

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Youngblutt v Workers' Compensation Regulator*
[2019] QIRC 100

PARTIES: **Youngblutt, Kylie Gai**
(Appellant)

v

Workers' Compensation Regulator
(Respondent)

CASE NO: WC/2017/117

PROCEEDING: Appeal against a decision of the Workers'
Compensation Regulator

DELIVERED ON: 26 June 2019

HEARING DATES: 1 to 3 April 2019
8 May 2019 (Appellant's Submissions)
29 May 2019 (Respondent's Submissions)
7 June 2019 (Appellant's Submissions in Reply)

MEMBER: Thompson IC

HEARD AT: Brisbane

ORDERS:

- 1. The appeal is upheld.**
- 2. The decision of the Workers' Compensation Regulator of 5 June 2017 is set aside.**
- 3. The claim for workers' compensation is one for acceptance.**
- 4. The Regulator is to pay the Appellant's costs of and incidental to the appeal.**

CATCHWORDS: WORKERS' COMPENSATION - APPEAL
AGAINST DECISION - where appellant bears
onus of proof - where standard of proof is on

balance of probabilities - where appellant attended police social club annual Christmas party - where appellant alleges sexual harassment by another police officer - where appellant made formal complaint to Ethical Standards Command - where complaint forwarded to Crime and Corruption Commission - where appellant diagnosed with work-related acute stress disorder - whether injury arose out of or in the course of employment - whether employment the significant contributing factor - whether injury excluded because of reasonable management action taken in a reasonable way.

LEGISLATION:

Workers' Compensation and Rehabilitation Act 2003, s 32, s 548A, s 549

Police Service Administration Act 1990 (Qld)

CASES:

Apolloni v Traffic Technologies Management Division Pty Ltd [2012] QSC 070

Comcare v PVYW [2013] HCA 41

Comcare v Mather (1995) 56 FCR 456

Glass v Workers' Compensation Regulator [2019] QIRC 046

Wyatt v NSW Police Department [1996] NSWCC 14

Davis v Blackwood [2014] ICQ 009

Simon Blackwood (Workers' Compensation Regulator) v Mahaffey [2016] ICQ 10

Hatzimanolis v ANI Corporation Ltd (1992) 173 CLR 473; 106 ALR 611; (1992) HCA 21

Danvers v Commissioner for Railways (NSW) (1969) 122 CLR 529; [1970] ALR 403; [1969] HCA 64

Henderson v Commissioner of Railways (WA) (1937) 58 CLR 281; [1938] ALR 18; [1937] HCA 67

Kavanagh v Commonwealth (1960) 103 CLR 547; (1960) ALR 470; [1960] HCA 25

Comcare v Mather & Mitchell (1995) 37 ALD 463
Oaks Hotel and Resorts (Qld) Pty Ltd v Blackwood and Anor [2014] ICQ 023

Australian Leisure & Hospitality Group Pty Ltd v Simon Blackwood (Workers' Compensation Regulator) & Campbell [2014] QIRC 105

Commonwealth of Australia v Lyon (1979) 24 ALR 300
Simon Blackwood (Workers' Compensation Regulator) v Civeo Pty Ltd and Anor [2016] ICQ 1

APPEARANCES:

Ms L. Willson of Counsel, instructed by Anderson Fredericks Turner Solicitors for the Appellant.

Ms D. Callaghan of Counsel, directly instructed by the Workers' Compensation Regulator, Respondent.

Reasons for Decision

- [1] A notice of appeal was lodged with the Industrial Registrar on 30 June 2017 by Kylie Youngblutt (Youngblutt) pursuant to ss 548A(1) and 549 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) against a decision of the Workers' Compensation Regulator (Regulator) dated 5 June 2017.
- [2] The decision of the Regulator was to confirm the decision of WorkCover Queensland to reject Youngblutt's application for compensation in accordance with s 32 of the Act.

Relevant Legislation

- [3] The legislation pertinent to this appeal is as follows:

32 Meaning of *injury*

- (1) An *injury* is personal injury arising out of, or in the course of, employment if -
- (a) for an injury other than a psychiatric or psychological disorder - the employment is a significant contributing factor to the injury; or
 - (b) for a psychiatric or psychological disorder - the employment is the major significant contributing factor to the injury.

...

- (5) Despite subsections (1) and (3), injury does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances -
- (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
 - (b) the worker's expectation or perception of reasonable management action being taken against the worker;
 - (c) action by the Regulator or an insurer in connection with the worker's application for compensation.

Examples of actions that may be reasonable management actions taken in a reasonable way -

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker

- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment.

Nature of Appeal

- [4] The appeal to the Commission is by way of a hearing *de novo* in which the onus of proof falls upon the appellant.

Standard of Proof

- [5] The standard of proof upon which appeals of this nature must be determined is that of "on the balance of probabilities".

Evidence

- [6] In the course of the proceedings, evidence was provided by eight witnesses.
- [7] The Commission, in deciding to *précis* the evidence of the witnesses and submissions notes that all the material has, for the purposes of this decision, been considered in its entirety.

Witness Lists

- [8] The witnesses for the appellant were:
- Youngblutt;
 - Dr Tim MacDonald (Dr MacDonald);
 - Dr Jenni Soden (Dr Soden); and
 - Ann Huntress (Huntress).
- [9] The witnesses for the Regulator were:
- Inspector Greg Baade (Baade);
 - Senior Sergeant Troy Lehmann (Lehmann);
 - Sergeant Jonathan Harris (Harris); and
 - Senior Constable Marc Miller (Miller).

Statement of Agreed Facts

- [10] The parties at the commencement of the hearing tendered a Statement of Agreed Facts in relation to a number of matters relevant to the proceedings that were not to be the subject of contest.
- [11] Matters agreed included (but not exhaustive) were:

- Youngblutt commenced employment with the Queensland Police Service (QPS) in November 2011 and from June 2013 was stationed at Coolangatta Police Station;
- Coolangatta Police Social Club (Social Club):
 - funded by voluntary fortnightly contributions from QPS officers and civilians working at the station;
 - not all QPS officers were members of the Social Club;
 - Social Club provided recreational activities for members, outside of work hours;
 - Social Club funds were used to organise an annual Christmas Party, annual bowls day, purchasing tea, coffee and treats for members;
- Youngblutt was encouraged to join on 19 January 2015 by Miller (by email);
- Christmas Party (Party) 2015:
 - Youngblutt attended Party on 10 December 2015;
 - Party organised by Miller and Sergeant Esgate (Esgate);
 - Party was funded by contributions of those who attended and held at Twin Towns Resort;
 - Social Club members and partners attended free of charge;
 - there were standing arrangements between the Palm Beach and Coolangatta Police Stations to cover their respective areas when attending a Christmas function;
 - internal emails in relation to the Party were sent out by Miller;
 - at the Party, Youngblutt alleges she was approached by Constable Diehm (Diehm) who:
 - on multiple occasions, said words indicating that he would have sexual intercourse with Youngblutt;
 - insisted on dancing with Youngblutt despite her objections;
 - attempted to kiss Youngblutt on one occasion;
 - gestured toward Youngblutt in a manner that indicated he was going to undo his pants;
- events after the Party:
 - on 15 December 2015 Youngblutt spoke to District Duty Officer (DDO) Sergeant Percival about what had occurred at the Party;
 - Youngblutt made a formal complaint to the Ethical Standards Command (ESC);
 - after 12 December 2015 Youngblutt did not work with Diehm;
 - 16 to 18 December 2015 Youngblutt was absent from work;
 - 17 December 2015 the Officer in Charge at the Coolangatta Police Station, Lehmann spoke to Youngblutt about the complaint;

- 17 December 2015 Diehm worked from the Burleigh Police Station;
 - 24 December 2015 Youngblutt was interviewed by the ESC in relation to the complaint and informed the complaint would be the subject of a full investigation;
 - Detective Sergeant Jack Savage (Savage) conducted a full investigation into the complaint;
 - Youngblutt was offered confidential counselling and support services;
 - 6 January 2016 pursuant to the *Police Service Administration Act 1990 (Qld)* (PSA) and the QPS complaint procedure, the complaint was forwarded to the Crime and Corruption Commission (CCC) for consideration;
 - 8 January 2016 Youngblutt was diagnosed with a work-related "Acute Stress Disorder" by her General Practitioner;
 - 8 January 2016 Diehm was suspended from duty;
 - February 2016 the QPS assigned an Industry Management Adviser to Youngblutt;
 - 29 February 2016 Youngblutt was transferred to Broadbeach Police Station on a suitable duties plan;
 - 31 March 2016 Youngblutt lodged an application with WorkCover for compensation;
 - application related to a psychological injury caused by:
 - sexual harassment at the Party; and
 - workplace bullying and isolation suffered as a result of sexual harassment complaint;
 - 6 April 2016 Youngblutt's General Practitioner reported her prognosis was good and envisioned a return to full duties;
 - 24 May 2016 Youngblutt saw Lehmann at Broadbeach Police Station and left the workplace never to return to the workplace;
 - in the period between 4 January 2016 and 10 May 2016 Youngblutt spent approximately 20 days in the workplace;
 - 17 January 2017 WorkCover refused the application as:
 - the injury was not an injury pursuant to s 32(1) of the Act; and
 - the post-party management was reasonable action taken in a reasonable manner pursuant to s 32(5)(a) of the Act;
 - 30 January 2017 the Deputy Commissioner informed Diehm of disciplinary charge of misconduct;
- the Deputy Commissioner was satisfied that on or about 10 December 2015 at the Coolangatta and Tweed Heads Party, Diehm sexually harassed Youngblutt. The investigation identified:
 - On 10 December 2015, Constable Diehm attended the Coolangatta Police Station Christmas function at the Twin Towns Services Club;
 - Prior to and during the function, Constable Diehm consumed a number of alcoholic drinks;

- During the function, Constable Diehm approached the Appellant and made a number of unwelcome comments including:
 - i. *I'm going to fuck you;*
 - ii. *Don't you want my big cock;*
 - iii. *I'm a 10 on the root scale;*
 - During the function, Constable Diehm also put his arm around the Appellant and attempted to kiss her;
 - During a shift at Coolangatta Station, before the Christmas party, Constable Diehm indicated to someone that he was going to "hit on" the Appellant;
- 5 June 2017 the Regulator confirmed the decision of WorkCover Queensland.

Appellant

[12] Prior to Youngblutt commencing evidence, additional material relating to nominated stressors was tendered in the proceedings [Exhibit 2] which listed stressors relating to events on:

- 10 December 2015;
- days following 10 December 2015;
- 15 December 2015;
- 16 to 23 December 2015;
- 23 December 2015;
- 6 April 2016; and
- 27 May 2016.

Youngblutt

[13] Youngblutt gave evidence regarding her attendance at the 2015 staff Social Club Christmas Party, receiving around seven to eight internal emails from Miller and also Esgate regarding Palm Beach undertaking the shifts for Coolangatta. The "girls" had decided to "get dressed up" for the Party. Youngblutt had spoken to Lehmann about her non-attendance due to her wedding anniversary and that it was not a good environment but felt if she did not attend her job might be in jeopardy because Lehmann was "pretty ruthless" and had previously caused some issues by putting out "quite a nasty roster" at the station. Lehmann had told her "it was time to build a bridge and get over it and put the past in the past".

[14] Prior to the Christmas Party another officer Josh Compton (Compton) had told her Diehm had said that he wanted to "fuck you" which she dismissed and laughed at because it was foolish. After the Christmas Party she had felt cranky toward Diehm who would be waiting for her in the carpark prior to work saying things like "are we good?" and she had just wanted him to go away and leave her alone. Youngblutt also experienced other issues in the workplace in the days after the Christmas Party where she felt isolated and "like dirt" including exchanges with Jackie Norvill (Norvill), another officer who along

with Compton told her she "was fucked". Youngblutt spoke to Lehmann on 23 December 2015 about feeling pretty worthless and made contemporaneous notes that recorded him saying "Not Nathan's [Diehm] fault people were questioning his sexuality and he is very young".

- [15] A complaint was made to the ESC on 15 December 2015 and she was subsequently interviewed by Savage from the ESC in relation to the allegations about unprofessional conduct at the Christmas Party. Correspondence (undated) was later forwarded to Youngblutt signed on behalf of Savage that advised:

The complaint was investigated by officers attached to the Internal Investigation Group, Ethical Standards Command. The investigation included interviewing a number of officers attached to Coolangatta Station and obtaining CCTV footage from Twin Towns Services Club.

At the conclusion of the investigation, disciplinary proceedings were commenced against Constable Diehm. The disciplinary proceedings were finalised on 30 January 2017. The disciplinary matter against Constable Diehm was substantiated and he was given a serious sanction designed to educate and prevent a reoccurrence of the conduct. As part of the sanction, Constable Diehm was transferred to North Brisbane District.

- [16] Youngblutt continued to have issues in the workplace which resulted in going on sick leave in April 2016 and included having been transferred from Coolangatta to Broadbeach Police Station, as a safe rehabilitation area, only to arrive at work one day to find out that Lehmann had also been transferred to Broadbeach.
- [17] Under cross-examination Youngblutt acknowledged there were many officers at the Coolangatta Police Station in December 2015 that outranked her (T1-29) who frowned upon junior officers who did not join the Social Club (T1-31). When she commenced at Coolangatta she was handed a piece of paper and told "make sure you sign this" which was a Social Club application form (T1-31). Youngblutt did not attend any other Social Club functions because she was not in the "clique" (T1-32). On the day of the Christmas Party she had not been rostered on and was not on a duty shift (T1-33). Youngblutt refused on multiple occasions to answer questions regarding having been issued a directive from senior officers to attend the Christmas Party (T1-33 to T1-35). It was conceded that no directive had been issued by the senior officers at the Coolangatta Police Station prior to the Christmas Party about alcohol consumption (T1-36). There had been no directive issued regarding what attire could be worn at the Christmas Party (T1-37). Youngblutt had met with Percival on 15 December 2015 who completed an incident form submitting it to ESC (T1-37). On 17 December 2015 Youngblutt met with Baade and discussed the content of her complaint (T1-38) and later sent him an email which stated that she needed some time to think about their chat (T1-39).
- [18] Following a meeting with Baade on or around 17 December 2015 Lehmann had approached her for a chat but had not raised issues relating to her welfare, rostering or working with Diehm (T1-40). Youngblutt conceded that as at 24 December 2015 she

had not spoken to Lehmann about her complaint and that she told Baade from ESC she did not know what to do about the complaint because she would not be treated well (T1-45). According to Youngblutt the Gold Coast situation was "toxic and a cesspit" (T1-46) and she had pre-empted that she was going to be treated badly for making the complaint (T1-47).

- [19] In an interview with Savage she had informed him that Diehm had often made silly comments which she ignored (T1-48). Youngblutt gave evidence regarding a number of stressors arising from incidents said to have occurred prior to the complaint being made about the conduct of Diehm at the Christmas Party (T1-50 and T1-51). Youngblutt gave evidence that if something had upset her at work she would come home and write in her diary yet there were no entries in the diary about Diehm (T1-52). Towards the middle of 2015 Youngblutt sought medical assistance in relation to circumstances where she was stressed over issues with her daughter and had requested Dr Soden to give her some time off (T1-54). Youngblutt denied seeking through Lehmann some special consideration in relation to her roster (T1-55). She denied that there were other stressors in play at the time in regard to her husband's and grandmother's health (T1-55).
- [20] On 8 January 2016 Youngblutt attended upon Dr Soden for the first time since the Christmas Party where an assessment was made that she was suffering an acute stress reaction (T1-56). At the time she had not sought to go on WorkCover because she thought it would be okay (T1-56). On 5 February 2016 she was diagnosed with celiac disease (T1-56). On 15 April 2016 she had been coping at work but there were some stressors as a result of being excluded from a work function and feeling marginalised at Broadbeach Police Station (T1-57). Youngblutt did not accept that she told Dr Soden she had significant workplace stressors that had come to a head with the Christmas Party episode (T1-57).
- [21] Youngblutt was surprised that on her first consultation with Huntress on 29 March 2016 she had never mentioned Diehm or Lehmann in her visit (T1-60). At the next consultation with Huntress in March 2016 she found it "interesting" that there was no record of any "goings on" at the Coolangatta Police Station (T1-61). Further in respect of Huntress, Youngblutt did not accept that the first time she mentioned Lehmann was in July 2016 (T1-62). Youngblutt first consulted with Dr MacDonald in mid-July 2016 where she informed him of the allegations about Diehm at the Christmas Party and of being managed out of Coolangatta Police Station (T1-66). The perception about being managed out of Coolangatta Police Station occurred well after January 2016 (T1-67). Youngblutt agreed that the management of the sexual harassment was a major contributor to her breakdown (T1-67). She believed that the management action was unreasonable.
- [22] In re-examination it was the evidence that the altercation with Norvill related to her being a whistle-blower after the Christmas Party even though she had not made a formal complaint at that time about the incident. Youngblutt had been reluctant to raise matters with Lehmann as she did not argue with him because he was stuck in his ways. Prior to

the Christmas Party Youngblutt had never sought any psychological counselling or been prescribed psychiatric medication. At the time of her decompensation there were no issues with her husband's or grandmother's health. After the Christmas Party it appeared Diehm was getting all the support.

Dr MacDonald

[23] Dr MacDonald first saw Youngblutt on 8 July 2016 and she reported symptoms that related to being essentially managed out of Coolangatta Police Station, which included shaking, sweating, frustration, depressed and anxious in an emotional sense. Youngblutt had described the sexual harassment claim and how she raised those issues with her superiors which resulted in her feeling that natural justice had not been followed. The cause of her condition, based on his understanding, was work being 100 per cent and the work-related stressors were the only implicating factors in her condition.

[24] The main precipitant to her psychiatric condition was the staff Christmas Party, the perceived follow-up occurring in the aftermath and also comments of a sexual nature prior to the Christmas Party. Dr MacDonald at paragraph 3.7.4.5 of his Treating Psychiatrist Report (dated 20 December 2017) stated:

There did not seem to be any significant pre-existing mental illness prior to service, and hence most or all of her symptoms arose out of, or in the course of, or a result of, her employment with Queensland Police Service.

[25] Under cross-examination Dr MacDonald understood that the range of sexual harassment claims had referred to multiple modalities with one person that included the Christmas Party and the days leading up to the Party (T2-7). Youngblutt had also perceived that she had been managed out of the Coolangatta Police Station (T2-7). There had also been other antedating traumatic events involved with policing and Youngblutt felt her values were not commensurate with others in the police service (T2-7). Dr MacDonald believed that Youngblutt may have also suffered consequences as a result of her alleged assailant being allowed to stay at the station and she was essentially forced to move somewhere else (T2-7). With regard to the sale of Youngblutt's house being a stressor, it was not for sale as at 8 July 2016 (T2-8). He continued to hold the opinion that there was a sequential and accumulating degree of stressors that were sexually based (T2-8).

[26] In a letter (dated 8 July 2016) to Youngblutt's General Practitioner, Dr MacDonald had mentioned a range of antedating traumatic events and that she seemed persecuted in suspecting a set-up to some degree (T2-9). Dr MacDonald could not recall being told about Youngblutt previously seeking a medical certificate for a period of two weeks due to her daughter's psychological condition but agreed that was relevant (T2-11). He was not aware Youngblutt had been referred to a psychologist in February 2016 and the issues in play at that time (T2-11 and T2-12). Whilst it would have been helpful to have that information, it "wouldn't have been helpful in an etiological sense (T2-12).

Dr MacDonald agreed he had not seen Youngblutt on 8 January 2016 having seen her much later when her symptoms were a lot more entrenched (T2-12). It was difficult to say confidently what her psychiatric condition was on 8 January 2016 (T2-13). His predominant etiological assumption was that the triggering factor for her diagnosis was the series of events at the Christmas Party (T2-13).

Dr Soden

[27] Dr Soden, a General Practitioner was consulted by Youngblutt on 8 January 2016 who was somewhat distressed and concerned about events at the December 2015 Christmas Party. She was struggling with symptoms post that event feeling quite stressed, teary, and sleep patterns that were altered. In consultation records for the visit it was recorded that Youngblutt was "unable to face the workplace" and "unable to face the officer in charge as he is against her and supportive of the young boy".

[28] Dr Soden issued a workers' compensation medical certificate (dated 10 March 2016) which had identified the stated cause of injury as "workplace sexual harassment" with the diagnosis being an acute stress disorder. Dr Soden was unable to make a full psychiatric diagnosis as it was not in her area of expertise. In a facsimile response to an enquiry from WorkCover (dated 20 May 2016) she had recorded that:

- first consultation when the workplace incident was discussed occurred on 8 January 2016;
- there were no non-work-related factors; and
- significant distress caused by the workplace event/injury. Ongoing issues with confronting ex-employers.

Huntress

[29] Huntress, a Clinical Psychologist had a consultation with Youngblutt in February 2016 and in a Report (dated 7 December 2017) recorded:

I am not aware of Ms Youngblutt's premorbid psychiatric condition; however I have found no evidence to suggest that Ms Youngblutt's symptoms have arisen from any other trauma, other than the reported events leading up to, during, and following the workplace Christmas Party in December 2015.

[30] The reported events were described as:

- the alleged perpetrator had been egged on;
- Youngblutt felt isolated and victimised in her role; and
- Youngblutt was taunted at the police station.

- [31] In handwritten notes (dated 29 February 2016) she recorded Youngblutt talking about a lack of support at work; self as a priority and work options. Similarly, in notes written on 22 March 2016 Huntress recorded "a reaction to superintendent, stop talking to ppl" and on 25 March 2016 "sexual harassment from another PO. Nathan 22 yo".
- [32] Under cross-examination there were questions raised in particular reference to a conversation about Lehmann when Huntress was unable to give a specific date (T2-26). The reference to "hurt" in the handwritten notes (dated 29 February 2016) related to Youngblutt being "hurt" by the lack of support although the witness was unable to recall with 100 per cent accuracy (T2-27). Huntress in her recollection of exchanges with Youngblutt at times was unable to recall with 100 per cent accuracy (T2-27 and T2-28). In relation to the comment "worked through WorkCover statement" she had no recall of going through questions with Youngblutt (T2-29). Huntress as at August 2016 acknowledged that she was supporting Youngblutt to work on her WorkCover information (T2-30).

Baade

- [33] In December 2015 Baade was the Inspector of the Southern Patrol Group of the Gold Coast District that included the overview of Police Stations including Coolangatta which was also the location of his office. Baade was a member of the Social Club at Coolangatta for which he contributed \$7.50 per fortnight, with the membership being totally voluntary.
- [34] Baade did not attend the 2015 Christmas Party and had not suffered any negative ramifications for the non-attendance. An email was sent to him by Percival (dated 15 December 2015) which detailed a complaint made to him by Youngblutt about another police officer [Diehm]. He initially spoke to Lehmann and in discussing the facts they examined the roster to make certain Youngblutt and Diehm were not working together over the next few weeks. He briefed his Superintendent and the next day spoke to an agitated Youngblutt about what happened with Diehm. Baade assured her that she was the victim and they were going to help her through the situation. A number of options in dealing with negative workplace behaviour were discussed. Youngblutt at the time was adamant she did not want Diehm moved or penalised and just wanted the problem fixed. A number of options were considered that included:
- alcohol counselling for Diehm;
 - counselling from a human resources officer; and
 - three months' mentoring with senior officers.
- [35] Youngblutt forwarded an email to him on the evening of 17 December 2015 in which she advised that she was surprised at some attitudes, was feeling less than welcome and she

needed to assess if she wanted to continue in the job. Baade responded the following morning indicating to her she was a "fantastic officer" and that any workplace issue could be resolved.

- [36] Baade then had a discussion with Diehm who indicated he was very remorseful but had no recollection of the events. He also indicated he had some personal mitigating circumstances in play at the time and he had apologised to Youngblutt. In the course of the discussion he informed Diehm of the possible ramifications that could result in the loss of his job.
- [37] Beyond this point he had no further communications with Youngblutt about the complaint but whilst she continued to work at Coolangatta Station he spoke to her about her general wellbeing. Youngblutt had never raised with him any concerns about Lehmann.
- [38] Baade confirmed that the QPS did not encourage members to attend a Christmas Party and where arrangements were made for other stations to cover shifts for such an event it would not be considered by him to be an encouragement to attend such function.
- [39] Under cross-examination the witness acknowledged the covering of shifts to attend a Christmas Party had been happening for as long as he knew and was usually arranged between officers without any involvement from himself. He accepted it was an appropriate practice (T3-9). He attended the 2013 Coolangatta Christmas Party mainly because it was a combined party to send off a retiring officer and he had been required to make a speech (T3-10). He received an invitation by email to attend the 2015 Christmas Party but chose not to go (T3-11). Baade was aware there were some issues at the Coolangatta Police Station in 2015 regarding comments Lehmann had placed on the roster that were never meant to be seen by staff and were the subject of an ESC investigation (T3-12). Also, Lehmann was having issues in relation to a number of the sergeants and there was quite a bit of discontent at the station (T3-12).
- [40] On whether Youngblutt wanted an investigation into the incident or not, it was always going to be investigated by ESC (T3-15). Baade thought the negativity referred to by Youngblutt had come from Norvill (T3-16). Diehm had been stood down whilst an investigation and disciplinary process was undertaken (T3-16). In terms of the Christmas Party he accepted that could be organised by someone working their normal rostered hours (T3-18). Baade did not accept that it was usual for an email, such as the email sent by Lehmann to "Station Coolangatta" (dated 8 January 2016), about the standing down of Diehm due to an internal investigation (T3-19).
- [41] In re-examination Baade gave evidence that Miller had volunteered for the Social Club position and there was no authorisation or approval of the appointment by the QPS.

Lehmann

- [42] In December 2015 Lehmann was the officer-in-charge at the Coolangatta Police Station having commenced in that role in September 2014 and ceasing 17 May 2016 when he was transferred to the Broadbeach Police Station. He had been a member of the Social Club since September 2014 and in December 2015 it was his recall that Miller was the president of the Club. He played no role in the Social Club other than receiving invites and making some stipulations if an event was organised on station grounds. In 34 years of policing he had worked in numerous stations all of which had Social Clubs and whilst the QPS had not issued guidelines around the operations of the clubs there was a policy about the storing of alcohol on site.
- [43] As the officer-in-charge he had no role in organising the 2015 Christmas Party but had attended as had the Police Chaplin who he invited. He had not suggested to staff members that they attend to support morale although the attendance at a social event would be a morale builder. A number of emails were received from Miller regarding the Christmas Party through the QPS email system which was accepted practice and utilised for other activities including footy tips competitions.
- [44] Lehmann first became aware of the complaint of sexual harassment made by Youngblutt on 17 December 2015 when informed by Baade that an official complaint had been made on her behalf by the District Duty Officer the previous evening. As the officer-in-charge he was concerned for her welfare and also for the person against whom the complaint was made. He contacted the roster officer, directing that they do not work on the same shift or at least minimise them working together, which had some issues as it was only a small station with 36 staff, but he tried to keep them separate as much as possible.
- Note: Lehmann altered his earlier evidence to having been told about the complaint on 16 December 2015 and not 17 December 2015.
- [45] On 17 December 2015 he spoke to Youngblutt following her meeting with Baade and chose not to actually address any of the issues complained about but concentrated on concerns for her welfare and what services were available to her. Youngblutt appeared upbeat and said "whatever happened, happened" and wanted to continue to work. He took a positive vibe from the meeting which was held in his office and went for about 45 minutes. The working relationship with Youngblutt prior to the incident had been good and they usually spoke each day. Lehmann met with her again on 23 December 2015 when he sought her out in the meal room prior to her starting work and enquired about her welfare. Again she appeared upbeat.
- [46] Lehmann denied a number of allegations that had been sent to him by WorkCover on 4 July 2016 where he was alleged to have said:

- that it was not Diehm's fault because he acted that way because people were questioning his sexuality;
- Diehm was the "youngest conny coming through";
- officers were egging Diehm on at the Christmas Party;
- in December 2015 that the District Officer and Inspector had already signed off on what was going to happen;
- that he had spoken to the Chaplin about Youngblutt;
- Diehm had made a couple of good "pinches" in the last couple of days and he should just keep "pinching people"; and
- Diehm was drunk and that is why he behaved in that way.

[47] Lehmann on 17 December 2015 had said to Youngblutt words to the effect that he could have handled it "in house" but denied having said words to the effect "get ready mentally as ethical standards go through everything". Lehmann offered her encouragement to continue to do her job despite what was boiling in the background. He also denied telling Youngblutt that he would be keeping Diehm on staff in whatever way he could and in any event any decision made about the sexual harassment matter was clearly out of his hands and would be made by the senior executives of the district.

[48] In months leading up to the Christmas Party on 10 December 2015 he had some conversations with Youngblutt about her personal life where she was experiencing problems with her daughter, husband and mother. He had indicated his support for her to undertake part-time work which resulted in the months leading up to December 2015 Youngblutt virtually writing her own roster, sometimes to the detriment of the station.

[49] Under cross-examination he described Youngblutt as "one of those persons" who was very strong with communication and often would grab him at the end of a shift and talk about everything that happened on shift (T3-38). There was a handover document prepared by Lehmann within the first two weeks in charge of Coolangatta in which identified a number of officers in terms put forward by the previous officer-in-charge where Youngblutt had been mentioned as "talks too much". This document had been stolen and placed in all officers' pigeon holes. The document had impacted negatively at the station and made his integration at the station a "bit rough at the start" (T3-40). He denied ever having a conversation with Youngblutt in which he told her she would be attending the Christmas Party (T3-41). All but a couple of the 37 staff were members of the Social Club and new staff were usually asked to join on arrival rather than encouraged to join (T3-45).

- [50] Lehmann along with around 35 or 36 staff attended the Christmas Party on 10 December 2015 in a room designed for the QPS (T3-46). Following the Christmas Party on 15 December 2015 Youngblutt worked traffic and Diehm was on general duties and he was not sure if they come across each other due to different start and finish times (T3-47). On 17 December 2015 he had a meeting in his office with Youngblutt that went for between 30 and 45 minutes and recalled saying to her that he was disappointed that she had gone to another Senior Sergeant with the complaint and why she waited to 15 December 2015 to do so (T3-48). He was not cross with her just perplexed about the path she had taken (T3-48). He conceded it was purely up to the victim of a sexual assault to determine how they deal with a sexual harassment complaint, however once a "QP 466" had been filed the complaint goes directly to ESU regardless of what the victim has to say (T3-49). If the matter was considered minor after a vetting process by ESU it could be referred back to the district. Lehmann, as at 17 December 2015, held the view that Youngblutt's complaint was minor and could have been handled in house with reliance strategies she had organised with Baade (T3-49). A referral was sent back to the district on the severity of the complaint (T3-49). He denied wanting to handle the complaint in house because "Cooly had just gotten out of the shit" on the basis that "Cooly was still in the shit".
- [51] Lehmann denied that his desire to handle the Youngblutt complaint in house was to protect Diehm but as the officer-in-charge it was his job to provide welfare to not only victims but also the perpetrators (T3-50). He had sent out an email about Diehm to inform the station of the decision to stand down mainly because of the rumours circulating in the station. Lehmann denied having told Diehm to "keep his head down" and everything would be alright (T3-51). In the meeting with Youngblutt on 23 December 2015 he denied telling Youngblutt it had not been Diehm's fault because people were questioning his sexuality (T3-51). On each occasion he encountered Youngblutt after the incident on 10 December 2015 he would enquire about her welfare and he had officers keep an eye on her when they worked together (T3-52). Lehmann refuted a number of other suggestions with regards to comments allegedly made by him as being fabricated (T3-52 to T3-54]. On 17 December 2015 he was aware of some sort of incident going on between Youngblutt and Norvill (T3-58). He was not aware that Norvill and another officer had told Youngblutt she was "fucked" after having made the complaint against Diehm although Youngblutt's shift supervisor informed him that both officers had loudly voiced their opinion in the constable's day room that they did not support Youngblutt and that Diehm had been harshly dealt with at the time (T3-59). He spoke to Baade about the incident and they decided they would talk to each of the officers about the Whistle Blowers Act and eventually cautioned both officers (T3-59).
- [52] In re-examination he gave an explanation for comments written on a previous roster about officer's nicknames which had been taken from his office and distributed to all officers. There had been processes over the incident in the Commission and QCAT with all matters dismissed. He reaffirmed his evidence about his lack of involvement in the

running of the Social Club unless there was an event held on station premises. On the email he sent out about Diehm he had been restricted from mentioning Youngblutt because her complaint was the subject of an ongoing investigation.

Harris

- [53] In December 2015 Harris was the officer-in-charge of the Coolangatta Watch House and had a role in the running of the Social Club on a couple of occasions which included December 2015. The Social Club provided milk, bread and biscuits for members also hosting send-offs and holding a Christmas Party for members. In December 2015 Miller had organised the Christmas Party, sending out emails about possible venues and suitable dates which had not required QPS approval. During the period of his involvement in the Social Club the QPS had never issued directives about the conduct of the club except for a general instruction about the non-consumption of alcohol on police premises. The QPS email system was used to distribute information about the Christmas Party and also other events such as the birth of a child or a send-off. Harris attended a Christmas Party/send-off in 2013 where there was a small fee of \$20 to \$25 for non-members to attend but no funding was provided by the QPS. If non-Social Club members or partners attended the Christmas Party they were required to pay a cover charge.
- [54] Under cross-examination he confirmed that the cost for non-members to attend the Christmas Party was normally \$50 per person (T3-68). Most staff at the station were members of the Social Club and he agreed they were encouraged to join (T3-69). There was a general instruction regarding the consumption of alcohol on premises which he had authored (T3-69).

Miller

- [55] In December 2015 Miller was a senior constable stationed at Coolangatta Police Station having commenced there in 2013. Sometime in 2015 he took over the running of the Social Club at the station because no one else wanted to do it. Miller had not sought approval from the senior staff at the station about taking the Social Club role and apart from a QPS directive regarding the non-consumption of alcohol on premises there were no directives regarding the Social Club activities. In December 2015 he had organised the Social Club Christmas Party with minor assistance from Eastgate. There had been no authorisation of his activities by Lehmann or other senior officers nor did the QPS fund any activities related to the party. Miller had sent invitations to staff through the station internal email and whilst people were welcome to attend it was not compulsory. He had no knowledge of any involvement by Lehmann having indicated to staff that their attendance was required at the party nor did Lehmann have any role in the organisation of the function.
- [56] Under cross-examination Miller reiterated that as President of the Social Club he invited people to attend the Christmas party but no one was forced to attend (T3-75). Miller was

unable to recall follow-up discussions that may have occurred around the party apart from some banter (T3-75). He had not been able to locate the emails from 2015 regarding the Christmas Party but accepted there may have been more than just one email (T3-76). The majority of staff at the station were members of the Social Club with the majority paying \$7.50 per fortnight and some a lesser amount because they spent less time at the station (T3-78).

Submissions

Appellant

Background

[57] The appellant was required to prove on the balance of probabilities the essential elements of s 32 of the Act and whilst it was not of dispute that Youngblutt was a worker, the issues of contention were:

- did Youngblutt suffer a personal injury, that being a psychiatric or psychological disorder;
- did Youngblutt's personal injury arise out of, or in the course of her employment;
- was her employment the major significant contributing factor to her injury; and
- was the injury excluded from being compensable because the injury was a consequence of "reasonable management action taken in a reasonable way" by her employer in connection with her employment.

[58] Of relevance is whether Youngblutt's injuries could be regarded as having arisen in circumstances where there was an attendance at a Christmas Party.

Witnesses

Youngblutt

[59] Youngblutt gave her evidence in detail and was adamant about the dealings with Lehmann supported by a notebook which documented a contemporaneous note of a conversation with him on 23 December 2015 in the aftermath of the Christmas Party. The notes had strong evidentiary foundations and should be considered reliable as to the facts of the meeting.

[60] Youngblutt was a party to the "Agreed Statement of Facts" which permitted the most acute aspects of the incidents at the Christmas Party not to be an issue in the hearing.

However, not surprisingly, in giving her evidence she at times became emotional and at one stage an adjournment was required. This should not have an effect on the credibility of her evidence.

- [61] Youngblutt's demeanour was of a person trying very hard to recall events of a 2015 time period and when she was uncertain about her recollection she conceded this was the case.
- [62] Overall, given the incidents surrounding the Christmas Party had such an effect on Youngblutt, she had the clearest recollection of such events and in this regard her testimony should be preferred wherever it contradicts that of the other witnesses.

Witnesses not called to rebut the evidence of Youngblutt

- [63] In the course of her evidence she recalled exchanges with Compton, Savage and Norvill, all of whom were not called by the Regulator which had the effect of rendering Youngblutt's evidence as uncontested and should therefore be accepted.

Medical Evidence

Dr Macdonald

- [64] The evidence of Dr MacDonald provided a diagnosis of post-traumatic stress disorder and an alcohol dependence and that based on his understanding her employment "was 100 per cent of the cause of her condition" with the "trigger" being a series of events at the Christmas Party.

Dr Soden

- [65] As the treating general practitioner, she saw Youngblutt on 8 January 2016 where she presented "distressed and concerned" about events that happened at the Christmas Party the previous year. Dr Soden signed a Workers' Compensation Medical Certificate on 10 March 2016.

Huntress

- [66] Huntress saw Youngblutt on referral from Dr Soden and in the course of her treatment:

...found no evidence to suggest that Ms Youngblutt's symptoms have arisen from any other trauma other than the reported events leading up to, during and following the workplace Christmas Party in December 2015.

Other Medical Evidence

[67] On the failure of the Regulator to call medical evidence despite Youngblutt having seen a psychiatrist on behalf of WorkCover, it should allow an inference to be drawn that this medical evidence would not have assisted the Regulator's case.

Baade

[68] Baade presented as a credible witness who gave open honest answers to questions put to him in addition to his evidence about the complaint process. He had evidenced the shift arrangements entered into by two stations "enabled them" to go to the Christmas Party. Baade was aware that:

- the Christmas Party was for the entire station;
- invitations went to everyone on the station email list;
- roster was organised to enable all staff to attend the party which Baade accepted as an appropriate practice;
- Christmas Party was considered an "Off duty police function"; and
- he had the power to intervene to control the Christmas Party process.

Lehmann

[69] He gave evidence in a forthright and confident manner and even in the case of innocuous events gave confident and detailed answers despite admitting in re-examination that some of his evidence was speculation. The type of evidence given by Lehmann cannot be held to be reliable. Lehmann's evidence about keeping Youngblutt's complaint inhouse was without foundation and supports his motive of trying to protect the perpetrator of the harassment. Lehmann had attempted to undermine Youngblutt's case by:

- reporting she was stressed because of her husband's eyesight issues;
- reporting she was stressed because her grandmother was close to death in circumstances where this was not true; and
- suggesting the Chaplin mentioned in Youngblutt's complaint had not started working at the time of the complaint in circumstances where this was not true.

[70] The Commission ought to be very careful in accepting any of Lehmann's evidence unless corroborated by another credible witness.

Miller

[71] The failure by Miller to concede that as President of the Social Club he would have encouraged staff at the Coolangatta Police Station to attend the Christmas Party

challenges the credibility of his evidence. It was submitted that the evidence given by Miller identified he was prepared to withhold information for the sake of his employment.

Relevant Emails

[72] The fact that the email invitations were unable to be produced by the QPS did not add or detract from the fact that it was accepted generally that:

- there were multiple emails regarding the Christmas Party details;
- at least one email was an invitation to all staff;
- the Christmas Party was a party for the entire station, regardless of whether a person was a member of the Social Club or not;
- people were allowed to bring partners;
- Social Club did not have a separate email address from which the invitation was sent; and
- Social Club had no branding to identify as a separate entity.

When did the "injury" occur

[73] Youngblutt relied upon the following five stressors:

Stressor 1: 10 December 2015, Sexual Harassment Event. Nathan Diehm harassed the Appellant for sex, tried to kiss the Appellant and repeatedly told her and others that he was going to have sex with the Appellant.

Stressor 2: Days following 10 December 2015, Having to work with Nathan Diehm. This caused the Appellant stress and she called in sick to avoid him.

Stressor 3: Incident with co-worker, Jackie Norvill. The Appellant and Jackie Norvill were getting ready in the "Gun Room" and Jackie said "*I'm having a bad undie day*". The Appellant responded with "*Oh I hate that*". Jackie Norvill then looked straight at the Appellant and said "*Oh sorry! We can't say things like that anymore*".

Stressor 4: Change in the way the Appellant was treated by co-workers:

Other staff were reluctant to talk to the Appellant;

- Senior Sergeant Troy Lehmann told the Appellant "*you've brought Coolie in the shit again*";
- Jackie Norvill and Josh Compton told the Appellant she was "*fucked*";
- Senior Constable Nicholas Ruane said "*you know Jackie is the alpha female around here I wouldn't cross her if I were you*".

Stressor 5: On 23 December 2015, The Appellant meets with Senior Sergeant Troy Lehmann to discuss having to work with Nathan Diehm is told that:

- In response to concerns about working with Nathan - "just do your job".
- Troy Lehmann is upset because the matter should have been handled "in house";
- That ethical standards "will go through everything" and get ready because the complaint process is "going to go on for a long time"; and
- Perhaps she doesn't "*have the necessary qualities for this job*".

[74] In terms of each stressor the submission provided commentary that included:

Stressor 1

- this stressor admitted in Agreed Statement of Facts;
- failure to call evidence from Compton leaves Youngblutt's evidence uncontested;
- medical evidence suggests this did feature as a stressor; and
- this was not management action.

Stressor 2

- Youngblutt took sick leave 16 to 18 December 2015 because she did not want to be around Diehm; and
- this was not management action.

Stressor 3

- Youngblutt's evidence had this incident occurring as a result of what happened at the Christmas Party;
- this can be considered as a genuine and substantiated stressor, particularly in circumstances where the Regulator failed to call Norvill to dispute the allegation; and
- this was not management action.

Stressor 4

- Youngblutt gave evidence of comments made by co-workers and in this case the comments of Norvill and Nicholas Ruane (Ruane) should be accepted as stressors without management action being involved;
- Youngblutt's contemporaneous notes (dated 23 December 2015) regarding Lehmann's comments supports a finding that this stressor is substantiated; and

- Lehmann's comment about "Cooly in the shit again, so you stop talking to everyone" would support a finding that this stressor is substantiated and needs to be considered in the context of s 32(5) of the Act.

Stressor 5

- specific details of the conversation between Youngblutt and Lehmann on 23 December 2015 were recorded in the contemporaneous note taken by Youngblutt;
- in making a finding of fact, the credibility of a person whose evidence is supported by contemporaneous record should be preferred where everything else is equal;
- the evidence of Youngblutt was more cogent, valid and credible to that of Lehmann;
- in the matter of *Apolloni v Traffic Technologies Management Division Pty Ltd*¹ Henry J dismissed a plaintiff's case because a supervisor had kept a diary note of an injury report and their evidence was preferred;
- the impact of this conversation is documented by the medical evidence as being somewhat related to the causation of her ultimate diagnosis, although not the trigger; and
- management action cannot be evaluated as "reasonable" so as to engage the provisions of s 32(5) of the Act.

Did the appellant's injury arise out of or in the course of employment?

[75] The first consideration is to determine whether the circumstances of the injury arose because Youngblutt was encouraged to attend at a "place" or engaged in an "activity".

[76] In the matter of *Comcare v PVYW (PVYW)*² the majority held:

The starting point in applying what was said in *Hatzimanolis*, in order to determine whether an injury was suffered in the course of employment, is the factual finding that an employee suffered injury, but not whilst engaged in actual work. The next enquiry is what the employee was doing when injured. For the principle in *Hatzimanolis* to apply, the employee must have been either engaged in an activity or present at a place where the injury occurred. The essential enquiry is then: how was the injury brought about? In some cases, the injury will have occurred at and by reference to the place. More commonly, it will have occurred while the employee was engaged in an activity.

¹ *Apolloni v Traffic Technologies Management Division Pty Ltd* [2012] QSC 070.

² *Comcare v PVYW* [2013] HCA 41 [38], [39].

It is only if and when one of those circumstances is present that the question arising from Hatzimanolis principle becomes relevant. When an activity was engaged in at the time of injury, the question is: did the employer induce or encourage the employee to engage in that activity? When injury occurs at and by reference to a place, the question is: did the employer induce or encourage the employee to be there? If the answer to the relevant question is affirmative, then the injury will have occurred in the course of employment.

It follows that where an activity was engaged in at the time of the injury, the relevant question is not whether the employer induced or encouraged the employee to be at a place. An employer's inducement or encouragement to be present at a place is not relevant in such a case.

[77] There is a clear distinction in the application of the law as it applies to characterising the influence of the employer in each scenario.

[78] In *Comcare v Mather*³ Kiefel J held:

In my view, 'encouragement' is not to be taken as of narrow meaning and limited to some positive action and in specific terms which might lead the employee to undertake a particular activity or attend at a particular place.

...

To be said to have, expressly or impliedly, induced or encouraged an undertaking or presence at some location could refer to, by way of example only, requirements, suggestions, recognition of practices, fostering of participation, or providing assistance and may include the exercise of discretion or choice on the part of the employee. Further attempt at definition would be fruitless. In each case, the question will be whether the attendance at the place at which or the undertaking in which the employee is involved when injured in an interval falls within the ambit of statements, acts or conduct made by the employer and what may be said to logically arise from them. And in each case, importantly, they must be viewed in the background of the particular employment and the circumstances in which the employer is then placed.

[79] In consideration of whether the attendance at the Christmas Party was "expressly or impliedly, induced or encouraged an undertaking or presence at some location" a finding can be made on the evidence that is not in dispute:

- multiple invitations to the Christmas Party;
- shifts for the Coolangatta Police Station covered to enable all members at the station to attend;
- all but one employee in the Social Club;
- multiple emails regarding details of the Christmas Party;
- at least one email was an invitation to staff;

³ *Comcare v Mather* (1995) 56 FCR 456 at 462, [22].

- Christmas Party was for entire staff, regardless of Social Club membership;
- Baade agreed a successful Christmas Party would be good for staff morale;
- partners were allowed to attend;
- Social Club did not have a separate email address;
- Lehmann had the authority to make stipulations about the Social Club and had previously done so;
- Social Club had no branding or logos to identify as a separate entity;
- there was a separate area at the Christmas Party venue for QPS employees;
- Social Club "President" was generally permitted to use his work computer to organise social events;
- Social Club "President" never spoken to about the appropriateness of any emails sent;
- Lehmann as officer-in-charge attended the 2015 Christmas Party; and
- at the 2013 Christmas function was also a farewell celebration and was attended by senior QPS officers.

[80] Other authorities cited included:

- *Glass v Workers' Compensation Regulator*⁴; and
- *Wyatt and NSW Police Department*⁵.

[81] Given the case law and the *indicia* that informs the decision making it was clear the Christmas Party was "incidental" to the appellant's work and the injury she suffered as a result of her attendance at the Christmas party "arose out of or in the course of her employment".

Was employment the major significant contributing factor to the injury?

[82] In reaching a decision on this issue the Commission would ordinarily place emphasis on the opinions of the medical practitioners and in this case the matters recorded by the

⁴ *Glass v Workers' Compensation Regulator* [2019] QIRC 046.

⁵ *Wyatt and NSW Police Department* [1996] NSWCC 14.

medical professionals and Youngblutt's complaints support that employment was the major significant contributing factor to the injury.

Application of s 32(5) of the Act

[83] The relevant management action was the conversation between Youngblutt and Lehmann and in the event the Commission was to find the conduct of the meeting was "reasonable" there was still a requirement to consider, given the finding of fact what had caused Youngblutt's injury in all the circumstances of the case.

[84] Given the medical evidence and in particular that of Dr MacDonald the Commission ought to accept that the psychiatric injury suffered by Youngblutt did not "arise out of or in the course of this management action" it was merely a contributor to the stress of the Christmas Party.

[85] In terms of causation the reason for Youngblutt's injury was the sexual harassment that occurred before and during the Christmas party on 10 December 2015. If there had been no Christmas Party she would not have suffered an injury.

[86] If the Commission considered that management action was involved, then the following was relevant:

- Whether management action was taken in a reasonable way is a question of fact and reasonable people may differ from time to time about whether a particular management decision was reasonably implemented.
- Language, tone of voice and demeanour are relevant to the issue whether action was taken in a reasonable way.
- The task of the Commission when applying section 32(5) does not involve setting what it regards as the type of actions that would have been reasonable in the circumstances. There may be any number of actions or combinations of actions which would satisfy section 32(5). The proper task is to assess the management action which was taken and determine whether it was reasonable and whether it was taken in a reasonable way. Sometimes, that may involve considerations of what else might have been done, but that will only be relevant to whether what was done was, in fact, reasonable.

[87] In relation to the application of s 32(5) of the Act, the following authorities were cited:

- *Davis v Blackwood*⁶; and
- *Simon Blackwood (Workers' Compensation Regulator) v Mahaffey*⁷ where Martin J stated:

The difficulties in construing section 32(5) support the conclusion that more than one interpretation of section 32 is available and that, therefore, the beneficial interpretation

⁶ *Davis v Blackwood* [2014] ICQ 009, [47].

⁷ *Simon Blackwood (Workers' Compensation Regulator) v Mahaffey* [2016] ICQ 10, [57].

approach should be applied. In the cases decided in this court, any attempt to provide some type of formula or application of dominant cause has been rejected. Section 32 must be applied in light of the evidence accepted by the Commission. If, after considering all the relevant evidence and weighing up the factors which were accepted as having given rise to the personal injury, the Commission forms the conclusion that any of the conduct referred to in section 32(5) does not, on balance, displace the evidence in favour of the worker then a finding in the worker's favour must follow.

[88] If accepted that some causal stressor related to the management action of Lehmann in talking to Youngblutt about her complaint, then the management action should not be characterised as "reasonable". The tone and content of that discussion in the context of Youngblutt having just reported a serious sexual harassment incident at the Christmas Party could not be considered "reasonable" in all circumstances.

Orders Sought

[89] The orders sought were as follows:

- Appeal against the decision of the Regulator (dated 5 June 2017) be upheld;
- Youngblutt's application for compensation is one for acceptance; and
- Regulator pay costs of and incidental to the appeal.

Regulator

[90] The parties executed a statement of agreed facts prior to the hearing with references to issues that included:

- background and facts;
- Coolangatta Police Station Social Club;
- Christmas Party 2015; and
- events after the Christmas Party.

[91] On or about 5 June 2017 the Regulator confirmed the decision of WorkCover Queensland.

Stressors

[92] The stressors identified by the appellant were:

1. Sexual harassment event on 10 December 2015, perpetrated by Nathan Diehm at the Social Club Christmas Party.

2. Days following 10 December 2015 - having to work with Mr Diehm, causing her to call in sick to avoid him.
3. Incident with Jackie Norvill on 15 December 2015. The appellant and Jackie Norvill were getting ready in the "Gun Room" and Jackie said "I'm having a bad undie day .." The Appellant responded with "'Oh I hate that". Jackie Norvill then looked straight at the Appellant and said "Oh sorry! We can't say things like that anymore ..."
This comment made the Appellant upset and lonely and she became very anxious and sweating profusely. The Appellant could not work the following day (16 December) and called in sick.
4. During 16-23 December 2015, there was a change in the way the Appellant was treated by co-workers:
 - Other staff were reluctant to talk to the Appellant;
 - Senior Sergeant Troy Lehmann told the Appellant "you've brought Coolie in the shit again";
 - Jackie Norvill and Josh Compton told the Appellant she was "fucked";
 - Senior Constable Nicholas Ruane said "you know Jackie is the alpha female around here I wouldn't cross her if I were you".
5. The Appellant met with Senior Sergeant Troy Lehmann on 23 December 2015 to discuss having to work with Nathan Diehm is told that:
 - In response to concerns about working with Nathan - "just do your job";
 - Troy Lehmann was upset because the matter should have been handled "in house";
 - That ethical standards "will go through everything" and get ready because the complaint process is "going to go on for a long time";
 - Perhaps she doesn't "have the necessary qualities for this job";
 - At this point the Appellant was struggling to work more than 3 days in a row and was not coping.
6. (This is relevant but not a stressor) in April 2016 - the Appellant did not cope with her work. On one particular occasion she had to prepare a statement for a Court Brief at the request of Sergeant Lyndon. She cried uncontrollably at the workplace, left the workplace and took 2 weeks' sick leave.
7. Having moved to the Broadbeach precinct, the Appellant found out on 27 May 2016 that Senior Sergeant Troy Lehmann was also now stationed as a permanent at Broadbeach. This caused significant stress to the Appellant.

Relevant Legislation

[93] The legislation relevant in the proceedings was identified as s 32(1) and (5) of the Act.

Evidence

Stressor 1

[94] The appellant was excluded from giving evidence about the first stressor as the Regulator agreed that the sexual harassment as determined by the QPS investigation had occurred and was reflected in the agreed facts.

[95] The only issue about the stressor was whether the events at the Christmas Party had, on the balance of probabilities, arisen out of or in the course of employment. The Christmas Party:

- was arranged by the Social Club;
- costs were covered by membership fees and non-members paying to attend;
- it was not a compulsory part of employment to be a member of the Social Club or attend the Christmas Party;
- there were no QPS policies around the setup, operation of functions of the Social Club;
- there was an invitation, rather than encouragement to attend the Christmas Party;
- Baade confirmed that the QPS would not encourage officers to attend a Christmas Party;
- Lehmann confirmed he had not directed or encouraged attendance at the Christmas Party. He had no involvement with the Social Club beyond membership;
- arrangements for another station to cover shifts for the evening was a practice generally accepted across the Gold Coast;
- invitations to the Christmas Party were sent by internal email without any authorisation being required;
- Baade had not attended the 2015 Christmas Party and had not experienced any negative ramifications as a result of his non-attendance;
- appellant apart from not being in the "clique" for "gossip and things like that" had been unable to describe any detriment for not attending Social Club functions;
- appellant was quite evasive in cross-examination about any QPS involvement in the Christmas Party and would not respond to direct questions regarding directives by senior officers in relation to dress, conduct and alcohol consumption; and
- Miller confirms QPS made no directions in relation to Social Club events except about alcohol on QPS premises.

Stressor 2

[96] It was agreed that the appellant did not work with Diehm after 12 December 2015. As soon as Baade and Lehmann became aware of the alleged sexual harassment on 16 December 2015 they arranged for Diehm to be on different shifts.

[97] The appellant took two days sick leave on 16 and 18 December 2015 with a medical certificate. In the period around this time her path would cross with Diehm where he would attempt to seek assurance that they were "good".

[98] There was no evidence by or about the appellant experiencing any psychological condition during that time nor was there evidence about any medical condition.

Stressor 3

[99] The appellant gave brief evidence about this alleged stressor although in the appellant's statement of facts and contentions there was a description of Norvill's comments which appeared to be embellished in her oral evidence. The appellant gave a further embellished version of another event, which allegedly also occurred on that day and was again different to her statement of facts and contentions.

[100] The first conversation with Norvill which was alleged to have occurred at the beginning of the shift on 15 December 2015 was not the subject of an immediate complaint and in any event the comments of Norvill, embellished or otherwise, are unlikely to be found on the balance of probabilities as having been directed at Youngblutt as a result of the harassment or capable of causing psychological distress.

Stressor 4

[101] The claim by the appellant that Norvill and Compton had told her she was "fucked" as a result of reporting Diehm's conduct at the Christmas Party was not supported by evidence about the context or manner in which the comment had been allegedly made, nor had Youngblutt described any offence or reaction to the comment that would attribute to her psychological distress. Also the alleged comment relied upon that Norvill was the alpha female was absent of any context that would allow for this comment to be interpreted as being related to the sexual harassment, the complaint or to alienate or mistreat Youngblutt as alleged.

Stressor 5

[102] The appellant relied wholly upon a "diary note" which was allegedly written on the date of the conversation with Lehmann (23 December 2015) after she had returned home. The note had not been written in a diary, was hand dated or demonstrated to be part of a series of contemporaneous records. The diary note included reference to an earlier conversation with Lehmann on 17 December 2015 about her complaint where she was told to "just do your job" despite claiming it was awkward working with Diehm. If such a conversation had occurred it would have been superfluous because Diehm by this time had been transferred to another station. Lehmann's evidence was that on the occasion he spoke to Youngblutt after the Christmas Party she had been quite upbeat.

[103] In examination-in-chief Lehmann had responded to alleged comments said to have been made by him in the conversations with Youngblutt on 17 and 23 December 2015. The response included:

- he was only informed two to three weeks after the Christmas Party that Diehm's sexuality was being questioned at the party and he had never relayed this information to Youngblutt;
- he had never heard any report of Diehm having mentioned plans to have sexual intercourse with Youngblutt until July 2016;

- he had not spoken to Youngblutt about the various options available to deal with her complaint because Baade had that role; and
- on 17 December 2015 when he spoke to Youngblutt he was unaware that there was to be an ESC investigation because Baade had told him Youngblutt did not want the complaint formally dealt with.

[104] Lehmann in cross-examination acknowledged he expressed some disappointment about Youngblutt not initially approaching him about the complaint but in any event he never had the power to determine whether the complaint was dealt with "in house" or investigated by the ESC.

[105] Youngblutt had not mentioned to Baade any concerns about comments made by Lehmann which had allegedly upset her despite being told by Baade she could contact him at any time to resolve any issues in the workplace.

[106] In the course of her interview with Savage she had made no mention of a discussion with Lehmann following what happened at the Christmas Party. If Lehmann had treated her badly as claimed, in her meeting with Savage the very next day, she would have raised the matter with him but there was no record of that happening. Youngblutt had not been reluctant to speak at length with Savage about issues at the Coolangatta Station including "anarchy amongst the hierarchy here at the station" and her fear of being mistreated. In Youngblutt's diary there had been no notes about the Christmas Party, Diehm speaking to her in the carpark or discussions with Baade and Lehmann on 17 December 2015 although she had claimed to be upset about what had happened at work.

[107] There was considerable doubt cast on the contemporaneous nature and accuracy of the alleged "diary note" and the weight that should be placed on such note when Youngblutt had not given evidence about the conversation. On the matter of an absence of oral evidence in "Cross on evidence" the Honourable J.D. Heydon⁸ stated:

Perhaps the most important feature of an Australian trial, civil or criminal, is its 'orality'. Much greater weight is attached to the answers given by witnesses in court on oath or affirmation than to written statements previously made by them, and contrary to what is commonly supposed by persons without experience of litigation, the way in which a witness responds to examination in chief is often more informative about that witness's reliability than that witness's reaction to cross-examination.

[108] The submission addressed aspects of Lehmann's evidence that had been questioned in the appellant's submissions in respect of:

- process involving the functions of the Social Club and in particular the position of President;
- disappointment in the failure of Youngblutt to come to him in the first instance;

⁸Heydon J D, *Cross on Evidence*, updated January 2019, Chapter 9, [171170].

- could have dealt with the complaint "in house" however in Lehmann's cross-examination it had been established he had no power to determine whether or not the complaint would be vetted by the ESC;
- on whether Lehmann had treated the complaint as minor, it had not been explored with him the level of precise knowledge of the incident he may have had and his evidence was he had not discussed the detail of the incident with Youngblutt;
- the email sent out by Lehmann advising of the standout of Diehm should be read in its entirety and in the context of a young constable who was a good worker, popular and had not been found guilty of any offence at that point of time. It was not appropriate to have sent out an email supporting the appellant as the alleged victim.

[109] Questions arise in relation to the reliability of Youngblutt's evidence about her conversation with Baade which was at odds with his evidence and an email which he sent immediately after the conversation on 17 December 2015. Youngblutt denied every aspect of this conversation that was put to her yet there was no submission by the appellant that Baade was an unreliable witness. There was evidence from Lehmann regarding conversations with Youngblutt about concerns for her husband's visual problems which were denied by Youngblutt but confirmed in her general practitioner's records.

[110] The evidence of Youngblutt in relation to conversation with Baade and Lehmann should not be found to be reliable on the basis of insufficient grounds to do so.

Stressor six

[111] This was said not to be a stressor but was relevant in that Youngblutt became distressed, left work and attended upon a general practitioner over the insistence of her commanding officer to complete a court brief without her notebook.

[112] This event occurred after her injury had occurred and a claim had been made.

Stressor seven

[113] On 27 May 2016 Youngblutt whilst working at Broadbeach Police Station was advised of Lehmann's transfer to the same station which caused her considerable stress. This occurred after the application for compensation and does not require further consideration.

Medical Evidence

[114] Dr Soden treated Youngblutt on 8 January 2016 and described her as somewhat distressed and concerned about events that happened at the Christmas Party held in December 2015. She believed that the officer in charge was not taking her seriously and was supportive

of the officer who had abused and harassed her. Whilst not listed as a stressor the evidence is quite telling because this was the same day that Lehmann sent the email to other officers advising that Diehm had been stood down but should not be interpreted as Lehmann not taking Youngblutt's complaint seriously and not supporting her as well as Diehm. The temporal link is significant.

- [115] The first workers' compensation form completed by Dr Soden on 10 March 2016 was for an acute stress reaction for which Youngblutt was initially seen on 8 January 2016 with the stated cause of injury being workplace sexual harassment. The major contributing factor was said to be the events at the Christmas Party compounded by her not being taken seriously or supported. There was no specific evidence about some innuendo that may have occurred before the Christmas Party even though Dr Soden said this may have been the case.
- [116] The actions taken by the QPS to escalate and investigate Youngblutt's complaint do not support a view that the appellant was not heard, taken seriously or not being supported.
- [117] The treating psychologist (Huntress) gave oral evidence with three reports/letters tendered. She first saw Youngblutt in February 2016 and her understanding was that the major contributing factor was the harassment suffered by the appellant and some taunting and egging on by some officers to the perpetrator. There was no evidence of any taunting or egging on presented in the proceedings.
- [118] It had been difficult, if not impossible to glean information from Huntress about the cause of Youngblutt's condition due to sparse clinical record or recollection. The referral from Dr Soden to Huntress (dated 18 February 2016) was for "assessment and strategies to cope with her family and work stressors" with the first correspondence from Huntress to Dr Soden referencing family and work stressors.
- [119] Dr MacDonald's report diagnosed an adjustment disorder, post-traumatic stress disorder and alcohol dependence. He had been given a history of a range of sexual harassment claims and allegedly being managed out of the Coolangatta station as well as a range of antedating traumatic events or close calls throughout her career.
- [120] Dr MacDonald when asked to specify whether Youngblutt's psychological condition arose out of the events leading up to the Christmas Party, sexual harassment at the Christmas Party or from employer or co-worker treatment after the Christmas Party as a result of making a complaint for sexual harassment, Dr MacDonald could not isolate the stressors nor isolate them from the subsequent financial difficulties and sale of the family home. Dr MacDonald was not aware of any pre-existing stressors nor did he assess the marital relationship.
- [121] Dr MacDonald in his evidence-in-chief said that "it was his consideration that the Christmas Party was the main precipitant as well as the follow-up that the appellant

perceived in the aftermath". Dr MacDonald was not aware that when Youngblutt had consulted with her general practitioner in early 2016 she had complained about significant stressors in the workplace where a police officer had been stood down for sexual harassment and this had been compounded by stress at home with management of adolescent children as well as significant issues regarding her husband's health. Dr MacDonald was not able to give a diagnosis for Youngblutt as at 8 January 2016 but speculated that she was suffering from acute stress reaction at the time. His "predominant etiological assumption" was that the triggering factor for the acute stress reaction was the series of events at the Christmas Party.

Summary of evidence

[122] The medical evidence supports that Youngblutt suffered a psychological condition, initially an acute stress reaction evolving into a post-traumatic stress disorder.

[123] There were family and employment stressors involved in the development of the psychological condition however the nominated stressor which was supported by medical evidence and facts that should be accepted as reliable by the Commission, is the sexual harassment which occurred at the 2015 Christmas Party.

[124] The Regulator accepts that the appellant sustained a personal injury being a psychological injury arising out of or in the course of events at the Christmas Party.

[125] The issue remaining in contention is whether the Christmas Party should properly be considered as part of the appellant's employment.

Case Law

[126] In this matter, the injury arose out of Youngblutt attending the Coolangatta Police Social Club Christmas Party at the Twin Towns Resort with the issue being whether the party was a work activity or an activity which had been induced or encouraged by the employer. In *Comcare v PVYW*, French CJ, Hayne, Crennan and Kiefel JJ held:

- (i) Where an injury arises from some characteristic of the place where an employee is at the inducement or encouragement of the employer, then the injury may arise "in the course of the employment": at [38]⁹
- (ii) injuries occurring at a place where the employee is at the inducement or encouragement of the employer do not arise "in the course of employment" if the occurrence of the injury is unconnected to some particular characteristic of the place: at [45]
- (iii) An injury occurring in the course of an activity that is induced or encouraged by the employer is

⁹ At [38] *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473; 106 ALR 611; (1992) HCA 21, *Danvers v Commissioner for Railways (NSW)* (1969) 122 CLR 529; [1970] ALR 403; [1969] HCA 64; *Henderson v Commissioner of Railways (WA)* (1937) 58 CLR 281; [1938] ALR 18; [1937] HCA 67; *Kavanagh v Commonwealth* (1960) 103 CLR 547; (1960) ALR 470; [1960] HCA 25, applied.

one that arises "in the course of the employment", absent gross misconduct: at [30].

[127] The meaning of "induced" was explored in *Comcare v Mather & Mitchell*¹⁰ and referred to in *Oaks Hotel and Resorts (Qld) Pty Ltd v Blackwood and Anor*¹¹.

[128] In *Hatzimanolis v ANI Corporation Ltd (Hatzimanolis)*¹² and *PVYW*¹³ the High Court of Australia held that an injury would more readily be held as occurring in the course of employment when it was sustained in an interval or interlude within an overall period of work, as opposed to between two distinct periods of work. It was stated in *Hatzimanolis*:

However, it would be an unacceptable extension of the course of employment to hold that an employee was within the course of employment whenever the employer had authorised, encouraged or permitted the employee to spend the time during an interval between periods of actual work at a particular place or in a particular way.

[129] Although the sexual harassment by Diehm had not been activity encouraged or induced by the employer, it was the activity that must be considered and it was not Youngblutt's understanding of what was required of her in the scope of employment but what was, in fact, the scope of employment.

[130] In the matter of *Australian Leisure & Hospitality Group Pty Ltd v Simon Blackwood (Workers' Compensation Regulator) & Campbell*¹⁴ a worker had been killed by diving into a creek during her work social club's Christmas Party. The manager of the employer had seen a collegiate benefit of having a social get together and had specifically set up a social club to raise money to fund a Christmas Party. The manager was involved in advertising the event, giving staff a choice in respect of venue and preferences for food and drink. The manager purchased all the food and drinks with ice tubs and decorations provided by the employees.

[131] The Commission concluded that the employer had encouraged the worker to attend the Christmas Party but had not encouraged her to engage in the activity of jumping in the river.

[132] The scenario can be distinguished in this case for reasons including (but not exhaustive):

- Social Club was longstanding and not designed specifically for funding the Christmas Party;
- membership of the Social Club was voluntary;
- the Social Club was not controlled or guided by any policy, guideline or

¹⁰ *Comcare v Mather & Mitchell* (1995) 37 ALD 463, [22].

¹¹ *Oaks Hotel and Resorts (Qld) Pty Ltd v Blackwood and Anor*¹¹ [2014] ICQ 023.

¹² *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473, 482, 483.

¹³ *Comcare v PVYW* [2013] HCA 41, [28], [29].

¹⁴ *Australian Leisure & Hospitality Group Pty Ltd v Simon Blackwood (Workers' Compensation Regulator) & Campbell* [2014] QIRC 105.

authorisation of the QPS;

- there was no financial contribution to the Christmas Party by the QPS;
- venue was not determined by the QPS; and
- there were no QPS directives in relation to dress, alcohol consumption or conduct at the Christmas Party.

[133] There were invitations sent out for the Christmas Party through the Coolangatta Station email system as occurred with other social messages within the station.

[134] In reference to the case of *Wyatt v NSW Police Department*¹⁵ it was noted:

- this case was not binding in Queensland;
- the NSW Police Department, in the person of the Commissioner of Police reserved the right to appoint the Management Committee and Games Council and was in a position to influence and control the affairs of the Games Council;
- the constitutional objectives of promoting participation in sport and encouraging health and fitness of members had been the responsibility of the Chief Inspector who was the Chairman of the Management Committee; and
- the NSW Police Service had allowed the Police Games to use its corporate identity to enhance its image as a responsible and caring employer.

[135] The case authorities and facts established in this appeal, properly leads to a finding that the events at the Christmas Party arranged by the Social Club did not arise out of, or in the course of Youngblutt's employment.

[136] The appeal should be dismissed and Youngblutt pay the costs of the respondent.

Appellant in Reply

[137] The Regulator submitted that Youngblutt had failed to discharge her onus of proof in regard to her psychological injury arising out of, or in the course of her employment, however was clear about the findings the Commission should make about the medical evidence.

[138] The Regulator had made no submissions in relation to the stressors alleged by Youngblutt and the causation of her psychological injury or submissions with respect to whether any actions by Lehmann constituted "reasonable management action" or should be excluded by virtue of s 32(5) of the Act.

[139] In the circumstances, it follows that if the Commission is satisfied that the events and stressors occurred in the way Youngblutt submitted, then the only argument for the

¹⁵ *Wyatt v NSW Police Department* [1996] NSWCC 14.

Commission is to consider whether her injury could be seen as "arising out of, or in the course of her employment".

Weight of the evidence - Diary Note

[140] The general legal principle as outlined at paragraph 86 of the Regulator's submissions should be considered in the context of all features of the case. The principle must have regard to the nature and type of hearing before the Commission.

[141] With regards to the admissibility of the diary note, the original submission is maintained in that it is clear from the transcript of the meeting with Savage that Youngblutt had made notes of the conversation she had with Lehmann and the notes were contemporaneous, relevant and admissible.

[142] The diary note speaks for itself and in terms of the weight the Commission should apply to it, it is not significant that Youngblutt did not articulate every specific allegation of the meeting with Lehmann in evidence in chief, because it was well known to the parties and the witnesses what the alleged conversation was about. On the conversation with Lehmann:

- Youngblutt gave evidence about how and why the diary note came into existence;
- the diary note was consistent with allegations put to Lehmann in the investigation of the matter internally within the QPS;
- the allegations in the diary note form the basis of her complaint within the QPS; and
- allegations were articulated in the List of Stressors tendered at the hearing.

[143] Other factors that support the diary note being preferred over the weight of the oral testimony of Lehmann includes:

- Lehmann provided no documentary evidence such as a diary note, memo or record of the meeting;
- Lehmann's written response to the allegations was dated six months post the event; and
- Lehmann's argument about the Chaplin could not be sustained and further demonstrated his recollection was at best, unbelievable.

[144] With respect to the Regulator's submission as to the law on "arising out of, or in the course of her employment", it remains the position of Youngblutt that each case should be decided on the application of the law and the factual circumstances of the case.

Conclusion

[145] There was no contest that for the purposes of s 11 of the Act, at all relevant times Youngblutt was a "worker" and therefore was entitled to have lodged a claim for workers' compensation.

[146] There was a further concession made by the Regulator being that Youngblutt had sustained a personal injury in the form of a psychological injury that arose out of or in the course of events at the Christmas Party.

[147] There remained a point of contention between the parties in terms of whether the Christmas party could properly be considered as having formed a part of Youngblutt's employment.

Statement of Agreed Facts

[148] The parties prior to the hearing of the appeal reached agreement on a series of facts which had the effect of reducing the amount of oral evidence adduced but also in the case of Youngblutt she was shielded from having to give evidence and be cross-examined regarding what may best be described as an "unsavoury" experience at the Social Club Christmas Party held on 10 December 2015.

[149] The issues covered in the Statement of Agreed Facts included:

- Youngblutt's employment period at the Coolangatta Police Station;
- Coolangatta Police Social Club activities including:
 - funding;
 - membership;
 - recreational activities for members outside of work hours; and
 - expenditure of funds including the organising of an annual Christmas Party.
- encouragement by Miller for Youngblutt to join the Social Club;
- Christmas Party - 2015:
 - Youngblutt's attendance;
 - party organised by Miller and Esgate;
 - funded by contributions of those who attended the party at the Twin Towns Resort;
 - Social Club members and partners attended free of charge;
 - a Police Station from the area covered the Coolangatta area to allow for attendance at the Christmas Party by officers stationed at the Coolangatta Police Station;
 - internal emails relating to the Christmas Party were sent out by Miller; and
 - recorded allegations of approaches by Diehm to Youngblutt at the Christmas Party where on multiple occasions he said words to the

- effect of wanting to have sexual intercourse with her and other questionable conduct;
- events after the party that included:
 - 15 December 2015 Youngblutt spoke to the District Duty Officer about what had occurred at the party;
 - Youngblutt's formal complaint to ESU;
 - after 12 December 2015 Youngblutt did not work with Diehm;
 - 17 December 2015 Youngblutt spoke to Lehmann;
 - 17 December 2015 Diehm worked from Burleigh Police Station;
 - 24 December 2015 Youngblutt was interviewed by ESC and informed the complaint would be the subject of a full investigation;
 - 6 January 2016 the complaint pursuant to the *Police Service Administration Act 1990* (Qld) was forwarded to the Crime and Corruption Commission;
 - 8 January 2016 Youngblutt diagnosed with a workers' related "Acute Stress Disorder";
 - 8 January 2016 QPS assigned an Industry Management Adviser to Youngblutt;
 - 29 February 2016 Youngblutt transferred to Broadbeach Police Station on a suitable duties plan; and
 - 31 March 2016 Youngblutt lodged an application for workers' compensation for a psychological injury caused by:
 - sexual harassment at the Christmas Party; and
 - workplace bullying and isolation suffered as a result of sexual harassment.

[150] Also contained within the Statement of Agreed Facts was a reference to a finding by the Deputy Commissioner that on or about 10 December 2015 at the Coolangatta and Tweed Heads Party, Diehm had sexually harassed Youngblutt with the investigation identifying that:

- on 10 December 2015, Constable Diehm attended the Coolangatta Police Station Christmas function at the Twin Towns Services Club;
- prior to and during the function, Constable Diehm consumed a number of alcoholic drinks;
- during the function, Constable Diehm approached the appellant and made a number of unwelcome comments including:
 - i *I'm going to fuck you;*
 - ii *Don't you want my big cock;*
 - iii. *I'm a 10 on the root scale;*
- during the function, Constable Diehm also put his arm around the appellant and attempted to kiss her; and
- during a shift at Coolangatta Station, before the Christmas Party, Constable Diehm indicated to someone that he was going to "hit" on the appellant.

[151] In terms of the Statement of Agreed Facts there were elements that were beneficial to the Commission regarding in particular the chronology of events that followed the Christmas Party held on 10 December 2015. There were also details relating to the consideration of Diehm's conduct on that date at the Christmas Party, by a Deputy Commissioner who was satisfied that the identified aspects of his behaviour had occurred however there was an absence of any reference relating to the legislative or policy arrangements that were utilised in determining a position around Diehm's conduct.

Medical Evidence

[152] The medical evidence in the proceedings was limited to three witnesses, all of whom were called by Youngblutt.

[153] The specialist evidence came in the form of Dr MacDonald, a Psychiatrist who opined that the main precipitant to Youngblutt's psychiatric condition had been the staff party, the perceived follow-up and comments of a sexual nature after the party. Dr MacDonald's predominant etiological assumption determined the "triggering factor" for the diagnosis had been the series of events at the Christmas Party.

[154] Dr Soden had been consulted by Youngblutt on 8 January 2016 when she presented somewhat distressed and concerned about events at the 2015 Christmas Party and recorded in her consultation notes that Youngblutt was:

- unable to face the workplace; and
- unable to face the Officer in Charge (Lehmann) as he is against her and supportive of the young boy.

[155] Dr Soden identified the stated cause of injury as "workplace sexual harassment" with the diagnosis being an acute stress disorder, acknowledging she lacked the expertise to make a full psychiatric diagnosis.

[156] The Clinical Psychologist (Huntress) opined that Youngblutt's symptoms had arisen from "no other trauma, other than reported events leading up to, during and following the workplace Christmas Party in December 2015".

[157] I am satisfied, based on the medical evidence presented in the proceedings, that Youngblutt suffered a personal injury in the form of a psychological injury that arose out of or in the course of events that occurred at the 2015 Coolangatta Police Station staff Christmas Party.

Stressor One

[158] **10 December 2015, Sexual Harassment Event. Nathan Diehm harassed the appellant (Youngblutt) for sex, tried to kiss the appellant repeatedly, told her and others that he was going to have sex with the appellant.**

[159] In the Statement of Agreed Facts it was recorded that the QPS investigation found that Diehm had engaged in the conduct as alleged by Youngblutt at the Christmas Party and as such it was not necessary for the Commission to determine whether the allegations had standing or otherwise in the decompensation of Youngblutt.

[160] The issue for determination is whether on the balance of probabilities the events relied upon by Youngblutt at the Christmas Party had arisen out of or in the course of employment. In effect, for a finding to be made as to whether the 2015 Christmas Party attendance had been as a result of inducement or encouragement by the QPS.

[161] There was significant evidence presented about the Social Club structure, role and responsibility for the organisation of the 2015 Christmas Party. In terms of undisputed evidence it is the case that:

- membership whilst voluntary, all staff with the possible exception of one at Coolangatta Police Station were members;
- generally staff paid \$7.50 per fortnight which was deducted from their wages by the QPS;
- Social Club provided milk, bread and biscuits for members in the workplace in addition to hosting send offs and an annual Christmas Party for members;
- the Social Club operated in the absence of involvement by the QPS except for directives regarding the non-consumption of alcohol on police premises;
- QPS allowed the Social Club to utilise the internal email system for purposes of contacting and advising members of a range of issues including the Christmas Party; and
- invitations to the Christmas Party were sent through the internal email system.

[162] Youngblutt gave evidence regarding the receipt of numerous emails about the 2015 Christmas Party and of having raised with Lehmann the option of not attending due to her wedding anniversary and of feeling pressured to attend because the work environment was not a good one and the failure to attend may have placed her job in jeopardy because Lehmann was "pretty ruthless" and had caused issues at the Coolangatta Station with a "nasty roster". Youngblutt evidenced that Lehmann had told her "it was time to build a bridge and get over it and put the past in the past".

[163] Lehmann in his evidence denied having made the comments alleged by Youngblutt in regard to the Christmas Party but conceded that issue had arisen out of a roster prepared by him in his first week as the Officer in Charge at Coolangatta Police Station. The roster

document had been stolen from his office and distributed to all officers at the station which he acknowledged had a negative impact on the morale at the station and had made his integration at the station "a bit rough" (T3-40). Lehmann believed that the Christmas Party presented an opportunity for the station to improve their morale but denied he had actually communicated his thoughts (T3-41).

[164] Baade in his evidence in response to a question about staff morale at the Coolangatta Police Station in 2015 stated "There were some issues at the Coolangatta Police Station during that period, yes" (T3-11). One of the issues related to a complaint against Lehmann for having put inappropriate names of people on a roster that had "some hurt" and impacted on the goodwill at the station. Baade also accepted that a successful Christmas Party would have been good for morale at the station.

[165] In respect of a preference for the competing evidence between Youngblutt and Lehmann and the need to attend the Christmas Party to "build bridges", I am inclined to accept Youngblutt's version because to some extent it had been corroborated by both Baade and Lehmann in that there were issues in play at Coolangatta at the time which were impacting negatively on staff morale. Further, I also have some questions over other aspects of Lehmann's evidence that enlivens concerns around the issue of credit where he evidenced firstly that at a meeting on 17 December 2015 with Youngblutt "she was very upbeat" and he got a very positive vibe from the meeting (T3-30). Secondly, he had sought Youngblutt out on 23 December 2015 to check on her wellbeing, stating that "again, she seemed quite upbeat". Both exchanges occurred in close proximity to the events of the Christmas Party (7 and 13 days respectively) where there is evidence before the proceedings that having been exposed to the unsavoury and unacceptable conduct of Diehm she was anything but "upbeat". Youngblutt had in fact been absent from work in this 13 day period due to the event.

[166] I accept that on the balance of probabilities Youngblutt had reasonably drawn the inference that Lehmann had wanted her to attend the Christmas Party and had attended at the encouragement of the Officer in Charge at the Station.

[167] The most critical factor of whether Youngblutt had been induced or encouraged by the QPS to attend the Christmas Party related to the longstanding practice in place whereby a police station would roster officers on duty to cover the shifts of another station to allow for attendance at the Christmas Party. This practice had the effect of rendering an entire police station off duty on a particular day, being the day of the Christmas Party.

[168] In the course of Baade's evidence the following exchange occurred:

Commissioner: It's my understanding, from the evidence that we've got before us, so far, that arrangements are put in place down on the Gold Coast to enable - by the Queensland Police Service, to enable, for example, Coolangatta officers to attend a party by allowing patrols or extra patrols, or patrols from either Palm Beach, or Broadbeach, to cover their area on that particular night?

Baade Yes, Commissioner, that's right. If Coolangatta has a Christmas party on, Palm Beach or Robina will put on an extra crew, and they will actually work in the Coolangatta for that night. It's only accepted for one night a year. And it's generally accepted across the Gold Coast that everyone does that.

Commissioner: So that facilitates, in a sense, that all police officers at Coolangatta were able to take the time off - those would've been normally rostered on, to go to the party?

Baade: That's correct, Commissioner.

Commissioner: You don't see that as an encouragement?

Baade: Yeah --- I --- it could be argued that it's an encouragement. It's also enables them, if they want to. But I'd say we never encourage people to go. But it was made available for them to go. (T3-9)

[169] Baade did accept that in undertaking this practice it enabled the staff to attend the Christmas Party and could also present a situation where an argument could be made that it was an encouragement.

[170] The Macquarie Dictionary (Fifth Edition) defines the term **enable** as:

to make able; give power, means etc.

[171] The Macquarie Dictionary (Fifth Edition) defines the term **encouragement** as:

to inspire with courage, spirit, or confidence; to stimulate by assistance, approval, etc.

[172] In terms of encouragement in the matter of *Comcare v Mather & Mitchell*¹⁶, Kiefel J held:

In my view, 'encouragement' is not to be taken as of narrow meaning and limited to some positive action and in specific terms which might lead the employee to undertake a particular activity or attend at a particular place.

To be said to have, expressly or impliedly, induced or encouraged an undertaking or presence at some location could refer to, by way of example only, requirements, suggestions, recognition of practices, **fostering of participation, or providing assistance and may include the exercise of discretion or choice on the part of the employee**. Further attempt at definition would be fruitless. In each case, the question will be whether the attendance at the place at which or the undertaking in which the employee is involved when injured in an interval falls within the ambit of statements, acts or conduct made by the employer and what may be said to logically arise from them. And in each case, importantly, they must be viewed in the background of the particular employment and the circumstances in which the employer is then placed.

[173] In this case the decision to facilitate staff attendance at the Christmas Party by having another station pickup the roster coverage for the night of the party would fit within the

¹⁶ *Comcare v Mather & Mitchell* (1995) 37 ALD 463, [22].

references to "fostering participation, or providing assistance" and "choice on the part of the employee" as identified in *Comcare v Mather and Mitchell*¹⁷ and thus formed an encouragement to attend the party. Baade accepted that the purpose of the arrangement was to allow staff to "go to the party".

[174] There was in my view a connection between the employment of Youngblutt and her attendance at the Social Club Christmas Party due to the QPS authorising the arrangement whereby an entire police station would cease to operate on the night of the party in question and officers from another station would assume responsibility for their area of coverage. This proposition is not inconsistent with the view in *Commonwealth of Australia v Lyon*¹⁸ where Deane J stated:

Injury in the course of employment means an injury is sustained while the worker is engaged in the work he or she is employed to do or in something which is concomitant of or reasonably incident to his employment to do that work (*Kavanagh v Commonwealth* (1960) 103 CLR 547 at 559; *Commonwealth v Oliver*, supra, at 358). The course of employment is a temporal concept and **it is unnecessary that there be any casual connection between the work which the employee employed to do and the injury which sustains** (*Kavanagh v Commonwealth*, supra, at 555, 570; *Commonwealth v Oliver*, supra, at 359, 362). **The scope of what is within it depends upon 'the sufficiency of the connection between the employment and the thing done by the employee' which 'cannot but remain a matter of degree, in which time, place and circumstances as well as practice, must be considered together with the conditions of employment'** (per Dixon J, *Whittingham v Commissioner of Railways (WA)* (1931) 46 CLR 22 at 29, and see generally *Stephen J Bill Williams Pty Ltd v Williams* [1972-73] ALR 303; 126 CLR at 158-9. (emphasis added)

[175] In consideration of the circumstances advanced by Youngblutt regarding her attendance at the 2015 Christmas Party, it is the case she felt pressured by the Officer in Charge of the station to attend the party for the purposes of "building bridges" and this had weighed heavily on her, as to not attend may have had the effect of placing her job in some form of jeopardy. Such a circumstance was not dissimilar in some respects with the comments of *Simon Blackwood v Cievo*¹⁹ where Martin J stated:

The test applied in determining whether employment was a significant contributing factor must be applied in a practical way. It is the 'exigencies' of employment which must be considered and, while that will ordinarily include the contractual terms of engagement, it will generally require an analysis of the circumstances surrounding the employment. In this case, Mr Cumbers was practically obligated to stay at the camp in order that he might be able to perform his work. The Deputy President found that the offer of accommodation was an inducement to enter into the arrangement. **It was, if not essential, a very sensible arrangement to enter into** given the shift cycle of 10 days on and four days off. (emphasis added)

[176] Whilst noting that Youngblutt herself had not been rostered to work on 10 December 2015, it was the overall actions of the QPS in arranging for another police station to cover all of the shifts for the evening of the party held on 10 December 2015 that had the effect of having enabled and encouraged employees of the QPS stationed at the Coolangatta

¹⁷ *Comcare v Mather & Mitchell* [1995] 37 ALD 463.

¹⁸ *Commonwealth of Australia v Lyon* (1979) 24 ALR 300.

¹⁹ *Simon Blackwood (Workers' Compensation Regulator) v Cievo Pty Ltd and Anor* [2016] ICQ 1, [24].

Police Station to attend the party and therefore was reasonably open for it to be found, subject to the requisite standard of proof, that the attendance of Youngblutt and others was as part of their employment.

[177] The Regulator in support of the argument that Youngblutt's attendance at the 2015 Christmas Party had not been relevant to the sustaining of a personal injury arising out of or in the course of her employment had relied upon various case law. On consideration of that case law against the particular circumstances of Youngblutt's situation, I have not been persuaded that such cases operate to prevent the finding the attendance at the party was in the course of the employment.

Stressors Two to Five

[178] The decision of the Commission to find that the 2015 Coolangatta Police Station Social Club Christmas Party had formed part of Youngblutt's employment, coupled with the concession by the Regulator accepting that she had sustained a personal injury arising out of or in the course of events at the Christmas Party, there is no requirement to address stressors two to five on the basis that the claim for compensation is now one for acceptance.

Finding

[179] On consideration of the evidence, material and submissions before the proceedings, I make the following findings:

- Youngblutt at all relevant times had been a "worker" pursuant to s 11 of the Act;
- Youngblutt had sustained a personal injury in the form of a psychological injury pursuant to s 32 of the Act; and
- Youngblutt's personal injury had arisen out of or in the course of her employment with the QPS with her employment being the major significant contributing factor to the injury.

[180] The appeal is upheld and the decision of the Regulator of 5 June 2017 is set aside. The claim for workers' compensation is one for acceptance.

[181] The Regulator is to pay the appellant's costs of and incidental to the appeal to be agreed or failing agreement to be the subject of a further application to the Commission.

[182] I so order.