SUPREME COURT OF QUEENSLAND

CITATION:	*Holman v WorkCover Queensland* [2026] QSC 158
PARTIES:	**LISA HOLMAN** (applicant) **v** **WORKCOVER QUEENSLAND** (respondent)
FILE NO/S:	BS 5147/2025
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	26 June 2026
DELIVERED AT:	Brisbane
HEARING DATE:	25, 26 and 29 May 2026
JUDGE:	Smith J
ORDER:	**1. The originating application is dismissed.** **2. I will hear the parties on the question of costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – REVIEW OF ADMINISTRATIVE ACTION – reviewable decisions, conduct and powers and general grounds – procedural fairness – whether General Medical Assessment Tribunal correctly exercised its jurisdiction – whether relevant documents were considered – whether irrelevant documents were considered – whether procedural fairness was accorded to the applicant and her lawyer – whether reasons of the Tribunal were sufficient CIVIL PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – where the applicant has sought various declarations that decisions of a General Medical Assessment Tribunal and the regulator are invalid – where the application has not been brought under the *Judicial Review Act 1991* (Qld) (**JRA**) – where the Tribunal has not been included as a party – where s 515 of the *Workers Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**) provides the Tribunal decision is final – where with respect to the regulators decisions there were appeal rights to the Queensland Industrial Relations Commission (**QIRC**) under Part 13 of the WCRA – whether the application should be dismissed

WORKERS COMPENSATION – DISPUTE RESOLUTION – JUDICIAL DETERMINATION – whether decision by the Tribunal is a valid one – whether the decisions of the regulator are valid – whether the Supreme Court is the appropriate forum for the disputes involving rehabilitation, travel and wages claims – where the QIRC is a specialist Tribunal with powers to deal with these matters

Acts Interpretation Act 1954 (Qld) s 14A, s 14C, s 48A
Civil Proceedings Act 2011 (Qld) s 10
Judicial Review Act 1991 (Qld)
Uniform Civil Procedure Rules 1999 (Qld) r 26
Workers Compensation Act 1990 (Qld) s 135
WorkCover Queensland Act 1996 (Qld) s 208
Workers Compensation and Rehabilitation Act 2003 (Qld) s 9, s 32, s 106, s 107B, s 132, s 144A, s 150, s 178, s 179, s 185, s 189, s 190, s 219, s 220, s 499, s 500, s 500A, s 502, s 505, s 510C, s 511, s 515, s 516, s 549, sch 6

Explanatory Notes to *Workers Compensation and Rehabilitation Bill* 2003
Explanatory Notes to the *WorkCover Queensland Bill* 1996

Apelu v Lusty Tip Trailers Pty Ltd [2023] QSC 262; (2023) 328 IR 93, distinguished
Apelu v Lusty Tip Trailers Pty Ltd [2024] QCA 158; (2024) 333 IR 413, cited
Barraclough v WorkCover Queensland [2012] QDC 321, cited
Costello v Queensland Rail [2014] QSC 083; [2015] 2 Qd R 296, considered
CSR Ltd v General Medical Assessment Tribunal – Thoracic [2010] QSC 321, cited
De Ross v General Medical Assessment Tribunal [2009] QCA 327; [2010] 1 Qd R 137, applied
*Ergon Energy Corporation Limited v Rice-McDonald & Or*s [2009] QSC 213; [2010] 1 Qd R 516, cited
Forster v Jododex Australia Pty Ltd [1972] HCA 61; (1972) 127 CLR 421, applied
Holman v Workers' Compensation Regulator [2025] QIRC 328, cited
LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] HCA 12; (2024) 280 CLR 321, applied
Masters v McCubbery [1996] 1 VR 635, considered
Masson v Parsons [2019] HCA 21; (2019) 266 CLR 554, applied
Hunter Resources Ltd v Melville [1988] HCA 5; (1988) 164 CLR 234, cited
Merton v Queensland Local Government Workcare Scheme [2016] QSC 017, distinguished

Minister for Immigration and Ethnic Affairs v Wu Shan Liang [1996] HCA 6; (1996) 185 CLR 259, applied
Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28; (1998) 194 CLR 355, applied
The Queen v A2 [2019] HCA 35; (2019) 269 CLR 507, applied
R v The Australian Broadcasting Tribunal; Ex parte Hardiman [1980] HCA 13; (1980) 144 CLR 13, applied
Rucker v Stewart & Ors [2014] QCA 32, applied
Sawtell v State of Queensland [2026] QCA 62, applied
Sean Investments Pty Ltd v MacKellar [1981] FCA 191; (1981) 38 ALR 363, cited
Stenner v Crime and Corruption Commission (No 2) [2019] QSC 242, cited
SZTAL v Minister for Immigration and Border Protection [2017] HCA 34; (2017) 262 CLR 362, applied
Wilkie v The Commonwealth; Australian Marriage Equality Ltd v Cormann [2017] HCA 40; (2017) 263 CLR 487, cited
Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA 43; (2013) 252 CLR 480, cited
WorkCover Queensland v Turner Freeman & Anor [2020] QCA 194, cited
WorkCover Queensland v Yang [2022] QCA 196; (2022) 12 QR 43, cited
York v General Medical Assessment Tribunal [2002] QCA 519; [2003] 2 Qd R 104, distinguished

COUNSEL: Solicitors for the applicant
C Murdoch KC and N Harris for the respondent

SOLICITORS: Andrew Abaza for the applicant
Hall & Wilcox for the respondent

INTRODUCTION

[1] In 2021 Ms Holman was employed as a driver at a childcare centre. She sustained a psychiatric injury whilst working there because of unreasonable management action. Her claim for worker's compensation was accepted by the respondent on 11 August 2023.

[2] In May 2025, her matter was referred to and heard by a General Medical Assessment Tribunal – Psychiatric (**Tribunal**) which determined she had a partial incapacity for work and a permanent impairment of 5 per cent.

[3] She was given a notice of election by the respondent on whether to accept an offer of a lump sum payment on 26 May 2025. She deferred this offer. Her ongoing workers compensation payments were then terminated.

[4] She alleges that errors occurred concerning the Tribunal decision and submits that it should be set aside together with the consequential decision to terminate compensation payments dated 16 June 2025.

[5] She further alleges the following decisions by the insurer should be set aside:

1. The wage decisions.

2. The decision on 2 July 2025 not to refer the applicant to its employment connect program. This was upheld by the regulator on 14 August 2025.

3. Decisions concerning travel expenses, although I note this was resolved in the Queensland Industrial Relations Commission (**QIRC**).

[6] For the reasons which follow, it is determined:

1. There are no grounds established upon which to set aside the Tribunal decision.

2. There are no grounds established upon which to set aside the rehabilitation decision.

3. There are no grounds established upon which to set aside the wage decisions or the other decisions.

BACKGROUND

[7] On 31 May 2021, the applicant applied for Workers Compensation under s 132 of the WCRA. The injury claimed was noted to be for "psychological system in general, reaction to stressors – other, multiple." The accident description was "bullying and harassment to adverse management action."

[8] On 14 July 2021, this claim was rejected. The reasons noted that it was not considered the actions of management were unreasonable.

[9] However, after various reviews, on 11 August 2023 the original decision was set aside, and a decision was made to accept the claim under s 32 of the WCRA.

[10] The decision maker was satisfied there was a mixture of reasonable and unreasonable management action taken. The unreasonable management action was more significant. Section 32(5) of the WCRA was not enlivened. The applicant therefore sustained an "injury" within the meaning of that term in s 32 of the WCRA.

[11] On 19 August 2023, the condition accepted was a panic disorder.

[12] On 20 October 2023, WorkCover calculated the applicant's normal weekly earnings (**NWE**) at $833.35. The weekly payment would be $708.35.[1]

[13] On 17 November 2023, the respondent advised the applicant that on a review of the claim, the injury no longer prevented her from working and wages payments would cease. However, payment for reasonable medical treatment and rehabilitation would continue. The last day for payment of weekly payments was set to be 9 August 2022.

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1 This is 85% of the $833.35.

[14] The reason for the decision was that an independent psychiatrist Dr Pant advised that the applicant had functional capacity to work in an alternative job role which she commenced on 10 August 2022.

[15] On 20 February 2024:

(a) The regulator set aside the decision of 17 November 2023 and found that the applicant had a continuing entitlement to compensation;

(b) The regulator confirmed the wage calculation decision dated 20 October 2023; and

(c) The regulator confirmed a decision that it would not pay travel expenses for attending Dr Gill on 12 September 2023 under s 219(6)(b) of WCRA as there was treatment available nearer than Dr Gill.

[16] On 6 January 2025, the respondent decided to calculate the partial capacity payment at $148.44. This was upheld by the regulator on review on 6 May 2025.

[17] On 7 February 2025, Dr Murphy, a psychiatrist, in a report advised WorkCover that it was appropriate to refer the matter to a Medical Assessment Tribunal.

[18] On 13 May 2025, WorkCover referred the matter to the Tribunal pursuant to ss 502 and 505 of the WCRA.

[19] On 13 May 2025, a hearing occurred before the Tribunal. This was to determine the applicant's ongoing incapacity and for permanent impairment. A decision was made that she had a partial incapacity as a result of an adjustment disorder, mixed anxiety, depressed mood and panic attacks. A final impairment of 5 per cent was determined.

[20] On 26 May 2025, WorkCover offered a lump sum compensation of $19,938.50.

[21] On 16 June 2025, the applicant deferred the offer.

[22] On 16 June 2025, Workcover advised that the claim was now finalised and the applicant would no longer receive compensation payments or medical expenses.

[23] On 2 July 2025, Workcover advised that an accredited rehabilitation and return to work program was not available to the applicant as the applicant did not cooperate with offers made to her and the applicant was working for a different employer.

[24] The regulator's wage decisions, rehabilitation decision and travelling decision were all appealed to the QIRC under s 549 of the WCRA.

ISSUES

[25] The claims made by the applicant in the originating application and the submissions are difficult to discern, but the following was stated by the applicant to be the issues in this matter:

1. A preliminary point as to defects in the originating application.[2]
2. The validity of the Tribunal's decision.[3]
3. There has been a failure to assess the applicant's high blood pressure.[4]
4. Whether the notice of termination on 16 June 2025 is valid.[5]
5. The validity of the decision to not provide rehabilitation.[6]
6. The validity of the wage decisions.[7]
7. The validity of the travel decision.[8]

ISSUE 1 – PRELIMINARY POINT

[26] The respondent submits that there are two defects concerning the proceedings relating to the Tribunal, namely:

(a) The Tribunal is directly affected by the relief sought and it is not a party.

(b) The Tribunal's decision is final under s 515 of the WCRA and it cannot be questioned by a court except under the *Judicial Review Act 1991* (Qld) (**JRA**).

[27] The *Uniform Civil Procedure Rules 1999* (Qld) r 26(2) provides that all parties directly affected by the relief must be named in the application. It may be accepted that the Tribunal should have been a party. It would also be accepted that the Tribunal would likely abide the judgment of the court.[9] It should have been afforded the opportunity of addressing the court.[10]

[28] The question is whether the matter should be adjourned to enable the applicant to join the Tribunal. The parties agreed that if I decided to dismiss the proceedings on the substantive grounds then there was no need to adjourn the matter. Ultimately, for the reasons to be discussed, I have decided not to adjourn the matter, as I consider there are no substantive grounds established by the applicant.

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2 Transcript day 1 page 39.35; Respondent's supplementary submissions (Ex 9).
3 See transcript page references below.
4 Transcript day 1 page 12.35; Applicant's submissions Ex 3 [16].
5 Transcript day 1 page 15.1; Applicant's submissions Ex 3 [10], [30], [31], [32], [38].
6 Transcript day 1 page 13.32; Applicant's submissions Ex 3 [28].
7 Transcript day 1 page 15.25 and 23.35; Applicant's submissions Ex 3 [25], [26], [27].
8 Transcript day 1 page 21.17; Applicant's submissions Ex 3 [34].
9 *R v The Australian Broadcasting Tribunal; Ex parte Hardiman* [1980] HCA 13; (1980) 144 CLR 13 at pp 35-36.
10 See e.g. *Stenner v Crime Corruption Commission (No 2)* [2019] QSC 242.

[29] As to the second point, s 515 of the WCRA provides:

> "**515 Finality of tribunal's decision**
>
> (1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 512—
>
> (a) a decision on a medical matter referred to the tribunal under section 500;
>
> (b) a decision under section 514(1).
>
> (2) Subsection (1) has no effect on the *Judicial Review Act 1991*."

[30] There is an issue as to whether this section ousts the jurisdiction of the Supreme Court to grant declaratory relief under section 10 of the *Civil Proceedings Act 2011* (Qld). This section provides:

> "**10 Declaratory order**
>
> (1) This section applies to the Supreme Court only.
>
> (2) The court may hear an application for a declaratory order only and may make a declaratory order without granting any relief as a result of making the order."

[31] In *Costello v Queensland Rail*[11] McMeekin J took the view that despite this section the court had a wide jurisdiction to grant declaratory relief. On the other hand, in my opinion the section seems clearly drafted.

[32] At the end of the day, I do not consider I need to resolve this issue as I do not consider the applicant has established any of the grounds for complaint.

ISSUE 2 – VALIDITY OF TRIBUNAL DECISION

[33] The issues raised by the applicant were confirmed in oral submissions as follows:

1. The referral was not made under the WCRA, and the approved form was not used.[12]

2. There was a failure to accord natural justice as to the referral.[13]

3. She alleges it was falsely asserted the applicant agreed to the insurer's statements and the referral did not refer to the diagnosis.[14]

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11 [2014] QSC 083; [2015] 2 Qd R 296 at [23] and [28].
12 Transcript day 1 page 38.45; Applicant's submissions Ex 3 [1], [2], [6].
13 Transcript day 1 page 37.10; Applicant's submissions Ex 3 [10].
14 Transcript day 1 page 39.10; Applicant's submissions Ex 3 [4].

4. She alleges there was an inclusion of irrelevant documents and omission of relevant documents.[15]

5. There was non-compliance with s 510C of the WCRA.[16]

6. There was a denial of natural justice before the Tribunal.[17]

7. There is a complaint the Tribunal did not exercise its jurisdiction.[18]

8. It is alleged the reasoning of the Tribunal was insufficient.[19]

Legislation

[34] Section 178 of the WCRA provides that an insurer (under that part of the Act) may ask for an assessment to decide if a worker has sustained a degree of permanent impairment (**DPI**) from an injury. Section 179(2)(b) of the WCRA provides that for a psychiatric/psychological injury this is done by a Medical Assessment Tribunal.

[35] Section 500 of the WCRA provides:

> "**500 Reference to tribunals**
>
> (1) An insurer may refer the following matters in relation to an injury under this Act to the appropriate tribunal for decision on the medical matters involved—
>
> (a) a worker's application for compensation for an alleged injury;
>
> (b) a worker's capacity for work;
>
> (d) a worker's permanent impairment under section 160;
>
> (e) a worker's permanent impairment under section 179;
>
> (f) a worker's level of dependency under section 193;
>
> (fa) whether a worker has a serious personal injury that meets the chapter 4A eligibility criteria for the injury;
>
> (fb) for a worker who the insurer decides is entitled to treatment, care and support payments for an interim period under section 232M, whether the worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends;

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15 Transcript day 1 page 22.15 and 25.15; Applicant's submissions Ex 3 [3], [5], [7], [11], [21], [22].
16 Transcript day 1 page 31.25; Applicant's submissions Ex 3 [8].
17 Transcript day 1 page 23.20 and 37.20; Applicant's submissions Ex 3 [12],
18 Transcript day 1 page 28.45; Applicant's submissions Ex 3 [14], [15]
19 Transcript day 1 p 27 and 29.11; Applicant's submissions Ex 3 [17], [18], [19], [20].

(fc) whether a particular treatment, care and support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances;

(g) a worker's permanent impairment reviewable under section 266.

(2) An insurer may also, in relation to an injury mentioned in section 490A(1)(b), refer to the appropriate tribunal, for decision on the medical matters involved, a matter that could have been referred to a former tribunal under a former Act."

[36] Section 500A of the WCRA provides:

"**500A How to make a reference**

"(1) An insurer refers a matter to a tribunal by—

(a) making a reference in the approved form; and

(b) giving the tribunal a copy of all relevant documents.

(2) The insurer must give the tribunal relevant documents even though otherwise protected by legal professional privilege.

(3) However, the insurer is not required to give the tribunal correspondence between the insurer and the insurer's lawyer that is protected by legal professional privilege."

[37] Section 502 provides:

"**502 Reference about worker's capacity for work**

(1) This section applies on a reference to a tribunal under section 500(1)(b).

(2) A reference under section 500(1)(b) may be made at any time and from time to time.

(3) The tribunal must decide—

(a) whether, when it makes its decision, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made; and

(b) whether the incapacity—

(i) is total or partial; and

(ii) is permanent or temporary; and

(c) if the worker has sustained an injury resulting in permanent impairment and the insurer asks—the DPI for the injury."

[38] Section 505 provides:

"**505 Reference about worker's permanent impairment**

(1) This section applies on a reference to a tribunal under section 500(1)(e).

(2) The tribunal must decide—

(a) whether the worker has sustained a degree of permanent impairment; and

(b) if the worker has sustained a degree of permanent impairment—

(i) the degree of permanent impairment resulting from the injury; and

(ii) the DPI for the injury."

[39] Section 511 provides:

"**511 Right to appear and be heard before tribunal**

(1) Despite any Act or law, this section is the only provision of law under which a person may be heard in relation to a matter referred to a tribunal, whether in relation to an injury mentioned in section 490A(1)(a) or (b).

(2) On a reference to a tribunal, the worker is entitled to be heard before the tribunal in person or by the worker's representative.

(3) Only the worker and any representative of the worker may be present or heard before the tribunal.

(4) To remove any doubt, it is declared that an insurer, employer, or any other person (not being the worker) whose interests may be affected by a decision made by a tribunal can not be present, represented or heard before a tribunal."

The referral was not made under the WCRA, and the approved form was not used

Submissions

[40] The applicant submits that the referral was an invalid one. It submits that the referral to the Tribunal was not made under the WCRA and further the mandatory form required by s 500A of the WCRA was not used.

[41] The respondent submits that it was entitled under the WCRA to refer the matter to the Tribunal. With respect to the allegation there was no approved form, it is submitted

the approved form and the WorkCover referral as compared are not materially different.

Discussion

[42] In my view the respondent was permitted under the WCRA to refer the matter to the Tribunal. Section 500(1) of the WCRA provided that an insurer had the power to refer this particular matter to the Tribunal for decision.

[43] Insurer is defined in the dictionary as:

> "(a) Generally – means WorkCover or a self insurer; or
>
> (b) In relation to a claimant or worker whose employer for the purposes of the injury is a self-insurer – means the self-insurer; or
>
> (c) In relation to any person or otherwise entitled to compensation for the injury – means WorkCover."

[44] In this particular case Ms Toniello of WorkCover referred the matter to the Tribunal on 21 February 2025. There is nothing in the applicant's contention that the referral is invalid. Ms Toniello had the advice of Dr Murphy to refer the matter to the Tribunal. The respondent clearly acted under ss 178, 179 and 500 of the WCRA.

[45] With respect to the allegation that the mandatory form was not used, in my opinion the form of the referral was substantially in accordance with the mandatory form. Section 48A of the *Acts Interpretation Act 1954* (Qld) provides:

> "**48A Compliance with forms**
>
> (1) If a form is prescribed or approved under an Act, strict compliance with the form is not necessary and substantial compliance is sufficient."

[46] In my view the referral is not invalid on this ground.

Failure to accord natural justice as to the referral and the notice of termination of benefits

Submissions

[47] The applicant submits that a denial of natural justice occurred in the making of the referral to the Tribunal.

Discussion

[48] With respect to the referral, it is my opinion that the principles of natural justice did not apply. In *Rucker v Stewart & Ors*[20] the Queensland Court of Appeal was concerned with a situation where a police officer challenged a decision by a deputy commissioner of police to stand him down from duty for a breach of discipline. There would later be a substantive hearing on whether the grounds were established. It was held that the nature of the legislation led to the conclusion that the legislature did not

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20 [2014] QCA 32 at [14].

intend that at the first stage of the process the officer should have a right to be heard. It was noted that there was an avenue for review on the merits of which the officer could put forward material and be heard. This told "strongly against the existence of an opportunity to be heard at an earlier stage." In this case I consider there was no requirement to accord procedural fairness in the making of the referrals. The Act gave power to the insurer to do this. The principles of natural justice were to be accorded at the Tribunal hearing stage.

[49] I also consider there was no requirement to accord natural justice before the issue of the notice on 26 May 2025. Procedural fairness had already been accorded at the Tribunal hearing, as I later discuss. The notice on 26 May 2025 was a notice issued under the Act consequent on the Tribunal decision which the insurer was obliged to issue. Section 185 of the WCRA provides:

> "**185 Insurer to give notice of assessment of permanent impairment**
>
> (1) The insurer must, within 10 business days after receiving the assessment of the worker's permanent impairment, give the worker a notice of assessment in the approved form.
>
> (2) To remove any doubt, it is declared that if a worker sustains multiple injuries in an event, the insurer must give the notice only after the worker's DPI for all injuries has been decided.
>
> (3) The notice must state—
>
> (a) whether the worker has sustained permanent impairment from the injury; and
>
> (b) if the worker has sustained permanent impairment—
>
> (i) the DPI for the injury; and
>
> (ii) the amount of lump sum compensation under section 180 to which the worker is entitled for the injury; and
>
> (c) if the worker is entitled to additional lump sum compensation under division 4—the worker's entitlement."

Allegation that it was falsely asserted the applicant agreed to the insurer's statements and the referral did not refer to the diagnosis

Submissions

[50] The applicant submits that the respondent falsely asserted that the applicant agreed to the insurers statement when the applicant had not so agreed. It is submitted the referral nominated panic disorder alone when there was another recorded diagnosis of "panic disorder with agoraphobia" which was not included in the referral.

[51] The respondent submits that the applicant misunderstands the nature of the insurer's statement on the referral. It was the respondent who made the certification as to the relevant documents and the respondent's representative who agrees to the insurers statement.

[52] It is submitted the respondent's claim summary recorded the nature of the applicant's injury to be "psychological system in general; reaction to stressors." The respondent's referral to the Tribunal was correct.

Discussion

[53] Ms Toniello gave evidence that the use of the term "panic disorder" was based on a recent medical report and it was a matter for the Tribunal to make its own assessment and diagnosis. I accept this evidence.

[54] The respondent's argument should be accepted. It is clear when one looks at the referral form that the insurer's statement is a certification that all relevant documents were itemised and attached to the Tribunal referral. The insurer's representative understood that the regulator might be required or authorised to release information or documents to other parties and agreed to this statement. The applicant misunderstands the insurer's statement.

[55] The referral to the Tribunal was with respect to "panic disorder" but numerous medical reports and documents were attached to the referral which analysed the applicant's condition in detail.

[56] Additionally in the information summary it was noted that the original rejection was "acute mental stress." The information summary referred to the psychological/psychiatric injury.

[57] The Tribunal in its decision stated "the Tribunal accepts in response to the work-related injury, Ms Holman has developed psychological symptoms. As Ms Holman has described symptoms of "depression and anxiety including panic attacks, which have occurred in response to work related stressors, the Tribunal considers her condition is more consistent with a diagnosis of adjustment disorder with mixed anxiety and depressed mood."

[58] The referral to the Tribunal was with respect to ongoing incapacity and permanent impairment assessment. The relevant sections of the WCRA were s 500(1)(b) and (1)(e) and the Tribunal was required to decide matters in accordance with ss 502(3) and 505(2) of the WCRA. This is precisely what the Tribunal did. The accepted liability for the applicant's injury was panic disorder. However, the Tribunal considered all of the medical evidence and determined its own diagnosis, which was entirely appropriate in the circumstances. As I later discuss there was evidence to support this diagnosis.

Inclusion of irrelevant documents and omission of relevant documents

Submissions

[59] The applicant submits that the numerous regulators decisions were not relevant documents. It is further submitted that statements by the worker, workers employer

and witnesses were relevant and were not included and investigative or expert reports were relevant, and these were not included.

[60] The respondent submits that all relevant documents under s 499 of the WCRA were provided. It submits that the regulator decisions were relevant to the claim and further submits that the applicant at all times had the opportunity to submit whatever documents she considered relevant. Indeed, her solicitor took the opportunity to submit documentation to the Tribunal to consider.

Discussion

[61] Section 500A(1)(b) of the WCRA required the insurer to give the Tribunal a copy of all relevant documents even though otherwise protected by legal professional privilege.

[62] A decision of a tribunal may be set aside if all relevant documents are not provided to the tribunal.[21]

[63] The term "relevant documents" is defined in s 499 of the WCRA. This section provides:

> ***"Relevant document*** means a document relevant to a reference of a matter to a tribunal and, in particular, includes the following documents—
>
> (a) an application for compensation;
>
> (b) an application for a damages certificate under the repealed *WorkCover Queensland Act 1996*, section 270 before 1 July 2001;
>
> (c) a notice of claim;
>
> (d) medical reports;
>
> (e) investigative or expert reports;
>
> (f) information about medical treatment or investigations;
>
> (g) statements made by a worker, the worker's employer or a witness;
>
> (h) reasons for a decision made by the insurer under the Act or former Act relevant to the reference."

[64] The following documents were attached to the referral:

1. The application for compensation dated 14 July 2021.
2. The worker claim history dated 14 February 2025.
3. The first medical certificate and last medical certificate.

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21 *De Ross v General Medical Assessment Tribunal* [2009] QCA 327; [2010] 1 Qd R 137 at [38].

4. Reports of Dr Murphy dated 27 April 2022, 21 July 2022, 6 March 2022, 23 August 2024 and 7 February 2025.

5. Report of Dr Gary Larder dated 21 September 2023 and 2 September 2022.

6. Report of Dr Pant dated 7 October 2023.

7. Reports of Dr Gill dated 6 July 2021, 12 April 2024, 20 December 2021, and 11 March 2024.

8. Reports of Mel Tesch psychologist 12 August 2024.

9. Psychology reports dated 7 May 2024, 14 February 2024 and 3 December 2021.

[65] Miscellaneous documents as follows were attached:

1. Workers statements (numerous)

2. Reasons for decisions.

[66] Other documents attached included:

1. Email form Ms Holman.

2. Dispute of claim decision.

3. Statement from husband.

4. Dispute options of claim denial.

5. Rejection response from solicitor.

6. Other statements from Nicholas Campbell, Amy Bodel and Ms Holman.

[67] The Tribunal in its decision noted that Mr Abaza submitted further documents including:

1. Letters from Mr Abaza dated 7 April 2025, 22 April 2025 and 28 April 2025.

2. Affidavits from Leanne Richardson, Sharon Peterson, Suzanne Wareing, Julie Paroz and Helen Stokes.

3. Reviews provided on USB's.

[68] In my opinion on the evidence all relevant documents were provided to the Tribunal and I accept the respondent's submissions in this regard.

[69] The applicant complains that other documents were not given to the Tribunal, namely a certificate of Dr Gill dated 19 May 2025, statements by a worker, employer or a witness and investigative reports.

[70] With respect to the first complaint, the applicant has not established how the medical certificate would have made any difference to the decision. It seems unlikely it would

have when one considers the detailed medical reports the Tribunal had to consider. It also had a number of other reports from Dr Gill. There is nothing to that complaint.[22]

[71] With respect to the complaint that the Tribunal did not have workers statements or witness statements; that is plainly wrong. It did. It had emails from Ms Holman about the alleged bullying; it had an 18-page statutory declaration from Ms Holman with attachments; it had a statutory declaration from Mr Holman and it had witness statements. It also had the affidavits provided by Mr Abaza. Also, the applicant has not established how any additional witness statements (or the Facebook messages, texts, photos or crying schedule) would have made any difference to the decision. There is nothing to that complaint.[23]

[72] Also, for the reasons I later give concerning natural justice, I find that at all material times the applicant had the opportunity to place the material she alleged was relevant before the tribunal.

[73] On the issue of an investigative report, s 499 of the WCRA does not require that to be disclosed if it does not exist. Also, with respect to a s 133 WCRA report, Ms Toniello in her evidence says that she did not consider this necessary as the claim was accepted. I accept her evidence on this.

[74] With respect to the complaint that the regulators decisions were provided, the simple answer to this point is that relevant documents under s 499(8) include reasons for a decision made by the insurer under the Act. In my opinion the decisions were relevant to the context of the case. I note the Act refers to "a decision" and not "the decision." There is nothing to the applicant's argument in this regard. One of the decisions complained of is the decision to accept the claim. One would have thought that was entirely relevant to the matter.

[75] No error on these grounds has been established.

Denial of natural justice before the Tribunal

Submissions

[76] The applicant submits that there was a denial of natural justice concerning the Tribunal proceeding.

[77] The respondent disputes this and submits that at all times natural justice was accorded to the applicant.

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22 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; (2024) 280 CLR 321 at [7], [15].

23 *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12; [2024] 280 CLR 321 at [7], [15].

Discussion

[78] It may be accepted that the principles of natural justice apply to a hearing before an assessment tribunal.[24] This is clear also from s 511 of the WCRA which entitles a worker to be heard before the Tribunal.

[79] I consider on the evidence there was no denial of procedural fairness before the Tribunal.

[80] Before the Tribunal hearing:

(a) Ms Toniello told the applicant she was referring the matter to the Tribunal.[25]

(b) Ms Toniello specifically told that applicant that Mr Abaza could forward further information to the Tribunal.[26]

(c) On 21 February 2025, the matter was referred to the Tribunal.[27]

(d) During the course of February and March 2025, the applicant was given copies of medical reports from Dr Pant[28] and Dr Murphy.[29]

(e) On 19 March 2025, a complete copy of the documents relevant to the claim was forwarded to the applicant.[30]

(f) The applicant was forwarded all of the material by Ms Behne on 4 April 2025.[31] The applicant's solicitor also received this.[32]

(g) On 21 April 2025, the applicant asked for some material to be considered by the Tribunal.

(h) On 23 April 2025, Ms Behne had advised that a letter from Mr Abaza had been added to the referral file.

(i) On 29 April 2025, the applicant had provided more documents which were given to the Tribunal. Mr Abaza also provided these and others to the Tribunal.

[81] At the Tribunal hearing the applicant's solicitor provided much information to the Tribunal and was given the opportunity of making submissions at the hearing. In addition, Ms Holman had a right to be heard at the Tribunal. In the circumstances I do not consider a denial of procedural fairness was proved here with respect to the Tribunal decision.

[82] The applicant complains that there was non-compliance with s 510C of the WCRA and this invalidates the decision. I do not accept this. Section 510C(4) provides that the worker is to give to the Tribunal at least 10 business days before the hearing, any relevant documents the worker wants the Tribunal to consider. Section 510C(7) provides that the Tribunal cannot rely on a document not exchanged under this part.

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24 *York v General Medical Assessment Tribunal* [2002] QCA 519; [2003] 2 Qd R 104 at [29].
25 Affidavit of Ms Toniello [126].
26 Affidavit of Ms Toniello [126].
27 Affidavit of Ms Toniello [129].
28 Affidavit of Ms Toniello Page 784.
29 Affidavit of Ms Toniello [140].
30 Affidavit of Ms Toniello [147].
31 Affidavit of Ms Toniello [149].
32 Affidavit of Ms Toniello page 864.

In this matter Mr Abaza tried to hand further documents to the Tribunal on 29 April 2025, which was less than 10 business days before the hearing. However, the Tribunal accepted this material at the hearing regardless.[33]

[83] There is also a complaint that the applicant was not given the Tribunal documents within the 10-day period mentioned in s 510C(3) of the WCRA. The fact is she was given those documents well in advance of the Tribunal hearing. No prejudice can be shown. Also, no point was taken as to service at the hearing and in my view reliance on this section has been waived.

[84] I did not accept the applicant's argument that a failure to comply leads to invalidity of the Tribunal decision.[34] Any breach of the section did not lead to invalidity of the decision. The section does not provide this, and that does not appear to be the purpose of the provision, which is more directed to early notice of relevant material.[35]

[85] There is also a complaint that on 13 May 2025, the applicant received an amended summary. However, the summary was substantially in the same terms as to the original summary. The only additional matters were the addition of references to the stressor events.[36] These were relevant to the medical condition and were not solely non-medical matters. It is not identified how this prejudiced the applicant when the claim had been accepted. Regardless, the applicant had the opportunity of making submissions on this (if it was relevant) on the day of the hearing.

[86] With respect to the allegation that there was no evidence to support the assertion at page 73 of the bundle,[37] again the applicant had the opportunity of making submissions on this (if it was relevant) on the day of the hearing.

[87] Finally, insofar as it is suggested that was a lack of procedural fairness in the Tribunal's determination that there was an adjustment disorder with mixed depressed mood and anxiety, there was material before the Tribunal (and which the applicant had) which supported this:

(a) First, Ms Redman specifically referred to this diagnosis in her report.[38]

(b) Second, Dr Larder referred to a severe phobic anxiety and depression.[39]

(c) Third, Ms Tesch referred to symptoms of depression, anxiety, stress and PTSD symptoms.[40]

[88] This is a different situation to that considered in *York v General Medical Assessment Tribunal*,[41] where the Tribunal determined the worker had not suffered an injury without giving notice of this to the worker where there were favourable reports to the worker on the question. By contrast, the finding of an adjustment disorder is not an adverse finding.

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33 See the material tendered on 13 May 2025 p 4.
34 *Hunter Resources Ltd v Melville* [1988] HCA 5; (1988) 164 CLR 234.
35 *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [93].
36 Affidavit of Andrew Abaza CD 5 page 63.
37 Applicant's submissions exhibit 3 [13].
38 Exhibit 2 page 296.
39 Exhibit 2 page 260.
40 Exhibit 2 pages 306, 310.
41 [2002] QCA 519; [2003] 2 Qd R 104.

The Tribunal did not exercise its jurisdiction

Submissions

[89] The applicant submits that the Tribunal did not consider all matters it was required to under the WCRA.

[90] The respondent submits to the contrary and did consider that which it had to.

Discussion

[91] The information summary to the Tribunal noted that the reference was for assessment of whether there was ongoing incapacity, and the Tribunal was to make a decision under s 502(3). The reference was also for the Tribunal to make an assessment of any permanent impairment under s 505(2) of the WCRA.

[92] In its decision, the Tribunal noted:

(a) That the referral was with respect to a "psychological/psychological injury."[42]

(b) The Tribunal specifically noted that it had to decide under s 502(3) of the WCRA whether there existed an incapacity in the worker for work and whether the incapacity was total or partial and permanent or temporary.[43]

(c) It also noted that it had to decide under s 505(2) of the WCRA whether the worker had sustained DPI and if the worker sustained a DPI for the injury.

[93] The Tribunal correctly exercised its jurisdiction.

Sufficiency of reasons

Submissions

[94] The applicant submits that the reasons of the Tribunal were inadequate. It submits that no reasons were given for rejecting various medical opinions and giving no credence to others.

[95] The respondent disputes this saying the Tribunal considered all matters and the reasons are adequate.

Discussion

[96] Before it can be determined whether reasons are sufficient, it is necessary to identify the issue to be determined by the Tribunal.[44] Here the Tribunal's function was to determine whether the applicant had an ongoing incapacity for work, resulting from the injury and the assessment of any permanent impairment (ss 502(3) and 505(2) of the WCRA). It also had an obligation under s 516 of the WCRA to give written reasons.

[97] It is important to note, when assessing reasons of a Tribunal like those of a Medical Assessment Tribunal, they are meant to inform and should not be regarded "over

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42 Page 2 of the reasons

43 Page 2 of the reasons.

44 *CSR Ltd v General Medical Assessment Tribunal – Thoracic* [2010] QSC 321 at [38].

zealously."[45] A court should be careful not to turn a review of a decision into a review on the merits.[46] In *Masters v McCubbery*,[47] Ormiston J noted that a medical panel is not required to do more than provide sufficient reasons to enable it to be seen by the court and the parties that it has arrived at its decision in accordance with its statutory functions.

[98] The assessment of the evidence and the weight to be given to it were entirely matters for the Tribunal.[48] It is my opinion the Tribunal undertook this precise task and provided adequate reasons with respect to its decision.[49]

[99] In its reasons for the decision the Tribunal referred to the following:

1. The background of the matter.

2. What it needed to determine under the WCRA.

3. It listed the relevant documents it considered including all medical reports.

4. It noted Mr Abaza had the opportunity of making submissions regarding recent visits to her general practitioner and recent hospital admission for a medical condition. The applicant was interviewed and provided information to the Tribunal.

5. It noted that the applicant was a 46-year-old married mother with two sons. At the time of the injury, she was working as a bus driver for Campbell.

6. She had worked in that role since January 2014 in a part time position.

7. She had an accepted WorkCover Queensland claim for panic disorder which had occurred in the context of difficulties in the workplace.

8. Dr Murphy, a psychiatrist, had provided an independent medical examination report. He diagnosed panic disorder and noted the treatment since the injury. He considered she was not capable of ever returning to her substantive role or any role with the employer but had capacity to work in a different workplace and recommended occupational rehabilitation and further treatment.

9. The Tribunal referred to Dr Larder's report dated 30 May 2022, in which he noted a syndrome of severe phobic anxiety and depression.

10. The Tribunal referred to Dr Pant's report in which he noted that the applicant had been working in a newsagency since August 2022, two days a week. He diagnosed panic disorder with anxiety and recommended further treatment. He considered the applicant could not work in her substantive role but could in an alternative role. He determined a permanent impairment of 7 per cent.

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45 *CSR Ltd v General Medical Assessment Tribunal – Thoracic* [2010] QSC 321 at [35].

46 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; (1996) 185 CLR 259 at p 272.

47 [1996] 1 VR 635 at p 650.

48 *Sean Investments Pty Ltd v MacKellar* [1981] FCA 191; (1981) 38 ALR 363 at p 375.

49 *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; (2013) 252 CLR 480 at [54], [55]; *Ergon Energy Corporation Limited v Rice-McDonald & Ors* [2009] QSC 213; [2010] 1 Qd R 516 at [15].

11. The Tribunal referred to Dr Murphy's further report dated 20 August 2022. The applicant remained working two days a week as a cashier of a newsagency and was coping well. She had 40 sessions of psychotherapy and was seeing a psychologist. Her sleep was poor. He considered her condition was slowly improving and recommended further treatment.

12. Dr Murphy provided a further report dated 7 February 2025, in which he noted the applicant continued to work two days a week plus overtime when available. She was reluctant to start with a new therapist. He diagnosed panic disorder and considered it stable and stationary.

13. The Tribunal referred to the applicant and what she reported to the Tribunal. They noted the applicant reported there had not been significant improvement in mental health despite ongoing treatment. She continued to experience panic attacks. Her sleep was poor. With respect to employability, she could not work at all in her previous position and was working reliably two days a week as a cashier despite having panic attacks at work. She could work in a less stressful position for less than 20 hours a week.

14. "The Tribunal accepts in response to the work-related injury Ms Holman has developed psychological symptoms. As Ms Holman has described symptoms of depression and anxiety including panic attacks which have occurred in response to the work-related stressors, the Tribunal considers her condition is more consistent with a diagnosis of an adjustment disorder with mixed anxiety and depressed mood."

15. The Tribunal noted no pre-existing psychological impairment.

16. The Tribunal noted that the applicant had more than 40 sessions with a psychologist and had trialled three different anti-depressant medications and had been reviewed by a psychiatrist. The Tribunal considered it was unlikely to be further significant functional improvement over the next one to two years with further treatment.

17. The Tribunal considered her condition was stable and stationary in accordance with the guidelines for evaluation of permanent impairment.

18. With respect to capacity for work, the Tribunal noted she had displayed a capacity for up to 20 hours per week in a different role and had considered her current incapacity for work is partial but anticipated she would be able to return to full time work at some point and therefore is temporarily.

19. Ultimately the final impairment was determined at 5 per cent.

20. The Tribunal ultimately noted, "following consideration of all medical and other evidence presented, interview and clinical examination of the worker, the Tribunal determined that:

    (a) Section 502(3) – as at 13 May 2025, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made and the incapacity is partial and temporary.

(b) Section 505(2) – Following consideration of all medical and other evidence presented interview and clinical examination of the worker and with reference to the guidelines for evaluation of permanent impairment second edition, the Tribunal determined that the worker had sustained a permanent impairment and the degree of permanent impairment resulting from the injury is 5 per cent.

[100] Contrary to the applicant's submissions, the Tribunal gave considered reasons in this matter, considered all relevant evidence and addressed the relevant statutory provisions. The reasons were sufficient.

ISSUE 3 – VALIDITY OF DECISION DATED 16 JUNE 2025

The decision is void

Submissions

[101] The applicant submits that the decision to cease compensation on 16 June 2025 is void. It is submitted that the applicant had 20 business days from 26 May 2025 to continue to receive compensation. She submits it did not matter when she responded to the offer of the notice of assessment. It is submitted a deferral is not a relevant decision. It is therefore argued that she is entitled to payment for psychology treatment sessions.

[102] The respondent submits that because the applicant notified as to her decision on 16 June 2025, then that is when the time ceased. The respondent terminated the applicant's entitlement to further compensation because the notification was within the decision period.

Discussion

[103] The facts are clear. On 26 May 2025, the respondent forwarded a notice of assessment to the applicant. The degree of permanent impairment for the applicant's psychiatric/psychological injury was assessed at 5 per cent, and lump sum compensation in the amount of $19,938.50.

[104] The applicant advised the respondent on 15 June 2025 that she decided to defer the offer.[50] On 16 June 2015, the respondent terminated the applicant's entitlement to compensation under s 190 of the WCRA.

[105] The issue here involves an interpretation of s 190 of the WCRA. The objective of statutory construction is to give the words of a provision the legislature intended them to mean.[51] The starting point for consideration is the text of the provision and regard is to be had to its context and purpose.[52] A court will not depart from the natural and ordinary meaning unless it is plain that the Parliament intended it to have a different meaning.[53]

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50 This was under s 189(3) of the WCRA.

51 *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [78].

52 *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34; (2017) 262 CLR 362 at [14]. *The Queen v A2* [2019] HCA 35; (2019) 269 CLR 507 at [32]-37].

53 *Masson v Parsons* [2019] HCA 21; (2019) 266 CLR 554 at [26].

[106] Also, s 14A of the *Acts Interpretation Act 1954* (Qld) provides that the interpretation to be preferred is one which achieves the Act's best purpose.

[107] Section 190 of the WCRA provides:

> "**190 No further compensation after fixed time**
>
> (1) This section applies to a worker who has been given a notice of assessment.
>
> (2) The worker is not entitled to further compensation for the injury after the first of the following happens—
>
> (a) the worker notifies the insurer of the worker's decision about the offer within the decision period;
>
> (b) 20 business days have passed since the worker received the offer.
>
> (3) This section does not limit the worker's entitlement to payment of—
>
> (a) lump sum compensation, if any, under part 3, division 5; or
>
> (b) lump sum compensation under section 188(4) or 189(5); or
>
> (c) additional compensation, if any, under division 4; or
>
> (d) compensation under chapter 4A."

[108] The context of the provision also needs to be considered.

[109] Section 179 of the WCRA permits an insurer to decide to have a worker's injury assessed to decide if the worker has suffered a DPI. For psychiatric injury to assessment must be made by a Medical Assessment Tribunal.

[110] After this s 185 of the WCRA provides:

> "**185 Insurer to give notice of assessment of permanent impairment**
>
> (1) The insurer must, within 10 business days after receiving the assessment of the worker's permanent impairment, give the worker a notice of assessment in the approved form.
>
> (2) To remove any doubt, it is declared that if a worker sustains multiple injuries in an event, the insurer must give the notice only after the worker's DPI for all injuries has been decided.
>
> (3) The notice must state—

> (a) whether the worker has sustained permanent impairment from the injury; and
>
> (b) if the worker has sustained permanent impairment—
>
> (i) the DPI for the injury; and
>
> (ii) the amount of lump sum compensation under section 180 to which the worker is entitled for the injury; and
>
> (c) if the worker is entitled to additional lump sum compensation under division 4—the worker's entitlement."

[111] Section 189 of the WCRA applies where the DPI for a psychiatric injury is less than 5 per cent and has an entitlement to lump sum compensation. The insurer must advise the worker that they must make an irrevocable election on whether they receive the sum or seek damages for the injury. Under s 189(3):

> "The worker may accept, reject or defer a decision about the offer by giving the insurer written notice within the decision period."

[112] The evident purpose of these provisions is so that the WCRA does not provide open-ended benefits in favour of a claimant. It is a short tailed or finite scheme.[54]

[113] It is my opinion that the decision to defer was still a decision about the offer. I therefore consider that the decision to defer meant that the applicant was not entitled to further compensation.

[114] The respondent also submits the legislative history is of some importance as to the interpretation.

[115] Section 190 of the WCRA was enacted in fairly much its present terms by the WCRA on 23 May 2003. The Explanatory Notes[55] which accompanied the introduction of s 190 of the WCRA explain that it was intended to replace s 208 of the *WorkCover Queensland Act 1996* (Qld) which stated:

> "Clause 190 replaces s 208 of the *WorkCover Queensland Act 1996*. It specifies that no compensation is payable (including weekly payments, medical, rehabilitation and other expenses) after the worker notifies WorkCover of their decision or after 28 days after receiving the offer, whichever is first. This does not limit the workers entitlement to payment of the lump sum or any additional lump sum compensation (if entitled)."

[116] Section 208 of the *WorkCover Queensland Act 1996* (Qld) which was immediately in force prior to the in force prior to the enactment of the WCRA provided:

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54 *WorkCover Queensland v Yang* [2022] QCA 196; (2022) 12 QR 43 at [88]. Certainly, five years is the upper limit – see s 144A of WCRA.

55 Explanatory Notes to *Workers Compensation and Rehabilitation Bill 2003* page 53.

"**208 No further compensation after fixed time**

(1) This section applies to a worker who has been given a notice of assessment.

(2) The worker is not entitled to further compensation for the injury after the first of the following happens—

(a) the worker notifies WorkCover of the worker's decision about the offer within the decision period;

(b) 28 days have passed since the worker received the offer.

(3) This section does not limit the worker's entitlement to payment of—

(a) lump sum compensation under section 206(4) or 207(5); or

(b) additional compensation, if any, under division 4."

[117] Section 208 of the *WorkCover Queensland Act 1996* (Qld) was itself enacted to replace s 135 of *the Workers Compensation Act 1990* (Qld). Which on repeal provided:

"**135 No further compensation after offer**

(1) This section applies if an offer of lump sum compensation under section 132 is made.

(2) A worker to or for whom an offer of lump sum compensation is made is not entitled, after the acceptance, rejection or deferral of the offer—

(a) to further compensation in relation to the injury; or

(b) to payment of expenses of any description in relation to the injury.

(3) This section does not limit the worker's entitlement to payment of the lump sum compensation offered after acceptance of the offer." (added emphasis).

[118] Importantly, s 135(2) expressly referred to "acceptance, rejection of deferral of the offer." The Explanatory Notes which accompanied the introduction of s 208 of the *WorkCover Queensland Act* explained that the amendment was intended to clarify the intent of the provision and update it in accordance with the current draft in practice:[56]

"Clause 208 replaces section 135 of the *Workers' Compensation Act 1990.*

It has been changed to clarify its intent and to update it according to current drafting practice. It specifies that no further compensation is payable (including weekly payments, medical, rehabilitation or other expenses) after the worker notifies WorkCover of their decision or

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56 Explanatory Notes WorkCover Queensland Bill 1996 p 84.

> after 28 days after receiving the offer, whichever is first. This does not limit the worker's entitlement to payment of the lump sum or any additional lump sum compensation (if entitled).
>
> (emphasis added)"

[119] The legislative history supports the contention that the deferral of an offer is a decision about the offer within the meaning of s 190(2)(a) of the WCRA.

[120] It is important to note s 14C of the *Acts Interpretation Act 1954* (Qld) provides:

> "**14C Changes of drafting practice not to affect meaning**
>
> If—
>
> (a) a provision of an Act expresses an idea in particular words; and
>
> (b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—
>
> (i) the use of a clearer or simpler style; or
>
> (ii) the use of gender-neutral language;
>
> the ideas must not be taken to be different merely because different words are used."

[121] It may be concluded that the legislative history supports the contention that s 190 of the WCRA and the provisions it replaced were always intended to provide that once a worker had made a decision about a lump sum offer i.e. acceptance, refusal or deference, then compensation for the injury ceases.[57]

[122] The respondent is correct in its contention that the applicant was not entitled to further sessions with a psychologist after that date or for rehabilitation costs. The payment for medical treatment is compensation within the meaning of s 9 and s 190(2) of the WCRA.

[123] Section 9 of the WCRA is compensation payable under chapters 3, 4 and 4A by an insurer. Chapter 3 relates to weekly payments; Chapter 4 relates to injury management including medical treatment, hospitalisation and expenses, travelling expenses and rehabilitation. "Medical treatment" includes treatment by a psychologist.[58]

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[57] See *WorkCover Queensland v Turner Freeman & Anor* [2020] QCA 194 at [77] – [80]; *Wilkie v The Commonwealth; Australian Marriage Equality Ltd v Cormann* [2017] HCA 40; (2017) 263 CLR 487 at [107].

[58] Schedule 6.

ISSUE 4 - THE "INJURY" OF HIGH BLOOD PRESSURE

Submissions

[124] It is alleged by the applicant that there was no assessment by a doctor of the applicant's high blood pressure as required by s 179(2)(c) of the WCRA.

[125] It is submitted by the respondent that this allegation is misconceived, because any "injury" of high blood pressure was not part of the acceptance of the applicant's application. But in any event the issue was considered by the Tribunal.

Discussion

[126] The applicant relies on *Merton v Queensland Local Government Workcare Scheme*.[59]

[127] In that particular case the applicant had injured his left hip at work and applied for compensation and was paid weekly payments. It was noted by Philip McMurdo JA, that Part 10 of the WCRA provides for a process by which the workers injuries are assessed and by which the insurer gives a notice of an assessment of a permanent impairment. For an injury such as the hip injury, the assessment is to be undertaken in the first instance by a doctor. Once this is done there is a notice of assessment which affects the way in which a worker may seek damages for the injury. In that particular case it was held that the respondent was obliged under s 179 of the WCRA to have the applicant's hip injury assessed by a doctor.

[128] The applicant also relies on *Apelu v Lusty Tip Trailers Pty Ltd.*[60] In that case the plaintiff was struck on the back of the head and was rendered unconscious. He sued in respect of the head injury and claimed that he also suffered a psychiatric injury. Brown J held that the defendant was entitled to set up a defence that the psychiatric injury had not been assessed under s 185 of the WCRA.

[129] The decisions of *Merton* and *Apelu* may be distinguished from the instant case for the following reasons:

(a) In both of those cases there was a completely different injury considered. It has been accepted that there may be situations where an impact is more rather described as a symptom of a claimed injury.[61]

(b) There was an assessment by a doctor in this case. Dr Gill provided a certificate which was provided to the Tribunal which noted that the applicant had hypertension likely caused by workplace stress. It was taken into account by the Tribunal.[62]

(c) The most likely situation here is that the hypertension/high blood pressure was a symptom of the psychiatric condition.[63] In those circumstances I did not

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59 [2016] QSC 017.
60 [2023] QSC 262; (2023) 328 IR 93. On appeal [2024] QCA 158; (2024) 333 IR 413.
61 *Sawtell v State of Queensland* [2026] QCA 62 at [36].
62 Page 330 of exhibit 2; reasons page 920 affidavit of Ms Toniello.
63 This is what Dr Gill said see page 330 of exhibit 2.

consider that there was a necessity to provide a different assessment regarding the high blood pressure/hypertension.[64]

(d) Indeed, Mr Abaza specifically made submissions to the Tribunal as to her blood pressure readings.[65]

ISSUE 5 – ALLEGATION THAT THE DECISION TO REFUSE REHABILITATION WAS UNLAWFUL

Submissions

[130] The applicant submits that the decision of the respondent to refuse to provide rehabilitation to her is unlawful.

[131] The respondent, on the other hand, submits that the applicant lodged an appeal against the regulator's decision to the QIRC, and as such, there is no warrant to make a declaration. It submits that regardless the decision is not wrong.

Discussion

[132] On 2 July 2025, the respondent advised the applicant that, "it recently stopped paying compensation for your claim without referring you to our accredited rehabilitation and return to work program."

[133] The respondent's reasons for decision identified the fact that during 2024, steps were made to refer the applicant to a rehabilitation and return to work program, but there was an unwillingness on the applicant's behalf to participate. This meant that the program was unlikely to provide any assistance. Ms Tonielli sets out in detail the facts surrounding this. Her evidence is unchallenged. On 12 August 2025, the regulator confirmed this decision. The regulator also noted that the applicant had been engaged in actual employment for a number of years and did not meet the requirements of s 220(3)(c) of the WCRA.

[134] The applicant, as she was entitled to, appealed this matter to the QIRC under s 549 of the WCRA. That matter is the subject of an order of Industrial Commissioner Dwyer to stay the matter.[66] This decision is the subject of an appeal to the Industrial Court of Queensland.

[135] I accept the respondent's contentions. In *Forster v Jododex Australia Pty Ltd*[67] it was noted that when a specialist Tribunal is appointed by statute to deal with matters arising under its provisions, then as a general rule such procedures should take their course and should not be displaced by the making of declaratory relief.

[136] Similarly in this case, I consider it inappropriate for the Supreme Court to inquire into this matter when it is a matter for the QIRC to consider.

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64 *Barraclough v WorkCover Queensland* [2012] QDC 321 at [56]; *Apelu v Lusty Tip Trailers Pty Ltd* [2023] QSC 262; (2023) 328 IR 93 at [124].

65 Affidavit of Andrew Abaza CD 5 [100].

66 *Holman v Workers' Compensation Regulator* [2025] QIRC 328.

67 [1972] HCA 61; (1972) 127 CLR 421 at p 427.

[137] As the respondent submits there are clear appeal rights vested in the applicant. The hearing before the QIRC is a hearing *de novo* and the applicant is entitled to put on whatever evidence she wishes to as to the decision.

[138] But regardless, I could detect no error in the decision. The respondent's reasons for decision[68] identified the fact that during 2024, steps were made to refer the applicant to a rehabilitation and return to work program, but there was an unwillingness on the applicant's behalf to participate. This meant that the program was unlikely to provide any assistance.

[139] The evidence tends to justify this decision. The evidence reveals the following:

(a) On 2 April 2024, Ms Toniello organised a referral to Kinnect Pty Ltd a return-to-work provider (**RTW**).[69]

(b) On 8 and 9 April 2024, Kinnect arranged an appointment with the applicant.

(c) The applicant declined to sign a consent form which the RTW provider required because of the name of her employer.[70]

(d) A fresh consent form was sent to the applicant on 9 April 2024.[71]

(e) On 14 and 15 April 2024, the applicant postponed the appointment she had with Kinnect.[72]

(f) The applicant still did not sign the consent form as at 23 April 2024.[73]

(g) On 13 May 2024, Kinnect tried to contact the applicant to see if she wanted to participate. The applicant did not contact them. They closed their file.[74]

(h) On 20 January 2025, the applicant was provided with a further rehabilitation and RTW plan.[75]

(i) On 24 January 2025, the applicant raised concerns about the plan.[76]

(j) On 13 June 2025, Ms Toniello offered to re-engage RTW planning.[77] A plan was sent.

(k) On 16 June 2025, entitlement to compensation ceased.

[140] Ms Toniello says that the reason the decision was made not to refer the applicant to its employment connect program was because the RTW provider's efforts were frustrated by the applicant's refusal to agree to the terms of engagement. The applicant never proposed an alternative RTW provider. She says:

> "Workcover attempted to provide the Applicant with an RTW plan however her refusal of the RTW provider's terms of service made this difficult. She

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68 Affidavit of Ms Toniello pages 1001-1007.
69 Affidavit of Ms Toniello [60].
70 Affidavit of Ms Toniello [63].
71 Affidavit of Ms Toniello [66].
72 Affidavit of Ms Toniello [68].
73 Affidavit of Ms Toniello [72].
74 Affidavit of Ms Toniello [74], [75].
75 Affidavit of Ms Toniello [112].
76 Affidavit of Ms Toniello [114].
77 Affidavit of Ms Toniello [170].

otherwise did not assist by proposing an alternative RTW provider whose terms of service she was prepared to accept."

[141] Section 220(1) of the WCRA provides that an insurer must take all reasonable steps to secure the rehabilitation and early return to suitable duties of a worker who has an entitlement to compensation.

[142] Section 220(3), (4) and (5) of the WCRA provides:

"**220 Insurer's responsibility for rehabilitation and return to work**

…

(3) Without limiting subsection (1), an insurer—

(a) may refer a worker who is receiving compensation for an injury to an accredited rehabilitation and return to work program of the insurer; and

(b) must refer a worker who is receiving compensation for an injury, and has asked the insurer to be referred to a rehabilitation and return to work program, to an accredited rehabilitation and return to work program of the insurer; and

(c) must refer a worker who has stopped receiving compensation for an injury under section 144A, 168 or 190(2), and has not returned to work because of the injury, to an accredited rehabilitation and return to work program of the insurer.

(4) However—

(a) subsection (3)(b) and (c) does not apply if the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury; and

(b) subsection (3)(c) does not apply if the worker is already participating in an accredited rehabilitation and return to work program of the insurer.

(5) A worker who is referred under subsection (3) to an accredited rehabilitation and return to work program of an insurer is entitled to participate in the program until the first of the following happens—

(a) the insurer is satisfied the worker is unwilling or unable to participate in the program;

(b) the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury;

(c) the worker receives a payment of damages for the injury;

(d) the worker receives a redemption payment for the injury;

(e) the worker receives compensation for the injury for 5 years.

…"

[143] In this particular case, there was reasonable evidence available to the respondent that a program was unlikely to provide any assistance, and that was a valid reason under s 220(4)(a) of the WCRA to decide not to refer the applicant to a rehabilitation and return to work plan. Alternatively, there was evidence that the applicant was unwilling to participate in the program. Further, there was no requirement to further refer the worker as she had returned to work (see s 220(3)(c) of the WCRA.)

[144] Finally, for the reasons expressed earlier, the termination of compensation under s 190(2) of the WCRA meant that rehabilitation benefits ceased.

ISSUE 6 – ALLEGATION AS TO WAGE DECISIONS

Submissions

[145] The applicant makes complaint concerning the wage payments decisions. She says that the calculation of the weekly payments is incorrect alleging that an incorrect methodology was used by WorkCover.

[146] The respondent submits that the matters are the subject of appeals to the QIRC, and that specialist Tribunal should have the conduct of this case. It is submitted that regardless the calculation has not been proved to be wrong.

Discussion

[147] On 20 October 2023, the respondent decided that the rate of payment of compensation was $708.35 which was 85 per cent of NWE.[78] The decision maker took into account the wages paid from 8 June 2020 until 23 May 2021 and used a statistical measure to determine NWE at $833.35. 85 per cent of this was $708.35 per week.

[148] On 17 November 2023, WorkCover gave reasons for ceasing the payment of weekly compensation from 9 August 2022.[79] This decision was set aside on 20 February 2024.[80] It was affirmed that the payment was to be $708.35 per week.

[149] There is also an ancillary decision as to a partial payment for the week of 6 January 2025 which is also the subject of an appeal to the QIRC.

[150] The applicant appealed this decision to the QIRC.[81] This matter has been stayed by Industrial Commissioner Dwyer. That decision is the subject of an appeal to the Industrial Court of Queensland. Indeed, I note from the notice of appeal that the applicant argues there are many errors in the calculations. These would need to be the subject of evidence from the applicant.

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78 Affidavit of Ms Toniello p 269.
79 Affidavit of Ms Toniello [50].
80 Affidavit of Ms Toniello [42].
81 Affidavit of Ms Toniello [53].

[151] I accept the respondent's submissions. I consider applying the principle in *Forster v Jododex Australia Pty Ltd*[82] that this is exactly the sort of matter a specialised Tribunal should deal with. The applicant can lead evidence at this de novo hearing of how she says the calculations are incorrect. This has not been done here.

[152] But regardless, I did not see any error on the evidence in the calculations.

[153] Section 150 of the WCRA provides:

> "**150 Total incapacity—workers whose employment is governed by an industrial instrument**
>
> (1) The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week—
>
> (a) for the first 26 weeks of the incapacity, the greater of the following—
>
> (i) 85% of the worker's NWE;
>
> (ii) the amount payable under the worker's industrial instrument; and
>
> (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
>
> (i) 75% of the worker's NWE;
>
> (ii) 70% of QOTE; and
>
> (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
>
> (i) if a worker demonstrates to the insurer that the injury could result in a DPI of more than 15%—the greater of the following—
>
> (A) 75% of the worker's NWE;
>
> (B) 70% of QOTE; or
>
> (ii) otherwise—an amount equal to the single pension rate.
>
> (2) However, the amount paid under subsection (1)(b) or (c) must not be more than the amount to which the worker would be entitled under subsection (1)(a)."

[154] Section 106 of the WCRA provides:

> "**106 Meaning of *normal weekly earnings***
>
> (1) *Normal weekly earnings* are the normal weekly earnings of a worker from employment (continuous or

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82 [1972] HCA 61; (1972) 127 CLR 421 at p 427.

intermittent) had by the worker in the 12 months immediately before the day the worker sustained an injury.

(2) If a worker has not had employment for the 12 months immediately before the day the worker sustained an injury, *normal weekly earnings* are the normal weekly earnings of the worker from employment (continuous or intermittent) had by the worker in the period in which the worker has had the employment.

(3) *Normal weekly earnings* are calculated as prescribed under a regulation."

[155] The Regulations provide as to the method of calculation. Regulation 106 provides as to what amount may be taken into account:

"**106 What amounts may be taken into account**

(1) In calculating the worker's NWE, amounts paid to the worker by way of overtime, higher duties, penalties and allowances, in relation to work required by the worker's employer, may be taken into account but only if the amounts—

(a) are of a regular nature; and

(b) would have continued if not for the worker's injury.

(2) However, amounts mentioned in the Act, schedule 6, definition *wages*, paragraphs (a) to (d) must not be taken into account in calculating the worker's NWE.

[156] Wages is defined in schedule 6 as:

"*wages* means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include—

(a) allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and

(b) superannuation contributions, for deciding the amount of compensation payable to a worker under chapter 3 or 4; and

(c) lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and

(d) an amount payable under section 66."

[157] In this matter the following appears on the evidence:

(a) On 16 August 2023, WorkCover received the payroll advices from the applicant's employer for the period 25 May 2020 until 27 May 2021.[83]

(b) Those invoices were used to calculate the NWE by Mr Wright for his decision dated 20 October 2023. Mr Wright chose to apply $708.35 instead of the amount from the industrial instrument of $358.35.

(c) The regulator in the decision of 20 February 2024 referred to the correct sections of the WCRA and the correct definition of wages. The information was based on the information from the accountant for the employer. The regulator had regard to the payslips and concluded the WorkCover calculations were correct.

(d) WorkCover back paid the applicant $17,124.14.[84]

[158] I have compared the wages that were actually paid to the applicant, and I did not see that any material error is established concerning the wages decisions on the admissible evidence before the court. Any issue as to increases under s 107B of the WCRA are matters to be dealt with by the QIRC as is the dispute about the $2147.76 deduction.

[159] During the reply (over objection) Mr Abaza on behalf of the applicant tendered exhibit 15 which suggests the applicant was paid some wages from Freedom Fuel in the 12 months before the injury. There is no evidence before the court that these documents were given to WorkCover. Indeed, Ms Toniello in her affidavit says that the applicant had not produced WorkCover any proof that she had an ongoing expectation of income from Freedom Fuels or any other source.[85]

[160] She also says:

> "To assess the applicant's entitlement to weekly compensation for her partial capacity, I needed the applicant's assistance to provide me with a payslip. She had told me that she did not want me to contact her new employer. I did not have any other reasonable means of accessing the applicant's weekly wages information."[86]

[161] In that circumstance, where there is no proof that WorkCover was provided the payslips from Freedom Fuels, it cannot be shown WorkCover was in error in the calculations which they made. It is a matter for the applicant to either put the further information to WorkCover for recalculation or a matter which should be placed as "new evidence" before the QIRC.

[162] Similarly, with respect to the wage decision[87] as to the week commencing 6 January 2025, this is also the subject of an appeal to the QIRC. For similar reasons given previously the appropriate forum for this dispute is the QIRC.

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83 Affidavit of Ms Toniello TT11.
84 Affidavit of Ms Toniello [57] and TT 213-page 1019.
85 Affidavit of Ms Toniello [201].
86 Affidavit of Ms Toniello [202].
87 Review decision dated 6 May 2025 page 126 affidavit of Mr Mortensen.

[163] There was an issue raised concerning certain travel expenses. Again, this was the subject of an appeal to the QIRC which was resolved. There is no basis to grant declaratory relief on hypothetical matters.

[164] During the reply, Mr Abaza tendered to the court exhibit 16 in which he submitted a number of decisions made were void. The issues in this case were identified at the commencement of the hearing and they have been dealt with in this judgment.

CONCLUSION

[165] For the reasons given, the applicant has not established any grounds for relief.

[166] I make the following orders:

1. The originating application is dismissed.
2. I will hear the parties on the question of costs.