

CITATION: *Debra Brook V Konekt Australia Pty Ltd* [2025] NTWHC 4

PARTIES: *Debra Brook*
V
Konekt Australia Pty Ltd

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO(s): 2024-03854-LC

DELIVERED ON: 26 May 2025

DELIVERED AT: Darwin

HEARING DATE(s): 9 April 2025

DECISION OF: Judicial Registrar Gordon

CATCHWORDS:

Further Interim Determination – Undue Hardship – Full and Frank Disclosure –
Misleading and Contradictory Evidence

Jenkinson v CMA Recycling Pty Ltd [2009] NTMC 064

McGuiness v Chubb Security Holdings Australia (2009) (Unreported, Work Health Court
Northern Territory, Lowndes SM, 23 March 2006)

Taal Joshua Johannsen V Buslink Vivo Pty Ltd [2021] NTLC 026

Wormald (Australia) Pty Ltd v Aherne [1994] NTSC 54

Return to Work Act 1986

Work Health Court Rules 1999

REPRESENTATION:

Counsel:

Worker: Ms Spurr

Employer: Ms Frost

Solicitors:

Worker: Halfpennys

Employer: Hall and Wilcox

Decision category classification:

B

Decision ID number:

[2025] NTWHC 4

Number of paragraphs:

61

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

No. 2024-03854-LC

BETWEEN:

DEBRA BROOK
Worker

AND:

KONEKT AUSTRALIA PTY LTD
Employer

DECISION OF L GORDON JR

(Delivered 26 May 2025)

1. The Worker has made an application for an interim determination pursuant to section 107 of the *Return to Work Act 1986*.
2. The Application, opposed by the Employer, was heard on 9 April 2025. The Worker relies on the Affidavits of the Worker filed 27 March 2025 and of Catherine Louise Spurr filed 2 April 2025.
3. The Employer tendered and sought to rely upon the Affidavit of Kirralee May Pavy promised 9 April 2025. The Worker initially opposed the filing of the Affidavit, noting an unsealed copy had only been received by the Workers legal representative at 1.32pm, in anticipation of the 2.00 pm listing.
4. The Affidavit comprised of 4 annexures, the first three being screen shots taken from the Workers Instagram page (purportedly from mid-February and March 2025) and the fourth being a spreadsheet of the Workers food expenses.
5. The Workers legal representative noted that nothing in this evidence appears to have only been available to the Employer at the last minute and there appears to be no reason, other than a potential tactical advantage, as to why it could not have been filed and served earlier. The Workers legal representative advised that Court, that as a result of the limited time and the need to be ready to appear before the Court just 28 minutes after receipt of the Employer's Affidavit material, that the Worker had not been able to provide instructions in response to the Employer's evidence.
6. Despite this however, the Worker was loath to seek an adjournment to obtain such instructions, noting this application is one intended to relieve financial hardship and further delays would serve only to compound the ongoing hardship.

7. The Employer submitted that the Rules did not preclude the late filing of their Affidavit material. I agree.
8. The *Work Health Court Rules 1999* provide at Part 6, in relation to interlocutory applications:

6.05 Service

(1) The applicant must serve a sealed copy of the interlocutory application and, if applicable, a copy of the supporting affidavit on each party to whom the application is addressed.

(2) Subject to these Rules, an interlocutory application and supporting affidavit must be served:

(a) within a reasonable time before the date fixed for the hearing and, in any case, not later than 2.00 p.m. on the day before the date fixed for the hearing; or

(b) if the registry is closed on the day before the date fixed for the hearing – not later than 2.00 p.m. on the day the registry is last open before that date.

9. Notably, this requirement for service to be effected not later than 2.00pm the day prior to the hearing, relates to the interlocutory application and supporting affidavit only, and the Rules are in fact silent on the timeframes for filing of evidence in response, thus not precluding an Employer filing and relying upon evidence immediately prior to the hearing.
10. In the interests of procedural fairness of course, doing so increases the likelihood that an adjournment will be required to consider any new evidence, although, as was the case here, that option is often unpalatable for an Applicant Worker and the Worker may well prefer to press on over the disadvantage, rather than delay the outcome.
11. Ultimately, the Worker did not press the objection and elected to proceed with the hearing. Although it was unnecessary therefore for me to formally rule on the evidence being relied upon, I noted that while the Employer is entitled to run their case as they see fit and this may include proceeding in a manner which may give rise to some tactical benefit or element of surprise when introducing their evidence, such an approach may give rise to risks and pitfalls.
12. The Court may well choose to adjourn the hearing, potentially to a date that is not preferred by the Employer or their counsel, the Court may not allow the evidence to be relied upon and if it is entered into evidence, there is also a risk that its probative value may be considered less in circumstances where the evidence cannot be tested or challenged by the Worker due to time constraints.
13. These are all, of course, matters to be weighed up by parties and considered in preparation for any interlocutory hearing. Late evidence may still be received by the Court from time to time.
14. The concern of the Court will be to ensure all parties are being accorded procedural fairness and that evidence being relied upon is entered onto the Court record in a manner which enables the Court to properly conduct the hearing and make any necessary findings.
15. If late evidence interferes with these considerations, then the appropriate rulings will be made, on a case-by-case basis and at the discretion of the Judicial Officer as needed.

16. The Worker's claim pertains to a psychological injury sustained up to and including 7 October 2024¹. The Worker submits that her injury was caused by a 'litany of issues over time' as set out at paragraph 4 of her Affidavit² including but not limited to:
- a. Being bullied and witnessing other staff be bullied;
 - b. Being required to be available for meetings during rostered days off, being restrained from appointing a proxy and regularly having meetings cancelled at the last minute;
 - c. Rude behaviours including being interrupted, being excluded from staff discussions and having others take credit for her work;
 - d. Accusations of fraud, allegations of complaints against the Worker during a period she was based interstate;
 - e. Reprimands for swearing despite it being common practice;
 - f. Having work reallocated without notice or explanation;
 - g. Being exposed to inappropriate behaviours, including derogatory comments about political figures and flirtatious behaviours.
17. The Worker says she received no support from the Employer following these incidents and as a result has suffered a compensable injury.
18. The Worker was assessed by Dr Papier on 13 January 2025 who authored an Independent Medical Report dated 17 January 2025³. The report provides:
- "Yes, Ms Brook does currently suffer from an adjustment disorder with mixed anxiety and depressed mood. There are trauma symptoms, quite significant ones, but insufficient to come to a formal diagnosis of PTSD according to DSM-V.*
- ...
- The causation of this injury is related to Ms Brook's workplace traumas...*
- The current symptomatology, as noted in detail under Current Problems, relate to her employment with Konekt. The issues at Konekt which had significant negative repercussions are the manner in which she was micromanaged by Jasmine, the lack of care in the manner in which staff were treated, as well as herself specifically, the bullying she experienced at the hands of not only Jasmine, but Saul and other managers, the insistence of meeting KPIs which were essentially unobtainable without encroaching on personal time and the threat of being written up and then fired. The lack of trust and support of the staff was significant."*
19. The legal representative for the Worker highlighted Dr Papiers conclusion (emphasis added): *"The diagnosis come (sic) to, an adjustment disorder with mixed anxiety and depressed mood, is of **serious degree**."*
20. The Workers legal representative also notes that the Employer has not led any evidence for the purposes of the application for an interim determination which is contrary to the

¹ Affidavit of Debra Brook filed 27 March 2025 at paragraph 3.

² Filed 27 March 2024

³ Affidavit of Debra Brook filed 27 March 2025 at annexure "DB4"

factual or medical evidence relied upon by the Worker in relation to her injury and diagnosis.

21. Indeed, the Employer did not make submissions on the threshold test of serious question to be tried, conceding the Worker has a triable issue and rather defended the application on the basis of a failure to make full and frank disclosure, as discussed below.

22. As well established in *Wormald International v Aherne*⁴:

“The approach to the exercise of the discretion to award payments under s107 of the Work Health Act [as it then was] is the same as in an application for an interlocutory injunction, that is, that the worker must establish that there is a serious question to be tried and that the balance of convenience favours the making of an interim award.”

23. The Worker submits that the causation of the injury being related to workplace incidents has been made out, that she has a psychological diagnosis supported by Dr Papier and as a result has been rendered totally incapacitated for work.

24. I accept that there is a serious question to be tried, and the Court should thereafter consider the balance of convenience factors.

25. The unreported Work Health Court decision of *McGuinness v Chubb Security Holdings Australia* (2009)⁵ establishes the, non-exhaustive, balance of convenience factors:

- i. Hardship to the worker;
- ii. The ability of the worker to repay the interim benefits should their substantive application fail;
- iii. The strength of the worker's case
- iv. The amount of compensation at stake;
- v. Any delay in making the interlocutory or substantive application and the reasons for delay;
- vi. The time which might elapse before the substantive application is heard;
- vii. Prejudice to the employer, particularly if the worker is outside the jurisdiction;
- viii. Any failure by the worker to provide full and frank disclosure of material relied upon in support of the application.

26. The Worker submits that as a result of her incapacity for work, she is suffering financial hardship and that this, and other balance of convenience factors lie in her favour.

27. In relation to hardship, the Workers evidence is that she previously received income in an amount of \$1,791.35 per week⁶, with which she was able to meet her weekly expenditure of \$1,715.67⁷.

⁴ *Wormald (Australia) Pty Ltd v Aherne* [1994] NTSC 54

⁵ (Unreported, Work Health Court Northern Territory, Lowndes SM, 23 March 2006)

⁶ Affidavit of Debra Brook filed 27 March 2025 at paragraph 10

⁷ Affidavit of Debra Brook filed 27 March 2025 at paragraph 11

28. In circumstances where the Worker says she is now in receipt of nil income⁸ the Worker submits she has been placed into circumstances of financial hardship.
29. The Worker notes that she has disclosed approximately 12 months of bank statements and has provided her best estimates to calculate her expenses, acknowledging that there will likely be discrepancies and variations week to week and across different months as expenses such as petrol, alcohol or pharmaceuticals will vary at times. The Worker submits that her estimates “cant be to the dollar, its just not possible” I accept this submission.
30. The Worker cautions against relying on narrow snapshots of expenses which may be misleading, such as the summary of food expenses found at Annexure ‘D’ of the Affidavit of Kirralee May Pavy⁹. This summary is for the period 10 December 2024 to 13 March 2025 and notably includes the busy Christmas and new year period where it is not uncommon to have additional food expenditure, including eating out. I likewise accept this submission.
31. As is oft quoted in applications for interim determinations, Acting Judicial Registrar Smyth (as he then was) in *Jenkinson v CMA Recycling Pty Ltd*¹⁰ has clearly established:
- “It is not the task of the Court to engage in a forensic accounting exercise to match up or justify the worker’s claims. That is a matter for the worker in the prosecution of his application.”*¹¹
32. Additionally, in *Taal Joshua Johannsen V Buslink Vivo Pty Ltd*¹² it was held:
- “57. In the current matter I have formed a view that the Worker has failed to adequately correlate his documentary evidence with his Affidavit evidence. The receipts provided clearly fail to verify the assertion of weekly expenditure of \$412.00. They are not unmistakably evident on the evidence of the Worker nor clinically evident and unmistakable.*
- 58. It is, in my view, imperative for the Worker that when providing estimates and annexing primary documentation in support of such estimates, that they can withstand reality testing. Here they have failed to do so, even with a generous allowance for fluctuations.”*
33. Thus, in avoiding assuming the role of a forensic accountant, the Court should be prepared to look at financial estimates through a lens which acknowledges the vicissitudes of life and the imprecision of the data the Worker may be relying upon for their calculations. The bar set for the Worker cannot be set impossibly high, such that applications for interim determinations become cost prohibitive. This is clearly not the intention of the act or the established case law.
34. But, in acknowledging this, there should be a clearly identifiable correlation between the evidence relied upon to support the calculations and the evidence of the Worker as to their financial circumstances. The calculations must withstand reality testing and be unmistakably evident; so the Employer or Court reviewing and analysing the assertions relied upon by a Worker can formulate an accurate and reliable view of their own.

⁸ Affidavit of Debra Brook filed 27 March 2025 at paragraph 10

⁹ Tendered into evidence at the hearing on 9 April 2025

¹⁰ [2009] NTMC 064 at 25

¹¹ Ibid

¹² [2021] NTLC 026 at 57 and 58

35. Ultimately, as I understand it in this case, the Employer's complaint in relation to the Worker's full and frank disclosure pertains less to the degree or depth of the disclosure but rather the picture it reveals of the Worker's true financial position and household composition.

36. The Employer submits that the omissions and contradictions in the Worker's evidence renders the Court unable to accurately assess the Worker's financial circumstances and in such a case, the Court cannot find for the Worker in this application.

37. A substantial amount of the uncertainty turns on the Worker's relationship status and the financial contributions that may flow from such a partnership. The Employer notes the following inconsistencies¹³:

a. The NT Workers Claim Form completed by the Worker dated 24 October 2024¹⁴ states that the Worker is single with no dependants;

b. Dr Papier, in her report dated 17 January 2025¹⁵ noted:

i. [The Worker's] *husband was going to be working in Broome, and she decided she would join him and work remotely. She spent August in Broome with her husband*"; and

ii. Under the heading 'Lifestyle': *"Ms Brook stated she lived with her partner. They are renting. They have two dogs as pets."*

iii. Under the heading 'Personal/Social History' her current relationship is reported to be 15 years long.

c. In the Workers Affidavit of 27 March she deposes¹⁶ *"I am single and do not have any dependants"* yet the following annexures appear to cast significant doubt on this assertion:

i. Annexure "DB6" an Everyday mobile phone bill dated 26 December 2024 addressed to 'Jason Hiscox' is referred to by the Worker at paragraph 15 as follows *"DB6" is a copy of my mobile bills.*";

ii. Annexure "DB10" Real estate trust receipts issued to Debra Brook & Jason Philip Hiscox for payments received from 4 October 2024 to 7 March 2025 is referred to by the Worker at paragraph 19 as follows *"DB10" is a copy of my rent receipts.*"

iii. Annexure "DB13" Motor Vehicle Certificate of Registration in the name of Jason Philip Hiscox dated 19 December 2024 is referred to by the Worker at paragraph 23 as follows *"DB13" is a copy of my car registration certificate and its under my partner's name.*"

iv. Annexure "DB14" Car insurance policy dated 17 October 2024 in the names of Ms D Brook & Mr J Hiscox referred to by the Worker at paragraph 24 as follows *"DB14" is a copy of my Suncorp car insurance Account"*

38. It would seem that the only evidence that the Worker is single is her assertion of this fact in her Workers compensation claim form of October 2024 and at paragraph 10 of her

¹³ Written Submissions tendered at the Hearing of the application on 9 April 2025 at paragraph 8

¹⁴ Affidavit of Debra Brook filed 27 March 2025 at annexure "DB1"

¹⁵ Affidavit of Debra Brook filed 27 March 2025 at annexure "DB4"

¹⁶ At paragraph 10

Affidavit of March 2025. All supporting and primary evidence in the intervening period suggests otherwise.

39. Ms Spurr for the Worker submitted that it is open to the Court to accept the Worker's evidence that she is single, particularly noting that it is not uncommon for psychological ill health to cause difficulties in a relationship and that Dr Papier had observed the relationship to be 'troubled'.
40. I cannot accept that characterisation when the highest Dr Papier takes it is to note "*Her self-confidence, self-esteem and her sense of self-worth are shattered. Currently, her libido is diminished. Her relationship has been **affected**.*" (my emphasis)¹⁷.
41. It would seem patently unlikely and inconceivable that from the time of meeting Dr Papier in January 2025 to deposing her Affidavit in March 2025 that had the Worker's relationship have come to an end, that she would not give evidence of the fact, noting the presumably significant impact that would have on her personal and financial circumstances. There may be little doubt the stress of a mental injury and Work Health Court litigation will affect a relationship, most likely in a negative way, but I cannot place greater weight on this assumption than I can on the independent documentary evidence which suggests the relationship has not come to an end and is ongoing.
42. The Employer further submits that the Court should not accept that the Worker's assertion that her estimated weekly food expenditure of \$333.38 is for a single person household. Particularly when the Employer's calculations for the period 10 December 2024 to 13 March 2025 revealed an average weekly spend on groceries and takeout food¹⁸ of \$587.26 per week. The Employer submits "*it is inconceivable that the Worker is spending this amount of food for herself alone.*"¹⁹ I am satisfied that this submission carries some weight, even in circumstances where the increased spending includes Christmas. Particularly in circumstances where all of the primary evidence supports the finding that the Worker is not single and has a number of shared financial interests with Mr Hiscox.
43. The Employer has also identified several incoming payments from Mr Hiscox into the Worker's bank account²⁰ from 19 December 2024 to 17 February 2025 totalling an amount of \$10,000.
44. Ultimately the Employer submits²¹:

"In circumstances where the Claimant is currently in a de facto relationship with Mr Hiscox, they are living together and share expenses (which certainly appears to be the case, based on the evidence available), the Worker is obliged to provide full and frank disclosure with respect to any income and expenses of her partner.

The Court cannot be satisfied that the Claimant has provided full and frank disclosure in relation to her financial circumstances, and therefore the Court is not in a position to properly assess the balance of convenience factors, in particular:

¹⁷ Report of Dr Papier dated 17 January 2025 at annexure "DB4" of the Affidavit of Debra Brook filed 27 March 2025

¹⁸ Affidavit of Kirralee May Pavy filed 9 April 2025 at annexure 'D'

¹⁹ Written Submissions tendered at the Hearing of the application on 9 April 2025 at paragraph 8.3

²⁰ Affidavit of Debra Brook filed 27 March 2025 at annexure "DB8"

²¹ Written Submissions tendered at the Hearing of the application on 9 April 2025 at paragraph 8.6 – 8.7

- (a) Any hardship suffered by the Worker; and
(b) Her ability to repay the interim benefits..."

45. In light of the evidence and the significant discrepancies and uncertainty in relation to the Workers relationship status and the impact that has on her financial circumstances (noting the Worker's partner was at least as some stage employed²²), I accept these submissions.
46. The Employer's Affidavit also annexes a number of social media posts made by the Worker. The Workers legal representative argues that these posts are identifiable as being posted on 14 February and 20 March but that there is no evidence of what year these photos were taken or posted or when they were located and downloaded by the Employer.
47. Annexure 'C'²³ appears to depict a drink in a stubbie cooler in front of a window with a location tag of 'Bicheno Beachfront Tavern' and a caption reading "*Made it to the west coast Tasmania, so that's all sides done*". It is dated 14 February. The Worker's St George Amplify Signature bank statements²⁴ show that on 13 February 2025 the Worker made purchases at 'Shadows Café and Bakery East Devonpor[t] AU' and 'Cock & Bull Launceston AU' and on 15 February 2025 at 'Hobart Workers Club Hobart AU'. Given that the Worker describes her arrival at the West Coast of Tasmania as a 'first' in her Instagram post and her bank records verify purchases made in Tasmania in February 2025, I am satisfied on the balance of probabilities that the post is from 2025 and is evidence that the Worker travelled to Tasmania in February 2025 and shared some of her travels on social media.
48. Annexure 'B' depicts a cocktail, with a tagged location of 'Hula Bula Bar, Perth CBD' and a caption '*Now we are talking !*'
49. Although the bank records in evidence do not extend to March 2025 to verify or otherwise the presence of the Worker in West Australia in March 2025, the bank records from March 2024 indicate a purchase a Winnellie Cellars on 20 March 2024, so in my view, it is unlikely the photo of the cocktail is from last year.
50. Given I am satisfied that the Worker was travelling and posting on social media in mid- February 2025 and there is no indication that the posts from March are also not from 2025, it is troubling to try and reconcile these activities with the observations of Dr Papier from mid-January 2025, including:
- "Ms Brook stated she is able to leave home but does not like being away from home. She has to plan her excursions in order to go out. She remains very self- focused and not hypervigilant when she leaves home.*
- ... She does go shopping but goes to quieter places and at quieter times, usually early morning. She avoids shopping centres. She is not good with crowds and loud noises."*
51. In terms of the merits of the Worker's case the Worker relies on the, as yet unchallenged, evidence of the factual circumstances giving rise to her injury and the medical evidence of Dr Papier.

²² See paragraph 35(b)I above

²³ Affidavit of Kirralee May Pavy filed 9 April 2025

²⁴ Affidavit of Debra Brook filed 27 March 2025 at annexure "DB7"

52. It must be noted however, there is some impact on the Worker's credibility in her self-reporting of symptoms, when contrasted with her apparent ability to travel interstate and her claim to be single for the purposes of the Workers compensation claim when compelling evidence (including her self-reporting a current 15 year relationship to Dr Papier) suggests otherwise. This does negatively impact on the assessment of the prospects of ultimate success in her claim before the Court.
53. It should be noted that the Worker's legal representative indicated a willingness to obtain further instructions and evidence regarding the status of the relationship. I formed a view that the Court should proceed on the evidence available at the Hearing.
54. The uncertainty of the relationship status should have been clear on the face of the evidence. In the Worker's Affidavit²⁵ at paragraph 10 says she is single and then paragraph 23 refers to a partner having the Worker's vehicle registered in his name. This issue was not an unexpected discovery by the Employer raised to defeat the application.
55. The *whole household* make-up and financial contributions should always be assessed and verified in preparation for an application for an interim determination. In this instance the evidence relied upon by the Worker in her Affidavit material has resulted in confusion and uncertainty and in my view, given the matters discussed at paragraph 37 above, this should have been foreseen prior to the Hearing.
56. The Worker was of course, taken by surprise by the Instagram posts in the late filed Affidavit of the Employer, and although I have considered these and the impact they have on the Workers credibility and social functioning, this evidence has not been the single determinative factor in the outcome of the application. Had that have been the case then it would have been reasonable to allow the Worker to file additional material in relation to the matters raised in the Affidavit of Ms Pavy.
57. Ultimately, when considering the application as a whole and assessing the balance of convenience factors I am not satisfied that the Worker will suffer hardship as on the evidence before me, I have found that, on the balance of probabilities, the Worker remains in a relationship and has undisclosed financial resources as a result of that relationship.
58. The Worker would be unable to repay any interim determination payments in the event her substantive application is unsuccessful as her primary asset being a motor vehicle valued at \$21,000²⁶. In my view, the current application has also exposed some vulnerabilities of the strength of the evidence of Dr Papier considering the inconsistencies of the Worker's evidence and this is so, even if the Affidavit of Ms Pavy is disregarded.
59. There have been no delays in the bringing of the application and the time until hearing does not weigh heavily in the determinative balance of convenience factors.
60. The Workers disclosure, or lack of frankness fails to leave the Court in a position where her assertions are '*clinically evident and unmistakable*' and as a result the requirement for full and frank disclosure does has not been satisfied.

²⁵ filed 27 March 2025

²⁶ Affidavit of Debra Brook filed 27 March 2025 at paragraph 12(a)

61. As a result of the analysis of the balance of convenience factors I am not satisfied they fall in the Workers favour on this occasion and accordingly, her application must fail.

ORDERS:

1. The Worker's interlocutory application filed 27 March 2025 is dismissed.
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