CITATION:	*Kieth Van Dongen v Northern Territory of Australia* [2004] NTMC 050
PARTIES:	KIETH VAN DONGEN
	v
	NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	Work Health
JURISDICTION:	Work Health – Alice Springs
FILE NO(s):	20104578
DELIVERED ON:	24 March 2004
DELIVERED AT:	Alice Springs
HEARING DATE(s):	8 – 12, 19 December 2003
JUDGMENT OF:	M Little

CATCHWORDS:

REPRESENTATION:

Counsel:

Worker:	J Reeves QC / R Bennett
Employer:	S Gearin / N Collier

Solicitors:

Worker:	Martin and Partners
Employer:	Collier and Deane

Judgment category classification:	
Judgment ID number:	[2004] NTMC 050
Number of paragraphs:	156

IN THE WORK HEALTH COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20104578

BETWEEN:

KIETH VAN DONGEN
Worker

AND:

NORTHERN TERRITORY OF AUSTRALIA
Employer

REASONS FOR JUDGMENT

(Delivered 24 March 2004)

Ms M LITTLE SM:

This is an action pursuant to the Work Health Act ("the Act").

1. By way of a Further Amended Statement of Claim dated the 26th of November 2003 the worker seeks the following orders:

   A. That the employer pay the worker weekly payments of compensation.

   B. That the employer pay the worker's medical and related expenses.

   C. That the employer pay the worker interest.

   D. That the employer pay the worker's costs of these proceedings.

2. By way of amended Notice of Defence dated the 4th of December 2003 the employer denies that the worker is entitled to the orders sought or any orders at all. In a counterclaim the employer specifies four reasons as to why the worker is not entitled to compensation and these are:

(a) the Worker has not suffered an injury out of or in the course of his employment ("a compensable injury");

(b) in the alternative, if the Worker has suffered a compensable injury it did not render him, nor does he remain, incapacitated for;

(i) employment as a Police Officer with the Employer, or

(ii) alternative employment such that he could earn an amount equal to or greater than his normal weekly earning with the Employer.

(c) the Worker has not given notice of his injury as soon as practicable pursuant to Section 80 of the Work Health Act;

(d) the Worker is not entitled to maintain these proceedings pursuant to Section 182 (1) of the Work Health Act as he:

(i) failed to bring a claim for compensation before voluntarily leaving his employment; and

(ii) failed to bring a claim for compensation within 6 months of the occurrence of the injury or 6 months from the date of any incapacity arising from any disease.

In the counterclaim the employer claims that the worker is not entitled to any compensation pursuant to the Work Health Act, that the worker's claim be dismissed and that the worker pay the employer's cost of the proceedings.

3. A Further Amended Reply to Defence and counterclaim was before the Court at the commencement of the hearing. Leave was granted for that to be filed.

4. This matter proceeded as a hearing and commenced on the 8th of December 2003. Oral evidence was taken from the worker Kieth Van Dongen. Pursuant to Rule 18.06 of the Work Health Rules, a report from Dr McCarthy was tendered by the worker and Dr McCarthy was cross-examined by the employer. Numerous documents and reports were tendered on behalf of the worker and they will be referred to in these reasons. The employer tendered a report of Dr Terace pursuant to Rule 18.06 and he was cross-examined by the counsel for the worker. Former

police officers David Benson and Leonard Pryce were called, statements were tendered by the employer and then cross-examination occurred. Documentary evidence and reports were tendered on behalf of the employer and once again they will be referred to in these reasons.

5. I will now summarise the evidence on behalf of the worker, with some comments being made in the summary. The worker is currently employed as an investigator for the Office of the Public Advocate within the Department of Justice in Western Australia. He was born on the 5th of January 1961 in Perth, where he attended school to year 11. He then undertook tertiary studies at the University of Western Australia and Murdoch University, graduating with a double degree in History and English in 1985. He undertook a range of work upon leaving his studies. He married on the 25th of January 1986. He currently has four children and they were born in 1988, 1989, 1998 and 1999.

6. On the 20th of January 1986 he joined the Northern Territory Police Force ("the employer"). His evidence was that he was mentally and physically fit before joining the Northern Territory Police Force; and in particular that he was not suffering a mental illness before joining the Northern Territory Police Force. He undertook police training through much of 1986 and graduated just before Christmas of 1986. He had done some work on the road before graduation. Following graduation he was posted to Maningrida Police Station in 1987.

7. After two years and two months at the Maningrida Police Station he was transferred to the Jabiru Police Station for 18 months and then onto Alice Springs. He spent six years at the Alice Springs Police Station and then was posted to the Yulara Police Station. He had been promoted to Senior Constable. He had undertaken the Sergeant exam successfully and had been given acting Sergeant duties in Alice Springs. He had expected to become Senior Sergeant at some stage. He gave evidence that he enjoyed his job and that he felt he had skills and talent to become a commissioned officer.

8. While police work involved being a party to some distressing incidents, and that was a daily expectation, he accepted this as part of his role as a police officer. He said that he had been subjected to numerous assaults as a police officer. He gave

evidence that once at Maningrida a man had taken a shot over his head and a couple of times guns had been produced and he had disarmed the persons involved. He had learnt in training and whilst on the job that, at times such as this, a police officer must not be indecisive and that to disarm someone is the key issue.

9. Whilst he was in Alice Springs he undertook a range of duties including general duties, acting as the administration Sergeant for approximately six months, in CIB for some years as an acting detective and in major crime for some time. This latter job involved distressing incidents and the need to attend autopsies. Upon his move to Yulara he was immediately involved in another distressing incident; a murder had taken place where a man had shot his brother to the head.

10. He had lodged a number of Work Health Claims and he believed the first claim he had filed related to a man named Whisky Jungari, where the worker was punched to the face and his glasses were broken. He gave evidence that he believed he had filed a claim for what became known in this hearing as the first Curtis incident at Yulara (12th of August 1996) and also with respect to the second Curtis incident (9th of November 1996).

11. When he first commenced as a police officer guns were issued to a particular station and a police officer drew a gun from the station if there was a particular need for a weapon. Approval would have to be granted for a gun to be carried in these circumstances. In approximately 1994-1995 this changed and firearms known as Glocks were issued to each police officer. These were semi-automatic firearms. A personnel utility belt was also issued and these had to be worn at all times. The worker stated that he disagreed with the new policy. He said prior to this change the Northern Territory police force was an unarmed police service and other techniques were used to address violence. He received training to use the firearm.

12. The worker gave evidence that he had always done his job without a gun and prided himself on talking through situations, never having to resort to the use of a

firearm. His evidence was that the first time he had ever pointed a gun at someone was on the 12th of August 1996, in the first Curtis incident.

13. In 1998 a colleague had had to shoot someone and he said that had been a very distressing incident for all concerned. He gave evidence that he was concerned that the use of a weapon such as a gun had connotations within the police force; that there was a badge of courage and that one of the indicators of that badge of courage was that you may have to shoot someone. It was said, "If you have to do it, do it". He would hear people talk about who they would want to have as a partner and who they would not want as a partner.

14. It was the worker's evidence that after guns had been allocated on an individual basis people started using them far too quickly. He said he was vocal about the use of warning shots and his evidence was that these were not reported at times. He said that there were regular discussions about guns.

15. The details of the first Curtis incident was then the subject of evidence. On the 12th of August 1996 the worker was at Yulara with police officer Kathy Brett. A call came through indicating that the Aboriginal community police officer at Mutitjulu was in trouble. Officer Brett and he travelled by car to Mutitjulu and as they turned into the community they noticed many people standing around. They saw the police aide's car coming from the west and that vehicle spun around. They saw a man named Bob Curtis running towards the aide's car with a smoking stick. Bob Curtis was hitting the ACPO's police car and he had a star picket in the other hand. The worker indicated that he got his car as near as he could to Bob Curtis and that he had his police baton in his hand. He swung the baton towards Curtis. Officer Brett was nearby.

16. The offender, Bob Curtis, was six foot six and approximately 120 kilograms. He was in his early to mid thirties and was fit. The offender produced a knife. Police officer Brett was approximately 50 kilograms and five foot four inches. The worker said that the offender raised the knife and slashed it towards Officer Brett's head area. While missing police officer Brett, the knife got very close to

her. At this point police officer Brett raised her gun, which was loaded, and put it at the face of the offender. Officer Brett swore at the offender and told him to back off. The worker then pushed the offender with the baton and got the gun off police officer Brett. The worker said that he did not know why he did that. He then said he did not want police officer Brett to shoot the offender. He told police officer Brett to go and phone Alice Springs and say they were in trouble and, whilst she was distressed, she did leave the area.

17. He estimated there was 80-100 people in the area including children, women and old men. The worker screamed at Bob Curtis to put the knife down on the ground but the offender refused to comply with this direction. The worker raised police officer Brett's gun towards the offender and they both moved around in a spinning motion. The worker told the offender to put the knife down and the offender said, "shoot me". The offender was talking in an Aboriginal language as well. The worker said he was focused on Bob Curtis and he was aware that some people were screaming out the words to the effect of "kill him" and some were saying not to kill him. Some were calling him a murderer. Bob Curtis thumped his chest and said words to the effect of "kill me".

18. On two occasions the worker thought he would need to shoot the offender. He thought to himself "how to do this", he recalled his training and he put the gun down as he could not do it. He had a mixture of thoughts at this time including that "I cannot take his life", "if I shoot him there would be a coronial" and other such thoughts. On the second opportunity he thought he could do it but then he put the gun down. He heard a man say words to the effect of being a little boy. He walked to the car and the offender was throwing things at the car.

19. A message come through from his supervisors in Alice Springs saying "don't shoot the guy". The worker then had concerns about what to do next. He thought that he could not drive away, as that would mean difficulties in subduing a further situation. The worker decided to wait and wear the offender down. For another hour or so the offender was coming back and forth, with various incidents occurring. The offender went into a house and the police were watching that

house. As it transpired the offender got out the side of the house and left by car going towards Amata. There is no doubt in my mind that this was a prolonged and very serious incident.

20. The incident was reported and a crime report was submitted. An accident/injury report was also submitted by the worker and that became exhibit W4. W4 was dated the 13th of August 1996, that is the day after the incident. Much turned on this document and I will summarise the contents as part of the summary of this evidence. In the description of the incident the worker had written "offender attacked me several times with a knife causing me to draw my firearm to protect myself". In part of body injured he said "mind". In the nature of the injury he wrote "psychological". As to cause of injury he said, "attack by offender". In answer to the question, do you intend claiming compensation, the box yes was marked. It was said that there was an attached statement; that statement was never sighted by the Court. He was not absent because of the incident, no first aid was provided, no medical attention was provided and there were no medical expenses incurred. As to action needed to prevent recurrence he marked more pre-job instruction and improved personal protection. In the section headed preventative action taken he marked the box no and wrote "unable to due to nature of incident". W4 was signed by the worker.

21. The worker gave evidence that after the first Curtis incident everything changed. He said it was a huge step to put the form in to acknowledge that he had a problem with his mind. He felt like he had failed and felt he could not cope. He was concerned about how others were going to think of him. He was confused about what to do. He felt it struck at his manhood and at his pride. His evidence was that he had an injury; that the first Curtis incident had injured him mentally.

22. He rang the welfare section of the police force on behalf of Kathy Brett and they said for her to phone the welfare section. He told Kathy Brett that she should ring welfare and he thought she did do that. There was no debriefing straight after the incident and the first occasion that he could have a debriefing was a couple of

weeks later, when the superintendent came to see police officer Brett. Officer Brett is now a non-operational police officer.

23. His evidence was that he thought he made a claim for compensation for the first Curtis incident but he was not able to find any copies of paperwork. No claim for Work Health was ever found with respect to the first Curtis incident of the 12th of August 1996. I find that no claim for work health was ever made with respect to the 12 August 1996 incident.

24. The worker made a claim for compensation under the Crimes (Victims Assistance) Act with respect to the first Curtis incident and that claim became exhibit W5. W5 is dated the 11th of August 1997, application number 9718181 in the Local Court of Alice Springs. In the section entitled "What happened" it is stated : "The victim responded to a call for help at the Mutitjulu community and in his capacity as a police officer at the Yulara police station he attended at Mutitjulu and attempted to arrest the offender. The offender was armed with a knife and rushed the victim several times attempting to stab the victim. The victim was able to defend the offender off with his police issue baton on numerous occasions. The offender then threw several rocks at the victim all of which missed. The offender then picked up a shovel and attempted to strike the victim with the shovel on several occasions. The offender then attempted to strike the victim with a crow bar, again the victim was able to defend the offender off before the offender alighted from the area. Throughout the assault the offender threatened to kill the victim on numerous occasions". It was stated the offence occurred at work and that "the victim was acting in pursuance of his duties as a police officer attempting to arrest the offender when the assaults occurred". As to injuries it is stated "mental distress, full and further particular to be provided prior to hearing". Continuing disabilities is marked "mental distress, full and further particulars to be provided prior to hearing". Item 9 of the (CVA) form was any other amounts received or receivable from other sources and that is marked nil. Ordinarily this section would make notation of any other claims made, such as a Work Health claim. Item 11, any other expenses or losses, is marked nil.

25. In the opening, and pursuant to Rule 18 of the Work Health Rules, a report of Mr Mike Tyrrell was tendered and became W1. The report was dated the 25th of September 1997 and was prepared in support of two Crimes (Victims Assistance) claims. Mike Tyrrell is a psychologist who works for Alice People Services Pty Ltd in Alice Springs. Mr Tyrrell assessed Mr Van Dongen on the 2nd of September 1997 and prepared the report. The report set out two critical incidents involving the worker, namely on the 12th of August 1996 and the 9th of November 1996. Mr Tyrrell diagnosed an "Adjustment Disorder with features of mixed emotions from the first incident and particularly Depression after the second incident." (Page 3 of W1).

26. He opined that the worker had "suffered significant mental distress and related suffering in the form of an Adjustment Disorder with mainly depressive features spanning nearly 12 months as the direct and indirect result of two incidents he faced in the work place on the 12th of August and the 9th of November 1996". (Page 6 of W1). He also advised that the worker's condition has endured beyond its usually expected progress due to the effects of the incident raising issues for the worker and impairing his ability to address and resolve these issues in his current career situation. Mr Tyrrell said that counselling and medical oversight was needed to address both his symptoms and situation. He said without such assistance the worker's condition was at risk of consolidating into a more substantial and impairing depressive syndrome. (Page 4, W1).

27. The worker gave evidence that following the first Curtis incident he did not seek any treatment. He said that he could get over it and, whilst he was pretty shook up, he needed closure. He believed that once he had locked Bob Curtis up, he would have closure. Bob Curtis was found on the 9th of November 1996 and that became known as the second Curtis incident. Early that morning Bob Curtis was waiting for the police and he had a belt around his hands with the studs facing out. Straight away there was a fight in a confined space. The worker struggled to get Bob Curtis down. Bob Curtis threatened that he would find the worker's wife and children and threats were made towards them. The arrest was exhausting hard

work and was a lot harder than he had expected. Bob Curtis was taken into custody and he was later charged and convicted of certain offences.

28. The worker's evidence was that after the arrest he expected to be relieved of the burden and to regain what he had lost, but that did not happen. He said that he still had trouble sleeping and he would wake up at night; it was as if there was a war going on inside his head. He would break out in sweats and would go through the incidents again and again.

29. Following the second Curtis incident he sustained bruises from punches and made a claim for Crimes (Victim's Assistance) and for Work Health. The Work Health claim form with respect to the second Curtis incident was dated the 14th of November 1996 and became exhibit W6. In part five of the Work Health claim form he indicated that the part of body affected was his arms, hands and stomach. As to the type of injury he noted cuts and bruises. He noted the cuts as the most serious injuries. There is no reference to mental injury in exhibit W6. In part eight he stated that the injury was reported on the 9th of November 1996 and that he did not stop work because of the injuries. He received treatment from Dr Carney at the Yulara medical centre on the 10th of November 1996. He stated that he was no longer receiving treatment (that is, at the date the form was completed by the worker on the 14th of November 1996) and the form was handed to his employer. He was still employed by the employer when W6 was completed.

30. Exhibit W7 was then tendered. That was the Crimes (Victim's Assistance) application with respect to the second Curtis incident and was signed by the applicant's solicitor on the 7th of November 1997, (being claim number 9725384 in the Local Court of Alice Springs). Under injuries it was stated "bruised abdomen, lacerations to hands, associated bruising and swelling, mental distress, adjustment disorder". Under continuing disabilities it was said "full particulars to be provided prior to hearing". Under the heading Loss of Earnings it was stated there was nil loss of earnings. Under the heading, any other amounts received or receivable from other sources it was noted 'nil'. As stated earlier, the report of Mike Tyrrell (W1) was also relied upon in this claim.

31. The worker's evidence was that during 1997 he was still stationed at Yulara as a police officer and that things had changed after the two Curtis incidents. He was struggling and had lost motivation. He found it hard to deal with the incidents and didn't know who to go to. He tried to solve the problem through self-help literature but this did not help. The thoughts in his mind were not going, he would go home a lot during work hours and had a few days off.

32. He recalls one incident at Docker River involving petrol sniffers. That incident had caused him to draw his gun straight away, and he pointed his gun at a petrol sniffer. He had never done that before. The crowd gathered around and they said to him there was no need for a gun. He and Sergeant Benson drove off after that incident. He said prior to August 1996 he had not taken a lot of sick leave but after August 1996 he had taken a bit a sick leave. He said he and his family lived at a house adjoining the Police Station and he found it hard to detach his life from his work. He said he would go home when he got annoyed at work. I took this to mean for relatively short periods of time.

33. In 1997 there was a bad situation involving a young person named Brumby who had the worker in a headlock. He said that there was another incident at Docker River where he had been bitten to the thumb area and he had been told to get a hepatitis check. He lodged a Work Health claim for that incident. That incident is set out in paragraph 4 (a) (iv) of the Further Amended Statement of Claim.

34. He gave evidence that he tried to raise the effect the Curtis incident was having upon him with senior officers in the police force in approximately early 1997. Sergeant Pryce was prosecuting on a Court circuit and he had been picked up at the airport. Sergeant Dave Benson, the worker's station Sergeant, Sergeant Pryce and the worker were in a Police vehicle. His evidence was that he said to the two Sergeants that he had been finding it a bit hard to cope as a result of the incident and that he couldn't shoot someone. Neither officer said anything and there was an uncomfortable silence. He said he felt out on a limb, embarrassed and stupid. He said he had raised this matter in the presence of these two officers as they were trained in peer support, which the police department had set in place.

35. In 1997 he was referred to Mr Tyrrell by his solicitor who sought a medical report for the Crimes (Victim's Assistance) Claim. He was not comfortable seeing a psychologist. Mike Tyrrell told him he probably had a "bit of post-traumatic stress disorder" and that he should consider taking anti-depressants. The advice to take anti-depressants had shocked him and he did not want to accept that advice. He did not take any anti-depressants at that stage. Mr Tyrrell had also told him to look for another job. He felt that his world was shattered. He said his condition fluctuated up and down.

36. I note that the report of Mr Mike Tyrrell (W1) does not confirm all the matters which the worker set out in his evidence, in particular that the worker probably had "a bit of post-traumatic stress disorder", that the worker consider taking anti-depressants and that he should look for another job. I do note that Mr Tyrrell's report has suggested that he required counselling assistance and medical oversight. I also note that he has given the opinion that, without such assistance, the condition may become more substantial and more impairing. The diagnosis made by Mr Tyrrell in W1 is not one of post-traumatic stress disorder but rather an adjustment disorder with depressive features.

37. The worker gave evidence that the crunch came with the Jingo incident in February 1998. This incident is set out in paragraph 4 (a) (v) of the Further Amended Statement of Claim. He said the offender picked up and lifted a knife. The worker punched the man's arm before the knife was up too high and then wrestling commenced. The offender threw punches and the worker received two punches to his rib cage whilst he was struggling to arrest the offender. He sustained an injury to his ribs although no x-ray could be taken. His evidence was that it was at this point that he decided he wasn't going to work any more as a police officer. He was getting hurt too often. He tried to verbalise but that was not working. He had some time off and whilst he was in bed with the rib injuries he thought of his future. He said he saw Mike Tyrrell again close to the time of the February 1998 incident. It was then he decided to leave the police force and he told Mr Tyrrell that. He did not tell the employer about this decision.

38. He went to Western Australia for his wife to have a child. They had previously lost a child at birth in February 1995 and decided to have this next child in Western Australia. It was around this time he made applications for several jobs including in the Prosecution Section of the Department of Transport, the Public Advocates Office and the Western Australian Police. His recollection was that he withdrew his application to the Western Australian Police, as he "did not want to be a copper any more".

39. He was offered both the prosecution job in the Department of Transport and the job at the Public Advocates office. He decided to take the Public Advocates job as it was a less threatening environment and there were no offenders or arrests to be made. He perceived the job in prosecutions may involve some violence. The job as an investigator with the Public Advocates Office involved mainly older people and some people with psychiatric problems. It involves looking at records and speaking with families. As stated earlier, he continues to undertake that job.

40. He lodged a claim for Crimes (Victim's Assistance) and worker's compensation with respect to the Jingo incident. Exhibit W8 was the worker's compensation form and the incident was dated the 2nd of February 1998. W8 lists the parts of body affected as leg/chest/hand. The type of injury listed is cut/strain, bruise/bruise. The chest injury was listed as the most serious. There was no reference to a mental injury on W8. He was still employed with the employer at the time W8 was lodged.

41. W9 was the Crimes (Victim's Assistance) form with respect to the Jingo incident and is dated the 28th of July 1999. In W9, under injuries the following injuries are listed: painful right side of chest, fracture to rib, associated bruising and swelling, damage to cartilage attached to ribs, mental distress. Under continuing disability is listed mental distress. Item nine, any other amounts received or receivable from other sources, is listed as nil. As with the other CVA claims, no reference has been made to the Work Health claims lodged (which were lodged with respect to all CVA claims except the first Curtis incident). He was no longer employed with the employer at the time W9 was lodged.

42. On or around the 9th of June 1998 the worker resigned from the Northern Territory Police Force, effective from the 24th of June 1998 (E20). He commenced work with the Public Advocates Office in the Department of Justice in Perth. At that time he arranged to move the rest of the families possessions to Western Australia, handed in his uniforms and got a clearance certificate from the police. He attended an exit interview and was told there was nothing to talk about. He shook hands with the officer and left. He did speak to peers before he left. No one in any position of authority spoke to him about whether there was an alternative to him leaving. He felt disappointment about that.

43. Upon leaving the Northern Territory Police Force he felt a weight off his shoulders. He said the 1996 incident had set the fate (and here I am presuming he refers to the August 1996 incident) and after he saw Mr Tyrrell things seemed to fall into place.

44. In September 1998 he came back to the Northern Territory to give evidence in his Crimes Victims Assistance cases involving Curtis. After returning to Perth he attended at the Prime Medical Services for some psychological counselling. This medical service was a Department of Justice employee benefit. He felt that the psychologist "didn't fit" and he didn't feel any great benefit from the session. At that time he was beginning to get tearier and more confused. He was struggling to keep on top of things, there was a struggle inside his head.

45. He had thoughts of killing people and thoughts he described as "black thoughts." It was not like depression, that was a feeling he had later. He said these were dark thoughts yet he found it comforting to think bad things about people who had done things to him.

46. Throughout 1999 things ticked along ok and he found the thoughts were not so intrusive. Later in 1999 it was the worst period of his life. He took some leave and was feeling very low. He crashed during the leave and got the flu. Then it was as if a grey veil had dropped in front of his eyes and he was dysfunctional. He asked his wife to take him to the doctor and she did that. He said his ability to

function had gone all together. He talked about his situation to Dr Henderson who referred him to Dr Blyth, a psychiatrist. He was then put onto Efexor, an anti-depressant, and undertook cognitive behaviour therapy.

47. He said that the depression was a nightmare and that he didn't care about anything. He couldn't think to do anything and felt sick all the time. He did not have dark thoughts. It was like a veil was over him and he just wanted to give up. He said that the Efexor helped a lot and the therapy, which he undertook at the Perth clinic, also helped him. He estimated it was October 1999 when he commenced therapy at the Perth clinic, completing therapy at the end of 1999. While out of sequence with respect to the worker's examination in chief exhibit, E30, the Perth clinic notes, sets out the date of his first admission to the clinic as 16th August 1999.

48. It was at this stage he realised he may have to be on medication for the rest of his life and there may be relapses. He wrote to TIO and asked them to reopen his Work Health claims, requesting that they pay for his medical expenses. TIO were the insurers for his employer in the Work Health claims. Exhibit W10 is a bundle of letters and documents relating to correspondence between the worker, TIO and his then solicitors, Morgan and Buckley. The first letter from the worker to TIO was dated 7th of December 1999. At that stage he made a claim for medical expenses and this letter states in part: "I have left the employment of the Northern Territory Police Service as of 28/06/1998. I now reside in Perth in Western Australia at the above address. In the last years of my service I was subject to a number of assaults which eventually led to me resigning from the Police Service. In total there were 6 claims to TIO for assaults to me. The last of those assaults occurred on 2/2/1998. Your claim number 104029 refers. I can provide the other claim numbers if required. Since leaving the Police Service I have needed to seek the help of medical professionals in coping with the effect these assaults have had on me. To date I have paid for these service myself. It has become apparent to me that the need to seek such professional help is a direct result of these assaults, in particular the above mentioned one of 2/2/1999 (sic). As such I ask that you reopen your file and accept payment for further medical expenses associated with

this matter". I take the reference to 1999 to mean 1998. This letter does not specifically refer to either of the Curtis incidents.

49. The worker's evidence was that his condition improved after taking anti-depressant medication. While he was on medication he would feel up but then he would go down again. He had some problems with his weight and sexual dysfunction. He described these as side effects associated with the medication and that he believed he should live with them.

50. TIO then arranged for an appointment for the worker to be examined by Dr Ding (see letter dated 20th December 1999 as part of bundle W10). He had read the history given in Dr Ding's report and said that was accurate. He saw Dr Ding once. He had been seeing Dr Blythe and then he saw Dr McCarthy. He saw Dr McCarthy on three or four occasions and on one occasion his wife came with him. His wife came to cognitive behaviour therapy on two occasions as well. Dr McCarthy is psychiatrist.

51. Two reports were prepared by Dr McCarthy and these were shown to the worker. He highlighted some minor inaccuracies in the history and the reports generally. The report of Dr McCarthy dated the 17th of February 2003 was marked for identification W11. Later it became exhibit W11. At page four of W11 Dr McCarthy states: "I confirm the diagnosis in my report of the 29th of August 2000 about the Post Traumatic Stress Disorder and Major Depressive Disorder were caused by stressors at work as a policeman with a contribution to his continuing depressive symptoms from subsequent events". At page five of W11 he states: "Irrespective of the precise diagnosis I remain of the opinion that this gentleman's significant problems with anxiety and depression and possibly alcohol relate to and originate from his work as a policeman in the Northern Territory with other life events contributing subsequently to the maintenance or exacerbation of his depressive symptoms. I note that cessation of his medication does lead to an exacerbation of his depressive symptoms".

52. The worker then talked about his alcohol consumption. His evidence was when he was a police officer there were times when he did not drink at all, for example when he resided in communities and where he was on call. When he was in Alice Springs he drank socially although not on a regular or heavy basis. His heavy drinking happened more recently, in late 2001-2002. He said he would drink to get drunk and to go to sleep every night during that time. In recent times his alcohol of choice moved from beer to wine. He was drinking on his own, a situation which he saw as undesirable. He would drink to forget, to go to sleep and once he was low, he would start again. The reason he was drinking alcohol was that "it stopped you from thinking and you went to sleep".

53. In February 2002, in consultation with Dr Blythe, he stopped taking his anti-depressant medication. Dr Blythe had suggested that he try and go off the medication for some time. When he first went off the medication he seemed to cope. Then he was irritable and angry and would sometimes fight with his supervisor at work. He said the thoughts would come into his head, in particular the Curtis incident, if he was not on his guard. If he let his guard down the thoughts would come back to visit. This was particularly if he was not on medication or was not drinking. He managed things better for a while when he was off the medication. He was seconded to a job in the Court system for some time. He then went down hill again.

54. In August 2003 he was feeling very low and did not care about himself. It was a struggle to go to work and he went to see a doctor. Dr Blythe had retired in 2002 and he was referred to Dr Black. He was then placed on a new anti-depressant and was seen for a few sessions. He said he believes things are now going well.

55. Dr Black said that whilst he treated people he did not do medico-legal work. He gave evidence Dr Blythe was approached approximately after 12 months after commencing treatment and Dr Blythe also advised him that whilst he treated people, he did not get into the "legal stuff".

56. He saw Dr Terace in Perth approximately six or seven weeks prior to the hearing; this appointment was arranged by his employer. He gave evidence that Dr Terace was twenty minutes late and then he rushed through the appointment. The worker estimated the appointment was thirty minutes in total. He was surprised that the majority of the interview related to his current work. He would get cut off very quickly when being questioned by the doctor. He said he tried to discuss various incidents, including the Curtis incident with the doctor.

57. He then gave evidence with respect to his wages and airfare entitlements. He gave evidence that he was entitled to airfares to Perth every two years for himself, his wife and his children. He said he took two entitlements in 1998 as two periods backed onto each other. He indicated he was entitled to free housing when he resided in places such as Yulara. In Alice Springs he was given an allowance as he had his own home.

58. Exhibit W12 is a bundle of wage slips from December 1996 to the 11th of June 1998, being pay and entitlements from the employer to the worker. By agreement further wage slips were tendered on the 19th of December 2003 and they became W33. They relate to the period July 1995 to August 1996.

59. Exhibit W13 is a conditions and remuneration circular and a photocopy of two pay slips from 1996 showing housing allowance payments. The originals of these photocopies are contained in W33, housing allowance with respect to the 3rd of April 1996. Exhibit W14 is a bundle of wage slips from work at the Office of the Public Advocates from July 1998 to December 2003. Exhibit W15 is a bundle of medical expenses and documents with respect to those expenses. There is a summary of medical expenses prepared by the worker as a schedule as part of that exhibit.

60. A document entitled Particulars of Worker's Loss of Earning Capacity has been filed with the Court and, whilst not tendered, can be relied upon as an aid for loss of earning and other entitlements.

61. The worker gave evidence that he had never been disciplined in the Northern Territory Police Force. There is no evidence to the contrary.

62. Exhibit W16 is a memo from the Northern Territory Police special circular number 4 of 1993 relating to claims by members who are victims of crime. The memo sets out in part that referrals to a legal representative would be arranged by the department upon request.

63. Exhibit W17 is an internal memorandum sent by the worker to the personnel section of the police on the 11th of November 1996, that is two days after the second Curtin incident, and is in accordance with exhibit W16. The worker sought assistance to pursue claims for crimes victims assistance with respect to the two Curtis incidents. In paragraph 5 the worker stated in part "The nature of my claim against the offender is both physical and mental suffering". This is an important statement when considering the issues surrounding section 182 of the Work Health Act. The worker gave evidence that he received a letter from Morgan Buckley shortly after sending the memo, indicating that they would be acting as his solicitors in the Crimes (Victim's Assistance) claims as requested.

64. He gave evidence that there were no inaccuracies in the history given to Dr Tyrrell, as set out in exhibit W1. With respect to Dr Terace's report, the worker indicated some inaccuracies: that at point 1.20.1 that he said much more about his sexual dysfunction than was recorded, at 1.20.2 he did not say that he got up to drink alcohol, but rather he said he got up to drink water because he was dry in the night, at 1.20.4 he said he had put on twenty-five kilograms over two to three years rather than 2-3 weeks, at 1.20.6 he said as part of a lengthy discussions on the issue that he wanted to get home where he felt safe after work, rather than the simple statement "getting home", at 1.20.7 he said that he was not having any dreams at that time and they were not a problem by then, at 1.22.1 the incidents were in 1996 not 1997, that he was not given a chance to explain the incident, that he (meaning the worker) said that he took the gun from her (which I take to mean police officer Brett) rather than that the aggressor had taken the gun from her, and

finally that at 33.4 he said that he had applied for approximately eleven jobs over a period of two years not two days as reported.

65. With respect to medication expenses, he has been on three separate brands of medication. He said that for approximately 18 months he was paying $20.60 per month. For approximately 12 – 13 months he has been paying approximately $21.00 per month on a different medication. This medication was being paid for by himself. Since August 2003 he has been paying $23.60 per month for the new medication.

66. His evidence was that in the period he has been working at the Public Advocates office he has had a lot of time off due to the medical condition which he claims arises from his employment with the Northern Territory Police Department. He said that he has had to manage his sick leave quite closely.

67. After the Curtis incident he felt a change in attitude towards him, he felt people were distant from him and that people were doubting him. At Yulara he would feel uncomfortable in the muster room and then he moved his desk into another room. When he was with senior officers he felt that he had done the wrong thing and that the incident had not gone well. He felt that people were not opening up and talking to him freely. He said that he felt on the outer. He gave evidence that working with the police is a culture or a club and either "you are in it or you are not."

68. The worker was then cross-examined. He agreed that he had told Mr Tyrrell that he was still upset as a result of the show down he had with a senior detective in CIB when he had been returned to general duties in Alice Springs. He agreed this happened in 1995 and that he was still upset about it in September 1997. He agreed the CIB officer had said words to the effect "as long as I am in the force you will never be promoted." He denied that he believed his prospects of promotion had been affected. He agreed that that particular officer was then on the promotions boards and agreed his career had been reduced after the incident.

69. He accepted that going to Yulara was considered a demotion. He gave evidence that he still believed his prospects of promotion were good notwithstanding this particular set back. He was angry when he was speaking about these matters to Mr Tyrrell. He had been told by another officer to get out of Alice Springs and get his creditability back. He gave evidence that he always thought it was a merit base system and that, all things being equal, he would have his chance one day.

70. He agreed that the loss of the child in 1995 was distressing. He took some time off work at the time but did not undertake any counselling as a result of this death. He agreed his child Nicola had been diagnosed with ADD and that there were problems with her condition in 1996 when the family went to Yulara.

71. He agreed that he was opposed to the firearm policy, that is, that the Northern Territory Police Force would be an armed force in 1994. He had agreed that once the force was an armed one, it was part of the culture you must protect your partner and yourself with a firearm if the need arose. He said that he struggled with that. He said that whilst he was not overly religious, he was Catholic and he believed in his own way. It was part of his belief system not to shoot at people. Notwithstanding this, he thought he could do the job and that he had not been tested prior to the incident involving Curtis in August 1996. During the time that he was in the police force he believed that it was wrong to use guns. He had doubts as to whether he could shoot someone. He agreed that he had a conflict as to what he was required to do and his personal belief system. He did not inform his employer of his personal belief system or this conflict. Up until August 1996 he had managed the job without drawing a gun. He had always thought there were other options.

72. He agreed with the history that was set out in Dr Ding's report. Dr Ding's report was W2. I note at page 2 of W2 the first Curtis incident is said to have occurred in 1997. That error also occurred in Dr Terace's report. It is possible that the worker gave the wrong date on both occasions. In any event, there is no doubt the incident occurred in 1996. Page two of Dr Ding's report reads, in part: "Later in

the course of the interview he talked about his realisation that on account of his religious beliefs he just could not kill".

73. He agreed that now, as in 1995, he thought it was wrong to shoot someone. He also knew he would have problems using a gun. He agreed that sometimes it may be needed to use a gun to protect a partner. He said that he did not know whether he could have done it or not, but he knew he would have a problem with it. As to how to deal with this problem, he said that he knew how to talk to people, that he was good at judging situations and he believed that the times it may be needed to draw a gun would be very rare. He agreed that he hoped it would never happen. He also agreed that he never told his employer of any of these matters.

74. He said that anxiety was not affecting him in his work up until August 1996. Prior to August 1996 he had hoped he would never have to deal with a firearm situation. He agreed that if he had told his employer about this issue, that it was likely he would have been taken out of operational duties. After August 1996 he was hoping it would never happen again.

75. It was then put to him that he had made a significant number of Work Health claims. These claims were outlined. All the claims for Work Health were later tendered and became E32. In 1993 he made a claim after receiving a positive test for TB. He did not take any time off work and the claim was accepted. In October 1995 he made a claim after a female prisoner injured his left wrist. He saw a physiotherapist and was on light duties for a while. On the 11th of February 1996 he received a punch to the face and his glasses were broken. He made a claim for damage to the glasses and got his money back. He received $288 for damages to his glasses and then eventually paid the money back to the Northern Territory. The receipt for that money was tendered and is now exhibit E18, receipt dated the 8th of July 1997. In 1997 he made a claim for Worker's compensation following a bite to his thumb.

76. Exhibit W4 was the accident/injury report completed after the incident in August 1996. It was put to him that the account of the incident in W4 was different to the

account he gave in evidence. In particular in W4 he said, "offender attacked me several times with a knife causing me to draw my firearm to protect myself". In his evidence before the Court he made it clear that he had taken Officer Brett's firearm from her and then raised that firearm at a later time in the incident. Under cross-examination he said that he thought both accounts were right. He then agreed that he did not draw his firearm and he agreed that he drew Officer Brett's firearm.

77. He agreed that in exhibit W17, that is the memo to the Northern Territory Police seeking assistance for CVA claim, he did not mention the firearm. He agreed that in the application for Crimes (Victim's Assistance) relating to the August 1996 incident (W6) he did not mention the gun. He was not able to give an explanation as to why any of these documents did not include mention of the gun.

78. He agreed that he did not mention the fact that he could not shoot his firearm in W4. He denied that he never told his employer that he had a problem. He said that he had told them through document W4 and also to 2 senior officers when he spoke to them while driving from the airport into Yulara. When the officers came out to speak to Kathy Brett about the incident, he didn't tell them about his problems. He gave evidence that he felt his employer "should have known" of the difficulties given that Kathy had rung welfare and from the briefing notes that had been provided. He denied that he was suffering stress from the untruthfulness of his account with respect to the incident or from the fear of what might happen next.

79. In his claim for Worker's compensation with respect to the November 1996 Curtis incident he had not made a claim regarding psychiatric injury (W6). He deposed that he thought he would get over it. He was hoping he would move on after the arrest. He agreed he knew in himself he could not shoot somebody. He agreed that the ability to shoot was an operational requirement of being a police officer. He agreed that on the Work Health claim form, W6, he had not mentioned that he was unable to shoot someone and he also knew that that was a significant matter. He also agreed that at that time he did not ask for psychiatric treatment.

80. He agreed that he should have received treatment for his mental injury. He went to see Mr Tyrrell because of the Crimes (Victim's Assistance) claim. The advice from Mike Tyrrell was that he would have to go onto anti-depressants and he should start looking for another career. He then set about looking for another career. In February 1998 the decision was made to move to Western Australia.

81. On the 18th of February 1998 he saw Mike Tyrrell again. He told him that he had decided to leave the force and that his wife was pregnant. He told Mike Tyrrell that he had made an "escape plan"; that he had made the plan in around the time of the Jingo incident (on the 2nd of February 1998).

82. His wife and children went to Western Australia, as his wife was due to have their child. He had applied to the Western Australian Police Force and there was a statutory declaration attached to that application dated the 16th of March 1998. He said he had no idea why he had applied to the Western Australian Police.

83. In the application to the Western Australian Police Force he had stated that he wanted to move back to Western Australia for family reasons. He agreed he could have stayed in the Northern Territory as a non-operational police officer but he chose not to do that. He went to Western Australia in early April 1998.

84. He agreed he took the job at the Public Advocates Office at a significantly reduced salary. On the 10th of June 1998 the job was confirmed with the Public Advocates Office. Exhibit E19 was tendered and that is a letter from the Ministry of Justice to the worker dated the 10th of June 1998. His salary commenced at $39,956 gross per annum.

85. He agreed he never asked his employer if there were any non-operational duties available. He never told his employer that he proposed leaving and gave no opportunity to his employer for alternative employment or duties to be offered to him. He did not tell his employer that he was suffering a mental injury or incapacity. The resignation from the Northern Territory Police Force was tendered

and became E20. He resigned from his employment with the Northern Territory Police Force on 9 of June 1998, effective from the 24th of June 1998.

86. It was put to him that former Police Officer Pryce had no recollection of the conversation in the motor vehicle. He said he did persist with the allegation. It was also put to him that former Police Officer Benson had no recollection of the incident. He said that he disagreed with them. He said the conversation had occurred. The matters that were put to him with respect to Pryce and Benson were significant in that it was being put to him that he had fabricated the account of the conversation in the car. From the way these matters were put, I do not believe he had had any warning that these officers had been spoken to. The witness acted in an impressive manner when these matters were being put to him. At no stage did he appear melodramatic, insistent or defensive; he acted in a passive manner. He took the allegations that neither person recalled these incidents in his stride and was impressive on this point.

87. He commenced employment with the Office of the Public Advocates on the 2nd of July 1998. He agreed that he not made a claim for workers compensation with respect to the August 1996 incident, or any psychiatric problem, up until that date. He agreed it was not until the year 2000 that such a claim was made. It was put to him that it was the 16th of August 1999 he was an in patient at the Perth clinic and he agreed. He agreed that he had reported to the Perth Clinic that he had become depressed approximately ten weeks before admission, and this was in and around the time he had had a vasectomy. He agreed there were major social stresses at around the time of the onset of his depression including moving to Perth, building a new house and his wife being pregnant.

88. He agreed he was an in patient at the Perth clinic from the 16th to the 24th of August 1999. He expressed surprise that there were no notes with respect to his work with the Northern Territory Police Force in the Perth clinic notes. He agreed he was an in patient at the Perth clinic in April 2001. He said he had spoken of his work with the Northern Territory Police force at various times at the Perth clinic.

89. In 2001 the Northern Territory Police service made a return to work offer. He said that he was prepared to come and work with the Northern Territory Police Force if a suitable job was offered. He said he would have to look at any proposal put and that he could not simply answer yes or no as to whether he would accept an offer. He agreed that the Western Australia Police Force application, dated the 16th of March 1998, was true and correct. In that application he had written in part, "I wish to return to Western Australia to be closer to my family and to give my children the opportunity to pursue educational, sporting and social chances not available to them in the Northern Territory". That document was tendered by the employer and became E21.

90. He was then re-examined. He said that the transfer to Yulara was effectively a demotion. He was a senior constable when he was transferred, he had been an acting sergeant whilst in Alice Springs. Internal memos were tendered and became exhibit 22. These memos set out the opinions of two senior sergeants as to his abilities in the work force and are dated the 9th of January 1996 and the 6th January 1996. At around this time he still believed that the police force was a merit based system and he thought he was managing his job quite well.

91. Entries from the Yulara police station day journal were then exhibited and became W23. Police officer Brett made the entries with respect to the first Curtis incident on the 12th of August 1996. In particular folios 85, 86 and 86 relate to the 12th of August 1996.

92. The worker said that he did not recall suffering from any stress or anxiety with respect to the vasectomy procedure. With respect to the Perth clinic, he recalled talking about the police force and he was surprised this was not mentioned in the notes which were prepared by the Perth clinic. He recalled speaking of various distressing incidents from August 1996 onwards in particular with respect to the police force. He spoke regularly to one of the counsellors about his experiences, as her husband was an ex-police inspector. He also spoke to a female police officer who was at the Perth clinic. When he was at the Perth clinic in 2001 he

had one-on-one counselling and he did talk about incidents involving the police force.

93. With respect to speaking to Police Officers Benson and Pryce, he said the incident lasted thirty seconds to one minute and that he did all the talking. He said the others sat in silence quite a while after he spoke.

94. He said to move to non-operational duties would reduce his income by ten to fifteen thousand dollars per annum and also penalty allowances would be reduced.

95. That was the end of the worker's evidence.

96. With respect to the worker's evidence I formed the view that he was an honest witness. At no stage did he seek to embellish or exaggerate his testimony. He gave thought to his answers and answered succinctly and accurately. When it was put to him that officers Pryce and Benson did not recall speaking to him in the motor vehicle he responded in a calm and thoughtful manner. He did not over react or appear defensive when receiving this information. I formed the view that he was an honest and reliable witness.

97. The next witness called on behalf of the worker was Dr McCarthy. He prepared two reports with respect to the worker. He set out his qualifications and his Curriculum Vitae was exhibited as W24. Dr McCarthy is a general physician and a consultant psychiatrist. He has worked extensively in areas of forensic psychiatry and with patients suffering from traumatic experiences. He has also undertaken a considerable amount of work involving police officers and defence force personnel.

98. Exhibit W3 is a report by Dr McCarthy dated the 29th of August 2000 relating to the worker. Dr McCarthy agreed that this was his opinion and that he held to those opinions at the time of the hearing. He diagnosed the worker as have a Post Traumatic Stress Disorder complicated by a major Depressive Disorder. He said

the PTSD arose as a result of the assaults and related stressors in the workplace (page 5 of W3).

99. Exhibit W11 was a report by Dr McCarthy dated the 17th of November 2003 relating to the worker. He once again agreed that the opinions were his. He confirmed the diagnosis made in his report of the 29th of August 2000.

100. Dr McCarthy was then cross-examined. He said that in coming to his diagnosis that the worker had a work related post traumatic stress disorder, he had relied upon the worker's information as the sole source of information. The information was not corroborated by anyone else or with any other material. He then advised that he had spoken with the worker's wife on one occasion. He did not retain any detailed notes from conversations he had with the worker's wife. He said that the worker gave him typed notes.

101. He stated that the worker had said that prior to August 1996 he was satisfied with his job. Whilst he had a number of stresses, part of his job was dealing with the fear of those stresses. There had been a number of incidents leading to the development of his symptoms. His expert opinion was that experiences tend to mount up.

102. Dr McCarthy agreed that the worker had said that he was most reluctant to shoot someone and that that was a problem. He agreed that the worker had said he had a moral issue with respect to shooting someone. He said that he saw the worker three or four times and nominated the following dates: the 18th of April 2000, 30th of March 2000 and the 11th of April 2000. W3 says he also saw the worker on the 14th of March 2000. He was of the opinion that the worker's response to the 1996 incident was one of fear rather than relating back to his moral beliefs. He indicated that the worker then had a concern about his ability to carry out the job.

103. Dr McCarthy's notes indicated that with respect to the August 1996 incident, the worker felt that he could not kill the man. The notes indicated the worker had said that part of his distress was that he found himself at a lesser rank, in a more

responsible position and in more danger. The doctor reported that in the circumstances of the August 1996 incident the worker chose not to use the firearm. The doctor said that, in retrospect, that turned out to be the correct decision. The doctor could not rule out the possibility that if the situation had continued, the worker may have used the firearm. He indicated that while the worker was in fear for his life, he was not fighting for his life. He was not sure if the worker could have pulled the trigger or not, if he had been fighting for his life. The doctor said that the act of pointing the gun at the aboriginal man was an aggressive act. The doctor reported that the worker had said to himself "why are you raising the level of violence here?" (with respect to the August 1996 incident). He reported that this worker, in his work as a police officer, knew he was meant to decrease violence, rather than increase violence. He reported that he was reluctant to use a weapon based upon this professional training and this was not just his philosophical beliefs. The doctor formed the view that the worker seemed to have been a good police officer and thought that his decision making would have made him a good officer.

104. The worker saw himself as unreliable due to his reluctance to pull the trigger in the August 1996 incident. The doctor said that in his experience such reluctance was very common and that many army personnel had the same reluctance. He agreed that if the worker was unable to kill someone in the course of his duties, then this may have been a major problem in his employment. He said that he would have reservations about his suitability to undertake the position if he definitely could not kill someone in the line of his duties, however, the doctor was not convinced that the worker could not do so. He said in circumstances such as this it would be out of character for a person such as a worker to go to a health professional prior to consulting a colleague with respect to these problems.

105. Dr McCarthy was referred to exhibit W1; the report of Mr Tyrrell dated the 25th of September 1997. In exhibits W3 and W11 Dr McCarthy gave the opinion that this worker had a Post Traumatic Stress Disorder and Major Depressive Disorder. Mr Tyrrell's opinion was that the worker had an Adjustment Disorder with mainly depressive features (exhibit W1, page 4). Dr McCarthy said that he saw the

symptoms of Post Traumatic Stress Disorder as compatible with the symptoms which Mr Tyrrell described in his report. He was of the view that there was no single episode to explain the workers condition but rather that he had been subjected to a history of violent incidents, that there were multiple incidents. He said that whilst it would appear paradoxical that the worker would apply to the Western Australian Police Force, such a phenomenon was not uncommon. He said that he doubted the worker could continue to be a police officer in the Northern Territory. He said that in his new job in the Public Advocates Office the worker was able to be removed from the source of distress and he was able to cope and manage his condition. The worker could apparently function to the satisfaction of his new employer.

106. Dr McCarthy indicated that he does not take a literal interpretation of what a person says to him, he does not take what a person says at face value. He indicated that whilst the worker concluded he could not shoot anyone in the circumstances of the August 1996 incident, Dr McCarthy was not prepared to conclude that this worker could not shoot anyone in any circumstances. Dr McCarthy said that at no stage did the worker say to him that, due to his religious views, he could not kill someone.

107. In re-examination Dr McCarthy said that the worker had indicated to him a level of uncertainty as to how he would cope and a lack of confidence as he did not know under what circumstances he could shoot someone (if any). He indicated this level of uncertainty was common with persons who worked in these situations.

108. With respect to making the job application to the Western Australian Police Force he said that such an application was a common phenomenon – that a person who was part of a service or police culture would hope that, if they reshuffle the cards, they may be able to make a go of it.

109. He said that he did not agree with the report of Dr Terace dated the 25th of October 2003. In particular he did not agree with the diagnosis and conclusions in

Dr Terace's report. Dr McCarthy was of the view that the variety of the symptoms described by Dr Terace were compatible with post-traumatic stress disorder. He said that the lapse in time between the incidents and the interview Dr Terace had with the worker, meant that the connections between the events were less clear. He also said that when someone is being assessed whilst they are on medication the effect of the medication may also obscure the picture somewhat.

110. Dr Ding's report of the 5th of May 2000 was tendered and that became exhibit W25. Exhibit W26 was a letter from TIO requesting the report from Dr Ding dated the 7th of January 2000. That was the case for the worker.

111. The employer then opened their case. I now summarise the evidence on behalf of the employer. Once again I will make some comments in that summary.

112. Dr Terace was called first. He has a Batchelor in Medicine and Surgery and he is a fellow of the Royal College of Psychiatrists and has been since 1993/94. He prepared a report dated the 25th of October 2003 with respect to the worker. Minor changes were made to that report. In particular at page seven of his report where he referred to 1997, he agreed that he may be wrong and that the year may be 1996. He said that the worker was very distressed when he was describing the incident involving a gun. He said that none of the matters altered or amended in the report affected his conclusions or diagnosis. He said the essential point was that there were a number of incidents which were depressing and demoralising. He said there was no pattern of continuous symptoms. The report of Dr Terace was exhibited and marked W27.

113. Dr Terace was then cross-examined. He said that he had experience working with members of the armed forces and had a particular interest in trauma incidents which commonly involved police officers or security workers. He said he had referrals from the military and the Department of Veteran Affairs. He agreed that Dr McCarthy had experience working with military personnel and said that his own experience was considerable in that area.

114. He interviewed the worker on the 23rd of October 2003. He agreed that he may have been late but denied it was more than fifteen minutes. He denied he rushed through the interview and denied he cut Mr Van Dongen off in questioning. He said his interview lasted fifty five minutes. A number of errors were raised with respect to his report. He said that he recorded in his report the totality of the worker's comments with respect to sex. He agreed that at point 1.20.6 the worker gave a much wider description of his reactions to leaving work and returning home. He denied he took the approach of cross-examining the worker. He said he conducted a structured clinical interview. He said that at the end of the interview he asked whether the worker had any other issues or any other questions. He said that he did not read the letter from the employer's insurer's solicitor, Collier and Deane (dated the 14th of October 2003) until after he had seen the worker. He said that the report only included details and information which the worker had raised at the interview. He said that he asked whether there were any incidents relevant to the worker which the worker wanted to raise.

115. He agreed that he did not specifically ask about the incident of the 8th October 1995, the incidents of 1996 including the incidents of August and November 1996, the incident of the 23rd of April 1997, or the incident of the 2nd of February 1998. He did report two incidents relating to mid 1997 and November 1997 (which he had previously agreed could have related to 1996). He said that he recorded what the patient told him and in particular that there were recurrent incidents. The two incidents from 1997/96 were the two most prominent. He indicated that it is the psychiatrist who decides what is a stressor. He agreed that incidents which are distressing, could be seen as stressors.

116. While the report stated that the worker had been assaulted on a number of occasions whilst carrying out his duties, those incidents were not described as psychological stresses. It was put to him that the report did not speak of the second period of time when the worker was at the Perth clinic but rather only referred to the period in 1999 when he was seeing Dr Blythe. He said that the worker did not raise the Perth clinic admission in August 2001. It was noted that at point 1.32 a two year period was referred to.

117. He denied that a person needed to have a rapport with a psychiatrist before the psychiatrist could objectively consider questions of causation. He agreed that a lack of rapport may mean it was difficult to treat someone. He said that further interviews with a person may affect rapport but he did not agree that it would affect decisions as to causation. It was put to him that at the top of page 14 of his report, W27, he was only referring to the two incidents of trauma as opposed to all traumas the worker had suffered in the workplace. The doctor denied that. He said that he intended to include all the stresses of the work place. He referred to page nine (top paragraph) as further indication of this. He said that the incidents from the worker's past were relevant to his mental state but not relevant to causation of his present psychiatric condition.

118. He said that if the worker was in the Northern Territory Police Force at the present time he should not be exposed to any trauma. Given his depressed state, the worker should not be exposed to trauma.

119. Referring to page seventeen of W27 he agreed that he had stated that the worker would have developed a psychiatric condition after the 1996 incidents. The condition would have been called an adjustment disorder but was temporary and subsequently resolved (W27, page 17). He said in his report that this was a condition commencing shortly after the second incident, which I take to mean the second Curtis incident in 1996.

120. He was then re-examined. He said that during a structured clinical psychiatric interview a person's details were taken, matters of concern were raised, hypothesis were tested and past history was obtained. The person was free to express what they wanted and the psychiatrist would test and retest the hypothesis. They would be asked to discuss any events concerning them. At the end of the interview the worker would be asked whether he had any other issues or any other questions. He said that the worker's interview was conducted in that way. The worker would be asked if there were any other matters he wanted to raise. He said the worker did not raise any other matters.

121. As to this witness' evidence I must say that there were times when it was extremely difficult for the Court to be sure of his answers. The witness had a tendency to not answer the question asked and to respond in a rather defensive manner. The evidence was taken by way of a video link up and there were many occasions where the witness would start answering before the question had been completed.

122. The next witness to be called was Dave Benson. He was a retired police officer and he said he had made a statement which he adopted whilst giving evidence. That statement became exhibit E28. He could not recall an occasion when Mr Van Dongen said that he was have difficulties coping. In cross-examination he agreed that while he had no recollection of the incident, he was not saying the incident did not take place. While he thought the incident would have rung alarm bells, he agreed he could not say for sure it did not occur.

123. The employer tendered file notes and reports from Mike Tyrrell from Alice Springs People Services and they became exhibit E29. The Perth clinic notes from the 16th of August 1999 to the 10th of August 2001 were then tendered and became exhibit E30.

124. Leonard Pryce was then called. He is a retired police officer and adopted a statement he made, which became exhibit E31. In exhibit E31 he stated that he could not recall the occasion the worker had given evidence about. In cross-examination he agreed he had no recollection of the incident but he could not say the worker did not make such a comment. He said he did not recall the incident. He agreed he could not dismiss absolutely the possibility that it happened.

125. Numerous claims made for workers compensation by the worker were then tendered and became exhibit E32. Some of these claims had already been filed by the worker in his case and I will set out the exhibit numbers where relevant. Claim number 52929 dated the 6th of October 1993, claim number 75266 dated the 11th of October 1995, claim number 75267 relating to an injury on the 14th of February 1996, claim number 92556 relating to an injury on the 9th of November

1996 (also exhibit W6), claim number 92558 relating to an injury on the 23rd of April 1997, claim number 95770 relating to an injury on the 2nd of February 1998 (also exhibit W8), claim number 121664 relating to an injury on the 5th of February 1998 lodged with employer on the 27th of November 2000 (also part of exhibit W10). That was then the end of the employer's case.

126. Submissions were made by counsel for the employer and then by counsel for the worker. I am grateful for the helpful submissions which were put by counsel for both parties. This case raises a number of issues and I will deal them in turn.

127. **Section 80.** All parties agree that the 12th of August 1996 incident (the first Curtis incident) is the relevant injury for the purposes of these proceedings. The first issue was whether or not notice of the injury was given pursuant to s.80 of the Work Health Act. Subsection 80 (1) states: "Subject to this Act, a person shall not be entitled to compensation unless notice of the relevant injury has, as soon as practicable, been given to or served on the worker's employer." A claim for compensation shall be deemed to be notice of the injury (s.80 (2)). As already stated, no claim for compensation was made with respect to the August 1996 incident. The form of the notice of injury is set out in s.81 of the Act. It may be given orally or in writing.

128. In this case I find that notice of the relevant injury was given by the worker to the employer by way of a Northern Territory Police, Fire and Emergency Accident/Injury report which is now exhibit W4. I do not regard the fact that the worker has used the words psychological instead of psychiatric as affecting the fact that notice was given. W4 is dated the 13th of August 1996, the day after the first Curtis incident on the 12th of August 1996. This form was forwarded to the employer, the Northern Territory Police Department. The form complies with the other requirements in s.81 and I find that notice of the relevant injury was given to the employer. In their defence the employer referred to a letter written by the worker to the Territory Insurance Office, dated the 7th of December 1999 (now part of W10). I do not need to consider whether this letter complied with s.80 as I have found W4 fulfills the notice requirements of s.80. The claim by the worker

in paragraph 6(a) of the statement of claim that the letter to TIO dated the 7th of December 1999 amounted to notice does not assist the worker as no reference was made to the first Curtis incident in that letter.

129. **Section 182.** The next issue relates to s.182 of the Work Health Act.

130. Section 182 of the Act states:

> "182. Time for taking proceedings.
>
> (1) Subject to subsections (2) and (3), proceedings for the recovery under this Act of compensation shall not be maintainable unless notice of the injury has been given before the worker has voluntarily left the employment in which he or she was injured and unless the claim for compensation has been made-
>
> (a) within 6 months after the occurrence of the injury or, in the case of a disease, the incapacity arising from the disease; or
>
> (b) in the case of death, within 6 months after advice of the death has been received by the claimant.
>
> (2) The want of notice or a defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings referred to in subsection (1) if it is found in the proceedings for the settling of the claim that the employer is not, or would not if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his or her defence by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake, absence from the Territory or other reasonable cause.
>
> (3) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.

(4) For the purposes of subsection (1), where a worker left his or her employment only by reason of the fact that, because of an injury received in that employment, he or she was unable to continue in that employment, he or she shall be taken not to have voluntarily left that employment.

(5) Without limiting the generality of the meaning of "reasonable cause" in subsection (3) -

(a) the making of a payment to a person which the person believes to be a payment of compensation; or

(b) any conduct on the part of the employer or his or her insurer or agent, or on the part of an employee of any of them purporting to act on behalf of the employer, by which a person is led to believe that compensation will or will probably be paid to him or her or by which he or she is led to believe that he or she is not entitled to compensation,

shall be taken to be a reasonable cause within the meaning of that expression."

131. Reasonable cause is the exception being relied upon by the worker. The worker bears the onus of proving that his failure to comply with s.182 of the Act was occasioned by reasonable cause.

132. I find that subsection 4 of s.182 of the Work Health Act is not applicable in this case. I find that the worker did not leave his employment only by reason of the fact that, because of the injury received in his employment with the Northern Territory Police Force, he was unable to continue in that employment. I find that for personal reasons including the education of his children and a desire to return to his native Western Australia, the worker sought out and obtained alternative employment. In support of that finding I rely upon exhibit E21, the application to the Western Australian Police Service dated the 16th of March 1998 and the sentiments expressed by the worker in that application.

133. I also rely upon the fact that the worker was applying for numerous jobs in Western Australia in and around the time that he received the offer of employment with the Department of Justice. These applications were for employment in Western Australia, as opposed to other positions in the Northern Territory or other states. This fact reinforces my finding that he sought to relocate to where he had family and where he wished to return. In his evidence he said that following the Jingo incident in 1998 he decided to leave the police force because he was getting hurt too often. There is no dispute that the worker did not give any opportunity for the employer to consider whether or not there were alternative employment options for him within the Northern Territory Police Force before he resigned. The letter of resignation dated the 9th of June 1998 simply states that he gives notice of his resignation to take effect from two weeks time. There is no indication that his resignation is in any way related to any of the incidents which he has given evidence about, in particular the incident of August 1996. I find that the worker voluntarily left his employment with the employer. I have already found that notice of the injury was given on the 13th of August 1996. Thus notice was given prior to the worker voluntarily leaving his employment. The proceedings are maintainable with respect to the question of notice. I do not read s.182(1) of the Act as requiring that the claim for compensation must be made before voluntarily leaving the employment. It is the notice of injury which must be given before the worker has voluntarily left the employment. I make this point with reference to paragraph 1(d)(i) of the counterclaim.

134. I have made a finding that, pursuant to s.80 of the Act, notice of the injury was given and that pursuant to s.182(1) of the Act such notice was given before the worker voluntarily left his employment. Exhibit W4 was notice of the injury sustained on the 12th of August 1996. I find that no claim for compensation was made for the mental injury sustained on the 12th of August 1996. It follows that no claim for compensation was made within six months of the date of the injury. The claim is not maintainable unless section 182(3) of the Act can be invoked. The worker, referring to section 182(3) of the Act, argued that there was "other reasonable cause" for the failure to make a claim for compensation within the relevant six month period. Subsection 182 (5) of the Act is not relevant in these

proceedings, there being no payment or conduct on the behalf of the employer, or the insurer, which would invoke subsection (5).

135. The employer submitted that they were denied the opportunity to rehabilitate the worker or obtain suitable alternative employment. The scheme of the Work Health Act aims to rehabilitate injured workers, not merely providing a scheme for monetary compensation as in previous schemes (*Maddalozzo v Maddick* 84 NTR 27 at page 35). Sections 80 and 182 of the Act are integral to these aims. They place the onus on the worker to give notice in a timely fashion and while the employment relationship exists (subject to ss. (4)), and to make a claim within 6 months.

136. The employer says that even though exhibit W4 sets out the worker had a psychological injury, he made no claim, he sought no treatment and he was not incapacitated for work as a result of the injuries. Dr Terace says at page 17 of W27 "It was not any psychiatric condition or disability that led to Mr Van Dongen's resignation as police officer on the 23rd of June 1998". The employer's primary position is that the worker had no mental injury which occurred whilst with the Northern Territory Police Force. Alternatively, if he was injured the employer submits that the injury occurred as a consequence of the August 1996 incident and is barred by s.182 of the Act. Dr Terace said in his evidence that the worker developed a psychiatric condition after the 1996 incidents.

137. The remedy which the worker seeks as against the employer is not barred if the worker is able to bring himself within an exception in s.182 (3) of the Act. As stated above, the worker is arguing "other reasonable cause" as to why his remedy should not be barred.

138. It is agreed by both parties that the relevant six month period, pursuant to s.182 (1) (a) of the Act, is between the 12th of August 1996 and the 12th of February 1997 ("the relevant period"). That period includes the date when the second Curtis incident occurred, namely the 9th of November 1996. All the medical evidence, including that of Dr Terace, points to a mental injury being sustained at or around

the time of and as a consequence of the 12th of August 1996 incident. Based upon the evidence before me, I find the worker has proven, on the balance of probabilities, that he sustained an injury, namely a mental injury, on the 12th of August 1996 and that this injury arose out of or in the course of his employment with the employer. I am not required at this stage to made a finding as to the nature or extent of that injury, or whether the injury was still in existence at the time of his resignation or any later time.

139. In W4 the worker notified his employer that the injury was psychological. That was a self diagnosis and did not seek to particularise the condition. As far as I can ascertain the worker's injury did not manifest itself in an overt or perceivable way. A mental injury is not necessarily an injury which can be "witnessed". The worker had not had his injury diagnosed by a medical practitioner, a psychologist or a psychiatric practitioner at the time of notice of the injury in W4 or at any time in the relevant period. On the day following the incident, he has asserted that he is suffering such an injury. While I am satisfied that notice pursuant to s.80 has been given (irrespective of the fact that there was no medical certificate to substantiate that assertion by a qualified person) and I am satisfied that there was such an injury, s.182 of the Act raises different considerations.

140. The worker is relying upon the following matters to submit that "other reasonable cause" justifies the maintenance of the claim for recovery of compensation under the Act: that he was waiting to arrest Curtis and hoping that following the arrest of Curtis his symptoms may end, that he was hoping he could put it all behind him, that he was hoping that he would not be subjected to the same stress again, that he suffered no loss of earnings or expenses, that he had no treatment that he had to pay for and that he had continued working as an operational police officer in the relevant period.

141. I find that the worker has not made out the "other reasonable cause" exception in s.182 (3) of the Act. The reasons that I make this finding are as follows. The worker's evidence is that following the first Curtis incident he suffered an injury; that that incident had injured him psychologically. I have found he was injured at

that time. There is no evidence placed before the Court that the worker sought to obtain a medical opinion within the six month period on the question whether or not he had a psychological injury as described in W4 or to diagnose the nature of the injury. His evidence is that throughout the six month period following the first Curtis incident he was of the opinion that he was suffering a psychological injury or at least the symptoms of such an injury. At no stage did he seek any medical attention or seek to have his symptoms documented or treated. He said he raised the fact that he was having difficulty coping, as a consequence of the August 1996 incident, with senior officers in early 1997. This may have been within the six month period. Neither of the senior officers concerned could rule out the possibility that a conversation occurred. I find that the conversation did occur. I rely upon my observations on the workers credit when making this finding. I am not satisfied as to the exact words spoken and I am not satisfied that what was said was sufficient to put his employer on notice that he should be taken off operational duties or that the worker was suffering a mental injury. This conversation does not advance the reasonable cause argument of the worker.

142. The workers evidence was that he believed once Curtis was locked up he would get over it; that he expected to be relieved of the burden that was upon him following the arrest and that he would regain what he had lost. Following *Fenton v Owners of Ship Kelvin* [1925] KB 473 at 481, Mildren J in *Tracy Village Sports and Social Club v Walker* (1992) 111 FLR 32 at 40 said, "A hope and expectation that a worker might make a complete recovery may amount to reasonable cause as a matter of law." (My underlining).

143. Following the arrest of Curtis, the burden was not relieved and he had not regained what he had lost. His evidence was that he still had symptoms such as trouble sleeping; he would wake up at night and he said it was like there was a war going on inside his head. He would break out in sweats and go through the first Curtis incident again and again. He would leave the Police Station at times when he needed to get away from the workplace during work hours. It is clear that the worker's hope that, following the arrest of Curtis, his symptoms would end did not transpire. I find that this realisation occurred within the relevant six

month period. While I do not doubt that the worker was genuinely hoping he could put all of these matters behind him, it is clear that they could not be put behind him. He knew this when he completed W17 on the 11th of November 1996.

144. He was hoping he would move on after the arrest. He knew "in himself" that he could not shoot somebody. He agreed that the ability to shoot someone was an operational requirement of a police officer. On the claim form W6 he did not record that he was unable to shoot someone and he knew that was a significant matter. I do not intend to imply that this inability is a criticism of the worker, but it was vital that his employer knew of his inability. He was not able to carry out all his operational duties in the relevant period; he knew that and did not notify his employer or make a claim for workers compensation. In his evidence the worker agreed that he should have had treatment.

145. As part of the reasonable cause argument, the worker submitted that he hoped he would not be subjected to the same stress again. In all the circumstances of this case I find that such a hope was not a reasonable one. In particular it is evident that the worker was aware of the increased danger in his work when transferred from Alice Springs to Yulara. This was communicated to Dr McCarthy and was part of the worker's evidence. The possibility of further serious incidents occurring in the future was extremely high. Following the transfer from Alice Springs to Yulara there was higher danger in the work place (compared with the duties he was undertaking in Alice Springs). While he may well have hoped that he would not to subjected to the same stress again I find, in all the circumstances of this case, that that was an unreasonable hope.

146. The worker had a history of lodging Work Health claims, both before and after the first Curtis incident. In the relevant period he lodged a Work Health claim for the second Curtis incident. In W4 he said he intended to make a claim for compensation. No claim was ever made. The worker was not an immature person as at 1996; he was 35 years old. He demonstrated he was able to seek out assistance for compensation claims prior to and in the relevant period. He is educated to University level, and was in the relevant period.

147. The worker went to see Mr Tyrrell as part of his Crimes (Victim's Assistance) claims with respect to the two Curtis incidents. He did not attend Mr Tyrrell's office with any expectation of treatment but rather was seeking a report for his Crimes (Victim's Assistance) claims. He was seen by Mr Tyrrell on 2 September 1997, outside the six month period for the purposes of s.182 (3). However, when considering s.182 (3) of the Act, it is significant that the worker sent a memorandum dated the 11th of November 1996 seeking assistance to start his CVA claims (see exhibit W17). This request specifically outlined the two Curtis incidents and was made within the relevant period. Paragraph 5 of W17 reads in part; "The nature of my claim against the offender is both physical and mental suffering." Within the relevant period the worker alleged he had a mental injury and he was seeking an assistance certificate for that injury. He did not make a work health claim in the relevant period specifying the mental injury as a consequence of the second Curtis incident. No Work Health claim was made for the first Curtis incident. The Work Health claim with respect to the second Curtis incident (W6) does not specify a mental injury. That claim was dated the 14th of November 1996, 5 days after the incident and 3 days after W17 was completed by the worker asserting a mental injury as a consequence of the two Curtis incidents. W6 only refers to physical injuries.

148. Notwithstanding the serious effect the injury was having upon the worker in his work, he did not seek any medical attention in the relevant period. In the relevant period the worker knew that he was not able to fully undertake his operational duties. He was having to go home at times during work hours, albeit his house adjoined the Yulara Police Station. But his ability to work was limited by the injury. He believed he could not use a firearm if called upon. Following the second Curtis incident the worker was aware that he was not improving as he had hoped he would. In the relevant period he was incapacitated within the definition of s.3 of the Work Health Act in that he had a limited ability to undertake paid work because of an injury. The worker knew he was incapacitated. His employer was not made aware of this incapacity.

149. This is a case where the worker has given notice that he has a psychological injury. Notice was given the day after the incident he claims caused the injury, occurred. This is not a case where a person has suffered symptoms and has been unable to link the symptoms to an incident or has not been able to categorise them. Pollock MR states in *Fenton v Owners of Ship Kelvin* (1925) 2 KB 473 at 483:

> "…there may be a number of graduations, questions of degree, as to whether or not the workman was apprised so clearly of his condition, its origin and its future, as to compel him or throw upon him the duty of giving notice. When, however, the true measure of the situation is only arrived at by lapse of time and by confidence in the diagnosis which arises from the progress of the disease, particularly where the injury is what may be called latent, then I think that the workman is more readily excused. But the measure of these degrees, the estimate of these graduations are questions of fact which are for the learned county court judge."

Fenton's case was followed in *Tracy Village Sports and Social Club v Walker* (1992) 111 FLR 32 at 40.

150. In this case the injury to the worker was not latent in the relevant period. The worker was aware that he was incapacitated and suffering as a consequence of the injury in the relevant period. He himself referred to "mental suffering" in W17 and that he had an injury to his mind in W4.

151. I am careful to note that there was no diagnosis made by a trained person but rather the worker made an assertion that he had suffered a psychological injury. Notwithstanding this lack of an expert diagnosis, the assertion that he had a psychological injury, and the failure to make a claim for compensation, disbars the worker from making a claim in this case. If he had suffered some symptoms which he had not been able to identify as amounting to a psychological/ psychiatric injury, or which he could not link to his employment, and then he had

been diagnosed at some later time his situation would have been different. But in this case the worker has given notice of the injury, amounting to notice pursuant to s.80, and he is fully aware that the symptoms were incapacitating him (within the definition of that word in s.3 of the Act) in his work as a police officer. I do not regard this in the same way as I would regard a case where a person's condition has not been identified. To use the expression in Fenton's case the condition was not "latent". While his condition was not as serious as when he was hospitalised in the Perth clinic, it was nevertheless serious enough for the worker to be aware of it and for it to have a relatively severe and negative impact upon him and his work. I do not regard the assertion made in Work Health claim number 121664 (which is part of exhibit W10) signed by the worker on the 27th of November 2000, that the injury happened or he first noticed the disease on the 5th of February 1998, as being determinative on the question of when the worker became aware of the condition. This assertion conflicts with other documentary and oral evidence in the case. In particular it conflicts with W4 and W17. I do not accept that the 5th of February 1998 is a date which has any relevance when considering whether s.182 (3) acts as a bar to these proceedings.

152. I refer to *Tracy Village Sports and Social Club v Walker* 1992 111 FLR 32 at page 40 where Mildren J says:

> "A hope and expectation that a worker might make a complete recovery may amount to reasonable cause as a matter of law. In *Fenton v Owners of Ship Kelvin*, Pollock MR said (at 481):
>
> > "Efforts have been made from time to time to give some sort of indication of what is 'reasonable cause'. It is impossible, of course, to give an inclusive definition of it, but in *Webster v Cohen Brothers* (1913) 6 BWCC 92 at 97, to which our attention has been drawn, Buckley LJ says: "We must distinguish between two different sets of facts: in the one the workman says, "If things continue as they are, I shall never require to give notice of any claim for compensation"; that might be reasonable cause for not giving notice. The other state of facts is this; the workman says to

himself, “I have had an accident, the results of which are serious, but I think they will alter for the better. I shall not give my employer notice of the accident, because if, as I hope, the results alter for the better, I shall never have to give notice of a claim for compensation at all.” That is not reasonable cause for the failure to give notice of the accident.’”

The learned Master of the Rolls went on to say that there could be difficulty in appreciating the line of demarcation between these two contrasted statements, but that, in cases where the injury is latent, difficulty of diagnosis and perhaps of prognosis, it is easier to find that there was reasonable cause.”

153. In this case it is clear that, particularly following the arrest of Curtis and the second Curtis incident and the failure of the symptoms to dissipate, the worker was not in the position to say “if things continue as they are, I shall never require to give notice of any claim for compensation”, in the relevant period of time.

154. During the time the worker was employed with the Northern Territory Police he did not lodge a Work Health claim alleging a mental injury. He was not able to carry out all his duties. He was receiving increased entitlements for undertaking operational duties which, in part, he could not undertake. The Work Health Act is a scheme which aims to rehabilitate workers (as well as compensating them). By not coming forward and seeking assistance the worker has not given the employer the opportunity to rehabilitate him. In the whole of the circumstances of the case the fact that he did not make any claims for, inter alia, medical expenses in the relevant period is not determinative of whether his failure to make a claim for compensation was occasioned by other reasonable cause. It is a factor but does not overshadow the other matters which I have rejected in the section 182(3) argument.

155. I find that the claim is not maintainable as the claim for compensation was not made within 6 months after the occurrence of the injury and the failure was not

occasioned by other reasonable cause. I dismiss the claim of the worker in this matter.

156. Save for the question of costs, the counterclaim does not leave any further matters to be decided. I will reserve the question of costs for submissions on any application pursued by the employer.

Dated this 24th day of March 2004.

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Melanie Little
STIPENDIARY MAGISTRATE