CITATION:	*Slade v CGH Group Pty Ltd* [2026] NTSC 53
PARTIES:	SLADE, Lance James v CGH GROUP PTY LTD trading as CORESTAFF (ABN 72 122 760 427)
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2025-02003-SC
DELIVERED:	1 July 2026
HEARING DATE:	1 December 2025
JUDGMENT OF:	Grant CJ

CATCHWORDS:

WORKERS COMPENSATION – Entitlement to and liability for compensation

Whether Work Health Court fell into error of law by finding injury caused by workplace bullying and harassment – Finding in error because incidents of bullying and harassment alleged by worker did not occur – Whether Work Health Court fell into error by finding injury caused by perception of radioactive contamination – Matter adequately pleaded and evidence upon which finding could be made – Whether Work Health Court failed to frame orders in relation to normal weekly earnings, interest and medical expenses with necessary precision – Relevant and necessary findings not made by Work Health Court – Terms of orders inadequate – Normal weekly earnings, interest and medical expenses remitted to Work Health Court for determination in accordance with law

Return to Work Act 1986 (NT) s 4

Attorney-General for the State of New South Wales v X (2000) 49 NSWLR 653, *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389, *Federal Broom Co Pty Ltd v Semlitch* (1964) 110 CLR 626, *Haritos v Federal Commissioner of Taxation* (2015) 233 FCR 315, *Horne v Sedco Forex Australia Pty Ltd* (1992) 106 FLR 373, *Hunt v Collins Radio Constructions Inc* (unreported, NTSC, 3 December 1996), *Ju Ju Nominees Pty Ltd v Carmichael* (1999) 9 NTLR 1, *Kurniawan v Gifkins* [2025] NTSC 70, *Lee v Macmahon Contractors Pty Ltd* [2018] NTCA 7, *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705, *Maurici v Chief Commissioner of State Revenue* (2003) 212 CLR 111, *Nicolia v Commissioner of Railways (NSW)* (1970) 45 ALJR 465, *Orr v Cobar Management Pty Limited* [2020] NSWCCA 220, *Re John Kirkpatrick v Commonwealth of Australia* [1985] FCA 440, *State Transit Authority of New South Wales v Fritzi Chemler* [2007] NSWCA 249, *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439, *Wiegand v Comcare Australia* [2002] FCA 1464, *Wilson v Lowery* (1993) 4 NTLR 79, referred to.

CIVIL PROCEDURE – Pleadings – Amendment – Late application for amendment

Whether Work Health Court fell into error by refusing worker's application to reinstate claim for physical injuries – No error – Appeal dismissed

Aon Risk Services Australia Limited v Australian National University (2009) 239 CLR 175, *House v The King* (1936) 55 CLR 499, referred to.

REPRESENTATION:

Counsel:	
Appellant/Cross-Respondent:	In person
Respondent/Cross-Appellant:	D McConnel SC
Solicitors:	
Appellant/Cross-Respondent:	Self-represented
Respondent/Cross-Appellant:	HWLE Lawyers

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Slade v CGH Group Pty Ltd [2026] NTSC 53
No. 2025-02003-SC

BETWEEN:

LANCE JAMES SLADE
Appellant/Cross-Respondent

AND:

CGH GROUP PTY LTD trading as CORESTAFF (ABN 72 122 760 427)
Respondent/Cross-Appellant

CORAM: GRANT CJ

REASONS FOR JUDGMENT
(Delivered 1 July 2026)

[1] This is an appeal by the appellant/cross-respondent (**the worker**), and a subsequent cross-appeal by respondent/cross-appellant (**the employer**), from a decision of the Work Health Court delivered on 6 June 2025. That decision found that the worker had suffered a mental injury arising in or out of his employment, and that the employer was to pay the worker compensation for total incapacity from 20 October 2021, interest and reasonable medical and rehabilitation expenses.[1]

1 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3.

Brief factual background

[2] The employer is a labour hire firm. The employer's business included providing contract labour for closure and rehabilitation works being carried out at the Ranger Uranium Mine in Jabiru.

[3] In August 2021, the worker registered with the employer for employment as a heavy machinery operator.

[4] In September 2021, the worker commenced working at the Ranger Uranium Mine for the employer. That employment involved working at the Energy Resources of Australia (**ERA**) site as a machinery operator removing contaminated mud from the mine's former tailings dam.

[5] The worker worked a 14-day shift between 29 September and 12 October 2021 before having seven days off. On 20 October 2021, the worker returned to the site and immediately presented to the ERA clinic and reported symptoms which he claimed were the result of exposure to radioactive material the week before when cleaning tailings mud from vehicles referred to during the course of the trial variously as 'water trucks' or 'water carts'. The worker was directed to return to Darwin to seek medical attention. On arrival in Darwin, he attended at the Royal Darwin Hospital.

[6] On 21 October 2021, the worker commenced a worker's compensation claim and went to see his general practitioner. The worker did not return to his employment with the employer.

[7] The worker's initial claim for compensation was for physical injury arising from the exposure to radioactive material at the mine site. No claim was made at that time for workplace bullying or harassment or mental injury. That claim for compensation was rejected by the employer.

[8] At a later time, the worker made a second claim for compensation for mental injury arising out of being bullied and harassed at the mine site. The second claim for compensation was also rejected by the employer.

[9] The worker subsequently commenced two separate proceedings in the Work Health Court in relation to each of those claims. Those proceedings were consolidated.

The decision of the Work Health Court

[10] The consolidated proceeding comprised a claim for physical injuries, including dermatitis and neuropathic injury, and for a mental injury caused by incidents in the workplace which he sought to characterise largely as bullying and harassment, but which also incorporated the allegation of contamination. As stated, the incident central to the worker's claim of contamination was that on 12 October 2021 he was required to clean three vehicles which were covered by mud from the tailings dam. As described above, his initial claim was that he suffered a neurological injury from radiation poisoning, including a rash, 'pins and needles' and numbness, as a result of that exposure.

[11] The worker was legally represented during the hearing of evidence in the trial of his claim before the Work Health Court. Shortly before the hearing commenced, the worker, through his legal representatives, withdrew the claim in relation to the physical injuries and proceeded solely on the basis of a mental injury arising out of or in a course of his employment. However, the worker withdrew instructions and dismissed his legal representatives after the evidence had been heard at trial but before closing submissions were made. Counsel who had represented the worker during the hearing filed written submissions in closing as *amicus curiae* which were directed to the case which had been run and the evidence which had been received during the trial. During the oral submissions in which the worker represented himself, he sought to reinstate the claim for physical injuries after all the evidence was received. That application was refused.

[12] The Work Health Court was unable to find, and did not find, that the worker had suffered any physical injury on 11 or 12 October 2021. In addition, the Work Health Court made the following adverse findings in relation to the reliability of the worker's evidence.

(a) The trial court did not accept the worker's evidence that he had rung his general practitioner in Darwin on 4 October 2021 to make an appointment related to bullying in the workplace.

(b) The trial court found that the worker had fabricated his complaint that the employer did not provide him with personal protective equipment (**PPE**) in an attempt to advance his case.

(c) The trial court rejected the worker's evidence that he was not given enough time to shower after the shift during which he cleaned the vehicles, and found that the objective evidence showed that he had more than two hours to do so and that he was in fact directed to do so.

(d) The trial court rejected the worker's evidence that a truck had rolled over on the mine site and the occurrence had been suppressed, and found that the incident had in fact been the subject of occupational health and safety seminar at the site.

(e) The trial court rejected the worker's evidence that at some time between 13 and 19 October 2021 he saw a doctor following the incident, and found that during that period the worker did not seek any medical treatment or assessment in relation to any alleged injury.

(f) The trial court rejected the worker's evidence that the employer had not provided him with any medical assistance.

(g) The trial court rejected the worker's evidence that the medical clinic records were inaccurate due to an attempt by the employer to cover up his physical symptoms on the basis that his account was inconsistent with the objective and contemporaneous documentary evidence.

(h) The trial court rejected the worker's allegation that his supervisor refused to sign his pay sheets in a timely fashion.

(i) The trial court rejected the worker's evidence that another worker had threatened to report him for sexual harassment.

(j) The trial court rejected the worker's evidence that other workers engaged in 'metal on metal' incidents with heavy machinery and dropped loads of mud and clay into trucks from excessive heights.

(k) The trial court rejected the worker's allegation that there was an ongoing campaign by his supervisors and other workers to restrict his break times.

(l) The trial court did not accept the worker's allegations that another worker made criticisms of him over the open radio system.

(m) The trial court rejected the worker's evidence that his principal supervisor had told him to 'piss off' or 'fuck off' if he didn't like cleaning the vehicles or driving the type of vehicle to which he had been allocated.

(n) The trial court found that the worker had fabricated an allegation that the Chief Executive Officer of the Work Health Authority had resigned because he had wrongly issued a trespass notice to the worker to prevent him protesting outside the offices of the Authority.

[13] Based on those matters, the trial court stated:

> I find the Worker to be a generally unreliable witness, and I didn't believe much of his evidence unless it was supported by common sense, other witnesses, or contemporaneous documents.[2]

[14] The psychiatric evidence before the trial court was that the worker had a 'strong' personality, and perhaps a personality disorder. On that basis, the trial court purported to find that 'these traits affected the Worker's ability to dispassionately assess and recall events accurately'.[3] Further, the trial court purported to find that 'the Worker's general presentation during his evidence and in his conduct during and after the proceedings was consistent with having a mental injury of some kind'.[4]

[15] The Work Health Court made a number of findings in relation to the worker's allegations of harassment and bullying in the workplace. As already described above, the trial court rejected the worker's allegations that his supervisor would not sign his pay sheets on time leading to a delay in payment of his salary; that another worker had threatened to report him for sexual harassment; that other workers engaged in 'metal on metal' incidents with heavy machinery or

2 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [28].

3 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [26].

4 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [27].

dropped loads of mud and clay into trucks from excessive heights; that there was an ongoing campaign to restrict his break times; that another worker would make criticisms of him over the open radio system; and that his principal supervisor had told him to 'piss off' or 'fuck off' if he didn't like cleaning the vehicles or driving the type of truck to which he had been allocated.

[16] The Work Health Court made the following further findings in relation to the worker's allegations of harassment and bullying.

(a) A co-worker used the open radio system to direct the worker to move his truck into a better position for loading in a manner which did not constitute harassment, but it made the worker feel inadequate and believe that he was being bullied and harassed.

(b) The worker's principal supervisor did not bully or harass the worker, but had a direct and abrupt manner which made the worker feel that he was being bullied and harassed.

[17] Although the trial court was not satisfied that the majority of the events and occurrences alleged by the worker had in fact taken place, and although the court found positively that there was no behaviour in the workplace which constituted bullying or harassment, the court found that 'the Worker honestly felt harassed'.[5] The two events which the Work Health Court found had taken place to cause this honest feeling

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5 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [67].

of harassment were the principal supervisor's direct and abrupt manner and the radio directions given to the worker to move his truck into a better position for loading. The Work Health Court found that the only other event pleaded which contributed to the worker's feelings of harassment and anxiety was his belief that he suffered from a physical injury arising from the cleaning of the vehicles on 11 October 2021.

[18] Against that background, the Work Health Court accepted that the worker's failure to seek medical treatment in the period between 11 October 2021, when he said the symptoms first presented, and 20 October 2021, when he attended at the ERA clinic, told against any finding that he genuinely believed he had suffered a physical or mental injury on 11 October 2021, or that he had been the subject of bullying and harassment in the workplace.

[19] However, the trial court accepted that when the worker did attend at the ERA clinic on 20 October 2021 he complained of 'pins and needles', a rash and numbness, although the court rejected the worker's evidence that he had been prevented from seeing the general practitioner on duty at that time. The worker then attended at the Royal Darwin Hospital on the afternoon of 20 October 2021 complaining of radiation exposure, itchiness and aching in his hands. He was observed at that time to have 'high levels of anxiety' over the purported uranium exposure and 'mild paranoia'. Staff at the hospital recommended that the worker attend his general practitioner to enable a psychological

assessment to be arranged. The worker attended at his general practitioner on 21 October 2021, which was the following day. At that time, the worker first complained to his general practitioner about bullying and harassment at work. That complaint was made before the employer rejected the worker's claim for physical injury on 2 November 2021. The general practitioner diagnosed a hypertension secondary to a generalised anxiety disorder which the worker sought to attribute to workplace harassment.

[20] The Work Health Court accepted that the worker was suffering from symptoms of a mental injury on and from 20 October 2021, and stated:

> I find it unlikely that he planned and commenced a fraudulent campaign to feign a work injury. I find the Worker had fragile mental health at the commencement of employment, such that the benign events that he thought were harassment (direct language and radio calls), coupled with the belief that he suffered a physical injury, caused his mental health to deteriorate.
>
> I find it unlikely that he was malingering in October 2021 in that I do not accept the Employer's case that the presentation was one for secondary gain where he was seeking attention, affection, treatment, or sympathy.[6]

[21] The mental injury pleaded by the worker was major depressive disorder, adjustment disorder, substance use disorder and/or post-traumatic stress disorder. The Work Health Court then went on to consider the expert medical opinion. Evidence had been received from the worker's treating general practitioner, the worker's treating psychologist and three psychiatrists who had been engaged to provide

6 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [55]-[56].

opinion for the purpose of the proceeding. It is of significance that all those witnesses, with the exception of the psychiatrist engaged by the employer, accepted that the events described by the worker had in fact taken place. Their diagnoses of some form of mental injury arising out of or in the course of the employment were predicated on that factual substratum.

[22] So far as the opinion expressed by the psychiatrist engaged by the employer was concerned, he considered that the worker had an adjustment disorder attributable to factors unrelated to his employment with the employer, including a recent divorce, a move to the Northern Territory and alcohol abuse. The Work Health Court formed the 'impression' that the psychiatrist was unfavourably disposed to the worker because the worker had made a complaint about him. The Work Health Court found that the psychiatrist's impartiality was affected because 'he appeared to disbelieve everything the Worker said'. There is a certain irony in that finding given the adverse findings made by the Work Health Court in relation to the reliability and credibility of the worker's accounts about events he claimed to have occurred in the workplace.

[23] The Work Health Court ultimately preferred the opinion of one of the psychiatrists who had been engaged by the worker's legal representatives. That opinion was to the effect that the worker had not been suffering from a mental injury prior to his employment with the

employer, despite having what the psychiatrist described as a 'strong personality' and a past claim for mental injury. That psychiatrist considered that the psychiatric injury had two causes. The first was the bullying and harassment experienced by the worker in the workplace. The 'second and more substantial' cause was described as the worker being 'made, with the threat of losing his employment, to clean the underside of a water truck which had come from working at the uranium mine, leaving [the worker] fearful of contamination'. On the basis of that opinion, the Work Health Court accepted that the worker had suffered a mental injury arising from his employment, and that he had been totally incapacitated as a result from 20 October 2021.

[24] Finally, the Work Health Court dealt with the worker's service of a summons on ERA and an application to tender further evidence.

[25] After the worker had terminated his legal representation, he complained about the adequacy of ERA's compliance with a summons to produce documents which had previously issued. No complaint had been made about compliance by the worker's former legal representatives. The trial court gave leave for the service of a second summons. ERA responded that further searches had been undertaken and no additional documents had been located, and the court was satisfied that ERA had discharged its obligation under the summons.

[26] In February 2025, which was some months after the evidence had been received and closing submissions made, the worker applied to reopen his case and tender further documents. Those documents included statements from witnesses who had not been called. The trial court inferred that the worker's erstwhile legal representatives had made a soundly based forensic decision not to tender those statements or call those witnesses. The receipt of some of the other materials would have required witnesses to be recalled and given rise to prejudice on the part of the employer. The court received into evidence those documents to which no objection was taken on the ground of prejudice.

The worker's appeal

[27] Despite his apparent success in the proceedings, the worker filed an appeal against the decision of the Work Health Court. The worker is without legal representation in the appeal proceeding and the notice of appeal must be read in that understanding. That notice described the grounds of appeal as jurisdictional error, miscarriage of justice and unsafe verdict. The relief sought was:

> To reinstate my Physical claim to the case, Except [sic] the 12 Bundles of Documents into the case, Along with Enforcing the Subpoena to ERA.
>
> Include physical medical treatment to the decision.

[28] The prayer for relief is clearly directed to the Work Health Court's rejection of the worker's claim of a work-related physical injury; and

to the Work Health Court's rulings in relation to the summons to produce to ERA and the attempt to introduce additional evidence.

[29] On 13 November 2025, the worker filed a further document titled 'Grounds of Appeal' purporting to identify 23 grounds of appeal. That document also suffered from the worker's lack of professional legal representation. In addition to the complaints made in the original notice of appeal, the grounds in the subsequent document purport to traverse such matters as the failure to incorporate mediation documents into the Court Book; the omission of witness statements; the failure on the part of the Work Health Court to take into account relevant evidence and the reliance on inadmissible evidence; apprehended bias on the part of the Work Health Court; denial of procedural fairness; collusion between his solicitors and the solicitors for the employer; and various allegations of perjury and the falsification or alteration of documents, photographs and phone records. That document was subsequently supplemented by further document filed on 3 December 2025 titled 'Outline of 25 Key Grounds of Appeal (with Authorities)', which essentially repeated the matters in the earlier document with additional references to some legislation and authorities.

The employer's cross-appeal

[30] On 30 July 2025, the employer filed a notice of cross-appeal. That notice was filed nine days out of time. The notice of cross-appeal asserts the following seven grounds of appeal.

1. The learned trial judge erred in law in finding (at Reasons [55], [62] [67] and [57 (second appearing)]) that the Appellant had work-related perceptions of bullying and harassment when:
   a. there was no evidence to support the finding;
   b. such evidence as there was pointed overwhelmingly to the Appellant having deliberately and consciously made up the allegations of bullying and harassment for the purposes of pursuing a claim for compensation.
2. The learned trial judge erred in law in finding, at [27] that the Appellant's general presentation during his evidence and in his conduct during and after the proceedings was consistent with having a mental injury of some kind, when:
   a. there was no evidence to support a finding that the Appellant had a mental injury (within the meaning of the *Return to Work Act 1986* [the Act]);
   b. such a finding was inconsistent with the trial judge's findings that the Worker was an incredible and unreliable witness (at [15] and [22]) and that the Appellant was making up evidence (at [17]);

   and in failing to decide whether any such mental injury was caused out of or in the course of the Appellant's employment with the Respondent (through working at ERA).
3. The learned trial judge erred in law in finding, at [26] that the Appellant's personality traits affected the Appellant's ability to dispassionately assess and recall events accurately when:
   a. the effect of personality traits on a person's ability to dispassionately assess and recall events accurately is a matter of clinical expertise requiring evidence from a psychiatrist; and
   b. there was no evidence to support that finding.
4. The learned trial judge erred in law in finding (at Reasons [72]) that the Appellant suffered a mental injury in the course of his employment when:
   a. the learned trial judge had made findings of fact that:
      i. the late signing off of timesheets was not true and the Appellant could not be believed;
      ii. the lunchroom incident did not occur and the Appellant could not be believed;

iii. the improper use of machinery to harass the Appellant was an extraordinary allegation, did not occur and the Appellant could not be believed;

iv. the Appellant perceived he was being harassed and bullied by comments over the radio;

v. the interference with break times did not occur and the Appellant could not be believed;

vi. the Appellant was not the subject of adverse criticism by other workers and could not be believed;

vii. the Appellant did not hear specifically alleged dismissive words from his supervisor Mr Whiting;

viii. the Appellant was not:

1. put in a position of not being provided appropriate PPE;

2. given insufficient time to shower and change after performing work;

3. the subject of an exchange with Mr Whiting; Mr Whiting did not say the words alleged and the meeting did not happen;

ix. the Appellant attended the clinic on 20 October 2021 but his claim that he was not allowed to speak to a GP could not be believed;

b. the learned trial judge made a finding of fact that Mr Whiting was abrupt in his conversations with the Appellant in circumstances where:

i. the learned trial judge did not identify by reference to any evidence which conversations were said to have been abrupt;

ii. the Appellant’s case at trial did not include an allegation that Mr Whiting had spoken abruptly to him generally in the work place;

iii. the learned trial judge did not consider whether any specific conversations between Mr Whiting and the Appellant had caused an injury;

iv. there was no evidence upon which the learned trial judge could conclude that a specific conversation or conversations between Mr Whiting had caused an injury to the Appellant;

c. in light of:

i. the findings of fact made by the learned trial judge that almost all of the specific allegations of bullying and harassment did not happen and the Appellant could not be believed; and

ii. the finding of fact which was not available by reason of a lack of evidence or alternatively because it did not form part of the Appellant's case;

the learned trial judge had no evidence upon which he could make a finding that the Appellant had suffered a mental injury in the course of his employment;

d. the opinions of Dr Papier and Dr Samuel were that the Appellant suffered a mental injury arising from the alleged incidents in the course of his employment and as such, their opinions were based upon an assumption that was unsupported by the evidence and were incapable of being relied upon.

5. The learned trial judge erred in law in making a finding of fact (at [55 second appearing]) that the Appellant had fragile mental health at the commencement of employment when there was no evidence upon which such a finding of fact could be made.

6. The learned trial judge erred in law in:

a. departing from the pleaded cases of the parties and thereby denying the Respondent procedural fairness and natural justice;

b. finding, contrary to law, that the Appellant could sustain an injury based on a perception of being physically injured at work when the Worker:

i. had abandoned any allegation of suffering any physical injury out of or in the course of his employment; and

ii. did not pursue a case that he had a mental injury based on a perception of a physical injury;

c. finding, contrary to law, that a perception of exposure to physical injury was a sufficient connection with employment to constitute a mental injury out of or in the course of employment; and

d. finding that the Appellant's mental injury was contributed to by a perception of a physical injury when there was no evidence to support that finding.

7. The learned trial judge erred in law making orders (at Reasons page 15) where he:

   a. failed to make necessary findings in respect of the Appellant's entitlements to compensation;

   b. ordered payment of compensation without identifying the amount of compensation payable and when the Appellant failed to establish the value of his entitlement to compensation at trial;

   c. ordered compensation to be paid to the Appellant without the necessary antecedent findings of fact;

   d. ordered interest to be paid to the Appellant without antecedent findings of fact upon which any entitlement to interest could be based;

   e. ordered interest to be paid without specifying the time period for which interest would be payable;

   f. ordered interest to be paid in circumstances where it is not possible for the Respondent to calculate compensation payable to the Appellant and/or pay compensation in compliance with the orders and thereby cease its liability for interest; and

   g. ordered the Respondent to pay reasonable medical expenses without confining such medical and rehabilitation expenses to the injury upon which the claim succeeded.

[31] The employer seeks orders allowing the cross-appeal, and dismissing the worker’s claim or, in the alternative, the remittal of the matter to the Work Health Court for hearing in accordance with law.

The employer’s application for an extension of time

[32] As already described, on 30 July 2025 the employer filed a notice of cross-appeal nine days out of time. The employer subsequently made application for an extension of time for the filing and service of the cross-appeal. The reasons given for the failure were, in essence, uncertainty whether the notice of appeal filed by the worker on 2 July

2025 was valid; difficulties communicating with the worker concerning the provision of information to assess the quantum of the worker's entitlement to compensation; subsequent advice from counsel concerning the incorporation of a further ground of cross-appeal; and inadvertence on the part of the employer's solicitor.

[33] Rule 82.08 of the *Supreme Court Rules 1987* (NT) provides that a respondent who wishes to appeal from the decision being appealed must file a notice of cross-appeal within 14 days after the day the notice of appeal is served on the respondent. Although the provisions dealing with applications for extensions of time speak only of a 'notice of appeal', the better view is that term includes notices of cross-appeal. Rule 82.19 provides relevantly that the appellate court has power to grant an extension of time. In the case of an appeal from a Work Health Court to the Supreme Court, that extension may be granted by a single judge on the papers.

[34] Beyond the requirement to act judicially, the appellate court has unfettered discretion to grant an extension of time. There is no need for the applicant to establish anything in the nature of special reasons or exceptional circumstances. The principal considerations are the need to do justice as between the parties and the public interest in finality in litigation. The question of finality does not carry great weight in circumstances where there is already an appeal on foot which must be determined by the appellate court regardless of the cross-appeal. In

circumstances where the notice of cross-appeal raises genuine issues for determination, 'it is appropriate to take a benign view of applications to extend time'.[7] It is enough that the applicant establishes 'some reasonable kind of explanation or excuse for his neglect of the rules'.[8]

[35] In the circumstances of this matter, and for reasons which are given further below, the notice of cross-appeal raises arguable grounds. There is also a reasonable explanation for the delay, and the default of nine days does not give rise to any material prejudice to the worker. Accordingly, it is appropriate to grant an extension for the filing and service of the notice of cross-appeal.

Challenges to the fact-finding process

[36] It is convenient to deal first with the employer's cross-appeal. The employer's first five grounds of appeal all assert errors of law in the fact-finding process. The sixth ground of appeal asserts errors of law in the conclusions that the facts as found fell within the provision of the statutory enactment properly construed. The appeal is brought under s 116 of the *Return to Work Act 1986* (NT), which is limited to an 'appeal against the decision or determination on a question of law'. That gives rise to a preliminary question concerning the scope of the appeal and what will constitute a 'question of law'.

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7 *Outboard Marine Australia Pty Ltd v Byrnes* [1974] 1 NSWLR 27 at 30.

8 *Bishop v The Queen* [1982] FCA 33.

[37] No satisfactory test of universal application has yet been formulated to distinguish between questions of fact and questions of law.[9] Many questions of law will be inextricably or closely intertwined with questions and findings of fact such that they cannot properly be characterised as purely questions of law.[10] That distinction may be seen in the criminal appeal provisions of the *Criminal Code 1983* (NT). Section 411 of the *Criminal Code* provides that a person found guilty may appeal to the Court of Criminal Appeal as of right on any ground that involves 'a <u>question of law alone</u>' but with the leave of the Court on any ground of appeal that involves 'a <u>question of fact alone</u> or <u>question of mixed law and fact</u>'.

[38] There are a number of decisions of this Court and the Court of Appeal dealing with the scope of an appeal under s 116 of the *Return to Work Act*.[11] The discussion of the issue in those decisions is generally directed to the fact-finding process and to what will constitute an error of law in that process. The conclusion reached in those decisions is, in broad terms: (a) a finding against the evidence or the weight of the evidence or contrary to the overwhelming weight of evidence does not constitute an error of law in the fact-finding process;[12] (b) if there is evidence which, if accepted, would support the finding of fact, there is

9 *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 394.

10 *DaCosta v The Queen* (1968) 118 CLR 186 at 194-195.

11 See, for example, *Wilson v Lowery* (1993) 4 NTLR 79 at 84-5.

12 *Wilson v Lowery* (supra), citing *Haines v Leves* (1987) 8 NSWLR 442 at 469-470.

no error of law;[13] and (c) it is only where there is no evidence to support a finding of fact which bears on the ultimate determination that there will be an error of law. What amounts to material that could support a factual finding is ultimately a question of law.[14]

[39] Those principles are concerned with what will constitute an error of law in the fact-finding process, rather than with broader questions of the permissible scope of an appeal limited to a question of law. In *Lee v Macmahon Contractors Pty Ltd*,[15] the Court of Appeal considered an appeal under the *Return to Work Act* on grounds that included that the Supreme Court had erred in law in finding that the facts satisfied various statutory criteria. The Court stated:

> … When dealing with the distinction between questions of fact and law in the process of statutory interpretation, in *Collector of Customs v Agfa-Gevaert Ltd* [(1996) 186 CLR 389 at 397] the High Court stated that the question whether a statute uses a word or phrase in any sense other than that which it has in "ordinary speech" is always a question of law [*Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 397]. In the course of that decision, the Court also gave general endorsement [*Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 396-7] to the following principles from *Collector of Customs v Pozzolanic Enterprises Pty Ltd* [(1993) 43 FCR 280]:
>
> (a) the ordinary or non-technical meaning of a word is a question of fact;
> (b) the meaning of a technical legal term is a question of law; and
> (c) the question whether facts as found fall within the provision of a statutory enactment properly construed is generally a question of law.

13 *Wilson v Lowery* (supra), citing *Nicolia v Commissioner of Railways (NSW)* (1970) 45 ALJR 465 at 466.

14 *Maurici v Chief Commissioner of State Revenue* (2003) 212 CLR 111 at [91].

15 *Lee v Macmahon Contractors Pty Ltd* [2018] NTCA 7.

> That third principle is subject to some qualification. A finding that facts come within the ordinary or non-technical meaning of a statutory word or phrase is one of fact which can be disturbed only if: (a) there is no evidence to support the findings of fact [*Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126 at 138]; (b) if the trial court has misdirected itself in law [*Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126 at 138]; or (c) if the finding of fact is required by the statute to be determined through the application of a correct legal process requiring, for example, procedural fairness or taking relevant considerations into account [Gageler S, *What is a question of law?* (2014) 43 AT Rev 68].[16]

[40] The Court in *Lee v Macmahon Contractors* then adopted the following statement from the reasons of the plurality in *Vetter v Lake Macquarie City Council* in relation to the scope of an appeal confined to questions of law from a court exercising workers' compensation jurisdiction:

> Whether facts as found answer a statutory description or satisfy statutory criteria will very frequently be exclusively a question of law. To put the matter another way … whether the facts found by the trial court can support the legal description given to them by the trial court is a question of law. However, not all questions involving mixed questions of law and fact are, or need to be susceptible of one correct answer only. Not infrequently, informed and experienced lawyers will apply different descriptions to a factual situation.
>
> ….
>
> [W]hen it is necessary to engage in a process of construction of the meaning of a word (or phrase) in a statute a question of law will be involved, but … the question may be a mixed one of fact and law … [A] question exclusively of law arises … if, on the facts found only one conclusion is open.[17]

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16 *Lee v Macmahon Contractors Pty Ltd* [2018] NTCA 7 at [16]-[17.

17 *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439 at [24], [27]. See also *Collector of Customs v Cliffs Robe River Iron Associates* (1985) 7 FCR 271.

[41] The subsequent decision of the Full Court of the Federal Court in *Haritos v Federal Commissioner of Taxation*[18] considered what constituted a 'question of law' within the meaning of s 44 of the *Administrative Appeals Tribunal Act 1975* (Cth). The principal issue in that case was whether a mixed question of fact and law fell outside the avenue of appeal, as had been determined in several previous decisions by the Full Court of the Federal Court. The Court in *Haritos* proceeded on the premise that the determination of whether an alleged error constitutes a 'question of law' will depend on the scope, nature and subject matter of the statute. That is so regardless of whether the error is alleged to have been committed in the fact-finding process, the exercise of a discretion or the process of evaluation.

[42] The considerations relevant to that process of construction included that members of the tribunal in question were not required to have legal qualifications or experience; and the statutory provision was not limited to 'pure' questions of law and did not exclude mixed questions of law and fact. The history of the legislation indicated that if the right of appeal was properly interpreted to exclude mixed questions of law and fact, it would give rise to the unlikely result that for a period of four years preceding the commencement of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) the only avenue by which to challenge errors by the Administrative Appeals Tribunal not

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18 *Haritos v Federal Commissioner of Taxation* (2015) 233 FCR 315.

involving ‘pure’ questions of law would have been to bring proceedings in the original jurisdiction of the High Court.

[43] The Full Court then conducted a review of the decisions of the Federal Court. That review identified authority for the following propositions.

(a) The question whether the material facts as found fall within a statutory description is a question of fact, unless the situation disclosed by the evidence falls necessarily inside or outside the statutory description, in which case the question is one of law.[19]

(b) Whether a particular thing should be classified as falling within a statutory description is a mixed question of law and fact. It is first necessary to decide as a matter of law whether the legislation uses the expression in any other sense than it has in ordinary speech. If it does not, determining the common understanding of the words is a question of fact.[20]

(c) The term ‘question of law’ encompasses errors such as the failure to take into account a material consideration, the taking into account of an irrelevant consideration, the making of a decision that no reasonable decision-maker would have made, the exercise of a decision-making power for a purpose other than for the

19 *Collector of Customs v Cliffs Robe River Iron Associates* (1985) 7 FCR 271.

20 *Jedko Game Company Pty Ltd v Collector of Customs (NSW)* [1987] FCA 74 at [9].

purpose for which the power was conferred and the failure to provide natural justice.[21]

[44] The Full Court in *Haritos* concluded that the text and history of the legislative provision and some considered previous authority demonstrated that not all mixed questions of fact and law stood outside a right of appeal on a question of law. Rather, a right of appeal expressed to be confined to questions of law does not extend to mere questions of fact but may extend to mixed questions of fact and law. The approach prescribed by the Full Court to give effect to that distinction was as follows.[22]

(a) It is first necessary to determine whether the appeal is <u>on</u> a question of law, without being diverted by whether the appeal raises a mixed question of fact and law. However, it is not sufficient that the appeal merely <u>involves</u> a question of law.

(b) Where the facts found below are capable of falling within or without the description used in the statute, the question will be one of fact and not law because it will involve matters of degree and the allocation of weight to elements of the facts.

21 *Tuite v Administrative Appeals Tribunal* (1993) 40 FCR 483 at 484; *Australian Fisheries Management Authority v PW Adams Pty Ltd* (1995) 61 FCR 314 at 316; *Minister for Immigration & Ethnic Affairs v Teo* (1995) 57 FCR 194 at 199-200; *Sharp Corporation of Australia Pty Ltd v Collector of Customs* (1995) 59 FCR 6 at 12-13; *Repatriation Commission v Hill* (2002) 69 ALD 581.

22 *Haritos v Federal Commissioner of Taxation* (2015) 233 FCR 315 at [194]-[213].

(c) If the facts inferred from the evidence are <u>necessarily</u> within or without the description in a statute, a contrary decision is wrong in law.

(d) A finding of fact will be vitiated by an error of law, such as where the finding of fact is based on a misdirection of law. By extrapolation from the earlier discussion, there will also be an error of law where the finding of fact is based on the failure to take into account a material consideration, the taking into account of an irrelevant consideration, the making of a decision that no reasonable decision-maker would have made, the exercise of a decision-making power for a purpose other than for the purpose for which the power was conferred and the failure to provide natural justice.

(e) When it is necessary to engage in a process of construction of the meaning of a word or phrase in a statute, a question of law will be involved. In accordance with the decision in *Vetter*,[23] the question will be exclusively a question of law if only one conclusion is open.

(f) A mixed question of fact and law is <u>involved</u> where the statutory description takes its meaning from the context in which appears, and there is a dispute about whether an item falls within that description. In that circumstance, it is necessary to identify

23 *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439 at [27].

whether the tribunal below is alleged to have made an error of law or an error of fact. By extrapolation from the earlier discussion, an error in determining whether the legislation uses the expression in any other sense than it has in ordinary speech is one of law. If the words take their ordinary meaning, determining the common understanding of the words is purely a question of fact.

(g) It may constitute an error of law to make a decision which is irrational, illogical and not based on findings or inferences of fact supported by logical grounds, although that is not a conclusion which will be lightly drawn and not every lapse in logic is sufficient to constitute an error of law.

[45] The avenue of appeal created by s 116 of the *Return to Work Act* operates in a quite different context to the avenue of appeal under consideration in *Haritos*. First, it is an appeal from the Work Health Court to the Supreme Court, and the members of the Work Health Court are required to have legal qualifications and experience. In those circumstances, the right of the appeal might more readily be construed as limited to pure questions of law. Second, there is nothing anomalous in excluding from the right of appeal errors by the Work Health Court not involving 'pure' questions of law. Such a restriction could be characterised as a reasonable and deliberate limitation of the grounds on which challenges could be brought from decisions of the Work Health Court and could not result in disgruntled litigants seeking to

bring proceedings in either the original or appellate jurisdiction of the High Court.[24]

[46] Those distinctions notwithstanding, there is no compelling reason why the term ‘question of law’ appearing in s 116 of the *Return to Work Act* should be read to mean ‘a pure question of law’ and good reasons why it should not. The distinction between questions of fact and questions of law is not necessarily binary,[25] and that is particularly so where an appellate court is considering a decision made by an inferior court following the hearing of evidence and the application of legal standards to findings made on the assessment of that evidence. Moreover, there is no necessary inconsistency between the approach in *Haritos* and the approach which was described in *Lee v Macmahon Contractors*. In both approaches it is necessary to be satisfied that the appeal is on a ‘question of law’. Once that determination is made, the process necessarily involves an examination of whether there was an error on that question of law notwithstanding that the decision impugned may

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24 The High Court's appellate jurisdiction conferred by s 73 of the *Constitution* does not extend to appeals from inferior Territory courts. The High Court's original jurisdiction conferred by s 75(v) of the *Constitution* is limited to proceedings against officers of the Commonwealth. The High Court's appellate jurisdiction conferred by s 35AA of the *Judiciary Act 1903* (Cth) is limited to appeals from judgments of the Supreme Court of a Territory.

25 See *Attorney-General for the State of New South Wales v X* (2000) 49 NSWLR 653 at [32]; *Orr v Cobar Management Pty Limited* [2020] NSWCCA 220 at [45].

involve a mixed question of fact and law or that the material question of law may be predicated on an anterior finding of fact.[26]

[47] Even allowing for the different context, *Haritos* is a unanimous decision of a Full Court of the Federal Court constituted by five judges and the approach it describes is highly persuasive for the reasons which are described in *Kurniawan v Gifkins*.[27] It should be followed to the extent that it bears upon the determination of whether an appeal falls within the scope of s 116 of the *Return to Work Act*, and what must be established to vitiate the decision impugned.[28]

The employer's cross-appeal

[48] The essence of the Work Health Court's finding appears in the following paragraphs of the reasons:

> I agree with Dr Papier, who describes the vehicle cleaning as the primary contributing incident (emphasis added):
>
> > *I believe there were two issues to do with the psychiatric injury suffered by your client. One is his allegation of bullying and harassment by co-workers including supervisors. The* ***second and more substantial is the incident*** *described whereby he was made, with threat of losing his employment, to* ***clean the underside of a water truck*** *which*

26 There is also no inconsistency between that approach and the long-standing approach to cases in which an appellate court has jurisdiction to determine questions of law described in Jordan CJ's well-known discussion in *Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126 at 137-138.

27 *Kurniawan v Gifkins* [2025] NTSC 70.

28 That conclusion is based on the scope, nature and subject matter of the statute conferring the right of appeal in this case. It does not necessarily follow that the same approach should be taken in a different statutory context. By way of example, a provision allowing an inferior court to refer a 'question of law' to a superior court for determination will ordinarily operate where the proceedings below are still on foot, the fact-finding process has not concluded, and those questions of law have not first been determined by the tribunal below. The purpose of those procedures is for the superior court to determine difficult or unsettled questions of law to aid in the determination of the proceedings below, and those questions are limited to 'pure questions of law': see *Orr v Cobar Management Pty Limited* [2020] NSWCCA 220 at [31]-[74], [101]-[111].

> *had come from working at the uranium mine,* ***leaving Mr Slade fearful of contamination***
>
> Dr Samuel did not explicitly say that he thought that the truck cleaning episode was the main cause, but it was the only event he discussed in detail in his November 2022 report.
>
> Although I have dismissed most of the harassment claims, I accept the conclusions of Dr Papier and Dr Samuel that the Worker has suffered a mental injury arising from his employment.[29]

[49] That reflects the factual findings recorded in paragraph 57 of the reasons to the effect that the worker was: (1) upset and felt harassed by the radio announcements to move his truck; (2) upset and feeling harassed by the occasional direct language from [the principal supervisor]; (3) anxious and distressed because he believed he had suffered some sort of physical injury when he came into contact with mud from the tailings dam.

[50] The finding that the worker suffered a mental injury arising from his employment was in error to the extent that it is based on the worker's perceptions of bullying and harassment by the radio announcements and his supervisor's direct language.

[51] First, the expert evidence to the effect that the worker suffered psychiatric injury 'due to bullying and harassment by co-workers including supervisors' could not rationally be accepted in circumstances where that expert opinion was predicated on a large number of incidents which the trial court found had not occurred. If the

29 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [70]-[72].

factual foundation on which the expert opinion is based is not established, the conclusions predicated on those facts are without probative value. There was in effect no probative evidence on which the trial court could find as a matter of fact that the worker suffered psychiatric injury due to bullying and harassment by co-workers. As the fourth ground in the cross-appeal asserts, those 'opinions were based upon an assumption that was unsupported by the evidence and were incapable of being relied upon'.

[52] Second, the trial court's findings about 'occasional direct language' from the principal supervisor contributing to the worker's perception of harassment and bullying could not be made. As the fourth ground of appeal also asserts, the trial court found expressly that the meeting with the principal supervisor about which the worker complained did not happen, and that the words alleged by the worker to have been said by the supervisor were not said. Against that background, the trial court could not identify by reference to any evidence which conversations were said to have been abrupt, there was no evidence on which it could be concluded that a specific conversation or conversations between the worker and the supervisor gave rise to perceptions of bullying or contributed to injury, and the worker's case at trial did not include an allegation that the supervisor had spoken abruptly to him generally in the workplace.

[53] Similar conclusions may be drawn in relation to the 'radio announcements'. The worker's allegations in that respect were inextricably linked to his allegation that his co-worker used the excavator scoop to bang on the side of the worker's truck to get the worker to move his truck which, together with radio calls from the same co-worker directing truck movements, made him feel humiliated. The trial court found expressly that no such 'banging' incident took place, and that any radio calls directing truck movements did not constitute harassment or bullying. Those findings, taken together with the findings of fact made by the learned trial judge that the other specific allegations of bullying and harassment did not happen, render any consequential finding concerning the worker's genuine perception of bullying and harassment 'glaringly improbable' or 'contrary to compelling inferences' in the sense that it is not based on findings or inferences of fact supported by logical grounds. In reaching that conclusion, it is unnecessary to be satisfied that the worker was consciously fabricating his complaints in support of a compensation claim. It is enough that the worker's allegations of bullying and harassment were so comprehensively undermined as to preclude any finding of a material perception in his favour based on the single and unlikely vestige which remained, and particularly where the expert opinion about causation from bullying and harassment had been fatally compromised.

[54] For those reasons, the error asserted in the fourth ground of appeal has been established. Having drawn that conclusion of error in the finding that the worker suffered a mental injury arising from his perceptions of bullying and harassment, the related assertion in the first ground of the cross-appeal becomes redundant. However, that error did not vitiate the decision so far as it is based on the separate and independent finding that the worker suffered a mental injury because of his (albeit unfounded or irrational) fear of radioactive contamination.

[55] The second ground in the cross-appeal asserts that the trial court erred in law in finding that the worker's general presentation during his evidence and in his conduct during and after the proceedings was consistent with having a mental injury of some kind. That finding does not of itself purport to attribute the 'mental injury' to employment with the employer or to attribute any technical meaning to the term. There was no error of law in the trial court observing that worker appeared to have a 'mental injury' in the colloquial sense of the term. Even were that not so, any error in that respect also did not vitiate the decision so far as it is based on the finding that the worker suffered a mental injury because of his fear of radioactive contamination.

[56] It may be accepted that the trial court did err in law in finding that the worker's personality traits and possible personality disorder affected his ability to dispassionately assess and recall events accurately, as is asserted in the third ground in the cross-appeal. That was a finding

which could only be based on evidence from an appropriately qualified expert, of which there was none. It may also be accepted that the trial court erred in law in finding that the worker had fragile mental health at the commencement of his employment with the employer, as is asserted in the fifth ground in the cross-appeal. That finding was at odds with the expert opinion which the trial court did accept. Again, however, those errors did not vitiate the decision so far as it is based on a finding that the worker suffered a mental injury because of his fear of radioactive contamination.

[57] That question is addressed in the sixth ground of the cross-appeal. The employer's assertion in that ground is that the trial court erred: (1) by departing from the pleaded cases of the parties and thereby denying the employer procedural fairness (in finding that the mental injury arose from the worker's perception of physical injury in circumstances where the worker did not pursue that case); (2) by finding, contrary to law, that a perception of exposure to physical injury was a sufficient connection with employment to constitute a mental injury out of or in the course of employment; and (3) by finding that the worker's mental injury was contributed to by a perception of a physical injury when there was no evidence to support that finding.

[58] The first question to be decided under the ground is whether the trial court departed from the case as pleaded and thereby denied the employer procedural fairness in finding that the worker had sustained

injury within the meaning of the *Return to Work Act*. As the formulation in *Haritos* recognises, whether there has been a failure to provide procedural fairness is a question of law and a finding of fact or mixed fact and law will be vitiated by error of law where there has been a failure to provide procedural fairness.

[59] The Work Health Court is a court of pleading and the primary purpose of pleadings in that jurisdiction is to define the issues between the parties.[30] Accordingly, the first function of pleadings in that jurisdiction is to record the issues which the Work Health Court must and may legitimately decide. It follows that the court should decide only the issues that the pleadings disclose and further, that if an issue arises for the first time at trial, the court ought not to decide the issue unless it is incorporated in the pleadings. The second function of pleadings is to control the admission of evidence during the trial. Pleadings need to be in proper form to define the limits of the contest for the benefit of both the trial court and appellate courts.[31] As Mildren J observed in *Hunt v Collins Radio Constructions Inc*:

> The pleadings are not just scraps of paper which the parties and the court are free to ignore. Their purpose is to define the issues between the parties and to control the admission of evidence at the hearing. If it is desired to raise new issues, the pleadings must be amended, and the court ought not to decide new issues unless they are incorporated into the pleadings: see *Horne v Sedco Forex Australia Pty Ltd* (1992) 106 FLR 373 at 379-80. Magistrates would be well advised to insist upon any necessary amendments to

30 *Horne v Sedco Forex Australia Pty Ltd* (1992) 106 FLR 373.

31 *Ju Ju Nominees Pty Ltd v Carmichael* (1999) 9 NTLR 1.

> the pleadings, if new issues are to be raised, and if necessary, to refuse to entertain new issues without the appropriate amendments.[32]

[60] The worker's amended statement of claim was filed on 18 September 2024, which was five days before the commencement of the trial. That document set out the basis on which the worker proceeded to trial. It contained the following relevant pleadings.

(a) During the period leading up to 20 October 2021 the worker suffered a mental injury within the meaning of the *Return to Work Act* during the course of his employment, being major depressive disorder, adjustment disorder, substance use disorder and/or post-traumatic stress disorder: paragraph [5].

(b) The mental injury was sustained because of various incidents particularised to include the payslips issue; the allegation of sexual harassment; the improper use of machinery; the limitation on the worker's break times; the adverse comments about the worker's performance; the principal supervisor's comment that the worker had to accept his current vehicle allocation or 'piss off'; and the requirement to clean the water trucks: paragraph [6]. That paragraph went on to plead that as a result of the truck cleaning incident the worker developed a rash, itchiness, fatigue, 'pins and needles', numbness in his hands, as well as the physical injuries which were no longer pressed as a separate compensable injury.

32 *Hunt v Collins Radio Constructions Inc* (unreported, NTSC, 3 December 1996), 15.

(c) The worker has been totally incapacitated from around 12 October 2021 as a result of the mental injury: paragraph [13].

[61] By its amended notice of defence filed on the same day, the employer made the following relevant pleadings:

(a) The worker did not suffer any mental injury, or if he did it was the result of maladaptive coping strategies, malingering, relationship difficulties with his wife and/or a pre-existing alcohol abuse disorder: paragraph [3].

(b) The incidents alleged to have caused the metal injury did not occur: paragraph [5].

(c) If the worker suffered from any incapacity it did not arise from any injury arising in or out of the course of his employment with the employer: paragraph [8].

[62] The worker's pleading in relation to the truck cleaning incident was in essence that it contributed to his mental injury because his concerns about safety had been crudely dismissed, he became covered in contaminated material, he was unable to shower until his return to Darwin, and he developed physical symptoms as a result of that contamination. In addition to the allegation of separate physical injury, which had been withdrawn, and the allegations of bullying and the unavailability of a shower which were not accepted by the trial court, the pleading included the following allegations:

> The Mental Injury was sustained and has continued as a result of incidents which occurred to the worker during the course of his employment
>
> **Particulars**
>
> *Events of 11 and 12 October 2021*
>
> On 11 October 2021 the Worker and [a co-worker] were instructed by [the supervisor] to wash down the two water trucks used by the Civil Division, both of which had been used in the Uranium Tailings Dam.
>
> …
>
> The Worker raised issues regarding the safety of washing out the material to [the supervisor].
>
> …
>
> The Worker cleaned underneath one of the water trucks by going underneath the truck and pressure hosing the materials using a pressure hose.
>
> The Worker's clothing, hats, glasses and boots became covered in the materials from underneath the water truck and wet from the water being used.
>
> The Worker's hat kept falling off due to the angle and filled with the materials.
>
> …
>
> The Worker remained covered in the material from the Water Trucks until he was able to shower upon returning to his accommodation in Darwin in the Northern Territory.
>
> As a result of the matters referred to in paragraphs 6.30-6.40 above, the Worker:
>
> - developed rash like symptoms;
> - became itchy;
> - was unable to leave his bed for around 2 days due to exhaustion …

[63] It is correct to say that there is no express pleading that the mental injury was caused by an ill-founded perception that he had been exposed to and contracted physical injury. However, the pleading does comprehend that the worker's fear of contamination contributed to his mental injury. It would be overly restrictive to characterise the

pleading as extending only to an allegation that the worker's perception that he had suffered physical injury contributed to his mental injury.

[64] While it is also no doubt correct to say that expert evidence would be required to make a finding that the fear of contamination contributed to mental injury, the medical evidence did address that issue. In particular, Dr Papier's evidence, as extracted above, was that, '[t]he second and more substantial [cause] is the incident described whereby he was made, with threat of losing his employment, to clean the underside of a water truck which had come from working at the uranium mine, leaving Mr Slade fearful of contamination'. That evidence was filed and served in advance of the trial of the matter, and the employer had opportunity to address it, including by way of cross-examination and by adducing its own evidence on the issue. That is ultimately the opinion on which the Work Health Court relied in finding that the worker had suffered a mental injury arising from his employment, and that he had been totally incapacitated as a result.

[65] The employer submits that the matter was never a 'perceptions' case. That ignores the fact that once the worker abandoned his claim of separate physical injury, a claim for mental injury arising from, *inter alia*, the fear of radioactive contamination was necessarily one of perception. Although the pleading in relation to the water trucks also incorporates allegations of harassment and bullying which were rejected by the trial court, that was not the extent of the pleading or the

medical evidence in relation to the issue. The employer also submits that it was denied the opportunity to explore whether the asserted fear of contamination was due to some pre-existing psychiatric condition, whether the worker's asserted fear of contamination was deliberately false, and whether that perception was capable of characterisation as a 'disease' such that there was a requirement that the employment materially contributed to the disease. A number of observations may be made in relation to those submissions.

[66] First, the employer was not denied opportunity to explore whether the worker's mental injury, if any, was attributable to some pre-existing condition. The employer both pleaded and called expert evidence to the effect that any mental injury sustained by the worker was occasioned by a pre-existing Substance Use Disorder, relationship difficulties with his wife and ensuring maladaptive coping strategies.

[67] Second, the employer had opportunity to, and did, cross examine the worker extensively about the truck cleaning incident and matters such as the availability of PPE; the nature and duration of the itching and pain in his hands; whether he thought his physical symptoms were from having the uranium tailings on his clothing; whether he had reported that concern to the clinic, NT WorkSafe, his general practitioner and the employer; the availability of showers on site; whether he travelled back to Darwin after the incident without showering; and whether he was motivated by making a workers compensation claim. Part of that

cross-examination focused on the worker's impression that he had been exposed to radioactive materials, with the suggestion that had been the cause of his anxiety in the aftermath of the incident rather than any bullying and harassment. Although the principal thrust of the cross-examination was to establish that the worker had not complained of bullying and harassment in the aftermath of the incident, there is no doubt that the employer's case was also that the worker's perception and complaints of contamination were fabricated. So much is apparent from the employer's closing submissions:

> The Employer contends that the Worker in essence fabricated his complaint of exposure to radioactive waste and chemicals, and the claim symptoms of injury arising therefrom. The employer contends that neither did the Worker suffer a mental injury that might explain a perception of such symptoms, but instead that his behaviour is conscious, for secondary gain. (Paragraph 22)

[68] It is apparent from that submission that the matter was very much a 'perceptions' case, at least in part. So also were the closing submissions filed *amicus curiae* by the worker's erstwhile barrister directed in part to the worker's perceptions. Those submissions included the following:

> A number of incidents occurred during the course of his employment which could give rise to the mental injury. Mr Slade's response and perceptions of those incidents combined should be seen as the real, proximate or effective cause of the injury. (Paragraph 12)
>
> …
>
> The following week on 20 October 2021 Mr Slade return to site but did not commence work and instead went to the sickbay as he had broken out in a rash out of nowhere. By that time his mental

> state was very poor. That was particularly because he felt that the week before he had been exposed to toxic material. (Paragraph 31)
>
> …
>
> [Dr Papier] believed there were two issues to do with the psychiatric injury suffered by Mr Slade. One is the allegations of bullying and harassment by co-workers including supervisors. The second and more substantial is the incident described whereby he was made, with threat of losing his employment, to clean the underside of a water truck which had come from working at the uranium mine, leaving Mr Slade fearful of contamination and needing to clean the truck without previous experience or appropriate PPE, leaving him vulnerable and feeling exposed. (Paragraph 45.6)

[69] Third, the finding that the mental injury was occasioned by the fear of contamination did not mean that the worker somehow escaped the requirement to establish that his employment materially contributed to the injury. The matter was pleaded on the basis that the incident(s) at work caused the mental injury, ie that the injury arose out of the employment. That required the worker to establish a causal nexus between employment and the relevant injury. Even if it was possible on the evidence to characterise the injury as one which 'occurred by way of gradual process over a period of time' such that it was necessary for the worker to establish that the employment 'materially contributed to the injury'[33] in the sense that it was the 'real, proximate or effective cause of the injury[34], in the circumstances of this case that did not present any higher threshold than the establishment of a causal nexus. In any event, the submissions made *amicus curiae* accepted the burden

33 *Return to Work Act,* s 4(5).

34 *Return to Work Act,* s 4(8).

of establishing real, proximate or effective cause and proceeded on that basis. Although the relevant finding by the trial court is not expressed in those terms, it is tolerably clear that the court accepted the expert opinion that the mental injury was caused by the employment.

[70] For those reasons, the employer's contention that in making that finding the trial court departed from the case as pleaded, and thereby denied the employer procedural fairness, cannot be accepted.

[71] The second question to be decided under this ground is whether a psychiatric condition arising from a fear or perception of physical injury (including by way of contamination, as in this case), is capable as a matter of law of constituting a mental injury 'arising out of or in the course of employment'. It was open to the trial court to find on the basis of the medical evidence that the worker suffered from some form of psychiatric injury. That being so, the issue is whether that psychiatric injury could be properly characterised as an 'injury' for the purposes of the *Return to Work Act*.

[72] The legislation defines 'injury', so far as is relevant for these purposes, to mean 'a physical or mental injury arising out of or in the course of the worker's employment'. An injury may arise 'out of employment' if there is a causal relationship between the injury and employment. For an injury to arise 'in the course of employment' there needs to be a temporal connection between the injury and employment. This means

the injury has occurred while the worker is undertaking work-related activities or activities incidental to their work. The employer's assertion is that there is an insufficient connection with employment for any psychiatric injury from which the worker suffers to constitute a mental injury 'arising out of or in the course of employment', particularly in circumstances where there was no actual physical injury.

[73] The phrase 'arising out of or in the course of the worker's employment' is a technical legal term in this context, and the meaning of a technical legal term is a question of law. The subsequent question whether the facts as found fall within the terms of that technical legal phrase properly construed is also a question of law. It follows that this ground of appeal properly engages a question of law.

[74] The seminal case in this field is *Federal Broom Co Pty Ltd v Semlitch*.[35] The worker in that case suffered from chronic schizophrenia. During the course of her employment she strained muscles in her side while lifting a heavy box. That resulted in physical injury and incapacity for approximately one month, for which the employer paid compensation. However, the accident acutely aggravated her underlying schizophrenic condition which had been latent for some years prior to the injury. As a consequence, the worker suffered delusions of great pain and incapacity for which there was no rational

35 *Federal Broom Co Pty Ltd v Semlitch* (1964) 110 CLR 626.

basis. The central question for determination of the appeal was whether the injury and incapacity were causally related to the worker's employment.

[75] Justice McTiernan found that the worker's condition satisfied the definition of 'injury' because it constituted the deterioration of a mental disease; and that the psychiatric opinion that the accident at work precipitated a delusion on the part of the worker that she was unable to cope with her work, together with her contemporaneous loss of capacity, provided a sufficient basis on which to conclude that employment was a contributing factor to the deterioration. Justice Kitto adopted a similar opinion to the effect that the incident at work had brought about a 'new delusion' which constituted 'injury' within the meaning of the legislation, rather than solely a manifestation of the underlying mental disease. Justices Taylor and Owen agreed, with Taylor J adding that it might also have been open to find that the worker's incapacity was contributed to in a material sense by the physical injury.

[76] The reasons of Windeyer J provide the most graphic description of the worker's delusion:

> On 1st December 1960 the applicant apparently hurt herself in some minor way while at work - or thought that she did - and thereafter she, for no ascertainable reason, suffered pain in her right side. This pain is, without doubt, delusional. It is, however, intensely real to her. She is persuaded, irrationally but none the less really, that there is something wrong with or in her right side - that the pain or discomfort, or "soreness" or "nastiness" as she

> calls it, which she for no objectively discernible reason feels, is caused by some physical thing that is "wrong" inside her. At times she is persuaded that she can actually feel with her hands something in her side that is the source of her discomfort. She gave evidence at the hearing ; and her pathetically irrational statements in the box revealed the delusions under which she laboured and also her withdrawal from reality and her inability to see that her fantasies were the creatures of her own disordered thoughts. She said at one point : "The pain is not so much, but there's a nastiness. The thing that does not belong to me in there is annoying". Asked "what do you say causes this pain in your side ?", she said "something must be out of place". At another time she said, "It's always loose". There was much more of a like pitiable kind. As a result of these delusions she firmly believes it is impossible for her to work. And because she is persuaded that she cannot go to work, in fact she cannot.... It seems to me that there was in all this definite evidence of a deterioration in her mental condition after December 1960. The degree of maladjustment to her environment had become greater. "The basic illness" was, to use Doctor Ellard's words, "unchanged". She was still a schizophrenic. But her irrational beliefs were continuously disturbing her, and were incapacitating her to a much greater extent than formerly. Apparently they had become a fixed idea and were persistent. Her disordered state had seemingly become chronic. In short, judged by comparison with the attitudes and capacities of a normal person she had become more abnormal.[36]

[77] Justice Windeyer then went on to consider what was required to establish that employment materially contributed to the injury. Although the legislation in that case was differently framed, the same general considerations arise in determining whether there is a causal nexus between employment and the injury under the *Return to Work Act*. His Honour stated in that respect:

> The contributing factor must in my opinion be either some event or occurrence in the course of the employment or some characteristic of the work performed or the conditions in which it was performed. In this case it was said that the employment was a

36 *Federal Broom Co Pty Ltd v Semlitch* (1964) 110 CLR 626 at 641.

> contributing factor in the worsening of the disease, because the applicant focussed her delusions of pain and discomfort upon her right side which she believed she had hurt when lifting a tea chest in the course of her work. A minor physical strain she magnified in her irrational imagination into a serious and continuing derangement of her internal organs. The incident directed, or re-directed, her hypochondriacal attention to her abdominal muscles…
>
> …
>
> The question involved is difficult. Can the event to which a disordered mind irrationally attributes physical suffering, that is real to the patient but delusional, be properly called a contributing factor ? Ordinary concepts of cause and consequence are perhaps not applicable. Yet it seems to me that the incident which precipitated or stimulated, however irrationally, the worsening of her condition could be regarded as a factor contributing to it.[37]

[78] The situation under consideration in *Federal Broom Co Pty Ltd v Semlitch* was obviously different. The injury in that case was the aggravation of an underlying condition. The injury in this case was pleaded to be a fresh mental injury arising out of employment. The situation under consideration in *Federal Broom Co Pty Ltd v Semlitch* involved the worker suffering an actual, if minor, physical injury. In this case the allegation of physical injury was abandoned. Those differences notwithstanding, *Federal Broom Co Pty Ltd v Semlitch* involved a claim made exclusively for mental injury in circumstances where there was no allegation of a subsisting, continuing or coextensive physical injury. The case illustrates the propositions that a delusion or perception with no rational basis can constitute a 'mental injury', and that there can be a causal nexus with employment

37 *Federal Broom Co Pty Ltd v Semlitch* (1964) 110 CLR 626 at 642.

notwithstanding that on a rational assessment the employment-related incident should not have, and would not be expected to have, caused the result.

[79] These principles have been applied and refined in various cases since *Federal Broom Co Pty Ltd v Semlitch* was decided. In *Wiegand v Comcare Australia*,[38] the Federal Court dealt with a claim by the worker that he suffered major depression as a result of victimisation and discrimination occurring in the course of his employment. The definitions of 'injury' and 'disease' in the governing legislation were in terms similar to the *Return to Work Act*. The court proceeded on the basis that the worker's condition was an 'ailment' within the definition of 'disease', which required that the ailment 'was contributed to in a material degree by the employee's employment'. The question for determination was whether the injury was contributed to in a material degree by the employment.

[80] The position adopted by the employer in *Wiegand* was that the injury had been caused by 'perceived injustices and imperfections' which had been adequately and properly dealt with, and that it was the worker's adverse perceptions rather than his employment that resulted in the condition. The tribunal at first instance had concluded on that basis that employment was not 'the cause' of the worker's injury. The

38 *Wiegand v Comcare Australia* [2002] FCA 1464.

Federal Court began its consideration by observing that the legislation did not require the identification of a single real cause of the condition. The definition of ‘disease’ recognised that an injury will be compensable if employment was merely one of a number of factors that contributed in a material degree.[39] The Federal Court cited *Federal Broom Co Pty Ltd v Semlitch* as authority for the proposition that employment need only be a contributing factor. The Federal Court concluded:

> … All that is required is that the employee is exposed to some incident or state of affairs in the course of the performance of his duties and to which he would not otherwise have been exposed, which is a contributing factor to the ailment or an aggravation of the ailment suffered by the employee. A perception held by the employee will meet a "reality" test for the purpose of the definition of disease if it is a perception about an incident or state of affairs that actually happened.
>
> …
>
> In my opinion it was open on the evidence for the Tribunal to hold that one or more of the incidents or states of affairs about which Mr Wiegand raised complaint in the course of his evidence contributed in a material degree to an aggravation of the depressive disorder suffered by Mr Wiegand. For that to be the case there is no requirement at law that the interpretation placed on the incident or state of affairs by the employee, or the employee's perception of it, is one which passes some qualitative test based on an objective measure of reasonableness. If the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the

39 Sections 4(5) and (8) of the *Return to Work Act* deem an injury to arise out of or in the course of employment where it occurred by way of gradual process over a period of time and the employment materially contributed to the injury. Employment will not be taken to have materially contributed to the injury unless the employment was the real, approximate or effective cause of the injury, as opposed to one of a number of causes. That distinction between those provisions and the legislative provision under consideration in *Wiegand* is not material for these purposes.

> employee's ailment, the requirements of the definition of disease are fulfilled.[40]

[81] The Federal Court contrasted that situation with the situation under consideration in *Re John Kirkpatrick v Commonwealth of Australia* [1985] FCA 440.[41] In that case it was held that a neurotic employee's erroneous belief that his leg pain arose out of his work did not sustain a finding that employment was a contributing factor to the neurosis. The tribunal at first instance had concluded as a matter of fact that the worker's compensation neurosis had developed out of a condition which was not work-related. The worker's erroneous but genuine belief that his leg pain was related to a previous work injury did not alter the incontrovertible medical evidence that the leg pain was entirely unrelated to employment. The Federal Court in *Re John Kirkpatrick* distinguished cases such as *Federal Broom Co Pty Ltd v Semlitch*, in which the delusional condition derives directly from an incident occurring in the course of employment.

[82] It may also be accepted that there are differences between the situation presenting in *Wiegand* and the matter here under consideration. *Wiegand* was dealing with the exacerbation or aggravation of an ailment, rather than a fresh injury. In *Wiegand* the worker's account was not directly challenged, and the tribunal at first instance was satisfied on its observations of Mr Wiegand that he was a very sincere

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40 *Wiegand v Comcare Australia* [2002] FCA 1464 at [24], [31].

41 *Re John Kirkpatrick v Commonwealth of Australia* [1985] FCA 440.

man whose credibility was not in issue. As a result, the events about which Mr Wiegand made complaint were accepted by the tribunal at first instance. In *Wiegand* there was no substantial disagreement between the psychiatrists. Even allowing for those differences, *Wiegand* illustrates the proposition that an injury may still be work-related even where the cause relates to the worker's basic personality flaws and other characteristics.

[83] A similar situation was considered by the New South Wales Court of Appeal in *State Transit Authority of New South Wales v Fritzi Chemler*.[42] The worker claimed that he had suffered a psychological injury from being subjected to racial harassment and vilification in the workplace over a period of years. The tribunal at first instance found in his favour. One ground of the subsequent appeal was that the finding in favour of the worker was based upon his 'perception' of acts of harassment and vilification against him. The employer submitted that 'a perception of harassment is not sufficient basis to support a finding of "injury" under the [relevant legislation]'. Chief Justice Spigelman made the following material observations in relation to the issue:

> In this area of law, as in negligence, the *talem qualem* principle is applicable i.e. employers take their employees as they find them. With respect to psychological injury there is an "eggshell psyche" principle which, like the equivalent "eggshell skull" principle, is a rule of compensation not of liability. The element of foreseeability required by the law of negligence is not the basis of the "eggshell skull" principle and it can be applied by way of analogy to claims

42 *State Transit Authority of New South Wales v Fritzi Chemler* [2007] NSWCA 249.

for compensation under the 1987 Act. (See *Morgan v Tame* [2000] NSWCA 121; (2000) 49 NSWLR 21 esp at [23]-[29] and cases quoted therein. See also *Tame v New South Wales* [2002] HCA 35; (2002) 211 CLR 317 esp at [318] and *Nominal Defendant v Gardikiotis* [1996] HCA 53; (1995) 186 CLR 49 at 68.)

As noted above, there are numerous references in the Acting Deputy President's decision to "perception". A typical example is that set out in par [24], quoted above, where Mr Handley referred to "this perception, which arose from his employment situation, was a significant cause of his psychological injury". There were similar observations by Mr Handley in his first decision, which he set out again in his second decision by way of repeating the original findings of fact …

…

The Appellant referred to the fact that the Respondent, and doctors to whom he had recounted his version of the events, relied on a number of statements said to have been made by co-workers. These statements were denied in evidence and the Arbitrator accepted the denials. Nevertheless, the Arbitrator made findings of fact, upon which the Acting Deputy President also acted, that there was evidence of harassment and racial vilification in addition to the sign.

…

In the light of these findings it cannot be said that this is a case in which there was an erroneous perception not based upon conduct in the workplace. The Acting Deputy President's references to "perception" should be understood as establishing the causal link between acts in the workplace and the effect upon the mind of the Respondent.

Contrary to the Appellant's submissions, the Acting Deputy President did not question let alone overturn the credit findings made by the Arbitrator. Mr Handley proceeded on the basis that he accepted the Arbitrator's findings of primary fact. That included the rejection of some of the Respondent's evidence. It also included acceptance of other evidence that established conduct at work which could be, and was held to be, causally linked through the perception of the Respondent to psychological injury.

The position in *Townsend* supra, on which the Appellant relied, was quite different. There the relevant acts were mere rumours about whether or not the transfer of a police officer represented the implementation of the Police Department's anti-corruption policy. Nothing suggested that the rumours could be sourced to conduct in the workplace.

McGrath CJ of Comp Ct said at [235]:

> "My conclusions are that the anxiety state resulted from the applicant's erroneous perception of external events and not from his reaction to real events which were potentially damaging."

In this case, there was no "erroneous perception of external events". Not only were none of the events "external", there were positive findings of fact about "real events" with respect to which the Respondent's "perception" was accurate. There was also evidence of perception of events which the Arbitrator found did not occur, but that did not break the causal nexus.

I note that in *Yeo*, Neilson J referred to *Townsend* as authority for the proposition:

> "[53] ... that a misperception by a worker of otherwise innocuous matter, which misperception leads a worker to develop a psychiatric condition, does not constitute injury arising out of or in the course of employment."

On the facts of that case he held, as an alternative basis for refusing compensation, that the Applicant's irrational behaviour was "a misperception of the real events which were going on".

In my opinion, this states the authority of Townsend too broadly. As McGrath CJ Comp Ct indicated, as quoted above, a "perception of real events", which are not "external events", can satisfy the test of injury "arising out of or in the course of employment".[43]

[84] In agreeing with the Chief Justice, Basten JA made the following material observations:

The Appellant's contention that a misperception, or indeed a perception, cannot give rise to an injury "arising out of or in the course of employment", must be a contention that the accepted psychological state of the Respondent did not arise out of or in the course of that employment. For there to be the relevant connection with the employment, it was argued that the events perceived must be "real" and not "imagined".

No doubt a psychological state can be based upon a delusion, but the question remains one of causation. The point was succinctly identified and addressed by Windeyer J in *Federal Broom Company Pty Ltd v Semlitch* [1964] HCA 34; (1964) 110 CLR 626 at 642:

43 *State Transit Authority of New South Wales v Fritzi Chemler* [2007] NSWCA 249 at [40]-[54].

> "Can the event to which a disordered mind irrationally attributes physical suffering, that is real to the patient but delusional, be properly called a contributing factor? Ordinary concepts of cause and consequence are perhaps not applicable. Yet it seems to me that the incident which precipitated or stimulated, however irrationally, the worsening of her condition could be regarded as a factor contributing to it."

> There must be an aspect of the employment which constitutes "a substantial contributing factor to the injury" for compensation to be payable: see s 9A(1) of the 1987 Act. To focus on the concept of "perception" may obscure the real issue. Although the arbitrator said that he accepted the statements from witnesses who denied that they had heard anybody refer to the Respondent in a derogatory fashion because of his race or religion, he nevertheless accepted that "in this workplace, racial slurs and comments were made, particularly in relation to the Jewish religion, and the respondent's witnesses accept that": Reasons, Tcpt, 09/08/04, p 57. In so far as his findings constituted a rejection of the need for an intention to harass, there was no error of law. Nor is it necessary to determine whether the Respondent's response was a misperception as to the intention or attitudes of his fellow workers. In contrast to discrimination law, the proper focus in this context is the consequence of conduct on the claimant and not, even in a limited sense, the motivation, intention or other mental state of the co-worker or supervisor: cf *Purvis v New State Wales (Department of Education and Training)* [2003] HCA 62; (2003) 217 CLR 92 at [166] (McHugh and Kirby JJ); and [234]-[236] (Gummow, Hayne and Heydon JJ). If conduct which actually occurred in the workplace was perceived as creating an offensive or hostile working environment, and a cognizable injury followed, it was open to the Commission to conclude that causation was established. Accordingly, no error in point of law was identified by this ground.[44]

[85] It follows from these authorities that a psychiatric condition arising from a perception of exposure to physical injury (including by way of contamination, as in this case), is capable as a matter of law of constituting a mental injury 'arising out of or in the course of

44 *State Transit Authority of New South Wales v Fritzi Chemler* [2007] NSWCA 249 at [67]-[69].

employment'. Accordingly, the Work Health Court did not err in that conclusion. However, the necessary qualification is that the perception must arise from a work-related incident that actually happened or a work-related state of affairs that actually existed. The employer asserts that the incidents to which the worker's case attributed his perception did not in fact occur, such that there was either no nexus or an insufficient nexus to employment. That is the matter raised in the third limb of the sixth ground of the cross-appeal.

[86] Accordingly, the third question which falls for determination under this ground is the employer's assertion that there was no evidence to support a finding that the worker's mental injury was contributed to by a perception of a physical injury. The employer contends that because the worker was found to have given a false account about the availability of PPE, the time afforded to shower and a confrontation with the principal supervisor during the cleaning of the vehicles, when taken together with the fact that the worker pressed no claim for physical injury, there were no primary facts upon which the trial court could find that the worker genuinely believed he had been exposed to radioactive material in the aftermath of the incident.

[87] Although it is correct to say that the trial court rejected the worker's allegations about those particular matters, the trial court's rejection of the worker's evidence in relation to harassment and bullying is not determinative of whether the worker had a genuine belief and fear of

radioactive contamination. It does not necessarily follow that the trial court was compelled to find that the worker's belief of exposure to physical injury or contamination was also a falsity or fabrication. The question in that respect is not whether the worker was actually exposed to radioactive material, or whether the worker suffered physical injury as a result, or whether the worker was bullied or harassed into cleaning the vehicles. It is whether there was a real event in the workplace, as opposed to an 'external event', which was capable of giving rise to the perception and did in fact give rise to the perception.

[88] That event in this case is that the worker was required to clean mud from the vehicles which had been in the tailings dam. That is so even in circumstances where the trial court rejected aspects of the worker's evidence and allegations concerning the incident. There was no dispute concerning the objective facts that the worker was required to clean the work carts at the time in question and that the vehicles were covered in mud from the tailings dam. The objective contemporaneous evidence also established that the worker complained of radioactive exposure because of the incident shortly afterwards on 20 and 21 October 2021. Accordingly, there was evidence to sustain a finding that the incident actually occurred and that the worker did hold that belief or perception,

which finding cannot be characterised as so irrational as to constitute an error of law.[45]

[89] However, a finding that the incident said to have given rise to the perception actually occurred was not enough to sustain the ultimate conclusion that that the worker had suffered a mental injury arising from his employment. That conclusion was contingent on expert opinion to sustain it. As stated, the trial court relied principally upon Dr Papier's opinion in making that finding. That opinion, which is extracted above, was that the principal or 'substantial' cause of the worker's psychiatric injury was his fear of radioactive contamination from cleaning the trucks. However, it is once again necessary to examine whether the expert opinion was properly based on facts which were established by the evidence. The psychiatrist's evidence about those matters in cross-examination was as follows.

> Now, the adjustment disorder requires the external stressor?---Yes.
>
> And that is the incident or the exposure to something, in this case occurring in the workplace?---Yes.
>
> And just dealing with the description that he gave you of having undertaken duties that exposed him to uranium toxicity - if I can put it in those terms? ---Right.
>
> And not having clothes to change into. That was one of the factors that you took into account in accepting adjustment disorder

45 This is not an appeal in which the appellate court is to conduct a real review of the trial and the reasons for decision to determine whether a trial judge erred in fact, subject to the principle in *Fox v Percy* (2003) 214 CLR 118 at [26]-[29]. This is an appeal limited to questions of law. The relevant test is not whether the findings of fact made by the tribunal of first instance are 'glaringly improbable' or 'contrary to compelling inferences'. The relevant test is whether there was evidence which, if accepted, would support the finding of fact.

as the diagnosis?---It was the whole - the whole scenario that led me to believe that he developed the adjustment disorder.

You weren't able to break it up into specific components, one more so than the other?---There would have been - the belief by Mr Slade that the trucks had not been (inaudible) before leaving the mine site that he cleaned the truck externally on one day but when they returned and said the undercarriage had not been cleaned properly, that is where I believe the reaction to the events occurred when Mr Slade - my understanding - I don't know how much he knew about contamination by either uranium or heavy metals or (inaudible) or whatever or whether or the degree to which they could impact his health. However, he was very aggrieved and disturbed by not being provided with PPE whilst in contact with potentially contaminated it seems, material. He was used to driving the Moxy vehicles, which were heavy vehicles but he was driving them, he wasn't cleaning them or doing heavy physical labour. The cleaning of the undercarriage of the truck or trucks was very significantly (inaudible) heavy labour, which he was unused to. He was working in adverse conditions outside and the trucks that he normally drove were airconditioned and it was approximately 40 degrees my understanding is, outside and he was lying on his back with a hydra hose cleaning the underside of these trucks and needed to use bare hands to dig out dirt and tailings and whatever, that were in the crevices of the truck, where he couldn't blast them away, so he was left very fearful of what he had been - whether he had been contaminated and in fact what was - what the consistency the material was that he had to dig out his hands. And it felt to him from his description that he believed that this was dangerous and that he had expected that PPE would be provided but was not done so. (Inaudible) three, the trousers and shirt. He was lying on the ground, underneath the truck, (inaudible) and he was wet and dirty, covered in the stuff that was coming off the truck. I believe that that led to his significant symptomatology and that the symptomatology was the response to those circumstances.

Thank you?---He was (inaudible) - - -

Yes?--- - - - when the job was finished there was a bus waiting and to take the workers back to - I don't know where. Mr Slade required clean clothing, there was very little time, the clothing - and in showers that were available were 30 kilometres away, so he and the person with whom he (inaudible) 30 kilometres to obtain different clothing. There was no time for shower. And he stated – and his workmate put buckets of water over just to try and rinse themselves down, put on some clean clothing and then returned to the initial worksite where there was a bus waiting. Now, Mr – by

> that stage I believe that Mr Slade was anxious and stressed and did not feel well and elected to drive himself rather than take the bus.
>
> And just to clarify, Doctor, and I think these are – you're drawing – the evidence that you’ve just given is drawn from your report findings?---(Inaudible) my report findings and from the documentation that I read.
>
> Yes. And that’s the basis on which you believe that he had an adjustment disorder?---Correct.

[90] Dr Papier agreed with the proposition that the matters which the worker described as adverse experiences during the cleaning incident were an important part of arriving at her diagnosis, and agreed that ‘if none of it happened my diagnosis would be incorrect’. The events or incidents described by the worker which were taken into account by Dr Papier but which were not found by the trial court to have taken place were: (1) that he was not provided with PPE; and (2) that the worker had no time for a shower before travelling to Darwin.

[91] However, the matters in the worker’s account that Dr Papier relied upon which were either accepted, or at least not rejected, by the trial court included: (1) that the worker was performing the task in adverse conditions in which the temperature was approximately 40 degrees Celsius; (2) that the worker was lying on his back with a hydraulic hose cleaning the underside of the trucks; (3) that the worker needed to use his bare hands to dig out dirt and tailings that were in the crevices of the truck; (4) that the worker was wet, dirty and covered in the material that was coming off the truck; and (5) that the worker was fearful that he had been contaminated and believed that this was

dangerous. On a fair characterisation of the psychiatrist's evidence, her opinion was that the worker's symptomatology was in response to those circumstances and that fear of contamination.

[92] As described in *Makita (Australia) Pty Ltd v Sprowles:*

> The basal principle is that what an expert gives is an opinion based on facts. Because of that, the expert must either prove by admissible means the facts on which the opinion is based, or state explicitly the assumptions as to fact on which the opinion is based. If other admissible evidence establishes that the matters assumed are 'sufficiently like' the matters established 'to render the opinion of the expert of any value', even though they may not correspond 'with complete precision', the opinion will be admissible and material… One of the reasons why the facts proved must correlate to some degree with those assumed is that the expert's conclusion must have some rational relationship with the facts proved.[46]

[93] That principle also has application to facts accepted by a medical specialist based on the account given by the person in relation to whom the expert opinion is given. Expert evidence of that type will be irrelevant and lack probative force if it rests on assumptions not backed by primary evidence. However, there does not need to be a precise correlation between the facts proved and the facts accepted by the medical specialist on the basis of the account given by the person examined. If the expert's conclusion retains a rational relationship with the facts proved, it remains relevant and probative.

[94] As described above, the only matters relied upon by Dr Papier which were not proved in evidence were that the worker was not provided

46 *Makita (Australia) Pty Ltd v Sprowles* (2001) 52 NSWLR 705 at [64].

with PPE and that he had no time for a shower before travelling to Darwin. As to the first matter, the rejection of the worker's account that he was not provided with PPE did not lead necessarily to a rejection of his account that he nevertheless came into contact with material from the tailings dam. As to the second matter, the rejection of the worker's account that he had no time for a shower before travelling to Darwin did not displace the fact that he did not shower before travelling to Darwin. It cannot be concluded on the basis of those adverse factual findings that, to adopt Dr Papier's concession, 'none of it happened'. At most, those discrepancies were properly taken into account in assessing the weight that could properly be accorded to the expert opinion. There is no doubt that the trial court was aware of those discrepancies because they arose from the findings it had made. It is to be assumed that the trial court took those discrepancies into account in assessing the weight to be attributed to the expert opinion.

[95] This is a case in which the trial court made adverse findings about the worker's reliability and credibility, and rejected almost every allegation he made about bullying and harassment in the workplace. There is much force in the submission that having made those findings, the trial court should also have rejected the worker's evidence to the effect that the incident cleaning the trucks caused him a genuine fear and perception that he had been exposed to radioactive material. However, it is not to the point that another trier of fact might have

considered the worker's evidence about his fear of contamination to be glaringly improbable or contrary to compelling inferences. The relevant test is whether there was evidence which, if accepted, would support the finding of fact. There was at least some evidence to support both the expert opinion and the relevant finding of fact by the trial court. Nor is this quite a case in which the relevant finding of fact was so unsupported by logical grounds as to be characterised as irrational.

[96] It is plain that the principal focus of the worker's case as pleaded and at trial was on the allegations of bullying and harassment in the workplace. Of the 46 paragraphs of particulars of incidents said to have caused the worker's mental injury, only seven of those paragraphs involved the issue of contamination either directly or indirectly. It is understandable in those circumstances that the employer's principal focus at trial was directed to the issue of bullying and harassment. It is also understandable that the employer, having successfully established at trial that each of the worker's allegations of bullying and harassment was unfounded, may feel a sense of grievance that the worker succeeded in his claim for compensation before the Work Health Court. However, that court was entitled to conclude that the worker's mental injury arose by reason of an actual event in the workplace and that the requisite causal link was established. For these reasons, the sixth ground of cross-appeal has not been established.

[97] That leaves the employer's seventh ground of appeal. The employer contends that the Work Health Court erred in law by: (1) making orders which failed to make necessary findings in respect of the worker's entitlements to compensation; (2) making orders for the payment of compensation without identifying the amount of compensation payable in circumstances where the worker failed to establish the value of his entitlement to compensation at trial; (3) making orders for compensation to be paid to the worker without the necessary antecedent findings of fact; (4) making orders for interest to be paid to the worker without antecedent findings of fact upon which any entitlement to interest could be based; (5) making orders for interest to be paid without specifying the time period for which interest would be payable; (6) making orders for interest to be paid in circumstances where it is not possible for the employer to calculate compensation payable to the worker and/or pay compensation in compliance with the orders and thereby cease its liability for interest; and (7) making orders for the employer to pay reasonable medical expenses without confining such medical and rehabilitation expenses to the injury upon which the claim succeeded.

[98] As the employer says in its written submissions, this is in essence a complaint that the trial judge failed to frame orders with the necessary precision. Although the Work Health Court gave the parties liberty to apply for 'any other consequential orders', the matters identified in the

seventh ground of appeal were properly dealt with in the reasons and orders of the court. In the absence of that stipulation, it is impracticable for the employer to attempt to agree or resolve those issues with the worker given his idiosyncrasies and the fact he is unrepresented. So much was acknowledged by the Work Health Court when it observed that normal weekly earnings, interest, medical expenses and costs remained unresolved, and that the worker 'would be wise to reengage his former representatives to help him with the consequential orders'.[47] That has not come to pass, the relevant and necessary findings were not made by the Work Health Court, and the orders in their present form are inadequate.

[99] Accordingly, ground 7 of the employer's appeal has been made out. Order 2 made by the Work Health Court in the reasons delivered on 6 June 2025 will be set aside and the issues of the amount of compensation payable, interest, and reasonable medical and rehabilitation expenses will be remitted to the Work Health Court for determination in accordance with law. Although it will not be stipulated in the order, this is one of those circumstances in which the remittal must conveniently and properly be dealt with by the Work Health Court as originally constituted.

47 *Slade v CGH Group Pty Ltd* [2025] NTWHC 3 at [81].

The worker's appeal

[100] The worker's appeal is unfortunately but utterly misconceived. As earlier described, in February 2025, which was after the evidence had been received and closing submissions made, the worker applied to reopen his case to pursue his claim for physical injuries, and to tender further documents in support of that claim. That application was refused. The relief sought by the worker in his notice of appeal is:

> To reinstate my Physical claim to the case, Except [sic] the 12 Bundles of Documents into the case, Along with Enforcing the Subpoena to ERA.
>
> Include physical medical treatment to the decision.

[101] Accordingly, the central issue for determination in the worker's appeal is whether the Work Health Court erred in law in refusing the worker's application to reopen the case to agitate the assertion of physical injuries which had previously been withdrawn when the worker was professionally represented. That would have required an amendment to the worker's statement of claim to reinstate the claim for compensation for physical injuries. The questions which presented to the Work Health Court was whether that application for amendment was irredeemably late, and whether considerations of election, efficiency and finality in litigation militated against the worker's application.

[102] The considerations which govern the determination of an application to amend were discussed in *Aon Risk Services Australia Limited v*

Australian National University.[48] In that case the plaintiff sought to make substantial amendments to its statement of claim at the commencement of a four-week trial in a manner which disrupted the court's lists and caused substantial prejudice to the interests of the remaining defendant. The trial was adjourned to allow the application for amendment to be heard, and the trial court granted leave for the amendment to be made. An appeal to the ACT Court of Appeal was dismissed on the basis that the paramount consideration was 'justice as between the parties', and a further appeal was lodged in the High Court. The High Court allowed the appeal, and in doing so French CJ stated:

> … the history of these proceedings reveals an unduly permissive approach at both trial and appellate level to an application which was made late in the day, was inadequately explained, necessitated the vacation or adjournment of the dates set down for trial, and raised new claims not previously agitated apparently because of a deliberate tactical decision not to do so …
>
> In the proper exercise of the primary judge's discretion, the applications for adjournment and amendment were not to be considered solely by reference to whether any prejudice to Aon could be compensated by costs. Both the primary judge and the Court of Appeal should have taken into account that, whatever costs are ordered, there is an irreparable element of unfair prejudice in unnecessarily delaying proceedings. Moreover, the time of the court is a publicly funded resource. Inefficiencies in the use of that resource, arising from the vacation or adjournment of trials, are to be taken into account. So too is the need to maintain public confidence in the judicial system. Given its nature, the circumstances in which it was sought, and the lack of a satisfactory explanation for seeking it, the amendment to ANU's

48 *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175.

> statement of claim should not have been allowed. The discretion of the primary judge miscarried.[49]

[103] The reasons of the plurality reach the same conclusion and on the same essential grounds:

> An application for leave to amend a pleading should not be approached on the basis that a party is entitled to raise an arguable claim, subject to payment of costs by way of compensation. There is no such entitlement. All matters relevant to the exercise of the power to permit amendment should be weighed. The fact of substantial delay and wasted costs, the concerns of case management, will assume importance on an application for leave to amend …
>
> A party has the right to bring proceedings. Parties have choices as to what claims are to be made and how they are to be framed. But limits will be placed upon their ability to effect changes to their pleadings, particularly if litigation is advanced. That is why, in seeking the just resolution of the dispute, reference is made to parties having a sufficient opportunity to identify the issues they seek to agitate.
>
> In the past it has been left largely to the parties to prepare for trial and to seek the court's assistance as required. Those times are long gone. The allocation of power, between litigants and the courts arises from tradition and from principle and policy. It is recognised by the courts that the resolution of disputes serves the public as a whole, not merely the parties to the proceedings.
>
> [The relevant rule] recognises that delay and costs are undesirable and that delay has deleterious effects, not only upon the party to the proceedings in question, but to other litigants. The Rule's objectives, as to the timely disposal of cases and the limitation of cost, were to be applied in considering ANU's application for amendment. It was significant that the effect of its delay in applying would be that a trial was lost and litigation substantially recommenced. It would impact upon other litigants seeking a resolution of their cases. …[50]

49 *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175 at [4].

50 *Aon Risk Services Australia Limited v Australian National University* (2009) 239 CLR 175 at [111]-[114].

[104] The situation presenting in this case was more extreme than that which presented in *Aon Risk Services*. The application for amendment was not made prior to trial. The trial had already been conducted and had concluded. The worker's application, if granted, would have required the substantial recommencement of the litigation and what would effectively have required a retrial. The worker had a choice as to how his claim was to be framed and sufficient opportunity to identify the issues. At a time when the worker had the benefit of professional legal representation, a decision was taken to abandon the claim for physical injury. There is nothing to suggest that the decision was made on anything other than a rational legal basis and an objective appraisal of the evidence to hand, and in accordance with the worker's instructions. Nor did the worker provide any satisfactory explanation as to why the first decision had been wrongly made and why he should be permitted to depart from that position with all the adverse consequences and prejudice that would flow from such a departure. In those circumstances, the just resolution of the proceeding did not require the worker to be given opportunity to reinstate that claim once he had dismissed his professional legal representation following the trial.

[105] The Work Health Court's refusal to allow the worker leave to reinstate the claim for physical injury was a discretionary determination. An appeal against a discretionary determination is a matter to which the *House v The King* standard applies, and the approach prescribed in

Haritos governs that challenge. As the Federal Court observed in *Haritos*, the determination of whether an alleged error constitutes a 'question of law' must be undertaken regardless of whether the error is alleged to have been committed in the fact-finding process, the exercise of a discretion or the process of evaluation. There is no material incompatibility between the application of the *House v The King* standard and an appeal confined to a question of law. The *House v The King* standard requires the demonstration of specific error in the form of: (a) acting on a wrong principle; (b) allowing extraneous or irrelevant matters to guide or affect the decision; (c) mistaking the facts (so as to constitute error of law); or (d) not taking into account some material consideration.[51] That range of errors contemplates and is broad enough to capture any relevant 'question of law'. However, the worker has not established any error on a question of law in the Work Health Court's refusal to grant leave. For that reason alone, the appeal must be dismissed.

[106] To the extent that the worker's 'Grounds of Appeal' purport to identify other issues, they are only relevant and only require determination to the extent that they are capable of informing his contention that the Work Health Court fell into error in refusing his application for leave to amend in February 2025. The worker's complaints are irrelevant to that question so far as they traverse matters such as the adequacy of

51 *House v The King* (1936) 55 CLR 499 at 504-505.

ERA's compliance with the summons to produce; the Work Health Court's failure to allow him to tender further documents in relation to physical injury; the mutual failure by the respective solicitors to incorporate mediation documents into the Court Book; the omission of witness statements in the exercise forensic judgements made by the worker's then barrister; and the failure on the part of the Work Health Court to take into account relevant evidence and the reliance on inadmissible evidence.

[107] Those complaints are all directed to the worker's assertion of physical injury, and become relevant only if the trial court should properly have allowed him to ventilate that issue at the time he sought to do so. In any event, many of the complaints are misconceived. To take one example, the certificate of mediation and the schedule of documents from the mediation were received into evidence during the trial, but the materials considered on a without prejudice basis during the mediation were obviously not properly put before the Work Health Court.

[108] There is an assertion of an apprehension of bias on the part of the Work Health Court and of a denial of procedural fairness. Again, those complaints can only operate in the substantiation of error in the Work Health Court's refusal to allow the worker leave to amend his claim to reinstate the physical injuries. There is no error apparent in that respect, and no basis at all on which to assert either an apprehension of bias or a denial of natural justice by the Work Health Court. In

particular, the worker's contention that the Work Health Court somehow fell into error and denied him natural justice by receiving closing submissions from his erstwhile barrister as *amicus curiae* fails to appreciate that without those submissions his claim for compensation may very well have failed.

[109] There were two other specific allegations made by the worker in relation to the conduct and procedures adopted by the Work Health Court.

[110] The first was an allegation that the Work Health Court somehow deprived the worker of a proper opportunity to make submissions in relation to the reinstatement of his claim for physical injury. An exploration of that issue discloses that the worker made that application in a five-page document which was received by the Work Health Court on 10 February 2025. The worker then made an affidavit in support of the application which was received by the Work Health Court on 28 February 2025. The worker then made an oral application and further submissions, including in relation to the tender of further evidence, during a directions hearing conducted on 7 March 2025. At that time the Work Health Court ordered the employer to file and serve submissions in response to the worker's application to tender further evidence by 17 March 2025. There was no denial of procedural fairness in the procedure adopted.

[111] The second allegation made by the worker was that at the commencement of the trial the presiding judicial officer observed that the hearing book was 770 pages long. The worker says that the hearing book received was in fact 733 pages long, with the attendant suggestion that some material had been improperly excluded. There is no evidence that any material was excluded from the hearing book, the worker cannot identify any material that had been excluded, and the worker cannot identify any material which was relied upon by the Work Health Court which does not form part of the hearing book. The discrepancy between the judicial officer's statement concerning the length of the appeal book and the actual length of the appeal book did not constitute material error on the part of the Work Health Court.

[112] Similar observations may be made in relation to the dearth of evidence in support of the worker's allegation of collusion between his solicitors and the solicitors for the employer. Quite apart from the lack of any relevance to the prosecution of the worker's appeal, the allegation is a disgraceful suggestion which is entirely unsupported by any evidence and which, had it been made by a legal practitioner, would constitute professional misconduct.

[113] The worker also makes various allegations of perjury and the falsification or alteration of documents, photographs and phone records. Those allegations are all obviously irrelevant to the substance of his appeal and/or misconceived.

[114] To take one example, the worker alleged that a particular phone record was a forgery because there were two versions of the same record with one showing the timestamp of 11:49 AM and the other showing the timestamp of 1:19 PM. The exploration of that allegation during the hearing of the appeal disclosed that the records were otherwise identical, the time difference was referable to the fact that the versions had been generated in different time zones, and both versions were included in the exhibit which was tendered into evidence during the trial. The worker's assertion of some sort of forgery or other subterfuge is baseless.

[115] To take another example, the worker alleged that only one page of the trespass notice had been received into evidence for some unspecified nefarious purpose. The trespass notice postdated the employment and any of the incidents said to have caused injury. It was issued at a time when the worker was maintaining a campaign against the Work Health Authority and was irrelevant to the proceeding beyond sustaining the finding described at the outset of these reasons that the worker had fabricated an allegation about the Chief Executive Officer of the Authority. Leaving those questions of relevance aside, the exploration of that allegation during the hearing of the appeal disclosed that a full version of the trespass notice had been received into evidence at trial in Exhibit 11 and was incorporated into the appeal book.

[116] To take another example, the worker alleged that a photograph of the tailings dam was which had been received into evidence at trial was somehow 'false', that another photograph of the tailings dam was somehow 'missing', and that the missing photograph established bad faith on the part of the solicitors for the employer and that the principal supervisor had perjured himself during evidence. The exploration of that allegation during the hearing of the appeal disclosed that the principal supervisor had been examined extensively at trial about the general working of the mine and the tailings dam, that he identified the photographs which were ultimately received into evidence at Exhibit 17, and that no complaint had been made about the accuracy or completeness of the photographs during the course of the trial. Nor was the worker able to articulate in any comprehensible fashion what the asserted falsity was and how it was material to any part of either the trial or the appeal proceeding.

[117] To take another example, the worker alleged that an unsigned statement about the cleaning of the water carts had been improperly received into evidence by the Work Health Court. The exploration of that allegation during the hearing of the appeal disclosed that the document complained of by the worker had not in fact been received into evidence.

[118] To take yet another example, the worker alleged that the principal supervisor had given false evidence about the worker undertaking two

days' training in circumstances where there was no record of that training, where no relevant documents had been produced and where no reference had been made to those documents. The exploration of that allegation during the hearing of the appeal disclosed that the training documents all formed part of the hearing book at trial and had been incorporated into the appeal book for the appeal proceeding.

[119] The worker's submissions in relation to his appeal misapprehend what it is necessary for him to establish to demonstrate that the Work Health Court was in error in refusing his application to reinstate the claim for physical injuries. Even putting that fundamental misapprehension aside, the worker's specific complaints would seem to be the product of either mistake or paranoid ideation and do not withstand any serious scrutiny. For these reasons, the worker's appeal will be dismissed.

Disposition

[120] The following orders are made.

1. The appellant/cross-respondent's appeal is dismissed.
2. The respondent/cross-appellant's application for an extension of time within which to file the notice of cross-appeal is granted.
3. The respondent/cross-appellant's cross-appeal is allowed in part and Order 2 made by the Work Health Court in the reasons delivered on 6 June 2025 is set aside.

4. The determination of the amount of compensation payable, interest, and reasonable medical and rehabilitation expenses is remitted to the Work Health Court for determination in accordance with law.

5. In default of agreement, the parties are to file and serve written submissions in relation to the costs of the appeal within 28 days of the delivery of these reasons.
