SUPREME COURT OF QUEENSLAND

CITATION:	*Joynson v State of Queensland* [2004] QSC 154
PARTIES:	**KYLIE MARIE JOYNSON** (plaintiff) v **STATE OF QUEENSLAND** (defendant)
FILE NO:	BS5850 of 2002
DIVISION:	Trial Division
PROCEEDING:	Trial
DELIVERED ON:	3 June 2004
DELIVERED AT:	Brisbane
HEARING DATE:	24-27 February 2004
JUDGE:	Mullins J
ORDER:	**1. The plaintiff's claim is dismissed.** **2. Judgment for the defendant.**
CATCHWORDS:	TORTS – NEGLIGENCE – ESSENTIALS OF ACTION FOR NEGLIGENCE – DUTY OF CARE – SPECIAL RELATIONSHIPS AND DUTIES – EMPLOYER AND EMPLOYEE – claim by an administrative officer – whether risk of psychiatric injury to employee was reasonably foreseeable by employer INDUSTRIAL LAW – INDUSTRIAL SAFETY, HEALTH AND WELFARE – QUEENSLAND – WORKPLACE HEALTH AND SAFETY LEGISLATION – civil cause of action against employer under s28 *Workplace Health and Safety Act* 1995 (*Q*) – incorporates requirement that risk of injury be reasonably foreseeable *WorkCover Queensland Act* 1996 *Workplace Health and Safety Act* 1995 *Barber v Somerset County Council* [2004] 2 All ER 385 *Finn v The Roman Catholic Trust Corporation for the Diocese of Townsville* [1997] 1 QdR 29 *Gallagher v Queensland Corrective Services Commission* (unreported, S Ct(Q), Jones J, 30 July 1998) *Hatton v Sutherland* [2002] 2 All ER 1 *Midwest Radio Limited v Arnold* (1999) EOC 92-970 *Paff v Speed* (1961) 105 CLR 549 *Schiliro v Peppercorn Child Care Centres Pty Ltd* [2001] 1

QdR 518
Tame v New South Wales (2002) 211 CLR 317
Wall v Wall [1998] SASC 7017 (23 December 1998)
Wyong Shire Council v Shirt (1980) 146 CLR 40

COUNSEL: B F Charrington for the plaintiff
M Grant-Taylor SC and K Philipson for the respondent

SOLICITORS: Shine Roche McGowan for the plaintiff
C W Lohe, Crown Solicitor for the respondent

[1] **MULLINS J:** The plaintiff claims damages from the defendant for personal injuries (being psychiatric injury) and consequential loss alleged to arise as a result of the negligence and/or breach of contract and/or breach of statutory duty by the defendant by its servants or agents.

[2] The plaintiff alleges that these breaches occurred during the course of her employment by the defendant being the Department of Employment, Training and Industrial Relations ("the Department") between 1 July 1998 and 23 December 1998 ("the relevant period"). During the relevant period the plaintiff held the position of executive assistant to the director of the Industrial Relations Secretariat ("the Secretariat") for the Industrial Relations Taskforce ("the Taskforce"). The Taskforce was set up by the government to review industrial relations legislation and the Secretariat comprised the group of 9 or 10 public servants including the plaintiff who provided the secretariat services for the Taskforce. The work duties that the plaintiff alleges caused her injury are described in the following terms in para 4 of the further amended statement of claim:

> "To perform her role, the Plaintiff would be required to work extensive hours of work and was under enormous pressure to ensure that tasks were completed in accordance with deadlines specified by the Defendant."

[3] The defendant admits that the plaintiff suffered a psychological and/or psychiatric injury, but not that the injury occurred as a result of the plaintiff performing her work duties. The defendant pleads, in the alternative, that if the injury did occur as a result of the plaintiff performing her work duties, then it was not reasonably foreseeable that the injury would occur as a result of the plaintiff performing her work duties. Even if the plaintiff were able to establish the reasonable foreseeability of her injury, the defendant asserts that it does not necessarily mean that its lack of response to the foreseeability of any risk of injury to the plaintiff was inconsistent with the discharge of its duty of care as an employer.

Witnesses

[4] The plaintiff gave evidence and called another employee of the Department with whom she worked during the relevant period, Ms D Huggins, her husband Mr B Marsh and the clinical psychologist, Mrs M Rebgetz, engaged by WorkCover Queensland ("WorkCover") to investigate the plaintiff's claim for compensation. Psychiatrist Dr P Mulholland who was engaged by the plaintiff's solicitors to examine the plaintiff for medico-legal purposes also gave evidence for the plaintiff.

[5] The defendant called psychiatrist Dr T George who treated the plaintiff in the first half of 1999; psychiatrist Dr M Nothling who examined the plaintiff on 18 January

2001 at the request of Q Super; clinical psychologist Dr L Douglas who undertook psychological assessment testing of the plaintiff on 18 January 2001; and psychiatrist Dr F Varghese who examined the plaintiff for medico-legal purposes at the request of the defendant on 27 November 2002. The defendant also called the director of the Secretariat, Dr S J Blackwood, and the assistant director of the Secretariat, Ms M Van Rooden.

Plaintiff's history prior to the relevant period

[6] The plaintiff was born in November 1972. The plaintiff was, on her account, subject to sexual abuse over an extended period from about the age of 7 years until she was 11 or 12 years old, about which she has never sought to take any action. The plaintiff otherwise had a happy childhood. When the plaintiff was in year 11 at school, she attended a neighbourhood party and was sexually assaulted on her way home. The plaintiff's school organised for the plaintiff to see a psychiatrist which she did on one occasion. The plaintiff left school during the course of year 12 in April of that year.

[7] The plaintiff then did a business course at a TAFE College. The plaintiff obtained a temporary job in a Government agency doing typing and filing. She did this job for about a year.

[8] The plaintiff had a termination of pregnancy at around age 18 years. The plaintiff and Mr Marsh were in a relationship from when the plaintiff was about 19 years old. The first child of their relationship (a boy) was born when the plaintiff was 20 years old and their second child (a girl) was born when the plaintiff was 22 years old. The plaintiff and Mr Marsh married in 1996.

[9] Between 1991 and early 1995, the plaintiff worked on a part-time basis for a company that built engines for cars at Bribie Island doing office administration.

[10] The plaintiff commenced working for the Department on 13 February 1995, approximately 4 months before her daughter was born. She was employed on a temporary part-time basis as an administrative officer within the administrative support branch. The plaintiff was able to return to work 6 weeks after the birth of her daughter as the plaintiff's mother worked at a day care centre where the plaintiff was able to leave her daughter. Eventually the plaintiff was employed on a full-time basis. Her level was described as AO2 which was the basic level for an administrative officer who was over 21 years old.

[11] During 1996 the plaintiff was recommended by one of her superiors for the position of administrative officer to support the Trading Hours Inquiry that was chaired by Sir William Knox. That inquiry lasted for 6 months. The plaintiff was executive assistant to Sir William Knox and was temporarily at an AO3 level in that position.

[12] After that inquiry was completed, the plaintiff relieved in various positions in the Department, before being asked to work as an administrative support officer for the Industrial Relations Consultation Taskforce ("the Santoro Taskforce"). The plaintiff was required to undertake typing of the billbooks for the legislation that was developed by the Santoro Taskforce. The billbooks were over 500 pages long. Although this position kept the plaintiff busy, she described the leader of the Santoro Taskforce as "very organised" and the work "was organised it just flowed". The overtime claim forms that are part of Ex 25 show that the plaintiff did extensive

overtime between 22 November and 1 December 1996 and 24 and 30 January 1997 and on a few occasions during this period worked until late in the evening or 1am.

[13] After that Taskforce had completed its work, the plaintiff from about July 1997 relieved as executive secretary to the Director of the Policy, Research and Development Branch of the Department. That role was undertaken by Dr Blackwood after March 1998.

[14] According to the records of Medihelp 24 Hour Medical Centre at Everton Park (Ex 36), when the plaintiff was seen there on 7 April 1998, in connection with a possible pregnancy, the doctor recorded "Note stress ++ at home & work & not been well since viral URTI 1/12 ago". The plaintiff could not recall providing this information to the doctor or the reasons for it. The defendant sought to give significance to this reporting of work related stress prior to the commencement by the plaintiff's work in the Secretariat. I do not consider that the comment has much weight, when it is recorded in connection with a consultation for a purpose unrelated to the suffering of stress.

[15] On 4 June 1998 the plaintiff lodged an application (Ex 16) for the position of executive assistant to the general manager of the Business Development Centre within the Department which was a permanent AO3 position. The defendant relied on statements that the plaintiff admitted were untrue in this application, in order to attack the plaintiff's credit. The plaintiff explained how she obtained the assistance of others in putting together this application. In view of the purpose of the application, I consider the misleading statements in it should be considered as puffery rather than an indicator of a tendency of the plaintiff to lie.

[16] Both the plaintiff and Mr Marsh were questioned about the plaintiff's habits in drinking alcohol prior to her working at the Secretariat. The evidence of Mr Marsh was that in his early years of knowing the plaintiff, her drinking habits "were exactly the same as mine and of our joint friends" and that later on in their relationship, the only time that alcohol would be at their home was for a special occasion, a barbecue or a birthday party. After the plaintiff ceased work, on various occasions she gave a history which suggested that she had a long term problem with alcohol, but her evidence in this proceeding was to the effect that she was a social drinker prior to working at the Secretariat. There was no suggestion from the defendant that the extensive medical records of the plaintiff that went into evidence for the period prior to 1 July 1998 were inconsistent with that evidence. Although "social drinker" is not a term of precision, I am satisfied on the evidence that, despite what is recorded as the plaintiff's subsequent assertions, she did not have an alcohol problem prior to working at the Secretariat.

Working conditions during the relevant period

[17] Dr Blackwood was to be the director of the Secretariat and asked the plaintiff if she wished to work in the Secretariat. The plaintiff agreed. The plaintiff fixes July 1998, as when she commenced the administrative work for setting up the office space for the Secretariat. The plaintiff had been on leave for the 3 weeks which commenced on 15 June 1998 and returned to work in the week which commenced on 6 July 1998.

[18] Professor Margaret Gardiner was appointed the chairperson of the Taskforce. The other members of the Taskforce included representatives of employer organisations

and unions. The Taskforce produced an Issues Paper in September 1998 and a final report which was released in December 1998. The Secretariat was responsible for the organisation of the Taskforce meetings which included preparing papers for the Taskforce. The Secretariat organised for the Taskforce members to undertake consultations throughout the State.

[19] The type of administrative work which the plaintiff undertook in setting up the office for the Secretariat and the Taskforce included organising partitions, furniture, computers, a photocopier and telephones. Her position started out at an AO2 level, but was upgraded to an AO3. The plaintiff performed secretarial functions for Dr Blackwood and, to a lesser extent, Professor Gardiner. Most of the employees in the Secretariat who were working on policy and the draft legislation did their own typing. The plaintiff was responsible for doing the typing for the employee who did not type and for other employees who sought assistance with typing. The plaintiff attended to formatting, photocopying and filing of documents and some keeping of expense accounts. The plaintiff would take telephone calls, purchase stationery and attend to administrative maters such as organising cars, travel and equipment such as laptops for members of the Secretariat.

[20] The Taskforce met fortnightly from August 1998 and then weekly. This required the collation of the papers for the consideration of the Taskforce, preparation of the agenda and distribution of those documents for the meeting. The meetings of the Taskforce usually took place on a Tuesday which made work on Friday in the Secretariat hectic, in order to ensure that the distribution of the meeting papers to the Taskforce members was achieved. The plaintiff's work in connection with the distribution of the meeting papers was affected by the timeliness of the production of drafts for the meeting by other members of the Secretariat. The work undertaken by the policy officers was affected by the decisions made at Taskforce meetings. The drafts for the following meeting were therefore often not available until the time for collation of the meeting papers, because of the work undertaken by the policy officers between meetings.

[21] The plaintiff said that the set up of the Secretariat's office took about a month and that toward the end of the set up period Ms Huggins came to assist with the administrative support for the Secretariat for 2 or 3 days per week. After 2 weeks or so of Ms Huggins' assistance, the plaintiff considered that she required more help than what Ms Huggins could provide in 3 days each week.

[22] The plaintiff stated that she and Ms Huggins saw Dr Blackwood about requiring Ms Huggins to work 5 days each week, but that Dr Blackwood said it could not be done. Ms Huggins stated that Dr Blackwood laughed and said "We'll see". Although the plaintiff's evidence was that Ms Huggins just began working 5 days per week in the Secretariat, it is apparent from the evidence of both Ms Huggins and Dr Blackwood that this change was approved by Dr Blackwood. Ms Higgins stated, "We'd convinced Simon by that time that I needed to be there full-time." Dr Blackwood's evidence was that at the outset, he indicated to the plaintiff that the Secretariat needed to keep what administrative assistance it needed under review. He stated that he got Ms Higgins to work in the Secretariat and that, from time to time, he indicated to the plaintiff that assistance could be obtained from other administrative officers such as Ms Adrianssen who worked in the Policy section of the Department.

[23] The plaintiff described herself as being good friends with Dr Blackwood. Dr Blackwood stated that he would drink after work with others to unwind and that he got on well with a number of people in the Secretariat, including the plaintiff. There were a number of occasions that he had a drink with the plaintiff. The plaintiff stated that on social occasions that she complained to Dr Blackwood about her frustration in trying to get things done on time, but being held up, because others had not done their work. She said that Dr Blackwood laughed off her complaints. The plaintiff did not suggest, however, that she pursued these complaints with Dr Blackwood at work or in any formal way. Dr Blackwood conceded that there were occasions when the plaintiff and Ms Huggins expressed irritation at having to remain until 6pm to finalise the meeting papers for the Taskforce, but there were never any complaints made to him by the plaintiff or Ms Huggins that the plaintiff's health was suffering, because of the work she was doing. Ms Huggins conceded that she and the plaintiff did not make any official complaint, but when Dr Blackwood, Ms Van Rooden and Professor Gardiner were helping them get the meeting papers together, they would comment that if they had the paper work earlier, they could have got more work done.

[24] The plaintiff also described the management of the Secretariat as "very sloppy" and "less organised" than the Santoro Taskforce. The only aspect of the plaintiff's work which was described in detail in her evidence that could be the basis for these comments was the dependence on others producing their work in a timely way to enable the meeting papers for the weekly meetings of the Taskforce to be produced and distributed.

[25] By the end of August 1998, the plaintiff noticed that she was tired and her concentration was affected. She said that she would carry around a little pad and pen, so that she did not have to rely on her memory. Dr Blackwood did not observe any memory problems or loss of concentration on the plaintiff's part. The plaintiff said she was "teary" and would go to the toilet and cry or sit at her desk and cry. The plaintiff did not expand on the circumstances that made her cry.

[26] Ms Huggins gave evidence that there were several times when she broke down in tears from the atmosphere and the stress in the workplace and the way she was spoken to by others, but she did not give any detail or specific example of what was said to her or what otherwise had caused her to cry. She stated that on one occasion Dr Blackwood saw her in tears, but that there was no discussion with him about it. Ms Huggins stated that there were many times when she would go to the toilet and the plaintiff was there in tears, but she could not recall any occasion where she observed the plaintiff crying in the office. Ms Huggins stated that on one occasion she told Dr Blackwood that the plaintiff was stressed and that he responded that if the plaintiff was not coping, she should speak to him about it. Dr Blackwood did not recall such a conversation with Ms Huggins. There is no suggestion from the plaintiff that she ever spoke to Dr Blackwood about not coping with her work.

[27] The plaintiff's workstation was located near the entrance of the Secretariat's office, so that other employees had to pass her, when going to their work areas. The plaintiff stated that on one occasion Dr Blackwood saw her in tears and asked if she was all right. The plaintiff stated that she put the tears down to coming down with something and that she told Dr Blackwood "I just can't seem to concentrate and I'm just feeling really yuck." Dr Blackwood could not recall this episode. Both Ms

Van Rooden and Dr Blackwood stated that they did not ever see the plaintiff in tears in the office, during the plaintiff's time at the Secretariat.

[28] The plaintiff stated that she observed Ms Huggins to be crying on three occasions and that she told Dr Blackwood about one of those occasions. She stated that his response was "Nothing that mattered, didn't make any difference". The plaintiff stated that Dr Blackwood responded that "We've all just got to pull together and just do it". Dr Blackwood did not agree that there had been an occasion when the plaintiff came and told him about a tearful episode of Ms Huggins in the workplace.

[29] According to the records of the Royal Brisbane Hospital, the plaintiff presented at the emergency department on 31 August 1998 complaining of toothache for 3 days with dizziness and temporal headache and a possible diagnosis of postural hypotension. She was given panadeine forte. The plaintiff was on leave from work for the week which commenced on 31 August 1998.

[30] The plaintiff followed her children in having chicken pox. She was off work for the 2 weeks which commenced on 28 September 1998, returning to work on 13 October 1998.

[31] The plaintiff gave evidence of taking work home to do. She stated that she would take the laptop home, in order to check over addresses and that she did work at home when she had chicken pox. Apart from checking over addresses, the plaintiff did not provide any detail of the work that she did at home or the length of time which it took. She stated that she never applied for overtime for work done at home and that she did it, because she knew that the work needed to be done. Dr Blackwood stated that he was not aware of the plaintiff taking work home. That is consistent with the fact that the plaintiff did not claim for payment for any such work. Dr Blackwood also stated that he was not aware of any need for the plaintiff to take work home, in view of the fact that the work that was done at home was the writing of policy by himself and other policy officers.

[32] In October 1998 the plaintiff found out she had been successful with her application for the AO3 position in the Business Development Centre.

[33] The plaintiff gave evidence of an occasion when she and other employees were celebrating the 50th birthday of another public servant. The plaintiff can recall drinking with Dr Blackwood on that occasion. She was subsequently discovered in the toilets of the casino in an intoxicated state and was taken by ambulance in the early hours of 17 October 1998 to the emergency department of the Royal Brisbane Hospital. The plaintiff conceded that she was "totally blind" at that function.

[34] Mr Marsh described that in about the last 2 months of the plaintiff's work at the Secretariat, he noticed changes in the plaintiff. She was tired and emotional and it was impossible to get her up in the mornings. He noticed that the plaintiff's drinking of alcohol increased during her time at the Secretariat, in that the quantity which she drank on an occasion increased. Mr Marsh observed that during her time at the Secretariat, the plaintiff socialised with work colleagues "which would fit in with whatever hours they were working at the time".

[35] Ms Huggins stated that after 2 to 3 months in the Secretariat, she noticed that the plaintiff was "becoming snappy and tired, stressed, not as friendly". Dr Blackwood

and Ms Van Rooden stated that they did not notice any change in the plaintiff's demeanour at the Secretariat.

[36] In respect of her last 2 month in the Secretariat, the plaintiff described a worsening of her symptoms of tiredness, headaches and difficulty in sleeping. She stated that she felt she had no energy and wanted to withdraw from being with people and was crying more often. The plaintiff conceded that she did not noticeably lose weight until after she had left the Secretariat. Mr Marsh did not have a good recollection of the timing of various events and his observations. I reject his evidence that the plaintiff lost a lot of weight whilst at the Secretariat. The plaintiff did not attribute her physical symptoms to stress in the workplace, but thought there was something physically wrong with her.

[37] Dr Blackwood could recall that the plaintiff spoke to him once or twice about whether he thought that she had an opportunity to get a permanent AO3 in the Policy section of the Department, rather than taking up her position in the Business Development Centre. He stated:

> "She liked working with us. She had a strong preference to continue working with us. She had a strong preference for working particularly with me as her manager, and had some concerns about the change, going to a new division with a new manager, and she was a little bit unsure about that and she wasn't looking forward to it."

Dr Blackwood stated that he explained that although there was an acting AO3 position for the purpose of the Secretariat, when he went back to the Policy section, there would not be that extra AO3 position. The plaintiff conceded that she expressed interest to Dr Blackwood in continuing to work with him. Although the plaintiff had obtained a permanent AO3 position outside the Secretariat whilst working in the Secretariat, it is clear that the plaintiff did not seek to avoid the pressures of the Secretariat by looking for a position elsewhere. In fact, despite the pressures of working in the Secretariat she was seeking to continue working with people with whom she worked in the Secretariat, if she could obtain a permanent AO3 position.

[38] As from 4 December 1998 the Secretariat moved from its existing offices to the Bonner Building in William Street. The plaintiff was involved in packing up and was there on the weekend when the movers transported the boxes to the new premises.

[39] Ms Van Rooden could recall that the members of the Secretariat worked very long hours one weekend, putting the final report together. Ms Van Rooden could recall that the plaintiff was present for some of the time on that weekend when she and Dr Blackwood were working on the final report. From the general timesheets (Ex 24) and overtime forms (Ex 25), as summarised in the schedule that was made Ex 41, I infer that this lengthy period of working occurred during the week which commenced on 30 November 1998. In that week the plaintiff recorded working for 47 hours 30 minutes (which involved 11 hours 15 minutes in excess of standard hours) and overtime of 30 hours 15 minutes. The work on the final report occurred around the time that the Secretariat moved premises.

[40] The plaintiff explained that her standard hours per work day in each week were 7 hours 15 minutes, making a week of 36 hours 15 minutes. Any time that she worked in excess of those hours up until 6pm at night was treated as bank time which accumulated and when the plaintiff had 7 hours 15 minutes in bank time, she was entitled to take a day off or she could use part of her bank time to leave work early. Although there are some missing time sheets, the picture painted by the timesheets for the relevant period is that the plaintiff did accumulate and use bank time. Overtime could be claimed when the plaintiff worked past 6pm.

[41] Apart from the sick leave for chicken pox, the plaintiff took leave for each of the entire weeks which commenced on 20 July and 31 August 1998. The latter week was entirely of bank time. The attendance sheets showed that a few other isolated days and periods of time were also taken by the plaintiff for leave during her time at the Secretariat. The Saturdays for which the plaintiff was paid overtime are recorded as 8 August, 12 September and 24 October 1998. Overtime is also recorded for Sunday 25 October 1998. Dr Blackwood described that there were a couple of Saturdays on which Taskforce meetings were held and that the plaintiff came into work to open up and set up the room for the meetings. In the week which commenced on 19 October 1998 (which included the overtime on 24 and 25 October 1998), the plaintiff worked 55 hours 15 minutes. In the week which commenced on 30 November 1998 (which included the weekend of 5 and 6 December) the plaintiff worked 77 hours 15 minutes. For eight of the weeks between July and December 1998 the plaintiff worked over 40 hours, but less than 50 hours. The plaintiff's last working day in 1998 was 23 December 1998.

[42] The defendant also prepared a schedule of hours worked and overtime claimed by the plaintiff between March 1997 and May 1998 (Ex 42). This schedule shows a pattern of regular accumulation and use of bank time. Although there was the one week in early December 1998 in which the plaintiff worked exceedingly long work hours, the plaintiff conceded in cross-examination (as appears to be the case) that, in general terms, the actual hours that the plaintiff worked in the Secretariat were no greater than the hours that she was doing whilst she was working with the Santoro Taskforce. There was no challenge by the plaintiff to the accuracy of Exs 24 and 25.

[43] When the plaintiff lodged the notice of claim for damages (Ex 23) under the *WorkCover Queensland Act* 1996, the plaintiff exaggerated the extent and nature of her work at the Secretariat. She stated that she "was also required to spend time away in Parliament, often working until odd hours (like 3.00am)". In evidence, the plaintiff conceded that she did not recall going to Parliament for her work at the Secretariat and did not ever work until 3am.

[44] In the statement which Dr Blackwood provided to Mrs Rebgetz on 18 May 1999 (Ex 30), he stated:

> "Throughout this period Kylie was given significant administrative responsibilities which in general included long hours of work and, at particular times, significantly longer hours than would normally be expected in such a position – (Both work at evening and on weekends). The pace of work throughout this period varied from 'fast to frantic'. Kylie, at all times, was always a diligent and hardworking employee who had a particularly good attendance record. During the first few months of the IR Secretariat's work,

> Kylie was given a particularly heavy workload and as a result I employed another administrative assistant to help her carry out the administrative responsibilities. At the same time the work load for two administrative officers continued to be heavy, particularly for Kylie who was the senior administrative officer. From time to time the stress associated with the workload did lead to some personal tensions and distress for both Kylie and her assistant, Di Huggins.
>
> I support the claim of Kylie Joynson on the basis that the demands of the job from July to December 1998 were unusually demanding and stressful and therefore would have easily contributed to her stress related condition. The unusual aspects of this project were the requirement to produce two major reports and to work with a taskforce of employer and union representatives."

[45] Dr Blackwood sought in his evidence to qualify this statement. He explained that Mrs Rebgetz had attended upon him at a time when he was particularly busy. It is apparent from the statement itself that it was given without reference to timesheets. Dr Blackwood explained that although on occasions the plaintiff worked "at particular times, significantly longer hours than would normally be expected in such a position", that had to be balanced against the "ebbs and flows" of work that was required. He stated that there were some instances when the work in the Secretariat was not "fast and frantic" for the plaintiff. He gave as an example the time when Ms Van Rooden, one of the policy officers and him, travelled with the Taskforce for consultations throughout the state. He also pointed out, as the attendance sheets record, there were times when the plaintiff took off bank time which had built up, as a result of working longer hours.

[46] Dr Blackwood acknowledged that the work at the Secretariat was one of the busier projects that he had worked on in the Department. He stated that as the Taskforce was a priority for the Department, he had the flexibility to obtain additional assistance from the staff in the Policy section of the Department. He stated that he got the administrative assistance that he needed and recalled that the Secretariat did obtain additional administrative assistance from Ms Alissa Adrianssen, particularly in September, October and November 1998. Ms Van Rooden recalled that Ms Adrianssen did provide administrative support to the Secretariat. Ms Van Rooden gave a completely frank account of her recollection and observations of what occurred in the Secretariat. Despite the different recollections of both the plaintiff and Ms Huggins, I have no hesitation in accepting Ms Van Rooden's recollection that Ms Adrianssen did work on occasions in the Secretariat, whilst the plaintiff was working there.

[47] Both Dr Blackwood and Ms Van Rooden stressed that the work at the Secretariat was undertaken in a team environment, where there was much interaction amongst those working in the Secretariat. Ms Van Rooden described the project as demanding and that there was a heavy workload for the plaintiff, but made the point that the reality of the Secretariat was that "it was for a relatively short period of time; that this is not how work was going to be for the rest of our time in the Industrial Relations division". Ms Van Rooden did not recall any signs, either through direct comment to her or other signs, that the plaintiff was having difficulty with her job. The common thread of the evidence given by Ms Huggins, Dr Blackwood and Ms Van Rooden was that the plaintiff was competent, efficient and

organised and achieved the deadlines that were imposed on her work. It was also common ground that the plaintiff was the key person for providing administrative assistance in the Secretariat. As far as Dr Blackwood was concerned the plaintiff "always displayed a happy disposition throughout most of that period" and he did not have a feeling that the plaintiff was not enjoying the work. Ms Van Rooden stated:

> "I thought morale was good. The work was considered to be important. People were keen to get involved in the work that we were doing, and it was an environment in which everybody pitched in to the job and the job got done."

[48] By her application for the position of executive assistant to the general manager of the Business Development Centre (Ex 16) the plaintiff endeavoured to show herself as having the administrative skills, experience and initiative for the position. The plaintiff conceded in cross-examination that she was ambitious about her career in the pubic service and accepted that during the period that she worked in the public service, advancement was on the basis of merit and not merely the number of years worked.

[49] With reference to the "personal tensions and distress" which Dr Blackwood referred to in Ex 30, he explained in his evidence that there were some personal tensions on the odd occasion, but the level of personal tensions was nothing significant, as far as Dr Blackwood was concerned, and did not manifest itself in any sort of behaviour that indicated any real problems in the workplace, beyond that people were busy.

[50] Ms Huggins described the workload in the Secretariat for the administrative officers as "double" the workload that Ms Huggins had experienced in other administrative officer positions within the Department. That is not a particularly helpful comparison, when it is not readily apparent that Ms Huggins was fully occupied in those other positions. It is also not particularly relevant, when it was known that the work of the Secretariat was for a finite time.

[51] It was apparent from what Ms Huggins said in evidence and how she said it that she had great admiration for the work skills of the plaintiff and endeavoured to be as helpful as possible to her by the evidence she gave. Her evidence was, however, mainly in general terms and, on analysis, did not significantly depart from the oral evidence of Dr Blackwood. I also gained the impression from Ms Huggins' evidence that events, such as crying on her part, assumed a much greater significance for the purpose of giving evidence in this trial than they had in the context of the workplace at the time they were said to have occurred.

[52] Mr Charrington of Counsel on behalf of the plaintiff submitted that this trial should proceed on the basis that the work conditions were as outlined in Dr Blackwood's statement (Ex 30). In the light of all the evidence that was given in respect of the working conditions of the plaintiff, I do not accept that that statement given to Mrs Rebgetz provided a complete picture of the working conditions that applied to the plaintiff during the relevant period. It is unfortunate that Dr Blackwood did not take the time to do a detailed statement, by way of reference to dates and records, when he was interviewed by Mrs Rebgetz.

[53] I accept that some of the plaintiff's work in the Secretariat was done under pressure and that she felt under pressure, particularly on the day that the meeting papers were

prepared for the next Taskforce meeting. The plaintiff had a full workload. I do not accept, however, that the plaintiff was unable to obtain additional administrative assistance that may have been required, if she had sought it. I found both the plaintiff and Ms Huggins unconvincing on the difficulties that they said they encountered in having Ms Huggins work 5 days each week in the Secretariat. Ms Huggins ultimately conceded that Dr Blackwood had to agree for her to work 5 days per week in the Secretariat for that to occur. I am satisfied that one of the aspects of the plaintiff's working conditions in the Secretariat which was exaggerated by her was how Ms Huggins came to work 5 days each week in the Secretariat. I accept Dr Blackwood's evidence that he was empowered to and did obtain additional administrative assistance from the Policy section of the Department as required and had so advised the plaintiff to seek that assistance, if it were required. That is supported by the observations of both Dr Blackwood and Ms Van Rooden that Ms Adrianssen also worked at the Secretariat during the period that the plaintiff was working there.

[54] The hours that the plaintiff worked each day and the occasions on which the plaintiff worked overtime are clearly documented by Exs 24 and 25. This is despite the fact that there are missing attendance sheets for 4 weeks. One of those missing attendance sheets relates to the week which commenced on 28 September 1998 in which the plaintiff was on sick leave. The other missing attendance sheets relate to the 3 weeks which commenced on 27 July 1998. Even though the attendance sheets are missing, Ex 25 shows that overtime during this period of 3 weeks was worked only on 8 August 1998. During that period the plaintiff accumulated net bank time of 6 hours 15 minutes. In summary, whilst at the Secretariat the plaintiff consistently worked longer hours than the standard hours and occasionally worked overtime, the plaintiff regularly took compensating leave for the bank time and the plaintiff worked one week of exceedingly long hours which was almost at the end of her time in the Secretariat.

[55] Dr Blackwood and Ms Van Rooden were responsible for the Secretariat meeting the deadlines that had been imposed for the production of the issues paper and the final report of the Taskforce. The deadlines that mainly affected the plaintiff in doing her work were the practical time considerations that applied to distributing the meeting papers for the weekly Taskforce meeting. Despite the plaintiff being affected by these deadlines, it was Dr Blackwood and Ms Van Rooden who had the responsibility of meeting them, not the plaintiff.

[56] On the question of whether the plaintiff gave signs to those with whom she worked in the Secretariat, that she was affected by the pressure of her workload, I was much more compelled by the evidence of Dr Blackwood and Ms Van Rooden on the plaintiff's positive attitude to her work and lack of any indication of any difficulties in coping with her work, than the plaintiff's suggestion that she was sitting at her desk and crying at times during her last couple of months at the Secretariat. Not even Ms Huggins could say that she saw the plaintiff crying in the office. Although emphasis was placed in submissions on behalf of the plaintiff that the plaintiff had complained to Dr Blackwood that she was "feeling really yuck", she also stated that at the same time as making that statement she put it down to coming down with something. That had the effect of completely negating any connection between the plaintiff's workload and her feeling unwell. I accept that in the latter stages of her time at the Secretariat after returning to work from having chicken pox, the plaintiff experienced tiredness, lack of energy and headaches, as she described. I am not

satisfied, however, that there was any episode of crying by the plaintiff in the office or other signs from the plaintiff observable by Dr Blackwood or Ms Van Rooden that she was suffering from stress in the workplace.

Plaintiff's history subsequent to the relevant period

[57] The plaintiff commenced as executive assistant to the general manager of the Business Development Centre on 4 January 1999. For the first couple of days the plaintiff was being instructed by a fellow worker on what this job involved. The plaintiff described her feelings as "nervous", "scared" and "anxious". The plaintiff had not been looking forward to taking up this position. By the end of 1998, she was not confident that she would cope with the new job. Whilst at her desk on 7 January 1999, the plaintiff felt ill and then fainted in the toilet. With the benefit of hindsight, the plaintiff described this in evidence as a panic attack. She went to the Royal Brisbane Hospital from work. The history which the plaintiff gave at the emergency department was lethargy, reduced concentration, dizziness and blackouts, headaches, abdominal pain and irregular periods. She stated that the symptoms began 2 months previously, after she had chicken pox.

[58] After a few days off work, the plaintiff consulted her general medical practitioner Dr K Steward who diagnosed depression. She prescribed an antidepressant and referred the plaintiff to Dr George. The plaintiff consulted Dr George on 12 February 1999. Dr George recorded in his notes that the plaintiff presented with depression since approximately June 1998. Although Dr George would have obtained that date from the plaintiff, he explained, and I accept, that a person suffering from a psychiatric condition may not be an accurate historian, when it comes to recalling the onset of symptoms. Dr George recorded the following as the current stressor:

> "Relates onset of depression to a prolonged period of uncertainty and tension over her job (Aug-Nov 98). There was a possibility of her having to move to another position which she was not at all keen to. She felt she had been given conflicting messages all along (about the likelihood of the move) and despite having given the impression that the move may not be necessary, was told in the end of Nov 98 that she had to move after all. This change occurred in Jan 1999."

[59] Dr George diagnosed that the plaintiff was suffering from major depression. When the plaintiff saw Dr George on 22 February 1999, she stated that she was feeling worse. The plaintiff estimated in evidence that during January and February 1999, she was experiencing up to 10 to 15 panic attacks per day.

[60] When the plaintiff saw Dr George on 1 March 1999, she was feeling very low and emotional. She had not been sleeping well, her concentration was impaired, she was very irritable and had little patience and was constantly tired. Dr George therefore admitted the plaintiff to the Prince Charles Hospital Mental Health Unit as from 2 March 1999.

[61] The plaintiff was an inpatient between 2 and 6 March 1999. She then had leave for the weekend to attend her mother's 50th birthday party. She returned to the hospital on 7 March 1999, but left again on 12 March 1999. The applicant returned again on 18 March 1999, but was discharged finally on 19 March 1999.

[62] It appears that the plaintiff who signed her application for worker's compensation (Ex 21) on 18 March 1999 did so whilst on leave from the hospital.

[63] When the history was taken from the plaintiff for admission to Prince Charles Hospital, she also described the onset of depressive symptoms from June 1998 and that it was associated with a change in jobs which she was unhappy with. The hospital notes record "move to job (promotion) which she found isolating, unstimulating and boring". During cross-examination, the plaintiff accepted that the change of jobs that she was describing was the move from the Secretariat to Business Development.

[64] The plaintiff was treated with medication and counselling during her stay at Prince Charles Hospital. Dr George recorded on 2 March 1999 in the hospital notes that the plaintiff was feeling a little more hopeful than before and "has managed to remove one of the major stressors eg work. Has arranged with her boss that a proposed change in the area of work which she was dreading will not now take place". The clinical psychologist recorded on 3 March 1999:

> "Spoke at length re the role of work in her life, relationship with boss. Tends to be obsessional and takes on increased responsibility – then feels resentful and unappreciated. Believes she was 'dumped' by previous boss 'Simon' who now rings to check on her progress."

[65] Dr George reviewed the plaintiff a week after she had been discharged from hospital. He noted that although the plaintiff had improved from her pre-admission state, she had not picked up since returning home. The plaintiff said in evidence that after the period in hospital, she experienced the panic attacks about 5 times per day.

[66] The plaintiff discovered she was pregnant which was unplanned and underwent a termination on 6 April 1999. That termination was subsequently diagnosed by the plaintiff's general medical practitioner as incomplete and the plaintiff underwent a dilation and curettage at the Royal Women's Hospital on 9 June 1999.

[67] By letter dated 14 June 1999 (Ex 22) the plaintiff informed Dr George that she had decided to find a new psychiatrist, as she was not finding that the sessions that she had with Dr George were helping her at all.

[68] The plaintiff then obtained a referral from Dr Steward to psychiatrist Dr T Bell. Her first consultation with Dr Bell was on 26 July 1999 when he made a provisional diagnosis of major depressive disorder that was improving slowly with treatment. Dr Bell treated the plaintiff with antidepressant medication. The plaintiff felt that she developed a good rapport with Dr Bell.

[69] The plaintiff stated in evidence that she did not drink alcohol throughout 1999, until towards the end of 1999 or the beginning of 2000, when she started going out with a girlfriend to dinner and drinking alcohol. This then became a regular fortnightly occurrence. The plaintiff stated that her drinking of alcohol increased during 2000.

[70] The plaintiff gave evidence of an incident in March 2000. The plaintiff had been out with her sister-in-law and had a few drinks. Her sister-in-law had left. She had rung her husband to come and pick her up, but when he arrived at 10:25pm, he was unable to locate the plaintiff. The plaintiff woke up the next day at about 1pm on a bench near the Riverside Centre. She could hear voices talking to her and felt

confused and could not remember anything after her sister-in-law had left her. She went to the emergency department at Royal Brisbane Hospital, where the records note that there was some evidence that she had been the victim of a sexual assault.

[71] The plaintiff gave evidence of an incident when she had been drinking at a hotel and that she was driving home to Samford and coming up the range, and she thought how easy it would be to drive over the side. She then turned around and drove to the Royal Brisbane Hospital and sought help. The plaintiff cannot recall the content of the discussion she had with those who treated her at the hospital. The records of the Brisbane North Alcohol and Drug Services relating to the plaintiff are on the Royal Brisbane Hospital file for the plaintiff that became Ex 37. Those notes record that when the plaintiff was assessed on 10 August 2000 she had a blood alcohol level of 0.15% and that she had been consuming alcohol daily for 4 months and had a long history of being a heavy drinker for 10 to 14 years. As I have already indicated, I consider that the plaintiff was not reliable on this occasion in giving a history of being a heavy drinker for 10 to 14 years. The explanation for this is likely to be that suggested by Dr Mulholland that a person with a serious depressive illness tends to paint himself or herself in a very negative light. The plaintiff gave a history of having depression since August 1998 and panic attacks since October 1998.

[72] The plaintiff decided to break up with Mr Marsh in November 2000, left the matrimonial home and moved to her girlfriend's home. She stated that she felt dreadful about herself. She can recall at least 10 occasions after her separation until a couple of months prior to the trial in which she "cut herself" with a razor for the pain.

[73] While WorkCover was meeting her treatment costs, the plaintiff continued being treated by Dr Bell. She recalls that stopped in early 2001.

[74] The plaintiff gave evidence of another incident in which she ended up at the Royal Brisbane Hospital on 10 March 2001, but left before being treated. She stated that she was hit by a man at a hotel. She presented with a laceration to the eyebrow.

[75] Mr Marsh and the children moved to near Canberra in late 2001 or early 2002. From then until November 2003 the plaintiff divided her time between Canberra and Brisbane, spending slightly more time in Brisbane. She stayed in separate accommodation, but within the same house as Mr Marsh and the children.

[76] On one occasion in Canberra the plaintiff stated that she drank a bottle of rum, took some antidepressant tablets and cut her arm with a razor. She was admitted to Queanbeyan Hospital for a few days. According to the file of the Queanbeyan District Hospital relating to the plaintiff (Ex 38), the admission was on 13 August 2002 until 16 August 2002. The plaintiff was described as presenting with a polydrug overdose and "minor self-inflicted wound to forearm". The plaintiff was kept under review by the Queanbeyan Mental Health Service until 18 September 2002, which was just prior to one of her visits to Brisbane.

[77] The plaintiff stopped taking antidepressant medication a couple of years prior to the trial.

[78] The plaintiff has not been able to resume work. It was common ground that on 17 July 2003 the plaintiff received from Q Super a lump sum total and permanent disability payment of $169,784.92.

[79] Early in 2004 the plaintiff was a victim of a sexual assault, when she was walking home at night.

[80] At the time of trial the plaintiff stated that she was not currently being treated by a medical practitioner and that the last time she had consulted a doctor was some time in 2003.

Psychiatric and psychological evidence

[81] Although there had been a suggestion in the material that Dr George had diagnosed the plaintiff as suffering from post-partum depression, when he gave evidence Dr George confirmed that was not his diagnosis.

[82] Mrs Rebgetz' report on her investigation of the plaintiff's claim for worker's compensation is Ex 9. Mrs Rebgetz relied on her interview with the plaintiff and the statements she obtained from Dr Blackwood (Ex 30) and Ms Huggins. Mrs Rebgetz reported on what the plaintiff told her:

> "Ms Joynson stated that her workload and hours increased to accommodate the increased work responsibilities and to meet specific deadlines. She stated that when the taskforce met she was required to remain at work until 10.00 p.m. and that she was required to do weekend work. She stated that as her workload increased so did her symptoms such as difficulties with sleeping, concentration, memory loss, easily flustered and upset, and indecision. By 7 January 1999 Ms Joynson was not able to attend work".

[83] In cross-examination the plaintiff conceded that she did tell the first psychiatrist or psychologist whom she saw (who was Mrs Rebgetz) that the working hours were a lot more than what they were.

[84] Mrs Rebgetz administered psychological tests and concluded that the overall profile on the Pesonality Assessment Inventory suggested the presence of a major depressive illness with associated features of anxiety, paranoia, difficulties with regulating emotions and social withdrawness. As the onset of this illness seemed to have been during the time that, on the history given to Mrs Rebgetz, the plaintiff had a significant increase in her work responsibilities and workload and working to deadlines and there did not appear to be any other significant stress in her family or personal life, Mrs Rebgetz concluded that work issues had a significant contribution to the development of the plaintiff's major depressive disorder.

[85] The plaintiff saw Dr Mulholland on 11 October 1999. Dr Mulholland described the plaintiff's developmental history as "a mixture of functional and dysfunctional" and concluded "that she was probably left with some degree of psychological vulnerability", but that "she coped well until recently". In this report dated 21 October 1999 (Ex 3), Dr Mulholland recited what he had been informed by the plaintiff about her work history at the Secretariat in para 10.6 of this report:

> "The real problems started when she commenced work with the Industrial Relations Task Force to do with developing new legislation. This work was extremely demanding and there was

> limited administrative, i.e. secretarial, type input. During this period of time she would work regularly from 7.15am to 8.00am until 5.30pm or even up to 12 midnight. On weekends she frequently worked from 9.00am until 10.00 or 11.00pm. Sometimes there were 24 hour block units. She also took work home doing about 6 or 7 hours work at home. At other times she would 'duck into work for a few hours' on a Saturday or a Sunday."

[86] This history was clearly an exaggeration on the plaintiff's part and accords neither with the records kept by the Department nor the evidence given by the plaintiff in this proceeding in relation to hours worked and weekend work. The plaintiff accepted that she never worked for 24 hours continuously.

[87] Dr Mulholland diagnosed that the plaintiff developed a major depressive disorder and an associated panic disorder which began in about July or August 1998 and gradually deteriorated until she went off work in January 1999.

[88] Dr Mulholland reviewed the plaintiff on 7 June 2002 and 25 March 2003. In his report dated 7 June 2002 (Ex 5) Dr Mulholland expressed the opinion that the most likely outcome for the plaintiff, even if she were to have further treatments, was that she was probably going to end up somewhere about the 50%-55% psychiatric impairment range more or less indefinitely and that she was never likely to get back into the workforce. When Dr Mulholland saw the plaintiff in March 2003, he considered that she was still suffering from a chronic major depressive disorder of mild to moderate degree, whilst she was not on any treatment. In the report dated 28 April 2003 (Ex 6), Dr Mulholland stated:

> "1) by virtue of childhood and developmental factors she was always going to be vulnerable to the later development of psychiatric disorder and depressive illness in particular.
>
> 2) It is possible that she became depressed anyway in 1998-1999 due to factors unrelated to work and because she was depressed found work to be unduly distressing. That explanation is always possible but if it can be demonstrated definitely that the work demands were excessive then it would be reasonable to assume that work related factors had a significant input into her becoming clinically depressed at that time. In other words if it can be demonstrated that work related factors were in fact unusual and excessive then it would be probable that work related factors were a significant contribution in precipitating her into depressive illness at that time."

Dr Mulholland also expressed the opinion that one would have expected that the importance of work related factors would have ceased to operate within several months or a year or two after ceasing work. In evidence, Dr Mulholland stated that it is extremely difficult to give a clear answer, as to when work stops being a contributing factor to the depressive illness.

[89] In his report dated 24 November 2003 (Ex 8), Dr Mulholland stated:

> "Assuming that the workplace situation was much the same as she has described then it is reasonably foreseeable that any person might

> develop some form of psychiatric disorder in response that situation. In other words it is reasonably foreseeable that any person may be precipitated into a state of psychiatric disorder as a reaction to that situation".

Dr Mulholland agreed, however, that his opinion was dependent upon the assumption expressed in it. That assumption however was not borne out by the evidence at the trial.

[90] Dr Mulholland was cross-examined on whether the plaintiff's depression would be a consequence of her concerns about transferring to the Business Development Centre. Dr Mulholland did not rule out the possibility, but stated that a person "would have to have a fairly extreme vulnerability to become as ill as what she was and to remain that ill for a long period of time in response to a relatively minor stressor".

[91] Dr Douglas gave the MMMPI-2 test to the plaintiff on 18 June 2001, in conjunction with the examination of the plaintiff by Dr Nothling. Dr Douglas expressed the opinion that the pattern of answers of the questionnaire suggested an over-reporting of pathological symptomatology and that it was not possible to generate an accurate level of the plaintiff's stated level of psychosocial functioning from the test.

[92] What was of significance from Dr Nothling's report (Ex 27) which was done for the purpose of determining for Q-Super the extent to which the plaintiff was permanently disabled was what Dr Nothling recorded the plaintiff as telling him.

[93] With respect to alcohol, the plaintiff described to Dr Nothling that on a Saturday night she and two others would share two bottles of rum and that, prior to seeing Dr Nothling, she had last drunk alcohol on Saturday 13 January 2001 when a bottle of rum was shared between three people (including the plaintiff). Dr Nothling then recorded "She explained that Dr Bell was not concerned with regard to her above alcohol consumption". In evidence, the plaintiff explained that, if she said that to Dr Nothling, she said it because Dr Bell was not concerned about her alcohol consumption "because I didn't divulge everything to him". The pathology tests conducted at Dr Nothling's request, did not support excessive alcohol intake.

[94] With respect to medications, the plaintiff told Dr Nothling that she was taking Cipramil and had taken Cipramil tablets on the day of interview and had not missed taking any medication the previous week. The results of the urine drug screen of the plaintiff were that there was "probable misreporting of dosing" with respect to Cipramil.

[95] Dr Nothling was of the opinion that the plaintiff's misreporting of Cipramil and her invalid MMMPI-2 profile raised doubts as to her credibility as an historian.

[96] Dr Nothling was of the opinion that the plaintiff developed a major depressive disorder from late in 1998 which resulted in her ceasing work in January 1999 and that the cause of depression was probably multifactorial.

[97] The plaintiff also relied on the written reports (Exs 10 to 12) of psychiatrist Professor Jones who was overseas at the time of the trial and unavailable to give evidence. There was therefore no opportunity for Professor Jones to be cross-examined on the contents of his reports. Another difficulty with the first two of

Professor Jones' reports was that they were prepared at the request of WorkCover in connection with the plaintiff's claim for statutory benefits and were each qualified by an express disclaimer that the level of detail had been reduced in order to reduce costs and complexity for processing by the WorkCover Medical Assessment Tribunal and that use of the report in civil litigation was not recommended without further evaluation of the subject.

[98] Professor Jones first interviewed the plaintiff on 23 June 1999. Professor Jones was of the opinion that the plaintiff had developed a moderate to severe major depression, the onset of which coincided with a major change in her work in which she was subjected to considerable and changed workloads which she attempted to deal with systematically and conscientiously. Although there were personality traits which suggested some predisposition to depression, there was neither a past history of depression nor any family history of depression and Professor Jones concluded that the plaintiff's depressive state was precipitated by her work.

[99] When Professor Jones saw the plaintiff again on 1 March 2000, there had been only minimal change in the plaintiff's depressive symptoms. Professor Jones confirmed his previous opinion that, in the absence of past history of a clinical syndrome of depression and in the presence of work stressors, the plaintiff's depression appeared to be a work related condition.

[100] Professor Jones interviewed the plaintiff again on 1 February 2002. Professor Jones could find no indication to change the diagnosis he had previously made. He considered that the plaintiff was still continuing to suffer from a moderate to severe major depressive disorder.

[101] The plaintiff was examined by Dr Varghese, at the request of the defendant, on 27 November 2002. Dr Varghese made a provisional diagnosis on the basis of his interview with the plaintiff that the plaintiff was in a state of major depression when she ceased work and that it was possible that there was a recurrent major depression and that her current mood state was that of a chronic dysthymia (neurotic depression). Dr Varghese also considered that the cause of the major depression in early 1999 would have been multifactorial.

[102] Dr Varghese then did a review of the reports of other doctors and the medical files relating to the plaintiff. He confirmed his conclusion that at the time the plaintiff ceased work in early 1999 she was in a state of major depression, the cause of which was likely to have been multifactorial. He considered that it was difficult to relate the plaintiff's subsequent problems to work, as there was so many adverse events and circumstances in her life, including the break up of her marriage, her husband retaining custody of the children, significant traumatic events and apparently severe alcohol abuse. Dr Varghese concluded that it was likely that there had been more than one actual episode of major depression. He considered that at the time he interviewed the plaintiff, she did not have major depression, as any previous episode of major depression was in remission and her state was best understood as a chronic dysthymia. He described her problems as an interaction between the dysthymia, issues of personality and her overall circumstances.

Further findings

[103] All the psychiatric and psychological evidence points only to the conclusion that the plaintiff was suffering from a major depressive disorder when she ceased work on 7

January 1999. It is apparent that the plaintiff did not immediately recognise herself that the condition was caused by the stress which she experienced whilst working at the Secretariat. It is not surprising that when she was at Prince Charles Hospital that she associated her condition with the move to the Business Development Centre about which she was unhappy and which was where she suffered the panic attack that precipitated her leaving work. Although the defendant placed significance on this explanation offered by the plaintiff at that time, I am persuaded that Dr Mulholland's opinion about that being a relatively minor stress and unlikely to be the cause of the onset of the plaintiff's major depressive order should be accepted.

[104] From the time the plaintiff was interviewed by Mrs Rebgetz she has exaggerated the extent of her work hours in the Secretariat and the extent of the pressures under which she worked. These exaggerations, however, do not invalidate the various diagnoses of a major depressive disorder that have been made by the psychiatrists who have given evidence in this proceeding. Even Dr Nothling who was aware of the indications that cast doubt on the plaintiff's creditability as an historian still expressed the opinion that the plaintiff developed a major depressive disorder from late in 1998 that resulted in her ceasing work in January 1999.

[105] The effect of Dr Mulholland's evidence and opinions is that the plaintiff is still suffering from a major depressive disorder, that had its onset in late 1998. Although Dr Varghese suggests an alternative view of the continuing symptoms exhibited by the plaintiff, I am more persuaded by Dr Mulholland's opinion, particularly in view of the opportunity which he has had to interview the plaintiff on several occasions and that his opinion reflects the plaintiff's history and presentation subsequent to the relevant period.

[106] There can be no issue that, in the light of the plaintiff's medical history, the onset of her major depressive disorder was temporally linked with the time that she worked in the Secretariat. Without deciding whether the stress in her workplace was the cause of the onset of that major depressive disorder, but assuming that it was, the critical issue raised by this proceeding is whether, in all the circumstances, the risk of the plaintiff sustaining a recognisable psychiatric illness was reasonably foreseeable, in the sense that the risk was not far-fetched or fanciful. This is the test that was formulated in *Wyong Shire Council v Shirt* (1980) 146 CLR 40, 48. It remains the relevant test: *Tame v New South Wales* (2002) 211 CLR 317 at paras [12] and [201]. See also the discussion on foreseeability in *Hatton v Sutherland* [2002] 2 All ER 1 at paras [23] to [31] which was approved by the House of Lords in *Barber v Somerset County Council* [2004] 2 All ER 385 at para [63].

[107] In this matter this question of reasonable foreseeability of psychiatric injury must be considered in the context of the particular plaintiff and what the defendant knew or ought to have known about her: *Tame v New South Wales* at paras [199] to [200]. Although the psychiatric evidence is that the plaintiff had a vulnerable personality because of other earlier events in her life, the defendant had no knowledge of the plaintiff's vulnerable personality and at the time the plaintiff took up her position in the Secretariat she was not exhibiting any signs of a person who had a vulnerable personality.

[108] The issue of reasonable foreseeability of psychiatric injury has to be determined in the context of the finding which I have made that the plaintiff exhibited a positive attitude to her work in the Secretariat and did not indicate to either Dr Blackwood or

Ms Van Rooden that she was having any difficulties in coping with her work. Even though the plaintiff was put under pressure regularly in having to prepare the meeting papers and distribute them in a timely way and consistently worked longer hours than the standard hours, this was done in circumstances where the plaintiff knew that these conditions would end in December 1998, when the Secretariat's role was coming to an end or she took up her position in the Business Development Centre that she had known since October 1998 was to be her next job in the Department.

[109] This question of reasonable foreseeability has to be determined, having regard to all the circumstances that pertained to the plaintiff's working conditions and not just those which have assumed a much greater significance in the plaintiff's view, after the diagnosis of her major depressive disorder. I am not satisfied that in the circumstances that I have found existed throughout the time the plaintiff worked in the Secretariat that the risk of the plaintiff sustaining a recognisable psychiatric illness from her work in the Secretariat was reasonably foreseeable.

[110] The defendant submitted that, in any case, the test that should be applied was whether the risk of psychiatric injury to the plaintiff was reasonably readily foreseeable, in reliance on ss 312(1)(b) and 312(3) of the *WorkCover Queensland Act* 1996. In view of my conclusion that the plaintiff cannot satisfy the reasonably foreseeable test, it is unnecessary to decide whether the defendant's submission that the test of reasonably readily foreseeable which makes a plaintiff's task more difficult is applicable.

[111] The consequence of my concluding the issue of reasonable foreseeability of the risk of psychiatric injury against the plaintiff is that she has failed to show that the defendant owed her a duty of care not to expose her to a risk of such injury. As the plaintiff's contractual claim was based on the same particulars as the claim for negligence, the plaintiff also fails in her claim for damages for breach of contract.

[112] The plaintiff's claim for breach of statutory duty is based on s 28(1) of the *Workplace Health and Safety Act* 1995 which provides that an employer has an obligation to ensure the workplace health and safety of each of the employer's workers at work. This provision provides a civil cause of action to an employee: *Schiliro v Peppercorn Child Care Centres Pty Ltd* [2001] 1 QdR 518, 533. Section 27 of that Act applies if there is not a regulation or ministerial notice prescribing a way to prevent or minimise exposure to a risk, or an advisory standard or industry code of practice stating a way to manage the risk. Section 27(2) provides:

> "The person may choose any appropriate way to discharge the person's workplace health and safety obligation for exposure to the risk."

[113] This provision is applicable in this matter, as there is no relevant regulation or ministerial notice. The question arises what is meant by "risk". It is defined in schedule 3 of that Act to mean "risk of death, injury or illness".

[114] It was submitted by Mr Grant-Taylor SC who appeared with Ms Philipson on behalf of the defendant that reasonable foreseeability of risk was an element of the cause of action for breach of the statutory duty imposed by s 28(1) of the *Workplace Health and Safety Act* 1995. Reliance was placed on an observation made by Williams J (as he then was) with whom McPherson JA agreed in *Finn v The Roman Catholic*

Trust Corporation for the Diocese of Townsville [1997] 1 QdR 29, 42. It was observed in respect of s 9 of the *Workplace Health and Safety Act* 1989 (which was the forerunner to s 28(1) of the *Workplace Health and Safety Act* 1995) that it would not require an employer to take precautions against a risk which was wholly unforeseeable.

[115] *Schiliro v Peppercorn Child Care Centres Pty Ltd* was concerned with an action under s 28(1) where there was a regulation or ministerial notice prescribing a way of preventing or minimising exposure to a risk (and thus s 26 and not s 27 was applicable). In that case the relevant regulation or ministerial notice was the Manuel Handling Code and the conclusion was that no risk of injury was identified to the appellant in that case, as a result of the risk assessment required under that Code. It was stated at para [70]:

> "In the absence of a reasonably foreseeable risk there is no room for further application of the Code."

[116] There was therefore no need for the court to consider whether the risk of injury where s 27 was applicable had to be a foreseeable risk of injury. It is implicit in s 27 that there will be an appropriate way to discharge the employer's obligation for exposure to the risk of injury. It makes it difficult to apply that provision if the exposure to the risk is such that no action is required. It makes sense to imply the concept of foreseeability of risk of injury in the obligation under s 28(1). On that basis the plaintiff has also failed in showing breach of statutory duty.

[117] It is unnecessary to consider the defence raised in para 7A of the amended defence that some of the allegations of negligence found in the further amended statement of claim were not allegations contained in the plaintiff's notice of claim for damages given pursuant to s 280 of the *WorkCover Queensland Act* 1996.

Quantum

[118] The defendant made submissions on quantum on the assumption that the plaintiff was able to establish a causal link between her work conditions at the Secretariat and the psychiatric disorder diagnosed by Dr Mulholland. There were not significant differences in the respective amounts advanced by each party for the heads of claim on this basis. The total damages calculated to the date of trial by the plaintiff (after allowing for the WorkCover refund of $60,041.44) was $535,548.55 (see Ex 43) and that calculated by the defendant was $497,097.42 (see Ex 44).

[119] One difference between the parties was on the quantum of general damages. It was submitted on behalf of the plaintiff that, having regard to the permanent impairment assessed by Dr Mulholland, the appropriate level of general damages was $65,000. The defendant submitted that general damages should be assessed at $45,000.

[120] The amount of general damages contended for by the plaintiff is supported by the quantum decisions relied on by Mr Charrington in his submissions including *Gallagher v Queensland Corrective Services Commission* (unreported, S Ct(Q), Jones J, 30 July 1998) and *Midwest Radio Limited v Arnold* (1999) EOC 92-970. If it were necessary to assess general damages on the basis on which the quantum submissions were made, I would allow for an amount of $65,000.

[121] It was submitted on behalf of the plaintiff that the award for past superannuation benefits should be 8% of the amount calculated for past economic loss. The

defendant relied on *Paff v Speed* (1961) 105 CLR 549, 558 and *Wall v Wall* [1998] SASC 7017 (23 December 1998) at para [102] to submit that the effect of the plaintiff's receipt of the payment from Q Super was that she could not claim for past superannuation benefits. Mr Grant-Taylor did not suggest that the principle had any application to future superannuation benefits. There should therefore be no allowance for past superannuation in an assessment of the plaintiff's damages.

[122] I would otherwise assess damages for the plaintiff, if it were necessary to do so, in accordance with the submissions made by Mr Charrington set out in Ex 44.

Order

[123] As the plaintiff has been unsuccessful in establishing her claim, the orders which should be made are:

1. The plaintiff's claim is dismissed.
2. Judgment for the defendant.

[124] I will receive submissions from the parties, before considering the question of costs.