Bulletin

Edited by Michelle Riordan

Independent Review Office

RECENT CASES

These case reviews are not intended to substitute for the headnotes or ratios of the cases. You are strongly encouraged to read the full decisions. Some decisions are linked to AustLii, where available.

Decisions reported in this issue

1. Somyaying v AAI Limited t/as GIO [2021] NSWSC 1466
2. Whelan v Stowe Australia Pty Ltd [2021] NSWPICPD 36
3. Yarrawonga & Border Golf Club Ltd v Williamson [2021] NSWPICPD 37
4. Group Marketing (AUST) Pty Ltd t/as Barberhouse Cafe v Workers Compensation Nominal Insurer [2021] NSWPICPD 39
5. Secretary, Department of Education v O'Sullivan [2021] NSWPICMP 211
6. Page v Workers Compensation Nominal Insurer [2021] NSWPIC 445
7. Moran v Remondis Australia Pty Limited [2021] NSWPIC 448

Supreme Court of NSW Decisions – Judicial Review

Failure to respond to a substantial and clearly articulated argument – Duty to provide reasons – Jurisdictional error – Error on the face of the record – Denial of procedural fairness – Decision of Review Panel set aside

Somyaying v AAI Limited t/as GIO [2021] NSWSC 1466 – Harrison AsJ – 15/11/2021

On 18/07/2016, the plaintiff injured his neck, lower back and shoulders in a MVA and the insurer admitted liability for the accident. On 21/07/2016, he attended his GP and complained of pain in the right side of his body, pain in the chest, ears, neck, left shoulder and left upper arm and on 22/07/2017, he complained of pain in his neck and lower back.

On 9/01/2017, the plaintiff underwent anterior discectomy and fusion at the C6/7 level and on 8/01/2018, he underwent an anterolateral fusion at the L4/5 level.

On 16/05/2018, the plaintiff filed an application to the MAS, which appointed a Medical Assessor (Dr Barnsley) to determine the degree of permanent impairment. On 19/12/2018, the Assessor issued a MAC finding that the injuries to the right shoulder and back were caused by the accident, but that the neck injury was not caused by it, and assessed 6% WPI (5% WPI for the lumbar spine & 1% WPI for the right shoulder).

The Plaintiff sought a review of the MAC and the matter was referred to a Medical Review Panel (MRP), but the MRP determined that the need for surgery to both the neck and back was not caused by the accident and that the accident caused only soft tissue injuries. It assessed 0% WPI.

The Plaintiff applied to the Supreme Court of NSW for judicial review of the MRP's decision, asserting a number of jurisdictional errors, errors on the face of the record and/or denial of procedural fairness. In the alternative, he argued that the MRP failed constructively failed to exercise its statutory power and failed to consider relevant evidence.

Harrison AsJ granted the plaintiff an extension of time to lodge the Summons.

Her Honour upheld ground (1) and stated that the MRP omitted from their decision the clinical diagnosis of cervical radicular symptoms reported by the treating neurosurgeon and also overlooked his clinical diagnosis with regards to the lumbar spine and why the surgery was necessary. She stated, relevantly:

130 As per *Wingfoot*, I accept that it is the function of the Review Panel to form their own opinion on the medical question referred for its opinion. However, by misconstruing and failing to acknowledge the clinical judgment of the plaintiff's treating neurologist, it is my view that the insurer failed to discharge its statutory duty by not engaging with a substantial and clearly articulated argument as to causation in the same manner articulated by Gleeson JA at [109] in *De Gelder*. The Review Panel has therefore made a jurisdictional error.

131 I accept that the Review Panel did provide reasons for why they disagreed with Dr Abraszko, who provided a second opinion supporting Dr Nair as to why the surgery to the lumbar spine was an appropriate cause of action. However, it cannot be denied that a decisive factor of this path of reasoning is the lack of contemporaneous complaints between November 2016 to March 2017 in which the Review Panel assert that the effects of the soft tissue injury ceased, and instead the longstanding spondylolisthesis took over and caused back symptoms.

132 As previously set out, in *Norrington* Brereton sets out (at [32]) a wealth of authorities that support the contention that while the presence or absence of a contemporaneous record of a complaint is relevant in this context, it must not be treated as conclusive of the question of causation, not least because it is possible that causation may exist without a documented contemporaneous complaint.

133 While I accept the insurer's argument that a multifaceted approach was used by the Review Panel in their reasoning, by failing to address the medical documentation from Dr Nair with regards to the radicular symptoms of both the cervical and lumbar spine, and then considering the absence of contemporaneous complaints for a period of four months as a conclusive factor in their path of reasoning, it is my view that the Review Panel erred on the face of the record and failed to provide procedural fairness to the plaintiff. Judicial ground (1) is successful.

Her Honour also upheld ground (3) and stated that the MRP was required to explain their actual path of reasoning in arriving upon their decision and, as per *Francica* at [18], it is essential to expose the reasoning on the point critical to the contest between the parties. By overlooking the clinical judgment of the treating neurosurgeon, the MRP failed to dispense the statutory obligation to provide adequate reasons.

Accordingly, her Honour set aside the MAC and remitted the matter to the President of the PIC for determination by a differently constituted MRP.

PIC - Presidential Decisions

Acceptance of evidence in the absence of cross-examination – alleged factual error

Whelan v Stowe Australia Pty Ltd [2021] NSWPICPD 36 – Deputy President Wood – 8/11/2021

On 24/05/2018, the appellant and a co-worker were locating and moving fibre optic cable and were required to lift a heavy steel road plate. He later claimed compensation for an alleged injury to his lumbar spine, but the respondent disputed the claim under ss 4, 4(b) and 9A *WCA* and ss 254 and 261 *WIMA*. The appellant filed an ARD and claimed weekly payments and s 60 expenses for a frank injury to his lumbar spine on 24/05/2018, or in the alternative as a result of lifting heavy objects and driving long distances on 23/01/2018 or 9/09/2019.

Arbitrator Haddock conducted an arbitration. On 5/03/2021, following the abolition of the WCC, the PIC issued a COD which determined that the appellant had not discharged his onus of proving that he suffered injury as alleged.

On appeal, the appellant asserted that the Member erred in law: (1) by failing to give weight to the evidence of Mr Kye Romeo; and (2) by failing to determine primary questions of fact.

Deputy President Wood determined the appeal on the papers.

Wood DP rejected ground (1). She noted that the appellant relied on the fact that Mr Romeo was not cross-examined and held that the Commission is not obliged to accept evidence that is not the subject of cross-examination if it is contradicted by a credible body of substantial evidence.

Wood DP found that Mr Romeo's statement was made approximately 12 months after the alleged injury and did not state that the appellant indicated that his symptoms were attributable to the incident on 24/05/2018. She referred to that lack of contemporaneity and to the lack of specificity in respect of the complaints of back pain and reviewed the contemporaneous complaints made to treatment providers, including the physiotherapist's record dated 17/07/2018, that the appellant now complained of back pain from driving.

The Member also referred to the entry in Dr Moloney's clinical notes on 19/07/2018, which recorded a history of back pain after driving, and to the entry in Dr Hay's notes on 2/08/2018, which recorded a 2-week history of lumbar pain caused by "*driving*". She found that she was "*better assisted*" by the contemporaneous medical evidence than Mr Romeo's evidence.

Wood DP noted that Mr Romeo's statement that the appellant lifted the heavy steel plate is not evidence that the lumbar symptoms arose from that event and while the Member did not reject that evidence, she found it of little assistance. This conclusion was open to the Member on the evidence and she did not overlook material facts or arrive at a view that was contrary to the preponderance of other evidence. As a result, she committed no error of fact or law.

Wood DP also rejected ground (2). She stated that it is abundantly clear from the Member's reasoning process as to why she concluded that the appellant had not satisfied her that he suffered an aggravation of his lumbar disease. The appellant did not explain why he found the Member's reasoning convoluted and confusing and the Member's reasoning provides a clear pathway upon which she reached her conclusion. In particular she stated:

> 141. The appellant asserts that it "appears" that the Member determined that the appellant's symptoms were caused by the long drive to the South Coast. The Member made no such determination. Her observation was that if the aggravation was a result of long driving, it was likely to have been because of the journey to the South Coast. Such an observation was not contrary to the evidence. In any event, the lack of sufficient evidence to establish that the cause of his symptoms was the purported driving conditions, including the telling lack of medical evidence to support the appellant's assertion, was sufficient to dispose of the appellant's claim of injury resulting from the nature and conditions of his employment.
>
> 142. The appellant does not point to any other "primary facts" that the Member was required to determine before reaching her ultimate conclusion. It follows that no error of fact or law is demonstrated, and this ground of appeal fails.

Accordingly, Wood DP confirmed the COD.

Work capacity – adequacy of reasons – whether Arbitrator failed to provide adequate reasons – Held that the Arbitrator provided adequate reasons

Yarrawonga & Border Golf Club Ltd v Williamson [2021] NSWPICPD 37 – Acting Deputy President Parker SC – 9/11/2021

The worker alleged that she suffered a psychological injury during the course of her employment between 10/05/2019 and 20/02/2020, as a result of lack of support, excessive workloads, unrealistic expectations, bullying and harassment. She claimed continuing weekly payments from 20/02/2020 and s 60 expenses. However, the appellant disputed the claim under ss 4, 9A, 33 and 60 *WCA*.

Arbitrator Perry determined the dispute and on 17/02/2021, he issued a COD, which awarded the worker continuing weekly payments from 20/02/2020 and s 60 expenses.

The appellant appealed and asserted that the Arbitrator failed to provide adequate reasons with respect to his conclusion regarding s 32A *WCA*.

Acting Deputy President Parker determined the appeal on the papers. He noted that appeal is focussed on 2 particular paragraphs of the SOR, but the appellant's submissions do not address or recognise the extent to which the Arbitrator's conclusions in particular paragraphs are supported by the analysis contained in other parts of the overall SOR.

Parker ADP stated that the Arbitrator expressly recognised the submissions of the appellant's counsel regarding the current work capacity issue, but found that the worker had no current work capacity after 20/02/2020 based on the clear evidence of Dr Takyar and Dr Aung. Further, at para [98] he: (a) referred to the appellant's submission concerning the worker's work experience, education and history and explained why he did not accept the submission, namely because he the accepted medical evidence that she has no [current work capacity]; (b) provided additional reasons in paras [99] and [100]; and (c) directed the parties' attention to the opinions of Drs Takyar and Aung.

All of the medical evidence that the Arbitrator accepted was to the effect that the worker had a present inability arising from the injury such that she was not able to return to work in either her pre-injury employment or in suitable employment. The only matters relevant to "*suitable employment*" with which the Arbitrator was concerned were those relevant to a determination of the issues presented by (a)(i) and (ii) and (b)(i) to (iv) of the definition in s 32A *WCA*.

Parker ADP found that para [101] in combination with the other paragraphs of the reasons generally and the medical evidence in particular, provide an adequate explanation for the Arbitrator's finding that notwithstanding the respondent's age, education, skills and work experience, it was more probable than not that the worker had no current work capacity. He found that more fulsome reasons were not required because the reasons were adequate to explicate the reasoning process so as to provide the appellant with an understanding of why it did not succeed and were sufficient to allow for appellate review.

Accordingly, Parker ADP confirmed the COD.

Dismissal of proceedings – s 54 of the PIC Act 2020 – r 77(a) of the PIC Rules 2021 – procedural requirements for an appeal under s 352 WIMA – deficient appeal application – non-compliance with Delegate's direction – appellant not taking steps to prosecute its case –appeal dismissed

Group Marketing (AUST) Pty Ltd t/as Barberhouse Cafe v Workers Compensation Nominal Insurer [2021] NSWPICPD 39 – President Phillips DCJ – 10/11/2021

The appellant appealed against ***Member McDonald's*** determination of a miscellaneous application brought by an uninsured employer under s 145(3) *WCA*.

On 22/02/2021, the first respondent issued a Notice to the appellant under s 145(1) *WCA*, seeking reimbursement of $57,237.30, being compensation paid to the injured worker (the second respondent) as a result of an injury on 12/12/2019. There was no dispute that the appellant employed the second respondent on a work trial and that it was uninsured at the time.

The appellant was not legally represented in the proceedings. During a teleconference on 4/05/2021, Mr Francis (Director/operations) appeared for the appellant, and he stated that he wished to obtain and file further evidence. However, he did not file any further evidence. The matter was listed for conciliation and arbitration on 20/07/2021, but on the evening of 19/07/2021, he sought an adjournment, which was opposed. The Member ultimately refused the application and the matter proceeded. The Member informed the parties that the application was dismissed and on 21/07/2021, she issued a COD which confirmed the ex tempore orders.

On 16/08/2021, Mr Francis lodged an Application to appeal against the COD and attached a covering letter (bearing that date) and a copy of the s 145(1) Notice. The covering letter indicated that the appellant wished to present new evidence, including witness statements and "*previous work history (investigating)*" and stated that this was not able to be presented before the Member because certain details were not obtained and the witnesses could not be reached. He also argued that he required time to submit this evidence after the lockdown arising from the COVID-19 pandemic.

On 17/08/2012, the President's delegate issued a direction, setting out the deficiencies of the Appeal, which did not comply with Procedural Direction WC3, and noting that it did not include or attach: (a) the grounds for and the arguments in support of the grounds for the appeal and, if necessary, arguments in support of leave to appeal an interlocutory decision; (b) submissions, for the purposes of s 352(3) *WIMA*, regarding the amount of compensation alleged to be at issue on the appeal; (c) submissions with respect to the fresh, or additional evidence on which the appellant seeks to rely,

including: (i) a schedule of the fresh, additional or substituted evidence; (ii) a copy of the fresh, additional or substituted evidence; (iii) a brief outline of the fresh, additional or substituted evidence; (iv) the reasons why the fresh, additional or substituted evidence was not in the proceedings before the member, and (v) submissions on why the fresh, additional or substituted evidence should be admitted or rejected on appeal; (d) an objective chronology of the key events leading up to the commencement of the proceedings, which is not limited to matters that assist the party preparing it; (e) a copy of the Certificate of Determination issued by Member McDonald dated 21/07/2021, and (f) a list of authorities. The appellant was directed to lodge an Amended Application by 15/10/2021.

However, the appellant did not lodge an Amended Application or any further correspondence in the matter. On 15/10/2021, the PIC sent an email to Mr Francis as follows:

> We refer to the above matter and telephone discussion earlier today.
>
> The Commission notes that the President's Direction of 17 August 2021 (copy attached) directed that the appellant lodge with the Commission an amended Application – Appeal Against Decision of Member by 15 October 2021, which the Commission has not received.
>
> As per the telephone conversation, the Commission notes that if you seek additional time to lodge a complying amended appeal, the appellant needs to make an application in writing by email seeking an extension of time.
>
> It is also noted that you mentioned that you have instructed Colin Daley Quinn solicitors to represent you in this matter. The Commission also requests that you provide your legal representatives' contact details.

Neither the appellant nor his solicitors responded and on 25/10/2021, the first respondent's solicitors sent an email to the PIC and Mr Francis, which asked whether the PIC would now reject the appeal so that the matter could be finalised. Mr Francis did not respond or communicate with the PIC.

On 27/10/2021, the President's delegate sent a further direction and stated that the PIC would consider dismissing the appeal under s 54 of the *PIC Act* and/or r 77 of *the PIC Rules* unless the appellant lodged by 5/11/2021, an amended appeal application and submissions explaining why the previous direction was not complied with and showing cause as to why the appeal should not be dismissed. However, the appellant did not comply with this direction.

President Phillips DCJ determined the matter on the papers. He held that the way in which the appeal has been conducted falls within the realm of s 54 of *the PIC Act* and r 77(a) of *the PIC Rules*. He stated that despite being afforded multiple opportunities, the appellant has still not lodged an amended appeal application or provided reasons for non-compliance with the directions, and in the absence of any explanation he found that the appellant has abandoned the appeal. Therefore, s 54(a) of *the PIC Act* was satisfied.

His Honour found that s 54(b) of *the PIC Act* was satisfied because the appeal is lacking in substance, essentially because there no grounds of appeal are enunciated and there are no submissions in support of any grounds. As presently framed, there is no discernible allegation of error of fact, law or discretion by the Member, as required by s 352 *WIMA, the PIC Rules* and Procedural Direction WC3. He therefore held that the appeal has been abandoned and/or in the alternative the appellant failed to prosecute the proceedings with due dispatch and are lacking in substance and he dismissed it.

PIC – Medical Appeal Panel Decisions

Psychological injury – Pre-existing psychological condition – Finding that pre-existing condition has not contributed to the level of permanent impairment was available on the evidence – MAC confirmed

Secretary, Department of Education v O'Sullivan [2021] NSWPICMP 211 – Member Peacock, Dr J Parmegiani & Dr D Andrews – 8/11/2021

The worker alleged that he suffered a psychological injury on 4/07/2017 (deemed date). He claimed compensation under s 66 *WCA*.

The dispute was referred to Dr P Morris for assessment and on 12/07/2021, he issued a MAC, which diagnosed Major Depressive Disorder with anxious distress and assessed 22% WPI. He also determined that there was no deductible under s 323 *WIMA*.

The appellant appealed against the MAC under ss 327(3)(c) and (d) *WIMA* and asserted that the MA erred by not applying a deductible under s 323 *WIMA*. In particular, it asserted that the MA failed to refer to the worker's long prior history of depression and that he failed to consider all relevant and significant evidence.

The MAP noted that the MA considered all of the medical evidence, including an opinion from Dr Lotz in 2019 and 2020, that the worker suffered Bipolar Affective Disorder and Major Depressive Disorder. However, the MA stated that he did not diagnose Bipolar Affective Disorder as the only times that the worker has had episodes of elevated mood was in response to anti-depressant treatment and the episodes stopped as soon as the treatment was withdrawn. He expressed the worker that the worker did not have a pre-existing psychiatric condition and therefore he did not apply a deductible.

The MAP stated, relevantly:

> 24. The MA has very clearly explained why he does not consider that the worker had a persistent psychological condition that pre-existed the work injury and contributed to the level of permanent impairment assessed as a result of the work injury. On a review of all of the evidence, the Appeal Panel can discern no error in the MA's reasoning

Accordingly, the MAP confirmed the MAC.

PIC – Member Decisions

Workers Compensation

Section 9AA WCA - Worker not entitled to benefits under WCA merely by being injured while working in NSW - Worker failed to establish that she usually works or is usually based in NSW in her employment with the first respondent – First respondent's principal place of business was in Queensland

Page v Workers Compensation Nominal Insurer [2021] NSWPIC 445 – Member Isaksen – 4/11/2021

On 24/06/2021, the applicant alleged injuries to her lower back and shoulders due to heavy liftin g of equipment and suitcases while employed by the first respondent as a sales person. She also alleged that she suffered a psychological injury as a result of being required to reach unrealistic targets with little or no support and by bullying and harassment by officers of the respondent. She claimed continuing weekly payments from 5/07/2021 and s 60 expenses and asserted an entitlement to compensation because her injuries occurred whilst working in NSW or her employment was connected to NSW.

The first respondent's registered office is in Queensland and it holds a workers compensation policy in that state.

The applicant also claimed compensation against the Nominal Insurer on the basis that the first respondent was uninsured in NSW. However, the second respondent disputed the claim and asserted, inter alia, that the employment with the first respondent is not connected with NSW as required by s 9AA *WCA*.

Member Isaksen identified the issues for determination as being: (1) whether the applicant's employment is connected with the state of NSW, so as to allow the payment of compensation to her under s 9AA *WCA;* and (2) whether the applicant is entitled to workers compensation benefits under *WCA* because she sustained injury while working in the state of NSW.

The Member noted that in *Martin v R J Hibbens Pty Ltd* [2010] NSWWCCPD 83 (*Martin*), Roche DP provided an overview of the application of s 9AA *WCA* as follows:

> (a) regard should always be had to the terms of the contract of employment;
>
> (b) "*usually works*" means the place where the worker habitually or customarily works, or where he or she works in a regular manner (*Hanns* at [26]). It does not mean the place where the worker works for the majority of time (*Knight* at [76]) and is not simply a mathematical exercise (Falls at [43]), though the time worked in a particular location will naturally be relevant. It will also be relevant to look at where the worker is contracted to work (*Falls*). Regard must be had to the worker's work history with the employer and the parties' intentions, but "temporary arrangements" for not longer than six months within a longer or indefinite period of employment are to be ignored. Whether an arrangement is a "*temporary arrangement*" will depend on the parties' intentions, which will be ascertained by looking at the worker's work history and the terms of the contract. A short-term contract of less than six months that is not part of a longer or indefinite period of employment will not usually be a "*temporary arrangement*" (*Knight*);
>
> (c) "*usually based*" can include a camp site or accommodation provided by an employer (*Knigh*t at [83]). Where a worker is usually based may coincide with the place where the worker usually works, but that need not necessarily be so. In considering where a worker is "*usually based*", regard may be had to the following factors, though no one factor will be decisive: the work location in the contract of employment, the location the worker routinely attends during the term of employment to receive directions or collect materials or equipment, the location where the worker reports in relation to the work, the location from where the worker's wages are paid, and
>
> (d) an employer's "*principal place of business*" is the most important or main place where it conducts the main part or majority of its business (*Knight* at [66]). It will not necessarily be the same as its principal place of business registered with ASIC.

The appellant argued that s 9AA *WCA* is not intended to cover the current factual scenario and that the section is used where a worker's contract of employment is from NSW but the worker is injured outside NSW, and it is sufficient for her to have sustained an injury in NSW.

However, the Member rejected this argument because s 9AA(1) states that compensation is only payable when the employment is connected with the state of NSW. It is therefore mandatory for a worker seeking benefits under the *WCA* to establish that their employment is connected with NSW and s 9AA(3) sets out how to determine this. This was confirmed by Roche DP in *Workers Compensation Nominal Insurer v O'Donohue* [2014] NSWCCPD 1 (*O'Donohue*) when he said at [48]:

> To determine whether the employment is connected with New South Wales, sub-s (3) of s 9AA provides a series of cascading tests.

Roche DP does did not preface that remark by stating that s 9AA is some exceptional provision that only applies when a worker sustains an injury outside of NSW. Section 9AA is an exclusive provision which provides that compensation under the *WCA* is only payable in respect of employment that is connected to the state of NSW, and then provides "*a series of cascading tests*" to determine if the employment is connected with NSW. That is also consistent with the legislative purpose of s 9AA, which was summarised by DP Roche in *Martin* at [39-41]:

> 39. The *Workers Compensation Legislation Amendment Act 2002* introduced section 9AA into *the 1987 Act*. It applies to all applications from 1 January 2006. The Parliamentary Secretary, the Hon Ian MacDonald, stated in the second reading speech in the New South Wales Legislative Council on 4 December 2002, that the purpose of the amendment was to "*eliminate the need for*

employers to obtain workers compensation coverage for a worker in more than one jurisdiction". The principles were intended to ensure that workers:

> working temporarily in another jurisdiction will only have access to the workers compensation entitlements – and common law benefits – available in their home State or 'State of Connection' and to provide certainty for workers about their workers compensation entitlements and ensure that each worker is connected to one jurisdiction or another.

40. This would remove the need for employers to have two workers compensation policies for "*employees working temporarily for up to six months*" in another State.

41. With this intention in mind, other States and the Territories introduced similar legislation to section 9AA, as follows: …

The Member held that it would defeat the legislative purpose of s 9AA *WCA* if the applicant were to receive workers compensation benefits under that Act merely because she was injured while working in NSW.

In the alternative, the applicant argued that she does meet the criteria of s 9AA(3)(a) as she usually works in her employment with the first respondent in NSW. However, the Member held that s 9AA(3)(a) in isolation does not assist the applicant in this dispute. In *Martin*, Roche DP referred with approval to the decision of Gray J of the Australian Capital Territory Supreme Court in *Hanns v Greyhound Pioneer Australia Ltd* [2006] ACTSC 5 (*Hanns*), who considered the term "*usually carries out the work of the employment concerned*" in section 7A (repealed) of the *(ACT) Workers Compensation Act 1951* to be where the worker habitually or customarily works, or where the worker works in a regular manner.

The Member held that the available evidence does not support an argument that the applicant habitually or customarily works in NSW, rather that she worked no more than 6 days in NSW within the 4 months she worked for the first respondent, and she worked more days in each of the states of Queensland and Victoria, and the Australian Capital Territory, than she did in NSW. Accordingly, he was not satisfied that a finding can be made that the applicant usually works in her employment with the first respondent in NSW. He stated:

> 93. As with the '*usually works*' test, there is evidence which could support a finding that the applicant is usually based in Queensland or Victoria for the purposes of her employment with the first respondent. However, it is not necessary for such a finding to me made. Having been satisfied that the applicant's employment is not usually based in New South Wales, the next and final test in section 9AA (3) is to look for the State '*in which the employer's principal place of business in Australia is located*'.
>
> 94. In *O'Donohue*, DP Roche referred to a decision of Commissioner Herron in the District Court of Western Australia in *Tamboritha Consultants Pty Ltd v Knight* [2008] WADC 78 (Knight), and said at [78]:
>
> > Accepting the reasoning in *Knight*, I said in *Martin* that an employer's principal place of business is not necessarily the same as its principal place of business registered with the Australian Securities and Investment Commission under the Corporations Act 2001. I also agreed with *Knight* that principal place of business means '*chief, most important or main place of business from where the employer conducts most or the chief part of its business*' (*Martin* at [56]).
>
> 95. The evidence supports a finding that the first respondent's principal place of business is in the state of Queensland. Mr Brejnev states that the registered office and principal place of business of the first respondent is and always has been at his residence at 12 Knightsbridge Parade, West Paradise Point, Queensland. There is no evidence which disputes this.

Accordingly, the Member entered an award for the first and second respondents.

Psychological injury wholly and predominantly caused by transfer - Applicant's expert's opinion not established as assumptions not proven - Applicant's credit in question - Award for the respondent entered.

Moran v Remondis Australia Pty Limited [2021] NSWPIC 448 – Member Wynyard – 10/11/2021

The worker alleged that she suffered a psychiatric injury on 31/03/2021 (deemed date). She alleged that since November 2019, she was employed by the respondent as Liquids Development Manager at its St Marys premised, but in March 2020, during the COVID-19 pandemic, she was demoted and put back into an administrative role and this made her feel upset and angry and she suffered anxiety and high blood pressure.

In November 2020, the appellant "*moved*" to the role of liquids Business Development Manager, reporting to the State Sales Manager for NSW and the ACT and she resumed her sales role on 23/11/2020, but her contract was not changed and she was not paid any extra income. She said that she was constantly asking to change her contract to review her salary and she was not provided a company car, phone or laptop that would normally have been afforded to her and that she "*was always asking*" the State Sales Manager to address these issues.

On 22/02/2021, the worker met with the State Sales Manager and asked about her contract and employment terms. She was told that she had been placed in her role on a temporary basis only and that she would resume her administrative role. She ceased work on 1/07/2020 and claimed weekly payments, but the respondent disputed the claim.

Member Wynyard identified the issues in dispute as being: (1) whether the injury was wholly or predominantly caused by the actions of the respondent with respect to transfer and/or the provision of employment benefits; and (2) if so, were the respondent's actions reasonable.

The respondent argued that the worker was simply offered a transfer back to her administrative finance role when Management decided to close down the liquid sales area on 31/03/2021. The transfer upset her and appeared to be the major cause of her psychological condition and consequent incapacity. It noted that the worker stated that if she had been given a wage increase, a motor vehicle, a mobile phone and a laptop computer, she would still be happily working in sales and that this scenario fitted into s 11A *WCA* and the transfer could not be seen as a demotion.

However, the worker argued that she had been demoted on 31/03/2021 and that the respondent had not discharged its onus of proving that its actions were reasonable.

After discussing the evidence and relevant case law in detail, the Member found that he was satisfied that the respondent was fair in the actions it took to transfer the worker. He also found that the worker has current work capacity and that in appropriate employment, she would be able to earn the equivalent of her salary with the respondent.

Accordingly the Member entered an award for the respondent.