely conclusion about the complaints and a timely announcement of the action to arise from that conclusion.
- [193] The defendant's breach of its duty of care to Mrs Robinson to take timely and determinative action in response to the Holmes WIFs was manifest in the failure to provide copies of the WIFs to Mrs Robinson in a timely fashion once she was told they would be provided. It was manifest in the failure to investigate the Holmes WIFs in a timely fashion or at all. Subsets of the latter failure were a failure to investigate Mrs Robinson's WIF, which would necessarily have required investigation of the Holmes WIFs, and, though not expressly alleged, a failure to investigate or indeed articulate any material reply to Mrs Robinson's response to the complaints in Ms Holmes' WIFs, a response the department had specifically called for.
- [194] The relevant duty of care was not per se confined to a duty to investigate. It was to take timely and determinative action. Ms Turner acknowledged it was within her power to, in effect, summarily determine the complaints against Mrs Robinson in the Holmes WIFs required no investigation, because they were vexatious, and to in turn announce that determination. Such a determination would have met the aforementioned duty, but there was no such summary determination. Equally it was within her power to ensure a timely investigation of those complaints. But there was no investigation of them, let alone a timely investigation or an investigation leading to a determination.
- [195] The risk of psychiatric injury to Mrs Robinson was reasonably foreseeable by reason of the signs progressively exhibited by Mrs Robinson of a high and increasing degree of emotional concern and distress about Ms Holmes' targeting of complaints against her in the WIFs. The risk of such injury was not insignificant, particularly bearing in mind those signs fell for consideration in the light of Mrs Robinson's previously expressed concerns about Ms Holmes and what the PsyCare report had advised the defendant about Ms Holmes. The risk of injury obviously emanated in part from the fact Ms Holmes targeted Mrs Robinson in complaints to the defendant. But it was the response of the defendant to the receipt of those complaints which would be most material to the probability of psychiatric injury. A reasonable employer would have realised its response to such complaints bore heavily upon the probability of such injury occurring and that such an injury can have serious consequences. Moreover, the burden of taking the precaution of timely and determinative action on Ms Holmes complaints to avoid the risk of injury was modest. Realistically, the taking of such elementary action would

likely be the standard response of any competent manager, even if unconcerned by a risk of psychiatric injury.

- [196] The defendant breached its duty to take reasonable care to avoid psychiatric injury by failing to take timely and determinative action on Ms Holmes' complaints. While other staff had some involvement in that failure, its substantial cause was the conduct, largely by omission, of Ms Turner, conduct for which the defendant would be vicariously liable.
- [197] The breach was an ongoing one. Its effects on Mrs Robinson were ongoing. Regrettably its effects would inevitably have been compounded by other forms of managerial mistreatment of Mrs Robinson which escalated as 2011 wore on.

29 September 2010 Tense exchanges between Robinson and Turner re Holford's return

- [198] On 29 September 2010 Mrs Robinson emailed Ms Turner at 7.59 am, indicating she had become aware the previous afternoon that discussions were to be held with Ms Holford the following week. She expressed concern at this and asked to be told why she had not been included in such discussions, given she was the line manager of Ms Holford. The email continued:

“I respect that you may have a rationale for not including me in the actual meeting with Sharon, however I do not know on what basis this would be. I am concerned that you have not discussed my exclusion with me. I am unaware of any complaint against me regarding this staff member. If there is such a thing I request that I be given natural justice and be made aware of that and that I'm given the right to respond. This type of treatment has a detrimental impact on my professional standing in this district and inhibits my ability to do my job. Thanks for considering my concern.”³⁶¹

- [199] On Ms Turner's account she had forgotten to let Mrs Robinson know of the meeting because Mrs Robinson had been on leave.³⁶² Ms Perriman also testified she had overlooked giving Mrs Robinson notice of the meeting.³⁶³ Ms Turner responded by email at 8.30 am saying:

“This is clearly an oversight on mine and Nicky's part and the fact that you were away so we will sort this out today. I am concerned about your email and the tone of it thinking that you're excluded. I would suggest that next time you simply ask for clarification rather than just thinking immediately that there is something more sinister at hand.”³⁶⁴

- [200] Ms Robinson responded by email at 8.59 am saying:

“I would like to discuss this with you.

³⁶¹ Ex 1 p 126.

³⁶² T4-65 L3.

³⁶³ T7-11 LL30-47.

³⁶⁴ Ex 1 p 126.

Please understand that I am in a very vulnerable situation and my professional integrity has been dragged through hell over the past several months and this as you know is ongoing.

I do not think in sinister terms but rather need clarification and as I have spent the night worried once again. As I was due to see the Dr at 0800 I thought it best to email you.

Every minute of my time is spent evaluating if I should remain the DDON given the ongoing attacks on my professional credibility. You are the only person that I have allowed myself to place my professional trust and in fact my career in your hands.

I will be available to meet with you as soon as you wish.”³⁶⁵

- [201] Prior to these email exchanges Mrs Robinson had contacted Raelene Burke, the Director of People and Culture, once called human resources, to seek her opinion as to whether she was blowing the matter out of proportion.³⁶⁶ That fact appears to have prompted it to be explored with Mrs Robinson in cross-examination whether, by that time, she was contemplating the idea of putting in a grievance as against Ms Turner.³⁶⁷ Mrs Robinson responded that in fact Ms Burke had pointed out to her earlier in the year that the treatment she was receiving was inappropriate and that she should consider a grievance, but Mrs Robinson testified she did not want to engage in such a process, having been “told by senior HR people in corporate office” that “you don’t take on your CEO”.³⁶⁸
- [202] At around 10 am on 29 September Mrs Robinson and Ms Turner met in Ms Turner’s office. On Mrs Robinson’s account Ms Turner was aggressive and angry during the meeting, yelling, raising her voice and pointing at Mrs Robinson.³⁶⁹ She told Mrs Robinson that “this” was all in Mrs Robinson’s head and that she needed to trust Ms Turner. In the face of disagreement by Mrs Robinson, Ms Turner said Mrs Robinson thought in sinister ways. Mrs Robinson was upset by Ms Turner yelling and pointing at her.³⁷⁰ Mrs Robinson told Ms Turner she was feeling “really quite fragile” and had thought Ms Turner would understand Mrs Robinson was “feeling incredibly vulnerable”. She said the tone of Ms Turner’s email to her was offensive and distressing to her. Mrs Robinson told Ms Turner she felt her professional integrity was being dragged through the mud and that even in her own home she felt it was as if “they had a gun after me and ... eventually they would catch up and it just depended what corner I went around”.³⁷¹
- [203] On Ms Turner’s account of the meeting, it actually occurred the day after the abovementioned exchange of emails³⁷² and Ms Turner conducted herself apologetically and sympathetically towards Mrs Robinson.³⁷³ However, such conduct would have

³⁶⁵ Ex 1 p 126.

³⁶⁶ T3-72 L12.

³⁶⁷ T3-72 L45.

³⁶⁸ T3-73 LL1-22, T4-22 L15.

³⁶⁹ T2-18 LL28-45, T3-71 L24.

³⁷⁰ T2-19 L6.

³⁷¹ T2-19 L5.

³⁷² T4-66 L11.

³⁷³ T4-66 L14.

represented a significant turnaround from the sentiments disclosed in Ms Turner's curt email to Mrs Robinson at 8.30 am the day before. I do not accept Ms Turner conducted herself so mildly and to the contrary accept Mrs Robinson's evidence that Ms Turner was angry and aggressive.

- [204] Ms Turner did testify that Mrs Robinson broke down and was sobbing and in tears during the meeting and that she emphasised to Mrs Robinson that if anyone could make a decision about her career it was Ms Turner, and Ms Turner had no intentions of terminating Mrs Robinson's employment.³⁷⁴ Mrs Robinson acknowledged Ms Turner tried to console her, but only briefly.³⁷⁵
- [205] Paragraph 10(f) of the SOC identifies Ms Turner's above discussed curt email and her ensuing conduct towards Mrs Robinson at the meeting as another instance of "mistreating and harassing" of Mrs Robinson by Ms Turner. The email presents as having minor significance but it gives context to Ms Turner's ensuing loud and aggressive belittling of Mrs Robinson's concerns as sinister and all in her head. That conduct well exceeded the bounds of reasonable correction of staff, particularly in circumstances where Ms Turner knew of Mrs Robinson's emotional vulnerability.³⁷⁶

*5 October 2010 Robinson excluded from Holford's return to work meeting*³⁷⁷

- [206] The following week Ms Holford participated in a return to work meeting attended in Weipa by her, Ms Turner, a Union representative and Ms Perriman, and, on telephone link in Cairns, Ms Reed and Mrs Robinson. At the outset of the meeting, after introductions, Mrs Robinson heard silence and then Ms Turner asked the Cairns based participants to hang up.³⁷⁸ They did so and Ms Turner then rang them and asked Mrs Robinson to leave the meeting because Ms Holford had become visibly upset and did not want Mrs Robinson involved. Mrs Robinson left the meeting.³⁷⁹ So it is Ms Turner elected to exclude Mrs Robinson from the very same meeting Ms Turner had insisted Mrs Robinson had not at first been invited to because of any sinister reason.
- [207] Later in the day Ms Turner telephoned Mrs Robinson, ostensibly to tell her what had occurred during the meeting. Mrs Robinson testified she told Ms Turner it was a slur on her integrity as Ms Holford's line manager to be removed and wanted to know what the reason was.³⁸⁰ On Mrs Robinson's account Ms Turner said Ms Holford had become visibly upset at just the mention of Mrs Robinson's name and they had discussed with Ms Holford whether she had issues or complaints about Mrs Robinson. Mrs Robinson testified Ms Turner told her she said she told Ms Holford to put her complaints in to Ms Turner but did not tell Mrs Robinson what they were. On Mrs Robinson's account she

³⁷⁴ T4-66 LL15-25, T5-32 L45.

³⁷⁵ T3-71 L30.

³⁷⁶ On Ms Turner's account it was in the course of the above discussion that the idea of support for Mrs Robinson through mentor coaching was raised. The genesis of and action taken about that was the subject of quite different evidence by Ms Turner and Mrs Robinson at T3-61 L42 – T3-62 L41, T4-66 L27 – T4-67 L38. I preferred Mrs Robinson's evidence on the issue, which is of insufficient relevance to justify analysis.

³⁷⁷ SOC [6(rr-tt)].

³⁷⁸ T7-65 L12.

³⁷⁹ T2-19 LL10-32.

³⁸⁰ T3-74 LL37-42.

said she was only ever aware of one disciplinary discussion she had had with Ms Holford and wanted to know what it was she was supposed to have done.³⁸¹ Mrs Robinson testified she was distressed and said to Ms Turner it appeared, as Mrs Robinson thought might happen, that Ms Holford and Ms Holmes “were now combining” to impact on Mrs Robinson’s professional credibility.³⁸²

[208] Ms Turner testified there were numerous meetings she held with Mrs Robinson in which Mrs Robinson would talk about her fears that Ms Holmes and Ms Holford were colluding and “were going to get rid of her”, in response to which Ms Turner tried to reassure her that was not the reality.³⁸³ Her account of the above discussion she had with Mrs Robinson in the aftermath of Mrs Robinson’s exclusion from the meeting was vague about Ms Holford having a complaint against Mrs Robinson but I accept Mrs Robinson’s evidence Ms Turner did say something to that effect to Mrs Robinson.

[209] I was left with the distinct impression Ms Turner was not being entirely candid during the following exchange on the topic in evidence:

“Now, did she ever indicate to you on that day after the meeting that the meeting, the way it was conducted, was a further slur on her professional integrity?--- No. To me, she understood the importance of continuing that meeting in her absence because of the claims that Holmes was – Holford was making. ...

HIS HONOUR: Sorry. What claims that Holford was making. I must have missed something there?--- Just how she was feeling uncomfortable that we didn’t want to be seen to be buying into her allegations of Mary-Rose bullying her and things like that. It was considered a potential risk.

These allegations in the WIFs, you mean, or some other allegations?--- No. Just that she was – in the meeting, she was asserting that she felt unsafe with Mary-Rose in the room, that she felt she was being – had been victimised by her – to that effect. I can’t remember the precise words, but that was the type of conversation she was having with us. Yeah.”³⁸⁴ (emphasis added)

[210] The following day, on Mrs Robinson’s account, Mrs Robinson asked Ms Turner when she would be informed of the accusations made by Ms Holford in response to which Ms Turner laughed, smirked and derisively said words to the effect of, “What do you mean you don’t know what you’ve done, I’ll have to get that for you, won’t I?”³⁸⁵ Mrs Robinson was left in ignorance of what, if any, articulation Ms Holford ever gave to her supposed concerns.³⁸⁶ So too was Ms Reed.³⁸⁷

³⁸¹ T2-19 L45.

³⁸² T2-20 L35.

³⁸³ T4-64 L37.

³⁸⁴ T4-69 L45 – T4-70 L15.

³⁸⁵ T3-75 L17. Mrs Robinson had not been asked in evidence-in-chief about this conversation, which was pleaded in her SOC at [6(tt)], but she confirmed in the course of cross-examination the conversation as it appears pleaded did occur. The pleading dates the conversation as 6 October 2016 but in re-examination her recollection was it occurred immediately before the start of the meeting of 6 December discussed below at T4-23 L23.

³⁸⁶ T3-13 L6.

³⁸⁷ T7-89 L39.

[211] These events are pleaded in paragraph 10(f) and (h) of the SOC as instances variously of mistreating and harassing, humiliating and undermining. Ms Turner's decision to bend to the desire of Ms Holford to exclude her line manager Mrs Robinson from the meeting of 5 October 2010, particularly in the wake of the events of 29 September remain mystifying, even after her opportunity to explain it in evidence. The decision to remove Mrs Robinson was inherently controversial. It gave the appearance Ms Turner considered there must have been substance to whatever Ms Holford's concern was. Even assuming it was a rushed decision, taken out of an abundance of caution for Ms Holford's well-being, Ms Turner would well have appreciated the humiliating, isolating impact such a decision would have had upon Mrs Robinson. Knowing all she did of Mrs Robinson's concerns and emotional state it is reasonable to expect she would either admit apologetically to Mrs Robinson she had made an error in excluding her or ascertain and explain to Mrs Robinson what the substance of Ms Holford's concern was. She did neither. Instead she was flippantly dismissive of and did not ever meet Mrs Robinson's request for information about the substance of Ms Holford's concerns. That feature of Ms Turner's behaviour is more concerning than her decision to exclude Mrs Robinson. Save for intending to isolate Mrs Robinson there is no sensible explanation for Ms Turner being unco-operative in support of such a request, particularly in the wake of having controversially excluded Mrs Robinson from a meeting with that staff member.

[212] Ms Turner was isolating Mrs Robinson by flippantly dismissing and never meeting her request for information about Ms Holford's concerns, in the wake of excluding Mrs Robinson from the meeting with Ms Holford of 5 October 2010.

19 October 2010 Turner engages Ashdale Workplace Solutions

[213] On 19 October 2010 Ms Turner engaged Ashdale Workplace Solutions to conduct an independent review in response to the Holmes grievance.³⁸⁸ It is verging on surreal that the CEO eventually concluded she would incur the expense of an independent review into an earlier independent review in response to a complaint about the earlier independent review by a staff member the CEO understood to be manipulative and vexatious. It is difficult to avoid the impression that, despite the toll her inaction on Ms Holmes was taking on Mrs Robinson, Ms Turner was herself unwilling to deal firmly with Ms Holmes.

[214] As to her reasons for engaging Ashdale Workplace Solutions Ms Turner explained:

“ESU confirmed with us they had no issues with the conduct, referred it back to the HHS and then we – because I could see the writing on the wall that this was going to be a repeat of history, so we got onto this really quickly, which is why we then went to get another review done for this particular issue.”³⁸⁹

[215] It is quite plain that, contrary to Ms Turner's evidence, they had not moved “really quickly” at all. In any event, as already discussed, Ashdale Workplace Solutions was

³⁸⁸ T4-61 L18.

³⁸⁹ T4-61 L25.

not asked to investigate Ms Holmes' WIFs or that component of her grievance which alleged harassment and bullying by Ms Robinson.

October 2010 Robinson seeks counselling

- [216] Mrs Robinson testified she informed Ms Turner that she was seeking the assistance of a counsellor in late 2010, probably in November.³⁹⁰ Mrs Robinson sought assistance privately from clinical psychologist Lyn Roubos in around October 2010.³⁹¹ She evidently preferred this course to utilising the department's confidential counselling system available for the benefit of employees.³⁹² She also saw her general practitioner, Dr Donna O'Kane, during 2010.³⁹³ She was then diagnosed with type 2 diabetes but was not medicated for it at that stage.³⁹⁴ There is no suggestion her diabetes developed in consequence of any of the behaviours this case is concerned with.³⁹⁵
- [217] It will be remembered, as mentioned above, Ms Turner could recall a workshop in around November which Mrs Robinson was consistently leaving in tears.³⁹⁶ On Ms Turner's account of that workshop she followed Mrs Robinson out of the room and comforted and consoled her for lengthy periods. Ms Turner testified of her interaction with Mrs Robinson at this time:
- “She was describing things like that she couldn't trust anybody, that they were all trying to get at her, that – the stuff with Holmes and Holford – they were all going to conspire to, you know, have her, you know, do things that would make her lose her job and things like that. And I tried substantially to coach her to get her to see the reality of how she was seeing the world against the facts of the situation.”³⁹⁷
- [218] At a later stage of Ms Turner's evidence-in-chief she said of this interaction:
- “I felt that she needed a bit more support. I asked her whether we could assist her with some counselling. She indicated that she was already receiving counselling.”³⁹⁸
- [219] Ms Turner's knowledge of Mrs Robinson's need for support does not appear to have engendered any particular sympathy in her conduct towards Mrs Robinson in the closing stages of 2010.
- [220] By October 2010 Ms Perriman recalls talking to and “keeping an eye” on Mrs Robinson because she appeared upset in the workplace.³⁹⁹

³⁹⁰ T2-66 L44, T4-54 L40.

³⁹¹ T2-66 L4.

³⁹² T2-65 L42.

³⁹³ T2-66 L34.

³⁹⁴ T4-25 L25.

³⁹⁵ T4-8 L31.

³⁹⁶ T4-54 L4.

³⁹⁷ T4-54 LL25-31.

³⁹⁸ T5-25 L35.

³⁹⁹ T7-29 L37.

21 October 2010 Turner agrees to Robinson's proposal to separate Costello from Holmes

[221] In October 2010 Mrs Robinson discussed office moves with her staff involving, inter alia, moving Michelle Costello from the same office where Ms Holmes was located to a different office which she would share with Lisa Fletcher. Mrs Robinson's intention was to leave Ms Holmes in her existing office so as to avoid complaint by Ms Holmes.⁴⁰⁰ The plan included some consequential moves of staff including Verna Singleton. On 21 October 2010 Mrs Robinson emailed Ms Turner enquiring whether it would be okay to proceed with changes itemised in the email.⁴⁰¹ The defendant adduced evidence from Ms Jacobs, the then director of primary health care, that she was not consulted about office moves.⁴⁰² It is unclear if that evidence related to the limited number of moves contemplated in the email or more broad ranging moves but Ms Jacobs did witness Ms Singleton was upset about her office allocation.⁴⁰³ Mrs Robinson's email mentioned the difficulty of working with Ms Holmes and Ms Costello in the same room and the need to have Ms Costello and Ms Fletcher, who did not have a designated office, working from the one room. Ms Turner responded on the same date saying:

“That's fine go ahead. They spoke about it with me yesterday.”⁴⁰⁴

[222] Three days later on 24 October 2010 Ms Turner emailed Mrs Robinson indicating Ms Singleton was unhappy with the move of office that was planned for her and requesting Mrs Robinson work with Ms Woodham to move Ms Singleton to an alternative office.⁴⁰⁵ The email involved no challenge however to that aspect of the proposed move involving Ms Costello being moved from the office where Ms Holmes was located to a different office to be shared with Ms Fletcher.

[223] On 3 November Ms Turner emailed Ms Singleton and Ms Holmes indicating she had reviewed all options and telling them to progress with the office moves as planned by Mrs Robinson.⁴⁰⁶ Within a fortnight Ms Turner was to completely change her position about the office moves, giving Ms Holmes her way and humiliating Mrs Robinson.

15 November 2010 Turner overrides Robinson's preference at meeting re office move⁴⁰⁷

[224] On the morning of 15 November 2010 a meeting concerning office moves was convened at Weipa and presided over by Ms Turner. Ms Perriman, Ms Holmes, Ms Costello and some other staff members were present at Weipa and Mrs Robinson attended the meeting by telephone from Cairns.⁴⁰⁸ Near the outset of the meeting Ms Turner asked Mrs Robinson to explain why the moves were required and she explained

⁴⁰⁰ T3-78 L15, T3-82 L23.

⁴⁰¹ Ex 1 p 127.

⁴⁰² T6-27 L46.

⁴⁰³ T6-27 L23. Ms Jacobs also gave evidence at T6-27L38 of a complaint about the moves from Eddy Bobonghi, although it emerged as likely at T6-79 L36 that he was not being moved.

⁴⁰⁴ Ex 1 p 127.

⁴⁰⁵ Ex 1 p 128.

⁴⁰⁶ Ex 1 p 131.

⁴⁰⁷ SOC [6(xx-yy)].

⁴⁰⁸ T2-27 L1.

there was a need to accommodate Ms Fletcher so that Mrs Robinson could work with the patient safety and quality unit.⁴⁰⁹ She made no specific mention of her concerns about Ms Holmes contaminating Ms Costello by being in the same office.⁴¹⁰ Doubtless that was because Ms Turner was already aware of that concern and because it would provoke Ms Holmes who was present at the meeting. In response to Ms Turner's query of her, Ms Holmes said she was happy to move with the patient safety and quality staff or for them to move to her office.⁴¹¹ On Mrs Robinson's account Ms Turner then left the room with Ms Holmes while the rest of the meeting attendees talked amongst themselves. Ms Turner denied leaving the room for a private discussion with Ms Holmes⁴¹² but I accept Mrs Robinson's account that she did. Mrs Robinson testified that when they returned Ms Turner said she had made the decision that Ms Holmes could stay in the same office as the other patient safety and quality staff, which would have the consequence Ms Holmes could move to an office into which Ms Costello and Ms Fletcher had already moved.⁴¹³ Mrs Robinson testified Ms Turner asked Mrs Robinson in front of the meeting whether she had an opinion about that.

- [225] On Mrs Robinson's account she responded, "Well, yes, you know I have an opinion. However, Susan, I think we need to have – I need to discuss this with you outside the forum".⁴¹⁴ Ms Perriman confirmed in her testimony that Mrs Robinson did say something to that effect to Ms Turner.⁴¹⁵
- [226] Mrs Robinson testified Ms Turner initially said nothing and then said, "Well, no. What have you got to say?"⁴¹⁶ Mrs Robinson became distressed at being put in such a position and responded, "Well, you've made the decision. There's nothing else I can say."⁴¹⁷ The meeting concluded without change to Ms Turner's decision that Ms Holmes would move into the same office as Ms Costello and Ms Fletcher.⁴¹⁸
- [227] Ms Turner's decision to publicly contradict Mrs Robinson and place Ms Holmes in the same office as Ms Costello and Ms Fletcher, persons who were line managed by Mrs Robinson, seems inexplicable given Ms Turner's knowledge of Ms Holmes' vexatious and still unresolved pursuit of Mrs Robinson and its debilitating effects upon Mrs Robinson. It was also completely at odds with her email to Ms Holmes and Ms Singleton of 3 November maintaining the moves would proceed as planned by Mrs Robinson.
- [228] Mrs Robinson forwarded an email to Ms Turner the following morning saying she was "very upset and humiliated" by what had occurred during the meeting.⁴¹⁹ In the email Mrs Robinson reminded Ms Turner of the concerns Mrs Robinson had expressed before going on leave about the influence of Ms Holmes upon Ms Costello if left to share the

⁴⁰⁹ T2-29 L18.

⁴¹⁰ T2-29 L25.

⁴¹¹ T2-27 L39.

⁴¹² T4-71 L22.

⁴¹³ T2-28 L3.

⁴¹⁴ T2-28 L17.

⁴¹⁵ T7-15 L32.

⁴¹⁶ T2-28 L23, T3-79 L17.

⁴¹⁷ T2-28 L30.

⁴¹⁸ T7-15 L46.

⁴¹⁹ Ex 1 p 132.

same office and of Ms Turner's undertaking that they would be separated. The email also reminded Ms Turner that, on Mrs Robinson's return from leave, Mrs Robinson had expressed her ongoing concerns in respect of Ms Holmes, and of Ms Turner's undertaking that she would act to avoid Mrs Robinson being exposed to the risk of interaction with Ms Holmes. The email also reminded Ms Turner of her having authorised Mrs Robinson to organise the office moves. The email summarised what had occurred at the meeting of 15 November 2010:

“At this morning's meeting after Barbara Holmes raised her concerns you asked Barbara Holmes to leave the meeting and have a private discussion with you. On your return you advised that you thought it was appropriate that Barbara Holmes did move into the same office as Michelle Costello and Lisa Fletcher.

You then in front of Barbara Holmes and other staff, asked if I had any issue with that when I felt you would have been aware of my concerns. I stated that I did and that I thought it best that you and I also spoke outside the meeting. The response to this from you was a pregnant pause that effectively pushed me into saying I would therefore proceed to try and explain my concerns. I was of course understandably frightened and worried both professionally and personally about this, but felt I had no option. From my perspective I was damned if I did, and damned if I did not speak, I was humiliated whichever way.”⁴²⁰

[229] The defendant's counsel highlighted the inconsistency that, in this account of what occurred at the meeting, Ms Turner's response to Mrs Robinson's request to discuss the topic outside the meeting was a pregnant pause, that is, her email account did not specifically mention Ms Turner saying “no”.⁴²¹ Mrs Robinson maintained Ms Turner did say “no”.⁴²² The point is academic because it is obvious from the tenor of Mrs Robinson's email description of the event that, by her own conduct, Ms Turner did not agree to Mrs Robinson's request to discuss the matter outside the meeting. I am quite satisfied Ms Turner understood Mrs Robinson wanted to discuss her concerns about the matter outside the meeting and Ms Turner deliberately refused that opportunity to her.

[230] The email finished:

“In summary I felt undermined, humiliated and belittled in front of staff I directly line manage and others. Of course this was particularly humiliating in front of Barbara Holmes given the accusations against me by her, of which you are aware.

I was not given the same opportunity to have a private discussion with you that you gave Barbara Holmes and as such felt disadvantaged and at risk.

In previous conversations regarding the situation with Barbara Holmes you have told me that I am to trust you and you have assured me that I am safe. I did that and thought that I would be safe during this meeting, but the outcome is that I again do not feel safe.

⁴²⁰ Ex 1 pp 132-133.

⁴²¹ T3-80 L44.

⁴²² T3-81 L2.

Again I apologise for communicating with you via email but I know that I do not currently have the confidence in being able to articulate my concerns without being too emotional.”⁴²³

- [231] Ms Turner did not ever provide any type of response to Mrs Robinson’s email.⁴²⁴ Ms Turner noticed during the meeting that Mrs Robinson was “clearly not happy with the outcome of the final decision...That Costello and Holmes would be in the same room”.⁴²⁵ Ms Turner testified Mrs Robinson spoke with her at some time after the meeting, saying she was not happy with the decision because Holmes would unduly influence Costello and cause grief for her.⁴²⁶ Ms Turner testified she explained she had performed her “own due diligence of the situation” and did not consider Costello would be unduly influenced by Holmes and that the needs of the organisation and the needs for space overrode Mrs Robinson’s issues which Ms Turner described as “unfounded concerns” and “perceptions of something that hadn’t happened”.⁴²⁷
- [232] Ms Turner’s explanation that she had simply acted to correct a situation in which she found Mrs Robinson had not sufficiently consulted⁴²⁸ suggests she disregarded the significance and impact of Ms Holmes’ vexatious and unresolved pursuit of Mrs Robinson and provides no sensible explanation for why she chose to treat Robinson and Holmes so differently at the meeting on the 15th.
- [233] A consideration which obviously influenced Ms Turner’s approach to the issue of office allocation in respect of Holmes and Costello is that on 10 November 2010 Ms Holmes submitted a further WIF against Mrs Robinson.⁴²⁹ That WIF annexed copies of emails in relation to the office moves, along with a letter by Ms Holmes to Ms Turner commencing:
- “It is with great regret that I have to again raise concerns of an incident in which I feel that I have been treated less than fairly by the District Director of Nursing – Ms Robinson.”
- [234] The letter goes on to discuss the recent history of communications about the office moves, complaining, inter alia, of a lack of consultation and asserting the issue “could have easily been avoided if staff had been called to a meeting in which they were advised as to the need for the change, given an opportunity to put forward suggestions and be part of the decision”. The letter concludes:
- “As I have previously submitted a quantity of incident reports regarding less than favourable treatment of myself by Ms Robinson to which I have as yet had no response, I respectfully request that I am given an assurance by yourself that these behaviours towards myself will cease immediately.”

⁴²³ Ex 1 p 133.

⁴²⁴ T2-30 L15.

⁴²⁵ T4-71 L35.

⁴²⁶ T4-71 L40.

⁴²⁷ T4-71 L45 – T4-72 L4.

⁴²⁸ T5-8 L20.

⁴²⁹ Ex 16.

[235] Also annexed to the WIF was a more personal email by Ms Holmes to Ms Turner commencing, “Hi Susan”. The email also addressed the topic of the moves and asserted Mrs Robinson was trying to professionally isolate Ms Holmes. It concluded with a mix of ingratiation and implied threats of adverse consequences:

“I have therefore sought the advice of the QNU and I will be going home as I cannot work in this environment, I will be seeking medical advice for leave due to stress caused by the long and protracted review, bullying and harassment by Ms Robinson and now professional and physical isolation. I apologise for this as you have been nothing but supportive and I appreciate your honesty. If you want to contact me I will be in the building for about another hour then I’ll be able to be contacted at home on ...”

[236] The rear of the WIF contains the endorsement by Ms Turner in the incident investigation and management review section “Action taken in meeting to resolve issues”. Curiously, Ms Turner’s endorsement is not dated, although in the Department head comments section the date 15 November 2010 – the date of the above discussed meeting – is endorsed in the OHS Unit comments of the incident investigation section of the form. Helen Reed, in an endorsement dated 28 February 2011, after Mrs Robinson had left the workplace, endorsed the WIF “Action was taken, meeting held to solve issues”. Ms Reed acknowledged in cross-examination that there had been no investigation of the allegation in Ms Holmes WIF that Mrs Robinson was isolating her.⁴³⁰ She recalled there had been a discussion with Ms Turner to the effect there would be no point in investigating it.⁴³¹

[237] Ms Turner’s isolating treatment of Mrs Robinson in the meeting of 15 November 2010 makes much more sense in the light of the contents of Holmes’ WIF of 10 November 2010. So too does her otherwise astonishing decision announced at that meeting, completely contrary to the decision she informed Ms Holmes of by email on 3 November. The conclusion is irresistible that once Ms Holmes lodged her WIF of 10 November Ms Turner was much more concerned for her self interest in placating the notoriously problematic Ms Holmes than for the welfare and standing in the workplace of her District DON.

[238] Ms Turner’s conduct in connection with the meeting is pleaded in the SOC paragraph 10(h) as humiliating and undermining. Ms Turner isolated and undermined Mrs Robinson at the meeting of 15 November 2010 by her public reversal of Mrs Robinson’s allocation of offices designed to avoid contact between Mrs Robinson and Ms Holmes. She also humiliated and undermined Mrs Robinson at the same meeting by not according Mrs Robinson the same opportunity for private discussion with her outside she accorded Ms Holmes.

16 November 2010 Turner moves to return Holmes temporarily to clinical work over Christmas

[239] Throughout 2010 Ms Holmes had been away from her substantive position. There was little evidence of the actual reason for that, though it might have been assumed to be the

⁴³⁰ T7-79 L32.

⁴³¹ T7-77 L12.

recommendations of the PsyCare review. However Ms Holmes' return to work co-ordinator, Ms Reed, was clearly not of that impression.⁴³² She testified the aftermath effects of Ms Holmes' physical injury, for which she had been off work entirely in late 2009 and early 2010, precluded her from performing her usual physical duties during 2010 and that is why she was in an alternate position.⁴³³ Ms Holmes had provided medical certificates during 2010 certifying to her physical inability to perform her usual role and Ms Reed was co-ordinating Ms Holmes' potential return to her clinical work role by reference to that recovery issue, not the issues identified about Ms Holmes in the PsyCare report.⁴³⁴ By 16 November 2010, only the day after Ms Turner had given Ms Holmes her way over office moves, it was contemplated by Ms Turner that Ms Holmes could return to a clinical role.

[240] On that date Ms Turner emailed Joanne Briggs, the Acting NUM at Weipa, carbon copying the email to Mrs Robinson, saying:

"I am not sure if you are aware but Barbara Holmes' substantial position is the Nurse Unit Manager in Weipa. This is the position that Wendy is currently in as Acting NUM. Barbara is working for me on the clinical governance project until we complete the 360 review which has just been completed and then from there determine the next steps i.e. whether she returns to this role or another. She would like to undertake some clinical work over Christmas, and I have agreed this with her subject to your approval, and that there are clinical areas that she can work on. I think she wants to be rostered on. I gather that other nurses will want the holiday period off so this may be of some assistance to your rostering. Can you please consider this and get back to me on whether this is okay with you."⁴³⁵ (emphasis added)

[241] Mrs Robinson had become aware of Ms Turner's proposal to roster Ms Holmes on at Christmas from staff who came to her concerned for their safety. Yet again, Ms Turner had failed to consult Mrs Robinson. When cross-examined on the point Ms Turner was unable to explain why she had not consulted Mrs Robinson.⁴³⁶

[242] On 16 November 2010 Mrs Robinson responded to her carbon copy of the abovementioned email by way of an email to Ms Turner, saying:

"I am extremely concerned about this ... can we please discuss it. I accept you are the DCEO but surely we should wait until the outcome of last week's review before she goes back to those staff. Some of them are already worried since you advised that she would go back there."⁴³⁷

⁴³² T7-84 L35.

⁴³³ T7-84.

⁴³⁴ T8-84 L42 – T8-85 L3.

⁴³⁵ Ex 4.

⁴³⁶ T5-53 L18.

⁴³⁷ Ex 4.

- [243] In the end result, at Mrs Robinson's suggestion, Ms Holmes was rostered on to perform some clinical work over Christmas at Mapoon, the clinical outpost about 750 kilometres north of Weipa.⁴³⁸
- [244] Of itself this episode is of relatively minor note. In the light of surrounding events however it was part of a pattern of isolating Mrs Robinson, in this instance not consulting her and circumventing her in communicating with staff she line managed in respect of the operational assignment of Ms Holmes.
- [245] According to Ms Turner there came a time when she told Mrs Robinson that Ms Holmes and Ms Holford had to return to the workplace,⁴³⁹ in response to which Mrs Robinson made it clear she did not want them coming back and wanted Ms Turner "to sack them".⁴⁴⁰ Mrs Robinson denied saying she wanted them sacked and I accept she did not say it.⁴⁴¹ On Ms Turner's account when she told Mrs Robinson she could not sack them, Mrs Robinson responded, "I'm going to go on WorkCover on stress leave and I'm going to do you", to which Ms Turner responded, "[Y]ou just have to do what you have to do, and I have to do what I have to do."⁴⁴² The above review of the events during 2010 makes it plain that Mrs Robinson repeatedly expressed concerns about the prospect of the return to workplace of Ms Holmes in particular. However, Ms Turner's claim to the effect Mrs Robinson threatened to go on stress leave and "do" Ms Turner, denied by Mrs Robinson,⁴⁴³ was not credible and I reject it.

6 December 2010 Turner asks DONs' meeting what Robinson had said about her job⁴⁴⁴

- [246] On about 3 December 2010, in the aftermath of a DONs' forum, Ms Turner told Mrs Robinson there was to be a meeting with the DONs at 10 am on the following Monday, 6 December 2010.⁴⁴⁵ Mrs Robinson asked whether there was an issue, to which Ms Turner responded, "Apparently the DONs have got some management problems with me."⁴⁴⁶
- [247] In fact it appears Ms Turner's actual concern lay with something Mrs Robinson allegedly told the DONs about Ms Turner. On Ms Turner's account, because of national health reforms creating board-run hospital services, chief executives had to reapply for their positions. She was advised by a number of the DONs that they had attended a meeting with Mrs Robinson at which she had said she had inside information that Ms Turner was not going to be reappointed to her position and they did not have to worry about her at all.⁴⁴⁷

⁴³⁸ T2-41 L1.

⁴³⁹ T4-61 L45.

⁴⁴⁰ T4-62 L2.

⁴⁴¹ T3-66 L5.

⁴⁴² T4-62 L11.

⁴⁴³ T3-66 LL20-25.

⁴⁴⁴ SOC [6(zz-aaa)].

⁴⁴⁵ T2-33 L23.

⁴⁴⁶ T2-33 L43.

⁴⁴⁷ T4-72 LL20-28.

[248] Mrs Robinson testified she said no such thing.⁴⁴⁸ This was contradicted by Ms Lyn Layton, the DON at Lockhart River in that era. She testified for the defendant that at one of the three-monthly DONs' meetings or forums in December 2010 at Cairns Mrs Robinson had said of Ms Turner, "We have to get her out, and she's reapplying for the ... position and she's not going to get it."⁴⁴⁹ On her own account, the first time Ms Layton was called upon to recall that alleged event was in 2016. Surprisingly though, she could not recall the much more memorable event of Ms Turner raising the alleged comment at an ensuing meeting with the DONs and Mrs Robinson.⁴⁵⁰ Indeed she testified that if such a matter had been raised by Ms Turner it would not have been raised in front of Mrs Robinson by Ms Turner.⁴⁵¹ In fact Ms Turner did raise the topic in front of Mrs Robinson.

[249] I accept Mrs Robinson did not make the alleged comment. It is likely the topic of the CEO having to apply for her own position was the subject of conversation amongst the DONs and Mrs Robinson, perhaps even at one of their meetings, and that such a discussion became contorted in gossip which reached Ms Turner and, years later, in the variable memory of Ms Layton.

[250] Ms Turner included reference to Mrs Robinson's alleged comments in an email she sent on the morning of 6 December 2010 to the department's senior human resources officer, Dulise Maxwell, in which she wrote:

"I have a significant problem with the Cape York District Director of Nursing, Mary-Rose Robinson. I received feedback from some of the Directors of Nursing about comments that she has made about myself at a DON meeting last week as follows:

"I would have to reapply for my role in March next year and she (Mary-Rose) has been told I will not get the job. All they have to do is hang tight and not do anything I ask them to do."

Clearly I find this unacceptable and undermining of myself in my role as DCEO. I have a teleconference this morning with the DONs and DDON to confront this issue. I wanted to seek your advice on the course of action I'm able to take should this be confirmed.

I'm constantly dealing with complaints on her behaviour and she is also the subject of an independent investigation on how she managed two staff which has resulted in significant costs to QH. The preliminary findings indicate she carried out an unfair process.

I clearly have no confidence in her within this role and I would like to discuss this further with you on the options available to me."⁴⁵² (emphasis added)

[251] The email does more than explain why Ms Turner was convening the meeting. It reveals Ms Turner was prepared to completely misrepresent the truth about Mrs Robinson. There is no evidence she was constantly dealing with complaints about Mrs Robinson. It was also manifestly wrong to state it was Mrs Robinson who was the

⁴⁴⁸ T4-9 L28.

⁴⁴⁹ T6-15 L38.

⁴⁵⁰ T6-17 LL35-45.

⁴⁵¹ T6-18 L1.

⁴⁵² Ex 1 p 134.

subject of an independent investigation and that she had carried out an unfair process. The following exchange in the course of her evidence illustrates her inability to satisfactorily explain away the point:

“HIS HONOUR: Well, before we leave that, you say there she’s also the subject of an independent investigation on how she managed two staff. What independent investigation is that a reference to?--- Sorry, what was the question?

You say that she’s also the subject of an independent investigation on how she managed two staff?--- Yeah, that would be the---

What’s that a reference to?--- The – that PsyCare second review.

MR O’SULLIVAN: That’s the Ashdale review?--- Yeah, or the Ash review, yes.”⁴⁵³

[252] It is clear the Ashdale review was not an investigation into how Mrs Robinson had managed two staff and rather was a review of Ms Holmes’ complaints about her treatment during the PsyCare review, a review which had plainly occurred with the authority of the former CEO.

[253] Ms Turner gave additional insight into the extent of her animosity towards Mrs Robinson when asked whether the contents of the email were accurate. She responded:

“Absolutely. There were a whole series of events that had occurred, not just – this was the icing on the cake for me. I had had the Queensland Nurses Union approach me to say that nurses were being approached by Mary-Rose Robinson to join her in action against me, to get rid of me and to make allegations through the Crimes and Misconduct Commission, which ultimately happened in the end – not to get rid of me, but I had to deal with a number of CMC complaints about me.”⁴⁵⁴

[254] Mrs Robinson knew nothing of allegations made against Ms Turner to the CMC.⁴⁵⁵

[255] The meeting proceeded at Weipa on 6 December 2010, with Weipa based staff including Ms Turner and Mrs Robinson physically present, and DONs from other centres in the region attending by teleconference. On Mrs Robinson’s account Ms Turner asked the DONs whether Mrs Robinson had been speaking to them at the DONs’ forum about Ms Turner having to apply for her job.⁴⁵⁶ A number of persons present immediately replied that they were not party to any such conversation with Mrs Robinson about that.⁴⁵⁷ Ms Turner testified she did not name Mrs Robinson⁴⁵⁸ but I accept Mrs Robinson’s account. Mrs Robinson was alarmed and asked Ms Turner not to go ahead with the conversation and requested they discuss it outside, but Ms Turner was dismissive of her, telling her to shush up and not make a fuss.⁴⁵⁹ Mrs Robinson felt

⁴⁵³ T4-74 LL11-28.

⁴⁵⁴ T4-73 LL20-26.

⁴⁵⁵ T3-6 LL22-31, T3-7 L25.

⁴⁵⁶ T2-32 L47.

⁴⁵⁷ T2-33 L1.

⁴⁵⁸ T5-96 L9.

⁴⁵⁹ T2-33 LL5-13.

humiliated and undermined by Ms Turner raising this topic with the DONs without having raised it with her directly in the variety of opportunities she had had since the forum to speak alone with Mrs Robinson.⁴⁶⁰

- [256] On 13 January 2011 someone anonymously left a hard copy of the above email under Mrs Robinson's office door, where she found it.⁴⁶¹
- [257] The SOC paragraph 10(i) alleges Ms Turner's conduct at the meeting of 6 December 2010 involved false accusation and humiliating and undermining. It had all of those qualities.

*9 December 2010 Turner removes risk management from Robinson's area of responsibility*⁴⁶²

- [258] On or shortly before 9 December 2010 one of Mrs Robinson's staff came to her enquiring about a memorandum Mrs Robinson had not seen, about the responsibility for risk management being moved from Mrs Robinson's role to that of the Director of Corporate Services, a position in which Dani Hoins was then acting. The staff member wanted to know whether the memorandum meant she should go to Mrs Robinson any more or whether she should go to Dani Hoins.⁴⁶³ Mrs Robinson procured a copy of the memorandum from Ms Hoins.⁴⁶⁴
- [259] The memorandum appears to have been a memorandum by Ms Turner of 24 September 2010 to the Director-General, acknowledging a memorandum by him of 23 September 2010 regarding a failure to address issues in the risk register for the district. The memorandum explained that to remedy the situation Ms Turner had reviewed or would review the position description of the Director of Corporate Services to include executive responsibility for the risk management function.⁴⁶⁵ Mrs Robinson, who had been the member of the executive responsible for the risk management function since soon after Ms Turner's arrival, was not informed of this change.
- [260] Feeling humiliated and undermined, Mrs Robinson emailed Ms Turner on 9 December 2010, saying:

"I have just received a copy of a memo that shows that risk management is no longer managed by the DDON in Cape York.
I know you will be cranky with me for asking but it really is concerning that I'm not being consulted or given any chance to defend myself.
I am aware that this area would have been behind due to not having a PS & QO. Now that I have someone in the role this would have been identified and well corrected and managed by both myself and Lisa.
I am committed to Cape and your team but this type of treatment is very damaging to an individual.

⁴⁶⁰ T2-33 LL15-30.

⁴⁶¹ T2-31 L16.

⁴⁶² SOC [6(bbb)].

⁴⁶³ T2-35 L27.

⁴⁶⁴ T2-55 L18.

⁴⁶⁵ Ex 7.

I don't believe either yourself or anyone else would feel any different than I do about this type of thing.
Thanks in advance for some clarification."⁴⁶⁶

[261] Ms Turner responded to the following effect by email a short time later:

"The DOCS' role in my view manages the whole of the district risk. This system has to incorporate all risk which includes corporate and clinical risk. Their job is to bring it altogether in a district wide plan and monitor compliance for me. It does not negate your responsibility for clinical risk you are still responsible for this but for a whole district I need a single accountability. I would therefore expect that the plan is done in consultation with you and that this area is your accountability but the co-ordination and compliance which is reporting would come from the DOCS.
If you are not being consulted and this is not clear from Dani to you then I will clarify it with her."⁴⁶⁷

[262] Ms Turner's email therefore dealt with why the change had occurred, but not with the problem that she had not consulted with Mrs Robinson about the change. The notion implicit in Ms Turner's email that it was for Ms Hoins, the member of the executive to whom the role had been moved, to consult Mrs Robinson, another member of the executive, about that fact without Mrs Robinson's CEO first flagging with her what was going to occur, is of itself surprising. However, it is even more extraordinary given Ms Turner's knowledge of Mrs Robinson's fragility by this time.

[263] The SOC paragraph 10(g) pleads this episode involved a failure to consult, which it was. Considered in light of the other conduct the announcement of the decision to staff without first consulting and informing Mrs Robinson was a further instance of the undermining and isolation of Mrs Robinson.

*21 December 2010 Turner and Hoins delay filling Robinson's ESO position*⁴⁶⁸

[264] In late 2010 Sandy Quinn, Mrs Robinson's ESO, secured a new position. Mrs Robinson moved to advertise the position promptly, concerned that otherwise the looming Christmas break would delay the process.⁴⁶⁹

[265] On 21 December 2010 Danielle Hoins, then acting CEO, emailed Ms Turner, who was on leave, about having just received a request to permanently fill the position of executive support officer ("ESO") to Mrs Robinson. The email expressed concern that if that position was filled they "may end up with a surplus officer" in a new structure being implemented, "given there is already an ESO to the DON at Weipa". The email ended with a reference to "MR", being Mrs Robinson, and a discreditable intimation her request could be deliberately misplaced:

⁴⁶⁶ Ex 1 p 135.

⁴⁶⁷ Ex 1 p 135.

⁴⁶⁸ SOC [6(eee)].

⁴⁶⁹ T2-36 L20.

“But if I sit on it MR will smell a rat, of course I could conveniently miss place (sic) the paperwork to give us some breathing space (happens all the time!!) let me know your thoughts ...”⁴⁷⁰

- [266] What the new structure referred to in the email was to be and what role, if any, the position of District DON had in it was not elaborated upon in the email. It might have been a reference to a plan Ms Turner was contemplating whereby Mrs Robinson’s position of District DON would be abolished and replaced with two nursing leadership roles to lead strategic and operational nursing matters.⁴⁷¹ Nor did the email identify the causal link between the DON at Weipa “already” having an ESO and the risk that they “may” end up with a surplus officer. Ms Hoins’ testimony about her unattractive email was no more enlightening. She testified, inconsistently with the email, that they “already had” – not may have ended up with – “a surplus officer ... ready to put into” the position of ESO to Mrs Robinson, so she did not want to approve Mrs Robinson’s request to fill the position.⁴⁷² If that testimony was correct then the situation was innocuous and it begs the question why Ms Hoins could not simply have told Mrs Robinson there was a surplus ESO ready to fill the position.
- [267] Ms Turner responded to Ms Hoins’ email on the same day, saying, “I will reply to her and say you have referred it to me”.⁴⁷³
- [268] Later that afternoon Ms Turner emailed Mrs Robinson saying she preferred to leave the advertising of Mrs Robinson’s ESO role to after the holidays and budget discussions and enquiring whether there was anyone who could “fill in for a few months”.⁴⁷⁴ Mrs Robinson responded acquiescently that she was happy not to advertise if that was Ms Turner’s preference. She noted that Ms Jacobs’ ESO position had been advertised and asked whether the filling of “both” ESO positions was being put on hold.⁴⁷⁵ Ms Turner informed Mrs Robinson that the filling of Ms Jacobs’ ESO position was not being postponed.⁴⁷⁶
- [269] It is beyond doubt Mrs Robinson’s demanding position required the support of an ESO and it is notoriously less disrupting and more efficient to engage and develop work patterns with a permanently appointed rather than temporary secretary. That Mrs Robinson was to be deprived of such an appointment but Ms Jacobs was not, could only have fuelled Mrs Robinson’s perception Ms Turner was in reality positively unsupportive of her. She would hardly have been disabused of that perception when she eventually became aware of Ms Hoins’ email to Ms Turner and Ms Turner’s reply. A hard copy of that email exchange was found by Mrs Robinson after it had been left anonymously under her office door, with the above discussed email to Dulise Maxwell of 6 December 2010, on 13 January 2011.⁴⁷⁷

⁴⁷⁰ Ex 1 p 136.

⁴⁷¹ T5-35 L23.

⁴⁷² T6-87 LL17-28.

⁴⁷³ Ex 1 p 136.

⁴⁷⁴ Ex 1 p 137.

⁴⁷⁵ Ex 1 p 137.

⁴⁷⁶ T2-37 L34.

⁴⁷⁷ T2-31.

Mrs Robinson's emotional state

[270] The distress occasioned to Mrs Robinson by her dealings with Ms Turner had become obvious to Ms Turner's secretary, Cherie Woodham, as 2010 had progressed. The offices of Ms Turner, Ms Woodham and Mrs Robinson were configured closely, so that Ms Woodham could see Mrs Robinson coming and going from Ms Turner's office.⁴⁷⁸ She noticed nothing abnormal when Ms Turner first started and Mrs Robinson had to meet with her, but as the year progressed Ms Woodham observed the relationship between the two women deteriorate.⁴⁷⁹ Mrs Robinson would often be seen leaving Ms Turner's office obviously upset, in an obviously different state than when she had arrived.⁴⁸⁰ Towards the end of Mrs Robinson's tenure, she would often leave Ms Turner's office upset, obviously distressed, appearing variously to be crying, red-faced, angry and dishevelled.⁴⁸¹ It was apparent to Ms Woodham that Mrs Robinson's desire to avoid chance encounters with Ms Turner was illustrated in one instance when Ms Woodham found Mrs Robinson peeking around the doorway of her office and she asked Ms Woodham whether Ms Turner was around. She was wanting to go to the toilet but being cautious in case Ms Turner was about.⁴⁸²

[271] This is consistent with the following evidence of Mrs Robinson:

“There was one occasion when I heard Susan Turner's voice in the corridor and I could feel my heart racing. When I had to meet with her I would feel tense all over. There were times that I would shake and get flustered and feel lightheaded.

There were times that I found myself pacing a room when I needed to go to the bathroom as I was worried about running into Susan Turner. I would keep my office door closed to avoid an unplanned, unprepared meeting with her.”⁴⁸³

[272] In the lead-up to ceasing work Mrs Robinson's sleep was poor. She had variable appetite. She struggled to make decisions, could not concentrate and was not as sharp and able to recall details as she used to be. She would become easily tearful. She felt vulnerable and worried how her vulnerability would affect her capacity to perform well at work. She had become anxious about any form of contact with Ms Turner.⁴⁸⁴

PsyCare Stage 3 and the Ashdale review

[273] Before progressing to the events of early 2011 it is timely to note the then progress of two external review processes.

⁴⁷⁸ T3-47 L5, L8. ??

⁴⁷⁹ T3-47 L25.

⁴⁸⁰ T3-47 L26.

⁴⁸¹ T3-47 LL40-45.

⁴⁸² T3-49 L12.

⁴⁸³ Ex 5 p 4 [32, 33] – errors in tense corrected.

⁴⁸⁴ Ex 5 p 4 [30-33].

- [274] Mrs Robinson understood that as a result of the initial PsyCare report there was to be a follow-up process involving an auditing of the functioning at Weipa Hospital.⁴⁸⁵ She recalled two follow-up visits, one where information was delivered to staff and the other where questions were asked of how staff now were.⁴⁸⁶ That activity by PsyCare gave rise to a so-called “Organisational Health Review Remeasure Final Report – Stage 3”, addressed to Ms Turner and dated 2 December 2010.⁴⁸⁷ The report did not specifically address the issue of the extent to which PsyCare’s earlier recommendations about Ms Holmes had been followed, its focus being more general. However, it did note some staff had raised concerns regarding the potential return of Ms Holmes to her substantive position.⁴⁸⁸
- [275] Mrs Robinson was also aware there was review of the PsyCare process undertaken by Ashdale.⁴⁸⁹ She understood the Ashdale review had been completed prior to her leaving the workplace in early 2011 but was never provided with a copy of the report.⁴⁹⁰ It had been completed. It will be recalled the Ashdale Review had been instigated in response to that component of Ms Holmes’ grievance which complained the PsyCare review was flawed and she was treated unfairly by and during it. The Ashdale Review report,⁴⁹¹ dated 6 January 2011, found there was insufficient evidence to support Ms Holmes’ complaints.⁴⁹²
- [276] While neither of these two external review processes were expressly concerned with whether it would be a good idea to return Ms Holmes to her substantive position, Ms Turner could not have regarded either resulting report as positively supporting such a conclusion.

12 January 2011 Turner tells Robinson that Holmes will return to her NUM role⁴⁹³

- [277] Prior to going on leave, Mrs Robinson had discussed with Karen Jacobs, who had a role in relation to outreach primary health care, to the effect that Ms Holmes, who is very dedicated to midwifery, would be suited to a role as an Outreach clinical nurse consultant, a role dealing predominantly with maternity and which was at an equivalent level to a NUM.⁴⁹⁴ This led to communication between Ms Turner and Mrs Robinson to the effect that Ms Holmes could be considered for such a position.⁴⁹⁵ There was no suggestion before Mrs Robinson went on leave that Ms Turner was of a mind to return Ms Holmes to her substantive position. Yet, while Mrs Robinson was on leave, Ms Turner announced her decision to do just that.

⁴⁸⁵ T2-42 L36.

⁴⁸⁶ T2-42 LL37-43.

⁴⁸⁷ Ex 23.

⁴⁸⁸ Ex 23 pp 3, 4, 10, 11.

⁴⁸⁹ T2-42 L26.

⁴⁹⁰ T2-43 LL8-32.

⁴⁹¹ Ex 1 pp 139–278.

⁴⁹² Ex1

⁴⁹³ SOC [6(fff)].

⁴⁹⁴ T4-14 LL1-6, T4-14 L45 – T4-15 L8.

⁴⁹⁵ T4-15 L6.

- [278] On Friday 7 January 2011, the last day before Mrs Robinson was due to return from leave on Monday 10 January,⁴⁹⁶ Ms Turner held a meeting with Weipa hospital nursing staff which was also attended and file noted by Ms Perriman.⁴⁹⁷ Incredibly, Ms Turner informed the meeting that Ms Holmes would return to work as the Weipa NUM on 14 February 2011.⁴⁹⁸ Ms Reed, as Ms Holmes' return to work co-ordinator, had no involvement in the decision making about what position Ms Holmes would return to; the decision to return Ms Holmes to her substantive position was Ms Turner's.⁴⁹⁹ Ms Turner made the claim she had been advised, "probably" by Ms Perriman, that Ms Holmes should be put back in her substantive role.⁵⁰⁰ I did not believe her. She conceded in any event that the ultimate decision was hers.⁵⁰¹ Her evidence varied as to whether she had made her decision before or after receipt of the PsyCare stage 3 report, dated 6 January.⁵⁰²
- [279] She testified that by the time of her decision she "felt that things were settling down with" Ms Holmes and Ms Holford, that they had stopped their concerning conduct,⁵⁰³ and their conduct could be managed.⁵⁰⁴ Despite this unbelievable testimony blending reference to Ms Holford in with Ms Holmes, as Ms Turner sometimes did in her evidence, there is no disguising the reality that "things" were far from settled in respect of Ms Holmes by this time. As recently as November Ms Holmes had submitted a further WIF against Mrs Robinson and the ink would barely have been dry on the Ashdale Review report's finding against Ms Holmes' grievance about the PsyCare process. At one stage of cross-examination Ms Turner claimed she weighed up the Ashdale Review report in making her decision to return Ms Holmes to her substantive position but when pressed she could not recall how.⁵⁰⁵ Nor for that matter could she recall whether she gave the PsyCare report any weight by that time.⁵⁰⁶ Plainly she gave it no weight.
- [280] Given all that had transpired this innately controversial decision was obviously not a properly considered or credibly founded managerial decision. The absence of any documentary evidence from the defendant to show it was the product of a good faith managerial process is unsurprising. The lack of managerial integrity underlying the decision is also exposed by the fact Ms Turner did not wait to consult the absent Mrs Robinson about it. She could not explain that lack of consultation.⁵⁰⁷ Ms Turner chose to make the non-urgent announcement of this decision on a Friday when she would have well appreciated Mrs Robinson was due back at work on the following Monday. It was unedifying conduct for a CEO. It was a further illustration, if any more were needed, that Ms Turner had abandoned any pretence of support for her District DON.

⁴⁹⁶ Ex 5 p 3 [20].

⁴⁹⁷ Ex 32.

⁴⁹⁸ T7-30 L25

⁴⁹⁹ T7-85 L45 – T7-86 L5.

⁵⁰⁰ T5-9 L30, T5-48 LL33-38.

⁵⁰¹ T5-49 L11.

⁵⁰² T5-50 L16, T5-52 L6.

⁵⁰³ T5-51 LL 35-43.

⁵⁰⁴ T5-52 L27.

⁵⁰⁵ T5-57 LL7-21.

⁵⁰⁶ T5-57 L32.

⁵⁰⁷ T5-58 L9.

[281] On 11 January 2011, the day after returning from leave on Monday 10 January 2011, Mrs Robinson emailed Ms Turner seeking an update on job allocations for Ms Holford and Ms Holmes saying:

“Are you able to tell me what is happening with Sharon Holford and Barbara Holmes?
Before you went on leave you told me Sharon was going to Napranum.
Last time I asked you about Barbara you were going to see if she would consider Outreach.”⁵⁰⁸

[282] Ms Turner testified that both she and Mrs Robinson had not wanted Ms Holmes to return to her NUM role and considered a clinical nurse consultant Outreach role for her in maternal health would be appropriate.⁵⁰⁹ On Ms Turner’s account she raised that option with Ms Holmes who rejected it.⁵¹⁰ How Ms Holmes’ rejection of that offer supported the restoration of Ms Holmes to the very position from which she sparked such difficulty in the first place is not apparent.

[283] Ms Turner responded to Mrs Robinson’s email of 11 January by email on Wednesday 12 January 2011 advising in the following terms that Ms Holmes was returning to her NUM role:

“I wanted to catch up with you but you did not look well at all. Sharon is taking the detox role in MHATODS for return to work but ultimately does not want to return to her DON role. Nicky and I have an approach to deal with that. I believe she starts soon. Barbara will return to her NUM role on 14 Feb and I have let the staff know.
I will meet with you next week to discuss in more detail.”⁵¹¹ (emphasis added)

[284] There had been no consultation of Mrs Robinson by Ms Turner about Holmes’ return to her substantive position nor had Mrs Robinson been involved in the method by which staff were told.⁵¹² Mrs Robinson first learned that Ms Holmes was returning to her NUM role from her staff.⁵¹³ Mrs Robinson testified staff went to her expressing their concern and distress about the news Ms Holmes was returning, given that they had an undertaking they would not be exposed to Ms Holmes after the PsyCare report.⁵¹⁴ That a decision had been taken and staff notified before it had even been discussed with Mrs Robinson was predictably humiliating to Mrs Robinson.⁵¹⁵

[285] Less significantly, but illustrative of Ms Turner’s lack of credibility as a witness, is Ms Turner’s reluctance to concede the obvious point, inherent in the above email’s opening sentence, that Mrs Robinson had appeared so unwell Ms Turner did not want to talk to her about the topic of Ms Holmes return.⁵¹⁶

⁵⁰⁸ Ex 1 p 138.

⁵⁰⁹ T4-79 L32.

⁵¹⁰ T4-80 L37.

⁵¹¹ Ex 1 p 138.

⁵¹² T2-38 L31.

⁵¹³ T4-16 L13, T3-85 L2.

⁵¹⁴ T2-38 L45, T3-87 L23.

⁵¹⁵ T3-89 LL25-41, T3-90 L15, T3-91 L27.

⁵¹⁶ T5-33 L22 – T5-34 L19.

[286] Mrs Robinson met with Ms Turner on Thursday 13 January 2011⁵¹⁷ when, on Mrs Robinson's account, she told Ms Turner:

“[T]hat I was very concerned that she was returning Barbara Holmes to the NUM position given what we had been advised by PsyCare and it had actually implemented to remove her from the workplace, that why were we returning her without the actual response from the Ashdale ... review ...? ... I was concerned that we were taking this step before we had the Ashdale outcome.”⁵¹⁸

[287] On Mrs Robinson's account Ms Turner responded that she was going ahead with her decision.⁵¹⁹ In evidence which I did not believe, Ms Turner claimed that in fact she told Mrs Robinson she would go back to Ms Holmes and speak with her again.⁵²⁰ On Ms Turner's account she did speak with Ms Holmes again and succeeded in persuading her that Ms Holmes should take the Outreach role.⁵²¹

[288] Whether there really was such a change of plan and whether, if there was, it was made after Mrs Robinson's departure from the workplace, as Ms Turner may have increasingly realised how extreme her conduct towards Mrs Robinson would appear, were not issues that were explored at trial. In any event, even if Ms Turner did subsequently have such a conversation with Ms Holmes, the relevant point is that it was not something which was communicated to Mrs Robinson before she finally departed from the workplace on 17 January 2011 or, for that matter, after.⁵²² Ms Turner clearly conveyed the singular position to Mrs Robinson that she would proceed with her decision to restore Ms Holmes to her substantive position.

[289] The decision to restore Ms Holmes to her substantive position, a position line managed by a DON who in turn was line managed by Mrs Robinson, made it inevitable Mrs Robinson would be exposed to direct and indirect managerial contact with Ms Holmes in the workplace. Such a situation was clearly untenable while Ms Holmes' complaints against Mrs Robinson remained unresolved. The SOC paragraph 10 identifies as a particular of negligence the defendant's failure to ensure the plaintiff was not placed in a work situation involving Ms Holmes. Such failure was inherent in the decision to restore Ms Holmes to her substantive position. The decision to restore Ms Holmes to her substantive position while Ms Holmes' complaints in her WIFs against Mrs Robinson remained unresolved was inevitably isolating of Mrs Robinson. The making and announcing of that decision without first consulting or advising Mrs Robinson about it also humiliated and isolated Mrs Robinson. In light of past events it showed a contemptuous disregard towards Mrs Robinson and the responsibilities of her position.

Turner unreliable

⁵¹⁷ T3-87 L11.

⁵¹⁸ T2-39 LL10-15, T3-89 L6.

⁵¹⁹ T2-39 L19.

⁵²⁰ T4-81 L8.

⁵²¹ T4-79 L35, T4-80 L39.

⁵²² T4-12 L11, T4-20 LL12-22.

- [290] As will by now be apparent I found Ms Turner to be an unreliable witness. She at times complained of difficulty in recalling matters so long ago without reference to her meticulously recorded diary notes for January 2010 to January 2011, which she claimed she discovered were missing when she went to respond to Mrs Robinson's subsequent WorkCover claim in 2011.⁵²³ Curiously Ms Jacobs, purporting to verify Ms Turner had announced the loss of her diaries, recalled the event was referred to by Ms Turner before Ms Jacobs left the workplace in 2010.⁵²⁴ In another curious anomaly on this topic Ms Turner evidently had access to her diary note of her initial meeting with Mrs Robinson at the outset of 2010 because Ms Turner annexed it to a statutory declaration she made in the post 2010 era.⁵²⁵
- [291] Accepting though that Ms Turner did not have the benefit of refreshing her memory from diary notes, she well knew from 2011 that she had a major dispute on her hands in respect of her treatment of Mrs Robinson. It is not as if the trial was the first occasion on which she had reason to recall the events of 2010 and early 2011 of relevance in this matter. Moreover, there was an abundance of relevant emails and other contemporaneous records she was able to refer to in refreshing her memory before and during her evidence. An obvious difficulty for Ms Turner in the witness box was that much of that documentary evidence was at odds with how Ms Turner sought to explain away her action and inaction.
- [292] Ms Turner had such difficulty in credibly dealing with objectively established evidence and her evidence seemed to go so badly for the defendant that I took the unusual step of making a considered comment to that effect to the parties immediately after her evidence, at a stage when the trial was due to adjourn part heard for some weeks.⁵²⁶ The trial continued. None of the subsequent evidence was such as to salvage the reliability Ms Turner's testimony.

17 January 2011 Robinson's departure from the workplace

- [293] Mrs Robinson asserted in her quantum statement that as a result of her treatment at work over a period of time from March 2010 to 17 January 2011 she experienced significant symptoms of anxiety and depression.⁵²⁷ In the lead-up to her ceasing work on Monday 17 January 2011 her sleep was poor, she had variable appetite, she became easily tearful over things that would not previously have upset her.⁵²⁸ Further, she struggled to make decisions, could not concentrate and was not as mentally sharp and able to recall detail as she had been in the past.⁵²⁹ She felt vulnerable and worried how that would affect her capacity to perform well at work.⁵³⁰ When she had to meet with Susan Turner, she would feel apprehensive.⁵³¹ Her heart would race when she heard Ms

⁵²³ T4-63 LL27-41.

⁵²⁴ T6-30 L27.

⁵²⁵ T5-39 L35.

⁵²⁶ T5-114 L46 – T5-114 L47.

⁵²⁷ Ex 5 [29].

⁵²⁸ Ex 5 [30].

⁵²⁹ Ex 5 [31].

⁵³⁰ Ex 5 [31].

⁵³¹ Ex 5 [32].

Turner's voice in the corridor, she worried about unplanned encounters with Ms Turner and kept her office door closed to try and avoid such encounters.⁵³²

- [294] Subsequent to returning to work from leave on 10 January 2011 Mrs Robinson became increasingly emotional in the workplace. Her general practitioner, Dr Donna O'Kane, mentioned to her that her anxiety was increasing and recommended she apply for WorkCover benefits.⁵³³ Mrs Robinson tried to continue with work but by 17 January 2011 her symptoms had become so severe it was untenable for her to remain in the workplace.⁵³⁴
- [295] On the 17th Mrs Robinson's husband went into her office to fetch her belongings, at which point Ms Turner's secretary, Ms Woodham, realised Mrs Robinson was outside in the car. Ms Woodham testified:
- "I went out to the car and she was sitting in ... the passenger side of her car. She was crying uncontrollably. She was shaking and she was rocking in her seat. And she said she couldn't do it anymore."⁵³⁵
- [296] Mrs Robinson did not return to work after 17 January 2011. She had suffered a psychiatric injury later diagnosed as an adjustment disorder with mixed anxiety and depressed mood in partial remission.
- [297] It is obvious Mrs Robinson's understanding that Ms Turner had decided to return Ms Holmes to the position of NUM at Weipa Hospital would have been a significant cumulative causal influence in pushing Mrs Robinson past the point of no return.
- [298] It will be recalled that in that final week on 13 January 2011 when Mrs Robinson went to her office to start work she found the anonymously left copies of two emails discussed above.⁵³⁶ Mrs Robinson was asked in cross-examination whether her discovery Ms Turner had written an email to Dulise Maxwell complaining of having to constantly deal with complaints about Mrs Robinson and asserting the preliminary findings of an independent investigation indicated she carried out an unfair process, was a more significant impact upon her than the news that Ms Holmes was returning to her substantive position. Mrs Robinson did not agree Ms Turner's email to Ms Maxwell was more significant, explaining it just proved what she thought.⁵³⁷ Her evidence to that effect reflects the reality that there had been a series of episodes which inevitably would have caused Mrs Robinson to think Ms Turner had an adverse attitude towards Mrs Robinson. Mrs Robinson acknowledged her discovery of Ms Turner's email to Dulise Maxwell was distressing, as was the news that Ms Turner had decided to return Ms Holmes to her substantive position without consulting Mrs Robinson or informing Mrs Robinson in a timely manner.⁵³⁸ However, it was Ms Turner's lack of effective communication about and decision to return Ms Holmes to her substantive role which

⁵³² Ex 5 [32-33].

⁵³³ Ex 5 [20].

⁵³⁴ Ex 5 [22].

⁵³⁵ T3-49 L25.

⁵³⁶ Ex 1 pp 134-136.

⁵³⁷ T3-86 L11.

⁵³⁸ T3-90 LL13-17.

Mrs Robinson categorised as the “final straw”.⁵³⁹ Mrs Robinson emphasised it was not per se the fact that Holmes was returning to her substantive position which was of major significance and rather it was the fact Ms Turner had not communicated with her, the senior person for nursing in the district, about the decision.⁵⁴⁰

Second category of breach

[299] In the course of the above analysis I have found there were repeated instances of managerial mistreatment of Mrs Robinson by Ms Turner, namely:

- (a) Ms Turner’s unjustified blaming and ill-tempered, humiliatingly loud and public dressing down of Mrs Robinson at the June teambuilding workshop.
- (b) Ms Turner’s loud and aggressive belittling of Mrs Robinson’s concerns as sinister and all in her head at their meeting of 29 September 2010.
- (c) Ms Turner’s isolation of Mrs Robinson by flippantly dismissing and never meeting her request for information about Ms Holford’s concerns, in the wake of excluding Mrs Robinson from the meeting with Ms Holford of 5 October 2010.
- (d) Ms Turner’s isolation and undermining of Mrs Robinson at the meeting of 15 November 2010 by her public reversal of Mrs Robinson’s allocation of offices designed to avoid contact between Mrs Robinson and Ms Holmes.
- (e) Ms Turner’s humiliation and undermining of Mrs Robinson at the meeting of 15 November 2010 by not according Mrs Robinson the same opportunity for private discussion with her outside, which she accorded Ms Holmes.
- (f) Ms Turner’s isolation of Mrs Robinson by not consulting her and circumventing her in communicating on 16 November 2010 with staff Mrs Robinson line managed in respect of the operational assignment of Ms Holmes.
- (g) Ms Turner’s false accusation at the meeting of 6 December 2010 that Mrs Robinson had said Ms Turner would have to apply for her own job and the humiliation and undermining inherent in making that accusation publicly and declining Mrs Robinson’s request to speak privately rather than at the meeting about the topic.
- (h) Ms Turner’s undermining and isolation of Mrs Robinson by deciding to remove risk management from Mrs Robinson’s area of responsibility and informing staff of that decision on 9 December 2010 without first consulting or advising Mrs Robinson.
- (i) Ms Turner’s isolating of Mrs Robinson by the decision of 7 January 2011 to restore Ms Holmes to her substantive position while Ms Holmes’ complaints in her WIFs against Mrs Robinson remained unresolved.
- (j) Ms Turner’s humiliation and isolation of Mrs Robinson and showing contemptuous disregard of Mrs Robinson and the responsibilities of her position, in making and announcing the decision of 7 January 2011 to restore Ms Holmes to her substantive position, without first consulting or advising Mrs Robinson about it.

[300] Ms Turner’s unjustified blaming, humiliation, belittling, isolation, undermining and contemptuous disregard of Mrs Robinson constitutes an obvious course of behaviour which I describe in summary in these reasons as a course of managerial mistreatment.

⁵³⁹ T3-90 L14.

⁵⁴⁰ T3-91 L26.

- [301] Ms Turner's failure to take timely and determinative action on Ms Holmes' complaints persisted throughout that course of managerial mistreatment and could be regarded as coming within the description of managerial mistreatment. However, for ease of analysis I have in these reasons dealt with it as a separate breach.
- [302] While isolated instances of managerial mistreatment of an employee may potentially breach an employer's duty of care in this case it is an accumulation of such instances, that is, a course of managerial mistreatment which falls for consideration. In that sense it is akin to a consideration of repeated behaviours of a kind sometimes referred to as workplace harassment or bullying. It is not seriously suggested that a manager's unjustified blaming, humiliation, belittling, isolation, undermining and contemptuous disregard of an employee is acceptable in the workplace. Indeed, Ms Turner's behaviours are of a kind listed as typical harassing behaviour in the defendant's own Workplace Harassment Human Resources Policy.⁵⁴¹ That policy requires managers to continually model appropriate and ethical behaviour.⁵⁴² It was a requirement repeatedly breached by Ms Turner, knowledge of which breaches I impute to the defendant by reason of Ms Turner's standing as the defendant's CEO. If her standing did not warrant such an inference then the facts would in any event compel the inference that the defendant failed to adequately monitor its CEO's conduct.
- [303] Ms Turner's course of managerial mistreatment of Mrs Robinson all occurred in the course of her employment by the defendant as CEO while purportedly carrying out the role of CEO. It is therefore uncontroversial not only that the defendant should be inferred to have knowledge of, and thus failed to prevent, such conduct by Ms Turner but that it was in any event vicariously liable for it.
- [304] As to whether Ms Turner's course of managerial mistreatment of Mrs Robinson breached the defendant's duty to take precautions against a risk of psychiatric injury to Mrs Robinson, the risk was reasonably foreseeable by reason of the very nature of the type of behaviour involved. In an era when the potentially grave psychological harm done by workplace harassment and bullying is well known, unjustified blaming, humiliation, belittling, isolation, undermining and contemptuous disregard of an employee by a CEO was conduct collectively raising a foreseeable and not insignificant risk of psychiatric injury. Moreover, as already noted, during 2010 Mrs Robinson exhibited heightening emotional distress, to Ms Turner's knowledge, signalling a higher than ordinary risk of psychiatric injury in reaction to Ms Turner's continuing course of managerial mistreatment of her.
- [305] The probability of potentially serious psychiatric injury from such behaviour is sufficiently well known that a reasonable employer would take precautions against such conduct occurring. In the present case, given the defendant's imputed knowledge of Ms Turner's conduct, that precaution should have involved intervention to prevent the continuation of the course of conduct. Further, given the defendant's vicarious responsibility for Ms Turner's conduct, it was plainly a simple precaution for Ms Turner to not engage in such behaviour and instead treat Mrs Robinson with courtesy and respect.

⁵⁴¹ Ex 1 pp 323, 324.

⁵⁴² Ex1 p326.

- [306] The defendant breached its duty to take reasonable care to avoid psychiatric injury by failing to prevent Ms Turner's course of managerial mistreatment, conduct by Ms Turner for which it is also vicariously liable.

Robinson does not return to work

- [307] Mrs Robinson attended upon Dr O'Kane on 17 January 2011 and again on 21 January 2011 and subsequently. She was initially certified unfit for work by Dr O'Kane from 17 January 2011 to 21 February 2011 and, on review by Dr O'Kane on 22 February 2011, was further certified unfit for work.⁵⁴³
- [308] The defendant adduced evidence from Ms Reed that on 25 January 2011 she had a discussion with Mrs Robinson, in the course of which Mrs Robinson mentioned she had a number of WIFs as against Ms Turner but was holding on to them because she wanted to get HR and union advice before submitting them.⁵⁴⁴ Mrs Robinson recalled saying such a thing though she was unsure if that was in this conversation.⁵⁴⁵ Even Ms Reed had no memory of this conversation until referred to her note of it⁵⁴⁶ and her ensuing testimony about the conversation seemed speculative and appeared to conflate some of her note's content.⁵⁴⁷
- [309] Mrs Robinson lodged an application for compensation with WorkCover. Ms Reed was contacted by WorkCover on 17 February 2011 and then met with Ms Turner to discuss Ms Robinson's allegations about Ms Turner in the WorkCover claim.⁵⁴⁸ Ms Reed suggested they should seek external advice to investigate them but Ms Turner decided she would prefer Ms Reed to investigate them.⁵⁴⁹ Ms Reed purportedly then investigated the allegations in the WorkCover claim.⁵⁵⁰
- [310] The defendant adduced evidence that on 22 February 2011 Ms Reed again spoke with Mrs Robinson. On Ms Reed's account, again obviously based on her interpretation of her non-verbatim notes of the conversation,⁵⁵¹ Mrs Robinson said she had completed her incident forms,⁵⁵² was consulting her union and not wanting to show all her cards at once.⁵⁵³ Mrs Robinson agreed she probably did say that and acknowledged her union representative had advised her to that effect.⁵⁵⁴ Ms Reed said in cross-examination that on 2 March 2011 Mrs Robinson told her she had provided the WIFs as against Ms Turner, despite contrary advice from the union.⁵⁵⁵ When it was suggested to Mrs

⁵⁴³ Ex 5 [23-24].

⁵⁴⁴ T7-66 L34, Ex 34.

⁵⁴⁵ T3-100 L45.

⁵⁴⁶ T7-66 L12.

⁵⁴⁷ T7-66 L30 – T7-68 L6.

⁵⁴⁸ T7-68 T7-68 LL20-27.

⁵⁴⁹ T7-68 L29.

⁵⁵⁰ T7-68 L37.

⁵⁵¹ Ex 34.

⁵⁵² T7-69 L41.

⁵⁵³ T7-69 L43.

⁵⁵⁴ T3-101 L14.

⁵⁵⁵ T7-97 L48.

Robinson that she had the union representative send the WIFs, she had no recollection of doing that.⁵⁵⁶

- [311] Some evidence was also adduced by the defendant that in the meeting of 22 February 2011 Ms Reed had asked Mrs Robinson what she wanted out of the WorkCover process and Mrs Robinson had alluded to health and financial stability.⁵⁵⁷ Neither witness was particularly precise about the words used. In the end result none of Mrs Robinson's communications with Ms Reed after Mrs Robinson had left the workplace suggest Mrs Robinson was malingering or manufacturing an inflated claim.
- [312] A report was provided to WorkCover after Ms Reed's purported investigation.⁵⁵⁸ Mrs Robinson's WorkCover claim was rejected on 24 March 2011, but on application for review, Q-Comp on 15 December 2011, overturned WorkCover's decision to reject the claim.

Diagnosis of adjustment disorder with mixed anxiety and depressed mood

- [313] On 13 October 2011 Mrs Robinson commenced treatment with Dr Michael Likely, psychiatrist, on a monthly basis.⁵⁵⁹
- [314] Dr Likely opined in a letter of 13 February 2012 to WorkCover that Mrs Robinson had experienced a psychological injury, the development of which had been characterised by the evolution of symptoms of both depression and anxiety.⁵⁶⁰ In his letter Dr Likely diagnosed Mrs Robinson as suffering from an adjustment disorder with mixed anxiety and depressed mood in partial remission.⁵⁶¹ He noted the decision of Q-Comp to overturn the original WorkCover decision had led to Mrs Robinson feeling vindicated, which he identified as an important part in her positive clinical response to that point.⁵⁶² He noted her wish to return to work at the earliest possible opportunity, notwithstanding the significant barriers remaining in respect of her professional relationship with Ms Turner. He anticipated she would be able to return to work within a period of three to six months, noting "she appears to be a woman of considerable psycho-social resilience and one who is highly motivated to return to her substantive position".⁵⁶³ He qualified his view by emphasis on the importance of Mrs Robinson's professional relationship with Ms Turner being dealt with in the meantime.

Hopes of return to work gradually fade

- [315] The apparent desire of Mrs Robinson to return to work was reflected in her evidence under cross-examination that she was prepared from the very beginning to attempt to return to work but Queensland Health blocked it.⁵⁶⁴ From 9 February 2012 Mrs

⁵⁵⁶ T3-105 L1.

⁵⁵⁷ T3-102 L10, T7-71 LL12-19.

⁵⁵⁸ T7-68 L41.

⁵⁵⁹ Ex 5 [27].

⁵⁶⁰ Ex 2 p 4.

⁵⁶¹ Ex 2 p 5.

⁵⁶² Ex 2 p 4.

⁵⁶³ Ex 2 p 6.

⁵⁶⁴ T3-103 L27.

Robinson had various contacts from a WorkCover claims adviser about return to work options, resulting in liaison between the adviser and Mrs Robinson's treating professionals.⁵⁶⁵

[316] On 24 April 2012 Mrs Robinson met with Kasrynne Huolohan, a psychologist appointed by WorkCover to mediate in some way. In that meeting there was discussion of the possibility of Mrs Robinson working in Mackay or in Mount Isa with her former CEO Paul Stephenson who was expected to return to that district shortly.⁵⁶⁶

[317] After Mrs Robinson became concerned that her nursing registration would lapse without her completing a minimum of 40 hours professional development, Dr Likely certified she was able to undertake such development and she attended two professional development courses in Brisbane and Melbourne in late May 2012.⁵⁶⁷ Mrs Robinson experienced debilitating anxiety, distress and concentration difficulties in attending the courses, but did attend them.⁵⁶⁸

[318] On 31 May 2012 Dr Likely addressed enquiries made of him by Ms Huolohan about Mrs Robinson's prospect of engaging in a graduated return to work program. In response to the question when Mrs Robinson "may be fit to commence a graduated return to work program" he wrote, "August 2012". In response to a question seeking his indication of "any medical restrictions" which needed to be considered for the first phase of a graduated return to work program "in alternate duties and alternate locality (if the employer can source this)" he wrote, "Restrictions/date of mediation to be advised."⁵⁶⁹

[319] The effect of these endorsements was elaborated upon in a letter by Dr Likely to WorkCover of 4 June 2012 wherein he noted, inter alia:

"With treatment, the passage of time and the time away from work Ms Robinson's condition has improved in that her depressive symptoms have diminished considerably. ... Nonetheless significant anxiety symptoms persist including pervasive feelings of anxiety, apprehension and worry together with the subjective sense of being unable to control the worry."⁵⁷⁰

[320] He opined Mrs Robinson's prognosis was guardedly optimistic and on the question of whether her condition was stable or stationary he wrote:

"An assessment of this will be possible after she has commenced a graduated return to work program and progressed from performing alternate duties in an alternative locality to phase 2 of this return to work program which will consist of her performing her usual duties in the usual locality. I estimate that this would take a period of at least six months."⁵⁷¹

⁵⁶⁵ Ex 5 [86-88].

⁵⁶⁶ Ex 5 [91].

⁵⁶⁷ Ex 5 [90, 92, 93].

⁵⁶⁸ Ex 5 [93-94].

⁵⁶⁹ Ex 2 p 9.

⁵⁷⁰ Ex 2 pp 10, 11.

⁵⁷¹ Ex 2 p 12.

[321] He also wrote of her potential return to work:

“With respect to return to work it is anticipated that Ms Robinson will be able to commence a graduated return to work program in alternate duties and in an alternate locality (she has identified Mackay as being the most suitable from a subjective point of view) around August of 2012.”⁵⁷²

[322] Mrs Robinson was examined at WorkCover’s request by consultant psychiatrist Dr Wasim Shaikh on 10 July 2012. In his report of 24 July 2012 he opined Mrs Robinson was not currently capable of participating in a suitable duties programme and that her capacity to return to work would be better determined by her future progress.⁵⁷³ He opined:

“The ongoing presence of symptoms and their duration over one year does have a negative influence on her prognosis. I believe however that she should be able to return to work. The question would be in terms of what level of duties she would be able to sustain.”⁵⁷⁴

[323] Dr Shaikh recommended Mrs Robinson see a counsellor immediately because she appeared particularly unwell.

[324] In September 2012 Dr Likely was requested to again address questions relating to Mrs Robinson’s potential return to work and did so on 12 September 2012 by endorsing questions asked of him.⁵⁷⁵ When asked, if Queensland Health were to provide a suitable duties program to Mrs Robinson, how long he foresaw the program would go for, namely weeks or months, he responded, “Months”. When asked what he foresaw as the major barriers to Mrs Robinson’s return to work at present, he endorsed the response, “Ongoing symptoms of depression/anxiety. Loss of confidence.”⁵⁷⁶

Hopes of return to work dashed by employer’s position

[325] Communications ensued in an endeavour to settle upon an appropriate return to work program. Mrs Robinson, who had attended a further professional development course, had some optimism she may be able to return to work in a region other than Weipa where she felt her reputation had been negatively impacted.⁵⁷⁷ However, on 23 October 2012 Mrs Robinson, with Dr Likely, participated in a telephone conference with Ms Huolohan, who informed them of the decision by Mrs Robinson’s employer that the only option available was to return to work in the Cape York district, specifically in Weipa.⁵⁷⁸

[326] On the same date Dr Likely wrote to WorkCover, opining of Queensland Health’s remarkable decision that Mrs Robinson could only return to work at Weipa, where Ms Turner was still the CEO, to work on a graduated basis:

⁵⁷² Ex 2 p 11.

⁵⁷³ Ex 2 p 19.

⁵⁷⁴ Ex 2 p 20.

⁵⁷⁵ Ex 2 pp 22, 23.

⁵⁷⁶ Ex 2 p 22.

⁵⁷⁷ Ex 5 [91, 107].

⁵⁷⁸ Ex 5 [106].

“[I]t is extremely important to realise that it is largely organisational structure (in particular interpersonal conflict with Susan Turner) within Queensland Health that was primarily responsible for the origin of Ms Robinson’s injury...I understand that Queensland Health have advised that Ms Robinson return to work on a graduated basis to the Cape York district and specifically in Weipa. I believe that this is potentially of significant detriment to Ms Robinson’s health in that re-exposure to the stressors that caused her injury initially is likely to serve only further to cause re-injury and therefore deterioration in her symptoms of depression and anxiety. I believe that any attempt to return Ms Robinson to the workplace should occur outside the Cape York district, otherwise I fear that her health will be further injured and that her clinical condition will deteriorate still further.”⁵⁷⁹

- [327] Mrs Robinson was distressed by her employer’s resistance to allowing her to work in an alternative district despite, as Mrs Robinson understood it, such work being available elsewhere.⁵⁸⁰ No further progress towards a graduated return to work appears to have occurred after this setback.
- [328] Mrs Robinson’s WorkCover claim ceased on 27 December 2012, but she continued to be certified unfit to work by Dr Likely.⁵⁸¹

Turner instigates further assessment

- [329] Ms Turner evidently retained a direct role in respect of the fate of Mrs Robinson’s employment. On 23 August 2013 she wrote to Mrs Robinson, care of her solicitors, stating that as a result of Mrs Robinson’s ongoing absence from work she was “directing” her to undergo an independent medical assessment by psychiatrist Dr Bell.⁵⁸² On the same date Ms Turner wrote to Dr Bell providing information in advance of him examining and reporting upon Mrs Robinson. Her letter noted:

“The relationships between Ms Robinson and a number of other employees of the health service, including the health service chief executive (who will still have ultimate responsibility for Ms Robinson – regardless of whether there is a direct reporting relationship) is such that the health service does not consider the relationships can be repaired to a point where professional relationships can be formed.”⁵⁸³

- [330] On 9 September 2013 Mrs Robinson attended for “independent psychiatric evaluation” upon consultant psychiatrist Dr Catherine Oelrichs, who forwarded a report dated 24 September 2013 to a solicitors’ firm. It is not clear from the report who that firm acted for but it was not Mrs Robinson. Dr Oelrichs had first seen Mrs Robinson the previous year in her role on the Medical Assessment Tribunal.⁵⁸⁴ In her report she opined Mrs

⁵⁷⁹ Ex 2 p 25.

⁵⁸⁰ Ex 5 [106,107].

⁵⁸¹ Ex 5 [109, 111].

⁵⁸² Ex 5 [114], pp 19-20.

⁵⁸³ Ex 2 p 42.

⁵⁸⁴ T5-13 L44.

Robinson's return to her workplace in her previous role would not be beneficial for her mental health.⁵⁸⁵

[331] Mrs Robinson attended for assessment upon Dr Bell as directed on 16 October 2013.⁵⁸⁶ In his ensuing report, of 31 October 2013, he opined Mrs Robinson was permanently incapacitated from returning to her former position and was reserved, pending resolution of her psychiatric illness, about her prospects of returning to a less challenging alternate role.⁵⁸⁷

[332] In a report to Q-Super of 23 October 2013 Dr Likely wrote of Mrs Robinson's mental state that:

“Her mood remains one of dysphoria (ie subjectively unpleasantly experienced). Her affect is anxious. Thought content shows an ongoing preoccupation with the events described above together with cognitive distortions consistent with both depression (loss, low self-esteem) and anxiety (negative automatic thoughts and catastrophisation).”⁵⁸⁸

The events which Dr Likely referred to as “described above” were the events which had occurred in connection with Mrs Robinson's workplace. Dr Likely opined that the specific medical barriers preventing Mrs Robinson from returning to work were:

“Ongoing symptoms of adjustment disorder with mixed anxiety and depressed mood including poor sleep, daytime lethargy, anergia, amotivation, and cognitive deficits in the areas of poor attention concentration, and short-term memory (with consequent difficulty planning, organising, sequencing, and performing tasks), social anxiety, social withdrawal, procrastination, and low self-esteem. In particular her relationship with Ms Turner remains a significant problem.”⁵⁸⁹

Dr Likely opined it was difficult to foresee any time when Mrs Robinson would be able to return to any form of remunerative employment, particularly until her legal matters were resolved.⁵⁹⁰ He opined:

“If she were to return to work this would not be in the Cape York area as noted above but rather in an area such as Mackay. However, this contention remains extremely tentative given the lability of her mental state.”⁵⁹¹

[333] On 12 December 2013 in a report responding to enquires by the Cape York Health Service's Senior Rehabilitation and Return to Work Coordinator, Dr Likely opined Mrs Robinson would not have the capacity to return to her substantive role and that her incapacity for that role's duties was permanent.⁵⁹² He affirmed Mrs Robinson had been highly motivated to return to her “hitherto successful career” and made every effort to

⁵⁸⁵ Ex 17.

⁵⁸⁶ Ex 5 [115].

⁵⁸⁷ Ex 2 p 70. This forms part of the narrative. Dr Bell was not an expert witness at trial.

⁵⁸⁸ Ex 2 p 27.

⁵⁸⁹ Ex 2 p 28.

⁵⁹⁰ Ex 2 p 29.

⁵⁹¹ Ex 2 p 29.

⁵⁹² Ex 2 p 31.

do so.⁵⁹³ He noted her employer had deemed the return to work programme, which he had formulated with her in 2012, to be unsuitable. He opined:

“I wish to point out that Mrs Robinson has been a highly motivated individual, who has been determined to return to work throughout the time that I have been treating her. She has only recently however come to accept the fact that her symptoms are so severe and her work atmosphere is so toxic that to attempt to return to work will be futile and would lead to a further decompensation in her condition.”⁵⁹⁴

22 May 2014 Robinson compulsorily retired

- [334] On 17 February 2014 Mrs Robinson’s solicitors received a letter from Ms Turner putting Mrs Robinson on notice that, on the basis of both Dr Bell and Dr Likely’s assessments, she was of the preliminary view that transfer or redeployment was not reasonably practicable and giving her the opportunity to provide information as to why she should not be compulsorily retired, pursuant to s 178(1)(b) of the *Public Service Act 2008 (Qld)*.⁵⁹⁵ Mrs Robinson’s solicitors forwarded a response dated 5 March 2014, the effect of which was not to contest the foreshadowed compulsory retirement but to seek some compassionate financial dispensations such as the cost of moving her possessions from Weipa.⁵⁹⁶
- [335] By letter dated 22 May 2014 Dr Jill Newland, Acting Health Service Chief Executive for Cape York Hospital and Health Service, Mrs Robinson was notified it was agreed that she could not return to work in the position of Executive District Director of Nursing and Midwifery and it was not reasonably practicable to transfer or redeploy her and accordingly the decision had been made to retire her from employment with the Cape York Hospital and Health Service, effective immediately.⁵⁹⁷
- [336] In consequence of her medical retirement Mrs Robinson was unable to maintain her nursing registration⁵⁹⁸ and has not returned to work, save for some short lived volunteer work at a fabric shop, since 17 January 2011.⁵⁹⁹

Robinson’s psychiatric injury

Dr Likely’s diagnosis

- [337] Dr Likely opined in a letter of 13 February 2012 to WorkCover that Mrs Robinson had experienced a psychological injury, the development of which had been characterised by the evolution of symptoms of both depression and anxiety.⁶⁰⁰ Dr Likely then diagnosed Mrs Robinson as suffering from an “adjustment disorder with mixed anxiety

⁵⁹³ Ex 2 p 31.

⁵⁹⁴ Ex 2 p 32.

⁵⁹⁵ Ex 5 [117], pp 21-24.

⁵⁹⁶ Ex 5 p 25.

⁵⁹⁷ Ex 5 pp 26-29.

⁵⁹⁸ Ex 5 [124].

⁵⁹⁹ Ex 5 [121, 126].

⁶⁰⁰ Ex 2 p 4.

and depressed mood – arising directly as a result of work stress in Ms Robinson’s capacity as a district director of nursing for the Cape York area”.⁶⁰¹

- [338] Dr Likely repeated the diagnosis of “adjustment disorder with mixed anxiety and depressed mood” in his report of 23 October 2013, noting it was “chronic”.⁶⁰² He maintained a diagnosis of adjustment disorder with mixed anxiety and depressed mood in his report of 2 March 2015.⁶⁰³

Dr Oelrichs’ diagnosis

- [339] In her report of 24 September 2013 Dr Oelrichs also diagnosed Mrs Robinson’s illness as “Adjustment Disorder with anxiety and depressed mood, chronic”.⁶⁰⁴
- [340] Dr Oelrichs examined Mrs Robinson again on 14 June 2016. The report of her second independent psychiatric assessment was again forwarded to solicitors who were not acting for Mrs Robinson.⁶⁰⁵ In Dr Oelrichs further report of 4 July she noted a deterioration, opining Mrs Robinson’s “condition has developed into a chronic depressive connection best described as Major Depressive Disorder, which has been perpetuated and exacerbated at times of stress”.⁶⁰⁶ Dr Oelrichs explained of the distinction between the disorders, the treatment for which is the same:

“[T]he difference is that the adjustment disorder is usually something that’s a reaction at the time to a stressor and usually, if the stressor is removed, the condition resolves. ... [B]ut if the condition goes on – if they’re chronic stressors, it can then be looked at as – as a chronic adjustment disorder. In this circumstance, Ms Robinson’s presentation – and it could be argued that she still has – is presenting with a chronic adjustment disorder, but her symptoms had become more marked, I thought, from my assessment in 2016 as compared to my assessment in 2013, and levels of focus and concentration had also deteriorated, which would be more fitting, I felt, with a diagnosis of a major depression.”⁶⁰⁷

- [341] She went on to explain that an adjustment disorder sometimes becomes chronic if the stressors causing it carry on over time.⁶⁰⁸
- [342] Dr Shaikh agreed in cross-examination that one of the differences between an adjustment disorder and a chronic depressive condition is that an adjustment disorder usually resolves once there is separation between the person and the source of stress or distress, whereas a chronic depressive condition continues in the absence of or independently of association with the original sources of distress or stress and can

⁶⁰¹ Ex 2 p 28.

⁶⁰² Ex 2 p 30.

⁶⁰³ Ex 15.

⁶⁰⁴ Ex 17 p 10.

⁶⁰⁵ Ex 18.

⁶⁰⁶ Ex 18 p 15.

⁶⁰⁷ T5-13 LL13-23.

⁶⁰⁸ T5-17 L3.

progress to a major depressive disorder.⁶⁰⁹ He agreed Mrs Robinson’s lack of success in sustaining her return to work, losing her position at Queensland Health and losing her nurse registration would be sufficient to convert the adjustment disorder over time into a disorder more consistent with a major depressive disorder.⁶¹⁰

Dr Shaikh’s diagnosis

[343] In his report of 24 July 2012 Dr Shaikh diagnosed Mrs Robinson’s illness as “Adjustment Disorder with Mixed Anxiety and Depressed Mood, chronic”.⁶¹¹

Causation

The relevant test of causation

[344] As to whether the breach caused injury, s 305D of the Act provides:

“305D General principles

- (1) A decision that a breach of duty caused particular injury comprises the following elements—
 - (a) the breach of duty was a necessary condition of the occurrence of the injury (*factual causation*);
 - (b) it is appropriate for the scope of the liability of the person in breach to extend to the injury so caused (*scope of liability*).
- (2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty—being a breach of duty that is established but which can not be established as satisfying subsection (1)(a)—should be accepted as satisfying subsection (1)(a), the court is to consider (among other relevant things) whether or not and why responsibility for the injury should be imposed on the party in breach.
- (3) If it is relevant to deciding factual causation to decide what the worker who sustained an injury would have done if the person who was in breach of the duty had not been so in breach—
 - (a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and
 - (b) any statement made by the worker after suffering the injury about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.
- (4) For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the injury should be imposed on the party who was in breach of the duty.”

[345] Section 305D(1)(a) adopts the “but for” test of causation. That is, proof that the breach of duty was a “necessary” condition of the occurrence of the injury effectively requires

⁶⁰⁹ T6-60 LL23-30.

⁶¹⁰ T6-60 L45.

⁶¹¹ Ex 2 p 18.

the plaintiff to prove that but for the defendant's negligence the plaintiff's injury would not have occurred.⁶¹²

[346] Section 305D(2) raises an alternative course of pathway for "an exceptional case". While the plaintiff did not plead or open reliance upon s 305D(2) and only mentioned it in passing in closing submissions, they submit they have not foregone reliance upon it. The defendant on the other hand submits, in the absence of a pleaded or opened reliance upon s 305D(2), it ought not be permitted to apply. I accept that submission in light of *The Corporation of the Synod of the Diocese of Brisbane v Greenway*,⁶¹³ in which McMurdo JA and Bond J, with whom Morrison JA agreed, favoured the view that reliance upon s 305D(2) should be pleaded or otherwise explicitly flagged at the commencement of the trial.

Breaches

[347] Before turning to the application of s 305D(1)(a)'s test of factual causation it is necessary to say a little more of the breaches to be considered in that process.

[348] I have found:

- (a) The defendant breached its duty to take reasonable care to avoid psychiatric injury by failing to take timely and determinative action on Ms Holmes complaints. While other staff had some involvement in that failure, its substantial cause was the conduct, largely by omission, of Ms Turner, conduct for which the defendant would be vicariously liable.
- (b) The defendant breached its duty to take reasonable care to avoid psychiatric injury by failing to prevent Ms Turner's course of managerial mistreatment, conduct by Ms Turner for which it is also vicariously liable.

[349] The above two breaches ("the breaches") each involve a course of behaviour and in effect include much of the conduct alleged in paragraph 10 of the SOC. Something should be said of some of the pleaded conduct not so included.

[350] Firstly, paragraph 10(d) alleges a failure to provide Mrs Robinson with adequate supervisory support having regard to her duties. Mrs Robinson undoubtedly had onerous duties and worked long hours. But there was no evidence to seriously suggest she was ever floundering for a want of adequate supervisory support or indeed that the demands of her job in the normal course had any causal connection with her psychiatric injury. This pleaded allegation may have arguable relevance in the sense her CEO, and in that sense her supervisor, Ms Turner was positively unsupportive of her by reason of the conduct involved in the two above breaches. But if so it is academic in that those breaches adequately capture the nature of the conduct which manifested that lack of support.

⁶¹² *Strong v Woolworths Limited* (2012) 246 CLR 182, 190 [18], discussed in *The Corporation of the Synod of the Diocese of Brisbane v Greenway* [2017] QCA 103.

⁶¹³ [2017] QCA 103, [50-58]. Also see rule 149(1)(e) *Uniform Civil Procedure Rules 1999* (Qld).

- [351] Secondly, paragraph 10(g)(i) alluded to removal of responsibility for medical officer credentialing which, on the evidence adduced, was of no significance.
- [352] Thirdly, paragraph 10(j) alluded to a failure to prevent what I have accepted was a false allegation in Ms Turner's email to Ms Maxwell of 6 December 2010. This letter was leaked to Mrs Robinson from an unknown source and it is not suggested that occurred at the instigation of the defendant or Ms Turner. Nonetheless there exists a basis upon which the defendant is vicariously liable for Ms Turner's making of the false allegation. It is that when managers write about employees for a purpose connected with the workplace an author should not make false allegations because, regardless of expectations about whether the employee will see the document, it is tantamount to spreading lies about the employee in the workplace – one of the examples of typical harassing behaviour in the defendant's Workplace Harassment Human Resources Policy.⁶¹⁴ While it was therefore a form of managerial mistreatment I have not included it in the conduct constituting breach by a course of managerial mistreatment. That is because Mrs Robinson already knew from Ms Turner's array of appalling managerial misconduct towards her, that Ms Turner had no regard for her, was prepared to engage in false blaming of her and was undermining and isolating her professionally. In short the leaked letter would not have been and on her evidence was not a revelation to Mrs Robinson and was thus unlikely to have been a necessary condition of the occurrence of her psychiatric injury. If I am wrong about then it would make no difference to my ensuing findings on causation because it would be but another instance of Ms Turner's conduct giving rise to the breach by course of managerial mistreatment.
- [353] Fourthly, paragraph 10(k) refers to the exchange of emails between Ms Hoins and Ms Turner of 21 December about delaying the appointment of Mrs Robinson's executive support officer. The evidence did not explain what was really motivating the suggestion in Ms Hoins' email. Ultimately this evidence reflected poorly on Ms Hoins but was largely neutral as to Ms Turner. Absent more information at the highest it showed Ms Turner was not supportive of Mrs Robinson, which was something Mrs Robinson well and truly knew by January when the emails were leaked to her. It is causally irrelevant and in any event is not evidence of managerial mistreatment.
- [354] Fifthly, paragraph 10(l) alleges a failure to ensure workplace health and safety. In light of the breaches found, the allegation is proved. However, there is nothing to be gained in incorporating generalised reference to such a failure when the failures which give rise to it are effectively articulated by the two breaches I have found. It is that articulation which will be more useful for the purposes of considering causation.
- [355] Sixthly, paragraph 10(m) refers to a failure to adequately monitor the conduct of Ms Turner in respect of the plaintiff. As with the preceding paragraph this failure is inherent in the articulated breaches.⁶¹⁵ Its separate listing adds nothing for the purposes of analysing causation.
- [356] Finally, paragraph 10(n) refers to a failure to train and instruct and monitor the enforcement of such training and instruction of Ms Turner, Ms Burke, Ms Gaffney, Ms

⁶¹⁴ Ex 1 p 323.

⁶¹⁵ See for example the explanation at [296] above.

Reed and Ms Perriman in nominated policies. This allegation was not particularly explored in evidence, perhaps because the conduct giving rise to the two breaches bespeaks such a failure, particularly in respect of the key player, Ms Turner. However, even if there was such a failure, once again it would add nothing material to the two breaches already articulated.

Discussion

- [357] In order to succeed the plaintiff must have proved that one or both of the breaches was a necessary condition of Mrs Robinson's psychiatric injury. I will for convenience hereafter refer to the breaches as a collective potential cause because there is no sensible basis to sever their causal contribution. They are closely connected and were each occurring as a course of combined behaviour in the workplace accompanied by the gradual emotional decline of Mrs Robinson and the defendant is responsible for both.
- [358] The question then is whether the plaintiff has proved that but for the breaches Mrs Robinson's psychiatric injury would not have occurred. This requires consideration of whether the injury would have been avoided if the breached duties had been discharged.⁶¹⁶ Given the above articulation of the breaches, that hypothetical inquiry should here contemplate that the defendant took timely and determinative action on the Holmes WIFs and that Ms Turner did not subject Mrs Robinson to a course of managerial mistreatment.
- [359] The defendant emphasises this is a case involving a combination of stressors of variable potential psychological influence. It submits there has been no evidence disentangling the various stressors which potentially contributed to the psychiatric injury, nor any attempt to isolate and consider the effect of stressors said to be the consequence of negligence from the combined stressors. Its supplementary submissions emphasise that, as in *The Corporation of the Synod of the Diocese of Brisbane v Greenway*,⁶¹⁷ so too here none of the experts were asked whether the breach conduct was an essential condition of the plaintiff's psychiatric injury.
- [360] I did not apprehend that latter emphasis to imply it is essential in cases of psychiatric injury that psychiatrists articulate their opinion by express reference to the legal test of factual causation, which it is for the court to apply. In any event *Greenway* does not stand as authority for such a requirement. Moreover, while the psychiatrists who testified in the present case were not asked to express their opinions by reference to whether a breach of duty was a necessary condition they did advance opinions of material assistance to an informed consideration of the factual causation issue.

Provisional views

- [361] It is helpful to articulate my provisional views relevant to factual causation, based on the whole of the lay evidence, before turning to the expert opinions.

⁶¹⁶ *Wolters v The University of the Sunshine Coast* [2014] 1 Qd R 571, 591.

⁶¹⁷ [2017] QCA 103, [30-32].

- [362] The stressors in Mrs Robinson's private life are unlikely contenders for having caused her psychiatric injury, as is further discussed below. As to workplace stressors, Mrs Robinson's position of District DON was doubtless demanding but the facts do not suggest she was materially troubled by the inherent stress of performing that role. There appears to have been some moderate stress at times felt by her in respect of the conduct of Ms Holford but it did not feature at a particularly consistent or concerning level. This leaves two obvious sources of major workplace stress for Mrs Robinson: the conduct of Ms Holmes and the conduct of Ms Turner.
- [363] The defendant highlights that Mrs Robinson had stressful concerns about Ms Holmes before Ms Turner took office. That is undoubtedly correct. Mrs Robinson told Ms Turner from the jump that she felt emotionally vulnerable to attack by Ms Holmes. On the other hand there is no persuasive evidence of the same degree of emotional distress progressively exhibited by Mrs Robinson during 2010 being exhibited earlier.⁶¹⁸
- [364] The evidence is however persuasive of Ms Holmes having no legitimate basis to target Mrs Robinson. The defendant's own witnesses readily acknowledged the complaints in the Holmes WIFs were vexatious.
- [365] It is clear Mrs Robinson was emotionally concerned by the very fact of Ms Holmes' targeting her in the WIFs, but it is also clear her level of emotional concern escalated to a materially different level than in previous years because of the state of uncertainty as to the resolution of the Holmes WIFs.⁶¹⁹ Herein lies the rub for the defendant's case. If the defendant had not breached its duty of care and instead had dealt in a timely and determinative way with the Holmes WIF's the outcome would have favoured Mrs Robinson and removed the cause of Mrs Robinson's heightened level of emotional distress. She doubtless would have retained concerns about Ms Holmes but no more than at historical tolerable levels, re-assured that the defendant's workplace systems protected her. Instead, her heightened distress was perpetuated by the ongoing failure to take timely and determinative action on the Holmes WIFs and in addition by Ms Turner's course of managerial mistreatment of her.

Dr Likely's opinion

- [366] Dr Likely opined in his letter of 13 February 2012 that Mrs Robinson's adjustment disorder with mixed anxiety and depressed mood had arisen:
- "...directly as a result of work stress in Ms Robinson's capacity as district director of nursing for the Cape York area";⁶²⁰

⁶¹⁸ The defendant highlighted references in the WIF submitted by Mrs Robinson (Ex 1 pp 104-105) to her concerns at the health implications of Ms Holmes past contributions to Mrs Robinson's more recent health concerns. The defendant's final Outline in Reply also highlighted a reference in a statutory declaration of Mrs Robinson (Ex 11 [8]), to her crying uncontrollably on 18 March 2010 in connection with Ms Holmes, at a time before she was troubled by the Holmes WIFs. The significance of this reference is muddy, not having been explored in evidence, and in any event it will be remembered Mrs Robinson forewarned Ms Turner she felt vulnerable vis a vis Holmes.

⁶¹⁹ She appears to have been unaware of the November WIF by Ms Holmes and of the fact the Holmes grievance was against her as well the PsyCare process.

⁶²⁰ Ex 2 p 5.

- “as a sole result of the work related stressors enumerated in the introductory paragraph to this report”.⁶²¹

(emphasis added)

[367] Dr Likely opined at the outset of his report that those stressors were “rather long and convoluted” but could be “summarised as follows”:

“1. Unreasonable management action by Susan Turner, District Chief Executive Officer, in relation to meetings on the 15th of November 2010 and on the 6th of December 2010 and subsequent non-receipt of response thereafter.

2. Humiliation and intimidation by Ms Turner at a meeting on the 6th of December 2010 and at a team building exercise on the 28th of June 2010. Breach of privacy by Ms Turner on the 17th and 18th of January 2011 by revealing to other staff that Ms Robinson had had a breakdown and gone on sick leave.

3. Unreasonable management action from Ms Turner regarding workplace incident forms lodged by the Nurse Unit Manager Barbara Holmes against her.

4. Long term undermining and misrepresentation by Ms Holmes (January 2009 to January 2011). Ms Turner making changes to the role of DDON without prior consultation with Ms Robinson.”⁶²²

[368] Dr Likely then opined:

“This combination of stressors over a protracted period of time saw Ms Robinson develop significant changes in her psychological health. These were characterised with the evolution of symptoms of both depression and anxiety.”⁶²³

[369] Dr Likely’s report of 23 October 2013 repeated the above opinions as to causation.⁶²⁴ His opinion as to the pivotal causative role of Ms Turner’s conduct was also implicitly reflected in his observations in that report that Mrs Robinson’s professional relationship with Ms Turner remained a significant problem as a barrier to Ms Turner’s return to work.

[370] Dr Likely’s report of 12 December 2013 again opined that Mrs Robinson’s illness had arisen “as a result of work-related stressors in her capacity as a district director of nursing for Cape York area”.⁶²⁵

[371] Dr Likely further repeated his opinions of 13 February 2012 as to causation in his report of 2 March 2015.⁶²⁶

⁶²¹ Ex 2 p 6.

⁶²² Ex 2 p 3.

⁶²³ Ex 2 p 4.

⁶²⁴ Ex 2 pp 26,27.

⁶²⁵ Ex 2 p 30.

⁶²⁶ Ex 15.

- [372] Dr Likely's four paragraph summary of causative stressors clearly identifies the conduct of Ms Holmes and Ms Turner as the stressors which gave rise to the injury. Some facts in the summary were seemingly not established at trial, which may result from some inaccuracy of expression or misunderstanding on consultation. Paragraph 2 refers to Ms Turner breaching privacy by informing staff Mrs Robinson had had a breakdown. This was not the subject of evidence but if it had been it invariably would have joined the list of instances giving rise to the course of managerial mistreatment so the causative equation is unaffected by this aspect. The very same considerations apply to paragraph 4's reference to Ms Turner changing the role of the DON without prior consultation.
- [373] A point of relevance to the defendant's submissions is paragraph 4's reference to "long term undermining and misrepresentation by Ms Holmes (January 2009 to January 2011)". Mrs Robinson's evidence did not articulate her concerns about Ms Holmes in quite that way but it must be borne in mind this is a summary. Dr Likely's understanding of the contribution of concerns about Ms Holmes as expressed in his testimony essentially coincided with my above expressed provisional views.
- [374] In cross-examination when Dr Likely was asked about the significance of the actions of Ms Holmes he clearly identified them as relevant but not as significant as the actions of Ms Turner:
- "I think the major stressor was with the actions of Ms Turner and the actions of Ms Holmes simply added to that ... I don't think it is possible to say Holmes without reference to Ms Turner. I believe the actions of Ms Turner were the primary stressor, which led to Ms Robinson being concerned regarding her professional position and adverse effects on her mental health."⁶²⁷ (emphasis added)
- [375] In the course of cross-examination Dr Likely agreed patients with anxiety disorders can develop cognitive distortions, exaggerations of real thoughts⁶²⁸ and he accepted the possibility of that having occurred so as to distort Mrs Robinson's view of what was occurring in the workplace.⁶²⁹ The point of this cross-examination was apparently to raise the prospect that by the time Mrs Robinson left the workplace she had by then developed distorted concerns about Ms Turner. Dr Likely obviously found that very unattractive, noting the historical consistency of Mrs Robinson's concerning major interpersonal conflict having been with Ms Turner and not other individuals.⁶³⁰ Moreover the effect of my findings is that Mrs Robinson's evidence about Ms Turner's conduct reflected the reality of what occurred and was not an exaggeration or cognitive distortion of it.
- [376] In cross-examination Dr Likely was reminded of Mrs Robinson's discovery of the anonymously left emails in her final week of work, particularly of Ms Turner's email to Dulise Maxwell complaining of having to constantly deal with complaints about Mrs Robinson and asserting the preliminary findings of an independent investigation indicated she carried out an unfair process. Dr Likely agreed that such a letter would

⁶²⁷ T4-89 LL1-24.

⁶²⁸ T4-91 L18, T4-92 L7.

⁶²⁹ T4-91 L34.

⁶³⁰ T4-91 L39.

have greatly distressed Mrs Robinson, was the very type of email which could cause Mrs Robinson to suffer anxiety or depressive symptoms, would have been at least a significant stressor and could well explain why Mrs Robinson decided to leave the workplace in January 2011.⁶³¹ However, in conceding learning of such an email could well explain why it is Mrs Robinson decided to leave the workplace in January 2011 his answer was qualified by pointing out that such a decision was:

“Because of a sequential series of such emails of communications...or...cumulative, shall I say.”⁶³²

Quite apart from that qualification, Dr Likely’s evidence on this issue was only to concede a possibility and it certainly was not an opinion that in fact the discovery of the email to Dulise Maxwell was the reason for Mrs Robinson’s departure from the workplace. It will be recalled this very issue was raised with Mrs Robinson and she explained that the discovery of Ms Maxwell’s email simply proved what Mrs Robinson already thought. That point is an important one, echoing Dr Likely’s point, in effect, that there had been an accumulation of communications bespeaking Ms Turner’s lack of support for, and adverse attitude towards, Mrs Robinson.

[377] In cross-examination, Dr Likely was questioned about the era of deterioration in Mrs Robinson’s condition in 2013 after such promising early progress, when she had been optimistic of returning to work elsewhere than Weipa. He conceded that if Mrs Robinson’s had in that era discovered in departmental records that the Director-General had been supportive of Ms Turner’s position, that could have aggravated her condition.⁶³³ While the detail of this discovery was not put to Dr Likely, this cross-examination seemed to be a reference to Mrs Robinson’s evidence in cross-examination of having discovered departmental documents including one showing Ms Turner had written to the Director-General describing nepotism complaints against Ms Turner as attributable to “the disgruntled district DON Mary-Rose Robinson”.⁶³⁴ Mrs Robinson testified he had written back to Ms Turner assuring her she was of a very high calibre and that no doubt her family would be too.⁶³⁵ She explained, having given her working life to Queensland Health, that what she saw of the documents caused a loss of her feeling of loyalty to the organisation.⁶³⁶ She did not say it caused an aggravation of her condition.

[378] To the extent that there were events in 2013 which coincided with the reversal in Mrs Robinson’s early progress in coping with her condition the most obvious event was the realisation her employer was not prepared to offer her the choice of returning other than to Weipa. But there is no evidence that realisation or the discovery of departmental documents suggesting Ms Turner had the department’s support was causative of Mrs Robinson’s condition in the relevant sense.

Dr Oelrichs’ opinion

⁶³¹ T4-96 LL1-14.

⁶³² T4-96 LL16-20.

⁶³³ T4-95 L18.

⁶³⁴ T4-11 L23.

⁶³⁵ T4-11 L29.

⁶³⁶ T4-10 L46.

[379] In Dr Oelrichs' report of 25 September 2013 she opined Mrs Robinson's "Adjustment Disorder with anxiety and depressed mood, chronic" developed "as a result of" circumstances in the workplace, described as:

"...being subjected to a consistent and persistent course of managerial mistreatment, bullying and harassing behaviour".⁶³⁷

[380] Dr Oelrichs' report of 25 September 2013 also specifically addressed specific questions posed of her, including the mechanism of Mrs Robinson's injury and its relationship to the current diagnosis:

"4. List stressors (including work-related and non-work-related stressors).

Work-related stressors appear to be the majority of her current presentation. Ms Robinson has had some ongoing family stressors relating to her husband's illness and her daughter's physical condition. These conditions had been longer term and chronic and have not previously induced any psychiatric or psychological condition.

5. Mechanism of injury as stated by the claimant.

The development of an Adjustment Disorder and depressed and anxious mood in relation to Ms Robinson's experiences within her workplace, in particular her direct line manager, where Ms Robinson felt vulnerable to bullying and harassment. (emphasis added)

6. Relationship of the current diagnosis to the stated mechanism of injury.

There appears to be a direct relationship."⁶³⁸ (emphasis added)

[381] Dr Oelrichs' reports, in dealing with causation, expressly allude to the particular role of Ms Turner, consistently with Dr Likely's apparent view of the dominant causal contribution by Ms Turner.

[382] The above reference to Mrs Robinson's daughter's physical condition appears to be a reference to a fact noted earlier in Dr Oelrichs' report to the effect that Mrs Robinson "occasionally gets irritable with her daughter who suffers from psoriatic arthritis and depression for the last two years and has had a pulmonary embolus".⁶³⁹ As to the above reference to Mrs Robinson's husband's illness, Mr Robinson was diagnosed with an aggressive auto immune disease scleroderma and raynauds in June 2008.⁶⁴⁰ His condition was acute and difficult to manage with oral chemotherapy for the first year, but in mid-2009 he underwent intravenous chemotherapy and his condition immediately improved. He returned to full-time work by early to mid-2010.⁶⁴¹ He retired in May 2012 and had a second round of intravenous chemotherapy in late 2012.⁶⁴² His condition is now chronic with acute episodes and fluctuates between periods of stability and periods of increased illness requiring hospitalisation.⁶⁴³

⁶³⁷ Ex 17 p 9.

⁶³⁸ Ex 17 p 13.

⁶³⁹ Ex 17 p 6.

⁶⁴⁰ Ex 5 [5].

⁶⁴¹ Ex 5 [5].

⁶⁴² Ex 5 [5].

⁶⁴³ Ex 5 [5].

[383] In Dr Oelrichs' report of 4 July 2016 she addressed some questions directly relevant to the issue of causation:

“3. Whether the work stressors described by the Plaintiff remain the significant contributing factor to her purported psychological injury or whether there are other factors (including her husband’s ill-health and family conflicts) contributing to her current condition.

The factors which had contributed to Ms Robinson’s condition over a period of time relate to Ms Robinson’s experiences relating to the work-related stressors. As I had noted in my report of 9 September 2013, there had been factors relating to her husband's ill-health and family conflicts, however, these had been long-term and have not persisted and had not been major contributors to her presentation in 2013 and, on current reassessment, from Ms Robinson’s report, her husband’s ill-health has fluctuated and, at current presentation, appears to be stable and reasonably well managed. She also reports no continuing concerns surrounding family conflicts. ...

8. If the plaintiff is suffering from a mental disorder, does it arise out of the events described by the Plaintiff at work?

The likelihood is that Ms Robinson had suffered from symptoms of an adjustment disorder with anxiety and depressed mood, which had become chronic and has been maintained. This condition has evolved and is more consistent with that of a major depressive disorder which is chronic, and this condition has arisen over time due to multiple stressors, initially arising out of events described at work, and has been perpetuated by factors relating to Ms Robinson’s lack of success in sustaining a return to work, losing her position at Queensland Health, and losing her nursing registration. These factors had been consistent throughout provided reports and material.”⁶⁴⁴

[384] The effect of the latter passage quoted above is that factors occurring after Mrs Robinson’s departure from the workplace which had perpetuated her condition were factors directly connected with her inability to return to work, a state of affairs caused by what had occurred in the workplace. A theory advanced by the defendant, that Mrs Robinson’s husband’s health and the demands of caring for him was a causative perpetuating factor unconnected with the workplace events, gained no material support from Dr Oelrichs when it was raised in cross-examination.⁶⁴⁵

Dr Shaikh’s opinion

[385] In Dr Shaikh’s report of 24 July 2012 Dr Shaikh noted:

“Mrs Robinson reports her symptoms to have been present since the middle of 2010 and relates them to chronic workplace stressors, and in particular to the actions of Susan Turner, District Chief Executive Officer. Her concerns

⁶⁴⁴ Ex 18 pp 15, 16.

⁶⁴⁵ T5-17 LL6-40.

relate to a number of incidents of “unreasonable management action”, “humiliation and intimidation” and “breach of privacy”.⁶⁴⁶

- [386] Dr Shaikh’s report responded to some specific questions in a way relevant to the question of causation:

“5. Diagnosis of all work related conditions, please include a DSM-IV multi-axis summary.

Axis 1 309.28, Adjustment Disorder with Mixed Anxiety and Depressed Mood, chronic. ...

This diagnosis is appropriate since Mrs Robinson’s symptoms initiated within three months of onset of an identifiable stressor (in this situation there were multiple stressors over a length of time). ...

6. Relationship of the current work related diagnosis to the stated mechanism of injury.

I believe the above work related diagnosis bears temporal, causal and consequential relationship to the stated mechanism of injury. Mrs Robinson does not have a prior history of psychiatric illness and does not have any significant predisposing factors to developing mental illness. Her symptoms initiated following workplace stressors and were exaggerated on presentation following an increase in workplace stressors.”⁶⁴⁷

- [387] Dr Shaikh joins the other two experts in identifying the cause of Mrs Robinson’s injury as workplace stressors.

Potential other causes emphasised by the defendant

- [388] The defendant’s counsel pressed a suggestion, rejected by Mrs Robinson,⁶⁴⁸ and unsupported by the opinions of the three psychiatrists who testified, that matters unconnected with her work also effected Mrs Robinson’s mental health.

- [389] In the course of cross-examination of Mrs Robinson, the defendant’s counsel placed considerable emphasis upon a section of Dr Bell’s report dated 31 October 2013, headed “Information provided by Ms Robinson”.⁶⁴⁹

- [390] That section contained an array of wide-ranging information given by Mrs Robinson to Dr Bell. It included reference to Mrs Robinson’s husband’s illness, as well as an observation made by her about Ms Turner to the following effect:

“All this has been because I spoke out against the CEO, Susan, when she was doing the wrong thing. She is a Maori from NZ; and, what she’s doing is employing all her relatives in the jobs up there. But, when I confronted her with that, she just said she didn’t f-ing care what anybody thought about it.”⁶⁵⁰ (emphasis added)

⁶⁴⁶ Ex 2 p 17.

⁶⁴⁷ Ex 2 p 18.

⁶⁴⁸ T3-36 L15.

⁶⁴⁹ Ex 2 p 62, T2-71 L10, T3-10 L5.

⁶⁵⁰ Ex 5 p 62.

[391] Mrs Robinson confirmed in cross-examination that she had concerns about Ms Turner's manipulation of the appointment process for the DON at Weipa in order that Ms Turner's friend, Brenda Close, may be appointed.⁶⁵¹ Ms Jacobs gave evidence that on 13 October 2010 when she, Ms Turner and Mrs Robinson were sharing a taxi to Brisbane Airport Mrs Robinson raised issues about potential perceptions of a lack of transparency in Ms Close's appointment process.⁶⁵² Ms Turner recalled of this event that Mrs Robinson was not confident in Ms Close's appointment and Ms Turner suspected Mrs Robinson was concerned about the appointment process.⁶⁵³ Mrs Robinson also explained in cross-examination that when Ms Turner's sister Storm Baker came second in the selection process in respect of a new position, an additional position was created so that she could be appointed.⁶⁵⁴ Mrs Robinson agreed in cross-examination she had confronted Ms Turner about her adoption of such a process.⁶⁵⁵

[392] What Dr Bell understood the words "all this" to be a reference to in the above quoted passage is unknown – he was not called as a witness. On its face however, the above quoted passage is not likely to have been a reference to the cause of Mrs Robinson's illness and rather is an expression of Mrs Robinson's opinion as to what may have motivated Ms Turner's unsympathetic attitude towards her when she had been working and possibly extending to the motivation behind the unsympathetic handling of Mrs Robinson's prospective graduated return to work. In any event it is plain that neither that passage nor the passage in Mr Bell's notes about Mrs Robinson's husband's illness were included by Dr Bell in the context of a causal analysis of Mrs Robinson's illness. As much is obvious from Dr Bell's note appearing under his heading "Information provided by Ms Robinson" namely:

"The following represents extracts from what Ms Robinson told me on 16.10.13 and is provided to set the general tone of Ms Robinson's psychological and emotional functioning and provide some insight into her recent difficulties."⁶⁵⁶

[393] Despite this the defendant still pressed the inference that the state of health of Mrs Robinson's husband, Jeffrey, played a significant causal role in Mrs Robinson's illness.

[394] Mrs Robinson rejected the suggestion in cross-examination that her husband's illness had greatly affected her emotionally.⁶⁵⁷ She acknowledged it had an effect upon her and that she held concerns about the state of her husband's health,⁶⁵⁸ however she explained that:

"[W]hen Susan Turner came on the scene Jeffrey was in the best place that he could ever have been. He was expected to be dead and he was returning to work. We were on an absolute high."

⁶⁵¹ T2-67 L16 – T2-69 L17.

⁶⁵² T6-28 L34, T6-80 L36. An event pleaded at SOC [6(vv)].

⁶⁵³ T4-70 LL32-40.

⁶⁵⁴ T2-69 L28 – T2-70 L39.

⁶⁵⁵ T2-69 L40.

⁶⁵⁶ Ex 5 p 62.

⁶⁵⁷ T3-10 L30.

⁶⁵⁸ T3-10 LL33-41.

- [395] Ms Burke had been aware from an early stage of Mrs Robinson's husband's health issues and was impressed by the fact that Mrs Robinson did not let it interfere with her work.⁶⁵⁹
- [396] The defendant adduced evidence of Mrs Robinson having become upset when present in support of her husband for two meetings about his return to or continuation of work during 2010. Ms Hoins recalled attending a meeting in Weipa early in 2010 with Ms Turner and Mr and Mrs Robinson.⁶⁶⁰ Ms Hoins testified that the meeting considered Mr Robinson's pathway to a manageable workplace position and Mrs Robinson became upset and cried.⁶⁶¹ However no detail was given as to what was being said when Mrs Robinson became upset.
- [397] Ms Hoins also testified to being present in late 2010 at a meeting with Ms Turner, Ms Reed and the Robinsons at which Mr Robinson's work ability was discussed.⁶⁶² Again Ms Hoins recalled Mrs Robinson became upset and cried⁶⁶³ but again Ms Hoins proffered no detail as to what was being said when Mrs Robinson became upset.
- [398] Ms Reed and Ms Turner also recalled Mrs Robinson was distressed during that meeting.⁶⁶⁴ Ms Reed made notes of this meeting.⁶⁶⁵ According to those notes the meeting was on 15 November 2010,⁶⁶⁶ although Mrs Robinson recalled it was 3 December.⁶⁶⁷ It will be recalled that, earlier on the 15th,⁶⁶⁸ there had been the meeting regarding office moves at which Ms Turner had given Ms Holmes her way, to the humiliation of Mrs Robinson – an event likely to have been upsetting to Mrs Robinson. The issue under discussion at the latter meeting related to the need for a letter of correction relating to Mr Robinson's Q-Super.⁶⁶⁹ There had evidently been a HR error in communication to Q-Super, which upset Mrs Robinson.⁶⁷⁰ It was to the effect that Mr Robinson had not been fit to return to his former work position because of total and permanent impairment when in fact there had only been partial impairment and he was in fact able to return to a work position,⁶⁷¹ that of maintenance co-ordinator.⁶⁷² Mrs Robinson was, to Ms Reed's memory, distressed about Q-Super not having been told her husband has been able to continue to work.⁶⁷³ On Ms Turner's account even Ms Turner was "extremely concerned" about how Queensland Health had handled the matter and had caused a financial disadvantage to Mr Robinson.⁶⁷⁴ Mrs Robinson acknowledged she was very distressed at the meeting.⁶⁷⁵ That she was as a wife upset

⁶⁵⁹ T2-94 L20.

⁶⁶⁰ T6-87 LL38-46.

⁶⁶¹ T6-88 L5.

⁶⁶² T6-88 LL21-40.

⁶⁶³ T6-88 L45.

⁶⁶⁴ T5-26 L21, T7-93 L39.

⁶⁶⁵ Ex 34.

⁶⁶⁶ T7-106 L28.

⁶⁶⁷ T3-95 L19.

⁶⁶⁸ T7-93 L35.

⁶⁶⁹ Ex 34.

⁶⁷⁰ T7-106 L43.

⁶⁷¹ T7-92 L46 – T7-93 L2.

⁶⁷² T7-108 L45.

⁶⁷³ T7-107 L 15.

⁶⁷⁴ T5-26 LL1-5.

⁶⁷⁵ T3-106 L2.

and tearful in the course of a meeting of that character about her husband is hardly surprising; even less so given her emotions were already frayed by Ms Turner's extraordinary conduct towards her earlier that day. It does not suggest her concerns about her husband's health or its consequences for him as an employee were so abnormal as to have likely causally contributed to her psychiatric illness. Indeed Dr Likely opined it was a perfectly reasonable reaction⁶⁷⁶ and Dr Oelrichs opined it was an understandable, normal response.⁶⁷⁷

[399] The defendant's counsel highlighted Mrs Robinson had apparently developed severe depression in 2015 and that her husband had been hospitalised for seven weeks before October 2014, apparently in connection with an infection, and Mrs Robinson had found it challenging in managing his medication in the aftermath.⁶⁷⁸ Indeed she told her counsellor Ms Roubos that she found the role of caring for her husband more challenging and difficult than she used to.⁶⁷⁹ Dr Likely acknowledged in that context that the ill health of a loved one can precipitate or perpetuate a mental disorder.⁶⁸⁰ However he explained Mrs Robinson's depression in 2015 had coincided with a change in medication and once her former medication was reinstated her condition improved, reverting to her previous predominantly anxiety disorder.⁶⁸¹

[400] The defendant suggested the illness of Mrs Robinson's sister was a causal stressor upon her during 2010. Mrs Robinson learnt her sister had breast cancer in September 2010. She accepted that concerned her and was "to a degree" another stressor.⁶⁸² Mrs Robinson's sister also had a trans ischemic attack, a brief stroke-like attack, in 2010, although Mrs Robinson did not learn of its occurrence until later in the year.⁶⁸³ It is readily apparent from the evidence that Mrs Robinson's sister's health issues would have been stress of a quite different degree and nature to that occurring in the workplace. As Dr Likely observed, they were not stressors which impacted upon Mrs Robinson's capacity to engage in remunerative employment.⁶⁸⁴ The evidence does not suggest Mrs Robinson's sister's health issues provoked such a degree of concern by Mrs Robinson as to have materially affected her mental state.

Conclusion

[401] My provisional view, earlier expressed, was confirmed by the psychiatrists' evidence.

[402] They all identified workplace stressors as the cause of the injury, lending no substance to the defendant's attempts to blame private life stressors.

[403] Of those who were more specific – Dr Likely and Dr Oelrichs – both emphasised the particular contribution of Ms Turner's conduct. It is true neither were asked the

⁶⁷⁶ T4-88 L14.

⁶⁷⁷ T5-16 LL9, 31.

⁶⁷⁸ T4-90 LL30-37.

⁶⁷⁹ Ex 31.

⁶⁸⁰ T4-90 L21.

⁶⁸¹ T4-90 LL6, 46.

⁶⁸² T3-35 L34.

⁶⁸³ T3-34 L33, T3-35 LL1-25.

⁶⁸⁴ T4-88 L27 ("remunerative" heard by me but transcribed as "indistinct").

ultimate question which I must determine. However, on a consideration of their evidence overall, it is apparent that they regarded Ms Turner's conduct as so significant a causal factor that it may reasonably be inferred to have been a necessary condition of the occurrence of the injury. In this context the relevant conduct of Ms Turner is the same conduct giving rise to the two breaches.

[404] I am fortified in so concluding because by far the most significant potential causal contribution of Ms Holmes' conduct was the targeting of Mrs Robinson in the Holmes WIFs. That causal contribution was itself only enlivened by the breach conduct of Ms Turner and the defendant in failing to take timely and determinative action in response to the Holmes WIFs.

[405] But for the breaches there would have occurred timely and determinative action on the Holmes WIFs, quelling any material potential concern about Ms Holmes, and Mrs Robinson would not have been subjected to a course of managerial mistreatment, leaving her in an ordinary emotional state. The necessary conditions of the occurrence of her psychiatric injury would not have existed. But for the breaches Mrs Robinson's psychiatric injury would not have occurred.

[406] It follows the plaintiff has made good her case in negligence against the defendant and there should be judgment for the plaintiff.

[407] It remains to assess the quantum of damages.

PART B QUANTUM

Pain, suffering and loss of amenities of life

[408] Mrs Robinson was once "the rock" of her family. She was well organised, had an excellent memory, was actively supportive of her family including her daughters and enjoyed many indoor and outdoor activities with family and friends.⁶⁸⁵ That has all changed by reason of the profound effect of her injury upon her.⁶⁸⁶

Residential arrangements

[409] Mrs Robinson became increasingly antisocial, withdrawn and dreaded leaving her home. When in Weipa she worried about dealing with conversations with locals about why she was off work. Her treating practitioners recommended she move to Townsville where her daughters live and psychiatric care was more readily accessed.⁶⁸⁷

[410] Initially she lived out of a caravan at her daughter's house. More recently she and her husband had been living in a shipping container in the back yard of her daughter's house, using the kitchen and bathroom of her daughter's house.⁶⁸⁸

⁶⁸⁵ T4-27 L10 – T4-28 L26.

⁶⁸⁶ T4-34 L42.

⁶⁸⁷ Ex 5 p 6 [47].

⁶⁸⁸ Ex 5 p 6 [48].

Wellbeing and concentration

- [411] Mrs Robinson at times becomes overwhelmed by anxiety and feelings of worthlessness and failure. She is conscious of being oversensitive and misconstruing and magnifying issues and struggling to move beyond them. This is accompanied by nausea, dry mouth, light-headedness and occasional diarrhoea.⁶⁸⁹ She has occasionally had suicidal thoughts.⁶⁹⁰ She sleeps poorly, often waking through the night, which leaves her tired during the day.⁶⁹¹
- [412] She has difficulty processing and remembering information, to the frustration of her family.⁶⁹²
- [413] She struggles with decisions, reflecting itself in errors, for example, in elementary decision-making when grocery shopping.⁶⁹³
- [414] Her concentration wanes easily, making it hard to stay on task even during day-to-day tasks such as paying bills and following recipes.⁶⁹⁴ She struggled in pursuit of her interest in quilting, even after attending a course. She found it difficult to follow instructions and felt overwhelmed without assistance in breaking down each step.⁶⁹⁵ Her pursuit of this interest was so problematic for her that she eventually passed the quilting machine on to her sister.⁶⁹⁶
- [415] Her former capacity to read books and lengthy documents has diminished and her reading attention is now limited to short bursts, reading newspaper and magazine articles.⁶⁹⁷ She struggles to follow television programs longer than short documentaries or news broadcasts.⁶⁹⁸

Social functioning

- [416] Mrs Robinson is conscious she is no longer the rock of her family and is conscious of her daughters protecting her from stress and family issues.⁶⁹⁹ She is less sympathetic and tolerant towards her husband's issues and feels guilty she cannot support him like she has in the past.⁷⁰⁰

⁶⁸⁹ Ex 5 p 4 [34, 35].

⁶⁹⁰ Ex 5 p 10 [79].

⁶⁹¹ Ex 5 p 8 [61-63].

⁶⁹² Ex 5 p 5 [40].

⁶⁹³ Ex 5 p 5 [41], p 7 [54].

⁶⁹⁴ Ex 5 p 5 [37, 42], p 7 [5], T4-28 L42.

⁶⁹⁵ Ex 5 p 10 [83].

⁶⁹⁶ Ex 5 p 10 [85].

⁶⁹⁷ Ex 5 p 10 [80].

⁶⁹⁸ Ex 5 p 10 [81].

⁶⁹⁹ Ex 5 p 6 [44].

⁷⁰⁰ Ex 5 p 7 [56].

- [417] She experiences friction with family members because of forgetting arrangements she has agreed to.⁷⁰¹
- [418] When on a caravan trip with friends and family she was so sensitive about her indecision in navigating that it culminated in an outburst against her friends.⁷⁰²
- [419] She prefers to be left alone⁷⁰³ and becomes anxious having to meet new people, particularly in a group. Even attending family events she may have a panic attack if she does not withdraw after a short period.⁷⁰⁴
- [420] She is evasive of her past work acquaintances, not wanting them to know how unwell she is.⁷⁰⁵
- [421] She becomes anxious, uncomfortable and withdrawn when exposed to aggression or conflict, even among strangers to her when out or on television in sporting events.⁷⁰⁶
- [422] She has managed to assist in supporter reader voluntary work at her granddaughter's school, though not consistently and has sometimes become distressed and overreacted to children.⁷⁰⁷

Domestic management and self-care

- [423] Mrs Robinson was once very self-sufficient in financial management but is now heavily reliant on her daughters to manage her financial affairs and budget, to the extent one of them is a signatore on her bank account.⁷⁰⁸
- [424] Mrs Robinson is very forgetful, including of birthdays and anniversaries as well as day-to-day commitments. She is heavily reliant on setting reminder alarms for daily tasks such as collecting grandchildren from school and meeting appointments.
- [425] Some days she is so low she cannot get out of bed, does not eat and needs reminders to take medication.⁷⁰⁹ She only cooks simple meals, struggling with recipes.⁷¹⁰ Her daughter cannot rely on her to cook for the household.⁷¹¹
- [426] She procrastinates and lacks motivation in tending to elementary household chores such as cleaning and washing.⁷¹² She no longer has the care to maintain a tidy home, which

⁷⁰¹ Ex 5 p 5 [43].

⁷⁰² Ex 5 p 10 [79].

⁷⁰³ Ex 5 p 9 [68].

⁷⁰⁴ Ex 5 p 8 [64], T4-30 LL1-5.

⁷⁰⁵ Ex 5 p 8 [65].

⁷⁰⁶ Ex 5 pp 8, 9 [66-67].

⁷⁰⁷ Ex 5 p 7 [57].

⁷⁰⁸ Ex 5 p 5 [38], p 7 [55], T4-29 LL5-16.

⁷⁰⁹ Ex 5 p 8 [60], T4-29 L40.

⁷¹⁰ Ex 5 p 7 [52].

⁷¹¹ T4-28 L37.

⁷¹² Ex 5 p 6 [51].

compounds her mood, seeing herself as a failure at home as well as at work.⁷¹³ She neglects her grooming and nutrition and has her hair cut or acquires new clothing only on her daughters' encouragement.⁷¹⁴

Travel

- [427] Once a confident driver, Mrs Robinson drove little between 2011 and 2015. When attempting to drive she would become disoriented and suffer panic attacks. She was heavily dependent on others driving her to appointments and the like. While not without difficulty, during 2015 she resumed localised driving tasks such as driving her grandchildren to school.⁷¹⁵

Social and recreational activities

- [428] Whereas once Mrs Robinson enjoyed outdoor activities, now she experiences agoraphobia and will not leave home for days.⁷¹⁶
- [429] She has lost interest in most activities, lacks motivation to exercise and no longer enjoys walking or swimming for exercise.⁷¹⁷
- [430] Mrs Robinson took up quilting to challenge herself and tried to socialise, attending a craft group once a week and attending a quilting workshop in the Blue Mountains with a friend, there overcoming challenging moments of anxiety and self-doubt. However, her participation in the local group grew irregular.⁷¹⁸

Psychiatric opinion

Dr Likely and Dr Oelrichs

- [431] The opinions of Dr Likely and Dr Oelrichs as to Mrs Robinson's prospect of returning to work are very similar.
- [432] In Dr Likely's report of 2 March 2015 he opined "Mrs Robinson is now rendered totally and permanently incapacitated from undertaking any form of remunerative employment".⁷¹⁹
- [433] It was highlighted in cross-examination that in his report of 23 October 2013 Dr Likely had opined that it was "difficult to see" Mrs Robinson returning to any form of remunerative employment "at least until legal matters are resolved".⁷²⁰ Dr Likely

⁷¹³ Ex 5 p 6 [50].

⁷¹⁴ Ex 5 p 8 [58, 59].

⁷¹⁵ Ex 5 p 9 [69-75], T4-29 LL24-36, T4-30 LL40-45.

⁷¹⁶ Ex 5 p 6 [49], p 10 [77].

⁷¹⁷ Ex 5 p 9 [76], p 10 [78].

⁷¹⁸ Ex 5 p 10 [82], p 11 [84].

⁷¹⁹ Ex 15 p 2.

⁷²⁰ Ex 2 p 29, T4-95 L5.

acknowledged it is common after the end of litigation, given the pressure of legal proceedings, for there to be an improvement in the condition of a plaintiff such as Mrs Robinson.⁷²¹ However, Dr Likely qualified that response by noting that Mrs Robinson has now been symptomatic for a prolonged period and “the longer anxiety and depression continue, the more severe they become, the more deeply engrained they become and the more treatment-refractory they become...”⁷²² He explained therefore that while the conclusion of the proceedings would be a considerable weight off her shoulders, it may not necessarily lead to a dramatic variation in her symptoms “because now they have been present for many, many years”.⁷²³

[434] In her report of 4 July 2016 Dr Oelrichs opined:

“Ms Robinson does not have the capacity to return to paid employment in the future for which she is skilled and experienced, due to the longitudinal nature of her condition, her lack of success in return to work and lack of success in maintaining any voluntary work, impact upon her levels of focus and concentration and, to a major degree, the impact upon her levels of self-esteem and confidence.”⁷²⁴

[435] It was highlighted in cross-examination that Dr Oelrichs had classed the degrees of impairment of a number of categories as mild and it was only the category of concentration, persistence and pace which she had classed as moderately impaired. But Dr Oelrichs explained it was that moderate impairment which was the “major impairing factor” in Mrs Robinson’s ability to work.⁷²⁵ Moreover she had rated Mrs Robinson’s degree of adaption impairment even higher than Dr Likely had.

[436] Dr Oelrichs acknowledged litigation was of itself a stressor and that the resolution of litigation can lead to an improvement in condition, but she seemed sceptical, observing:

“[P]rediction about that, I think, is very difficult. ... I got the impression, just given this lady’s description on how she just did everyday things, such as even, you know, preparing a simple recipe – that she had – you know, her focus for doing that was impaired. Her ability to, sort of, again multi-task and – and feeling overwhelmed – I don’t think those things are going to disappear overnight. ... I think those things are there – have been there and persistent for a number of years.”⁷²⁶

[437] While Dr Likely and Dr Oelrichs concur as to Mrs Robinson’s bleak prospects of ever returning to remunerative employment they diverge slightly on the extent to which her condition interferes with her day to day functioning and enjoyment of life. The extent of their divergence is quantified in their assessments under the psychiatric impairment rating scale (“PIRS”) contained in schedule 11 *Workers Compensation and Rehabilitation Regulation 2014* (Qld) (“the Regulation”).

⁷²¹ T4-96 L33.

⁷²² T4-96 L36. “Treatment-refractory” heard by me but transcribed as “indistinct”.

⁷²³ T4-96 L39.

⁷²⁴ Ex 18 p 17.

⁷²⁵ T5-22 L22.

⁷²⁶ T5-21 LL18-26.

PIRS assessments

[438] The PIRS assessments⁷²⁷ of Dr Likely and Dr Oelrichs were, in summary:

Category	Rating and comments by Dr Likely⁷²⁸	Rating and comments by Dr Oelrichs⁷²⁹
Self-Care & Personal Hygiene	2 – mild impairment “...able to live independently although by her own admission neglects regular grooming and nutrition”.	2 – mild impairment “can live independently but may require prompting to self-care”.
Social & Recreational Activities	4 – severe impairment “...only able to tolerate the company of family members or one or two close friends, other than this she rarely ventures from her residence”.	2 – mild impairment “will go out monthly to supportive group. Loss of confidence and self-esteem”.
Travel	3 – moderate impairment “Ms Robinson is unable to travel independently without a support person, often usually her husband Jeffrey”.	2 – mild impairment “able to drive self locally”.
Social Functioning	2 – mild impairment “Ms Robinson’s symptoms have exerted some strain on her relationship with all family members. However, her family is her primary source of psycho-social support.”	1 – no impairment “No impairments or separations in close interpersonal relationships.”
Concentration, Persistence & Pace	4 – severe impairment “cognitive impairment, ... includes broken sleep with consequent daytime lethargy, poor attention and concentration with difficulty retaining and thus retrieving information leading to poor short-term memory, difficulty planning, organising, sequencing and performing tasks, leading to generalised disorganisation and decreased productivity”.	3 – moderate impairment “unable to follow complex instructions”.
Adaption	4 – severe impairment “... rendered totally and permanently incapacitated from	5 – totally impaired “Cannot work”.

⁷²⁷ Following the steps in s 4 the Regulation.

⁷²⁸ Ex 15 pp 2,3.

⁷²⁹ Ex 18 p 19.

	undertaking any form of remunerative employment”.	
Classes in ascending order	2, 2, 3, 4, 4, 4.	1, 2, 2, 2, 3, 5.
Median Class Score ⁷³⁰	3	2
Aggregate Class Score	19	15
Percentage Impairment (Using Conversion Table ⁷³¹)	24	8
PIRS Rating	24	8

- [439] The divergence between the PIRS rating by each doctor is at first blush surprising given the proximity of their aggregate scores but readily explained by the application of the conversion table in s 7 of the Regulation. Dr Oelrichs’ ratings of 1 for social functioning and 2 for social and recreational activities each appear to be at least a classification level lower than suggested by the evidence. Were they altered respectively from 1 to 2 and 2 to 3 then her mean score would increase to 3 and her aggregate to 17. By reference to the conversion table this would result in a PIRS rating of 19, much closer to Dr Likely’s rating of 24.

Dr Shaikh

- [440] Before expressing a concluded view as what PIRS rating ought be accepted it is necessary to discuss a number of issues arising from the evidence of Dr Shaikh.
- [441] Dr Shaikh, who only ever examined Mrs Robinson once, back in 2012, provided a supplementary report dated 17 November in which he made comments on some records and the reports of Dr Likely and Dr Oelrichs.⁷³² Contrary to Dr Likely and Dr Oelrichs he expressed the expectation Mrs Robinson should be capable of returning to alternative employment. He disagreed with the assessment of the category of adaption being as high as that assessed by Dr Likely and Dr Oelrichs,⁷³³ an issue of obvious relevance not only to the PIRS rating and its impact upon general damages but also to the assessment of future economic loss.
- [442] The opinions of Dr Likely and Dr Oelrichs ought be preferred to those of Dr Shaikh. His supplementary report’s comments are so brief and bereft of foundational analysis as to carry little weight as expert opinion. While he was permitted to enlarge upon his report’s comments in evidence his testimony was unpersuasive.

⁷³⁰ Calculated per s 6 the Regulation.

⁷³¹ In s 7 the Regulation.

⁷³² Ex 28.

⁷³³ Ex 30 p 2.

[443] For example, Dr Shaikh wrote in reference to the notes of counsellor Lyn Roubos, apparently made in her consultations with Mrs Robinson, “there is documentation surrounding Ms Robinson seeing this as a “game””.⁷³⁴ In a more general observation he noted, “There is a significant level of contribution from the legalistic “game” process, and Ms Robinson’s vindictive thought patterns”.⁷³⁵ He confirmed in cross-examination that his reference to a “game” was actually a reference to the following passage within Ms Roubos’ notes of a consultation with Mrs Robinson:

“Her legal team have been in contact and a date set in late April. Has been warned that her expectations may be too high for the \$ outcome. Cognitive work on separating self-worth from final \$ value that is agreed. Created analogy of legal process being a ‘game’ b/w parties that does not accurately reflect her value to organisation or place a value on her future.”⁷³⁶

Dr Shaikh surprisingly declined to concede in cross-examination that the logical inference arising from those notes was that it was the counsellor, not Mrs Robinson, who created the analogy of the legal process being a game.⁷³⁷ In any event, whoever created the analogy, it was plainly created as a mechanism to fortify Mrs Robinson’s psychological wellbeing and guard against feelings of self-worth hinging upon the legal process. It provides no support for the opinion asserted by Dr Shaikh in additional evidence-in-chief that Mrs Robinson’s assumption of her enmeshed role in legal proceedings has caused a perception that she is not able to return to work.⁷³⁸

[444] As to Dr Shaikh’s reference to “vindictive thought patterns” he explained in further evidence-in-chief that he meant Mrs Robinson’s negative thought patterns against “one of the alleged perpetrators, Ms Turner”.⁷³⁹ In light of Ms Turner’s conduct the notion that Mrs Robinson may have negative thought patterns against Ms Turner is utterly unremarkable. Dr Shaikh’s brief purported explanation of its relevance as being the real reason for Mrs Robinson being unable to return to work, as distinct from her mental illness, was unconvincing.⁷⁴⁰

[445] Dr Shaikh also appeared to contort Ms Roubos’ notes of a consultation with Mrs Robinson in order to convey the view that Mrs Robinson had exhibited the capacity to undertake a carer’s role.⁷⁴¹ The reality, already mentioned above, is that after Mrs Robinson’s husband had been hospitalised for seven weeks prior to October 2014, apparently in connection with an infection, and Mrs Robinson had to care for him, she told her counsellor Ms Roubos, and Ms Roubos noted, that she found the role of caring for her husband more challenging and difficult than she used to.⁷⁴² That Mrs Robinson cared for her husband when he was incapable of living independently⁷⁴³ was viewed by Dr Shaikh as supporting “the notion that she is capable of some form of employment”.⁷⁴⁴ Such a view gives inadequate weight to the fact that Mrs Robinson

⁷³⁴ Ex 28 p 2.

⁷³⁵ Ex 28 p 3.

⁷³⁶ Ex 34 notes for 17/2/15.

⁷³⁷ T6-65 L34.

⁷³⁸ T6-56 L4.

⁷³⁹ T6-56 L9.

⁷⁴⁰ T6-56 L23.

⁷⁴¹ T6-65 L45 – T6-67 L16.

⁷⁴² Ex 31.

⁷⁴³ T4-37 LL25-30.

⁷⁴⁴ T6-76 L47.

found even that task more challenging and difficult than she used to. It also fails to allow for the distinction between the demands on Mrs Robinson's mental and psychological capacities of the task of caring for her spouse at her own pace in the secure environment of her own home and the tasks generally inherent in even unskilled remunerative work, such as travelling away from home, interacting effectively with persons other than family and friends and performing tasks in compliance with the standards of quality and timeliness imposed by others.

[446] It is clear however that Dr Shaikh was not merely asserting Mrs Robinson could return to work in some unskilled position. His evidence was to the effect that Mrs Robinson had the capacity to return to a similar position to that of District DON at some place other than Weipa or work in a non-clinical role at an equivalent executive level to that of District DON,⁷⁴⁵ within six months of the resolution of the trial.⁷⁴⁶ It is noteworthy that at the time of his sole assessment of Mrs Robinson in 2012 Dr Shaikh's view was that Mrs Robinson's capacity to return to work depended upon the success of her return to work programme.⁷⁴⁷ The evidence demonstrates that such a programme was never able to be implemented.

[447] Mrs Robinson's own evidence made it obvious Dr Shaikh's view was unrealistic. When it was put to Mrs Robinson that she would be more than capable of performing a wide variety of roles in Queensland Health or some other health facility she responded, "Maybe in the kitchen or the floor cleaning"⁷⁴⁸ but explained she no longer had the capacity to focus sufficiently to even follow patterns, let alone read policies.⁷⁴⁹ She rejected the suggestion that she would be able to return to work as a clinical nurse.⁷⁵⁰

[448] When further pressed in cross-examination about there being a vast array of positions in hospitals and health organisations which Mrs Robinson could work in, her response included the following:

"I'm certainly not able to function any higher than assistant nurse, and I don't have a registration, and I can't get that back. So I would only ever – if you're talking about nursing – would be a personal care attendant or an AIN, but there are increased risks to me for that because I would sometimes probably be found at fault at working outside my scope of practice, which is very different, because I was – I was a registered nurse and I would probably forget that I was, you know, not able to assess or do anything other than bathe and feed people."⁷⁵¹

[449] When cross-examined about her ability to take on administrative positions at a managerial level that would not require clinical registration, she testified:

⁷⁴⁵ T6-55 LL35-39.

⁷⁴⁶ T6-77 L42.

⁷⁴⁷ T6-61 L23.

⁷⁴⁸ T3-103 L31.

⁷⁴⁹ T3-103 LL31-37.

⁷⁵⁰ T3-104 L16.

⁷⁵¹ T4-19 LL1-8.

“No, but they would require the area I was known to have good expertise in, and that’s managing people, and I can’t do that because with people comes conflict.”⁷⁵²

[450] As to her capacity to manage a clinical group she responded:

“That position still has HR aspects and management, and is decision making, and I’m flat out making a decision what to wear.”⁷⁵³

[451] I preferred the opinions of both Dr Likely and Dr Oelrichs, both by reason of the more comprehensive analysis in their reports and by reason of the fact that, unlike Dr Shaikh, they had each had a relatively recent opportunity to again assess Mrs Robinson.

[452] While he had not examined Mrs Robinson since 2012, Dr Shaikh did peruse the transcripts of and listened to recordings of Mrs Robinson’s evidence at trial. Particularly on the strength of this he disagreed with Dr Likely’s and Dr Oelrichs’ rating of Mrs Robinson’s concentration impairment as being inconsistent with “her attendance at the trial”, her “extended evidence” and her ability “to follow complex instructions, as evidenced by her presentation during the trial”.⁷⁵⁴ The implication being advanced was, in effect, that Mrs Robinson had performed better than expected for someone of the level of concentration deficit assessed by Dr Likely and Dr Oelrichs (“the witness performance implication”).

[453] Dr Shaikh enlarged upon these comments in his evidence-in-chief, asserting that while it was reasonable that Mrs Robinson had a good recollection of events which were so important,⁷⁵⁵ he perceived from his perusal of the trial transcript she had exhibited a capacity to concentrate and deal with complex questions which should not be a capacity unique to the circumstance of the trial. He opined she would have the same ability to concentrate in her existence beyond the trial environment.⁷⁵⁶

[454] Dr Shaikh’s witness performance implication appeared to have been influenced by an assumption on his part that, while Mrs Robinson was not asked to follow complex instructions during the trial, she must have been called upon to follow complex instructions in the long course of the dispute culminating in the trial.⁷⁵⁷ His assumption appeared to be that because Mrs Robinson had been involved in lengthy interviews and discussions about her case, she must have been able to follow complex instructions.⁷⁵⁸ A source for the understanding Mrs Robinson had participated in lengthy interviews appeared to be this note by Ms Roubos:

“She reports often on pre-injury vs post-injury experience and really wants the legal process completed. Spent 5 hrs with her legal team recently.

⁷⁵² T4-19 L13.

⁷⁵³ T4-19 L20.

⁷⁵⁴ Ex 28 p 2.

⁷⁵⁵ T6-54 L7.

⁷⁵⁶ T6-52 L40, T6-54 L20.

⁷⁵⁷ T6-55 L5.

⁷⁵⁸ T6-54 L36.

Finds it very stressful and beginning to defuse her own value from this process, which protects her mental health.”⁷⁵⁹

That entry makes it obvious Mrs Robinson would have found the time spent with her legal team stressful but it says nothing of the complexity and variability of the demands placed upon Mrs Robinson’s concentration or the levels of concentration actually achieved by her during the time she spent with her legal team. It provides no support for Dr Shaikh’s aforementioned assumption, to which I give no weight.

[455] The airing of the witness performance implication had its debut before Dr Shaikh was asked to consider it, when the defendant’s counsel put to Mrs Robinson that her concentration, her ability to coherently present her case, was very good, to which she responded:

“It’s very, very patchy and very unlike my previous. And I get very lost in these documents. I cannot focus, and that is why I cannot understand you, because I can’t hear the – I don’t focus on the rest of what people are saying. I’m in great difficulty up here.”⁷⁶⁰

[456] That suggestion and the witness performance implication were at odds with my own impression of Mrs Robinson’s evidence. It appeared to me that Mrs Robinson was well prepared to give evidence but nonetheless found it a demanding experience. She at times appearing drained and tired, occasionally becoming upset, but pressed on without complaint. She was undoubtedly in the witness box for a very long time but she had no choice other than to be stoic about the duration of her testimony and she certainly had no choice but to give evidence if she wanted to pursue her claim. She appeared to be conscientious in trying to answer questions asked of her, which is unremarkable. She was able to remember a lot of information about what had happened to her in connection with this case, occasionally correcting herself or, very rarely, the questioner. Given the pivotal importance that information has come to assume in her life it is hardly remarkable she was reasonably familiar with its detail. That said, she was often aided by being taken to contemporaneous documents when being questioned. Furthermore, there were various instances during her testimony when she could not recall some factual detail, became confused or seemed to lose focus, consistently with her experiencing difficulty in concentrating.⁷⁶¹ Overall her performance as a witness did not strike me as being at all at odds with her reported condition and capability.

[457] When the witness performance implication was explored in cross-examination with Dr Likely he rejected it emphatically. He pointed out Mrs Robinson’s capacity to recall relevant information was not a good indicator of her capacity for return to work. Rather, he pointed out it merely reflected that she was well prepared for the trial and

⁷⁵⁹ Ex 31 5/5/15.

⁷⁶⁰ T3-95 LL28-32.

⁷⁶¹ Not all such instances are apparent from the transcript, but see for example, in evidence-in-chief, T1-36 L24, T1-36 L45, T1-37 L26, T1-42 L6, T1-42 L29, T1-46 L19, T1-47 L44, T1-49 L19, T1-51 L6, T1-54 L37, T1-56 L6, T1-57 L38, T1-58 L38, T1-65 L12, T1-70 L4, T1-72 L15, T1-74 L42, T2-8 L19, T2-16 L18, T2-16 L36, T2-39 L14, T2-41 L36, T2-43 LL1-5, T2-43 LL26-29, T2-43 LL1-5 and T2-52 L9, and in cross-examination, T3-15 LL21,31, T3-22 L5, T3-24 L13, T3-32 L20, T3-42 L26, T3-59 L9, T3-59 L32, T3-73 L8, T3-79 L14, T3-95 L30, T3-95 L45, T3-96 L11, T3-97 L28, T3-100 L22, T3-100 L32, T3-101 L3, T3-101 L25, T3-105 L6, T4-10 L18, T4-10 L25, T4-11 L47, T4-13 L45, T4-16 L35, T4-19 L22, T4-22 L8, T4-23 L45, and T4-24 L46.

was recalling information which had become deeply engrained on her psyche, having been taken through it so many times in the long history of this matter.⁷⁶² Dr Likely testified:

“I don’t believe that you can draw an equivalent to in the courtroom atmosphere and work in that the demands are completely different. The demands of a very senior nurse in terms of managing other staff, attending to very unwell patients and dealing with interpersonal conflict on a daily basis is very difficult – it’s very different to giving evidence in a courtroom for a case which she has been waiting to arrive at the courtroom for some years now. I think they’re two very different situations and I don’t think that one can extrapolate that because she was able to answer your questions and, indeed, by the sound of it correct you a number of occasions that that could be extrapolated that she is fit to return to work.”⁷⁶³

[458] Dr Oelrichs was also obviously unimpressed by the witness performance implication when it was raised with her in cross-examination, observing it was better to assess by seeing in person than by reference to a written transcript.⁷⁶⁴ She observed that while Mrs Robinson was able to present with a reasonable focus and concentration in providing information relevant to the case, information she had become very familiar with over a prolonged period and which had become all consuming, Mrs Robinson’s capacity to multi-task and focus on more complex everyday things associated with work was “not very good” and “quite reduced”.⁷⁶⁵

[459] For all of these reasons I reject Dr Shaikh’s witness performance implication.

[460] Dr Shaikh also opined Dr Likely’s rating in relation to the category of travel was inconsistent with it allegedly being known that Mrs Robinson is able to travel independently.⁷⁶⁶ In fact Dr Likely’s opinion of 2 March 2015 is consistent with the notes of Ms Roubos’ consultations with Mrs Robinson. For example, on 7 October 2014 Ms Roubos noted:

“Is not driving much currently – friend drove today – finds she gets disoriented/distracted easily.”⁷⁶⁷

Also, on 11 November 2014 Ms Roubos noted:

“Not driving currently – but assures me she will!”⁷⁶⁸

[461] It does appear, however, that after the time of Dr Likely’s 2 March 2015 report Mrs Robinson made some modest progress so as to be able to drive herself about locally, as reflected in Ms Roubos’ notes of 24 March 2015⁷⁶⁹ and more particularly Dr Oelrichs’

⁷⁶² T4-97 LL25-36.

⁷⁶³ T4-98 LL2-11.

⁷⁶⁴ T5-19 L39.

⁷⁶⁵ T5-19 L42 – T5-20 L40.

⁷⁶⁶ Ex 28 p 2.

⁷⁶⁷ Ex 31.

⁷⁶⁸ Ex 31.

⁷⁶⁹ Ex 31.

report of 14 June 2016⁷⁷⁰. It follows that while Dr Likely's rating of 3 for travel was likely an accurate assessment at the time, Dr Oelrichs' rating of 2 is more up-to-date.

- [462] Dr Shaikh's supplementary report did not attempt any rating of individual categories in accordance with the psychiatric impairment rating scale, rendering irrelevant his suggested figure of 5 per cent.

PIRS Rating accepted by the court

- [463] In the upshot I give no weight to Dr Shaikh's testimony in determining what PIRS rating should be accepted by the court.

- [464] Section 6 of Schedule 8 of the Regulation relevantly provides:

“(2) The PIRS rating for the mental disorder of the injured worker is the PIRS rating accepted by the court.

(3) A PIRS rating is capable of being accepted by the court only if it is –

- (a) assessed by a medical expert as required under Schedules 10 and 11; and
- (b) provided to the court in a PIRS report as required under Schedule 10, Section 12.”

- [465] The PIRS assessments of both Dr Likely and Dr Oelrichs each comply with the requirements of s 6(3) and thus either are potentially capable of being accepted by the court.

- [466] As already observed I perceive Dr Oelrichs' ratings for social functioning and social and recreational activities were somewhat lower than warranted.

- [467] As to Dr Likely's assessment, it is true, for reasons explained above, that Dr Likely's rating for travel, while right at the time, was probably one rating too high. That said, a one class modification of his travel ratings down would occasion no change to his mean score and only a two per cent reduction of his ultimate PIRS rating of 24 per cent.

- [468] For the purposes of the present exercise it thus remains a generally accurate rating. In the circumstances, I prefer Dr Likely's assessment and, pursuant to s 6, I accept his PIRS rating of 24 per cent as the PIRS rating for Mrs Robinson's mental disorder.

General Damages

- [469] Section 306O of the *Act 2003* (Qld) requires an injury scale value (“ISV”) to be assessed if general damages are to be awarded and s 306P requires that general damages be calculated by reference to the general damages provisions prescribed by regulation. Those provisions invoke the application of schedules within the Regulation.

⁷⁷⁰ Ex 18 pp 9, 19.

- [470] Pursuant to item 11 of schedule 9 a mental disorder with a PIRS rating between 11 and 30 per cent is a serious mental disorder and has an injury scale value (“ISV”) range of 11 to 40.⁷⁷¹
- [471] Mrs Robinson’s age and insight, the matters already canvassed as to pain, suffering and loss of amenity of life and the improbability of psychiatric difficulties otherwise having appeared in this hitherto mentally robust plaintiff all support an assessment in about the middle range (in a range 11 to 40). The PIRS rating of 24 (in a range of 11 to 30) is consistent with a moderately higher than mid-range outcome for a serious mental disorder but the above observations about Dr Likely’s and Dr Oelrichs’ ratings of discrete areas of impairment suggests a mid-range outcome is more correct overall. I assess Mrs Robinson as having an ISV of 25.
- [472] No arguments were advanced as to when I ought regard the injury as having been sustained for the purposes of selecting the appropriate table in the Regulation’s schedule 12. Having regard to the evidence of apparent onset of Mrs Robinson’s symptoms I adopt table 1 and arrive at an award of **\$41,200**.
- [473] No interest can be awarded on that amount.⁷⁷²

Past economic loss

- [474] The psychiatric opinions about Mrs Robinson’s capacity to return to remunerative work have already been canvassed. It is readily apparent that the opinions of Dr Likely and Dr Oelrichs, preferred by me, support an assessment of past economic loss on the premise Mrs Robinson has been unable to return to remunerative work. I am fortified in that conclusion by the lack of success to date of Mrs Robinson’s attempts by volunteer work and quilting to build a capacity to advance to remunerative work.
- [475] Prior to her injury Mrs Robinson showed no indication that her capacity or desire to work as a District DON would have dwindled by now. On the other hand it is not suggested she should be assessed on the premise of having been likely to have advanced to a materially more remunerative position or less remote position than her former position. There is no need for notional adjustments given the relative certainty of prediction about economic loss to the present time.
- [476] In her former position Mrs Robinson was earning a gross annual income of \$134,573.83⁷⁷³ plus an isolation allowance of \$6,000.⁷⁷⁴ Deducting tax of \$37,739.01 and adding the \$6,000 allowance gives rise to an annual net income of \$102,834.82. That is a net weekly income of \$1,977.59.

⁷⁷¹ It is illustrative that, while not warranted, even if the above alteration exercise were reversed in application to Dr Likely’s ratings, causing commensurately modest reductions, his mean score would remain at 3 and his aggregate reduce to 17, which, as explained, amounts to a serious mental disorder with an ISV range the same as it would be pursuant to his existing ratings.

⁷⁷² Per s 306N(1) of the Act.

⁷⁷³ Ex 6 p 15.

⁷⁷⁴ Ex 2 p 252, T1-31 L33. Other allowances are not claimed.

- [477] From 17 January 2011 to today, 8 August 2017 is a period of 6.58 years or 342 weeks.
- [478] Mrs Robinson's past economic loss is therefore 342 weeks x \$1,977.59 per week = **\$676,335.78.**
- [479] As to interest on past economic loss it is necessary to bear in mind it ought be applied to a total reduced by statutory compensation received of \$186,289.02,⁷⁷⁵ that is, to a total of \$490,046.76.
- [480] Section 306N(3) provides the appropriate interest rate is the 10 year Treasury bond rate at the beginning of the present quarter, namely, 2.6 per cent.
- [481] The consequent calculation is therefore $\$490,046.76 \times .026 \times 6.58 \text{ years} \times .05 =$ **\$41,918.59.**
- [482] As to past loss of superannuation, the relevant contemporary compulsory rate is 9.5 per cent. The plaintiff claims that rate on the aforementioned net weekly income, that is, $\$1,977.50 \times .095 = \187.86 . The relevant period to compensate is 199 weeks, consisting of:
- (a) 1 August 2011 to 15 December 2011 – 19 weeks leave without pay;
 - (b) 27 May 2013 to 27 August 2013 – 13 weeks leave without pay;
 - (c) 22 May 2014 to today, 8 August 2017 – 167 weeks since termination.
- $\$187.86 \text{ per week} \times 199 \text{ weeks} =$ **\$37,384.14**

Special Damages

- [483] The plaintiff has incurred:
- (a) medical expenses of \$2,371.10;
 - (b) rehabilitation expenses of \$18,422.10;
 - (c) mediation expenses of \$1,339.42;
 - (d) travel expenses of \$3,412.16.

To that total of \$25,544.78 it is necessary for this exercise to add \$49,238.16 worth of expenses paid by WorkCover,⁷⁷⁶ giving rise to special damages of **\$74,782.94.**

- [484] As to interest on special damages, again calculated per s 306N of the Act, it ought only apply to the unpaid total of \$25,544.78. Interest to be awarded on special damages is therefore $\$25,544.78 \times .026 \times 6.58 \text{ years} \times .5 =$ **\$2,185.10.**

Future Economic Loss

⁷⁷⁵ Ex 2 p 228.

⁷⁷⁶ Ex 2 pp 214-227.

- [485] I have already accepted the opinions of the two psychiatrists who regard Mrs Robinson as being permanently incapacitated from undertaking any form of remunerative work. It is of course conceivable that an injured worker whose condition prohibits a return ever to remunerative work at their former level may in time experience the fortitude and luck to become engaged in some modestly remunerative employment at an unskilled or low skill level. However, this is a case of psychiatric injury. Mrs Robinson's impairments are not physical. Her difficulties with interacting with groups of people, concentrating, decision making and the like are deficits permeating her general capacity to perform remunerative work at any level.
- [486] In time, with the vindication of this judgment behind her, she may gradually experience better adaption to coping with some aspects of her condition so that it does not so significantly impede her capacity to potentially perform some remunerative work. However, at 59, time is hardly on her side in the employment context. Given the opinions of Dr Likely and Dr Oelrichs, I regard the future employment prospects of Mrs Robinson as being so negligible to the assessment of future economic loss as to be an irrelevant discounting factor other than its implicit factoring into a global discount for vicissitudes.
- [487] Mrs Robinson asserted she would have continued working until she was aged 67,⁷⁷⁷ which is a reasonable expectation in the present era and coincides with the pension entitlement age in Australia for persons of Mrs Robinson's year of birth. She postulated she may have worked on to age 70⁷⁷⁸ but in the end result this was not pursued by her as a foundation for this calculation. I will assume she would have worked for another eight years to age 67. It is conceivable that she may have advanced to a higher paid position but that probably negligible prospect is at least offset by the prospect she may have elected to scale back to a less well paid position as she approached retirement.
- [488] The plaintiff's submission that the above identified net weekly income figure of \$1,977.59 ought be adopted without notional award increases is a reasonable premise for the purpose of informing the assessment of likely future economic loss.
- [489] Turning to an appropriate discount for vicissitudes of life, it is relevant that the weekly income figure to be adopted already involves discounting in the sense no allowance for likely pay increases is made. Mrs Robinson had no pre-existing material deficits. There is no suggestion her diabetes was likely to become disabling. She had handled the slings and arrows of professional life well, rising successfully through the defendant's ranks in likely challenging regional nursing settings. Until her employer caused her injury, depriving her of her career, it is likely she would have robustly continued on at the pinnacle of that career. An appropriate discount for vicissitudes is 12 per cent.
- [490] Adopting a figure of \$1,977.50 per week for eight years, the use of a multiplier of 380 identifies a present value of \$751,450. Discounted by 12 per cent for vicissitudes this gives rise to an award for future economic loss of **\$661,276**.

⁷⁷⁷ Ex 5 [130].

⁷⁷⁸ T4-20 LL30-37.

[491] As to future loss of superannuation I adopt a calculation rate averaging the presently mandated future rates⁷⁷⁹ to 10.125 per cent. Thus the future loss of superannuation on \$661,276 is **\$66,954.19**.

Future Expenses

[492] The evidence shows the management of Mrs Robinson's condition requires the long term continuation of her medication,⁷⁸⁰ counselling and psychiatric consultations.⁷⁸¹

[493] Existing information about expenditure shows:⁷⁸²

- (a) psychiatric counselling with Dr Likely from 31 January 2013 to 26 August 2016 (230 weeks) cost \$16,050, a weekly average of \$69.78;
- (b) counselling variously with psychologists Ms Roubos and Ms Kelly from 15 January 2013 to 31 August 2016 (176 weeks) cost \$2,372.10, a weekly average of \$13.47;
- (c) antidepressant medication from 26 April 2012 to 5 September 2016 (228 weeks) cost \$1,339.42, a weekly average of \$5.87; and
- (d) Mrs Robinson's annual mental health care plan review with her general practitioner costs \$125, a weekly average of \$2.40.

This totals \$91.52.

[494] There should be some moderation for vicissitudes and particularly the probability the more expensive component of that average figure, psychiatric consultation, will trend lower with time. This is reasonably achieved by opting to cap the allowable period beneath Mrs Robinson's theoretical life expectancy of 30 years to the halfway point of 15 years.

[495] Thus, applying a 15 year multiplier of 555 to the weekly average of \$91.52, future expenses are assessed as **\$50,793.60**.

Fox v Wood

[496] *Fox v Wood* payments are agreed at **\$50,700.00**.⁷⁸³

Statutory Refund

[497] The WorkCover refund to be deducted per s 269(3) of the Act is agreed to be **\$234,539.23**.

Assessment Summary

⁷⁷⁹ 17/18 9.5%, 18/19 9.5%, 19/20 9.5%, 20/21 9.5%, 21/22 10%, 22/23 10.5%, 23/24 11%, 24/25 11.5%.

⁷⁸⁰ Ex 18 p 16.

⁷⁸¹ Ex 18 p 17.

⁷⁸² Ex 5 pp 20-28.

⁷⁸³ SOC [17], Amended Defence [16].

Mrs Robinson's overall damages award is therefore assessed as follows:

(a)	General damages	\$41,200.00
(b)	Past economic loss	\$676,335.78
(c)	Interest on past economic loss	\$41,918.59
(d)	Past loss of superannuation	\$37,384.14
(e)	Special damages	\$74,782.94
(f)	Interest on special damages	\$2,185.10
(g)	Future economic loss	\$661,276.00
(h)	Future loss of superannuation	\$66,954.19
(i)	Future expenses	\$50,793.60
(j)	<i>Fox v Wood</i>	<u>\$50,700.00</u>
	Sub-total:	\$1,703,530.34
	Less WorkCover refund	<u>\$234,539.23</u>
	Total Damages Award	\$1,468,991.11

Conclusion

[498] The plaintiff should have judgment in the above amount.

[499] Costs should follow the event subject to the cost implications of offers as between the parties.

[500] My orders will allow for the potential need to hear and decide costs.

Orders

[501] My orders are:

1. Judgment for the plaintiff in the sum of \$1,468,991.11.

2. I will hear the parties as to costs, in the event they are not earlier agreed, at 10 am on 1 September 2017.