CITATION: *Van Dongen v NTA (No.2)* [2007] NTMC 059

PARTIES: KIETH VAN DONGEN

v

NORTHERN TERRITORY OF AUSTRALIA

(NUMBER 2)

TITLE OF COURT: Work Health

JURISDICTION: Work Health Court – Alice Springs

FILE NO(s): 20104578

DELIVERED ON: 31 August 2007

DELIVERED AT: Darwin

HEARING DATE(s): 26 – 27 June, 1 December 2006

JUDGMENT OF: M Little SM

**CATCHWORDS:**

Work Health – Matter remitted by Supreme Court – Whether Claim Lodged for Physical Injury Extended to Psychiatric Injury – Whether Worker Knew of True Nature and Extent of his Injury – Whether Link between Incidents and Mental Injury

**REPRESENTATION:**

*Counsel:*
Worker: Mr I Morris
Employer: Ms S Gearin

*Solicitors:*
Worker: Mark Heitmann
Employer: Collier and Deane

Judgment category classification:
Judgment ID number: [2007] NTMC 059
Number of paragraphs: 127

IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20104578

*[2007] NTMC 059*

BETWEEN:

**KIETH VAN DONGEN**
Worker

AND:

**NORTHERN TERRITORY OF AUSTRALIA (NUMBER 2)**
Employer

REASONS FOR DECISION

(Delivered 31 August 2007)

Ms M LITTLE SM:

1. On 24 March 2004 I delivered a decision in this matter - *Van Dongen v Northern Territory of Australia* [2004] NTMC 050. The claim of the worker was dismissed on a preliminary question namely that the worker had not demonstrated reasonable cause as to the failure to make a claim for compensation within 6 months, (s.182 (3) of the Work Health Act). Various aspects of the decision were appealed and on 11 February 2005 a decision was delivered by Justice Angel sitting in the Supreme Court of the Northern Territory (Van Dongen v Northern Territory of Australia [2005] NTSC 4). The first and third grounds of appeal were dismissed. Ground 2 of the appeal was upheld. Ground 2 of the appeal reads:

> *"the learned Magistrate erred in law failing to deal with the issues raised by paragraph 4 of the appellant's further amended Reply to Defence and Counterclaim in relation to the requirements of s. 182 of the Work Health Act (NT)."*

2. The Supreme Court remitted this aspect of the matter back to the Work Health Court. Justice Angel's decision sets out the basis of the matter being remitted and I set that paragraph out in full:

> *"In ordering dismissal of the appellant's claim for compensation the learned magistrate apparently overlooked the further issues raised by paragraph 4 of the appellant's Further Amended Reply to Defence and Counterclaim in relation to the appellant's 1999 mental breakdown and the requirements of s 182 Work Health Act (NT) in regard thereto. Those issues centred upon the appellant's mental breakdown in the latter half of 1999 which was said to arise out of his employment with the Northern Territory Police Force. In these circumstances the appellant ought to have the opportunity to re-agitate those issues before the learned magistrate. Finding of fact relevant to those issues not having been addressed by the Work Health Court it is inappropriate that I seek to determine those matters on appeal. The order dismissing the appellant's claims for compensation should be set aside. I will hear the parties as to the appropriate formal orders and as to costs."*(Paragraph 21)

4. The Worker appealed to the Court of Appeal with respect to the dismissal of grounds 1 and 3 on the original appeal. The Court of Appeal decision became Van Dongen v Northern Territory of Australia [2005] NTCA 6 and was delivered on 13 October 2005. The Court of Appeal dismissed the appeal. Accordingly the matter be resolved by the Work Health Court is the question remitted by Justice Angel following the first appeal, and set out in paragraph three of this judgment. This decision is to be read in conjunction with the first Work Health Court decision on 24 March 2004 and will be cited as *Van Dongen v NTA (No. 2).*

5. The matter was argued on 26 and 27 June 2006. Subsequently, the Court received copies of further cases from counsel for the Worker, copies of which were forwarded to counsel for the Employer. The matter was called back on and I advised that there were two questions which required submissions. Counsel responded in writing in February 2007. The questions raised and the respective responses are set out later in the decision.

6. In deciding the matter which has been remitted by the Supreme Court, account is taken of the following matters:

   (a) As no more evidence has been taken, the evidence before the Court is as stood following the hearing in December 2003.

   (b) No findings of fact have been set aside.

   (c) There may be a need to make further findings of fact.

   (d) Further findings of fact may need to take account of findings of fact made on 24 March 2004.

7. The pleadings relevant to the issue remitted by the Supreme Court are now set out. The further Amended Reply to Defence and Counterclaim was dated and filed on 8 December 2003, the date that the hearing commenced. Paragraph 4 of the Further Amended Reply to Defence and Counterclaim is a reply to paragraph 1 (c) and (d) of the Employer's Counterclaim. Paragraph 1 (c) and paragraph 1 (d) of the Employer's Counterclaim sets out as follows:

> "1. That the Worker is not entitled to any compensation pursuant to the Work Health Act for one or more of the following reasons:
>
> …
>
> (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."

8. In reply, at paragraph 4 of the Further Amended Reply to Defence and Counterclaim the worker set out:

> "4. In relation to paragraphs 1(c) and 1(d) of the employer's counterclaim the worker says:
>
> (aa) He gave notice of injury in accordance with section 80 of the Act on or about 13 August 1996 as pleaded in paragraph 4(aa) of the amended statement of claim.
>
> Further or in the alternative:
>
> (a) He first became aware of the true nature and extent of his condition while he was receiving medical treatment following his mental breakdown in July 1999 as particularised in paragraph 4(d) of the statement of claim;
>
> (b) He made a claim for compensation on or about 7 December 1999 ('the claim') as particularised in paragraph 6(a) of the statement of claim.
>
> (c) The claim is deemed to be a notice of injury ('the notice') pursuant to section 80(2) of the Work Health Act ('the Act');
>
> (d) In the circumstances, the notice was given as soon as practicable in accordance with section 80(1) of the Act.
>
> (e) Further to the above, the want of the notice before he voluntarily left his injury (*sic – taken to mean employment*) was occasioned by reasonable cause.
>
> **Particulars**
>
> The worker repeats and relies upon the facts and matters alleged in paragraph 4(a) above.
>
> (f) His mental breakdown in July 1999 was an injury as that term is defined in section 3 of the Act in that he suffered from the aggravation, acceleration, exacerbation recurrence or deterioration of the pre-existing injury particularised in paragraph 4 of the statement of claim.
>
> (g) The claim was made within six months of him suffering the injury as described in paragraph (f) above.

(h) In the alternative to paragraph (g) above, if the claim was not a proper claim for compensation the failure to make the claim within 6 months of July 1999 was occasioned by reasonable cause.

**Particulars**

The conduct of the employer's insurer, the TIO, as particularised in paragraph 6(b) (c) and (d) of the statement of claim led him to believe that compensation would probably be paid to him.

(i) In the alternative to paragraphs (f) to (h) inclusive above if his injury occurred on or about 12 August 1996, his failure to make a claim within 6 months of that date was occasioned by reasonable cause.

**Particulars**

The worker repeats and relies upon the facts and matters alleged in paragraph 4(a) above."

The underlining is as pleaded and represents the changes incorporated into the document filed on 8 December 2003. This is the paragraph the subject of the Supreme Court decision.

9. Paragraph 4 of the Further Amended Statement of Claim is referred to in the Further Amended Reply and sets out as follows;

"4. During the course of his employment with the employer the worker suffered an injury in the form of a post traumatic stress disorder complicated by a major depressive disorder.

**Particulars**

(a) During the course of his employment with the employer, the worker was subjected to numerous assaults including five assaults which resulted in the worker making claims for workers compensation, which claims were all accepted by the employer and particulars of which are as follows:

(i) On 8 October 1995 whilst removing a female prisoner from the male section of the Alice Springs Watch House, the prisoner struck the worker on the left wrist with her right fist causing a bruised muscle.

(ii) On 14 February 1996 whilst arresting a person for a breath analysis, the prisoner broke free and punched the worker in the face and then stood on the worker's glasses and broke them. The worker suffered black eyes and a cut nose.

(iii) On 9 November 1996 whilst executing an arrest pursuant to a warrant, the offender resisted arrest and punched the worker in the stomach, scratched both of the worker's hands and kicked the worker in the arm. The offender threatened to kill the worker and his children. The worker suffered cuts and bruises to his arms, hands and stomach.

(iv) On 23 April 1997 whilst attempting to arrest an offender, the worker was restraining him on the ground and was holding him by the head and shoulder area when the offender lunged his head forward and bit the worker on his right hand causing injury to the worker's right thumb including two puncture marks.

(v) On 2 February 1998 whilst arresting an offender, the offender resisted arrest using a knife and Police baton and the offender punched the worker in the chest and shoulder area five times. The offender's dog then bit the worker to the left leg. The worker suffered cuts, strains and bruises to his leg, hand and chest.

(a)(a) Further, on or about 12 August 1996, whilst arresting a person, the offender attempted to attack the worker several times with a knife, thereby forcing the worker to draw his firearm. The worker suffered a psychological injury as a consequence of this incident but since he did not suffer any loss of earnings immediately after the incident, he did not make a claim for compensation.

(b) The worker developed the injury (described above) as a consequence of the effects the various assaults (described above) had upon him, thereby rendering him unable to continue with his employment as a Police Officer.

(c) As a consequence, on 23 June 1998 the worker resigned from his employment with the employer.

(d) In July 1999 the worker suffered a mental breakdown and received medical treatment for his condition."

The underlining is as pleaded and represents the changes incorporated into the document filed on 26 November 2003.

10. Paragraph 5A of the Further Amended Statement of Claim sets out;

> 5A. On or about 13 August 1996 the worker signed and submitted an accident/injury report to the employer in which he stated, inter alia, that he had suffered a psychological injury as a consequence of the incident described in paragraph 4(a)(a) above.

The underlining represents changes incorporated into the Further Amended Statement of Claim filed on 26 November 2003, namely that the whole paragraph was added.

11. The Further Amended Statement of Claim makes a direct link between the incident on 12 August 1996 (called the First Curtis Incident in the decision of 24 March 2004, and I will continue to do so) and the worker suffering a psychological injury. This is set out in paragraph 4(a)(a) and reads in part that "the worker suffered a psychological injury as a consequence of this incident". (my emphasis). Nevertheless paragraph 4(b) sets out that the psychological injury (which had been described above) developed as a consequence of the effects the various assaults had upon him (as set out in paragraph 4(a)(i) - (v) and paragraph 4(a)(a) – that is including the First Curtis incident). This raises the prospect that the pleadings of the worker are either:

    (a) internally inconsistent,

    (b) that there are two injuries which are being alleged, the first being a psychological injury from 12/08/96 and the second being an injury in the form of a post traumatic stress disorder complicated by a major depressive disorder, or

    (c) the injury is one and the same injury.

12. The hearing before the Work Health Court was conducted on the basis that the injury the subject of the claim for compensation was sustained as a consequence of the First Curtis incident. A finding was made that a psychological injury was sustained as a consequence of the First Curtis incident on 12 August 1996. (See paragraph 138 of the decision of 24 March 2004). Despite the other incidents being pleaded, they were not relied upon in the hearing as contributing to the injury. The case is now being characterised differently.

13. The work health claims which have been accepted by the employer and which are now being relied upon by the worker will be set out. The first claim relates to an incident on the 8 October 1995, claim number 75266 which is part of exhibit E32. This claim relates to physical injury to the wrist and bruised muscle. The incident occurred whilst the worker was removing a female prisoner from the male section of the watch-house. He was struck on the left wrist by the prisoner.

14. The second claim emanates from 14 February 1996 and is claim number 75267. The worker was assaulted after a prisoner broke free awaiting a breath analysis. The worker was punched in the face and then his glasses were deliberately broken. He received injuries to his eyes, nose and damage to his glasses. This claim forms part of exhibit E32. The next incident was the First Curtis incident of 12 August 1996. No claim was made for that incident.

15. The third claim is dated 9 November 1996, claim number 92556. Whilst arresting an offender the worker was punched to the stomach and scratched. He was then kicked to his arm and threats made to himself and his children. The claim is for injury to his arms, hands and stomach. He received cuts and bruises. This claim is exhibit W6 as well as forming part of exhibit E32. This claim relates to what has been referred to as the Second Curtis incident, and involved the same offender as the First Curtis incident.

16. The fourth claim is dated 23 April 1997. While attempting to arrest an offender, the offender bit the worker to the thumb, leading to two puncture marks. This is claim 92558 and forms part of exhibit E32.

17. The fifth claim is dated 2 February 1998. While attempting to make an arrest the offender resisted arrest using a knife and punched the worker to the chest and shoulder area approximately five times. The worker was injured to the leg, chest and hand area. This is claim 95770 and is commonly referred as the Jingo incident. It is part of exhibit E32 and is also exhibit W8.

18. These are the five accepted claims which are now relied upon by the worker. The summary of the claims which has been set out above come from the claim forms themselves. The worker completed those forms. No reference is made to a mental injury. There is no evidence of any other notice to the employer of any of these incidents. Prior to December 1999 when the letter was sent to TIO, no claim had been made for mental injury. As a consequence of the findings made and the appeal decisions, the incident of the 12 August 1996 (the First Curtis incident) can no longer be relied upon by the worker.

19. As stated (and this is not in dispute) none of the Work Health claims lodged with respect to the five incidents were made for a psychiatric/psychological or mental injury. The claims were lodged within the six months of the occurrence of the injury and were accepted. Acceptance of liability was attached to the following injuries:

    (a) 08/10/95 – soft tissue (L) wrist.

    (b) 14/02/96 – soft tissue injury – face.

    (c) 09/11/96 – lacerations/bruising arms/stomach.

    (d) 23/04/97 – bitten inner (R) thumb.

(e) 02/02/98 – bruised chest.

This summary comes from advice contained in letters from TIO (part of exhibit E32).

20. The question remitted to the Work Health Court relates to Section 182 of the Work Health Act. Section 182 of the Work Health Act reads as follows:

> "**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."

**The Worker's Argument**

21. Mr Morris on behalf of the worker has submitted that I resolve the complex circumstances in this case in one of three ways:

1. That there is a causal nexus between the five instances pleaded and accepted and the psychiatric condition. These are the instances from 8 October 1995, 14 February 1996, 9 November 1996, 23 April 1997 and 2 February 1998. This excludes the first Curtis incident of 12 August 1996. There is notice of physical injury pursuant to the Work Health Act for each of these instances and the worker has made claims for compensation with respect these matters. It is submitted that this is sufficient to comply with s.80 and s.182 of the Work Health Act with respect to the psychiatric condition.

In the alternative;

2. It is submitted that when the worker had his breakdown in July 1999 that he sought compensation by way of sending a letter to TIO seeking payment of medical expenses. He received treatment from July 1999 and the letter was sent in December 1999. It was at that point that he realised his psychiatric condition would be a long term problem. His letter to TIO referred to a previous claim (February 1998) and quoted that claim number. It is submitted that reference to the earlier claim date had two effects; namely notice and it constituted a claim for compensation sufficient for the purposes of s.182 of the

Act. The letter sought to re-enliven the February 1998 claim. As a consequence of receipt of that letter TIO arranged for the worker to see Dr Ding. Dr Ding prepared a report. The letter to TIO of 7 December 1999 (which is part of W10) is sufficient for both notice and as a lodgement of a claim. It was submitted that all evidence points to decompensation caused by the employment and there is a clear causal nexus. As soon as it is apparent that the worker needed treatment he wrote to TIO and he linked his psychiatric condition to another claim he has made. Therefore notice has been given and a claim has been made.

In the alternative;

3. That the worker has a belief that the employer is considering his claim and that that constitutes reasonable cause. The worker received an indication that Dr Ding was going to assess him and in May 2000 received a report from Dr Ding. There is correspondence between solicitors for the worker and TIO and mediation is arranged for October 2000. A claim form number 121664 dated 27 November 2000 was lodged. A letter was received from TIO dated 27 December 2000 which inferred that TIO would consider the matters raised by the worker in 1999 to be part of the 2 February 1998 claim which was numbered 104029. For a period one year from December 1999 to December 2000 TIO were considering matters. It was submitted that this is sufficient for reasonable cause pursuant to s.182 (5) of the Work Health Act. In particular the belief that a claim is under consideration can amount to reasonable cause. It is said that TIO never indicated to the worker they would do nothing until they received a claim for compensation, rather TIO said they would investigate the matter.

22. I continue with an outline of the worker's contentions. It was submitted that an injury need not cause an entire incapacity. It was not just the first Curtis incident but the other incidents which materially contributed to the incapacity of the worker. So long as there is a causal link between the physical injuries and the psychological injuries it can be said the incapacity arises from the injury. It is submitted there is causal link here, that the evidence shows that the disability resulted from each of the five incidents pleaded. The case of *Beyan v Serco Sodexho Defence Services P/L* [2003]

NTMC 59 was discussed. The case of *Power v HSE Mining Pty Ltd* [2004] NTMC 5 was also discussed. I will refer to these cases later in my reasons.

23. It was submitted that the claims made by the worker with respect to the five physical injuries are sufficient to comply with sections 80 and 182 of the Work Health Act.

24. Alternatively it is said that notice has been given by way of the February 1998 claim number being allocated by TIO or by way of letter to TIO in December 1999. Notice was given as soon as was practicable. The employer, through TIO, was considering the worker's claim for compensation and therefore there is reasonable cause. It is said that this is a form of estoppel. It is submitted that the worker could not give notice prior to leaving his employment as at July 1999 as he did not have employment with the employer.

25. The Court is asked by the worker to find either that:

    1. There is a causal link between the five claims and the breakdown in July 1999. If that is the case there is no question of s.80 and s.182 to be considered as claims were lodged within time. The worker now accepts that it cannot maintain proceedings with respect to the first Curtis incident. If the Court is not satisfied with this primary submission it is submitted that the injury was an aggravation of a pre-existing injury. It is submitted that medical evidence supports such a finding.

    or

    2. That notice is as referred to in the February 1998 incident and that such notice was given as soon practicable. When the worker ascertains that the condition is likely to last forever, he seeks treatment quickly and gives notice by way of the letter to TIO in December 1999. It is submitted that this is sufficient as a claim form.

    or

3. When the worker wrote to TIO and TIO indicated they had the claim under consideration, they sent the worker to Dr Ding. As a result of TIO's action the six month period was passed.

26. The worker urged the Court to adopt the first proposition - to link his employment which led to the five incidents (not including the first Curtis incident), with his medical condition which manifested itself most dramatically in July 1999. It is agreed that the worker would have been aware of the post traumatic stress disorder but it is submitted he was not aware of such a massive decompensation as occurred in July 1999.

**The Employer's Argument**

27. Ms Gearin on behalf of the employer made the following submissions. Whether the injury was the first Curtis incident, the second Curtis incident or the Jingo incident (2 February 1998) the worker was aware he had a significant psychiatric injury and this injury had been ongoing since 12 August 1996. He had obtained treatment from Mike Tyrrell, psychologist, and in particular on 16 February 1998, after the Jingo incident, he had been told of the seriousness of his problems. He had been told he could no longer actively work as a Northern Territory Police Officer and he had decided to leave his employment. He did not advise his employer of this information and gave his employer no opportunity for treatment to be received. It is submitted that he is now unable to maintain a claim for compensation.

28. The finding of fact in the first instance at paragraph 134 of the decision of 24 March 2004 was referred to. In particular a finding was made that pursuant to s.80 of the Act notice of the injury had been given which referred to the first Curtis incident. This notice was given before the worker voluntarily left his employment (see s.182 (1) of the Act). The employer submits that it does not matter whether the February 1998 incident exacerbated an injury from 1996 or whether it was a separate and discrete injury, what matters is that there was no claim made for a psychological injury. It is submitted that nothing was claimed from the period 2 February

1998 to late 1999 in full knowledge of his condition. The worker did not tell his employer about his condition and did not make a work health claim for the condition whilst he was employed with the Police Service.

29. Paragraph 138 of the decision of 24 March 2004 was referred to where it was found that the relevant six month period pursuant to s.182 (1) (a) of the Work Health Act was from 12 August 1996 to 12 February 1997. It is submitted that the worker is now seeking to overturn a finding of fact. The Court has found notice was given and that an injury was sustained on 12 August 1996. No claim for compensation was made for an injury of any type sustained on 12 August 1996. Justice Angel has remitted the matter for consideration of matters relating to the breakdown in 1999. Consideration of the matter remitted must be made in the context of the facts already found by the Work Health Court. A finding was made in paragraph 128 of the decision of 24 March 2004 that notice of the relevant injury was given by the worker to the employer by way of an injury report (exhibit W4). This related to an incident on 12 August 1996, the First Curtis incident.

30. The employer submitted that the worker now seeks to argue that the true nature and extent of the condition did not manifest itself until July 1999. The employer submits that information from Mike Tyrrell had made the worker aware that he had a partial incapacity and he chose not to have this incapacity treated. It has been found that the worker knew that he had a psychiatric condition and with that knowledge he left his employment. Reference was made to exhibits E29 and W1. The worker chose not to have assistance or treatment. In February 1998, after the Jingo incident on 2 February 1998, he had seen Mr Tyrrell and he knew about his condition. He chose not to get help.

31. With respect to the Appellant's knowledge, reference was made to the Court of Appeal decision, and in particular paragraph 3 of the Chief Justice's decision. The employer also referred to Justice Riley's decision in the Court

of Appeal and in particular where he distinguishes between cases where a person knew they had a psychiatric injury and did not tell the employer, and those who did not know of the psychiatric condition. Justice Riley at paragraph 36 and Justice Mildren at paragraph 11 of Court of Appeal decision referred to the relevant period being the six month period following the injury on 12 August 1996. At no stage on appeal did the worker seek to set aside this finding (said to be an agreement).

32. The worker knew he could not be an operational police officer and he had not told his employer of this situation. When he resigned he gave various reasons for his resignation. Whether the injury was a new injury or an exacerbation of a previous injury, he was statute barred by s.182 of the Work Health Act. It was submitted that the worker knew the true nature and extent of the injury. Mr Tyrrell had reported to him that if he did not receive treatment his condition would become more severe. It is submitted that for a person to ignore their actual acknowledge of the situation goes against the purposes for which sections 80 and 182 of the Work Health Act have been enacted.

33. It was submitted that if the worker had not known of his condition before he left the police force, then he had had a breakdown, the situation would be completely different. The Work Health Court had found that the worker had knowledge at a time before he left the police force and that he had made two Crimes (Victim's Assistance) claims, (see exhibits in W5 and W7) with respect to, inter alia, a psychiatric condition.

34. It was submitted that the knowledge the worker had from 1999 is irrelevant, as he had known about this condition in 1996, 1997 and 1998 and it was not reasonable that no claim had been lodged. Reference was made to W6 from 14 November 1996, and findings made regarding his knowledge in paragraphs 142 and 143 of the decision of 24 March 2004. Paragraph 144 of the decision refers to the internal memorandum sent by the worker (W17)

wherein he sets out both physical and psychological/psychiatric injuries. W8 relates to 2 February 1998. The worker saw Mr Tyrrell in February 1998 after the Jingo incident. It is submitted that this is a fatal flaw in the first argument put by the worker. In the case of *Power v HSE Mining* the worker did not know nor did she understand her condition. Here the worker did know of his condition and did not make a work health claim for any injuries relating to a psychiatric condition prior to him leaving his employment. The worker knew he had a significant psychiatric injury and he left employment without making a claim. It was submitted as at December 1997 he knew that, if left untreated, the consequences may be quite serious. Reference was made to Dr Ding's report and in particular that the real problem was the worker's religious beliefs. (See page 2 of W2). It was submitted that this was an attempt to rework the same case.

**The Worker's Reply**

35. In reply Mr Morris submitted that any or all of the incidences of assault materially contributed to the worker's incapacity. It was submitted that there was no agreement at the hearing as to the relevant period for the purposes of s.182 of the Work Health Act. It was submitted that the possession of knowledge does not prevent a claim being made and there are many cases where an extension of time has been granted where a person has had knowledge of their symptoms. Section 57 of the Work Health Act was referred to. It was submitted that the second and third formulation of the argument lead to the question "is there a causal link to the employment?" Is the new injury attributable to the employment? The first formulation of the argument relies on the cases of *Power* and *Beyan* where there is a chain from one injury. It is submitted that knowledge makes no difference. The case of *Asioty* was referred to where the person's knowledge of the prospects of him being vulnerable to injury was known but the claim was not barred. It was submitted that it was impossible to make a claim in the relevant period in this case as the breakdown did not occur until July 1999.

**36. Consideration of the Matter Remitted to the Court**

37. There has been a finding of fact made that notice of mental injury occurred by way of an Accident/Incident Report dated 13 August 1996 (paragraph 128 of the decision of 24 March 2004). That report was submitted to the Northern Territory Police and is now exhibit W4. That finding of fact has not been set aside. That was the relevant notice for purposes of s.80 of the Work Health Act in the case based on the First Curtis incident.

38. An issue was raised as to whether or not there had been an agreement at the hearing as to when the relevant six month period commenced. The worker has challenged that there was an agreement that 12 August 1996 was the date of the relevant injury for the purposes of the proceedings (see reference to an agreement at paragraph 127 of the decision of 24 March 2004). The issue as to whether or not there was an agreement does not impact on the matter remitted to the Work Health Court. Based on the evidence before the Court, a finding was made that notice was given of the relevant injury by way of the accident/incident report on 13 August 1996 (exhibit W4). That finding has not been set aside. That remains the commencement of the relevant six month period, with respect the First Curtis incident and the mental injury sustained.

39. The worker now relies on claims which have been accepted as meeting the notice requirement. As Work Health claims were lodged there are no issues with respect to the six month period under section 182 of the Work Health Act with respect to the physical injuries sustained. The question then becomes whether the claims can be extended to include mental injuries. In the alternative, it is submitted that the worker did not know of the true nature and extent of this condition until July 1999. The letter to TIO is 1999 is then relied upon as notice.

40. Paragraph 4 of the further amended reply to defence and counter-claim defines the injury suffered during the course of the worker's employment

with the employer as a post-traumatic stress disorder complicated by a major depressive disorder. This has come from the evidence of Dr McCarthy (ex W3 and W11). Subparagraph (f) alleges that his mental breakdown in July 1999 was an injury, as that term is defined in s.3 of the Work Health Act, in that he suffered from the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury particularised in paragraph 4 of the statement of claim. The injury particularised in paragraph 4 of the statement of claim (and I take this to mean the further amended statement of claim – the pleadings relied upon at the hearing by the worker and dated 26 November 2003) pleads that the injury was as set out in paragraph 4 (a)(a) namely that the worker suffered a psychological injury as a consequence of the incident of 12 August 1996 (the first Curtis incident). It is specifically pleaded that a psychological injury was suffered as a consequence of the First Curtis incident.

41. In paragraph 4 (b) of the further amended statement of claim there is further pleading as to how the worker says the injury occurred. It is pleaded that the injury developed as a consequence of the effects of the various assaults which had been set out in paragraph 4 (a) and (a)(a) including the five incidents alleged in that paragraph and the first Curtis incident. It is first pleaded that the psychological injury is suffered as a consequence of the first Curtis incident. It is then pleaded that the injury developed as a consequence of the effects of the various assaults (including the First Curtis incident) upon the worker.

42. The worker has now provided the Court with an amended pleading which has deleted reference to the first Curtis incident and pleads that the injury developed as a consequence of the various effects of the five assaults.

43. I arranged for this matter to be called back on to ventilate the status of the amended pleading of the worker and the answer filed by the employer. I also

sought submissions as to the affect of the findings made with respect to the first Curtis incident. The specific questions asked were:

1. What status do the parties say the amended pleadings of the worker and the answer to the amended pleadings of the worker has in the matter which has been remitted to the Work Health Court.

2. How should the findings made with respect to the first Curtis incident – that is the incident which was reported to have caused a psychological injury on 12 August 1996 and as notified to the employer on 13 August 1996 – be treated when considering the worker's alternative submissions to the Court

44. Counsel submitted written answered to these questions in February 2007. I summarise the responses to the questions and commence with question one. The amended pleadings are agreed between the parties as to represent the alternative arguments of the worker, deleting references to the First Curtis incident. I have considered the amended pleadings of the worker and the reply to those amended pleadings by the employer. I now summarise those pleadings and add some comments. Paragraph 4 of the Further Amended Statement of Claim has been changed by deleting paragraph 4 (a)(a), the paragraph alleging the First Curtis incident of 12 August 1996 and that a psychological injury was suffered as a consequence. Paragraph 4 (b) is amended to take away the link between the 12 August 1996 incident and the injury. Five assaults (excluding the 12 August 1996 incident) are alleged to be the cause of the injury. The reference to notice being given on the 13 August 1996 is deleted. The amended pleading then takes its pleadings from the further amended reply to defence and counter claim and in particular paragraphs 4 (a) and (b). Notice of the injury is now in the alternative, namely that the worker first became aware of the true nature and extent of his condition while receiving treatment following his mental breakdown in July 1999. The amended pleading then moves back to the text of the Further Amended Statement of Claim and sets out particulars from paragraph 6 (a)

to 6 (i), pleading that the claim to TIO is deemed to be notice of the injury pursuant to section 80 (2) of the Act. Then it is alleged that want of notice was occasioned by reasonable cause. The letter to TIO is relied upon and it is pleaded that notice was given as soon as practicable. Then (as in the further amended reply) it is alleged that the breakdown is an injury as defined in section 3 of the Work Health Act in that there was an aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury as particularised in paragraph 1.4 above. This is taken to mean the pre-existing injury as particularised in paragraph 1 and paragraph 1.2 of the amended pleading (the reference to paragraph 1.4 not being capable of making sense in these circumstances). The further amended reply links the injury in July 1999 with the injury particularised in paragraph 4 of the Statement of Claim which can only mean the Further Amended Statement of Claim. The amended pleading does not allege when the injury occurred. It states that "during the course of his employment" the worker suffered the injury. Hence without reference to the First Curtis incident of 12 August 1996, a pre-existing injury is relied upon as the cause of the injury in 1999. It is not particularised as to when the pre-existing injury occurred or when it manifested itself. Finally it is alleged in the amended pleadings that the conduct of TIO led the worker to believe that compensation would probably be paid by him and the words "and that his claim was being considered" are added.

45. The employer filed an answer to the amended pleading of the worker denying the injury was suffered as alleged in the amended pleadings. The employer denied that the letter to TIO was notice saying the worker gave notice of injury in an accident report of 12 August 1996 (taken to mean 13 August 1996). In the alternative the employer says that the worker's action is not maintainable as he failed to give notice of his injury before he voluntarily left the employment in which he was injured. The employer denies that the worker gave notice as soon as practicable alleging that the

worker was aware of his injury and incapacity from at least September 1997. The employer denies there was reasonable cause for want of notice and pleads that the worker was aware of his injury and incapacity from at least September 1997 and he failed to notify his employer within a reasonable time. It is denied there was a breakdown in July 1999. The employer pleads that the psychiatric injury suffered by the worker was identified in September 1997 but the worker failed to notify the employer of the injury and its nature and extent until after he had left his employment. It is pleaded that there was no reasonable cause not to notify the employer.

46. I repeat question 2.

> How should the findings made with respect to the first Curtis incident – that is the incident which was reported to have caused a psychological injury on 12 August 1996 and as notified to the employer on 13 August 1996 – be treated when considering the worker's alternative submissions to the Court.

The worker responded as follows. As a consequence of findings made in the original decision no accord can be given to the psychological injury suffered on the 12 August 1996 in respect of that injury's specific contribution to the overall incapacity of the worker. Alternative injuries are pointed to as causing his breakdown in July 1999. Section 53 of the Work Health Act was referred to. The cases of *Treloar v Telecom* 97 ALR 321 and *White v Pink Batts* (2000) NTSC 27 were referred to. If there are several contributors to an incapacity and one of those contributors is disqualified (for example, as a consequence of one of the exclusory provisions in the Work Health Act) then that does not disqualify all of the contributors. The cases of *Parker v Comcare* 11 October 1996 AAT No. 11298 and *Wattle v York* decision of Justice Angel were also referred to. The workers final submission was as follows:

> "It is submitted that whilst no regard can be had in the consideration of these proceedings to the specific effects of the injury in 12 August

> 1996, that does not interfere with the Court finding that the workers incapacity was materially caused by the other several injuries complained of by the worker and that the worker is therefore entitled to compensation".

47. The employer's response to question 2 was as follows. The findings made with respect to the First Curtis incident should be treated as the relevant injury for the purposes of the proceedings. The worker pleads in the amended pleadings that the July 1999 breakdown was not a new injury but an aggravation of his pre-existing injury which occurred in August 1996. The employer's final submission is:

> "if the original injury is found not to be claimable then any aggravation or deterioration of it will also not be claimable. To find otherwise on the facts of this case would circumvent the very purpose of the scheme of the Work Health Act as a scheme which aims to rehabilitate workers as well as compensate them. It would also on the facts of this case render the time limits in section 82 (*sic – taken to mean 80*) and section 182 otiose".

**Cases**

48. Some of the cases referred to in submissions will be discussed in detail, prior to consideration of the arguments in this case. The first case is *Beyan v Serco* [2003] NTMC 59 decided in the Work Health Court in Darwin. The question of whether the worker was precluded to an entitlement to compensation to the extent that the claim related to a psychiatric injury was considered. No specific claim was lodged for a psychiatric injury. The Court ultimately found that the worker did not suffer from a psychiatric condition arising out of or in the course of his employment but nevertheless discussed this question, in the event it became relevant. The Court held:

> "Had I accepted this evidence then it is clear that the psychiatric injury, if directly attributable to the initial injury, is properly characterised as a sequela to the initial injury in the absence of any intervening act. To me this logically follows in the same way that for example a limp which develops some time after a broken leg can be directly attributable to the initial breakage of the leg. I can see no reason why this same interaction can not be apparent between an

> original physical injury and a consequent psychiatric injury, as long as the psychiatric injury is established and again absent any other intervening causal factors. As a matter of principle this has been accepted by the High Court in the common law context in *Shorey v PT Limited* [2003] HCA 27. On my reading of that authority there was no reason why that could not be applied in the context of a statutory scheme of workers compensation".

Further the Court held:

> "Moreover it is clear from the evidence of Ms Parkhill and Mr Campbell and to a lesser extent that of Ms Earle, that shortly after the worker's commencement of the return to work program, the worker was exhibiting signs of psychological disturbance most notably paranoid features. (I leave aside for the present whether the worker was genuine in that regard or the issue as to whether those symptoms if genuine arise out of or in the course of employment). In addition there can be no doubt that medical certificates were provided to the employer which were given by Dr Di Bella and Dr McLaren. Both are psychiatric professionals. There was some evidence from Mr Campbell which doubted whether he had been provided with a certificate. I think he may be wrong in his recall of events there, but in any event there can be no dispute that they were provided to the employer. Mr Cassidy, the case manager appointed by the insurer also directly observed events which led him to suspect an overdose and arrange for the worker to be seen by Mental Health workers from Tamarind Centre. That alone, in any event, would dispose of the issue of notice in relation to the claimed psychiatric issue in my view. In my view therefore the notice given by the worker satisfied the requirements of section 80(1) of the Act. (paragraphs 214, 215 and 216 of the decision of 1 December 2003)

49. The case before the Court is not on all fours with the case of *Beyan v Serco*. In the case before the Court there was no notification to the employer of a psychiatric, psychological or mental injury arising from any of the incidents (save and except the First Curtis incident which is no longer able to be relied upon) prior to the worker resigning from his employment. As previously found the notice give with respect to the First Curtis incident was not followed up with a claim for compensation. The five incidents that are now being claimed as to be causally linked to a psychiatric injury were not the subject of notice with respect to a psychiatric injury. For example there

were no medical certificates from a psychiatrist handed to the employer as in *Beyan v Serco.* Notice was given with respect to physical injuries. The physical injuries were the injuries which were notified by the claim for compensation and were the injuries accepted by the employer through their insurers. Whether there is a causal link proven between each, some or one of the incidents involving an assault and the psychiatric/psychological injury is a matter to be resolved later in this decision.

50. The next case to be considered is *Power v HSE Mining Pty Ltd* [2004] NTMC 5 delivered by the Work Health Court on the 30 January 2004. In that case the worker suffered a physical injury and a subsequent psychiatric injury. The Court found:

> "I am of the view that notice of the accident and physical injury given by the worker to the employer on 9 October 1996 was sufficient to fulfil any notice requirement with respect to a subsequent psychiatric injury". (The Court then referred to various authorities, and continued) "The psychiatric injury was consequential upon the physical injury and formed part and parcel of the original physical injury in respect of which proper notice was given." (paragraph 33)

51. The Court then considered question of section 104 and 182 of the Work Health Act. In the application with respect to section 182(3) of the Worker Health Act the worker claimed that her failure to comply with section 182(1) was occasioned by ignorance of disease. The Court held:

> "In relation to the excuse of ignorance of disease the worker's evidence is that although she appreciated that her mood and disposition was different following the accident, she was entirely unaware of the notion of "mental injury" and also unaware that the difference in her mood and disposition might be characterised as a "disease". That remained the position for the six month period following the injury. The true nature and effect of her mental condition only became apparent to her after she had formed a relationship with her current partner, late 1998 or early 1999, and after she sought psychiatric help. The medical evidence adduced in these proceedings was to the effect that there can often be a delay between the precipitating event and the onset of full symptoms. In

light of the workers evidence and the medical evidence, Mr Grant submitted that the worker did not realise until later (when the condition did not desist) that she would be required to make a claim for compensation". (Paragraphs 42 and 44).

52. The Court then referred to the case of *Fenton v Owners of Ship Kelvin* (1925} 2KB 473. The Court further stated :

> "I consider that the diagnosed psychiatric injury namely post traumatic disorder satisfies the definition of disease in section 3 of the Act. In my opinion it is proper to take into account the worker's educational background and the apparent intellectual capacity in determining whether, in fact, she was ignorant of her disease. The more educated or intelligent a person is, the more likely it is that they would be aware of the nature of a condition from which they are suffering. Conversely, a person with limited education or intelligence may have a diminishing understanding – indeed be ignorant - of any disease from which they are suffering. Of course the personal attributes of the worker must be considered in the context of all the evidence relating to the postulated explanation for the delay. In the present case the worker's evidence as to her state of mind relative to her medical condition must be considered as well as the nature of the diagnosed psychiatric condition and the onset of symptoms. I have considered the oral submissions made by Mr Bryant to the effect that the worker was following the cessation of her employment afflicted by and presumably aware of such debilitating symptoms that she found it necessary to self medicate in order to cope with the everyday activity of driving a motor vehicle and the presence of such symptoms indicated the existence of a psychiatric condition and by reason thereof the worker is precluded from relying upon ignorance of disease as an excusing condition. This submission fails to recognise the subtle distinction between awareness of symptoms and awareness of a disease manifested by those symptoms. One may be aware of certain symptomology yet lack knowledge that they are suffering from a disease. One may fail to appreciate that those symptoms indicate – indeed constitutes – a disease. In my opinion, after having regard to the workers own evidence, the medical evidence and the personal attributes of the worker I am satisfied on the balance of probabilities that the worker did not become cognisant that she had suffered psychiatric injury – a disease – until late 1998 or early 1999, considerably more than six months after the occurrence of the injury. Accordingly I am satisfied on the balance of probabilities that the worker's failure to comply with the time requirements of section 182(1) was occasioned by

ignorance of disease". (paragraphs 50 – 52 of the decision of 30 January 2004).

53. There is a significant distinction between *Power* and the case before the Court in that the worker had knowledge of his condition. The worker before the Court argues that the true nature and extent of his injury was not known until 1999. This will be addressed below.

**Chronology**

54. A chronology of relevant dates is as follows:

| | |
|---|---|
| 8 October 1995 | Assault, Work Health Claim lodged and accepted – no allegation of mental injury |
| 14 February 1996 | Assault, Work Health Claim lodged and accepted – no allegation of mental injury |
| 12 August 1996 | The First Curtis incident |
| 13 August 1996 | Report regarding First Curtis incident alleging psychological injury (exhibit W4) |
| 9 November 1996 | Second Curtis incident |
| 11 November 1996 | Worker applies to the personnel section of the employer for financial assistance for Crimes Victims Assistance claiming for 1st and 2nd Curtis incidents for mental and physical injuries (exWI7) |
| 14 November 1996 | Work Health Claim lodged Re: Second Curtis incident claim number 92556 - no allegation of mental injury – (exhibit W6) |
| 27 November 1996 | Work Health Claim 92556 accepted for laceration/bruising arms/stomach (part of E32) |

| | |
|---|---|
| 23 April 1997 | Assault – Work Health Claim accepted for bitten thumb (14.05.97) |
| 11 August 1997 | First Curtis incident Crimes Victim Assistance Claim lodged – mental distress claimed (exhibit W5) |
| 2 September 1997 | Assessed by Mike Tyrrell, Psychologist. |
| 25 September 1997 | Report of Mike Tyrrell (exhibit W1) |
| 26 September 1997 | Letter from Mike Tyrrell to worker's doctor, Dr Peterkin (part of exhibit E29) |
| 7 November 1997 | Crimes Victims Assistance Claim lodged regarding Second Curtis incident alleging mental distress and adjustment disorder (exhibit W7) |
| 2 February 1998 | Jingo incident, Work Health Claim lodged regarding that incident claim number 95770 – no allegation of mental injury (exhibit W8) |
| 17 February 1998 | Work Health Claim 95770 accepted for bruised chest |
| 18 February 1998 | Worker's appointment with Mike Tyrrell |
| 24 June 1998 (or 28 June 1998) | Left employment with the Northern Territory Police Force (exhibit E20) letter of resignation - no reason for leaving employment and no reference to health issues or psychiatric/psychological injury |
| 28 July 1999 | Crimes Victim Assistance Claim lodged with respect to the Jingo incident – mental distress claimed (exhibit W9) |
| 16 August 1999 | Admitted to Perth Clinic (Perth Clinic notes E30) |

| | |
|---|---|
| 8 September 1999 | Letter from Perth Clinic signed by clinical psychologist to worker's psychiatrist, Dr Trevor Blythe (part of exhibit E30) |
| 7 December 1999 | Letter by worker to TIO claim for medical expenses (part of exhibit W10) |
| 13 December 1999 | Letter from TIO (part of W10) |
| 16 February 2000 | Report of Dr Ding (W2) |

**The Workers Alternative Submissions**

55. The first submission by the worker is that there was a causal link between the five incidents (or some of them), where claims were made and accepted, and the breakdown in July 1999. Those five incidents are on the 8 October 1995, 14 February 1996, 9 November 1996, 23 April 1997 and 2 February 1998. The worker suffered some physical injury in each of these incidents. It is claimed that there was a material contribution to his breakdown in 1999 by all or some of these incidents. He lodged a work health claim on or around the time of each of the incidents, and certainly within six months of the physical injury being sustained and prior to him leaving his employment with the employer. Only the Work Health claims for 09/11/96 and 02/02/98 were tendered as part of the workers case (W6 & W8).

56. These five claims were accepted for physical injuries only. If a link can be shown between an injury from all or some of those claims and the 1999 psychiatric injury, can the claim(s) be extended to include a claim for psychiatric injury? With respect, I agree with the decision in *Beyan v Serco* that if a mental injury is found to be directly attributable to a physical injury, it can be characterised as a sequela to the initial injury in the absence of any intervening act. (*Beyan v Serco [2003] NTMC 59).*

57. In this case there has been the acceptance of 5 claims for physical injuries following assaults. An issue is raised as to what is meant by the 'acceptance' of a claim for a particular injury. Can it be said that the acceptance of the claim includes a mental injury if that has not formed part of the notice given by the claim? Does a worker's knowledge of their condition affect the answer to this question? Can a claim for physical injury be extended to include a mental injury in any circumstances, irrespective of the worker's knowledge? I find that a person's knowledge is not irrelevant. The cases of *Power v HSC* and *Beyan v Serco* do not support a finding that a worker's knowledge is irrelevant. Those cases weigh up all the circumstances of the case, including issues such as notice to the employer and the worker's knowledge. The workers knowledge of their condition, and the basis of that knowledge, is relevant when considering matters before the Work Health Court. Their knowledge may change over time – based upon a range of factors including professional advice and medical tests. What the worker does with the information and knowledge they have is also relevant. What is relevant can be an omission to advise, notify or act or the actions of the worker. Ultimately each case is to be decided on its facts.

58. At the time the Worker in this case completed the Work Health claim forms relating to 9 November 1996, 23 April 1997 and 2 February 1998, he knew of his mental injury. There is no evidence before the Court of a mental injury prior to the 1$^{st}$ Curtis incident and accordingly, the claims lodged from 8 October 1995 and 14 February 1996 do not take his case any further. The worker is not in the same position as a worker who either did not know or could not have known of the mental injury. Findings in this case are that the worker knew of his condition and deliberately withheld information from the employer. Later an expert informed him of his specific condition, and he did not advise his employer. He also made claims in another jurisdiction, namely in the Local Court when he filed claims for Crimes Victims Assistance, inter alia for the mental injuries now claimed in the Work Health

Court. In large part because of these factors, the claim relating to the First Curtis incident was dismissed. These findings remain and will be taken into account in this decision as they relate to the matters to be resolved.

59. Does an employer who accepts liability for an injury incur liability for injuries which are not claimed? An acceptance of a claim does not act as an estoppel to an employer who later disputes a claim. When a claim for compensation is pursued, a worker may be required to prove the injury and prove it arose out of and in the course of employment, even if the claim was lodged in time and has been accepted. Nevertheless the fact that a claim for compensation has been made within the time limit set out in s.182 of the Work Health Act means that the proceedings are maintainable for the recovery of compensation for the injury. That is, issues relating to section 182 do not act as a possible defence to the claim. Prima facie a claim relates to "the injury" which is set out in the notification.

60. Ignorance of a disease can act to excuse the failure to lodge a claim within time – see s.182(3) of the Work Health Act. In those circumstances, the employer has no notice of a potential liability and has no opportunity to offer treatment and rehabilitation to the injured worker. Nevertheless, the Legislature has expressly contemplated a situation where a claim can be maintainable in circumstances where an employer has no notice of a potential liability and has no opportunity to offer treatment and rehabilitation to the injured worker. In those types of cases, the decision whether to rule in favour of the worker must be carefully considered. The case of *Power* is one such case.

**61. What was the injury sustained in 1996?**

In the decision of 24 March 2004 the following finding of fact was made:

"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." There was no finding made as to the nature or extent of the injury. That question will need to be decided before consideration of the matter remitted to the court can be resolved.

**Nature of the Injury Sustained in August 1996**

The expert evidence before the court as to the nature of the mental injury sustained in August 1996 is as follows. In September 1997 Mike Tyrrell examined the worker and diagnosed the injury to be an Adjustment Disorder with mainly depressive features. He was of the view that many of the workers adjustment symptoms were similar to Post Traumatic Stress Disorder (PTSD), but the primary conditions for PTSD were not met. He expressly considered and rejected PTSD. His evidence is the only expert medical report prepared by someone who examined the worker near to August 1996, albeit a year after that time. (ex W1).

Dr Ding assessed the worker in February 2000. He was of the opinion that the clinical features which developed in the course of 1997 (the incident which is known as the First Curtis incident is said to have occurred in 1997 so it is possible that Dr Ding meant this to be 1996) were consistent with the diagnosis of a moderately severe Major Depressive Episode. He states that as work related stress was the predominant factor in the workers condition, it was understandable that Mr Tyrrell should have diagnosed Adjustment Disorder with mood features (ex W2). He was of the view that as the total package of depressive symptoms comfortably met the DSM IV criteria for a Major Depressive Episode then this diagnosis may be favoured. Dr Ding reported that prior to leaving employment with the employer the worker had seen Dr Blythe, consultant psychiatrist, who confirmed the diagnosis of Mr Tyrrell. He had a report of Dr Blythe in his possession, though this report is not before the Court. Importantly it is noted that in April 1998 Dr Blythe confirmed Mike Tyrrell's diagnosis and recommended

anti-depressant medication. The recommendation for anti-depressant medication would be an indication of ongoing depressive symptoms (ex W2).

In August 2000 Dr McCarthy diagnosed that by 1997 the worker had developed Post Traumatic Stress Disorder (PTSD). This is the injury set out in the Worker's pleadings. He had seen the worker on 4 occasions in 2000 before making this diagnosis (ex W3). Dr Terace saw the worker in October 2003. Dr Terace diagnosed that in 1997 (taken to be 1996 given the dates of the incidents) the worker had an Adjustment Disorder (exhibit W27 – this exhibit number has been wrongly made, it should read E27, it being a report tendered by the Employer. It will be referred to it as E27 from now on).

Thus with respect to the nature of the condition sustained as a consequence of the First Curtis incident, there are different diagnoses made after examination of the Worker over a period of 6 years - from September 1997 to October 2003. Mike Tyrrell is a Psychologist. All other report writers are Psychiatrists. The diagnosis of Mike Tyrrell was made just over one year after the incident of August 1996. Prima facie that diagnosis can be seen as the most relevant, it being closest in time to the incident the subject of the injury. He has specifically rejected PTSD as a diagnosis. Further Mike Tyrrell's report is the only expert report before the Court prepared prior to the Worker being treated at the Perth Clinic in 1999. Accordingly, this means that the diagnosis is being made without any possibility of confusion with symptoms and history from 1999 onwards. Dr Ding examines the worker 2 and half years after Mike Tyrrell, that being three and half years after the first Curtis incident. Dr McCarthy saw him 6 months later, 4 years after the first Curtis incident. Dr Ding diagnoses a Major Depressive Episode and Dr McCarthy diagnoses Post Traumatic Stress Disorder. Both have Mike Tyrrell's report before them for their consideration prior to preparing their reports. Dr Ding is of the view that his diagnosis of a Major Depressive Episode is largely the same as the diagnosis by Mike Tyrrell (Adjustment Disorder with mainly depressive features), and that there is no real difference as to the nature of the disorder. Dr Ding does not go into any detail as to symptoms during the period

1996-1997. The report is more focussed on the situation in 1999-2000. He refers to the work related stress, reporting that, as it was the predominant factor in the workers condition, it was understandable that Mr Tyrrell should have diagnosed Adjustment Disorder with mood features (ex W2). This explanation for the different diagnosis, and the statement that the two different diagnoses are the same in nature, are relevant in considering the nature of the injury sustained in 1996. Dr McCarthy's diagnosis is based on a series of interviews, as opposed to the other reports subsequent to 1999. That is a factor which prima facie goes to the report being given more weight than the other reports subsequent to 1999, though not being conclusive. Dr Terace diagnoses an Adjustment Disorder.

Based upon consideration of the material before the Court, I find that the injury sustained by the Worker in August 1996 was an Adjustment Disorder, with mainly depressive symptoms. This is based upon Mike Tyrrell's diagnosis made closest in time to August 1996, and takes into account the preponderance of evidence that the symptoms were consistent with both an Adjustment Disorder and Depression and the fact that in April 1998 Dr Blythe was recommending anti-depressant medication.

**Extent of the Injury Sustained in 1996**

I have found that the injury sustained by the Worker in August 1996 was an Adjustment Disorder, with mainly depressive symptoms. What was the extent of that injury? I find that the injury was such as to lead to an inability to fully undertake his work as a Police Officer as from August 1996. At no stage from August 1996 and during the rest of his time as a Police Officer in the employ of the Northern Territory Police Service did the Worker apply for time off for treatment or to recover from this injury. At all times subsequent to the injury being sustained his capacity to undertake his work was reduced because of the injury. Symptoms were ongoing throughout the rest of the workers time in the Police Service and he was aware of those symptoms. I do not find these symptoms were totally debilitating, nevertheless they did impact negatively upon

his capacity to undertake his operational duties fully. It is possible that the Worker had not fully recovered at the time the worker left the employ of the Employer in June 1998. Nevertheless there is limited evidence before the court to make a specific finding as to whether the Worker had fully recovered by the time he left his employment with the Employer.

Whether there were residual symptoms which could be linked to the injury sustained in August 1996 could have been answered by medical personal treating the Worker at the time but that material is not before the Court. The onus of proof rests with the Worker. He has not put this material before the Court. In February 1998 the Worker reported to Mike Tyrrell that the symptoms were not a problem but he was angry. By this stage he had 'planned an escape plan' from the Police Service and he believed he was not receiving support from his superior officers (ex E29). This was four months before he resigned. The notes taken by Mike Tyrrell do not reveal any symptoms other than anger – a symptom which could be attributable to his belief that he did not have the support of his superior officers. In April 1998 Dr Blythe confirmed Mike Tyrrell's diagnosis and recommended anti-depressant medication. (ex W2). The recommendation for medication would be an indication of ongoing symptoms. The worker left the employ of the employer in June 1998. Dr Ding's report does point to ongoing symptoms and the making of rapid improvement only after the worker commenced taking Efexor and undertaking cognitive behavioural therapy in August/September 1999 (ex W2). I find that it is possible that the Worker still suffered the symptoms from the condition of Adjustment Disorder, with mainly depressive symptoms at the time he left the employ of the Employer in June 1998. Given the limited evidence before the court, is not possible to make a finding as to the extent of those symptoms.

**Is a link proven between the 1999 breakdown and the five assaults the subject of the claims from the workers employment with the Employer? Can it be said that the 1999 breakdown arose out of or in the course of his employment with the Employer?**

**Relevant Case Law**

62. Some relevant cases will be discussed firstly. The Work Health Court case of *Beyan v Serco* [2003] NTMC 59 has been referred to above. The Court held:

> "Had I accepted this evidence then it is clear that the psychiatric injury, if directly attributable to the initial injury, is properly characterised as a sequela to the initial injury in the absence of any intervening act. To me this logically follows in the same way that for example a limp which develops some time after a broken leg can be directly attributable to the initial breakage of the leg. I can see no reason why this same interaction can not be apparent between an original physical injury and a consequent psychiatric injury, as long as the psychiatric injury is established and again absent any other intervening causal factors. As a matter of principle this has been accepted by the High Court in the common law context in *Shorey v PT Limited* [2003] HCA 27. On my reading of that authority there was no reason why that could not be applied in the context of a statutory scheme of workers compensation".

Thus there must proof that the injury is attributable to the initial injury, and be characterised as a sequela to the initial injury in the absence of any intervening act. These are questions of fact which will be considered in each case.

63. The case of *Treloar v Australian Telecommunications Commission* (1990) 97 ALR at 321 is also to be considered. The appellant in that case suffered from sun related skin conditions during his work with Telecom. He required some minor surgery and Telecom accepted liability. He then developed metastatic melanoma and he underwent surgery for this condition. Telecom denied liability in respect of the melanoma, its aggravation or acceleration on the basis that compensation was not payable. This denial was based upon medical reports which rejected any causal link between the development and progression of the melanoma and the exposure to the sun's ray whilst he was working with Telecom. There was conflicting medical evidence and ultimately the fact finding Tribunal found a causal link between his employment and the conditions. The Tribunal had previously found that the work was not the primary cause of his melanoma. The Full Court of the Federal Court held as follows:

> "Once it is established that an employee in the doing of his work was exposed to "a state of affairs to which he would otherwise not have been exposed" or to "some characteristic of or condition in which the work was to be performed" and that such exposure was in truth a "contributing" factor to the condition in respect of which he seeks compensation, then it matters not whether the contribution was of any particular size or degree. The same applies where the complaint is not one of initiation of the condition but its aggravation in the sense of making it worse, or its acceleration in the sense of speeding up the progress of a progressive disease. In all cases the question is whether there has been a "contribution"…. all that is required is that the relevant aspects of the employment add their measure to the creation of the condition, its aggravation or acceleration. They must, in truth, be part of the cause. If they are not, then they do not "contribute". (page 328).

This case is authority for the proposition that once it is proven there has been a "contribution" to the condition, then the amount of that contribution is not the question. If the link is proven on the evidence, that is sufficient.

**Is a link proven between the 1999 breakdown and the five assaults the subject of the claims from the workers employment with the Employer ?**

**The Workers Case**

64. Matters pleaded, the opening address and submissions by Counsel are not part of the evidence before the Court. The pleadings act as a guide to the way the case is intended to proceed. The evidence is the material which will form the basis of findings made. A litigant need not rely upon all of the pleadings they put before a Court. In this case alternative pleadings are now being relied upon, albeit without reference to the First Curtis incident.

65. The only contemporaneous medical material or documentation before the Court with respect to the breakdown 1999 forms part of Exhibit E30. This material will be referred to when the Employers evidence on this question is being considered. Notwithstanding that he bears the onus of proof, the Worker has not tendered any contemporaneous medical material or documentation with respect to the breakdown in 1999. The medical material

relating to the breakdown in 1999 which the worker now relies upon is material which was gathered subsequent to a claim for mental injury being lodged and is not from any treating medical personnel. This evidence will be considered in light of the contemporaneous medical material before the Court and the other evidence before the court.

66. The evidence of the worker is the foundation of the case. The evidence given by the worker at the hearing did not directly assert that there was a causal link between the five assaults and his breakdown in July 1999. His evidence was that the First Curtis incident on 12 August 1996 was the genesis of his condition, causing the injury which ultimately led to the breakdown in July 1999.

67. I will summarise the evidence of the worker as to the cause of his breakdown in 1999. In evidence in chief the worker sets out some of the distressing incidents he had encountered when working as a Police Officer in the Northern Territory (page 36). He was asked "have you ever been assaulted during the course of your duties" and he answered "lots of times". He sets out a range of assaults that occurred and also outlined an incident where he had been shot at in Maningrida. He gave examples of distressing incidents that he had been involved in and the type of work associated with being a Police Officer. With respect to the claim lodged relating to an incident on 14 February 1996, the worker said that he had made a claim as that was the only way of claiming money back for the cost of his broken glasses (page 39). He did not assert that the incidents prior to August 1996 were causative of his condition.

68. The worker then gave evidence about the incident on the 12 August 1996 (the First Curtis incident), commencing at page 41 of the transcript of the evidence in chief. This incident has been summarised in the first decision and it will not be repeated in this decision. The account given was comprehensive and very detailed – in contrast to the other evidence given

about his work. The accident injury report of the 13 August 1996 was tendered and became exhibit W4. The body part said to be injured was the "mind" and the nature of the injury was "psychological". With respect to the incident on 12 August 1996 the worker stated :

> "I felt after that incident everything changed, everything changed. It was like for me to have, for me to have put that in, that accident injury form in, was a huge step for me to even put that in….. knowledge that there was a psychological problem in my mind was a huge thing." (page 48).

69. And later the worker said:

> "When I looked at that incident that happened back in 96 and when the things that had happened, the pattern things that have happened after that, it was like that had been set. It if it was fate well then fate, that had set the fate. That had written my, sealed it. And then when I went and saw Mr Tyrrell and he had said the things he had said about the medication and that it was probably time to leave that, it all just seemed to fall into place. So yeah when I left there was a weight off my shoulders there was a huge weight and I sort of felt like things weren't too bad." (page 63).

70. He was asked why he had sent the letter to TIO to reopen the claim and he stated :

> "I wanted them to start picking up the medical because in my mind I knew very well where all this had come from. This had come from a couple of days in 1996 and the incidents there and what had followed." (page 68).

71. He was asked about recurring thoughts he had and the worker answered:

> "…when you're working and your busy you can, you're not thinking, your just thinking on what you're doing. So I mean it's only when you've got time on your hands when you are sitting there doing nothing that that sort of stuff tends to pop into your head and that's….
>
> What sort of stuff are you talking about? The thoughts about the whole process, the whole, your life cause when you have when you've got that one incident and then things that happen after that

> What incident are you talking about? The one in 96.
>
> The Curtis incident? The Curtis incident yeah. And then when you look at everything else that happens, I mean it doesn't all sit in isolation on its own, it all comes back at different perspectives that's why it's easier to drink.
>
> Well how often were you having those thoughts about the Curtis incident? Well as much as I let it happen, I guess, in my head. I mean it would come all the time if I didn't do something about it.
>
> If you, when you are on medication? Like if I didn't drink or yeah if I didn't take medication. If I didn't drink. If I didn't sort of actively keep on top of it, if I let my own guard down and get low that's when it happens, that comes back that what…
>
> The thoughts come back? Yeah, that's what comes to visit me." (page 76)

72. The worker was talking about the present medication he was on and he was asked:

> "Do you have any thoughts of the Curtis incident? Yeah I mean I have thoughts about it and other things as well but the medication makes me, I mean because I feel uplifted I am not alone, I don't let it get me down. Like I deal with it. I say to myself that one side of the head that says, look, just put it out of your head and move on, that wins." (page 78)

73. In cross examination the worker agreed that up until August 1996 he was a happy and confident member of the Police Force. He was asked:

> "And so you had no symptoms of any anxiety prior to August 1996 is that right? Well I wasn't a rock but I mean I didn't have anything that was affecting me, no." (page 106)

74. In re-examination he was asked about the history that he had given to the Perth clinic and he said:

> "Well it included who I was, where I was born, my time in the police service, how I arrived at being where I was. Those incidents that I thought were quite stressful.

> What did those incidents include? Well all those things I've mentioned here many of the quite distressing incidents but also the incident in 96 the one in 98 as well. All of those things were mentioned.
>
> And when you say all of those things what period are you talking about? I'm talking about that period from August 96 onwards.
>
> While you were employed in the Police Force? That's right" (page 165)

75. The workers evidence was that the August 1996 incident (the First Curtis incident) was the catalyst to his injury. That was the foundation of his case. Notwithstanding disturbing and distressing incidents prior to August 1996, everything changed in August 1996 and he gave notice of a psychological injury at that time. He did not make a work health claim for compensation for that injury. He did not undertake treatment as recommended.

76. The Court is now being asked to make a finding of fact which is not open on the totality of the worker's evidence to make. The worker's oral evidence does not support a causal link between the five claims, excluding consideration of the First Curtis incident, and his breakdown in July 1999. Not only does his evidence fail to assert the causal link between the five incidents and his breakdown in 1999, on his evidence the August 1996 incident precipitated his condition.

77. What of other material before the Court – can the link be proven on other material? Mike Tyrrell did not examine or report on the worker after 1997. The first report to be considered is from Dr Les Ding dated 16 February 2000 exhibited as W2. This report was prepared on behalf of the employer, on the request of Territory Insurance Office, after receiving the letter from the worker in December 1999 claiming medical expenses. Even though the assessment by Dr Ding was called for by the Employer through its insurer, this report was tendered by the Worker. The worker had prepared hand written notes regarding traumatic incidents which he handed to Dr Ding.

These notes are not enclosed in the report which is before the Court. The worker referred to a specific episode in 1997 where he was assisting a female colleague being confronted with an angry Aboriginal man who was attacking her with a knife. The details of this incident clearly identify it as the First Curtis incident in 1996 and so I take the reference in the report to 1997 to mean 1996. The worker placed a great deal of emphasis on this incident during his interview with Dr Ding and the doctor reported as follows:

> "In his mind this created a situation whereby he believed his colleagues would see him as being untrustworthy in not being prepared to use a gun and he felt that his colleagues began reacting differently to him from that time and that *he was starting to go down hill psychologically*. Later in the course of the interview he talked about his realisation that on account of his religious beliefs he just could not kill". (my emphasis)

78. The worker then referred Dr Ding to at least two more significant episodes in 1998, one involved being threatened with a spear and also being bitten. In February 1998 he was confronted by an assailant with a knife but was able to get that off him but in the course of wrestling with him he fractured his ribs. From the details particularised in the claim, these incidents would be the incidents of 23 April 1997 and 2 February 1998 (Jingo incident) respectively. Dr Ding had Mr Tyrrell's report of September 1997 before him and commented upon the symptoms the worker was describing. Dr Ding reported that that prior to leaving employment with the employer the worker had seen Dr Blythe, consultant psychiatrist, who confirmed the diagnosis of Mr Tyrrell and recommended antidepressant medication. The worker was reluctant to accept medication until September 1999. Dr Ding stated in his summary and assessment as follows:

> "Mr Van Dongen is a 39 year old ex police man who developed clinical features in the course of 1997 *[as previously mentioned the reference to 1997 is taken to mean 1996]* which were consistent with the diagnosis of a moderately severe major depressive episode. Although he was inclined to attribute his psychological deterioration

> to this incident specifically, it is almost certain that there had been a cumulative adverse psychological response over the preceding year in being exposed to traumatic and personally threatening situations in the course of his work. I am of the opinion that work related stress was the predominant factor in Mr Van Dongen's psychological decompensation and therefore it is quite understandable that Mr Tyrrell, the Psychologist, should have diagnosed adjustment disorder with mood features. It was not until he commenced on treatment with the anti-depressants Efexor, shortly followed by a course of cognitive behavioural therapy, that he began to make rapid improvement. He is now well on the way to recovery and there are very few residual depressive symptoms which do not appear to hamper his function in any significant way".

79. Dr Ding's report does demonstrate a link between the First Curtis incident and a mental injury. At no stage does Dr Ding make a direct casual link between any of the claims currently before the court and his breakdown in 1999. The claim of the worker is not work related stress in a general sense, the injury is said to be tied to certain identifiable (and claimed) incidents.

80. The next material to be considered comes from Dr McCarthy. In the letter to TIO dated the 7 December 1999 the worker refers TIO to Dr McCarthy. Dr McCarthy did not examine the worker until 14 March 2000, and did so to prepare a medico-legal report. The worker did not refer TIO to the Perth Clinic staff, Dr Blythe or Dr Henderson. In W3 Dr McCarthy reports that the First Curtis incident was the commencement of the post traumatic stress disorder. He further reported that the post traumatic stress disorder was exacerbated by the assault in April 1997 and again by the assault in February 1998. He describes the workers psychiatric illness as a post traumatic stress disorder which arose as a result of the assaults and related stressors in the work place. He then sets out that the post traumatic stress disorder was complicated by what appears to have been a major depressive disorder in 1999. He reports there was an overlap between the symptoms of the major depressive disorder and his chronic post traumatic stress disorder. At no stage in Dr McCarthy's first report does he suggest that the major depressive disorder has been *caused* by the workers employment. Further he

does not specifically diagnose a major depressive disorder but rather states that the worker *appeared* to have had a major depressive disorder.

81. Dr McCarthy's final opinion is that the worker has a psychiatric impairment due to post traumatic stress disorder and related psychiatric symptoms which resulted from workers experience with the Service in the Northern Territory Police Force. Dr McCarthy does not link the major depressive disorder in 1999 with the workers employment with the Northern Territory Police Force. The first report is dated 29 August 2000 and the worker had seen Dr McCarthy on various occasions through the year 2000 (exhibit W3). In evidence Dr McCarthy stated that the opinions expressed in his report were opinions he still held at the time of giving evidence.

82. In Dr McCarthy's second report dated 17 November 2003 and exhibited as W11 he went further than in his first report and he stated as follows:

> "I confirm the diagnosis in my report of 29 August 2000 about (sic) 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".

83. And finally 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".

84. In the original report of Dr McCarthy there is no specific link between the breakdown in 1999 and the workers employment as a policeman. He says that the Post Traumatic Stress Disorder was complicated by what appears to be a Major Depressive Disorder in 1999. In Dr McCarthy's second report he separates out the original cause of the problems from what he describes as the maintenance or exacerbation of the problems. He does not expressly set

out whether he believes there is a casual link between the assaults and the breakdown in 1999. He states that "other life events contributed subsequently to the maintenance or exacerbation of his depressive symptoms". This opinion can be viewed in light of the material from the Perth Clinic, which will be considered below. Dr McCarthy supports a finding that (of the incidents left to be considered), the assaults in April 1997 and in February 1998 exacerbated the worker's injury from the First Curtis incident. That casual link is made and will be discussed below.

85. The reports of Dr McCarthy of the 29 August 2000 and the 17 November 2003 were tendered together with his CV. No further evidence in chief was given. In cross-examination Dr McCarthy stated that the worker had said that he was satisfied with his job as a police officer and whilst he did have a number of stressors he was able to cope with those prior to August 1996. According to the history offered by the worker it was around '95 – '96 when his symptoms of anxiety and distress became more prominent. Dr McCarthy said that he saw the symptoms as outlined in the report of Mr Tyrrell (W1) as compatible with post traumatic stress disorder. Dr McCarthy's evidence was that in February 1998 the worker had an exacerbation of his condition. The doctor stated that there was not necessarily any single episode, though some episodes may be particularly significant. He said there is a history of violent incidents over many years. On his diagnosis he was not hanging the condition on one incident. The symptoms described by the worker were decreased memory, tendency to procrastination and switching off the job, mood swings with irritability, tearfulness, anxiety and anger and he had those symptoms chronically. The worker gave the history that the symptoms began after the incident at Ayers Rock (the First Curtis incident). Whilst they were the facts offered by the worker, the doctor's opinion was that "it doesn't usually work like that" and that the symptoms tend to build up more gradually over the years. That was the evidence of the worker on the issue of the cause of the breakdown in 1999.

**The Employer's Case**

86. I will now consider the material tendered by the Employer on the question of whether there was a link between the breakdown in 1999 and the five assaults. The notes from the Perth Clinic are contained in exhibit E30. That exhibit includes hand written clinical notes taken during the workers time at the Perth Clinic in August 1999. The notes from the attendances in 1999 were made by Elizabeth Rutherford, clinical Psychology Trainee. On 16/08/99 there is reference to "the onset of depression in the context of major social stressors – moving to Perth from Northern Territory after leaving NT Police Force, moving into new house and his wife pregnant with their fourth child". While there is reference to the move from the Northern Territory, this note does not mention work related stress or make reference to any of the five assaults the subject of the claims. There are further notes made at the Perth Clinic dated 17/08/99, 19/08/99, 20/08/99, 23/08/99, 24/08/99, 25/08/99, 26/08/99 and 27/08/99. These notes do not mention stressors. There is no reference to any of the incidents the subject of the claims before the court, as being stressors. At the time of his admission to the Perth Clinic, the worker was employed in Western Australia. On 10 September 1999 a letter was sent from the Perth Clinic to the worker's psychiatrist, Dr Blythe and this letter states in part:

> "Kieth reported anxiety symptoms when talking to the group of his reasons for seeking treatment for depression following a bout of flu. He reported he did not want to return to work and was experiencing a loss of confidence and anxiety in social situations. The onset of this depressive episode occurred in the context of major social stressors involving change of employment, an interstate move, and his wife pregnant with their fourth child". (This letter is included in the material from the Perth Clinic as part of exhibit E30).

87. The letter of 10/09/99 to Dr Blythe was signed by Ms Rutherford, Clinical Psychology Trainee and Erica Usher, Clinical Psychologist (Registrar). The contemporaneous medical material before the Court with respect to the breakdown in 1999 does not support a finding that the breakdown was linked

to the assaults the subject of the claims or the workers employment with the Northern Territory Police Force. The stressors referred in the letter of 10 September 1999 do not include a reference to the assaults the subject of the claims or work related stress from his work with the Northern Territory Police. This material does not point to a mental injury in 1999 linked to the work with the employer in the Northern Territory, or any of the assaults the subject of the claims.

88. Dr Terace examined the worker upon request of the employer and reported on 25 October 2003 (E27). He diagnosed a major depression in partial remission. He reported that the Worker did not present with a mental injury of a post traumatic nature. He reported the major depression in partial remission was not caused by the workers employment as a police officer. He concluded "I did not find a clear, continuous and casual link to any specific traumata in Mr van Dongen's employment" (page 14 of E27). In his report he refers to the fact that the worker subsequently regretted his decision to leave his employment with the Northern Territory Police. He reported the Worker was bored and dissatisfied with his current employment in Western Australia. In cross examination he said that it is the psychiatrist who decides what is a stressor. He stated that the incidents from the worker's past were relevant to his mental state but were not relevant to causation of his present psychiatric condition.

**Findings on this Question**

89. The worker bears the onus of proving the link between the breakdown in 1999 and the assaults the subject of the claims. If the link is proven it can be said that the mental injury arose out of or in the course of his employment. The burden of proof is on the balance of probabilities. I have already found that the Worker sustained an Adjustment Disorder with mainly depressive symptoms as a consequence of the first Curtis Incident in August 1996. I have also found that it was possible that the Worker still suffered the

symptoms from the condition of Adjustment Disorder, with mainly depressive symptoms at the time he left the employ of the Employer in June 1998.

90. I now turn to the nature of the condition (if any) in 1999. Dr Ding says that the Worker had a Major Depressive Episode which developed in the course of 1997 [taken to mean 1996 as discussed previously]. He does not diagnosis a separate and discrete condition arising in 1999. He reported that the time in the Perth Clinic in 1999 was focussed upon the Worker managing his depressive symptoms. His final diagnosis remains that of a Major Depressive Episode. Dr McCarthy reports that the Worker appears to have had a Major Depressive Disorder in 1999. Finally Dr Terace says that the Worker had Major Depression in partial remission when he assessed the worker in October 2003. I find that the worker was suffering a psychiatric injury or condition when the Worker was being treated at the Perth Clinic in August 1999. I find that this injury or condition was in the form of Major Depression.

91. **Were the five assaults, or any of them, contributing factor(s) in the development of the Major Depression?** The workers evidence does not take his case very far on this question, indeed his evidence militates against a finding in his favour. His evidence does not point to his employment (excluding the First Curtis incident) as contributing to his condition in 1999. I regard his evidence as the foundation of his case but do not find that his evidence is decisive on the question. If it was, then there would be no need to consider the matter further as he did not assert the link in his evidence. I find that the worker's evidence does not support a link between the five assaults, or any of them, and his Major Depression in 1999.

92. Dr Ding's report supports a link between the First Curtis incident and a mental injury. He diagnoses that as a Major Depressive Episode. He sets out that there had been a cumulative adverse psychological response over the

preceding year as a result of being exposed to traumatic and personally threatening situations in the course of his work, culminating in the First Curtis incident (he does not use that expression but that is the incident he is talking about). That incident and any injury sustained as a result of that incident can no longer be relied upon. I find that Dr Ding's report does not make a casual link between any of the five claims before the court and the condition he diagnosed as occurring in 1999, namely Major Depression.

93. The contemporaneous medical material before the Court does not support the workers assertion that he told the Perth Clinic about work related incidents. It is recognised that the notes would not record everything which has been said by the worker during his time at the Clinic. The material in exhibit E30 is the only contemporaneous medical material before the court which can assist in the fact finding process as to the cause of the breakdown in 1999. The letter to the treating and referring psychiatrist does not refer to a contribution or link between the breakdown in 1999 and the five assaults the subject of the claim, nor indeed any work related stressors while the Worker was employed with the Northern Territory Police. It would seem logical that stressors that appear relevant to trained staff treating the Worker would be reported accurately to the referring psychiatrist. If they did not, treatment in the future may be counter-productive or compromised.

94. The statement from the Perth Clinic, sent to the Workers treating psychiatrist on 10 September 1999 set out in part : "The onset of this depressive episode occurred in the context of major social stressors involving change of employment, an interstate move, and his wife pregnant with their fourth child" (E30). This statement is made based upon the expertise of those treating the Worker. The report written to the Worker's treating psychiatrist on 10 September 1999 does not refer to the assaults (or any of them) as being a stressor, as contributing or being causative of the problems experienced in 1999 which lead to the Major Depression developing and the treatment at the Perth Clinic. The material from the Perth

Clinic does not link the Major Depression with any of the assaults in the five claims.

95. In Dr McCarthy's second report stated as follows:

> "I confirm the diagnosis in my report of 29 August 2000 about (sic) 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" (W11).

96. Dr McCarthy does not make a specific link between the breakdown in 1999 and the workers employment as a policeman in his first report (W3). He reports that the Post Traumatic Stress Disorder was complicated by what appears to be a Major Depressive Disorder in 1999. In Dr McCarthy's second report he states that the post traumatic stress disorder and major depressive disorder were caused by stressors at work as a policeman. He does not expressly set out whether he believes there is a casual link between the five assaults the subject of the claims and the Major Depression in 1999. Dr McCarthy is of the view that "other life events contributed subsequently to the maintenance or exacerbation of his depressive symptoms". He is not specific as to when these other life events "subsequently" contributed to the maintenance or exacerbation of his depressive symptoms. He refers to "other life events" – not the 5 assaults the subject of the claims.

97. Dr Terace's evidence points to factors which are not linked to the employment with the Northern Territory Police, such as regretting leaving the force and dissatisfaction with his present employment as being causative of the condition he diagnosed in 2003. This conclusion compliments the material from the Perth Clinic.

98. The evidence before the Court does not support a finding on the balance of probabilities that there was a causal link between the five assaults (or any of them) pleaded and the Major Depression in 1999. The evidence does not

prove that any of the 5 assaults pleaded contributed to his mental injury, Major Depression, in 1999. The onus of proof has not been discharged.

99. **Was the 1999 injury was an aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury?**

100. It is alternatively submitted that the 1999 injury was an aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury.

101. A pre-existing injury from 1996 has found to be barred pursuant to section 182 of the Work Health Act and that finding remains. The finding was made principally on the basis that the worker deliberately withheld information from the employer. As that pre-existing injury was found not to be maintainable, then arguably any aggravation, acceleration, exacerbation, recurrence or deterioration of that injury would not be maintainable. Each case must be looked at on its facts. Here the workers knowledge of his condition and his actions (including making claims for Crimes Victims Assistance) affect consideration of the case. This matter must also be considered in light of the intent of the Work Health legislation. If a Work Health claim is made and the claim is accepted or proven, the employer must do all to ensure that the worker's rehabilitation is attended to. If there is no Work Health claim the opportunity for that to occur is lost. If the workers condition could have been treated, and no treatment is offered by the employer in the full knowledge of the condition and the treatment options, then any aggravation, acceleration, exacerbation, recurrence or deterioration of that injury can be claimed by the worker. If there is no claim made of the condition within the relevant time periods, treatment is available but treatment is not taken up by the worker, then it is arguable that any aggravation, acceleration, exacerbation, recurrence or deterioration of that injury should not be maintainable. The employer in this case submits that to find otherwise would circumvent the purpose and intent of the provisions of

the Work Health Act and in particular in this case circumvent section 182 of the Work Health Act. I find for the employer on this question.

102. Are there any other pre-existing injuries (other than the injury sustained in 1996 in the First Curtis Incident) which can be shown to have lead to the injury in 1999? In W3 Dr McCarthy reports that the First Curtis incident was the commencement of the post traumatic stress disorder. I have already found that the injury sustained in 1996 was not of a post traumatic nature. Nevertheless, his report must be considered further as he diagnoses 2 more injuries. He reported that the post traumatic stress disorder was exacerbated by the assault in April 1997 (the bitten thumb incident) and again by the assault in February 1998 (the Jingo incident). He describes the workers psychiatric illness as a post traumatic stress disorder which arose as a result of the assaults and related stressors in the work place. Thus there is some evidence before me which does make a causal link between the Bitten Thumb incident and the Jingo incident and an exacerbation of the original condition (said to be post traumatic stress disorder). There are some references to these incidents in other reports but no-one gives the incidents the type of focus that Dr McCarthy does. There are no other diagnoses which would point to an injury being sustained in 1997 or 1998. There is no reference to the April 1997 incident in Mike Tyrrell's notes despite the Worker seeing Mike Tyrrell on 2 occasions after that incident. The notes from Mike Tyrrell on 18 February 1998 (16 days after the Jingo incident) record details of that incident. He records that the symptoms are not reported to be a problem but that the Worker is angry. I find that it is not proven on the balance of probabilities that separate and discrete mental injuries were sustained by the Worker in 1997 or 1998 or at any later time as a consequence of the Bitten Thumb incident or the Jingo incident.

103. Mike Tyrrell raises the Second Curtis incident in November 1996 as the catalyst for a separate mental injury. There is no reference to this being a mental injury in any other material before the Court. This incident was also

the subject of a Work Health claim for physical injuries but not for mental injuries. The Worker has not proven on the balance of probabilities that a separate and discrete mental injury was sustained by the Worker in November 1996 or at any later time as a consequence of the Second Curtis Incident.

104. Even if the Worker had proven on the balance of probabilities that there were mental injuries sustained in the Second Curtis Incident, the Bitten Thumb incident and/or the Jingo Incident, those injuries would not be maintainable as they were an aggravation, acceleration, exacerbation, recurrence or deterioration of the injury from the First Curtis Incident in August 1996 which has been held not to be maintainable.

105. Notwithstanding these findings I will consider this issue further, in case I am wrong to find that no mental issues has been proven with respect to these three incidents. The worker claimed for physical injuries with respect to all three of these incidents but did not make a claim or give any notice of a mental injury. The Jingo incident in February 1998 is the claim referred to by the Worker in his letter to TIO in December 1999. The question arises as to whether the fact of the notice for the physical injury, given by virtue of the filing of the work health claims in November 1996, April 1997 and 2 February 1998, means that a claim has been made with respect to the mental injury. This would mean that no issues with respect to section 182 arise with respect to those injuries. The fact that no rehabilitation can be offered if the employer is kept in the dark affects the decision to be made in this case. The employer never received a Work Health Claim notifying of a mental injury when the worker was employed with the employer and carrying out his duties. The Employer maintained the operational status of the Worker as before and did not have the opportunity to take any steps to ensure that his injury from August 1996 was treated. The employer never had that opportunity as a direct consequence of the Worker’s actions (and omissions). To look at this case without considering the fact that this

Worker deliberately withheld knowledge of his condition from the Employer, which was ongoing from 1996, would not be a proper application of the Work Health Act. Where a worker does not know of their condition, including any opportunities for treatment, is a different type case.

**106. Was the worker aware of the true nature and extent of his injury/condition?**

107. It has been found that there is no link proven between the Worker's condition in 1999 and the five assaults the subject of the various claims. An alternative argument of the worker is that he was not aware of the *true* nature and extent of his condition. That is a question of fact which needs to be decided on the material before the court. That question pre-supposes that there is a link between the condition in 1999 and the five assaults the subject of the claims. While that has not been shown on the evidence, the question of whether the worker that he was aware of the *true* nature and extent of his condition will be considered in the event that I have been wrong in finding that there is no link proven between the Worker's condition in 1999 and the five assaults the subject of the various claims.

108. The letter sent by the worker to TIO on the 7 December 1999 sets out in part:

> "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 six claims to TIO for assaults to me. The last of those assaults occurred on 2nd of February 1998. Your claim number 104029 refers. I can provide 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 services myself. It has become apparent to me that the need to seek professional help is a direct result of these assaults, in particular the above mentioned one of 2nd of February 1999. *(sic - taken to mean 1998)* As such I ask that you re-open your file and accept payment for further medical expenses associated with this matter" (part of W10)

109. The worker has asserted that the assaults he sustained caused his breakdown in 1999, saying in the letter to TIO:

> "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 2nd February 1999". *(sic - taken to mean 1998)*(my emphasis)

110. The reference to the assault of 2 February 1998 is a reference to the Jingo incident. The correspondence from the worker does not say precisely when the link became "apparent" to him but the implication is that his awareness is relatively recent. This is concluded in part from the way the words 'has become' are before the word 'apparent' and in part due to the fact that the worker also states 'since leaving the Police Service I have needed to seek the help of medical professionals'. He left the Police Service in late June 1998 and this letter was sent in December 1999.

111. These assertions come in the face of considerable evidence to the contrary which is before the Court. On 18 February 1998 the Worker saw Mike Tyrrell after the Jingo incident on 2 February 1998. This attendance was not with respect to a further request for a report for medico legal purposes (ex E29). He attended at Dr Blythe's surgery in Perth before he left his employment with the Police Service. Dr Blythe is a Consultant Psychiatrist. Treatment was recommended but the worker did not undertake any treatment at this stage (Ex W2 at page 3). This is evidence that the worker was seeking out assistance before he left his employment with the Police Service. He sought financial assistance from the personnel section of the NT Police to make a claim for CVA for mental and physical injuries sustained in both the Curtis incidents (see ex WI7), then 3 days later, lodged a Work Health Claim for the 2nd Curtis incident without reference to a mental injury (see ex W6).

112. There is evidence to suggest the worker knew of the link between his condition and the First Curtis incident many years before the letter sent to

TIO in 1999. In addition to the fact that the Worker attended at appointments with Dr Blythe and Mike Tyrrell, the following material is before the Court; exhibit W4 report of psychological injury dated 13 August 1996, ex W17 where on 11 November 1996, the worker seeks financial assistance from the NT Police service in pursuing Crimes Victims Assistance actions in the courts for physical and mental suffering arising from the 1st and 2nd Curtis incidents, exhibit W5 dated 11 August 1997 – Crimes Victims Assistance claim relating to First Curtis incident claiming mental distress, exhibit W1 25 September 1997 report of Mike Tyrrell setting out the injury, letter from Mike Tyrrell to Dr Peterkin part of exhibit E29 dated 26 September 1997, 7 November 1997 – Crimes Victims Assistance Second Curtis incident claiming mental distress/adjustment disorder exhibit W7, and 28 July 1999 Crimes Victims Assistance claim relating to the Jingo incident mental distress being claimed exhibit W9.

113. Dr McCarthy's reports, "By 1997 Mr Van Dongen was aware that he was suffering from psychological problems and saw a Mr Mike Tyrrell, a clinical psychologist in Alice Springs" (W3 at page 2). Dr Ding reports that prior to his formal resignation the worker attended Dr Blythe, consultant psychiatrist, who confirmed Mr Tyrrell's diagnosis and recommended anti-depressant medication (W2). On the evidence before the Court, the need for professional help was first flagged by a professional, Mr Mike Tyrrell, to the worker in 1997, and he also advised the worker's general practitioner (also in 1997). There was the need for professional help before he left his employment with the NT Police Service. He did not take up the recommendations for treatment. Prior to his resignation, he saw Dr Blythe who recommended medication (W2). He did not commence taking medication or undergo treatment until September 1999. Even before he sought the opinion of Mr Tyrrell, he was aware of his condition and he had given notice of a psychological condition.

114. The assertion in the letter of 7 December 1999 to TIO that “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” is not substantiated by documentary evidence. When the worker resigned from the Police Force effective June 1998 his letter to the Police Force did not mention this or any other reason for leaving. (see exhibit E20) He gave the employer no notice that this was the reason he left the Police Force. Findings of fact were made on the decision of 24 March 2004 at paragraphs 132 and 133 which go to this question and these have not been set aside.

115. A further assertion in the letter is that :

“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 services myself.”

The letter does not say that the worker was advised that he needed the help of medical professionals before he left the Police Service and yet declined to undertake treatment. It is not the full picture to say that ‘since leaving the Police Service’ he had needed to seek the help of medical professionals. That need was identified to him by relevant professionals - Mike Tyrrell and Dr Blythe - before he left the Police Service in late June 1998.

Mike Tyrrell became involved in the case when Dr Peterkin, the medical officer at Yulara referred the worker to Mr Tyrrell. There was a request for an assessment and report for legal reasons related to Crimes Victims Assistance claims (letter dated 8 August 1997 part of exhibit E29). Mike Tyrrell prepared the report dated 25 September 1997 and, as authorised by the worker, forwarded a copy of the report together with a covering letter dated 26 September 1997 to Dr Peterkin. In part of that correspondence Mr Tyrrell said as follows:

> “He should further discuss his progress re his general well being with you, particularly in the context of decisions he might by now have taken career wise and their impact on his general mood state. If he

has made no shift in his career strategy and or not improved in his general mood state, he would benefit from further mentoring, probably from both you and me and perhaps a medical approach to his condition". (part of E29)

116. In the report from Mike Tyrrell dated 25 September 1997 there is the following statement:

> "It is very probable that his symptoms will abate if he addresses the on going stressors referred to above and perhaps obtain some support from his employer in that respect. The history of his situation suggests that he will require counselling to do so. If his depressive features inhibit his motivation to address this situation with or without counselling, his condition is at high risk of consolidating into one of several chronic depressive disorders. He will then require both counselling and antidepressant medical treatment to achieve normal mood state." (exhibit W1 together with being part of exhibit E29)

117. Later the report he states:

> "He requires counselling assistance and medical oversight during this period to assist him to address both his symptoms and his situation. It is possible that his condition could exacerbate his blood pressure concerns. Full recovery could be expected after suitable help and action. Without such assistance his condition is at risk of consolidating into a more substantial and impairing depressive syndrome".

118. When Mr Tyrrell saw the worker on 18 February 1998 and the Jingo incident was being discussed the notes of Mr Tyrrell set out "felt embarrassed", "symptoms not a prob but angry" and "feeling much better than before". The worker talked to Mr Tyrrell of having an escape plan and intending to leave the police force (part of E29).

119. The case of *Power v HSE Mining Pty Ltd* has been discussed above. The worker in *Power's* case did not know of her condition and it was found that she was entirely unaware of the notion of mental injury. That is not the case in this matter. Not only was the worker aware of his condition, the worker had made claims for Crimes Victims Assistance alleging mental injuies with

respect to both the First and the Second Curtis incidents. These claims for Crimes Victims Assistance were filed prior to the Jingo incident in February 1998.

120. In the case of *Beyan v Serco* the worker had been providing the employer with medical certificates from psychiatrists. While the original claim was for a physical injury it was found that the psychiatric injury was potentially capable of forming part of the claim. In this matter no such medical material was provided to the employer notwithstanding that the worker had the September 1997 report of Mr Tyrrell in his possession or control, he had subsequently seen Mike Tyrrell and that he had also seen Dr Blythe. The employer had no medical advice to indicate a mental injury. There was no claim for a mental injury as part of the Work Health claim of the incident of the Jingo incident in 2 February 1998. The claim for mental injury was made after the worker left his employment and was made in the letter to TIO in December 1999.

121. Dr Tyrrell's report (W1) expressly states that without treatment the worker's condition is "at high risk of consolidating into one of several chronic depressive disorders". This report was written in 1997 at the request of the worker's solicitor and prepared in support of Crimes Victims Assistance claims. It can be concluded from the material before the Court that prior to mid 1999 the worker had not experienced the very severe symptoms he experienced in mid 1999. But that is not to say that he had not become aware of the true nature and extent of his condition. Being aware of the aware of the true nature and extent of a condition does not imply that the person has experienced that condition. In this case, the worker had had professional advice as to the nature and extent of his condition. I find that prior to leaving his employment with the employer, the worker was aware of the true nature and extent of his injury. I find that the worker knew the true nature and extent of his injury before the breakdown in middle of 1999 and before the claim to TIO was made. I make this finding based upon the

totality of the material before the Court. I find there is no basis upon which to conclude that the worker was not aware of the true nature and extent of his condition before his breakdown in 1999.

122. The further alternative submission of the worker is that notice was given after the February 1998 incident and that notice was given as soon as practicable. It is submitted that when the worker ascertains the condition is likely to last forever he seeks treatment. He then gives notice by way of a letter to TIO in December 1999. He uses the claim number for the Jingo incident in February 1998. There had never previously been notice of a psychological or psychiatric injury arising from that incident. The evidence before the court does not prove that the psychiatric condition in mid 1999 was directly attributable to the initial injury from the assault in February 1998 or indeed any of the other 4 assaults the subject of the claims. I do not accept that the psychiatric condition in mid 1999 is properly characterised as a sequela to the injury in February 1998 (or any of the 5 injuries the subject of the claims).

123. Notice was given, and the claim was made after the worker ceased employment with the employer. Pursuant to section 182 of the Work Health Act, notice of the injury needs to be given before the worker voluntarily leaves his employment. In this alternative submission notice is given after the worker voluntarily leaves his employment in June 1998. The fact this has occurred after he has left his employment is not in dispute. This is not a case where it can said that the worker was ignorant of a disease. I rely upon findings made in this decision and the decision of 24 March 2004 with respect to that issue. The worker relies on an alternative submission that the letter sent to TIO placed the ball in the Court of the employer and they elected to have the worker sent to Dr Ding. This resulted in further delay. Thus the "other reasonable cause" relied upon by the worker is as defined in s.182(5)(b) of the Work Health Act.

124. I will set out the relevant parts of section 182 of the Work Health Act :

> "**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.
>
> …
>
> (5) Without limiting the generality of the meaning of "reasonable cause" in subsection (3) –
>
> …
>
> (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."

125. I find that subsection 5(b) is not relevant in this case as any potential six month period had already expired. If the nominated conduct of the insurer (on behalf of the employer) had occurred within a relevant six month period and that conduct had meant that the worker did not lodge the claim within the 6 month period, then that conduct would have been potentially capable of being found to be "other reasonable cause" within the meaning of section 182(5)(b) of the Work Health Act. The claim was lodged in December 1999. Six months had expired in August 1998 if the six months is calculated from the last of the incidents (the Jingo incident) in February 1998. There are no other later incidents which are claimed to have been causative. The worker was aware of his condition from August 1996 onwards. Following the Jingo incident in February 1998 he saw Mike Tyrrell and Dr Blythe and these attendances were also before he left his employment with the employer in June 1998. Whatever way the case is looked at, six months has past. There was no conduct on the part of the employer or their insurer or agent which led to the failure by the worker to make the claim within the six month period (however that period is defined in this case). And here I note again, this is not a case of ignorance of a medical condition. I decline to find that the worker could not have given notice any earlier than December 1999. The delay which can be linked to TIO, between the letter being received from the worker in December 1999, TIO sending the worker to see Dr Ding and Dr Ding's report of May 2000, does not fall within s.182(5)(b) of the Work Health Act. Any six month period had already expired. There was nothing about the conduct of TIO which could have lead the worker to think that any decisions had been made (either way) on the question of liability.

126. The claim of the worker is dismissed. I will grant the parties liberty to apply with respect to any consequential applications.

127. A claim for physical injury could be pursued. There would be no bar to pursuance of a claim for compensation for physical injuries sustained as a consequence of the 5 assaults where claims have been lodged and accepted. There was no evidence called with respect to those injuries in this proceeding. I do not regard this decision as determining any claims with respect to physical injuries.

Dated this 31st day of August 2007.

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**M Little**
STIPENDIARY MAGISTRATE