SUPREME COURT OF QUEENSLAND

CITATION:	*Costello v Qld Rail* [2014] QSC 83
PARTIES:	**JAMES LYNDON ROSS COSTELLO** Applicant **v** **QUEENSLAND RAIL** **ACN 132 181 090** Respondent
FILE NO/S:	S223 /2014
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court Rockhampton
DELIVERED ON:	16 May 2014
DELIVERED AT:	Rockhampton
HEARING DATE:	28 April 2014
JUDGE:	McMeekin J
ORDERS:	**1. The parties to agree on and file formal orders within seven days consistently with these reasons.**
CATCHWORDS:	WORKERS' COMPENSATION – PROCEEDINGS TO OBTAIN COMPENSATION – PRELIMINARY REQUIREMENTS – NOTICE OF INJURY – GENERALLY – where a Notice of Assessment referred to the Medical Assessment Tribunal only referred one of two known psychiatric injuries of the applicant – where the Medical Assessment Tribunal did not take into account all known psychiatric injuries – whether the Notice of Assessment is invalid. WORKERS' COMPENSATION – ASSESSMENT AND AMOUNT OF COMPENSATION – ENTITLEMENTS REDEEMED OR COMMUTED TO A LUMP SUM – JURISDICTION AND PROCEDURE – where a Notice of Assessment did not assess all physical injuries of the applicant – where the insurer offered the plaintiff a lump sum compensation payment based on this Notice of Assessment – where the applicant accepted the lump sum payment – where the respondent contends that the Court does not have

jurisdiction to make the declarations sought – whether acceptance of the lump sum payment made contrary to the provisions of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) is binding on the applicant – whether the Court has jurisdiction to make the declarations sought.

Civil Proceedings Act 2011 (Qld) s10
Judicial Review Act 1991 (Qld) s 20(2)(d), s 26(2)
Land Acquisition Act 1967 (Qld)
Workers' Compensation and Rehabilitation Act 2003 (Qld) s 179(2)(b), s 185, s 186, s 188, s 189, s 192(3), s193(3), s 237, s 266, s 287, s 499, s 512(3)(b), s 515, s 540, s 548, s 550(1)(b),

Bird v Bird [2002] QSC 202 cited
De Ross v General Medical Assessment Tribunal & Anor [2009] QCA 327
Forster v Jododex Australia Pty Ltd (1972) 172 CLR 421; [1972] HCA 61 applied
Munkerman v Skilled Group Limited & Anor [2013] QSC 51
Noosa Shire Council v T M Burke Estates P/L & Anor [1998] QCA 350
Otto v Mackay Sugar Limited [2011] QSC 215 cited
Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355; [1998] HCA 28 cited
Re The Proprietors Portman Place Building Units Plan Number 4313 (1995) 1 Qd R 525

COUNSEL: S Deaves for the Applicant

GF Crow QC for the Respondent

SOLICITORS: Rees R & Sydney Jones for the Applicant

McInnes Wilson for the Respondent

[1] **McMeekin J:** The application before me concerns the applicant's rights under the W*orkers' Compensation and Rehabilitation Act 2003* (Qld) ("the Act").[1] The respondent, Queensland Rail, is a self insurer under the Act.

[2] One night, nearly three years ago, the applicant, Mr Costello, was brutally attacked by a co-worker. The two men were employed at the relevant time by Queensland Rail ("QR"). Mr Costello suffered multiple stab wounds. As a result he has developed a psychiatric illness as well as the physical injuries and their consequences. QR accepted that he was entitled to receive workers' compensation. Mr Costello is contemplating seeking damages. QR says that he is precluded from

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doing so arguing that Mr Costello has accepted lump sum amounts of compensation which preclude him from exercising his common law rights.

[3] Mr Costello seeks one or other of the following orders:

(1) Declarations that:
    (i) the Notice of Assessment of Post Traumatic Stress Disorder given by the respondent to the applicant and dated 11 September 2013 is invalid and of no effect for the purposes of the Act; and
    (ii) the Notice of Assessment for partial injury to the right ulna nerve and scarring given by the respondent to the applicant dated 11 September 2013 is invalid of no effect for the purposes of the Act;
(2) A declaration that the offer contained in the Notice of Assessment for Post Traumatic Stress Disorder given by the respondent dated 11 September 2013 is an offer to which s 188, and not s 189 and s 237(3), of the Act applies.
(3) A declaration that the applicant is entitled to revoke his election to accept the offer contained in the Notice of Assessment for Post Traumatic Stress Disorder given by the respondent dated 11 September 2013.

[4] There are two issues:
(a) Whether a notice of assessment of work related impairment made under the Act in respect of psychiatric injury is required to include all known psychiatric conditions arsing from the subject event? and
(b) Whether acceptance of an offer of a lump sum compensation for permanent impairment made contrary to the requirements of the Act is nonetheless binding on the applicant?

The Psychiatric Injuries

[5] Where a worker has a psychiatric injury and there is a need to assess whether there is a degree of permanent impairment the insurer is required to refer the matter to a Medical Assessment Tribunal ("MAT") for the assessment: s 179(2)(b) of the Act. This was done here. The MAT found that there was a 10% permanent impairment related to a post traumatic stress disorder. The insurer was required to (s 185 of the Act) and did issue a Notice of Assessment. The Notice expressly referred to a condition of "Post Traumatic Stress Disorder". A lump sum offer was made to Mr Costello and accepted by him.

[6] However the complaint now made is that it was known to the insurer at the time of the referral to the MAT that the worker had two psychiatric conditions but referred only one of those for assessment. It is said that the Notice of Assessment issued in respect of the psychiatric injury is therefore fatally flawed and invalid.

[7] The referral to the MAT contained the following question: What is the injury to be determined/assessed?" To which the answer given is: "PTSD". It also provides: "Why is this matter being referred to the tribunal?" and the answer given was: "Whether the worker has an ongoing incapacity from the accepted injury, extent of incapacity and assessment of nature and degree of permanent impairment". The

form provides for the tribunal to be advised of all injuries suffered, even if not for determination. QR answered: "Multiple stab wounds and PTSD".

[8] There are three questions. First, were there in fact two psychiatric injuries? Second, if so, was the insurer obliged to refer both or is it sufficient that the MAT was aware of both conditions? Third, if not, what follows?

[9] As to the first question: initially Mr Costello was referred by QR to a psychiatrist, Dr Gunn. Dr Gunn diagnosed that Mr Costello was suffering from a major depressive disorder and a post traumatic stress disorder. She described each condition as falling under "Axis I" of the DSM 4 classification system and described each in the same terms: "mild severity, partial remission". The psychiatrist's description of Mr Costello's mental state in her report indicates that she considered there were two quite separate conditions. For example Dr Gunn opines at one point: "I consider **both** the Post Traumatic Stress Disorder and Major Depressive Disorder to be in partial remission."[2] There is no evidence advanced to the effect that one condition is subsumed by the other or that psychiatrists in their assessment of disability cannot divide the effects of two such conditions and attribute separate degrees of impairment to each.

[10] For the purposes of its referral QR had no information other than Dr Gunn's reports. It is not shown that QR had any reason not to accept Dr Gunn' opinions, at least so far as they identified the injury suffered or potentially suffered. I am satisfied that there was evidence of two separate psychiatric conditions. Whether that equates to two injuries is not quite so clear, but it seems to me that if one condition diagnosed by Dr Gunn qualifies as an "injury", as QR has assumed for the purpose of its referral, so must the other. At least no attempt was made to justify any distinction.

[11] So I accept that there were two injuries. Was the insurer obliged to refer both? I cannot see why not.

[12] Section 179(2) provides that an insurer "must have the degree of permanent impairment assessed… for a psychiatric or psychological injury…". The use of the word "must" suggests that it was mandatory to have the injury assessed, with no discretion being allowed to the insurer. I am conscious that it is the legislative purpose, rather than a formal characterization of statutory provisions as mandatory or directory, which is determinative of whether non-compliance with a statutory requirement renders a subsequent act or decision invalid: *Project Blue Sky v Australian Broadcasting Authority*.[3] But it seems plain that to compel assessment was precisely the legislative purpose.

[13] The purpose of the assessment is to enable the insurer to make an offer of a lump sum amount which has at least three potential effects – the worker's rights to further compensation will come to an end upon acceptance of the offer or the elapsing of a defined period of time after the offer; the worker may, depending on the degree of impairment become entitled to additional lump sum amounts; and the worker's ability to access common law damages turns on the workers' decision whether to accept the amount offered.

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2 My emphasis – and see Ex JC01 at p16 of the report of 4 June 2013 – noting that there are two reports exhibited and each has as a header the date 24 October 2012, the date of the first report.

3 (1998) 194 CLR 355 at 390 – 391 [93]

[14] It would appear to work a distinct disadvantage to the worker if the insurer can, at its option, not refer an injury for assessment even though that may have the consequence of reducing the degree of permanent impairment assessed and so the consequent lump sum offered. That has the prospect of denying the worker compensation that the legislature intended that he receive. It may encourage litigation where it may have been avoided. I can see no justification in the Act for such results.

[15] As well, while judicial review is available, which of course involves no review on the merits, there is no right of appeal from the determination of the MAT: s 515 of the Act. So there is no ability to correct an error by some form of review. I am conscious of the review provisions at s 266 of the Act but Mr Costello cannot bring himself within the conditions. Nor can he satisfy the fresh evidence provisions at s 512(3)(b) of the Act.

[16] It would be surprising that an insurer could unilaterally and adversely affect a worker's rights without him having any recourse.

[17] It is apparent that the members of the MAT had Dr Gunn's report and express mention was made in its decision of her diagnoses. QR argued that was sufficient. Presumably the inference is that it should be assumed that the MAT has brought into account the depressive condition in reaching their assessment. But I cannot see that that result follows at all. Indeed by the very terms of the reference the MAT was obliged to restrict its investigation to the incapacity resulting "from the accepted injury" identified expressly as "PTSD". There was no indication given to the MAT that the depressive condition was an "accepted injury".

[18] I conclude that it was not a sufficient compliance with the Act that the MAT be provided with the report of Dr Gunn in the absence of an express referral of the depressive injury for assessment.

[19] What follows? QR argued that the Court has no jurisdiction to intervene and make the declaration sought. In the alternative it was argued that if there was a discretion to exercise then the Court should not exercise it in favour of the applicant.

[20] As to the jurisdictional point it was said that the provisions of the Act, so far as they relate to matters of compensation falling within Chapters 3 and 4 of the Act, are effectively a complete and elaborate code covering the rights of worker, employer and insurer and by implication excluding the ability of the Court to grant even declaratory relief. Despite the incompleteness of the referral to the MAT QR argues that its decision is the end of the matter.

[21] In making that argument QR acknowledges that declarations on questions arising under Chapter 5 of the Act may be made[4] but says that those questions are in a different category as the Court is expressly empowered by the legislation to compel performance of those provisions of the Act that appear in Chapter 5: s 287. Douglas J has expressly accepted that the Court's jurisdiction is not ousted on a question arising under Chapter 5: *Otto v Mackay Sugar Limited*[5] where his Honour held that the unavailability of any review or appeal was the crucial and distinguishing feature.

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4 And have been made eg *Munkerman v Skilled Group Limited & Anor* [2013] QSC 51

5 [2011] QSC 215

[22] Mr Costello argues that what is in issue now is not a decision under Chapter 3 or 4 but rather the question of validity of a notice. There are no words in the Act which precludes a court exercising its usual jurisdiction to declare the rights of citizens. And his rights have been potentially seriously eroded by the course taken here. There are two potential adverse effects. One is that he may have been assessed as having a higher degree of permanent impairment and so have been offered a larger lump sum. The second is that his chances of being assessed as having a WRI of 20% or more for his psychiatric injury are now gone. That means that his acceptance of the lump sum precludes him seeking damages. If he had an assessment of 20% or above he could accept the lump sum and pursue his damages claim: cf s 188 to 189.

[23] The court's power to grant declaratory relief is presently found in s 10 of the *Civil Proceedings Act 2011* (Qld) and is in broad and unfettered terms. But it is well accepted that the legislature by express words or necessary implication can exclude the court's jurisdiction to make a declaration of right. Gibbs J (as he then was) put it this way in *Forster v Jododex Australia Pty Ltd*:

> "The jurisdiction to make a declaration is a very wide one… However the jurisdiction may be ousted by statute, although the right of a subject to apply to the court for a determination of his rights will not be held to be excluded except by clear words."[6]

[24] QR drew an analogy with the *Acquisition of Land Act 1967* (Qld) and the decision of Shepherdson J in *Re The Proprietors Portman Place Building Units Plan Number 4313*.[7] The legislation there under consideration conferred exclusive jurisdiction on a specialist court and it was accepted that the legislation comprehensively dealt with the parties' rights. But, as Pincus JA pointed out in *Noosa Shire Council v T M Burke Estates P/L & Anor*[8] in relation to this decision:

> "Cases in this category tend to rely upon *Barraclough v Brown* [1897] AC 615, which was decided at a time when a more restrictive attitude was taken, in relation to the jurisdiction to grant declaratory relief than is evidenced by more modern authorities such as *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, and the High Court decision in *Forster* (above). The decision in this Court in *Cairns City Council v Fairview Farming Co Pty Ltd* (Appeal Nos. 3244 and 3245 of 1997, 10 February 1998) is plainly inconsistent with the proposition that a grant of exclusive jurisdiction to the Planning and Environment Court, to hear appeals of a particular kind, excludes the Supreme Court's jurisdiction to determine issues which might have been raised by an appeal to the Planning and Environment Court."

[25] Thus there is at least a question mark over the approach taken by Shepherdson J in what seems to me to be a much stronger case than this one for ouster. Whether the provisions do cover the field here was a matter of debate. The internal review provisions in Part 2 of Chapter 13 of the Act are inapplicable as the failure to refer an injury does not come within any of the subparagraphs of s 540(1)(b) or s 540(1)(c). The appeal provisions permit appeals to an industrial magistrate against a "decision by an insurer under Chapter 3 or 4"(s 548(b)). Whether one can construe

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6 (1972) 172 CLR 421 at 435-436

7 (1995) 1 Qd R 525 at 529

8 [1998] QCA 350 at [14]

the omission of an injury from the referral notice as a "decision under Chapter 3 or 4" is at least debateable.

[26] I say that for three reasons. First, the legislation mandates a referral – there is no decision to make. The referral is required to be made if an insurer so decides or a worker asks the insurer to refer: s 179(1)). Second, the time limits contemplated in the appellate process suggest a more formal notification than a mere omission from a Notice. Those time limits are described as: "within 20 business days after the appellant receives the notice of the decision stating the reasons for the decision." (s 550(1)(b)). Third, there is no express obligation under the legislation that I can find to give the worker the notice of the referral. There is an obligation to exchange "relevant documents" under s 510C. That term is defined in s 499, albeit in inclusionary terms, but it does not include the notice of referral itself.

[27] There is no suggestion here that QR reached a view that it should not refer the depressive condition or communicated any such decision to Mr Costello. It appears to have been an omission. So neither party – QR nor the worker – thought that QR was making any decision under Chapter 3 or 4. Rather each thought that QR was following the guidelines laid down in those chapters. Hence Mr Costello was not put on the alert by the formal notification of a decision. At best his ability to protect his rights turned on him being astute enough to realise that the notice of referral – a notice that QR seems not obliged to provide - omitted one of his two conditions, and then lodge a timely appeal.

[28] The absence of any avenue for relief is against the submission that the court's jurisdiction to grant declaratory relief was intended to be ousted. Further, as mentioned, once the decision of the MAT is made there is no appeal from that. A review is not available under s 186 – see s 186(1)(a). And s 515 applies and provides:

> **"Finality of tribunal's decision**
> (1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 512—
>
> (a) a decision on a medical matter referred to the tribunal under section 500;
>
> (b) a decision under section 514(1).
>
> (2) Subsection (1) has no effect on the *Judicial Review Act 1991*."

[29] The decision here falls within s 515(1)(a). It is not an attractive proposition to assert that a conclusive decision adversely affecting a worker's rights to compensation arrived at in defiance of the legislation, and without any certainty of a right of appeal at any interlocutory stage, is not amenable to the court's jurisdiction.

[30] The point that has troubled me is that there is a procedure in place to correct the error that seems to have occurred here – an application to the court for a statutory order of review of the decision of the MAT under the *Judicial Review Act 1991* (Qld).

[31] As it happens grounds do appear on which Mr Costello could engage the *Judicial Review Act*. Section 20(2)(d) of that Act provides that an application for a statutory order of review to set aside a decision may be made where "the decision was not

authorised by the enactment under which it was purported to be made." It seems to me, given the finality of the MAT decision and the importance of the election contemplated upon the issuing of the Notice of Assessment which depended upon that decision, that a decision purporting to assess permanent impairment is not authorised which does not bring into account all known injuries. I observe that this Court has accepted that a failure to exchange relevant documents before a tribunal hearing in accordance with the legislation – a matter much less fundamental than ignoring a known injury - has resulted in a declaration that the decision of the tribunal is invalid on this ground: *De Ross v General Medical Assessment Tribunal & Anor*.[9]

[32] The application here did not seek to set aside the decision of the MAT but rather the Notice of Assessment that was consequent upon it. I was not told why. Perhaps the time limit in s 26(2) of the *Judicial Review Act* was seen as a difficulty. But it was not suggested that prejudice, either through elapsing of time or otherwise, was a relevant consideration here.

[33] I have concluded that the fact that there might be alternative remedies – and one possible remedy under an application for a statutory order of review may have been a declaration concerning the Notice of Assessment – should not result in the court declining the relief sought. Effectively that would be to insist on form over substance.

[34] No discretionary consideration was identified, apart from the comprehensiveness of the appellate and review procedures contained in the Act, that would justify declining relief. While that can be a relevant consideration, the scheme is not as comprehensive as QR contends and it does not overcome the significant unfairness, or potential unfairness, to Mr Costello. No issue of cost, convenience or delay impinges on the decision in favour of QR.

[35] In my view the Notice of Assessment of Post Traumatic Stress Disorder given by the respondent to the applicant and dated 11 September 2013 is invalid and Mr Costello is entitled to the declaration that he seeks. That has the result that he has received a lump sum compensation to which he is not now entitled. Presumably that can be dealt with as an advance under s 178A of the Act but I will hear the parties on that.

[36] Mr Costello advanced an argument at one point that seemed to assert that the notice of permanent impairment for the psychiatric injury was invalid because it did not include the physical injuries. If that was intended I reject the argument. No decision of the worker appears to depend on any combination of the two assessments. The legislation provides that the impairment from a psychiatric or psychological injury is not to be added to the impairment from another injury: s 183(3). And a combined assessment is not permitted in relation to accessing other amounts of compensation: ss 192(3), 193(3). The assessments are quite distinct and separate assessments and separate notices are entirely consistent with the scheme of the Act.

Physical Injuries

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9 [2009] QCA 327

[37] QR referred Mr Costello to an orthopaedic surgeon, Dr Ivers, to carry out the assessment. Dr Ivers assessed the injuries within his specialty. He expressly advised that he did not attempt an assessment of those injuries outside his specialty. The injuries that he did not assess included several stab wounds to the abdomen and chest including a resultant hernia. As it happens his assessment was of a WRI of 26%. Assessments of a WRI over 20% carry a special significance. The worker can accept the lump sum offered but not compromise his or her right to seek damages: cf s 188 to 189.

[38] Following the assessment QR were obliged to give a Notice of Assessment within 10 business days after receiving the "assessment of the workers' permanent impairment": s 185(1). It is common ground that Mr Costello sustained multiple injuries in the relevant event. In those circumstances s 185(2) of the Act governs the timing of the giving of the Notice of Assessment of Permanent Impairment. It provides: "However, if a worker sustained multiple injuries in an event, the insurer must give the notice only after the worker's degree of permanent impairment from all the injuries has been assessed."

[39] It is self evident that not all known injuries were assessed at the time of the issuing of the Notice. So much was not in issue. Despite that failure to assess all known injuries the respondent issued the Notice of Assessment of Permanent Impairment restricted to those injuries which Dr Ivers had assessed. It is not in issue that in issuing the notice the respondent failed to comply with the Act.

[40] The Notice of Assessment of Permanent Impairment offered lump sum compensation. Mr Costello accepted the lump sum offered. On doing so his rights to compensation came to an end: s 190.

[41] QR contends that effectively there is nothing that Mr Costello can now do so far as his rights to compensation are concerned. That those rights have been compromised adversely to him is plain. As previously he may have been assessed as having a higher level of impairment and so received a higher lump sum offer. As well he may have been assessed as having an impairment over 30% and had access to the additional lump sum compensation available: s 192.

[42] Mr Costello's common law rights to damages are unaffected even though some of his physical injuries are unassessed: s 237(1)(a)(ii). It provides:

> "(1) The following are the only persons entitled to seek damages for an injury sustained by a worker—
> (a) the worker, if the worker—
> (i) has received a notice of assessment from the insurer for the injury; or
> (ii) has not received a notice of assessment for the injury, but—
> (A) has received a notice of assessment for any injury resulting from the same event (the ***assessed injury***); and
> (B) for the assessed injury, the worker has a WRI of 20% or more or, under section 239, the worker has elected to seek damages;"

[43] Mr Costello satisfies each of the conditions in subparagraph (ii).

[44] The only issue here is the jurisdictional issue and, if I have jurisdiction, the exercise of a discretion as to whether I should make the declaration sought.

[45] The considerations relevant to the jurisdictional issue here differ from those relevant to the psychiatric injuries in that Mr Costello had a right to review the assessment if he disagreed with it: s 186(2). He had 20 business days to do so and did not. To the contrary he accepted it.

[46] QR argues that as well Mr Costello had a right of appeal to an industrial magistrate under s 548. The accuracy of that submission turns on whether the timing of the issuing of a Notice of Assessment is a "decision under Chapter 3 or 4": s 548(b). While the distinction might be a fine one I perceive a difference between a decision on the timing of a notice and a decision on inclusion of an injury in a referral notice which I discussed above. I think that a decision on timing is appellable. One can well imagine disputes about whether there was more than one injury arising from the one event and decisions having to be made. Hence there was a right of appeal but no appeal was brought within the 20 business days allowed.

[47] So the considerations supporting QR's argument here are stronger. But I am not persuaded that they are sufficiently strong to justify an implication that the court's jurisdiction is ousted. One consideration is that it would be artificial to hold that the court's jurisdiction to grant declaratory relief is unaffected in relation to one question arising under Chapter 3 or 4 of the legislation (as I have just found) but impliedly removed in respect of another. While the intersecting web of reviews and appeals provides a stronger argument here it is not sufficient in my view to displace the usual position that the Court can declare the rights of citizens.

[48] However the availability of reviews and appeals is relevant to the exercise of the discretion. The observations of Walsh J in *Forster v Jododex Australia Pty Ltd*[10] are often cited in situations akin to this one:

> "In my opinion, when a special tribunal is appointed by a statute to deal with matters arising under its provisions and to determine disputes concerning the granting of rights or privileges which are dependent entirely upon the statute, then as a general rule and in the absence of some special reason for intervention, the special procedures laid down by the statute should be allowed to take their course and should not be displaced by the making of declaratory orders concerning the respective rights of the parties under the statute."

[49] Mr Costello did not identify "some special reason for intervention".

[50] The cogent point made by QR is that the Act provides for strict time limits in the exercise of those rights of review and appeals. To make a declaration now adverse to QR would have the effect of avoiding those time limits completely, time limits intended to have substantive effect on the rights of workers and insurers.[11] There is no provision for any extension of those time limits. As well the reviews and appeals are directed to be carried out by designated persons (eg an industrial magistrate) who would be expected to have some familiarity with the issues that typically arise. There is no particular complexity in these issues requiring the attention of this Court.

[51] Further s 237 demonstrates that the legislature expected there to be cases where injuries were overlooked in the assessment process. Presumably the legislature had

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10 (1972) 172 CLR 421 at 427

11 See the remarks of White J (as her Honour then was) in *Bird v Bird* [2002] QSC 202 at [22] referring to the comments of Megarry VC in *Re Salmon (dec'd)* (1981) Ch 171 at 175

in mind injuries that subsequently came to light rather than injuries that were known and ignored. The legal effect is the same. Specific provision was made to permit damages claims to proceed but nothing was said about compensation – save for the review and appellate procedures discussed.

[52] These considerations, it seems to me, provide a much stronger ground for an exercise of a discretion in favour of QR than in respect of the psychiatric injuries. There seems to me to be no significant countervailing circumstance.

[53] I decline to make the declaration sought in relation to the notice of assessment for partial injury to the right ulna nerve and scarring.

[54] The alternative declarations sought do not seem to be relevant given my decision in relation to the psychiatric injury.

[55] I will hear from the parties as to the formal orders and on costs.