SUPREME COURT OF QUEENSLAND

CITATION:	*Australia Meat Holdings P/L v Douglas & Ors* [2005] QCA 437
PARTIES:	**AUSTRALIA MEAT HOLDINGS PTY LIMITED** ACN 011 062 338 (applicant/appellant) **v** **DR J B DOUGLAS & DR P MORRIS & DR J C SLAUGHTER in their capacity as members of the GENERAL MEDICAL ASSESSMENT TRIBUNAL/PSYCHIATRIC** (respondents/first respondents) **Q-COMP and its successor THE WORKERS COMPENSATION REGULATORY AUTHORITY** (respondents/second respondents)
FILE NO/S:	Appeal No 5153 of 2005 SC No 4650 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	25 November 2005
DELIVERED AT:	Brisbane
HEARING DATE:	8 November 2005
JUDGES:	McPherson and Williams JJA and Muir J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal allowed. Order dismissing the application on 31 May 2005 set aside** **2. Decision of the first respondent General Medical Assessment Tribunal/Psychiatric dated 29 April 2004 set aside** **3. Order that the reference the subject of these proceedings be heard and determined by the Tribunal according to law consistently with these reasons; in particular, that Australia Meat Holdings Pty Ltd may be present and represented by counsel or solicitor at any such hearing** **4. Order that the second respondent pay the costs of and incidental to this appeal and to the application for a statutory order to review**

CATCHWORDS: WORKERS' COMPENSATION – PROCEEDINGS TO OBTAIN COMPENSATION – DETERMINATION OF CLAIMS – JURISDICTION OF COURTS, TRIBUNALS, COMMISSIONS AND BOARDS – claim for workers' compensation from appellant employer – appellant was licensed self-insurer – whether appellant entitled to be present by its representative to hear, see and comment upon submissions and material on a reference to a medical assessment tribunal – whether right to be present circumscribed by legislation

Workers Compensation Act of 1916 (Qld), s 4, s 6, s 8, s 9, s 9A, s 13, s 14C, s 16
WorkCover Queensland Act 1996 (Qld), s 34, s 52, s 98, s 116, s 119, s 253, s 265, s 438, s 453
Workers Compensation and Rehabilitation Act 2003 (Qld), s 511A, s 603

Baba v Parole Board of New South Wales (1986) 5 NSWLR 338, considered
Bonser v Melnacis [2002] 1 Qd R 1; [2000] QCA 13, cited
Cooper v Wandsworth Board of Works (1863) 14 CB (NS) 180, cited
J v Lieschke (1987) 162 CLR 447, cited
Kioa v West (1985) 159 CLR 550, considered
Ridge v Baldwin [1964] AC 40, cited
Twist v Randwick Municipal Council (1976) 136 CLR 106
Wood v Woad (1874) LR 9 Exch 190, cited
York v General Medical Assessment Tribunal [2003] 2 Qd R 104; [2002] QCA 519, considered

COUNSEL: J Griffin QC, with G J Cross, for the appellant
D O J North SC, with S A McLeod, for the respondents

SOLICITORS: Abbott Tout Lawyers for the appellant
Bradley & Co for the respondents

[1] **McPHERSON JA:** This appeal raises the question whether, under the *WorkCover Queensland Act 1996* (the 1996 Act), the appellant Australia Meat Holdings Pty Ltd ("AMH") was entitled to be present by its representative to hear, see, and comment upon submissions and material presented by or on behalf of Mr Terrence Ketchup on a reference to a medical assessment tribunal established under that Act. The tribunal in this instance was the General Medical Assessment Tribunal/Psychiatric consisting of three specialist medical practitioners, who are the first respondents to this application under the *Judicial Review Act 1991*. They took no part in the appeal beyond appearing to say they would abide by the order of the Court. The active opponent of the application and the appeal is Q-Comp and its statutory successor The Workers Compensation Regulatory Authority, which is the second respondent to the application and appeal by AMH.

[2] On 18 May 2001, Mr Ketchup was employed by AMH at its Townsville meatworks plant as a labourer/knife hand, when he suffered an electric shock in the course of his employment. He was trying to put an electric plug into a power point.

He made a claim for workers compensation for injuries to his neck and right shoulder or arm, which was accepted by AMH as regards the neck injury. By a later application dated 26 May 2003, Mr Ketchup applied under s 265 of the Act for a damages certificate alleging an injury described as:

> "Psychiatric or psychological condition, secondary to physical injury sustained in the course of my employment on 18 May 2001, which has been diagnosed as depression".

Having concluded that Mr Ketchup had not sustained an "injury" within the meaning of s 34 of the Act, AMH declined to provide the certificate sought in respect of the psychiatric injury. By letter dated 27 November 2003, Mr Ketchup by his solicitors required that under s 265(8) the matter be referred to the Tribunal. This was done, and, after convening on 19 April 2004, the Tribunal delivered a written decision dated 29 April 2004. In it, the Tribunal recorded that they had heard representations from Mr Moon of counsel for Mr Ketchup, and had interviewed Mr Ketchup who provided information to the Tribunal. The decision was that, for the purpose of seeking damages, the matters alleged constituted an injury to him as the worker; that the nature of the injury was chronic adjustment disorder with anxiety; that he had sustained a degree of permanent impairment and that its degree was 7½ per cent.

[3] The complaint of AMH, which is summarised in its written outlines on the appeal, is that the Tribunal had before it, and took into account in reaching its decision: (1) four medical reports not available to AMH when it decided to refuse the damages certificate, and in relation to which AMH had no opportunity to make submissions to the Tribunal; (2) that the Tribunal had conducted an interview at which AMH was not present, and about which it knew nothing and did not have an opportunity of making submissions to the Tribunal; and (3) that the Tribunal heard submissions from Mr Moon of counsel for Mr Ketchup, which again were not communicated to AMH for comment or submissions by it.

[4] In these circumstances, AMH submits that it has been denied natural justice or procedural fairness by the Tribunal in coming to its decision. In its application and appeal for a statutory order to review AMH asks that the decision of the Tribunal on 29 April 2004 be set aside, and the matter be referred again to the Tribunal for determination according to law and natural justice, at a hearing at which AMH is entitled to be represented. The outcome of the appeal turns in part on the interpretation of the provision in s 453 of the Act, which, on a reference to the Tribunal, confers on the worker an explicit right to be heard before the Tribunal, while affording no corresponding right to do so on an employer in the position of AMH; and, in part, on the structure and history of the legislation, which the respondent Authority contends supports the contention that no such right is given. Before us, the Authority, for which Mr North SC and Mr McLeod appeared, submitted that these two considerations, either separately or together, were sufficient to defeat the present application and appeal by AMH.

[5] Section 453 of the Act is as follows:

> "**Right to be heard before tribunals**
>
> 453. On a reference to a tribunal, the worker may be heard before the tribunal in person, or by counsel, solicitor or agent."

It will be seen that, on one view of it, the section in that form does not in terms confer on the employee or worker a right as such to be heard, but rather invests the Tribunal with a discretion ("may be heard") to decide whether or not they will permit that privilege to the worker or his representative. In this instance they did permit it. On another view of it, the section may be seen as conferring on the worker a right of appearing, which he or she may exercise at his option, whether or not the Tribunal wishes it. In this Court the choice between these alternatives has been or came close to being determined in favour of the second by the decision in *York v General Medical Assessment Tribunal* [2003] 2 Qd R 104. There it was held that, where the Tribunal was minded to decide against the worker, it was required to alert him in advance to the possibility that it would not accept diagnoses favourable to him, so as to give him or his solicitor the opportunity of presenting the opposing standpoint before the Tribunal decided the reference against him. In the words of Jerrard JA in that case ([2003] 2 Qd R 104, 114):

> "… the obligation to afford procedural fairness required that in this case [the appellant] Mr York's solicitor have the opportunity to argue against, or even lead further evidence in his favour, on whatever provisional or preliminary views adverse to his client the Tribunal held."

[6] That was, however, an instance in which the point at issue turned on the content of the requirement of procedural fairness to the worker, rather than whether it existed in favour of the employer at all, which is the primary question here. Mr North SC submitted that s 453 was intended to be an exhaustive statement of rights of appearance before the Tribunal. But there is nothing in the provision itself, apart from its bare presence in the Act, to suggest it was intended to exclude the presence or representation at a tribunal hearing of any other person, such as an employer, with a sufficient interest in the matter at issue. The same is true of the section heading **Right to be heard before tribunals**, which, even though it is to be read as part of the section, is not expressed as a complete code of the right to be present or heard. Any such intention can be discovered, if at all, only by implication from the general law or, as the Authority submits, from a consideration of the legislation or its history in Queensland.

[7] As to the general law, the settled rule now is that the implication, if any, to be made is the opposite of that contended for by the Authority. The common law rule, said Barwick CJ in *Twist v Randwick Municipal Council* (1976) 136 CLR 106, 109-110, is that "a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power …". The legislature, his Honour went on, may displace the rule and provide for the exercise of such power without any opportunity being afforded to the affected person to oppose its exercise; but, "if that is the legislative intention it must be made unambiguously clear". His Honour's statement has been followed and applied in later cases, as it was, for example, by Brennan J in *J v Lieschke* (1987) 162 CLR 447, 460, on which AMH relied here; and as it was earlier by the High Court in *Kioa v West* (1985) 159 CLR 550, at 609, where the same learned judge regarded the law as supplying an interpretative presumption requiring principles of natural justice to be observed: see *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180, 194; 143 ER 414, 420.

[8] In the context of s 453 of the Act in the present case, a decision (which was referred to by Williams JA in argument before us) that is opposed to the Authority's submission is *Baba v Parole Board of New South Wales* (1986) 5 NSWLR 338.

There the relevant legislation in providing for parole of a prisoner expressly conferred on him a right to be present and to make representations if the Board was not intending to order parole. No such provision was made if it was proposed that a parole order be rescinded under s 336 of the relevant Act. The Court of Appeal held that the Parole Board was nevertheless required to afford a prisoner a right to be heard before the statutory power to rescind was exercised. Hope JA concluded (5 NSWLR, at 345) that the structure and provisions of the Act did not provide a code or otherwise excluding the rules of natural justice. Mahoney JA considered (5 NSWLR, at 347) that the specific provisions in respect of procedures and notice in the exercise of other parole powers did not indicate that no such procedure or notice was required in exercising the power of rescission under s 33. The *expressio unius* rule of interpretation was said not to apply. Reliance on that maxim, said McHugh JA (5 NSWLR, at 349) "can seldom, if ever, be enough to exclude the common rules of natural justice". Mr North sought to distinguish the decision on the basis that the legislation in *Baba* was in all respects silent on the right to be heard as regards the rescission of a parole order under s 336, whereas here s 453 expressly confers such a right on the worker as distinct from the employer. But the common element of the legislation in both cases is that a statutory provision conferring a right to be heard can rarely, if ever, be used as demonstrating an intention to exclude it elsewhere in the statute. By itself it is not an "unambiguously clear" indication to that effect.

[9] From there, it is necessary to turn to the structure of the Act and its legislative history. It has a lengthy past, beginning in 1915 when the newly elected Labor government of that time introduced legislation designed to make the business of workers compensation insurance a State-owned monopoly. After various vicissitudes in the courts, which are outlined in the history of *The Supreme Court of Queensland 1859-1960*, at 280-281, the proposal emerged in the form of legislation establishing the State Accident Insurance Office constituted under s 4(1) of the *Workers Compensation Act of* 1916, which was to be managed by an Insurance Commissioner. By s 6, as amended in 1921, the Insurance Commissioner was the only person authorised to issue policies of "accident insurance", meaning insurance against liability in relation to workers compensation under the Act. Insurance policies were to issue on behalf of and to be guaranteed by the Queensland Government. Premiums for policies were to be paid into, and liabilities under policies were to be paid out of, a State Accident Insurance Fund constituted by the Act; and by s 6, also amended in 1921, policies of accident insurance were to be issued only by the Insurance Commissioner and no one else. Section 8 required every employer to apply for and maintain such a policy in relation to his workers.

[10] Section 9 conferred on a worker injured by accident in the course of his employment the right to compensation out of the Fund in accordance with the Act, which was to be in lieu of all rights of action against any person whatsoever. This was qualified in s 16 by preserving the worker's right of action independently of the Act against an employer when the injury was caused by the personal negligence or wilful act of the employer or someone for whom the employer was responsible. As to procedure, s 13 provided for an application for compensation to be allowed or rejected by the Insurance Commissioner, with a right of appeal to an industrial magistrate. The Act was amended over the years, for example, in 1960 to substitute the State Government Insurance Office (Queensland) for the Insurance Commissioner; and from 1963 to require employers to insure with the Office against legal liability (widely referred to as common law liability) not only for

workers compensation under the Act, but also for sums for which the employer might become liable independently of the Act to pay damages in respect of that injury: see s 8, as amended in 1962, and s 9A.

[11] A statutory amendment relevant to this appeal was the introduction in 1960 of a cardiac board including two medical specialists in cardiology, to which the Office could refer claims for compensation in cases of injury by cardiac disease contracted by a worker in the course of his employment. Determination by the cardiac board of the questions whether there was an injury, the extent of the incapacity occasioned, and whether permanent or temporary, was to be "final and conclusive" and exclusive of any right to have those matters determined by an industrial magistrate: s 14C(5). It is by the fourth paragraph of s 14C(2) of this amending legislation that the worker's right to appear before the board and to be represented by counsel, solicitor or agent was first inserted in the statutory schedule, to which s 453 of the 1996 Act can be traced. The experiment of using specialist medical boards to determine references of claims for compensation in respect of alleged injury was regarded as so successful that in 1966 s 14C was amended to establish other speciality boards as part of the Tribunal for similar purposes, such as orthopaedic, dermatology, neurology boards, and so on. The psychiatry board appears to have been a later addition. In determining a reference, a board was empowered to make a personal medical examination of the claimant worker: s 14C(10). A decision of such a board was final and conclusive: s14C(10); but the "entitlement" of the worker, as it was then described, to appear, to be heard, and to be represented, was retained in s 14C(10).

[12] A major change in statutory policy or philosophy was introduced in 1996 when the *Workers Compensation Act of* 1916 was repealed by the *Workers Compensation Act 1990*, which was in turn replaced by the *WorkCover Queensland Act 1996* (the 1996 Act). Much of the language of the 1916 Act was preserved in the legislative definitions of "accident insurance", "compensation", and "damages" at common law. The employer's obligation to insure was retained in s 52, but s 98(1) in Part 5 of the 1996 Act introduced a concept of "self-insurance". An employer might be licensed to provide its own insurance for workers, instead of insuring with WorkCover, a body corporate which by s 334 took over the function of undertaking the business of "accident insurance" under the Act. By s 98(2) of the 1996 Act, a licensed self-insurer was to have "all the liabilities that WorkCover would have", if Part 5 of the Act did not apply, for injuries sustained by the self-insurer's workers arising out of events during the currency of the licence. By s 116(1)(a) the self-insurer was to be liable, to the exclusion of WorkCover, for compensation and for damages for all injuries sustained by a worker employed by the self-insurer; and by s 119(1), a self-insurer was, in relation to its workers, to have the functions and powers of WorkCover.

[13] The effect of these provisions of the 1996 Act was, for the first time since 1916, to remove the monopoly of the State insurance system over workers compensation accident insurance in the case of an employer that was licensed to act as self-insurer. Taking over as it did under s 98(2) and s 116(1)(a) of the Act the liabilities of WorkCover meant that the employer as self-insurer instead of WorkCover would be liable to pay workers compensation and damages at common law for injuries sustained by the self-insurer's employees. Assuming as it did under s 119(1) the functions and powers of WorkCover meant that the self-insurer would perform the determination and assessment of a worker's claim arising from an

injury sustained in his employment. This is what AMH did when it allowed Mr Ketchup's claim for injury to his neck, and when it rejected his claim for psychiatric injury following that incident. It was in consequence of the decision by AMH rejecting that claim that Mr Ketchup required the matter to be referred to the General Medical Assessment Tribunal/Psychiatric, with the outcome that has been described.

[14] Section 253 of the 1996 Act introduced another novel concept into the legislative scheme regulating claims arising out of industrial injuries in Queensland. Section 253 and other provisions of the Act imposed restrictions on the persons entitled to seek damages for an injury sustained by a worker in his employment. Section 253(3) declared that s 253(1) abolished any entitlement to seek damages of a person not mentioned in that provision; and s 265(1) provided that a claimant might seek damages for an injury "only if WorkCover gives … a damages certificate" under that section. Substituting the self-insurer for WorkCover in accordance with s 119(1), this had the consequence that, before being entitled to sue AMH for damages for the psychiatric injury for which he claimed, Mr Ketchup needed a damages certificate from AMH as the self-insurer. When his application for a certificate was declined by AMH, and he disagreed with that decision, AMH was required under s 265(9) to refer the matter to a medical assessment tribunal for decision and to ask the tribunal under s 438 if the claimant had sustained a degree of permanent impairment from that injury. It was following this procedure that the first respondent Tribunal arrived at the decision that Mr Ketchup had sustained a chronic adjustment disorder causing permanent impairment to the extent of 7½ per cent.

[15] The effect of that decision of the Tribunal was to remove the statutory immunity that AMH would otherwise have enjoyed from proceedings for damages at common law in respect of the psychiatric injury he claims to have sustained in the course of his employment with AMH. He satisfied the description in s 253(1)(c) of being a worker who "has not lodged an application for compensation for the injury", meaning the psychiatric as distinct from the physical injury he had suffered. These and other provisions of the 1996 Act were considered in *Bonser v Melnacis* [2002] 1 Qd R 1, 3-4, where the Court of Appeal confirmed that their combined effect was to abolish the right of an employee to sue his employer for damages for personal injury if the steps prescribed by the legislation were not followed. Of course, in the present case, the requisite steps were taken by Mr Ketchup and he received a favourable assessment of his psychiatric injury, with the result that he became entitled to proceed against AMH for damages for the psychiatric injury sustained as a result of the injury on 18 May 2001. The impact on the legal position of AMH was precisely the converse. Before the tribunal gave their decision on 29 April 2004, AMH was not legally liable to be sued for damages at common law. After it, AMH was liable to be sued in proceedings in which it might be held responsible in law to Mr Ketchup for damages in an amount potentially capable of extending to a large sum of money. We were not referred to any specific authority in which procedural fairness or natural justice has been held to prevail where an immunity from liability, as distinct from a right, has been removed or diminished. I notice, however, that in *Ridge v Baldwin* [1964] AC 40, at 70, Lord Reid quoted with approval a passage from *Wood v Woad* (1874) LR 9 Exch 190 in which Kelly CB spoke of a tribunal having power to adjudicate on "matters involving civil consequences"; and the removal of an immunity to suit may properly be described as such a matter. In any event, Mr North SC said he was not relying on any distinction between a right and an immunity in support of his submissions. On any view of it, the tribunal had

power to "affect" the rights of AMH, and in making its decision in favour of Mr Ketchup it exercised that power in a way that impinged on the patrimonial interests of AMH.

[16] It is true that the previous course of workers compensation legislation in Queensland provides no example of WorkCover or its statutory predecessors claiming or being given a right to appear before the cardiac board or any other such medical tribunal established since 1960. The function of the Medical Assessment Tribunal, or the boards which comprise it, were, as Mr North SC stressed, to provide panels who would use their professional expertise and experience to determine the reference whether by personal examination of the claimant or otherwise. Before the establishment of specialist boards, the State Government Insurance Office used to appear by solicitor or counsel to oppose appeals by workers before industrial magistrates against decisions rejecting their claims. At the time the boards were first instituted it was only the statutory State Accident Insurance Fund that was directly "affected" by an adverse decision of a board. The Fund was then under the administration of the Insurance Commissioner, or later the State Government Insurance Office, and the Fund was bound to satisfy liabilities established against it. The Fund was, however, not a person with rights that were affected by a decision of a board; or, if it was, the Office did not seek to protect them by appearing before the board in references under the Act. References were regarded as essentially administrative in character. We were reminded that at one time in the administrative history of the legislation, a board on a reference of this kind was presented only with the worker's compensation claim file from the Office together with the worker himself if he chose to be present. But if this illustrates the extent to which such proceedings were left simply to the personal medical opinion of the professional members of boards, it is not something that can be relied on in this instance. Here the applicant placed additional medical reports before the Tribunal that were not made available to AMH.

[17] The legal position changed substantially when the statutory monopoly of the State as the insurer of claims for industrial injuries to workers was brought to an end in 1996 and employers were licensed to become "self-insurers" of their liability for damages arising from injuries sustained by their own employees. In addition, the 1996 Act conferred on the employer a statutory immunity against actions for damages at common law that survived until it was removed by a tribunal decision favourably assessing an employee's "injury" as satisfying the Act. From that time, it was in my opinion impossible to regard the function of a board like the General Medical Assessment Tribunal/Psychiatric in determining a reference to it of that question as one that did not affect the rights of a self-insured employer like AMH. The administrative practices that evolved over the years have failed to keep abreast of legislative changes in philosophy and policy introduced by the 1996 Act. In accepting that AMH as self-insurer simply succeeded to the note of WorkCover as universal statutory insurer, the decision appealed from gave too little weight to the impact on the employer's liability that those changes entailed.

[18] In the meantime, the general law itself has not stood still. Some kind of limitation was at one time thought to have been judicially imposed on the circumstances in which a right to be heard would be implied in accordance with the principle in *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180. For a time it was thought that the duty to act with procedural fairness did not prevail if the decision affecting rights was purely administrative and in no sense judicial.

Whatever restriction was supposed to be imposed in that way was removed in England by the decision of the House of Lords in *Ridge v Baldwin* [1964] AC 40, as can be seen from the speech of Lord Reid at 74-79. The right to be heard, or the implication of that right in a statutory provision, is not now displaced by characterising the power being exercised as "administrative" rather than "judicial".

[19] The Authority submitted that decisions of the High Court stress that the content of procedural fairness, or what will amount to a denial of it, must be determined in the particular statutory framework in which the question arises, including the nature of the inquiry, the subject-matter, and the rules under which the decision-maker is acting: see *Kioa v West* (1985) 159 CLR 550, 584-585. The expression "procedural fairness" conveys "the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case": ibid, at 585, per Mason J. His Honour went on to say:

> "The statutory power must be exercised fairly, that is, in accordance with procedures that are fair to the individual considered in the light of the statutory requirements, the interests of the individual, and the interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations."

No doubt these considerations may constitute a weighty if not decisive factor in some circumstances. The problem for the Authority here is that there is nothing in the legislative scheme after it was revised in the 1996 Act to displace the interpretative presumption imported by the general law. It is possible that in the context of some statutory provisions it can be confidently said that the legislature intended to permit some but only an incomplete degree of representation or right of appearance, or one that was limited to particular issues, matters or circumstances. Here, however, AMH's right in that respect has not been circumscribed in that limited way by anything to be found in the statutory framework. It has been rejected not partially, but absolutely and completely, by the Tribunal in hearing the reference without anything in the legislation to say that it must or may do so. Denying procedural fairness in this case is inconsistent with the decisions of high authority already referred to and many others to similar effect.

[20] In the absence of an unambiguously clear provision in the 1996 Act, it is my opinion that AMH was entitled to attend the hearing of the reference in this matter, and to see and be heard to comment upon the material before the General Medical Assessment Tribunal/Psychiatric before that body reached its conclusion that Mr Ketchup had suffered an "injury" in the defined sense. There is nothing in the 1996 Act to displace the presumption of statutory interpretation supplied by the general law. I would accordingly allow the appeal and make the first order sought in the appellant's application by setting aside the decision of the first respondent Tribunal given on 29 April 2004. The other forms of relief sought in the application have now become more controversial. On 2 November 2005, which was only six days before the appeal was heard by this Court, legislation received assent amending the *Workers Compensation and Rehabilitation Act* 2003 (as the current statute is now called) by inserting in it a new s 511A. In sequence it follows the existing s 511, which is in the form of s 453 of the 1996 Act. Section 511A is as follows:

> "**511A Who can attend tribunal**
> Only the worker, or counsel, solicitor or agent nominated by the worker may be present before the tribunal."

[21] Considered on its own, s 511A would appear to apply to a future hearing before the Tribunal of the reference in this matter that is the subject of the application and this appeal. However, s 2(2) of the current Act of 2003, which commenced operation on 1 July 2003, contains the following relevant transitional provision in s 603:

> "(1) This section applies if a worker sustained an injury before the commencement of this section.
> (2) A former Act, as in force when the injury was sustained, applies in relation to the injury."

Schedule 6 includes a definition of "former Act" which includes the 1996 Act.

[22] Mr Ketchup sustained his physical injury on 18 May 2001. Even the psychiatric injury, if any, that he claims followed from it must have occurred before he made his application in respect of it on 26 May 2003, which was before the commencing date of the 2003 Act on 1 July 2003. The former or 1996 Act therefore continued to apply to it unaffected by the provisions in s 511A of the 2003 Act. It follows that the law and procedure to be applied to any further hearing of the reference of this matter to the Tribunal is prescribed by the 1996 Act, as it has been expounded in these reasons.

[23] The result in my opinion is that AMH is entitled substantially to the orders it seeks in its application for statutory review. The orders on this appeal will therefore be as follows:

(1) Appeal allowed. Order dismissing the application on 31 May 2005 set aside.
(2) Decision of the first respondent General Medical Assessment Tribunal/Psychiatric dated 29 April 2004 set aside.
(3) An order that the reference the subject of these proceedings be heard and determined by the Tribunal according to law consistently with these reasons; in particular, that Australia Meat Holdings Pty Ltd may be present and represented by counsel or solicitor at any such hearing.
(4) Order that the second respondent pay the costs of and incidental to this appeal and to the application for a statutory order to review.

[24] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of McPherson JA, and there is nothing I wish to add thereto. I agree with all that is said therein and with the orders proposed.

[25] **MUIR J:** I am in agreement with the reasons of McPherson JA and the orders he proposes.