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QUEENSLAND INDUSTRIAL

RELATIONS COMMISSION

DWYER C

No WC/2020/175

KELLY, LYNETTE GRACE v. WORKERS' COMPENSATION REGULATOR

BRISBANE

10.04 AM, MONDAY, 27 SEPTEMBER 2021

DAY 1

HEARING

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

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COMMISSIONER: Take a seat, thank you. We'll start with appearances, thank you.

5 MR M.B. WHITE: Good morning, Commissioner. My name is White, spelt W-h-i-t-e, initials M.B. of counsel. I'm instructed by Butler McDermott Lawyers on behalf of the appellant.

COMMISSIONER: Thank you, Mr White.

10 MR S.P. SAPSFORD: Good morning, Commissioner, my name is Sapsford, S-a-p-s-f-o-r-d, initials S.P., and I'm instructed by and appear on behalf of the Regulator.

COMMISSIONER: Thanks, Mr Sapsford.

15 MR SAPSFORD: Thank you, your Honour.

COMMISSIONER: All right. Are we ready to proceed? Any preliminary matters before we get underway?

20 MR SAPSFORD: Yes. I have a couple. The first's a housekeeping matter, your Honour. We attempted earlier on this week to compile a bundle of documents for your Honour and for the court. Now, by the weekend, which has just gone by, the appellant decided that was not suited to its purposes and prepared its own bundle of documents. Now, I've just been handed that now, and it appears to correlate
25 somewhat with the documents that the respondent prepared, so for the purpose of getting on with it, I'm quite happy to operate on that bundle of documents, but it just may be there are certain documents not in that one that I may need to stop and look for, and it may be that some of the documents numbered in that list do not actually correspond to ours, and there may be a little delay in making sure we've got the same
30 document, that's all, with respect to that.

COMMISSIONER: Okay. Yes, that's fine. We'll just get on with it, I think.

35 MR SAPSFORD: Yes.

COMMISSIONER: When are we hearing from the medical experts? I'm just looking at – I just – I haven't had a proper look at the trial plan, yet, but I'm looking at it now. We've got Dr Harrison is tomorrow?

40 MR WHITE: That's correct.

COMMISSIONER: And then psychologist is Gale Baker, and she's tomorrow, as well, is she?

45 MR WHITE: That's correct, Commissioner.

COMMISSIONER: All right. I have a preference to see any reports or any opinions in advance for those people, so if you could provide me with those at some point through the day today so I can look at them before I hear evidence from those witnesses tomorrow.

5

MR WHITE: They - - -

COMMISSIONER: Obviously, not receiving them into evidence. I just want to read them before we hear from them so I can give some meaning to what they're saying.

10

MR WHITE: Yes. The appellant's bundle contains a tab relating to medical evidence.

15

COMMISSIONER: Okay.

MR WHITE: So perhaps [indistinct] when we provide a copy and, in fact, we can do that now, if it pleases the commission, provide a copy of that one.

20

COMMISSIONER: All right. Do you want to hand up your bundle now, too, Mr Sapsford, just to – so I've got everything up here. So is it the case that there are some corresponding documents in these bundles?

25

MR SAPSFORD: Yes, your Honour. Yes. There are, indeed, in the respondent's bundle a number of documents which are unlikely to be tendered and - - -

COMMISSIONER: Okay.

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MR SAPSFORD: - - - are not found in the appellant's bundle, so - - -

COMMISSIONER: All right.

MR SAPSFORD: That seems to be the primary difference between the two bundles.

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COMMISSIONER: All right.

MR SAPSFORD: And do you think it'll take the full four days, Mr White?

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MR WHITE: We've been conservative in the approach. I expect that it very well may. It will, perhaps, just be a matter of the extent of the evidence that's required on Thursday.

COMMISSIONER: All right.

45

MR WHITE: And the commission's preference for how we address in the closing.

COMMISSIONER: All right. We'll probably deal with that when we get a bit closer to the end. I think sometimes with these things, it might be convenient to go to oral submissions, but we might all be at a point by day 3 where the parties have decided they want to review the transcript and we'll go to written submissions, but
5 I'll be, you know, guided by the parties' wishes in that respect, and we probably won't be in a – none of us will be in a position to make a decision about that till we get to about Wednesday, I suspect.

MR SAPSFORD: Can I just indicate, for the benefit of my learned friend, that my
10 preference will be to provide both oral and written submissions on Thursday.

COMMISSIONER: Sure. All right.

MR SAPSFORD: Because going away and reading the transcript, really, is such a
15 chore, so - - -

COMMISSIONER: Yes.

MR SAPSFORD: If I can keep up to it - - -
20

COMMISSIONER: Yes.

MR SAPSFORD: - - - in the interim, I'm approaching it in that fashion, your
25 Honour.

COMMISSIONER: And not to suggest that I would force you down that path, Mr White, but I have a preference, you know, to keep things moving and adjourning away and getting transcript and then having written submissions often adds nothing but delay and costs to matters, and - - -
30

MR WHITE: That's my preference, as well, Commissioner.

COMMISSIONER: All right. Well - - -

MR WHITE: I was simply indicating that, I would've thought, hopefully, on
35 Thursday we can get through the evidence and closing submissions - - -

COMMISSIONER: Okay. Terrific.

MR WHITE: - - - on the Thursday.
40

COMMISSIONER: All right. Now, I've got your bundle here, Mr Sapsford.

MR SAPSFORD: Thank you, your Honour. If you want a second one, we can
45 provide a second one, as well.

COMMISSIONER: No, that's okay. One will be enough, I think.

MR SAPSFORD: Thank you, your Honour.

COMMISSIONER: I've just got the one set of eyes. Now, we've got a large crowd of people in the room. Are any of these people witnesses?

5

MR WHITE: None, other than the appellant, who'll be called first, Commissioner.

COMMISSIONER: Okay. All right. I've read the material. Do you require an opening, Mr Sapsford?

10

MR SAPSFORD: Yes, and I was just going to come to that point, your Honour. I do require an opening and taking into – and bearing in mind what your Honour has said about moving things along, I make this submission after careful consideration. The respondent wants a full and complete opening. Now, the reason for that is not to unduly delay proceedings, but if your Honour has regard, first of all, to the statement of facts and contentions on behalf of the appellant, you will see in relation to the list of stressors at paragraph 19, by the time the appellant descends to particularity as to those events contributory to her psychiatric illness, she gets to paragraphs (e) and (f), which are generalised allegations of Mr Wetherall being unpredictably rude and abrupt in his dealings and frequently having angry outbursts.

20

Now, prior to that, the appellant's been able to identify an event of June 2014 in paragraph (a) and a number of offence in the other paragraphs, but otherwise does not descend to particularise those events relied upon. The matter becomes complicated when one has regard to the various statements of the appellant, which contain reference to a multitude of events. When one has regard, as your Honour will, to the recently discovered, and towards the end of last week, note of the psychologist which contained a different set, or a similar set, and different events in relation to matters complained of by the appellant, and the respondent at the present time is entirely unaware of which of those events the appellant intends to rely upon to establish particulars in the list of stressors at 19(e) and (f), and that is only part of the problem.

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The appellant elects by email of 24 September 2021 to inform the respondent as to the evidence as to the evidence of the newly added witness, Ms Seran Carter, who the appellant has added to its witness list. Ms Carter will give evidence in relation to a number of matters, as contained in that email, one of which is "the office environment". Once again, the respondent is incapable of properly addressing that issue. It's not just a matter of being informed what's relied upon by the appellant. The respondent in his action has assiduously conferred with witnesses who have been named in an attempt to address each and every allegation that's been maintained.

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It's, at the present time, unsure whether it needs to further confer prior to cross-examination, and that position exists equally with the other, rather large witness on the part of the appellant, Ms July Mossup, who contain, in her statements, a plethora of allegations in relation to conduct allegedly engaged in by the employer through its

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managing director, Mr Wetherall, towards Ms Mossup. Now, the respondent is entirely aware of recent case law issued out of this jurisdiction with respect to similar fact evidence and the like [indistinct] that if it objected to such evidence, your Honour would likely rule in favour of the appellant being able to adduce that evidence, so the decision's been made not to pursue that objection, but, nevertheless, once again, it leaves the respondent in the position of attempting to figure out what it is the appellant is alleging occurred.

Now, this is what the respondent is entitled to know, with respect, your Honour, and I ask that my learned friend in his opening outline each and every occurrence said to make up either of those events contributory to the appellant's psychiatric illness or, alternatively, conduct on the part of Mr Wetherall towards other witnesses, such as Ms Mossup and Ms Carter, which it relies upon by way of similar fact. Thank you, your Honour.

COMMISSIONER: All right. That seems a fair proposition, Mr White. Are you able to provide an opening providing greater particularity around the type – particularly around the evidence you're going to lead in respect of the matters at paragraphs (e) and (f) in paragraph 19 of the statement of facts and contentions?

MR WHITE: I can.

COMMISSIONER: All right. All right. Ready to proceed?

MR WHITE: Yes, thank you.

COMMISSIONER: Thanks.

MR WHITE: Commissioner, this is an appeal against a decision of the regulator dated the 26th of November 2020. That decision was to confirm the early decision of WorkCover Queensland dated the 15th of June 2020, which decision rejected the appellant's application for compensation. The appellant, Ms Kelly, contends that she suffered a psychiatric injury whilst an employee of the company of Kokoda Spirit Proprietary Limited. Kokoda Spirit provides Australian-led treks and tours of the Kokoda Trail in Papua New Guinea. Ms Kelly was employed by Kokoda Spirit, eventually as its office manager from on or about the 1st of July 2010 until her employment was terminated on the 7th of July 2020.

She asserts that during the period of her employment she suffered a psychiatric injury in the form of depression and anxiety and insomnia. In its decision below, the regulator found by reference to the factors set out at section 32 of the Act that Ms Kelly sustained a personal injury, that the personal injury arose out of the course of her employment and the employment was a significant contributing factor to the injury, but it also found that to the extent the stressors relied upon by Ms Kelly were established on the evidence, they arose out of reasonable management action taken in a reasonable way by the employer.

And on appeal, I understand it's the case that none of the section 32 elements are admitted, but it is accepted that she was a worker. The appellant proposes to call five witnesses to establish a case in respect of each of the elements, and your Honour will note those witnesses in the trial plan. The first witness is the appellant herself, Ms
5 Kelly. She'll provide evidence as to the commencement of her employment with Kokoda Spirit. On or about – in or about June or July of 2010.

She will speak in respect of the fact that that originally started in a part-time role and eventually transitioned into a full-time role when she took over as office manager
10 after Mr Wetherall, who is the owner and director of Kokoda Spirit Proprietary Limited, after he and his wife, Michelle's, marriage broke down and Michelle left the office. She then took over as office manager. She'll speak in respect of the duties that that role entailed, which included a variety of administrative functions, as well as management functions and, in particular, updating details on the Facebook page for
15 Kokoda Spirit.

In respect of the workplace environment to which my learned friend alluded to, her evidence will be that Mr Wetherall was up and down with his moods, that she would never know what kind of mood he would be in each day, that there was – there was,
20 effectively, no distinction between the business and personal matters that arose or that she was exposed to in the work environment. The office environment itself was situated within Mr Wetherall's home. It was an office part within that residence, and she'll speak in respect of the implications that that had in respect of Mr Wetherall's personal matters.

25 She'll talk about exchanges that were had between her and Mr Wetherall, and Mr Wetherall and other workers in respect of his personal and, in particular, his relationships with woman, as well as conversations that were had about his views as to particular women and their appearances, and that included trekkers that were
30 participating in treks run by Kokoda Spirit. She'll speak in respect of the layout of the office within the house. She'll speak in respect of, in particular, around the house the identification of damage to the house borne out of matters that were explained to her to have been disagreements that Mr Wetherall had with parties.

35 She'll speak in respect of an incident that occurred in June of 2014. The account that she'll provide in respect of that will be consistent with the four statements that she's provided today in respect of that incident. So there's quite a fair bit of particularity in respect of what she'll account to in respect of that, but, in effect, that her and Mr Wetherall had an exchange and a conversation in which he was yelling and
40 screaming at her, that he came through the door, that he stood over the top of her, that he was making condescending statements to her that she thought that she was better than him, that he was pointing at her, spitting at her, that he was swearing at her and the effect that this had on her.

45 She'll then speak about an exchange that she had with Seran Carter, who's another employee, in respect of that incident. She'll then speak about an exchange that occurred between her and Mr Wetherall the following day, where they spoke about

the events that occurred and the visit that Mr Wetherall paid to her house. She'll then speak in respect of the terms of her employment by reference to employment documentation. She'll then speak about the changing of her employment conditions, which included a pay rise in or about May of 2018. She'll speak to payslips that
5 were provided – that were issued to her through the company's Xero accounting software, and attest to those that she received by way of email.

She'll speak in respect of being witness to an altercation that occurred between Mr Wetherall and a Ms Julie Mossup in – on the 12th of April 2018 and the exchange
10 that she witnessed between Mr Mossup and Ms – apologies – Mr Wetherall and Ms Mossup in respect of her leaving the office and that giving rise to her resignation, that is Ms Mossup. She'll speak in respect of conversations that occurred on the 27th of March 2020, in particular, an initial conversation that occurs inside the dwelling and office between her, Mr Wetherall and a witness by the name of Christine.
15 Apologies. I'll get Christine's last name. Apologies. Christine Wilson.

She'll speak in respect of an initial conversation that occurred within the officer regarding the standing down of Ms Wilson on account of implications associated with COVID and the effect they were having on the business. She'll then speak of a
20 second conversation that occurred outside, then in the mid- to late morning, between her and Mr Wetherall, in particular, that she made a request for access to some accrued leave, that that was not accepted by Mr Wetherall, that a conversation then occurred in respect of her outstanding superannuation, and Mr Wetherall's response, in effect, that he was not going to provide access to her accrued long service leave at
25 that time, and the situation in respect of her superannuation.

She'll then speak of an event on the 1st of April 2020. This was a Wednesday, when she had come into the office to undertake approximately five hours of work from about 10 am in the morning. She'll speak about the work that she performed on that
30 date, inquiries that were made, at Mr Wetherall's request in respect of JobKeeper, dealing with Mr Wetherall's accountant Mr Thomas, Paul Thomas. She'll speak about the effect – she'll speak of conversations that then occurred between her and Mr Wetherall and, in particular, his concerns about the fact that she was not going to be able to work for him the following day, and the effect that that interaction had on
35 her.

She'll then speak about conversations that were had with Mr Wetherall the following day on the phone, where he was incensed and angry, and very distraught by the fact that what he perceived as her response to him the day before as to her availability to
40 work on the Thursday. She'll speak of the effect that that exchange had on her and that it prompted her to then go and see her doctor, which she did the following day, that is on the 3rd of April 2020. Her doctor is Dr Harrison, who the commission will be hearing from. She'll speak about the matters that were accounted to Dr Harrison during that consultation, the fact that he prescribed her with medication and referred
45 her to her psychologist who, again, the commission will hear from Ms Baker, and that he provided her with a medical certificate.

5 She'll attest to providing that medical certificate to Mr Wetherall and speak of messages and emails that were thereafter exchanged where the parties provided their respective positions as to the effect of her employment, in particular, whether she was stood down or not. She will then speak about interactions that she had with Christine Wilson on the 6th of April, as well, in particular, that she returned the iPad and that iPhone that she had access to in the course of her employment.

10 She'll speak to the allegations – or to the circumstances regarding the work Facebook account. She'll speak about the basis upon which she was required and able to access that through the work computers. She'll speak about some of the – what she regarded as inappropriate content to which she was exposed in her duties in the course of her duties administering that account and she'll be taken to photos of messages, indicating the tenor of the messages that she was exposed to during the course of that.

15 She'll then speak in respect of the allegations that were levelled at her by Mr Wetherall, regarding her alleged overpayment and the retaining of the USB device containing downloads of those messages, the effect that that reporting to the police and a subsequent investigation which was ultimately not continued had on her, and the effect that the matters that I've spoken to previously have had, particularly in respect of her mental health. Those are the matters to which I propose to take Ms Kelly in her evidence.

25 MR SAPSFORD: I'm loath to interrupt my learned friend, but the opening he provides exemplifies the problem that I have, or that the respondent has with respect to the evidence for the appellant. The identification of the June 2014 event is sufficiently with respect to the date it occurred and the events that occurred there, well and good, but with respect to the environment, reference is made to exchanges with respect to Mr Wetherall's person life, conversations about trekkers, identification of damage to the house and matters which were explained to her by others.

35 All of that doesn't identify what the conversation was, when it occurred or what it's about. We still don't know. Now, he's opened his case and we still don't know what the evidence is going to be. I'm also conscious of the fact that the appellant's in court during the opening. I don't know – she's entitled to be, of course, but I don't know if my learned friend wants that, in particular, while he opens the evidence of other witnesses.

40 COMMISSIONER: Starting with the second part first, Mr White, Mr Sapsford makes an appropriate observation there that if you're about to open evidence in respect of other witnesses, then it's probably not appropriate that Ms Kelly be present to hear that evidence, but before we get to that, are you about to descend into any greater level of particularity in relation to these matters that are set out in items (e) and (f)? Before you answer that question, though, is it – am I correct in assuming
45 that the medical evidence goes to – is likely to go to the issue around the work – the

office environment and these sorts of things, that these are matters that the doctors have been told about and expressed a view about?

5 MR WHITE: If I can assist the commission, Ms Kelly has – there are no less than four statements of Ms Kelly recounting a variety of these matters. A number of those appear in the respondent’s bundle. Included in the medical evidence is a summary of events that occurred that Ms Kelly has provided to her doctor. Her doctor refers to that document as a summary of the matters that she’s recounted to him in arriving at his diagnosis in respect of her medical condition. So none of the
10 matters that I’ve referred to to date, in my respectful submission, stray to a large degree beyond the matters that are already contained in statements that have already been provided to or otherwise disclosed to the regulator.

15 MR SAPSFORD: That’s the problem. The respondent – the whole - - -

COMMISSIONER: Yes. No, I understand, Mr Sapsford. Yes.

20 MR SAPSFORD: The whole purpose, your Honour, of a statement of facts and contentions is to appraise the other side of those facts and contentions relied upon by the appellant. It’s insufficient to say, “Well, she said this in one statement; she said that in another statement; she said something to the doctor, it’s all there”, and then she can get in the witness box and pick out of that what she wishes without informing the respondent what is relied upon.

25 COMMISSIONER: It might be time, Mr White, for Ms Kelly to leave the room so I can make - - -

MR WHITE: Yes.

30 COMMISSIONER: - - - some further comments about this issue. So on my reading of that, I anticipate that it was a stressor that is in more of a global, sort of, generalised statement. I appreciate that doesn’t solve the problem that you’ve got, Mr Sapsford, but my understanding of what likely evidence around that was, well, you know, “I was walking around on eggshells the whole time. He was volatile and
35 he was unpredictable”, without it actually descending to particularity, as in, “On this day he was really unpredictable and I was very nervous that day”.

40 I get the impression from (e) and (f) that that’s going to be – the sort of evidence is going to be, “I just – you never knew what it was going to do. I never knew what sort of a mood he was going to be in and it made me nervous every day to go in there because he was so volatile and unpredictable”. That was the impression that I got, and that’s not going to be capable of a great deal more particularisation than what’s already available.

45 MR SAPSFORD: Indeed. Indeed, and if that is the extent of the evidence, then there’s no objection to that whatsoever. I mean, it’s entirely proper for Ms Kelly to come along and say, “Well, he was unpredictable in mood on a daily basis. His

moods were up and down. We didn't know what sort of mood he'd be in". There's no objection taken to that whatsoever. The problem is that there are a plethora of incidents described in her statements, and the plethora of incidents, I might say, are contained in the notes of the psychologist, as the matters told to the psychologist.

5 The respondent doesn't know which of those incidents are being relied on by Ms Kelly.

COMMISSIONER: I see. So - - -

10 MR SAPSFORD: And it would, with respect, be improper to just adduce all of that evidence, and I understand the appellant intends to, in particular, the notes of the psychologist, to adduce all of that evidence and leave the respondent in a position whereby it's not capable of properly answering each of the particular circumstances outlined in that document.

15 COMMISSIONER: So that's why I was asking about the doctors. Has Ms Kelly spoken to her GP or a psychologist about these matters that are globally or broadly referred to in (e) and (f) and descended into more detail saying, for example, "On this day he did this", or, "On this day he did that", or, "He said this to me one day", or, "I

20 saw him abuse one of the other staff members one day". Are those sorts of things contained in the doctor's notes where she's able to give more specific detail around these matters?

MR WHITE: They are. The difficulty that we're faced with is that the first

25 characterisation in respect of her evidence will be that she was in there walking on eggshells every day, that Mr Wetherall was volatile, that she never knew what kind of mood that he would be in, that if she's asked to articulate an example in respect of that, then she's going to be referring to these particular events that I've referred the commission to in my opening.

30 It may be the case that the medical evidence speaks to other more – other examples of that kind of conduct that led to her having that experience in the workplace environment, but in respect of the evidence that's led out of Ms Kelly, that'll be the extent of the evidence that's relied upon by the appellant.

35 COMMISSIONER: Is it fair to say, then, that those examples aren't specifically identified as stressors? They're examples of a general stressor.

MR WHITE: That would be my submission, is that they're examples of the general

40 stressors in (e) and (f) that the commission's already referred to as giving rise to the perception as to this – as to what she was going to walk into each day in the office environment generally.

COMMISSIONER: Subject to anything - - -

45 MR SAPSFORD: Well, I suppose it's going to end up, your Honour, and it's going to have to be to solve this problem, being a submission about the weight he gives to

the evidence. Those stressors not identified by Ms Kelly, by herself or through the assistance of her solicitors and counsel as being contributory to her psychiatric illness and appraise to the defendant and the statement of facts and contentions are but general background.

5

COMMISSIONER: Yes. And, look, I think that's where we're going to land for now, Mr Sapsford.

MR SAPSFORD: Yes.

10

COMMISSIONER: But in the course of the proceedings, in the giving of evidence, if any of those examples to support the generalised, sort of, stressor of the work – the office environment, if any of those examples start to morph into something more than that, then that give rise to – you'd be at a disadvantage at that point, and that might give rise to us having to consider what we do from there, whether it requires you being given the opportunity to get instructions, whether that requires an adjournment, whether there's any consequences with respect to costs and so forth. We will cross that bridge when we get to it.

15

20

MR SAPSFORD: Yes.

COMMISSIONER: As I understand it at the moment, the – (e) and (f) are generalised workplace environment stressors, and there will be some examples provided of the types of things that contributed to those stressors, but those examples are, of themselves, not being identified as stressors. Mr White's nodding. So I take it that means that that's a yes.

25

MR SAPSFORD: Yes. All right. Yes, your Honour. Thank you.

30

COMMISSIONER: All right. Just while we're talking, does the 2014 incident have any contribution to the injury sustained in 2020, or is it merely for contextual illustration? Because it's a very specific date and a very specific incident, but it's also a very long time ago.

35

MR WHITE: Yes.

COMMISSIONER: And I haven't seen any of the medical evidence yet, but I'm just wondering what contribution something seven years ago would've – well, six years ago from the date of injury would've had to the injury sustained in 2020.

40

MR WHITE: Yes, and I accept it's historical with regards to some of the other stressors that are identified, but is nonetheless identified as a stressor, so it is pointed to as contributing to the injury.

45

COMMISSIONER: All right. All right. Did you want to continue with your opening in respect of the other witnesses, then?

MR WHITE: Yes. Thank you. The commission will also hear evidence from Julie Mossup. At present, she's scheduled to give evidence tomorrow, but can give evidence today if the matter proceeds to that point. Her evidence will be in respect of the commencement of her employment. So she worked for Kokoda Spirit for two
5 periods. First was July of 2010 to April of 2011, and then the second was in July 2017 to April of 2019. She had a similar role to that of the appellant, Ms Kelly, that was an administration assistant in the first instance, and then when she came back to do her work in July of 2017, it was her and – effectively, her and Ms Kelly working together, because Michelle Wetherall had at that time ceased working for the
10 organisation.

She'll speak in respect of the workplace, as well. In particular, she'll explain the fact that there was quite a lot of friction that would occur within the office, that there were – it was difficult to assess the mood that Mr Wetherall would be in from day-to-
15 day, but each morning she would be anxious coming in, just to figure out what kind of mood Mr Wetherall might be in, and what to expect, that that might mean for her dealings with him during the day. She'll also speak in respect of the layout of the office and also identifying damage to items within the office.

20 She'll speak about her witnessing of interactions, in particular, between Mr Wetherall and Ms Kelly about the extent to which he would be responsive or non-responsive to her and the times on which he would be – have outbursts, that he would be disparaging of the – of Ms Kelly, comments that he would make in respect of her, again, to the effect of that she and her family thought that they were better than him,
25 that he would speak at her in a loud voice, that he would swear at her, that he would berate her, stand over her and try and intimidate her, and the impact that she witnessed that that had on Ms Kelly.

She'll speak about the circumstances giving rise to her departure on the 12th of April
30 2019, but, in particular, her interaction with Ms Kelly immediately after that altercation with Mr Wetherall, in effect, the nature of that interaction will be that she went into speak with Mr Wetherall in the laundry of the premises, and that during that they had an exchange in which he was yelling at her, that he came at her, that he was standing very close to her, that he – that spit was coming out of his mouth, that
35 he was in such a state of fury that she left the laundry and then that was the point at which she then came into the office with Ms Kelly and told her that she wasn't going to tolerate that any more and that she was resigning.

She'll give evidence that she did then resign. She'll also speak in respect of the
40 access that she had to the company Facebook account, the fact that accessing that account was a part of her role. The system of work that it was established where by employees would log onto the Facebook account through the work computer. She'll speak in respect of the messages that she witnessed appear whilst she was undertaking those duties in respect of the Facebook account, and she'll speak to
45 those photos – to photos that she took of a number of those messages and what they identified and the general tenor that they reflected of the messages that she would see, and she'll speak in respect of conversations and her observations as to Ms Kelly

and the effect that they had on her, and she'll speak in respect of the allegations of misconduct that are raised against Ms Kelly and to the extent that she can comment on what she observed herself as an employee of the company.

5 The commission will also hear from Ms Seran Carter. Ms Carter was an employee of Kokoda Spirit between 2011 and 2017. She'll speak about entering the employment and, again, what she recalls witnessing with respect to the office environment, but, in particular, just how she describes the nature of the environment and, in particular, interactions between the employer, Mr Wetherall, and Ms Kelly, in
10 particular, that he was abrupt, that he was rude and aggressive, that he unapproachable, that you had to read his mood and not engage with him too much if he was in a bad mood.

15 She'll also speak in respect of the physical office environment and damage that was identified to that, and the nature of conversations that would occur between Mr Wetherall and the other staff, including descriptions about his personal and sexual interactions and the extent to which that was discussed openly with the female staff, and the effect that that had on her, but, in particular, the – what she witnessed in respect of the interactions with Ms Kelly.

20 She'll speak about the June 2014 incident that was spoke to before in respect of Ms Kelly, about her returning to the office and witnessing Ms Kelly and the state that she was in after that interaction and, in particular, that she was visibly distressed, physically upset, that she was shaking, that she was crying. She'll then talk about a
25 conversation she had with Mr Wetherall in which he recounted his version of events to an extent.

30 She'll speak about her access to the Facebook account and the work that she was required to do in respect of accessing the Facebook account. She'll then speak to the inappropriate messages that – or what she characterised as inappropriate messages and the content of those, and she'll speak to photographs of those messages that she took herself for the purposes of discussing them with Ms Kelly with the view or attempting to come to an idea as to what to do about that situation.

35 She'll speak about her departure from the employment and then Mr Wetherall's relationship with Lyn and how it was a matter that she would discuss with Lyn and the other employees from time to time, just about the effect that they could see the interactions were having on Ms Kelly.

40 Those are the lay witnesses that the appellant proposes to call. in respect of the expert witnesses, the commission will hear from a Dr Gavin Harrison. He is Ms Kelly's general practitioner. She's been a patient of his since February of 2016. He's aware of the WorkCover claim and will speak to the notes that he's taken in his consults with Ms Kelly, the first of which occurred on the 3rd of April 2020. He'll
45 speak of the version of events that was recounted to him by Ms Kelly, in particular, he'll identify a summary that was provided to him by Ms Kelly as to those events.

He'll speak of the opinion that he formed in response to his consults with Ms Kelly, in particular, that she was suffering from depressive thoughts, that her stress had become distress, the fact that he identified she had depressive thoughts and anxiety about the workplace, that he issued her with a medical certificate in response to what he – in his opinion, is a psychological injury, that – in his opinion, that that arose – that injury arose out of Ms Kelly's employment and that her employment was the only contributing factor to that injury, that he referred Ms Kelly to Gale Baker, her psychologist, who will also provide evidence before the commission and that he continues to see Ms Kelly in respect of her injury.

The commission will hear from Ms Baker. She's Ms Kelly's psychologist. She'll speak about having been referred Ms Kelly by Dr Harrison under a mental health plan and that the first consultation occurred on the 22nd of April 2020. She'll speak of the matters that were recounted to her by Ms Kelly and how Ms Kelly presented, being that she was upset and tearful, had a lot of anxiety, had difficulty in speaking about it, provide an indication as to the history between her and Mr Wetherall. She'll identify letters issued by her to Dr Harrison confirming the outcome of her consultations that, in her opinion, Ms Kelly has suffered an injury, namely, extreme severe depression, stress and anxiety.

She'll speak about how that manifests itself in terms of her signs and symptoms, that it did arise out of her employment and her employment was the only contributing factor to her injury, there being no pre-existing conditions, and then she'll speak briefly in respect of the documentation and tests that were applied in diagnosing these symptoms, or the effects of the injury associated with Ms Kelly's injury, that she continues to see Ms Kelly regularly and the injury continues to affect her. That's a summary of the evidence that the appellant proposes to call, Commissioner.

COMMISSIONER: All right. Yes, Mr Sapsford?

MR SAPSFORD: No, sorry, your Honour. I just have a matter arising out of the opening in relation to the witness, Carter. My learned friend indicated that the witness Carter had taken certain photographs, that I have no doubt he intends to produce. We were favoured afternoon with a series of photographs. I haven't gone through them in detail. I don't know which of those photographs are attributed to the witness Carter.

I do note that the first of the photographs is dated 4 July 2020, being a date after both Ms Carter and Ms Kelly finished their employment with Mr Wetherall, so I wonder of the significance of that and wonder how it was obtained, in fact, but until my learned friend identifies which of those photos are attributable to Carter, we're entirely in the dark and can't obtain instructions, but perhaps that can be done at an appropriate adjournment and advised at a later date.

COMMISSIONER: Yes. Perhaps the counsel can discuss that during one of the breaks today and sort that issue out. Just one last thing, Mr White. In terms of the timing or the date of the injury sustained by Ms Kelly, is it going to be the case that it

– the date of injury is April 2020, or is it the case that it's an over period of time claim that's – that, I guess, stress claim that's arisen over a period preceding that.

5 MR WHITE: April 2020 would, effectively, be – well, Dr Harrison's evidence will be to the effect of it having been – having arisen in April of 2020, but that there will be stressors preceding that that might give an indication as to the fact that it may have occurred in some part, I guess, prior to that period, but for the purposes of identifying a period, it would be April of 2020.

10 COMMISSIONER: All right.

MR WHITE: If I can speak in respect of the issue of the photographs, if I can take the commission to the appellant's bundle.

15 COMMISSIONER: You've got the two folders, haven't you. Yes. Which one?

MR WHITE: I believe they're two copies.

20 COMMISSIONER: They're two copies, are they?

MR WHITE: One's a working a copy for the commission.

COMMISSIONER: I see. Thank you. All right. You can have one back. Yes.

25 MR WHITE: There's an index to the document bundle, and on page 2 of that index at the bottom, the commission will see there's a heading Miscellaneous Documents. Thirty-eight, 39 and 34 are Facebook Messenger messages and they're attributed to the parties who took those photographs of those messages.

30 COMMISSIONER: These are going to be introduced through Ms Carter, are they?

35 MR WHITE: Through each of the parties. So at 38, 39 and 40, 38 is entitled Facebook Messages Photos Taken by Appellant, 39, Facebook Messenger Messages Photos Taken by Ms Mossup and then 40 is Photos Taken by Ms Carter. So the person who took the photos is identified there in the index by reference to each of those photographs.

COMMISSIONER: So the photograph at page 361 is taken by Ms Kelly?

40 MR WHITE: That's correct, Commissioner. Pages 361 to 366 were taken by Ms Kelly.

COMMISSIONER: What do these go to?

45 MR WHITE: They speak to the messages that appeared on the Kokoda Spirit – sorry, I'll be careful with my language. The appellant's case will be that the Kokoda Spirit Facebook account was accessible by way of clicking on a toolbar icon on the

work computers. That Facebook account was – apologies. That Facebook page was accessible on account of the fact that it was logged into Facebook through Mr Wetherall’s personal Facebook account, and as a consequence of that, when the female staff members were accessing the Kokoda Spirit Facebook page through their work computers, personal messages link to Mr Wetherall’s Facebook account would pop up in the bottom of the screen. These are examples of the messages that would pop up on the screen when the witnesses were accessing the Kokoda Spirit Facebook account.

10 COMMISSIONER: Are these messages that were viewed by Ms Kelly prior to her – the termination of her employment?

MR WHITE: Yes.

15 COMMISSIONER: And are these – in terms of the stressors that are identified in the statement of facts and contentions and the list of stressors, which stressor do these relate to?

MR WHITE: Stressor 19(g), the applicant had access to the Facebook account.

20 COMMISSIONER: Okay. All right. Does that make it clearer, Mr Sapsford?

MR SAPSFORD: It does, thank you, your Honour.

25 COMMISSIONER: All right. All right. Are you ready to call Ms Kelly?

MR WHITE: Yes. Thank you, Commissioner. The appellant calls Lynette Grace Kelly.

30 MR SAPSFORD: And, perhaps, for clarity, while we’re waiting for Ms Kelly, if the respondent could just indicate its view with respect to the date of injury. Your Honour will note that Ms Kelly was first diagnosed with a psychiatric injury on the 3rd of April. It’s the respondent’s submission that that injury was not in its fully developed form until her cessation of work some two weeks later.

35 COMMISSIONER: Right.

MR SAPSFORD: And I have the relevant authority, if your Honour - - -

40 COMMISSIONER: All right. So she ceased work on a – sort of a – on a medical certificate, but also on some arrangement with respect to the COVID stand down, didn’t she, a couple of weeks after that?

MR SAPSFORD: Yes.

45 COMMISSIONER: When you say she ceased working, you’re not talking about when she was dismissed in July 2020? You’re talking about when - - -

MR SAPSFORD: No, no.

COMMISSIONER: The last day she worked.

5 MR SAPSFORD: The application for compensation was made - - -

COMMISSIONER: Fifteenth of April, I think it was.

10 MR SAPSFORD: - - - 15th of April, so that's - - -

COMMISSIONER: Yes.

15 MR SAPSFORD: - - - the date that the respondent says that it was in its fully complete form. I note that the first certification in a workers compensation management certificate provided by the doctor - - -

20 COMMISSIONER: Sorry, just a second, Mr Sapsford. Ms Kelly, you're about to give evidence. If you'd come up here to the witness stand, please. Are you – are we able to continue this discussion with her here?

MR SAPSFORD: Yes, I don't think it'll - - -

COMMISSIONER: Just hang on for a moment, thanks, Ms Kelly.

25 MR SAPSFORD: First certification on a workers compensation medical certification is the 15th of April and that corresponds with the application. So it would be the respondent's submission, and I don't think the appellant challenges this, that the injury in its fully developed form was not present until 15th of April.

30 COMMISSIONER: All right. Ms Kelly, just come and stand here in the witness box. You're about to give evidence in these proceedings.

35 **LYNETTE KELLY GRACE, SWORN** **[10.53 am]**

EXAMINATION-IN-CHIEF BY MR WHITE

40 MR WHITE: Ms Kelly, could you please state your full name for the record?---Lynette Grace Kelly.

And whereabouts do you live?---Twenty-one Sinatra Street, Sippy Downs.

45 And you're the appellant in this matter; is that correct?---That's correct.

So these proceedings relate to your employment with a company called Kokoda Spirit?---That's correct.

5 Could you just explain to the commission how you came to be an employee at that company?---It was word of mouth and Mrs Wetherall asked me to attend a meeting in 2010 and I started work there.

10 So can you explain who Mrs Wetherall is?---Mrs Wetherall is Mr Wetherall's ex-wife. Michelle Wetherall is Wayne Wetherall's ex-wife.

And who's Wayne Wetherall?---Wayne Wetherall was the managing director of Kokoda Spirit. My boss, effectively, or my ex-boss.

15 You spoke about a meeting occurring in 2010. Do you remember when or abouts in 2010 that was?---It was in June 2010. I believe it was towards the end. It was probably the school holidays, if I remember correctly.

And who was present for that meeting?---Just Michelle Wetherall and myself.

20 And what was the expectation provided to you by her as to what your role would be?---Simply admin and assisting her in the admin office.

25 And what was the nature of the work that Kokoda Spirit provided at that time?---It was – they trek into – primarily into Papua New Guinea on the Kokoda Track, and she needed assistance with just general administration in organising the treks and – for Australia and in Papua New Guinea.

30 How many days a week were you working or was it proposed you work?---I started at two to three days, and then it just gradually increased to full-time.

35 And do you recall how much you were paid at that time?---I believe my – I started in 2010, and I believe she started me on \$30 an hour, and then within a very short period of time that increased to \$40 an hour, and when, I just can't remember exactly. It was within a few months.

And did the nature of the work you were doing for Kokoda Spirit change over time?---It didn't change so much. It increased and it became – I just took on more duties.

40 And did Michelle Wetherall stay with the company?---Michelle Wetherall stayed with the company until her marriage fell apart.

That's her marriage with Mr Wetherall?---Sorry, yes.

45 And when abouts was that?---That was at the end. It was falling apart in 2013, and so 2013/2014 period, late 2013, early 2014, it definitely fell apart. It was done.

And did she stay with the company after that?---She only stayed in there for – she stayed in there for a few months. They tried to – tried to have a working relationship and that didn't happen. That – it finished in a - - -

5 So what effect did that then have for your work, if any?---Well, then I – when she eventually left, I had to, basically, take on the managerial role. So I took on tall the jobs that Michelle was doing up until that point.

And this period we're talking about is now - - -?---Twenty-fourteen.

10

And who were the other employees?---Seran Carter.

And in terms of those managerial duties that you were undertaking, what were they at that time?---Then I took on things like all the banking, all the paying of the bills. I took on the role of preparing expenses for PNG when all expenses went out. I took on the role of doing the wages for PNG and, then, eventually I was asked to do the wages for the Australian staff, as well. I certainly paid all the Australian guides. Yeah, all the banking. Michelle had initially done all the banking side of things and I took on all of that, as well as all the other admin.

20

And how would you describe the workplace environment at that time, when you took over that role in 2014?---Well, it was volatile at that time, because there was a lot of angst in the office, due to the breakdown of the marriage. There had been some altercations in the office doorway between Mr Wetherall and Mrs Wetherall. So it was a little – it was, obviously, tense and uncomfortable, and then once she left it gradually became more unpredictable.

25

And what do you mean when you say unpredictable?---Well, some days were okay, depending – it depended on Mr Wetherall's moods. This is right back in 2014. And some days when his – his interactions with other females weren't going so well, he became more agitated, more aggressive, more – I – I never knew what I was walking into in the morning.

30

When you say interactions with other females, you're referring to females in the office or - - -?---No, I'm – I'm talking about females that he was meeting. I'm talking about extra –partners.

35

And how were you aware of those?---He would speak about them all the time.

In what context?---He would tell us who he was seeing, for – where he was meeting them. He was on dating sites. We had – we had a couple of girls knock on the door that – while we were in the office that were looking for items of clothing that they'd left behind. It was just – he – he – he always shared very personal and – information about who he was seeing.

45

Was he in the office all the time?---No, not all the time. No. He – he would – he had – he often had girlfriends in either Sydney, Melbourne or Darwin, and so he would be either away visiting them or he would be on the track doing – leading a trek.

5 And when you say leading a trek, that's whereabouts?---He would one of the Australian guides on – if we had numerous treks out, he – he would be one of the Australian guides leading a trek.

10 Okay. I think you indicated that you never knew what the day would look like?---Yes.

So can you describe, I guess, the extremes of that, what that would look like?---Okay. So you didn't know. When his car was parked in the driveway, you knew he was there, and so you – you would walk in the door and you would say
15 good morning, and you'd either get nothing, which was not a good sign, or an exuberant, "Good morning", or a grunt, and then the day would escalate from there depending on that tone of that morning. Within minutes you knew that – what sort of a day it would be and we would start the day and – look, if we were having a bad day he would start by pacing the house. He would come in and rouse on you from the
20 moment you walked in that something had happened overnight, whether that was in his personal life or in a business capacity, it didn't matter, and he would just start raising his voice and expressing his angst at whatever he foresaw that the situation was. So whether he was having a fight with a girlfriend, then we would be given all the details of that. He would read us his texts and if we didn't reply appropriately,
25 then I would get yelled at about why I wasn't – I didn't have a comment to make.

Commissioner, can I ask that the witness be shown the appellant's trial bundle, please. I think we have a witness copy. So there's a bundle of documents there. Can I take you to pages – or page 349 of that. It's towards the back?---That's right.
30 Yeah.

So can you identify what we're looking at here, please?---That's the office that I worked in at Kokoda Spirit, which is in Mr Wetherall's house.

35 So there is some photos there from 349 that go on for a few pages. So starting at the first one, what do we see in this photograph here?---You're seeing the printer at the very back. Obviously, that's a door to the entrance. That first chair that you can see closest to the back wall, that was my chair, and this other chair was my colleagues chair. The one in the forefront of the photo is my colleague's chair.

40 Was whose chair, I'm sorry?---Colleague's. Whoever was in.

And then onto the next page, what are we looking at in that photograph?---So that's, once again, the – the chair to the – to the very right, if you like. The monitor's on the
45 corner there, that was my monitor, my chair, my colleagues. If you look off to the very left, that's in the – you can see where – that's where Mr Wetherall sat with his

monitor and his chair there. It was just on the outside of the – outside of our office. It was only the half-wall that separated us.

5 Okay. And then if you come to the next page. What do we see there?---It's the same thing. It's – so there – that was the half-wall that separated – he would often stand on this side of that wall. That was my chair in the corner, my monitor, printer and my colleague's.

10 And what could you see, if anything, through that half-wall? Looking the other direction?---So when I – from my corner seat, and from my colleague's, if we looked – if we looked out towards the half-wall, we would go out to the hallway and at the end of the hallway was Mr Wetherall's bedroom door.

15 Okay. I tender those, Commissioner.

COMMISSIONER: Not to give you a hard time about it, Mr White, but do I need them? What do I need the photos for?

20 MR WHITE: They provide an indication as to the - - -

COMMISSIONER: They worked in close proximity, there wasn't a full wall, she could hear everything he said, she could see him. Do I need photos for that?

25 MR WHITE: Not if they wouldn't be of assistance to the commission.

COMMISSIONER: I'm just – I'm not trying to give you a hard time.

MR WHITE: Of course.

30 COMMISSIONER: But I'm just very conscious of the fact, and I'm becoming more conscious of it as each month goes by, that I get handed a bunch of documents in proceedings.

35 MR WHITE: Yes.

COMMISSIONER: I end up with folder upon folder upon folder sitting on the floor of my room that I've got to trawl through to write decisions and 80 per cent of it I don't use.

40 MR WHITE: Yes.

COMMISSIONER: I don't need.

45 MR WHITE: I believe - - -

COMMISSIONER: If there's something – some incident that has occurred that I need to be taken to these photos to – that has some specific relevance or will give me

some specific assistance, great, but I'm not just going to accept stuff unless I can see
- - -

MR WHITE: Yes.

5

COMMISSIONER: - - - that it's - that there's a - you know, a clear reason why I
need to have these photos.

MR WHITE: Yes. The - - -

10

MR SAPSFORD: Probably - sorry to interrupt. It's probably good that you do,
your Honour. I'll be asking some questions on them later.

COMMISSIONER: About the photos?

15

MR SAPSFORD: Yes.

COMMISSIONER: All right. No problems. I'll admit those, and so there's three
photograph, and they are, by reference to your appeal book, Mr White - sorry, your
bundle of documents, Mr White, they are the documents found at pages 349, 350 and
351. I'll admit those three photographs and mark them exhibit 1.

20

EXHIBIT #1 ADMITTED AND MARKED

25

MR WHITE: Thank you, Commissioner.

COMMISSIONER: I'll just give you a heads-up, though, I'm not going to be
admitting this as a bundle. I'm going to take documents out as they're referred to
and admitted, and they will be - - -

30

MR WHITE: Yes.

COMMISSIONER: - - - separate exhibits.

35

MR WHITE: Thank you, Commissioner, and it may well be the case that not all
that's in the bundle will be proposed to be - - -

COMMISSIONER: All right. As I say, I'm not trying to give you a hard time.

40

MR WHITE: No, of course.

COMMISSIONER: I'm just trying to take a very efficient approach to what
documents I receive, because - - -

45

MR WHITE: Yes.

COMMISSIONER: - - - you know, I've fallen into the trap in the past of just accepting these people give me and worked out later on I don't need them.

MR WHITE: Yes. Whatever assists the commission.

COMMISSIONER: All right.

MR WHITE: So, Ms Kelly, you've just described the physical layout of the office. Do you recall any events in which you identify changes in that physical layout?---Changes in the physical layout?

Well, were there any circumstances that you recall that caused you to have regard to the state of the office and the building that you were in?---There were – so there were many situations where Mr Wetherall would be – would have his girlfriends around, for instance, and they would be arguing, for instance, in that – in that bedroom, and we could clearly hear them in the office. In one instance, I don't – I didn't hear the actual argument. I know there was raised voices, but shortly after that he came into the doorway and Seran and I were working at these desks, and he gave us a – he gave us a mouthful and attacked us both, because he felt that we haven't been friendly enough to someone in his family, and so – but the argument had started in the bedroom, and it had followed through into – he came through into the office from there and he was very aggressive in his manner.

COMMISSIONER: Does Mr Wetherall live in the business premises, does he?---Yes, he does.

MR WHITE: Was there ever any damage to the property that you identified?---Yes. On numerous occasions there was damage to the property, but there was one morning we walked in and there was no toilet door on the – on the toilet that we used. There was a sheet hanging from the door, and – and there was also – and there was an expectation that we would simply use that toilet, which I just couldn't do, and so I insisted on – I live not far from there, and I insisted on going home to use the toilet, which made him – which upset him, because, obviously, I wasn't in the office when I was going to the toilet, and then – but also in the kitchen there was a big long kitchen bench and opposite the kitchen bench there was a wall and there was a huge – we walked in there, and there was a huge dint, hole, not all the way through, but it – obviously, something had been thrown into the wall.

Do you remember when abouts you found these things?---That was definitely in 2014. I – it was - - -

Did you - - -?---I'm thinking around the August period in 2014. It was, like, not right at the beginning. It was later in that year.

Did you know what happened with the toilet door?---Yeah, we later found the toilet door in the laundry and it had a huge hole in it, because we – we kept asking him to put it on. If he didn't want us to leave the office to go to the toilet, then we needed a

door. We just simply weren't comfortable with a sheet hanging there, and so then we found the toilet door, but it stayed that way for nearly two weeks, I think.

5 So we're in 2014. Prior to August of 2014, do you recall specifically in June of 2014 having any interactions with Mr Wetherall?---Yes, I do. There was a -- Seran Carter, who's my colleague, was out having treatment for cancer, and I knew Mr Wetherall was particularly -- he appeared particularly upset this one morning. Like I said, he -- if he was having problems with girlfriends, then he wasn't very good at hiding his feelings, and he actually walk past that open wall. I was sitting at my desk in the
10 corner there and he walked past that open wall and I simply said to him, "Are you okay, Wayne?" and he swung back round, came in the door and I turned the chair around to face him and he stood over me and he yelled and screamed at me -- yelled and screamed at me. He was so close that I was actually getting spit on my face, and he -- as he was standing over me, he was pointing his finger down at me and his
15 accusations were that I was -- I was too hoity-toity and he was very, very put out that he didn't understand why my husband, Bill, didn't invite him to his 50th birthday part two years previously, and he felt that we thought we were better than he was, and that abuse went on for, I'd have to say, at least six, seven, eight minutes and I -- I had -- I wasn't -- I didn't say a word. I just sat there with -- obviously, upset.

20

So was anyone else there at the time?---Not at the time, no. No.

You mentioned some of the things that he was saying. Do you remember the kind of language that he was using?---He -- every second word was -- it was every second
25 word was, you know, "You effing think you're better than me. You're effing too hoity-toity". It - - -

You just "effing". Did he say "effing" or did he say the word "fuck"?---No. So do you want me to say it?

30

COMMISSIONER: You can say it. It's all right.

MR WHITE: The language that was used.

35 COMMISSIONER: We've heard it all before?---Okay. Sorry.

That's all right?---He was -- he -- he just told me I was, "Fucking too hoity-toity", and I was -- every second word was "fuck". I was "fucking this", I was "fucking that", I was just -- it was all a real personal attack on me and apparently the fact that I was
40 too hoity-toity. I was too -- I felt he felt that I was above him, I was better than him.

Did you say anything in response?---I said nothing. I was incapable of speaking. I literally just sat there as he stood over the top of me. I was frightened. I was -- I didn't know how far -- because he was pointing at me, and I actually feared he was
45 going to strike me. I didn't know what he was capable of. He was very red in the face and he was spitting and he was very, very upset.

And do you recall how you felt in that moment?---I was – I – I think – I think I was just shocked. I – I had never – I had never been spoken to like that, and I was shocked. I was scared. I was so frightened, and I – I simply didn't know what to do, and I just – I couldn't understand what had brought on such a rage. I – yeah, I – I
5 was just – I was devastated. I just never had been spoken to in that way before, and so I just couldn't understand why a simple, "Are you okay?" had brought on such a rage.

and then what occurred after?---He left the office, he left me alone, because,
10 obviously, I was distraught and shortly after Seran came back in, and I believe I was just – I hadn't moved. I was still sitting at that desk and she walked in and just looked at me and said, "What the hell's going on?" and she gave me a big hug and I – I – I think I started telling her or trying to tell her what had happened and shortly after that, Parry McCutcheon walked in the door. He – there was something wrong
15 with the computers.

So who's that? Who's Parry McCutcheon?---Parry McCutcheon is the IT man and he came – I don't know if he was a planned appointment or not. I've no idea. He came in and as he came in Seran and I walked out of the office. I was, obviously,
20 still physically upset and we stood – if you're looking at that photo of that office, we actually stood on the other side of that open wall, and I was, sort of, just talking to her in a low tone and she was trying to console me and I was trying to give her an insight into what had – the attack that had just happened, the verbal abuse that I'd just received. So – so Parry was sitting at my chair and he kept looking over, but he
25 made no comment, and I kept thinking – I – I don't know whether he heard it or not. It would appear he couldn't have not heard it, but I wasn't capable of – I didn't ask him and he didn't comment.

And then did you know at the time where Wayne had gone?---I – I can't recall, to be
30 honest. I was too distressed. I know he was around, but I was – I just – I was too distressed and, eventually, Parry left the office and I know – I don't know where he went, but I know eventually they – I – Seran and I came back in and were sitting at the desks and I had my head down, and I know Wayne came in at one point and, sort of, half, sort of, stood over me like this and said, "We're good, aren't we?" and I – I
35 had no words. I just couldn't talk to him. I just – I just put my head down and kept working and then he walked out and he had Parry in the other office, which, as you saw, was on the other side and I – they were whispering in there, but I did hear him say to Parry, "I just had to put her back in her place".

40 So when Mr Wetherall said to you, "We're good, aren't we?" – "We're good, aren't we?" without the [indistinct] did you say anything in response to that?---No, I don't believe so. I – I – I was still incapable, really, of saying too much. I don't believe – I just – I think I just glanced at him and kept working.

45 And then what do you recall happening after that?---That day or in the days after?

Yeah, that – yeah, after that?---On that day, I don't really recall much. I remember just putting my head down. Seran and I had a – you know, we always would just say, you know, put your helmet on, put your head down. That's how we referred to our days when they were – and I just kept working until I just got out of there. I do
5 know I – there was no other – I do know that he asked Seran to take him to the, I think it was the Alex Bluff Bar, and so she left at some point and drove him to the Alex Bluff Bar, and, I guess, I debriefed with Seran after that point, and I – I know I went home and I fell apart a bit at home, tried to explain to my husband what had happened.

10 When you say you fell apart, what do you mean by that?---I – I was really distraught. I was very upset. I just – I – when I say fell apart, I guess I just – I was trying to explain to him what had happened in my day and I had trouble verbalising it. That's what I mean.

15 When was your next interaction with Mr Wetherall?---I did go to work the next day, but on the weekend, on the – some point on the weekend – so on – when I went to work the next day, it was just business as usual, and I don't think he was in the office very much that day at all. I believed he was probably avoiding me, but then over the
20 weekend he knocked on our front door with a six pack of beer and – he did say to me on that – the day after I went to work, he – the only thing he said to me – he was concerned, because he said, "Is Bill going to come here and punch on with me?" and I looked at him and said – I didn't – I just went, "No, it's – we don't operate that way", and he was a bit – well, you know, "I've obviously upset you. Are we going
25 to – is he going to come here and punch on?" and I just shook my head and – and just walked away. That was – that was the start of the next day, and that was as far as the interaction goes, and then, like I say, he – I don't believe he was in the office much at all after that, but then he came to our house over the weekend with a six pack of beer and his comment to Bill was - - -

30 That's okay. If you weren't – were you party to that conversation?---I was.

That he had with Bill?---Yeah.

35 Yeah. What did he say?---His comment to Bill was, "Your wife gives as good as she gets".

Okay. When you were working for Kokoda Spirit, did you have a written contract?---Not until 2017. So up until 2017, I had no contract.

40 Can I take you to page 60 of that document in front of you.

COMMISSIONER: Did you say page 6?

45 MR WHITE: Sixty, apologies.

COMMISSIONER: Sixty.

MR WHITE: Do you recognise that document?---I do, yes.

And what is that?---That's a document that I – we put together to try and get Wayne to formalise my employment.

5

And then if you can turn to page 62. So that's signed by you at the bottom; is that correct?---That's correct, yes.

And by Mr Wetherall?---That's correct, yes.

10

Just coming back to that matter you spoke about a moment ago when Mr Wetherall came to your house. Had he done that before in the past?---No. No, and not again since. No. He – he'd never – I've never invited him to my house for any reason at all and, no, he had never come before that - - -

15

Did you invite him on this occasion?---No, absolutely not.

Okay. All right. So you spoke about a written employment document. That's the form we've got in front of us now?---That's correct.

20

I tender that, Commissioner.

COMMISSIONER: Do I need it?

25 MR WHITE: In my submission, you do, Commissioner, insofar as it sets out not only the nature of the work that was to be undertaken by Ms Kelly, but also some key terms that were agreed between the parties in respect of her employment.

COMMISSIONER: Which key terms are they?

30

MR WHITE: It identifies the commencement of employment at the 1st of July 2010. It identifies her rate of remuneration of \$45 per hour as at the date of commencement of – as at the date of this employment agreement. It identifies at clause 5.3 on page 61 of the bundle that her remuneration will be reviewed annually on the 8th of May. 35 It also identifies at clause 6.1.4 that Ms Kelly was entitled to long service leave at a rate of 1.3 weeks per year, accrued from commencement of her employment, namely, the 1st of July 2010.

COMMISSIONER: Are any of those things in dispute?

40

MR WHITE: They become in dispute in circumstances where one of the stressors that's identified is Mr Wetherall – well, in the first instance, Ms Kelly asks to draw upon her long service leave. That's one of the altercations or interactions and the other is in relation to the allegation brought by Mr Wetherall that – in effect, that Ms 45 Kelly was stealing from the company by overpaying herself and accruing leave beyond that to which she was lawfully entitled.

MR SAPSFORD: I'll be asking questions on it once again, your Honour.

COMMISSIONER: All right. The contract of employment signed by Ms Kelly on the 9th of June 2017 is admitted and marked exhibit 2.

5

EXHIBIT #2 ADMITTED AND MARKED

10 MR WHITE: Ms Kelly, while you have that bundle, can you please turn to page 178.

COMMISSIONER: Which page was that, Mr White?

15 MR WHITE: Apologies. A hundred and seventy-eight. And do you recognise that document, Ms Kelly?---I've never been given this document, but I do recognise it, as of – it was shown to me at some point last year, I believe. It's not the document that I gave with that initial contract in 2017, no.

20 So what was the context in which you were given this and what was it said to be?---I – I believe that this was submitted at some point last year to say that this was handed to me with – as my key duties. It was some point between the interactions that were going on last year, but I had done something similar to this, but, like, for instance, I had never – I had written down all my key duties to go with that contract, but there's
25 a couple of lines in here that I had never, ever put in there:

To ensure the business is compliant with all legal, financial, HR and statutory requirements.

30 That's something I never – I've never seen – like, Mr Wetherall never gave to me himself as part of our contract agreement.

Is it your understanding that he's prepared this document?---He's definitely prepared this.

35

Okay?---I haven't – yeah, and he never prepared it and gave it to me when I was still working there.

40 There's an item a few dot points down about – a bit after half of the dot points. It says:

Update active trip details on Facebook.

?---I'm sorry, what number's that?

45

That's okay. It's probably a little bit more than half way down the dot points?---Okay. Yes. Yeah, that's right. Yeah.

So was that part of your role?---Absolutely, yes. Yes.

Okay. Right. We just had a look at an employment document in respect of your employment. It talks about there being a review in May of each year. The
5 employment document that was signed by you was in June of 2017. Did you have any discussions with Mr Wetherall about a review in May of 2018 the next year?---I did. I – I asked him if we could, sort of, do – I asked if we could do, like, an appraisal annually moving forward. I was trying to formalise – in that initial
10 document I was trying to formalise, you know, my entitlements, and so in 2018 my role had changed again, or had increased again in that we had lost staff and I was training staff and I was going much more than I had been doing, and so in May 2018 I started discussions with him where I’ve asked him if I could have a – because I hadn’t had a pay rise in a long time, all I’d done in 2017 was ask for entitlements. In
15 2018 I asked for a \$5 an hour pay rise. It wasn’t – he would never sit down and do a formal appraisal or a formal discussion, but we would try and – I would try and engage him in a, “Wayne, can we please discuss my pay rate?”

So a \$5 increase from what to what?---So \$45 an hour to \$50 an hour.

20 And did you ultimately reach an agreement with Mr Wetherall?---Yeah, so, eventually, on the 29th of June, we were – that was the first time we were implementing Xero, and so I’d been asking or trying to discuss that with him for a long period of time up to that point, about six, seven weeks, and because we had to implement Xero as of the beginning of the new financial year, I then said, “look, the
25 bookkeeper and Paul Thomas Accountants were harassing me to – you know, ‘Come on, Lyn, we need to put this thing back at Xero so that come Monday the beginning of the financial year we need – we need to have all that in the back end of Xero’,” so, eventually, on the 29th of June, which was a Friday, he agreed to my pay rate and he agreed to Julie’s pay rate and we were all in the office together in that – in that office
30 space when he agreed, “Okay”, you know, “You can have this. You can have that”, and because Julie and I then discussed – because she was a bit concerned and she said, “What does that bring my annual rate to?” and we chatted about it. It was quite an open discussion.

35 And do you recall any particular – that words that you used or that Mr Wetherall used when you arrived at that agreement as to the pay rise?---Well, he – he just said, “Right, so you’ll get” – he did say, “So you’ll get \$50 an hour, plus your super”, and I said, “Yes, that’s what I’m asking for. I’m asking for the pay rate, the increase of \$5 an hour”, because prior to that I was on \$45 an hour, plus my super.

40 So then once you had that information, what did you do with that in terms of the pay rates?---I – I rang it straight through to Dawn, the accountant at Paul Thomas Accountants. She was a bookkeeper, sorry, and just gave her all the information for all the staff.

45 And was the transition to Xero part of your role as the office manager?---Yes, it was. Yeah. They came into the office at some point and they trained me up on how to do

it. There were numerous reports that would've benefitted Wayne in his running of the business, and I tried numerous times to engage him and ask him to do some of that, but he wasn't interested.

5 So how were payslips issued after the transition to Xero?---So when you do a pay run on Xero, you go through and you do the whole pay run, and then you have the ability to print up about four or five reports that are relevant to each individual, and then as a group, which I did, and at the very end, Xero actually asks you whether you're ready to email payslips to the staff, and it's just a – and I – you just tick a “yes” and
10 it authorises that email to go across directly from Xero.

Can I take you to page 92 of that bundle you have in front of you?---Yes.

15 So do you recognise that document?---Yes, I do. Yeah. That - - -
Yeah. And what are we looking at there?---Sorry?

And what is this document?---That's the – that's an email that comes through from Xero automatically to indicate that your pay – that's your payslip. That's the
20 breakdown of your payslip, and then there's the attachment, which is your payslip. So that's the second page there. The first page is the beginning of the email and the second one is the payslip.

And that payslip, would you prepare that yourself?---I'd enter the details into Xero.
25 So I – we would work X amount of hours, 73 in my case, and I'd enter those hours into Xero and authorise it, and then the variable there is the on call. So I was always on call 24/7 when treks were out, but it depended on – sometimes, you know, there were days when there wasn't a trek out, so I wouldn't get paid for that on call.

30 Can I take you to page 170, please?---Yes.

So do you recognise that document?---Yeah. That was – that was – I believe that to be the last pay run I did, because it was only one week's pay. So he – he only paid us for the one week in that fortnight.
35

Is that the relevance of the message at the bottom of that?---Sorry. Yes, it is. Yeah.

And then in respect of the top panel there, salary and wages, can you comment on what appears below that and what that is produced out of from xero?---Well, he paid
40 us – the ordinary hours were normally 73, and he paid us for one week. As much as I was in there, that must've been on – well, the payment date was the 1st of the 4th, but JobKeeper had been announced, I believe, on Monday the 30th and he wanted to wait and see what would come with JobKeeper, so he didn't want to pay us any further than the end of that one week, so we got – we got the one week's pay, effectively.

45 Is that the ordinary hours referred to there?---Yes, it is. Yeah. Thirty-six .5, yes, that's correct, and then, obviously, you know, everything else is - - -

And then if you come down to “leave” there. What’s the heading underneath that? What does that refer to?---It’ accrued leave and that accrues every fortnight, and so – is that what you mean – the annual leave in hours.

5 And what’s the heading – what’s the relevance of the heading Balance off to the right?---Well, that’s how many hours I had accrued to that point.

Okay. If I can take you to page 63, please. Have you seen that document before?---I have seen it before, but it was sent to me after I left Kokoda Spirit.

10

By whom?---I’m guessing by someone in the Kokoda Spirit office.

And what do you say about that – the period up the top? The pay period that that’s relating to?---Well, that – that’s the same pay period as the pay – the – my – the pay
15 period I had done on the 1st of the 4th, but this is not the document that I had done. This has come later. My – the one we had on – is it page 170, was the one that was generated on the 1st of the 4th, and then at some point – and, sorry, maybe – I don’t – I’m – I’m just trying to think where that – where I’ve seen this. I don’t know if it
20 came from Butler McDermott or from Kokoda Spirit. I could be wrong either way there, I’m sorry, but I have seen it, and it – my initial one – my first one never had “stand down” on it, and the other discrepancy on here is the annual leave in hours in the balance section. For some reason, the balance of the accrued leave has changed dramatically for the same period.

25 Then if you can go to page 71 for me, please?---Yeah.

Again, do you know where that document comes from?---Well – well, I’m – I – this is another document that’s been done since I’ve left Kokoda Spirit, and for some reason the on call section in salary and wages has been taken out of there completely.
30 Normally, with Xero, that – the on call that stipulates, you know, Friday to Saturday and Monday to Thursday is actually put in the back end of Xero. So it automatically shows up, even if there are – even if there are no on call hours to put in there. So that’s changed again, for some reason.

35 But you didn’t produce this document?---I – no, I definitely did not produce that document, no.

And you can’t explain why there are those distinctions?---No, I cannot. No.

40 Commissioner, I was proposing to tender these payslips, but I’m conscious of the fact that these are payslips that straddle that total period. What I might propose to do is just simply tender the three payslips to which I’ve taken Ms Kelly in circumstances where I proposed to take Mr Wetherall to them.

45 COMMISSIONER: She’s just indicated, I think with the exception of the one at page 170, that she doesn’t – she didn’t produce them? She doesn’t – she got them

subsequent to – probably in the course of the preliminary processes leading to this hearing?

5 MR WHITE: I should clarify, perhaps, mark for identification two of those items and tender the third.

COMMISSIONER: All right.

10 MR WHITE: So on that basis, it would be marking for identification - - -

COMMISSIONER: Which ones, just be page reference. Page 71?

MR WHITE: Page 71 and page sixty - - -

15 COMMISSIONER: Three, I think it was.

MR WHITE: - - - three would be marked for identification.

20 COMMISSIONER: And then there's - - -

MR WHITE: And then page 170, 170, that would be tendered. I believe - - -

25 COMMISSIONER: I'll marked for identification the two payslips found at pages 63 and page 71 of the appellant's bundle of documents, and the 170 of the appellant's bundle of documents is admitted and marked exhibit 3.

EXHIBIT #3 ADMITTED AND MARKED

30 MR WHITE: Ms Kelly, do you know Julie Mossup?---I do, yes.

35 How do you know her?---I worked with Julie for a couple of months back in 2010/2011, and then I worked with her again in – when Seran left from – Seran left in April 2017 and I believe Julie joined us about 10 July in that year, and I worked with her for almost two years.

40 Can you recall when about she ended as an employee at Kokoda Spirit?---When she ended? Yeah, she ended in about a week before – maybe – yeah, a couple of weeks before ANZAC of 2019.

45 Do you recall any events immediately before she finished up at Kokoda Spirit?---I do. Once again, Mr Wetherall – Julie left on a Friday, it could've been, maybe, the 12th of April. Somewhere around there. It was definitely Friday. So on the Wednesday prior to that, Mr Wetherall was pacing. He was angry. He was anxious. He – and he was out of sorts, and he asked me to go out to the front of his house on the driveway, which I did, and he explained to me that he'd just recently found out

he had an illegitimate son to a woman from Papua New Guinea. She had contacted him to tell him that she had a son and it was his. He thought he had paid for that to be taken care of, as in he'd thought he'd paid for an abortion, and – but, obviously, he had the son. So he kept asking me what I thought he should do, because his
5 children were unaware that they had a half-brother and he was very – he just didn't know how to manage it. He was concerned that perhaps if he - -

Well, don't go into any more detail about that?---Okay.

10 Did that have an effect on his mood?---He started – he was very – he started spiralling out of control. He was – he was walking around the house. He was cranky. That conversation on the driveway went on for a very long time, like, I'm talking an hour or two, and then I went and sat back in the office and then I was still
15 called back out to the – to the backyard, and he was very, very upset and very agitated.

And did that mood continue after that point?---Yes, it did. So he was upset all the Wednesday, he was upset all the Thursday and then on the Friday that's where it all
20 culminated and - - -

And how did it culminate?---It culminated through – from the moment we walked into the office on the Friday and he and Julie had a awful episode in the laundry in the other room, the other living room just off the kitchen, which could be heard
25 throughout the house.

So were you in the laundry yourself?---I was in the – I was actually in the office, but I could hear everything clearly.

And what things could you hear?---I heard yelling and screaming. I heard – that was
30 Mr Wetherall yelling at Julie, and I heard him – well, I had twice that there was – he'd, obviously, slammed his hand into a wall twice. I heard Julie ask him to stand back from her, and as I heard that, I pretty much started to get up, because I didn't know what he was doing, to be honest, and so I was concerned, and then Julie walked into the office. As she – it must've been the second one, because she was – it
35 was a short – the second thump was within seconds of her coming back into the office, and then she walked in, she gave me a big hug, she grabbed all her stuff and she gave me a hug and said, "I am so sorry to do this, but I can't stay any more. I have to go", and we were hugging each other and she went to leave and Mr Wetherall was in the doorway and he – he – he was just sitting there staring at her
40 with this awful look on his face and she had to ask him – she said to him, "Wayne, move away from the door", and he still stood there and she asked him the second time, "Wayne, move away from the door", and he eventually stood back and she just walked out the door, and the door was very close to the front door and so she's come out the office door and she went straight out the front door.
45

And then did you see Mr Wetherall after that?---So within minutes of that, I, like – Parry McCutcheon, the IT guy, he walked in. When she walked out the door, he –

Wayne has walked off to the other end of the house, like, towards his kitchen area and then Parry's come in and gone out to the kitchen area. I sat in the office. I – I – I was – I think I might've been in shock. I just couldn't move, and so I was just sitting there. I wasn't working. I was just sitting there trying to take in what had
5 happened, and he – there was raised voices going on in the kitchen area, and eventually he yelled out to me, "Lyn, get in the kitchen. Come in here now", so I stood up and walked over to – walked into the kitchen and I was standing on the other side of the bench and Parry was standing over here and Wayne was pacing the bench and – pacing the kitchen, sorry, and raised voice, swearing, you know, "How
10 dare she", like, "Come into my house. How dare she follow me into my fucking laundry? How dare she have a go at me in my laundry?" and he was just ranting about that scenario and then he walked up to me – that went on for five or 10 minutes, and then he eventually walked up to me and he stood right in my face and just said to me, "Why aren't you fucking talking?" and I remember – I – I just
15 couldn't say anything, but I remember Parry said, "She's trying to figure out – she's probably trying to figure out how she's going to get through ANZAC", because ANZAC is the busiest time of the year for our trekking season, so - - -

20 Okay?---Yeah.

Do you remember having any conversations with Mr Wetherall towards the end of March of 2020?---Twenty-twenty. So Mr Wetherall had been in Darwin with his girlfriend at the time for some – like, I don't know, but he'd been there a couple of weeks and things were starting to go a little pear shaped and so he'd been away and
25 he'd not long come home, and he was once again, you know, aggressive. You couldn't speak to him. He was quite abusive. If you asked him anything, he'd basically tell you to fuck off. He – and so this – on the 27th he – we were all sitting in the kitchen as we came into work, and he was talking about how he – you know, he didn't know what to do and how he was going to do it, but he was discussing
30 reduced hours, and he said – we had – we were discussing the fact that there probably wasn't going to be enough work for both Christine and I.

And what was the reason for that?---COVID, so – and so, you know – so – yeah. So that was when COVID – all the COVID stuff was just really starting to impact on –
35 yeah, on us. So – and, yeah, so he – he was having that discussion. He basically - - -

And, sorry, who's present for this discussion?---Sorry. Christine Wilson, myself and Wayne.

40 Okay?---All right. And we were all – the three of us were in that kitchen and he was just saying he didn't know how to – how he was going to manage it. We'd have to – he'd have to – we'd all have to reduce hours, but Christine would reduce hours, because, obviously, I was running things and the longer standing employee. Any time I said to him anything about, "Wayne, I believe, you know, maybe if you talk to
45 Paul Thomas there's BAS incentives and" - - -

And, just again, Paul Thomas, who's he?---The accountant. Sorry. He would just yell at me and I knew that he was very cross and I just stopped talking. He was very aggressive in his manner, and so at the end of that conversation, it was just decided that, you know, I was coming – I would always come in and do the shit jobs that he didn't want to do, and Christine would probably not be coming back in.

So was there anything else that occurred during that meeting, do you recall?---No, just that – that was the gist of that particular meeting. That meeting finished.

Was there one after that?---Yes, there was. Then Christine went back into the office, we both did, and then he called m back out, but this time he wanted to speak to me out on the pergola and he closed the door to the house and he took me out to the pergola. So this was about mid-morning, whereas the first conversation took place as we walked in at 9 o'clock, roughly, you know, just after 9 o'clock.

So what happened during this conversation?---Mr Wetherall decided that he was concerned that he – and he said – the gist of this conversation was that he was concerned that I was going to come after my superannuation, and - - -

What do you mean when you say come after your superannuation?---He had – I didn't – he hadn't paid me seven years of superannuation, and so his comment to me was, "I'm worried that you're going to come after your superannuation".

Did he explain why he was – why he had that concern?---He just said all of a sudden that he didn't trust me and I said, "What, after 10 years you don't trust me? Why?" and he said, "Because I think you're going to come after your superannuation", and then I said to him, "Hang on a minute. So it's okay to pay Seran her super, it's okay to pay Julie" – because they had to appeal to the ATO and they eventually – after they left, they eventually got theirs, because I – there was a lot of – he – every time he made a payment, there was always a lot of abuse that went with that, and so I said, you know, "It's okay to pay Seran out her superannuation eventually, it was okay to give Julie her super eventually, but stiff shit, Lyn?" and that made him really, really cross, and he – we had a – he got really angry and he was starting to demand a handshake agreement that I would not go after my super. Part of that conversation was also in regards to my long service leave again, and I just said, "Look, I would like, you know, maybe to draw down a little bit of – one day a week or something for my long service", and his comment to me was, "You don't need the money. Bill's still working". So then he kept insisting on this handshake agreement that I wouldn't – wouldn't go after my super. I knew once again he was becoming aggressive, he's start swearing, so he just said, you know, "I want a handshake agreement that you're not going to do this", so, eventually, I just put out my hand and went, "Whatever, Wayne", and shook his hand.

So what arrangement had been reached at this stage for what you were going to be doing with your job after this point?---I was definitely coming in on – so this was the Friday the 27th, and we knew that the work had reduced, but I was to come in on the Wednesday and do anything outstanding that had to be done, to do the pay run,

because that pay date, as you can see, is dated the 1st of the 4th. So I had to do that and anything that had cropped up in the meantime, because I was also managing the – the people that thought they were going to go out on treks, obviously, weren't, and so I was taking all those phone calls and trying to, you know, postpone those treks and assure people that, you know, that they were okay and we could try and do this later, depending on what was going on with COVID. So I was to manage all of that, because Wayne certainly did not want to take any of those phone calls.

So when was it discussed that you continue doing those jobs?---On that 27th. It was like, "So you'll be back in here on the 1st. On Wednesday". He didn't want us in there on the Monday and the Tuesday. He definitely wanted us in on the Wednesday, and he said, "What I'll get you to do is I'll get you in one day a week or two day's a week, whatever's required, to do all those shit jobs".

And which conversation did that occur in that he said those things to you?---On that 27th. Like, on that day on the – which one. The first one, and I – and it was reiterated, not in that second one. That second meeting outside in the back, he was really concerned about the superannuation and the long service, but at the end of that day, when Christine was, basically, saying good bye to everyone, because she presumed it was her last day for a while, then he reiterated to me what might – I also – I also had the iPad. The Kokoda Spirit iPad, and I had the Kokoda Spirit work phone, and so – and when I was coming back in on the 1st, he had arranged for Parry, the IT guy, to come in to update that iPad so that I could access everything through the iPad to postpone people and put them in on trek dates in other time of the year.

And why did he need to do that for the iPad and the iPhone?---Why? Well, because I would have the phone diverted to me, so the Kokoda Spirit landline was going to be diverted to this Kokoda Spirit mobile, which was usually the on-call mobile, and then the iPad had to have all the – it had – it needed an update, so that I could access everything for trekkers and emails and the whole thing from the – from the computer at work. So it had everything on that iPad that I needed to work.

From where?---From home if I needed to.

So coming back to the second conversation you had with Mr Wetherall. So this is on the 27th and this is outside in the pergola?---Yes.

What happened after that conversation?---Well, after I shook his hand he – he just went inside and he was – he was, obviously, not happy. I was quite put out, and I went in to – I went into the office. I think I told Christine, you know, that, yeah, it wasn't a – a particularly positive conversation, so - - -

Do you recall how you felt at that time?---I was scared, because I had seen – I had seen that level of spiralling from Mr Wetherall numerous times. He was – he was quite often, you know, aggressive in his manner, you know, he – he was intimidating in his manner when things didn't go right. He – he came into – on that 27th, he would – if he wanted to – well, I don't know if he did it intentionally, but whenever I

was a little bit shaken or whatever, he would come and stand, sort of, over the top of me, which he did on the 27th, and he, basically, would go, “What are you doing?” and I’m, like, just there, and I would explain to him whatever it was that I was doing and he did that again when I went back into the office, which just made me fearful,
 5 because I didn’t know what he was going to do next, and it – he was – yeah, he was swearing all day. He was just out of sorts all day.

So that was the 27th. When did you – of March. When did you next have an interaction with Mr Wetherall?---On the 1st of April. So I went into work on the 1st
 10 of April. I was supposed to go in on my own, but I had told Christine that I was really, really anxious and scared, because I didn’t want to be in that office by myself with him, and she offered to come in with me, and – and she said that, “I’ll come in and just be there to – so that you’re not there by yourself”. So we went back in on the 1st at 10 am.

15 And what happened then?---We did – we did five hours work. I did the pay run. He came through and stood on the other – he often stood at that half wall, and he stood there when he demanded I ring Paul Thomas the accountant to get some information on JobKeeper. JobKeeper had been announced on the Monday. He was trying to
 20 determine how many hours a week we could work based on JobKeeper. So he was, sort of, saying, “Right, do we take this JobKeeper and divide it up into your hourly rate or do we – do you work a week and you just get paid your JobKeeper”. I suggest that perhaps JobKeeper was – I said, “Wayne, I think JobKeeper is to help you. So if I was to do a full week’s work, then that would be to assist your salary, not necessarily for the whole salary”, and he didn’t like that response and he – and he
 25 started getting angry and – and I – from that point on, I thought, “I’m not having – I’m not talking about this”, because I knew he was getting very cross, particularly with me, and so I – he was trying to work that out. When he came to the office and stood on the other side of the bench he asked me to ring Paul Thomas to find out
 30 whether Alicia, his daughter, could get JobKeeper, and – and I knew that – I didn’t believe that she was entitled to it, but I was too scared to mention that to him, so I offered to try and get a hold of Paul Thomas. Obviously, the accountant, Paul Thomas, was busy, so then I was put through to Dawn, who was, I think – I believe at the time working from home, and she said to me, “Look, that’s something Paul
 35 will have to answer. I’ll get him to call you back”, and so I’d been working on that. I was working on pay run and that’s when, you know, he decided he was only going to give us – even though we – we ended up being in that office for five hours on the Wednesday, he was only going to pay us the one week and then he would sought out the rest with the JobKeeper stuff.

40 Who else was there at this - - ?---Christine was in the office. She was beside me, because she’d come in to support me. I think one of his daughters may have been floating around, too. I think Alicia might’ve been floating around in the office that day.

45 And did Parry come in this day?---Yeah, Parry came in and he updated that iPad for me. Yeah, so he was in there. He did some stuff on the computers themselves, and

then he took my iPad and updated it and when he gave it back to me, he said, “That’s ready to go and you should be able to access everything on that iPad”.

5 And then what happened at the end of that day?---By 3 o’clock I’d been in there for five hours, and I had – I have – we hadn’t eaten all day. Wayne had been pacing all day. He’d be coming in and hanging over the top of us and just making comments and – I stopped talking to him, to be honest, because I just felt that he was – he was looking for – I felt he was, sort of, looking for a bit of an argument, so I just kept my head down and kept working, and then at 3 o’clock I just – I had to go, and so I
10 packed up. I said to Christine, “We’ve been in here five hours. We can’t do any more. Let’s just pack it up and go”, and – and I was pretty stressed by this point. The day had been very – it felt like we were walking on eggshells all day, and so he was out the back on the phone, and I just went, “I’m leaving”, and waved. I grabbed my bag, we got to the front door and he came to the front door and he started talking
15 about something to do with work, and I just said, “Wayne, I’ve got an appointment. I’ve got to go. We haven’t eaten all day. I’ve just got to go”, and I just left.

Did you talk about what you would next do in respect of your work?---Sorry. Yeah, so there was – there was – he was cross with me at one point because he wanted me
20 to come in on the Thursday, and that was because of JobKeeper. He decided he needed me in there on the Thursday to start going through, “This is our chance to update all our booking terms and – and look at things in the back of Kokoda”. So normally when we were doing admin, we only really had enough time to do what had to be done as we went along. He felt that this is a great opportunity to get everything
25 in the background with websites and all sorts of things sorted out with – you know, this was the time to be doing, and I said, “Well, you told me initially you didn’t need me here on Thursday, so I’m really sorry, I’ve made other plans for tomorrow. I might be able to come in after lunch, if that works for you, and I can definitely come in on Friday, but I can’t be here tomorrow morning”, and he was – and he said to me
30 – he was really cross, and he said, “Why not? We’re supposed to be in lockdown. Where are you going? What are you doing? You can’t go to the beach. You can’t go and just go anywhere”, and I – I didn’t answer him. I didn’t want to tell him where I was going so I just said I won’t be available till after lunch.

35 Anything else there before you left?---No, I think that was it. I think we just left at 3 o’clock and I just – yeah, like I said - - -

And do you remember anything else from that day?---Yeah, so when I got home, Paul Thomas, the accountant, rang me back and I had a bit of a discussion with him
40 in terms of what I’d been asked to talk to him about, which was this JobKeeper for Alicia, and so I was on the fine to him for a little while, and his comment to me was, “No way”, and I said, “Well, you’ll need to say that to Wayne. You need to talk to Wayne about that”. While I was on the phone to him, Wayne had called me twice and so then I tried to ring him back and he didn’t answer. I think I tried once or
45 twice to ring him back and he just didn’t pick up, which I knew that’s when Wayne’s particularly cranky, that’s what he does, so I thought, “Here we go”. I didn’t know – I thought, “Who knows, he’s not going to answer the call”, so on the Thursday

morning I – I left – I think I texted. Yes, I did. I texted. I didn't ring him. I texted him a message and said, "Wayne, I'm not available till after lunch, but if you want to talk, I – I'm available from midday onwards".

5 Okay. That's all right. Just to go back to the conversation with the accountant. Alicia was Mr Wetherall's daughter, did you say?---Yeah, she – that's Alicia Wetherall is Mr Wetherall's daughter, that's correct.

10 Did she work for Kokoda Spirit?---She did a little bit of work when – when Julie left at the – so when Julie left just before ANZAC in 2019, because we were going into our busiest period and I had no colleague to assist me, Wayne said to me, "I'm going to put Alicia in that seat for a little while and she can make you a cup of tea as you need it", that was his – so I think Alicia tried – like, if I was on the phone and phones were ringing, you know, she would try and do a little bit of that sort of stuff for me.

15 Okay. So you were speaking about the Thursday now. You sent Wayne a text. What happened after that?---So he didn't respond, and so then about lunchtime I actually put my phone on no caller ID and I rang the office, because I knew if I had my number he wouldn't have answered.

20 And did he answer this time?---Yes, he did.

And what happened in that conversation?---He was very, very angry with me, and when I asked him why he was so angry with me, he said because when I had left the day before at 3 o'clock I hadn't made eye contact with him and he'd never been so disrespected in all of his life, and I had treated him poorly. I don't recall not making eye contact with him, but I said to him, "Look, Wayne, it wasn't my intention to upset you and if I've done so inadvertently I apologise. I didn't mean to upset you". He got angrier and angrier about the disrespect, and I apologise in the course of that conversation, I said to him four times, because even on the fourth time, I said, "For the fourth time, Wayne, if I offended you, it was never my intention to offend you, so I'm terribly sorry", and he just – he – he was just angry and told me I was disrespectful and I probably should keep my distance from him and he was very upset with it. We had finished – I – we ended up – I think at the end, I said, "Well, how do you want to proceed with this?" and, you know, "I don't know what else to say to you", and he said something to the effect of, "We'll talk later", or something like. You know, "We'll talk in a few days", or something to that effect, and I just - - -

40 How long did this conversation go for?---About 40 ; 45 minutes.

And can you recall the kind of language he was using?---Mr Wetherall always uses foul language. I – he always uses the "fuck" word, I'm sorry.

45 COMMISSIONER: That's all right. You definitely don't have to apologise to me?---I would always – I always say to him, "Please don't use the 'c' word". I don't – I – I just – anyway, so, yes, there was always lots of swearing and stuff. I just - - -

MR WHITE: What happened after that phone call?---So it was a pretty aggressive phone conversation, and I went and saw my son, Liam. Bill was with me, my husband was with me, and I walked into Liam's office and he – he, sort of, looked at me and said, "What's going on?" and I started to tell him and he suggested that
5 perhaps I needed to see a doctor. So the next morning I made an appointment - - -

And at the time when you were speaking with Liam, how were you feeling?---Broken. Just – just broken. I – sorry. Just I was really upset. I didn't feel I had done anything wrong. I didn't feel I had disrespected him. I didn't feel that I
10 had deserved the abuse that I had received. So I was, obviously, distressed. If I had done anything, I had apologised. If I had – I don't believe I had.

And physically, how did you feel?---I was sick. I – it – I was nauseous. I – I didn't recognise a lot of signs that now I have been made aware of. When we were in the
15 Kokoda Spirit office, there was a bit of a, you know, "Hey, Lyn, how's your stomach cancer today?" and – and that's how – I was always really, really sick in the stomach. I – and I just took that as – well, just, I don't know what I thought of it. I now know what that sickness in the stomach is, because it's been made clear to me with some help over the last 12 months. So, yes, I was very, very sick. I was unable
20 to eat. I was shaking. I was distressed. I certainly didn't sleep that night, and the next morning I went to – I went to see my doctor.

And who's that doctor?---Dr Gavin Harrison.

25 And then what happened during that appointment with Dr Harrison?---Well, even up to that point, I thought, "I'll just go see the doctor", but when I walked in there, I fell apart. L So I – I had to try and tell him what had happened. I struggled to verbalise what had happened.

30 Do you recall the things that you tried to explain to him at the time?---Sorry?

Do you remember what you tried to explain to him at the time?---Yeah, I just said that – I don't remember exactly what I said, but I know I said that I have a – an employer that gave me - - -
35

MR SAPSFORD: I can't hear, your Honour?---I'm sorry.

COMMISSIONER: You need to speak up, Ms Kelly, sorry?---I'm sorry. I have an employer that gave me a hard time, and I'm just unable to eat or sleep or function. I
40 – yeah. I don't think I actually said a lot of words to him at that point, because I was incapable of it.

MR WHITE: Have you come back to see him since that day? Was this Dr Harrison?---Dr Harrison? Absolutely. I – I was – yeah. He gave me – he gave me a
45 medication straight up and he gave me a medical certificate straight up for 10 days, and then - - -

Sorry. Let's stay on that, so in terms of the medication that he gave you. Do you recall what the medication was designed – did he tell you what it was designed for?---It was designed to just – I can't remember what it was, but I believe it was, like, something to calm me down, to help me sleep, that sort of thing.

5

Did he give you anything else at that meeting?---No, he just gave me medication and a medical certificate, I think. Yeah.

And then did you go and continue to see him after that point?---Dr Harrison?

10

This is Dr Harrison?---Yes. Yeah, I've been seeing Dr Harrison on a regular basis, so then - - -

In respect of this situation?---Yes, absolutely. Yes. So I must've been in there again, look, I don't know, maybe within a week. No, possibly – within a week or so I was back there again, because he wanted to check up on me and as we've gone along, I've seen him every month, because he's put me on medication and then he suggested I – well, he gave me a referral to a psychologist who I've seen on a regular basis since then, as well.

20

And you've said you can't recall saying much to him on that first visit. Did you talk to him about your employment situation on any of your subsequent visits?---Yes. Well, I – I – he wanted a – an outline, and that's what I wrote down. I knew I wouldn't be able to verbalise everything in that appointment, so we wrote down a bit of a statement, I believe, and that's what we gave him, and then said, "Look, this is roughly what's happened", and so that's - - -

25

Can I take you to page 200 of that bundle that you have in front of you, please?---Two hundred?

30

Yes, please?---Yes.

Do you recognise that document?---I do, yes.

35

And what is that?---That's the statement I gave to Dr Harrison initially.

I tender that, Commissioner.

40

COMMISSIONER: The – it's a four-page document; is that correct?

MR WHITE: I believe the page numbering might be out. Apologies. I think it's five, if the commission goes back one page.

45

COMMISSIONER: Yes. Correct.

MR WHITE: It might've been faxed through out of order. Apologies.

COMMISSIONER: Yes. It's five pages. I'll just get them in the right order. Was Ms Kelly's evidence that she gave this statement to Dr Harrison?

MR WHITE: Yes, Commissioner.

COMMISSIONER: All right. So by reference to the bundle of documents provided by the appellant pages 200 to 204 is a statement by Ms Kelly provide to Dr Harrison in or about April 2020 is admitted and marked exhibit 4.

EXHIBIT #4 ADMITTED AND MARKED

MR WHITE: Ms Kelly, do you recall what happened after this appointment with Dr Harrison on the 3rd of April?---I went home. I was – I was really quite scared of what the reaction would be to my medical certificate, so I know that my son, Sean, came to my house to work from home that day. I sent Mr Wetherall my medical certificate. I then had a couple of phone calls from him that I didn't answer. I then had some text messages from him, but I didn't respond to him. My husband had some text messages and phone calls from him that he didn't answer, and I believe his daughter Alicia tried to contact me, as well.

And then what were your personal actions from there after you came home from the doctor? What did you do?---I just sat next to Sean all day, because I was – yeah, I – I just remember sitting at the dining table with Sean, worried that he would knock on our door. So worried, in fact, that Bill and I went out and bought a security camera doorbell thing to put at the front door and he – like I said, he messaged a couple of times and – yeah.

If I can take you to page 179 in the bundle in front of you, please. Actually, apologies. If I can take you to 359, I'm sorry. So on page 359 and 360, can you explain what we're looking at there?---Yeah, they're the messages that Wayne sent me after he received the medical certificate. So he wanted me to call him back. He wanted to talk. I was – I wasn't capable of that, and then he was asking for his iPad home. I interpreted that third message that he wanted to – to pick up the iPad and the phone from my house so that Christine could then work from home while I was off work. I didn't want him at my house, so – but it wasn't until the 6th of April that I responded, and I made it very clear then that I would give the iPad and phone to Christine and not – I didn't want – you know, so that she could come around and pick it up.

I tender those, Commissioner.

COMMISSIONER: Those are the two at page 359 and 360, are they?

MR WHITE: That's correct, thank you.

COMMISSIONER: All right. The documents at pages 359 and 360 in the appellant's bundle of documents, which are an exchange of text messages between Ms Kelly and Mr Wetherall on the – between the 3rd and 6th of April 2020 are admitted and marked exhibit 5.

5

EXHIBIT #5 ADMITTED AND MARKED

10 MR WHITE: Apologies, Ms Kelly. If you can go and come back to page 179. So between page 179 and page 180, perhaps starting with the – what appears on page 180. Do you recognise that?---Yeah, that was – yeah, that was the message I sent to Wayne where – when I sent him my medical certificate after I visited the doctor on the 3rd of April.

15

And then if you can come back to page 179, line 4. What's that there?---That's the message that he sent to me on the Monday, the 6th of April, acknowledging the medical certificate, but saying that I had been stood down and wasn't entitled to leave for the period I'd been sick – you know, had my medical certificate for.

20

And then if you could please go to page 181. What's that there?---That was me going back to him after that email trying to clarify with him that I hadn't been stood down, because I hadn't been stood down, as – and so I was trying to explain that, you know, "You wanted me in there", I had the iPad, I had the iPhone to work from home, so that was my email just in response to say I don't – I don't believe I was stood down.

25

And that email appears to be the 6th of April; is that correct?---That is correct, yes. Yeah.

30

Do you recall anything else happening on the 6th of April after that email?---So before that email trail even started, Christine Wilson came to our front door and asked to pick up the iPad and the iPhone. She told me that she was very anxious about going into work on that day, and that she would give me a call that night, and – yeah, let me know - - -

35

And did she?---Yeah, she did. She gave me a call that evening after she left work and, basically, said to me that he was on the phone all day, he was - - -

40 Who's he?---Sorry. Wayne Wetherall was on the phone all day and that – and that I needed to watch my back, and I said to her – this – this conversation went for, I don't know, 20 ; 30 minutes, but, basically, she said, "You need to watch your back", and I said, "What do you mean? What are you talking about?" and she said, "You just need to watch your back. He's been on the phone all day", and she didn't really clarify what "watching your back" meant. I don't know what that meant, but eventually she hung up on me – and I said, "Chris, what are you talking about?" she

45

said, "I've said too much already", and she hung up on me. I then rang her back, but she never picked up.

5 And how were you feeling at this point?---I was very anxious and upset. I didn't know what that meant. I – I knew I hadn't done anything wrong, but I also knew how Wayne treated people that he deemed had – were not in line with his points of view. So I just didn't know what that meant. I was, obviously, really, really anxious. I was very upset.

10 If I can then take you to page 184 of the bundle. Do you recognise that?---Yeah, I'm just – I have seen this before. Yeah.

15 And can you just identify what that is? It appears to be an email. Did you receive that email?---Yeah, it was just him – Wayne Wetherall justifying that he believed that I had been stood down on the 27th of March, but still saying – really, sorry – yeah. It was just him clarifying that he – he sent that to me to tell me that I had been stood down. That was him - - -

20 Then turn to page 186. Did you receive that email?---I did.

What do you say about the matters that appear in the second paragraph there? It says:

25 *I've taken advice from my legal team at Queensland Police Service.*

?---I - - -

30 Had you been made aware of that before receiving this email?---No. No. No. Not at all, and I was shocked. I can tell you that I, obviously, received that late in the day and I did not get any sleep at all that night, and I just couldn't believe what he was saying in this email. It made no sense and I, honestly – I just didn't believe it. I was thinking, "This can't be true or real". I was – yeah. I was sick as that night. It was – I was so ill. I just - - -

35 And then turn to page 188. Again, did you receive that email?---Yes. Yes, I did. I – I – I didn't know what he was talking about. I never had a USB. I honestly didn't know what he was talking about.

40 The email from the day before, the 8th of April on the page earlier, this appears to call to ask you to attend a meeting. Do you recall if you provided a response to this email?---I believe that was shortly after I got that. around the same time I believe Butler McDermott sent an email. I went and saw – that was the first appointment I had with Peter Boyce and they sent an email in response to this, I believe.

45 Okay. Commissioner, I propose to tender those emails, perhaps as a bundle, if that would assist.

COMMISSIONER: This is the bundle under tab C?

MR WHITE: That's correct. So it would begin on page 179.

5 COMMISSIONER: Seventy-nine.

MR WHITE: And continue to page 189.

10 COMMISSIONER: All right. The emails between pages – between and including page 179 to 189 of the appellant's bundle of documents are admitted as a bundle and marked exhibit 6.

15 **EXHIBIT #6 ADMITTED AND MARKED**

COMMISSIONER: Is that a convenient time, Mr White?

20 MR WHITE: Perhaps another 15 to 20 minutes to conclude. I'm happy to take a break now, if it would please the commission.

COMMISSIONER: Sure. No, if you've only got a – I mean, I'm not rushing you, but - - -

25 MR WHITE: Yes.

COMMISSIONER: - - - if you've got 15 minutes to go, then go for it.

30 MR WHITE: Yes. Thank you. Ms Kelly, these final emails that we just went to make some allegations about you and Mr Wetherall's personal messenger account. So if you just explain the situation in respect of the use of Facebook at Kokoda Spirit?---So after Michelle Wetherall, Wayne's ex-wife, left Kokoda Spirit, it became the job of – it wasn't primarily my job, but the job of – to update Facebook while treks were out on the Kokoda Spirit – on the Kokoda Track, and so we would – when
35 we had to do it, we would just simply – it was all logged in on our computers and we would just – Facebook was on the – on the monitors and we would open up Facebook, and whoever was doing it would update Facebook. Yeah.

40 And was this on the work computers?---On the work computers. That's correct, yeah.

And was that just your computer or both or one or the other?---No, both. Yeah. I didn't do a lot of the Facebook updates, especially initially, because I just wasn't – wasn't very good at it.

45 So who was doing that most of the time?---Well, it started off with Seran. Seran, primarily, did a lot of it. When Seran left, I did a little bit, and then when Julie came

on, she did a lot of it, because she – because she – you know, she was much better at it than I was. It was, really, who was better at writing, you know, what was going on in the day about the Kokoda Track. As the Australian guides rang in, we updated.

- 5 Okay. Do you recall during the course of you doing those updates on Facebook seeing any messages appear in respect of that Facebook account?---Yes, I do.

And can you describe those, please?---There were many messages that popped up on – when you're on Facebook. We didn't understand what was going on, but if Julie –
10 we had the two monitors very close together, right, and we would work side-by-side, and so if – say if Seran or Julie was doing Facebook, I now know that if Wayne was talking to somebody, his message would pop up on the screen. Okay. And so we would try and shut them down. Did you ask me to tell me – sorry - - -

- 15 MR SAPSFORD: I can't hear, your Honour, I'm sorry.

MR WHITE: If you can just speak a little bit louder, and there's a microphone, as well?---Yeah. Sorry.

- 20 So let's go back. So when did you first start seeing these messages on the computer?---I couldn't tell you exactly. I know that it was in some point in 2014 after Michelle left and we took on that role of updating Facebook when the treks were out. I don't know. I can't remember at what point in that year that was exactly.

- 25 And in terms of some of the things that you would see in those messages when they pop up, could you describe those?---Okay. So there were many messages about Mr Wetherall and his girlfriends, and there were many messages of Mr Wetherall trying to get his girlfriends to engage in group sex with many men. There were many messages where Mr Wetherall would try and engage or coerce his current girlfriend
30 into a gangrape situation with five or six men. There were just many messages where he insisted on – initially, Helen was a PNG staff member in – who lived in PNG. She was one of our staff and when he was going to PNG, messages would pop up when they were talking that he would insist that she meet him in his hotel room when he arrived, so that she could – she could perform fellatio on him. He wouldn't
35 use that terminology, and she – her payment for that would be something like a bottle of Johnnie Walker Red. There were – there was much talk about the fact that he would speak to whichever girlfriend it was at the time about how he loved cock. He would refer to – he would – the language was really vulgar and obscene and there's pornographic – there were many messages, but there was also many photos, and the
40 photos were very graphic of – of people's – like, women's vaginas and women's – men's penises, of dildoes, of Mr Wetherall performing fellatio on another man.

- If I can ask you to please go to page 363 of the bundle. So what are we looking at there?---We're looking at a photo that I – I took from someone's iPhone that was a
45 message that popped up on Facebook on Kokoda's Facebook.

Do you remember whose phone this photo was taken on?---I believe that is Julie's phone.

Julie Mossup?---Julie Mossup, yes.

5

COMMISSIONER: Did you take the photo, Ms Kelly?---I did.

MR WHITE: And what was the purpose of you taking this photo?---This photo – well, there's – there's a couple of photos there that I took. They were Mr Wetherall trying to talk his current girlfriend into – into having – into being gangraped, and – and she was saying something about she can't do five men any more, and he was trying to negotiate the number of men that he was going to have gang rape her, and so I was – I was really upset and concerned. I – this – and so I didn't know what – we didn't know what to do, and - - -

15

When you say "we", who's this?---July and I. and so I really wanted to – I really wanted to go home and talk to my husband about it and how we should proceed. We actually – after this situation, we actually had a conversation about – we didn't know what – we just didn't know what to do. I didn't know whether this girl was safe or whether – I – yeah, and so we actually had a conversation about visiting – maybe we should make an appointment go see – seek legal advice from Brendan Bathersby, which is a solicitor on the Sunshine Coast, who, you know, Bill knows personally from – from Siena College, and from – and I know from dealing with him, and we thought maybe we could get some advice on how to proceed. So that's why – that's what that conversation's about and that's why I - - -

25

Okay. And then there appear to be further photos on page 364, 365 and 366. Did you take those also?---Yeah. I – that was all that same conversation.

That same conversation that you had with - - -?---Yeah, it was all in relation to many men.

30

Okay. What would you do when these messages or images would pop up on the screen?---Primarily they weren't on my computer, but because we were sitting side-by-side, they would pop up and it was obvious, and we would always shut them down. We would always press the X and shut them down, but what I've learnt now is that if the conversation continues, they continue to pop up, and so hence that's why they kept popping up, so - - -

35

Did you know that at the time?---No. Well, I didn't – we didn't know why we were seeing this. We had no idea what was going on. We – look, the first time, the very first time something like this popped up, I actually thought, "Is this a joke?" like, "Is this – is there – is this, like, candid camera or something?" I honestly didn't know.

40

At a point, you obviously discovered that these related to Mr Wetherall on his account. Did you discuss the matter with him?---With Mr Wetherall?

45

Yes?---No. No.

And why not?---I – I had seen and been a recipient of Mr Wetherall’s anger, and his volatile temper, and this was, obviously, something very, very private. I – I had
5 never shared this with anyone except my husband, Bill, because I was so embarrassed, but Mr Wetherall would refer to homosexuals in a very derogatory term all the time, and he always prided himself on having a young woman beside him, so we knew that this was not something that he – it was embarrassing. It – he – I don’t believe Mr Wetherall would want – would’ve wanted to know that I knew, that I saw
10 that stuff. I was too scared, and I was far too scared. There’s no way I could’ve approached him about this.

I tender those photos, Commissioner.

15 COMMISSIONER: Just before you do. So these are the photographs, Mr White, between pages 363 and three-six – and there’s one after 366. Yes, 367 and 368, 369, 370. Is this – is this all these photos that go through to the end?

MR WHITE: No, apologies, Commissioner. They’re pages 363 to 366 only.

20 COMMISSIONER: Just in relation to those photos. The first one appears to be taken from a phone – or taken of a phone and then the others appear to be photographs of a – it looks like a desktop screen.

25 MR WHITE: Yes.

COMMISSIONER: Is there – what’s – is there a reason why, or is there some explanation why they are of different sources?

30 MR WHITE: I believe Ms Kelly’s evidence was that the first photo, 363, is a photograph taken of Julie Mossup’s phone.

COMMISSIONER: Yes.

35 MR WHITE: And the final three were taken by Ms Kelly directly on the computer herself.

COMMISSIONER: All right. Ms Kelly, when you were talking about the messages popping up while you were working, can you recall whether these were popping up
40 during the course of the day when Mr Wetherall was in the office?---They generally were not. I – I – no. In regards to these particular photos, I don’t believe he was in the office, no.

Okay. All right. The - - -

45 MR SAPSFORD: The only other problem, your Honour, sorry to interrupt - - -

COMMISSIONER: You're all right.

MR SAPSFORD: - - - with their admissibility is my note of the answer provided by this witness when she was asked by my learned friend, "Did you take those photos?"
5 referring to the photos depicted in 364, 365 and 366, she said that was the same conversation. She didn't answer the question.

COMMISSIONER: I see. Have you got those photographs in front of you, Ms Kelly? The ones that are pages 364, 365 and 366?---Yes.

10 Do you know how those photos came to be taken?---Yeah, I – I took those – I took three-six - - -

MR SAPSFORD: Thank you, your Honour.

15 COMMISSIONER: And when you say they're part of the same conversation, what conversation are you referring to?---That they were part of the – the conversation that he was – that Wayne Wetherall was having in regards to the gangrape situation of his girlfriend.

20 Do – is there a – when you say the conversations, in the photograph at page 363, which is on Ms Mossup's phone, is that the start of the conversation or is that another conversation or - - -?---No, it was all the same. I don't remember if that was the start of it or not. I remember thinking at that point that I need to get some advice – we
25 need to get some advice on how to manage this. So I – sorry, I don't remember the sequence. Is that what you're asking me?

What I'm trying to find out is whether when you refer to all part of the same conversation, are all of these photos, that is the photo of Ms Mossup's phone
30 - - -?---Yeah.

- - - and then the three photos of the desktop computer, are they all, essentially, contemporaneous? Is it all the one conversation?---Yeah. It was the conversations that were popping up on the same day with him and his girlfriend in regards to that.

35 Which comes back to my original question. So why did you take one photo of Ms Mossup's phone and then three photos of the desktop?---Because I think – I – I think that Julie had taken the photo and said, "We need to get advice", and I said, "I need to talk to Bill about this. Can you show me what you've got", and I took that and
40 then I took the next couple of photos.

All right. Anything arising out of that before I admit it?

MR SAPSFORD: No, thank you, your Honour.

45

COMMISSIONER: All right. Photographs between pages and including pages 363, 364, 365 and 366 of the appellant's bundle of documents are admitted and marked exhibit 7. Have you much longer to go, Mr White?

5 MR WHITE: Perhaps we should take a break. I might be - - -

COMMISSIONER: We'll adjourn till 2.15

10 **WITNESS STOOD DOWN**

ADJOURNED [12.57 pm]

15 **RESUMED** [2.16 pm]

20 **LYNETTE GRACE KELLY, CONTINUING**

EXAMINATION-IN-CHIEF BY MR WHITE

25 COMMISSIONER: Mr White.

MR WHITE: Ms Kelly, where we left off with things before the break was we were talking about the Facebook messages. So – and then the Commissioner asked you in respect of whether or not Mr Wetherall was in the house when those particular
30 messages you identified the photographs of were or appeared. Was there ever an occasion where he was in the house and messages would appear?---I – I don't recall, to – I don't recall specific incidences when – for that to have happened, I now know that we would've had to have been on Facebook updating Facebook with the – you know, with the trek information from the Australian guides, and I believe now that
35 he would have to be on Facebook himself somewhere else in the house. I remember that there was always a level of anxiety when we were on Facebook, because if he was around or even his daughters were around, we didn't know, you know, what was going to pop up when and it was, sort of, like, we would have to be on Facebook and he would have to be on Facebook. So I don't remember a specific incidence like
40 that, but there could've been. I'm not sure.

Was there ever an occasion where you had to log into Facebook in order to do the posts for Kokoda spirit?---On the work computers? On – at Kokoda Spirit, no. No, I don't believe so.

45 Okay. So how would you get access to the page?---The – Facebook was on the toolbar on the work monitors and we would just click into that.

Okay. We spoke about the – you described the tenor of some of the messages and the photographs that you saw, and you took us to examples of those photos. So what was your reaction to seeing these messages and these photos?---I was sick. I – I was shocked. Really shocked. I was – it bothered me a lot. I was – I was sick in the stomach over it. I – it was unbelievable. I'd never seen anything quite like that, so, yeah, my reaction was absolutely shock and sickness and – I – I just couldn't – part of my brain just thought it was a joke. I just didn't – I couldn't believe it. It made me physically unwell. Like I said – I think I said earlier, there was much talk about, you know, my supposed stomach cancer.

You're aware that in this proceeding it's asserted that Parry McCutcheon offered you the opportunity to become an administrator of the Facebook page. What do you say to that?---Parry – it was in April of 2017 when Seran left that I was asked to do more Facebook – I think all Facebook, because I hadn't done, really, any of it up to that point, and they – I needed to be able to do Facebook at home on my work – on my laptop at home, because – because sometimes the Australian guides would ring me after hours, and I was the one on call. So Parry did put administrator on my Facebook at home, I believe, and I just know that I went into Facebook at home, I clicked on an icon to the right of my screen and I would go into Kokoda Spirit that way. I was always really reluctant to use it, because I didn't know – at home – I had young teenagers at home, and I didn't know what was going to pop up or not pop up.

Do you understand what the expression administrator means in respect of the Facebook account? What was your understanding at the time?---At the time, I had no understanding, but now I understand that it gives me – well, that gave me access at home. I – at work, I didn't need it, even if it was offered to me, I wouldn't – I – no, I guess – I understand that it would take me to Kokoda Spirit, but I just – I don't really know if that stopped messages just coming up or not. I do know, you know, that I had it at home. I don't really understand everything about Facebook, so - - -

Okay. Further allegations that were raised in the email that we went to that Mr Wetherall sent to you, one of those was in respect of you downloading stuff from Facebook onto a USB. What do you say about that?---It's an absolute lie.

Can you think of anything – or any circumstances in which you have ever or needed to download material from work onto a USB?---No. I – I – look, I have no – there's no USB that was downloaded from a work computer. I – I honestly wouldn't – I've never downloaded anything from a – any Facebook onto a USB. So I'm not even sure I could do it, to be honest with you.

Do you own a USB?---Do I own a USB? No, I probably don't, actually. I'm just trying to think. No, I don't think I do.

Allegations were also raised by Mr Wetherall that you had overpaid yourself. What do you say about that?---Absolute lie.

As a consequence of those allegations, did you come to have any contact with the police?---Yes, I did.

5 And what occurred there?---So one Saturday night at my house, my daughter, Bridget, and I were home. We had a knock on the door, and there were three detectives at my door, and I initially asked them if everything was okay and they said, "Yes, but we're looking for Lynette Kelly. Can we come inside?" I said yes. I've never, ever had policeman come to my door and into my house before and it was -- they were detectives with guns on their belts. They -- they -- we -- we don't know
10 the procedures with detectives and they were -- they talked about -- they asked me a lot of questions about guns and drugs and whether I had anything like that in my house and I didn't. I was, obviously, in shock. I was, obviously, distressed. I remember thinking, "I think I'm going to actually vomit". My poor daughter burst into tears beside me, and when I said to her, "Bridie, please, go wait in your room. You don't need to" -- I didn't want her subjected to such a awful situation. They told
15 me that she wasn't allowed to leave the room, because she'd been detained with me. They were, apparently -- and I didn't even know this until later. They had a warrant for -- to look for a USB, and they just spent a bit of time talking to me or trying to talk to me, and I have to say, I am 59 years old and that would be classed as probably
20 one of the most horrendous, frightening, shocking experiences in my life.

So did that search yield anything? Did anything further come of that?---No. No. They -- I think at one point they said, "We'll just have a look through the bedrooms", which they were welcome to do, and they did. I'm sure -- my husband's a teacher
25 and he -- I'm sure there were USBs around. They didn't take anything. They asked me if I could -- if they could have my phone and maybe my iPad, I think, and I gave it to them. I gave them whatever they needed and a couple of hours later they got it all back to me.

30 And did anything else happen? Any further contact with the police after that?---With the police?

Yeah?---No. Nothing.

35 No charges?---Nothing. No. I didn't know -- I -- I didn't know whether they were coming back. I didn't know whether they were going to -- I knew nothing. Nothing.

Did you provide any material or anything to the police after that event?---I -- after the event. I think at that point -- I didn't personally provide anything to them, I think,
40 that Peter Boyce and Butler McDermott had just my information that showed that all my payslips were in order, and that sort of thing. That's all that was.

Did you make a statement?---To the police? No, I don't think I did. No.

45 Ms Kelly, despite these matters that you've spoken about, why did you stay in the employment with Mr Wetherall?---So I've thought about that. There was a few reasons. I guess, you know, it was a job, I was well paid to do a job, and a job I

enjoyed doing. I enjoyed doing all the logistics in PNG and Australia, and I – it's my strength, my forte, and I really liked it. It's three or four minutes from home, so it was convenient. I guess Mr Wetherall, really, was in and out of the office. So when things go particularly stressed and ugly, or he knew he had overstepped the mark in his aggression with us and started really becoming aggressive and swearing more, he would simply go away and it was almost like, "Okay. He's gone. Now we can breathe and do our work". Another reason I stayed was I felt an obligation to the trekkers who had paid a lot of money to trek Kokoda, and some of them had saved for many, many years for the experience, and I knew that if I left there was no one, really, that would be able to manage – I know that sounds a bit vain, but manage what was doing. Certainly not Mr Wetherall, anyway, and I just felt that I should make sure they had the best experience possible. In PNG, Mr Wetherall constantly would try and reduce the wages of the PNG staff and porters and – and so – or their food allowance. We would do what we call trek expenses, so porters are allowed X amount of dollars to buy food for X amount of days on the Kokoda Track, and the way he would reduce his costs is always to take from the locals, whether it be their wages or their food supplements, and I – he would refer to me as either the Irish Union Rep or his Jiminy Cricket, because I would always fight to make sure that they – they didn't have a pay increase, they just maintained what they should be getting by rights, because I felt that to reduce five kina from these people, which is probably \$2.50 in our terms was a huge amount for them, and meant a lot to them and to us was nothing. So I would always try and keep him honest in that regard, and I guess - - -

Any other reasons beyond that?---Yeah, and, I guess, the other thing – was I honestly – I didn't realise – I had no idea that I was unwell or becoming unwell. I didn't recognise any of the signs. I – you know, I said earlier, we referred to my sickness as a joke and a stomach cancer and I honestly just didn't realise what that was, and then, you know, to be – I'm a mother of four children, and I've just learnt you put one foot in front of the other. I was a stay at home mother for a long time, and it didn't matter whether I was sick or not sick, if I had children that needed me, you just kept going, and I think I just had that mindset. You just got to keep going and put one foot in front of the other and I simply – until I broke down in Dr Harrison's office, I really didn't realise that I was struggling or not coping with what was going on in the office.

That's the evidence of Ms Kelly.

40 **CROSS-EXAMINATION BY MR SAPSFORD**

[2.31 pm]

MR SAPSFORD: Ms Kelly, you certainly were well paid, weren't you?---Yeah. Yes, I was.

45 The last financial year, last full financial year you worked for Mr Wetherall, you were paid \$108,000, weren't you?---That's with all the on call, yes.

Ms Kelly, the photographs that have become exhibit 7 before in court, they're the three photographs, one of them by phone and two of a computer – well, three of a computer screen, and they're produced by you. Where did you store them?---They were just on my phone.

5

Stored on your phone?---They – I never stored them any – they were on my phone and - - -

I'm sorry?---They were on my phone.

10

They were stored on your phone, were they?---They – they were on my phone, yes.

Okay. And they were on your phone when the police took your phone, were they?---I think so, yes.

15

Are they still on your phone?---No, I've deleted them.

When did you delete them?---Some time in the last – I can't be accurate here, but some time in the last – some time last year. Some time in the last 12 months.

20

And the big question, Ms Kelly, which I'll come back to a little later in my cross-examination, is why did you keep them?---I showed them to my husband and - - -

Yes?--- - - - we had a big discussion and I – honestly, I – I didn't even think about – we just – we talked about it. We discussed what we should do about it, and I – I left them there until some point until I deleted them.

25

I take it, Ms Kelly, you showed them to your husband soon after taking them?---I did, yes. Yes.

30

Yes. And having discussed the matter with your husband, why did you not delete them there?---I didn't think to.

Then there was a specific purpose for keeping those photographs, wasn't there, Ms Kelly?---To discuss them with my husband, yes.

35

No. As you stated in discussion – and, as I say, I'll come back to this again, but, Ms Kelly, as you stated in discussion with Ms Christine Wilson, you said to her when you were discussing what popped up on the screen at work, Ms Wilson relates you told her that you and Ms Mossup had decided to copy it and keep it, what was on the screen?---That's a lie.

40

Well, but, in fact, it may be, Ms Kelly, you say it is a lie, but you say – I'm putting to you that you said to Ms Wilson, but it is certainly not a lie that you, in fact, kept those photographs and so did Ms Mossup?---No.

45

Do you want to have a look at exhibit 7? They're the ones you kept. On your phone?---Yes. I don't – I'm sorry, I don't understand. Can you please – I don't understand what you're asking me.

5 Well, I'll get to the point. When discussing this matter with Ms Wilson, and when you were asked why you were copying and keeping those photographs, you said to Ms Wilson, "Because if he", referring to Mr Wetherall, "Ever tries to fuck me over, that's my evidence"?---I never – I never - - -

10 COMMISSIONER: That's not what's in the statement of facts and contentions, Mr Sapsford. Perhaps you should put directly to her what's in 14(e) of the statement of facts and contentions.

15 MR SAPSFORD: I will. Thank you, your Honour. As contained in the statement of facts and contentions, you said to Ms Wilson, "I'm keeping it as leverage for further down the track if he ever decides to fuck mem over". Do you remember saying that to Ms Wilson?---No.

20 In any event, you did keep them, didn't you?---I kept them until I deleted them, yes. I'm sorry. Yes.

Yes, well - - -

25 COMMISSIONER: Sorry, Ms Kelly. You'll need to speak up a little bit?---I'm sorry.

I can hear you okay, but the transcript – these proceedings are being recorded - - -?---Yeah.

30 - - - and the microphone's not going to pick you up, and we're going to lose evidence, potentially?---So can I - - -

35 So you need to make sure that – you also need to raise your voice. Okay?---Okay. I'll - - -

MR SAPSFORD: You say you kept them until you deleted them, but, most certainly, you didn't delete them prior to printing them off and making them available to these proceedings?---They were printed out, that's correct.

40 I see. So prior to deleting them, you printed them?---Because I was asked to, yes.

Well, when was it you deleted them?---Some time in the last – I – some time in the last 12 months.

45 I see. Why did you keep them for that long?---Because it didn't occur to me – I don't – I didn't even remember I had them there.

You – are re you telling the court, Ms Kelly, that you came across these images and messages and that you were absolutely disgusted by them?---That's right.

That's your evidence, isn't it?---Yes, it is.

5

And you're telling the court that you had taken a copy of those on your phone and kept that for a period of some time, years; that's correct, isn't it?

COMMISSIONER: No years, Mr Sapsford.

10

MR SAPSFORD: Well, it's only recently, Ms Kelly, that you deleted them, isn't it?---It's – within the last 12 months, absolutely, yes.

15 All right. In any event, you kept them for some period of time and not deleted them; that's right?---That's – yes.

All right. Well, Ms Kelly, aside from generalised observations as to the behaviour of Mr Wetherall on a day-to-day basis, you recount that the first event of some note was June 2014?---That's correct.

20

And you recount that event as Mr Wetherall standing over you and yelling at you and screaming and accusing you of being too hoity-toity and complaining about not being invited to your husband's birthday party?---That's correct.

25 All right. Yes. I suggest that didn't occur?---Well, it did occur.

I suggest at no stage did Mr Wetherall stand over you and abuse you?---He did.

30 And you relate that Ms Carter was at that stage attending hospital to be screened for cancer or something like that; is that right?---She was having treatment.

Having treatment for cancer?---That's correct.

35 All right. And when she came back, you told her what you thought had occurred?---I endeavoured to explain to her why I was so upset, and I did.

And you contend Mr McCutcheon was there at the same time?---He turned up after Seran, and he – Seran Carter, and he came into the office to do some work on the computers.

40

And it was following Mr McCutcheon attending that Mr Wetherall came home, if I can put it that way, and they had a discussion?---I don't – I – I don't recall where Mr Wetherall was when Seran Carter came back into the office. I just – I'm sorry, I don't remember that, but - - -

45

Yes?---But then I do know that after Parry McCutcheon had finished working on the computers and Seran and I were waiting outside the office for him to finish, he left

the office and we went back in there, and I don't recall where Wayne was, but I do know that they both ended up in his office behind us.

5 And your evidence – my note of your evidence, Ms Kelly, is that Mr Wetherall and Mr McCutcheon were in the other office whispering?---That's correct.

10 But you were able to hear one phrase, "I just had to put her back in her place"?---I think they were coming closer. They were walking out of the office, and that's why I've caught that phrase.

I see. I suggest that did not occur?---It did.

15 Now, it seems that following the event of 2014 you elected to remain in the employment of Mr Wetherall?---I did.

Why was that?---I needed the job.

20 In fact, by 2017 you actively agitated with Mr Wetherall to be given a contract of permanent employment, didn't you?---Up until 2017 Mr Wetherall hadn't paid me any superannuation and never paid us for our holiday pay. So when Seran left in ANZAC of 2017, I asked to have a contract drawn up and – and that was the contract we had, because I needed to – I – I wanted my entitlements. I wanted my super and my holiday pay and long service and - - -

25 You wanted to be paid in a different fashion?---I wanted to be paid as per my entitlements, what I was entitled to.

30 You were being paid, prior to that date, as a subcontractor and you wanted the benefits and entitlements of a permanent employee, didn't you?---I don't believe I was a subcontractor.

35 In any event, you did write to Mr Wetherall requesting a job – stating to him job security was essential to you and that you could not continue to be employed without a contract as a subcontractor and using an ABN, as there was no job security. Do you remember writing to him saying that?---No, I don't, but - - -

Have a look at this document, would you. Page 58 and 59 of that – of my learned friend's bundle, your Honour.

40 COMMISSIONER: All right.

MR SAPSFORD: Just turn up page 58 and 59, please.

45 COMMISSIONER: Have you got that there?---Yes. Yes.

MR SAPSFORD: Just go to – that's your document, isn't it?---Well, I've written this, as long as it hasn't changed, yes it is.

Well, you read it through as much as you like, Ms Kelly?---Can I read it all, is that what you said, sorry?

Well, just satisfy yourself it's your document?---Yeah. Okay. Yes.

Yes, it is?---I believe so, yes.

Yes?---Yeah.

10 All right. Well, you see, if you go to the first page, please, you refer to the departure of Seran, that's Seran Carter, and you say it's necessary to review your current employment situation?---Yes.

15 And your current employment situation's referred to on the second page, second paragraph where you state:

Job security is essential for me. I cannot continue to be employed without a contract as a subcontractor using an ABN, as there is no job security.

20 Does that refresh your memory, Ms Kelly, as to the nature of your employment prior to entering into the contract?---Well, okay. I've written that, yes. I – I didn't use – I wasn't using an ABN at that point for my employment and I was working for Kokoda Spirit full-time.

25 So that's incorrect, is it?---I'm sorry if my ignorance is – I was working for him full-time. I worked there Monday to Friday and I worked 9 till 4.30 and I was on call 24/7. So sorry if I've used the wrong - - -

It's quite straightforward, Ms Kelly. That's your document?---That's correct, yeah.

30 You say there you were using an ABN, now you're saying you weren't?---Well, I was initially using an ABN when I started in 2010.

I tender that document, your Honour.

35 COMMISSIONER: Undated letter from Ms Kelly to Mr Wetherall regarding employment conditions. It's found at pages 58 and 59 of the appellant's bundle of documents. It's admitted and marked exhibit 8.

40 **EXHIBIT #8 ADMITTED AND MARKED**

45 MR SAPSFORD: And that's what led, Ms Kelly, to the creation of the contractual retainer titled Letter of Engagement, which is now exhibit 2 before the court; that's right? Your contract that you entered into with Mr Wetherall?---Is that the one I saw before? Yes.

And did – you created that document, didn't you?---I did, yes. Yeah.

Yes. In particular, you created the document referring to – at paragraph, if you go, please, to page 60. I'm referring the witness to exhibit 2, your Honour.

5

COMMISSIONER: Exhibit 2, did you say?

MR SAPSFORD: Yes, your Honour. In particular, at paragraph 4.2, the number of weeks you were to be working and paid for per year was 42, wasn't it?---That's what I would've liked to have worked, and that's what Wayne said would be okay, but it didn't - - -

10

There was a particular purpose for that, wasn't there? Due to the fact that your husband was a school teacher and you wanted to take an extended period of leave over the school holidays so you could holiday with your husband?---That's correct.

15

And that's why you both agreed on 42 weeks?---That's correct.

You, in fact, subsequently paid yourself for more than 42 weeks, didn't you?---That's because I worked more than 42 weeks. At the end of each year, when I went on break in December, which was the end of the trekking period, that – I couldn't go any earlier, because Wayne wouldn't let me go any earlier.

20

Similarly, you paid yourself for public holidays, which you weren't entitled to be paid for?---Once I had the contract.

25

Yes.

COMMISSIONER: Why is she not entitled to be paid for public holidays if she's a full-time employee, Mr Sapsford?

30

MR SAPSFORD: They're my instructions, your Honour.

COMMISSIONER: Mr Sapsford, that is some of the most basic employment law and that question - - -

35

MR SAPSFORD: Yes.

COMMISSIONER: - - - is not appropriate to put it to the witness in that way.

40

MR SAPSFORD: All right. I won't pursue it. In any event, and it already has been established the contract itself outlines a rate of \$45 per hour?---That was signed in 2017. That's correct.

And the evidence you give in relation to an oral variation in relation to that agreed rate per hour was a matter that you discussed, in part, with Ms Christine Wilson, wasn't it? Do you remember a discussion with Ms Wilson in relation to a verbal

45

agreement that you had about your pay increase and a verbal agreement in relation to being stood down from work on 26 March 2020?---My pay increase started in – as of the beginning of the new financial year in 2018, and I had a discussion with Julie Mossup in 2018. That’s when the pay increase started. I don’t believe I discussed any pay at all with Christine Wilson. I was on the same pay rate.

You recall having a discussion with Ms Wilson on 6 April 2020, don’t you?---In the – I had a discussion when she picked up the iPad, and then I had a discussion when she rang me that night, yes.

And that’s the discussion where you contend that Ms Wilson told you to watch your back?---That’s correct.

See, Ms Wilson says that it is incorrect and that it is an outright lie, recalling the discussion was that you asked her if she had your back?---No, that’s not correct.

She says further that in relation to the discussion, you spoke about the discussion with Mr Wetherall at the end of March and that you appeared to be concerned the stand down had only been communicated verbally. Do you remember that?---That didn’t occur - - -

Ms Wilson relates at that point she asked you whether the employment contract for you that Wayne had on the table during the discussion of 26 March 2020 was the latest updated contract for you. Do you remember that?---I’m sorry, can you say that again? Sorry.

Ms Wilson says that during that discussion, she asked you whether the employment contract that Wayne had on the table during the discussion of 26 March 2020 was the latest updated contract for you?---No. No, I don’t – no, I don’t recall that at all.

She says at that point she noted you became alarmed and commented that you and Wayne had a verbal agreement about your pay increase?---No. Sorry.

Did you say that to Ms Wilson?---No.

She relates that she replied that you could not change the goalposts to suit you, and observed you had been complaining that the stand down agreement was only verbal and not in writing, and in the same breath you were saying you could have a verbal amendment to your employment contract. Do you remember discussing that?---The – no. It’s not that I don’t remember. That conversation didn’t take place.

All right. While I’m on the topic of that conversation, there was a discussion, wasn’t there, about the possibility you might accuse Mr Wetherall of bullying?---No.

And she said to you if you were talking about going down the workplace bullying path, then she had never witnessed that and will not lie for anybody. Do you remember her saying that?---No. It’s not that I don’t remember. It didn’t happen.

There was no discussion about bullying or Wayne being concerned about you accusing him of bullying?---With Christine Wilson?

With Christine Wilson?---No.

5

Further, an allegation that Mr Wetherall mentioned he might keep you on the books until July and then – and pay out leave and make this all go away. Do you remember a discussion about that?---No.

10 You see, to put it to you fairly, Ms Wilson says that she confirms Mr Wetherall was worried about cash flow and that most employees were likely going to be eligible for bookkeeper and once work was back up and running, he would look at your entitlements – stop your entitlements. Ms Wilson, in fact, said to you she thought that was fair?---No.

15

So there was no mention about keeping you on the books until July and then paying out leave and making it all go away?---No.

20 What about that Mr Wetherall had told you if you stuck by him he would look after you? This is with Christine Wilson on 6 April 2020?---That's what Wayne Wetherall had said to Christine, not to me. Is that what you're saying, is it?

No, I'm saying there was a discussion between yourself and Christine Wilson on that topic on 6 April 2020?---Yeah. No, she said to me that she – on the phone that afternoon, she said to me, "If I stick by him he'll look after me".

25

All right. If the witness could please see – excuse me a second, your Honour.

30 COMMISSIONER: Is it exhibit 6 you're looking for?

MR SAPSFORD: I'm sorry?

COMMISSIONER: Is it exhibit 6, the bundle of emails around 6 April?

35 MR SAPSFORD: It wasn't, your Honour.

COMMISSIONER: Okay.

40 MR SAPSFORD: Yes. I'll provide a copy of the documents to this witness, so she's got it with you. It's number 1 in the respondent's bundle, your Honour.

COMMISSIONER: Okay.

45 MR SAPSFORD: Just would you turn, please, Ms Kelly, to the first tab there where it's got Statement of Lynette Grace Kelly and turn then, please, to the fourth page – I beg your pardon, the fifth page down the bottom there. In paragraph (gg) the 6th of April 2020, you refer there to Ms Wilson picking up an iPad from your house on the

5 way to work and that she was nervous about going to work. You then in the subsequent dot points refer to “watch my back”, inquiries about your pay rise in 2018 and that she had seen things that made her question you, and just go through those dot points. You’ll see there, in particular, a dot point about Wayne being concerned about you going to accuse him of bullying. Does that refresh your memory as to the matters discussed with Ms Wilson?---Well, he may – she may have said to me, “He’s concerned about you accusing him of bullying”. I did not respond to that comment.

10 But the distinction is, Ms Kelly, you just told the court the discussion didn’t take place. You just told the court you didn’t talk about Wayne being accused of bullying?---Well, I’m sorry, I forgot that she may have asked me. I never responded to that – that comment.

15 Yes. The record will speak for itself. I tender that document, your Honour.

COMMISSIONER: The statement of Lynette Grace Kelly, which appears to be dated the 21st of April 2020. I suppose I should ask her to identify that’s her statement before I do that, Mr Sapsford.

20 MR SAPSFORD: Yes.

COMMISSIONER: I appreciate it probably goes without saying, but I don’t know that she’s actually formally identified it yet.

25 MR SAPSFORD: Ms Kelly, would you tell the court whether that’s your statement, please. It’s just that it wasn’t signed. That’s why?---Can I just ask when I wrote that statement?

30 I can’t hear you?---Can I just ask when I wrote that statement?

I don’t know, Ms Kelly. Is that your statement or isn’t it?

35 COMMISSIONER: Did you provide an outline of evidence, in accordance with - - -?---Yes, I - - -

Sorry. I’m talking to your counsel. Is this an outline of evidence that was provided?

40 MR WHITE: I believe it’s one of the statements that was provided in support of the WorkCover application, and there is a date that appears on the final page.

COMMISSIONER: Right. Do you recognise the document at all, Ms Kelly?---Yes, I do. Yes.

45 You do?---I do. Yes.

All right. The statement of Lynette Grace Kelly that is dated the 21st of April 2020 is admitted and marked exhibit 9.

EXHIBIT #9 ADMITTED AND MARKED

5 MR SAPSFORD: You seem to indicate, Ms Kelly, that at the time when you spoke to Mr Wetherall about the pay rise, Ms Mossup was in the room; is that right?---There was general discussions between Wayne and myself without Ms – without Julie Mossup being in the room. It was once – once it was all finalised on the afternoon of the 29th of June, which I believe was a Friday, that it was – we were all in the office together and I – because it wasn't just – it was Julie, it was myself, it was Wayne and there was a younger lady – a young girl there, Kate Schumacher, who also had to have her rate of pay put on Xero. So we finalised it all in that office on that afternoon.

15 So, at the very least, Ms Mossup was present at the time when it was finalised; is that right?---That's correct. Yes. Julie Mossup was also in the room when I had to ring it all through to the – Paul Thomas, the accountants, and she was there beside me when I was doing that, as well.

20 You refer to the events which occurred when Ms Mossup departed. Now, just to be clear, in relation to Ms Mossup, she's a retired senior sergeant of police, isn't she?---She is, yes.

25 And had some 23 years on the police force; is that right?---I couldn't tell you how long Julie worked as a police officer, I'm sorry. I know she was there a long time.

In any event, when the interaction between Mr Wetherall and Ms Mossup occurred on the 12th of April - - -?---Yes.

30 - - - Mr McCutcheon was there, as well?---He was not.

See, I suggest Mr McCutcheon was present and is able to give evidence of observing Ms Mossup pursue Mr Wetherall into the laundry?---That's – that's a lie. That's not true.

35 Well, do you say he wasn't present at the time that Mr Wetherall and Ms Mossup were in the laundry?---That's exactly what I'm saying, yes.

40 You seem you say in the course of that encounter you had an interaction with Mr Wetherall when he was up in your face and said, "Why aren't you fucking talking"?---That was after Julie had left, and after Julie had left, walked out the front door, I can't tell you how long, but it was very shortly after Parry McCutcheon walked in and he was in the kitchen and once I was called into the kitchen, or yelled at to get into the kitchen, I was in the kitchen and Parry was already there listening to Wayne as he continued to yell his version of events.

45

You can have a look at this, Ms Kelly, if you need, but you make no mention of that event in your statement, which is exhibit 9?---So which – when – which one are you referring to, I'm sorry.

5 If you want to turn it up, it's document 1 that you've got in front of you?---Yeah.

And that's become exhibit 9. You make no mention of the events involving Ms Mossup or Mr Wetherall getting up in your face and saying, "Why aren't you fucking talking"?---Look, when I wrote some of these statements, I can only say that
10 I wasn't in a particularly good way mentally.

You're dropping your voice again, Ms Kelly?---I'm sorry. When I wrote some of these statements, I wasn't in a particularly good place mentally, and I – the incident definitely occurred. I definitely have a very good recollection of it. I was there for
15 the whole of it, and if I haven't detailed it – but on this statement it says, "(b) co-worker, ugly departure". Is that what you mean?

That's why I mean, yes, but, more importantly, any mention of the actual interaction between yourself and Mr Wetherall?---Well, like – okay. So you wanted more detail
20 and I - - -

No, I'm just saying it's not there, is it?---No, I - - -

COMMISSIONER: Which part did you point to, Ms Kelly, you said - - -?---On the
25 last page, page 8, there's just point (hh)(b), I do briefly - - -

I see?--- - - - mention it. I didn't go into further detail.

Yes.
30

MR SAPSFORD: Thank you, your Honour?---It was – sorry. It was shortly after all of this started and I was not really capable of giving much more than that, obviously, and so - - -

35 Now [indistinct] eventually to Mr Wetherall's return to work on 26 March 2020 when you had a discussion with him about your employment – your future employment prospects. Do you remember a discussion with Mr Wetherall on 26 March 2020 about your future employment prospects?---We definitely had a discussion. Future employment. We had the – the discussions on the 27th of March
40 in regards to reduced hours in the morning and we had a discussion later that morning in regards to Mr Wetherall worrying about me trying to get my seven years of unpaid superannuation and we discussed my long service. I'm sorry if there was something else on the 26th. Could you refer my – just refresh my memory. I'm - - -

45 I'm just putting to you that you had that discussion on the 26th of March?---I believe there was a discussion on the 27th. He was - - -

He returned to Queensland on the 25th. You had a discussion with him on the 26th?---The only discussion we had – I believe we had was on the 27th when he made it very clear he wanted me in the office to do the shit jobs that he didn't want to do.

5 If you'd turn, please, to - - -?---Okay.

- - - paragraph, in that statement?---Okay.

Third page. Paragraph (wx).

10

COMMISSIONER: Fourth page.

MR SAPSFORD: Fourth page. Thank you, your Honour?---Right.

15 *He was at work on Thursday 26 March 2020.*

?---Okay. Yeah.

Continuing:

20

I initiated a conversation about my future employment prospects.

?---Right.

25 Does that help, Ms Kelly?---Yes, it does. Sorry. Yes.

In fact, what the conversation was you wanted from Mr Wetherall your long service leave, didn't you? You wanted to access your long service leave?---I asked him if I could – because he was going to get me in one day a week, I asked him if I could
30 draw down one day a week out of my long service leave.

Mr Wetherall indicated to you that he couldn't pay you your long service leave, because you weren't entitled to it until July?---No, he never said that.

35 You, in fact, went so far as to contact Mr Wetherall's accountant seeking to access your long service leave, didn't you?---No. On the 27th of March I had to ring Paul Thomas about the JobKeeper for Alicia, and then I got – I couldn't get a hold of Paul Thomas, so I had to speak to the bookkeeper Dawn. Because Wayne had rejected giving me any of my long service one day a week, I was looking for good faith, I
40 asked Dawn – I said to Dawn, "Dawn, my long service isn't recorded anywhere here on Xero. How does that work? I've been here nearly 10 years", and she simply said to me, "That's something that Wayne will have to authorise". So that was with Dawn the bookkeeper, and that was it. That was the end of the conversation.

45 Now, the leave that you were attempting to draw on on 27 March 2020 was your long service leave, wasn't it?---That's correct.

And it was agreed, wasn't it, that you would come back to work on the 1st of April 2020 to do a number of tasks, in particular, the job that you had particular expertise in, that of doing the pays?---Well, I was a – it was a pay date so, yes, a pay run needed to be done on the 1st of April.

5

But after the discussions of Thursday the 26th of March 2020 and Friday the 27th of March 2020, you were stood down, weren't you?---I was not.

Well, Ms Kelly, you didn't come into the work on the Monday or the Tuesday, did you?---It's because there wasn't enough work to be done, but I was given an iPad – a Kokoda Spirit iPad and a Kokoda Spirit iPhone to work from home. There was no – he didn't want us in the office. There was no need for us to be in the office. In fact, on that Friday, I think Christine Wilson made me aware that perhaps the three of us shouldn't have even been in the office together. I believe there was a – from
10 recollection, the COVID lockdown and, hence, he said, "Come in on Wednesday",
15 because I needed to – Xero wasn't anywhere else. I couldn't do a Xero from home on the iPad, so I had to go into work on that Wednesday.

And there was a discussion where Mr Wetherall wanted you in on the Thursday, but
20 you told him you had a previous engagement; is that right?---Well, I said to him, "You didn't initially want me in on the Thursday, so, I'm sorry, I've got an appointment on Thursday morning; however, I can come in on Thursday afternoon. I do have the iPad and I do have the iPhone so I'm happy to, you know, do whatever I can with that and I can certainly come in on Friday".

25

Right. And then there was a discussion after your departure on 1 April 2020 on 2 April 2020 where Mr Wetherall was upset about the manner in which you left; is that right?---That's correct, yes.

30 He also questioned what you had done for five hours on the Wednesday?---He did, yes.

And this led you to consulting your doctor on the 3rd of April in 2020; is that right?---The – the – that was the last conversation I had with him, and it was the
35 aggressive conversation that led to me going to the doctor on Friday the 3rd of April, yes.

Could the witness please see exhibit 6, your Honour, and if you turn, please, to page 180 of the exhibit. You see there that's an email from yourself to Mr Wetherall of 3
40 April 2020?---That's correct.

And you refer in that email, don't' you, to Mr Wetherall processing your sick leave entitlement; that's right, isn't it?---That's correct.

45 That was the purpose of the certificate? In order to get entitlements as to sick leave, wasn't it?---I was sick, so yes.

And the sick leave certificate is in generic form, isn't it?---Do you mean it's not specific to - - -

It's not a WorkCover certificate?---No. No.

5

And there ensued a series of emails, the first of which, if you'd turn to the start of exhibit 6, page 179, is from Mr Wetherall to you, 6 April 2020?---Yes.

10 Where he outlines you and other employees were stood down from your employment on 27 March 2020 due to a stoppage in work as a result of COVID-19 and during a period of stand down like that, you were not entitled to be paid; that's right?---That's what the statement says, yes.

15 And that was at 9.27 am, to which you responded you were unaware at 2.19 pm that you had been stood down, stating that you had nothing in writing and didn't consider yourself to have been "notified"; that's right?---That's right.

20 You see, this is the same discussion you had with Ms Wilson, isn't it, about being stood down orally, as opposed to being in writing. Do you remember that discussion with Ms Wilson?---I – Ms Wilson was stood down. I was not stood down.

25 I see. Well, what was the situation? Who was stood down and who wasn't?---Well, I believe Christine Wilson was stood down. When she left on the Friday afternoon – and I actually don't believe the word "stood down" was ever really – the terminology wasn't really used. It was, like, "Okay. There's not enough work. I'll leave. Give me a call when you need me back". It was that sort of general terminology.

30 But you confirm in that communication of 6 April that you were instructed on 27 March to not come into work on Monday or Tuesday - - -?---That's correct.

- - - until Mr Wetherall could sort things out?---That's right. There wasn't enough work.

35 Indeed, it's that document where you inform Mr Wetherall that you consider and still do, until advised otherwise, that your employment conditions remained unchanged and you would expect your personal leave to be paid as normal; is that right?---Yes. Yes.

40 Mr Wetherall responds by the email of 7 April 2020 outlining there was no requirement, on his understanding of the Fair Work Act, for him to provide notice of standing you down nor to confirm it in writing with you and disagrees that you were not aware that you were stood down with the other employees on 27 March, and that refers also to the discussion of 26 March, where you asked Mr Wetherall to pay you two days each week as long service leave while you were stood down. Do you
45 accept that you made that request?---I accept I made a request of one day a week to draw down from my long service leave.

And Mr Wetherall declined that request, as he outlines in the next paragraph?---I'm sorry - - -

5 He reiterates his view that you were stood down, right, by 8th of April in 2020, when things had become a little bit more acute, where Mr Wetherall writes to you with respect to having ascertained that you had unlawfully obtained and downloaded and stored on two USBs photos and videos from his personal messenger account. It's fair to observe on the documentation that Mr Wetherall, and on your evidence, Ms Kelly, that Mr Wetherall had no knowledge of the access that was being made by
10 yourself, Ms Mossup and Ms Carter into his private images on the computer?---I don't know whether Mr Wetherall knew what we were seeing or not.

I beg your pardon?---I don't know if knew what we were – what was popping up on Facebook. I - - -

15 Well, your - - -?---I presume he wasn't. He was unaware that his messages were popping up when we were on Facebook and he was unaware of it.

Yes. And your evidence has been, Ms Kelly, that you took active steps whenever
20 you were on Facebook to ensure - - -?---To shut it down.

- - - that he didn't see you accessing this material?---I – we - - -

25 MR WHITE: I'm not sure that was Ms Kelly's - - -

COMMISSIONER: No, that wasn't her evidence and she just answered. She said, "To shut it down".

30 MR SAPSFORD: To shut it down. Yes.

COMMISSIONER: It would pop up without her doing anything, that's how Messenger works. I'm familiar with Facebook. And if there's a live chat going on, the messages keep popping up on your screen feed, and it's in those circumstances, I understood her evidence to be, that whenever these messages pop up, she'd shut
35 them down again. You can click X to box out and get it off your screen. That's what I understood her evidence to be and what she was doing.

MR SAPSFORD: Yes. Your Honour, I'll just take that a little bit further. Ms Kelly, as I understand it, the purpose of that was to ensure that Mr Wetherall didn't
40 - - -?---No.

- - - observe this happening?---It's because I didn't want to see it. It's – nobody wanted to see it. It wasn't in case Mr Wetherall saw it. It was - - -

45 Save for the occasions when you and Ms Mossup took photos of it?---That was – that was a really disturbing conversation about Mr Wetherall trying to coerce a young woman into a gangrape situation, and hence this was after a long time, many years of

us shutting down messages, and I was – I was really concerned and really disturbed, and still am, that – that that was occurring. That he was trying to – they were – he was negotiating on how many men would gangrape her, so I'm just – yeah, it's just awful.

5

Ms Kelly, in relation to the questions I was asking you about as to whether or not – it would be incorrect, wouldn't it to say that you had access to the Kokoda Spirit Facebook account and there was very inappropriate content on that account and Mr Wetherall was aware of the content and of you having access to the content?---Okay.

10 So – what – your question is, sorry?

Given the evidence you have just given, Ms Kelly - - -?---Yes.

15 - - - it would be incorrect to say the following: that you had access to the Kokoda Spirit Facebook account and there was very inappropriate content on that account and Mr Wetherall was aware of the content and of you having access to the content?---Well, I don't know if he knew what we – he knew we had access to his Facebook. Kokoda Spirit Facebook, because that was part of our – our role. That was our job description to get on there and update Facebook. He would often
20 instruct us to get on Facebook and look at all sorts of other things, including women that were on his trek. So I don't know whether he knew what I was seeing was there or not.

25 You remember, don't you, at the time when Ms Carter was employed, having a discussion with Mr McCutcheon about the possibility of you having a separate administrative access?---No, that didn't happen.

30 See, Mr McCutcheon relates having a discussion with you in early 2016 at the time when you were posting on Facebook as requested by Mr Wetherall regarding the progress of treks and trekkers that he suggested he make you an administrator in order that you were able to access the Kokoda Spirit Facebook page through your own Facebook page without having to use Mr Wetherall's Facebook access?---That conversation did not occur. The first conversation I had with Parry McCutcheon in regards to administrator – I don't know what do you call that, rights or whatever –
35 was when Seran left and it was before ANZAC in 2017 and I was the only one left in the office and I had to update the ANZAC treks in ANZAC 2017. So they decided to make me – put administrator on my laptop on home.

40 Were you aware by that stage, Ms Kelly, of the inappropriate content that you were being exposed to?---Yes, I was.

Did you, Ms Kelly, tell Mr McCutcheon?---No, I didn't, because - - -

45 Why not?--- - - - Mr McCutcheon is a close friend to Mr Wetherall, and I was too concerned and too embarrassed and I – I didn't - - -

You see, I suggest to you when Mr McCutcheon offered to you the possibility of being an administrator and having direct access independently of Mr Wetherall's Facebook page that you said you didn't do Facebook, and he suggested creating a Facebook page just using the Kokoda inquiries email that you and Ms Carter could use?---We never – Seran Carter and myself never had a conversation with Parry with regards to administrator whatever that's called.

And you said to - - -?---That never happened.

10 You said to Mr McCutcheon, "No, it's easier", or words to the effect of, "Leave it as it is"?---No. In 2017 he put that administrator on my computer at home, on the work computers we didn't need anything. It was on the toolbar. We opened Facebook on the toolbar and that was it, and I wouldn't – had no idea that if you had administrator – I don't know. Does that log you in different – I don't know. I didn't need it.

15 In mid-2019 Mr Wetherall employed Ms Carlie Brial as a marketing consultant - - -?---That's correct.

- - - to work with the team?---Yes.

20 Which required her to have access to both Facebook pages?---Right.

When I say both, I'm talking to the two – about the two businesses run by Mr Wetherall?---So Wild Spirit and Kokoda Spirit?

25 Yes?---Yeah. Okay.

That's right, isn't it?---So that – I'm sorry - - -

30 In 2019 - - -?---Yeah.

- - - Mr Wetherall employed Ms Brial - - -?---Yes, that's correct. Yes. Yeah. Yeah.

35 You made it very clear at the time to Mr McCutcheon that Ms Brial shouldn't have the same access as you had in the office and would need her own logins; that's right, isn't it?---I – no. I remember being concerned that Carlie would see what we were seeing. I was really worried that she – if she was on there, too, then she was going to actually see what we were seeing.

40 And you – I suggest he suggested that she could be added as an admin and she could accept this through her own Facebook, just as he'd suggest to you earlier in 2016? That's two parts to that question?---Yeah. Okay. So - - -

I'll make it clear?---Yeah. So - - -

45

The first part is he suggested that Ms Brial could be added as an admin and could, therefore, access it through her own Facebook account?---Yes, I believe that's what he said. Yes.

5 Yeah?---Yes.

You agree with that?---Yes. Yes.

10 The - - -?---But he never said that to me in 2016, and I – I was by that point – I was already – I had access to Kokoda Spirit. I don't think I had – no, I didn't have access to Wild Spirit. I had access to Kokoda Spirit Facebook on my laptop at home and, as I've said, I didn't need – I had it on my toolbar – on all – it was actually on every computer in the workplace. So, hence, I – I didn't need to ask any further questions. We all had the same access.

15 All right. Now, the purpose of accessing the Facebook was to update the Facebook page of the business in relation to treks that were in progress, isn't it?---That's – primarily, yes.

20 Well, that was the whole purpose of it?---Yeah, but there were times when Mr Wetherall – there were a lot of times when Mr Wetherall – and it was mainly my colleague. It started with Seran, because she used Facebook more than I did, right, and he would often say, "Get on Facebook and have a look at", and it would be all sorts of different things. So, yes, primarily; however, there were a lot of other
25 reasons we were asked to get on Facebook, even if he had placed something on his Facebook that he'd written and he wanted us to look at it and see if it looked right, sounded right, whatever it was.

30 Could the witness please see – tab 36, pages 352 to 358.

COMMISSIONER: This is of the respondent's bundle?

MR SAPSFORD: The respondent's bundle, your Honour.

35 MR WHITE: Appellant's bundle, I believe.

MR SAPSFORD: Appellant's bundle, I beg your pardon.

40 COMMISSIONER: Tab 36, did you say?

MR SAPSFORD: Yes, your Honour.

COMMISSIONER: Document 36 or - - -

45 MR SAPSFORD: Tab 36, your Honour.

COMMISSIONER: Tab I document 36?

MR SAPSFORD: Yes, I think so, your Honour. That's it. Yes, your Honour. Have you got that there?---No, I'm sorry. Is it - - -

Pages 352 to 358?---Right. Yeah.

5 You see there a series of entries and annotations from – starting with on the last page 17 October 2019 and finishing on the first page, which is 6 April 2020 to a number of accesses which have occurred on the employer's Facebook site, and do you see annotations there on a number of occasions where it refers to "WW". Now, assume
10 for the purpose of this question, that's Mr Wetherall, and he was not actively on a trek at the time where he was either in Darwin or a plane flying back from Darwin. There was no reason, was there, for you to access Facebook on those occasions?---The only reason I would've accessed Facebook is if I'd been instructed to by Mr Wetherall; however, I – there was three or four computers in that office
15 that all had access to Facebook, so it wasn't just my computer.

I tender that document for identification, your Honour.

20 COMMISSIONER: The documents found at page, and including 352 to 358 of the appellant's bundle of documents, at Facebook login records from October 2019 to April 2020 are marked for the purposes of identification.

MR SAPSFORD: Right. Now, if we can go back to, please, what's become exhibit 7, the three photographs that you retained on your phone and produced at a later
25 time. The first of those photographs, these are photographs of text messages on an iPhone; that's – well, a phone of some description. It appears to be an iPhone; is that right?---Is that a text message? Is this - - -

30 Or an SMS. Whatever. They're messages on a phone. That's a photograph of messages on a phone, isn't it?---Yes. Yeah, but - - -

And you took that photograph?---I took that photograph, yes.

35 And the phone belongs to Ms Mossup?---That's correct, yeah.

What is Ms Mossup doing accessing that content on her phone?---No, no, no. She – I think – I think she's taken a photo of the screen. That's a photo.

40 It doesn't have, as with the other two, the toolbar at the bottom?---No, but that – she's taken a photo.

What happened on that occasion? Ms Mossup has a photo on her phone and then there's another three photos on the screen. What occurred? How did that come to be?---That was that awful situation that I've spoken about that – and we were – that –
45 so that was that awful situation that I've spoken about with the – where he was trying to coerce that young lady, and so I just said, "This – is this illegal? Is this" – I didn't – we didn't know what to do, so I just went – she had taken a photo. She was going

to discuss it with Darryl. I said, "Just show me", and we took a couple of photos". That's what it was and, as I've said, we were both really concerned for her. We were embarrassed. I was – we were shocked. We didn't know where to go with it, so that's what happened.

5

Are you saying, having detected initial content as exhibited in the first photo with the phone, you then went about looking for further content?---No, I didn't look about for further content. The content that is photographed was popped upon the screen. We didn't look for anything. It was popped up.

10

You indicate that not only did you know what to do, but also Ms Mossup did not know what to do?---No, neither of us knew what to do.

And Ms Mossup's an ex-senior sergeant of police?---Yes. She's retired.

15

I think you indicate that you - - ?---Yeah.

- - - didn't want to tell Wayne about what was occurring?---I was, and still am, very fearful of Mr Wetherall, and I will – I could never have approached him about this.

20

Given your concerns about your content that you express now, did you think about going to the police?---We thought about – we spoke about going to Brendan Bathersby, who's a solicitor on the Sunshine Coast.

25

Did you do that?---No, because we – we – when we were discussing it we had a – I guess, a ethical dilemma. Is this – you know, like, what do we do? Do we have a duty of care? Are they consenting adults? Do we go to the police? Do we go – do we just – I guess we spoke about going to Brendan Bathersby as a solicitor, because we didn't know if it was illegal. We didn't – we made a decision on that day that if we ever saw anything that involved anybody that was underage, we would definitely go straight to the police, because this was a whole new level of – I - - -

30

But what you did do, Ms Kelly - - ?---Yes.

35

You and Ms Mossup, on that occasion and on other occasions, took photos, retained them – retained those photos on your own phones and did nothing further?---On other occasions? What are you referring to.

Well, there's other photos going to be produced through Ms Mossup that she took?---Well, they - - -

40

MR WHITE: I'm not sure this witness can speak to what the other witnesses did, Commissioner, will be my submission.

45

MR SAPSFORD: All right. Well, I'll ask you, Ms Kelly. Are they the only photos that were taken by either yourself or Ms Mossup or Ms Carter?

MR WHITE: Again, I'm not sure this witness can speak to that.

MR SAPSFORD: Well, she can - - -

5 COMMISSIONER: She can't answer questions about what other photos other people took, but she can certainly answer a question as to whether or not these are photos taken by her and are they the only photos taken by her.

10 MR SAPSFORD: Yes. Were those the only photos taken by you?---By me, yes.

I see. Are you aware of other photos being taken?---Yes.

15 And who were they by?---There was -- right at the beginning Seran took a couple of photos that she sent to me when I wasn't in the office when all of that started, and that was in -- that was with -- I believe with Helen, our PNG staff, that he was -- every time he flew to PNG as part of her job she had to meet him at the hotel, and so there was a couple of those photos taken.

20 So are you saying it began with Ms Carter sending photos to you?---There was a -- she messaged me a couple of photos, yes.

And did you take photos after that?---I took those -- these -- they -- yeah, I took these photos in -- I don't know, 2018, maybe.

25 You see, Ms Kelly, you were no stranger to recording matters, were you?---Recording - - -

30 You've on at least two occasions recorded dealings with Mr Wetherall, haven't you?---In -- what are you referring to? What do you mean?

I'm saying that on at least two occasions you've made tape recordings of conversations with Mr Wetherall?---Because I was fearful of him, that's correct. I was in the office by myself in 2017 after Seran left, trying to negotiate how I was going to move forward in my employment and I was there in a house by myself with Mr Wetherall.

You took a recording of Mr Wetherall when negotiating the contract you entered into, didn't you?---That's -- that's that recording that I'm referring to, yes.

40 You took a recording of him in 2020. Do you remember that?---Can you just be more specific? What do you mean?

45 I can't, but can you remember whether you did in 2020 take a recording of a conversation with Mr Wetherall?---Possibly, yes.

Did you let Mr Wetherall know when you were taking those recordings that you were doing so?---No. No, I just had my phone beside me.

You remember, don't you, having a conversation with Christine Wilson on the 6th of April regarding an interaction you'd had with Mr Wetherall and she said to you, "You played him like a fiddle". Do you remember that?---No, I don't - - -

5 And you responded, "Yes, I know"?---That I – I don't know.

The problem you had at the time when COVID hit and you were stood down was that you just bought a new care, hadn't you?---No, I hadn't. That's incorrect.

10 When enlighten the court, please, what is correct?---I didn't buy a new car.

Excuse me a second, your Honour. To put it to you fairly, in relation to the overpayment of wages, your contract was for 42 weeks and you paid yourself for 52 weeks; that's right, isn't it?---I paid myself for what I was at work for. So if I
15 worked 42 weeks, if I worked 46 weeks, if I worked 48 weeks, then that's what I paid for, and the reason I couldn't – I would've loved to have worked 42 weeks a year; however, Mr Wetherall wouldn't allow me to go on any longer leave. So when I actually took – I think – I believe I took six weeks off over the Christmas of 2019/2020 and he was most upset, because I had taken more than my four weeks
20 leave, because he wanted to go to Bali and that would mean that there was no one around to run the office, so, ideally, I wanted to work 42 weeks a year, but I wasn't allowed to.

Right. Excuse me just a second, your Honour. Is it correct that you're the only one
25 authorised to do the pay run?---Yes. Yes. I'm – Mr Wetherall could've done the pay run, I guess, but he wasn't – I don't think he knew how to do it, but, yes, I was the one that was doing it. So my colleague in the office was not authorised to do that pay run.

30 Hence your attendance at the office on 1 April 2020 to do the pay runs?---That's correct.

Yeah?---And other jobs, yes.

35 Now, to put it to you fairly, it was you that requested Mr Wetherall to ring his accountant about the eligibility for long service leave, and he indicated he'd already done so and the accountant was also waiting for answers. Do you remember that?---For my long service leave?

40 Yes?---No, I don't remember that. I remember – no. That – because he – he authorised e to ring – call Thomas the accountant, because he was quite agitated that day, and he wanted me to ring about Alicia's – whether she was eligible for JobKeeper.

45 Well, you did ring the accountant, didn't you?---I did. I tried to get a hold of Paul Thomas and I couldn't and, hence, I spoke to Dawn, the bookkeeper, but I eventually

got a hold of her and she was working from home, and then Paul Thomas rang me back on the afternoon of the 1st of April.

5 What you were seeking was a pro rata amount of your long service leave, wasn't it?---From who?

From the employer?---We'd – certainly I'd had – not – yeah, I'd asked him for that one day a week. From Mr Wetherall.

10 Yes?---Yes. Yes.

And Mr Thomas, the accountant, eventually rang you back saying you'd have to discuss that with Mr Wetherall?---No. Mr Thomas rang me back and told me that Alicia was not eligible for JobKeeper. It was – when I spoke to Dawn, the
15 bookkeeper, and she – I said, "My long service isn't here on Xero", and she said to me – and I said, "There's no record of my long service here", and she said that would have to be authorised by Wayne and I said okay.

And it was following all of that discussion about money that you had the interaction
20 with Mr Wetherall on the 1st and 2nd of April leading to you consulting your general practitioner?---It was – we had discussions about money on the – on the – at the end of the previous week. At the end of March, the 26th or 27th of March, right. When I went in there on the 1st of April, that was the day when I – we did five hours of the pay runs and he was asking about JobKeeper and all those sorts of things.

25 Yes. I have nothing further for this witness, thank you, your Honour.

COMMISSIONER: Before you go to re-examination, Mr White. I just wanted to come back to this exhibit 7, and I'll give you an opportunity for any further
30 questions, Mr Sapsford, arising out of it. I just want to understand more clearly the provenance of these images. So looking at this first one, I think you indicated that's a photograph of a phone and you took that photograph of that phone?---That's right. That's correct.

35 With your phone?---Yes.

And whose phone is that?---Julie Mossup's phone.

All right. So when was this photo taken, approximately? Presumably before Ms
40 Mossup left?---Yes. Yes, that's right.

All right?---And it was all – like, I don't know if there's dates on here, but it was all – that was the one conversation.

45 All right?---It was all the same.

So going over to the next image. That's a photograph of – it looks like a computer screen. Which computer screen is that?---That was on Julie's computer screen.

5 You sat next Julie?---Yeah, we were side-by-side, yes, that's right.

And you took that photograph?---I did.

10 And did you take that photograph at approximately the same time you took the first photograph?---It must've all been about – I can't recall exactly, I'm sorry, but it must've been around the same time.

All right. And is it the same for the remaining two photographs?---Yeah, it was all – it was all the – I believe it all to be the - - -

15 All right?---There were numerous conversations, but I believe that all to be the one – that whole stream of conversation.

20 There's – in the photographs there are images. If you look down the side of the message box, there are images there that are, as I understand the way in which Messenger works, those little photographs in the little circles next to each message?---There?

Yes?---Yeah.

25 Those little circles?---Yeah.

So that's a photograph, that's somebody's account photograph?---Yeah. Yeah.

30 Do those – do any of those belong to Mr Wetherall?---Not – not these ones, no. They're - - -

So the blue ones are Mr Wetherall?---Yes, that's correct. Yeah.

35 As you understand it?---Yes. Yes.

All right. All right. Thank you. Mr Sapsford, just as a point of, I guess, clarification. You were asking a question about that photograph being it's a photograph of text messages on a phone.

40 MR SAPSFORD: Yes.

45 COMMISSIONER: And I was – studying it a bit more closely and I noticed that the icons at the very bottom of the screen match exactly the icons at the bottom of the screen in the next three photographs. It appears to be a – an image of an open Messenger box with a conversation taking place. So whilst it's a message on a phone, it would appear to be a phone from Messenger, the service – the app that

people use which is connected with Facebook. That's what it looks like to me, but
- - -

MR SAPSFORD: Thank you, your Honour.

COMMISSIONER: I don't think much turns on that, but I think it just, sort of,
narrows it down a bit.

MR WHITE: Commissioner, if I might identify on that point, a cursor also appears.

COMMISSIONER: Right.

MR WHITE: Which - - -

COMMISSIONER: I see. Which would indicate it's a screenshot. Do you see the
point Mr White's made there, Mr Sapsford?

MR SAPSFORD: No, your Honour. Sorry, I'm - - -

COMMISSIONER: In the middle of that first photograph there's an arrow, a black
arrow - - -

MR SAPSFORD: A cursor. Yes.

COMMISSIONER: - - - which is a cursor, which you wouldn't find on an iPhone.
Not any that I'm familiar with, anyway, and it appears to be an iPhone, and that
would suggest that it's a screenshot someone's taken on their iPhone, but – and to
have done that, you would have to have been – you would have had to have had the
Facebook page open on the iPhone, which then have given you access to the
Messenger app and then a screenshot when the Messenger app was open.

MR SAPSFORD: Yes.

COMMISSIONER: It seems to be what's happened there.

MR SAPSFORD: Yes, your Honour. Yes.

COMMISSIONER: Ms Mossup will probably know the answer to all that.
Anything arising out of that, Mr Sapsford?

MR SAPSFORD: No, thank you, your Honour.

RE-EXAMINATION BY MS WHITE

[3.57 pm]

MR WHITE: Ms Kelly, some questions were put to you around the distinction between you being an employee or a subcontractor. Did you know the distinction between those two things in 2017?---In 2017, no. No. I believed I was working full-time for Kokoda Spirit. That's – he was my only employer.

5

Did you ever issue any invoices to Kokoda Spirit?---I believe in 2010 there were some invoices. Michelle would make me – I don't know if they were invoices or just the times we worked, you know, so she had, like, how many hours we'd worked a week, because then it was a bit more sporadic, and that was way back in 2010. Yeah.

10

Right at the beginning.

Did you choose the hours that you worked at Kokoda Spirit?---No, not really. No. She just asked me to come in certain hours and those hours just gradually increased and she would ask me to come in more and more often.

15

You said that the ATO ultimately ordered for you to be paid superannuation?---They did, yes. Exactly.

And do you recall what period across – or what time period across which you were to be paid superannuation?---I had seven years, I believe. Six, seven years. Seven years it was.

20

In respect of the letter of engagement, it was put to you that you paid yourself for more than 42 weeks, and what's your explanation as to why you paid yourself more than 42 weeks?---I worked more than 42 weeks. It was – that was what I would've liked to have worked, because I did want to have – I didn't want – I'd like to have had, say, two months off at Christmas or something like that, but I wasn't allowed to.

25

Did you submit timesheets for the hours that you worked?---Initially we did, but when we went into Xero we didn't. It was set hours.

30

And what were those set hours?---They were 9 to 4.30, five days a week, and I was often on call. I was the only one on call 24/7 when treks were out.

Did Mr Wetherall have access to Xero recording the hours that you worked?---I believe he could've accessed it, yes.

35

Did you ever lie about the hours that you worked?---No. Mr Wetherall would often ring me at just after 9 o'clock every morning and at about 4.25 every afternoon to make sure we hadn't left early or started late. So he knew we were in that – if he wasn't in the office, he knew we were there on every day.

40

WITNESS EXCUSED

[4.00 pm]

45

COMMISSIONER: We're not likely to get to anyone else today, are we, Mr White?

MR WHITE: I don't believe so, Commissioner.

COMMISSIONER: I was planning on pulling up at 4.30, anyway, so - - -

5 MR WHITE: We do have Ms Mossup coming in first up tomorrow morning, your Honour.

COMMISSIONER: She's first up, is she?

10 MR WHITE: No, apologies. The doctor is coming in at 10 - - -

COMMISSIONER: Dr Harrison is first up?

MR WHITE: [indistinct] at 10 o'clock, yes.
15

COMMISSIONER: All right. We're adjourned till 10 o'clock. Thank you.

20 **MATTER ADJOURNED at 4.00 pm UNTIL
TUESDAY, 28 SEPTEMBER 2021**

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QUEENSLAND INDUSTRIAL

RELATIONS COMMISSION

DWYER C

No WC/2020/175

KELLY, LYNETTE GRACE v. WORKERS' COMPENSATION REGULATOR

BRISBANE

10.00 AM, TUESDAY, 28 SEPTEMBER 2021

Continued from 27.9.21

DAY 2

HEARING

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

RESUMED

[10.00 am]

5 COMMISSIONER: Take a seat, thanks. Dr Harrison, you've got you on the phone?

DR G. HARRISON: Yes.

10 COMMISSIONER: Dr Harrison, it's Commissioner Dwyer speaking. I understand you're wanting to take an affirmation.

DR HARRISON: Yes. Thanks very much.

15 COMMISSIONER: All right. Just stand by. My Associate will read the affirmation out to you.

CONDUCTED VIA TELEPHONE CONFERENCE

20

GAVIN CAMPBELL HADDRELL HARRISON, AFFIRMED **[10.01 am]**

EXAMINATION-IN-CHIEF BY MR WHITE

25

COMMISSIONER: Thanks, Dr Harrison. Just stand by. Mr White of counsel is going to ask you some questions.

30 MR WHITE: Dr Harrison, could you please state your full name for the record?---Gavin Campbell Haddrell Harrison.

And you're a general practitioner?---Correct.

35 What are your qualifications, Doctor?---BSc, MBChB, FRCGP, MBA and a Diploma in Occupational Medicine.

And how long have you been in practice?---I qualified in 1985.

40 And do you operate from a practice location?---Correct.

And whereabouts is that?---That is Minyama Medical Practice, which is number 7 Nicklin Way, Minyama, Queensland 4575.

45 This proceeding is brought by the appellant Lyn Kelly. Do you know Ms Kelly?---Yes.

She was and remains a patient of yours?---Correct.

When did she first become a patient, approximately?---I can give you the exact date. She first attended this practice on the 4th of the 9th, 2010, where she saw my
5 colleague, Dr Michael Yates. The first time that I consulted with her was on the 12th of February 2016.

And have you been her general practitioner since that date?---I certainly have seen her. Whether she's seen someone else, I'm not sure, but I've seen her a number of
10 times.

Are you aware of her having brought a WorkCover claim?---Correct.

In respect of her employment by a company called Kokoda Spirit?---Correct.
15

When was the first time that she saw you in respect of that?---I saw her on the – I've just got to get that date for you.

Apologies, Doctor. Do you have documents in front of you at the
20 moment?---Correct. I've got my computer with me.

I see. Do you have a bundle of documents that was provided to you overnight by the law firm Butler McDermott?---No.

25 No. Okay. In terms of those notes - - -?---I have the full – her full file here with me, so I've got everything.

Okay?---So the 3rd of the 4th, 2020 is when she first presented to me.

30 So are you looking at your records at the moment, Doctor?---Correct.

Are you looking at a record that says:

Friday April 3, 2020 at 08:49:46.
35

?---That is correct.

Commissioner, that appears on page 221 of the bundle provided by the appellant.

40 COMMISSIONER: Two hundred and twenty-one?

MR WHITE: That's correct.

COMMISSIONER: I've got that.
45

MR WHITE: Thank you.

So, Dr Harrison, can you indicate to the Commission what your notes reveal from that first attendance?---So under the actions I've said that:

5 *She has stress++ at work – longstanding – recently worse with a lot of insomnia++.*

Reason for contact was workplace stress. I issued her with a medical standard certificate and suggested that, you know, after some of the symptoms that she has presented with, that we do some blood tests, which included full blood count, what 10 we call an ELFT, which is a full bank of all the electrolytes, the liver function, glucose. We also did a thyroid test and some iron studies. I've offered here some temazepam, which is a generally used medication for insomnia, and some Valium as and when and if she required it.

15 And in respect of that consult on that date, can you recall how she presented?---Not other than what I've just said in those notes.

Do you recall what she said to you as giving rise to her visit?---Well, what I did ask her to do was to actually – to document everything that's happened that we could 20 actually then see if there was anything else that I could help with, and I suggested that we see each other, having had all those blood tests back. But I can't recall exactly what we discussed at that time. It's some time ago.

On that date, do you recall forming any conclusion as to whether or not she was 25 unwell?---I certainly felt that she was unwell in the effect that I'd asked her to do some blood tests and that, as I said, I offered her some medication to try and help with the insomnia and offered her the Valium for that stress.

Okay. Commissioner, I'd submit that the doctor's identified what appears in that 30 extract on page 221 of the bundle, and I'd propose to tender that.

COMMISSIONER: Is it just that page you're proposing to tender? Is there any objection to that, Mr Sapsford?

35 MR SAPSFORD: No, there isn't, your Honour, but there may be some utility in tendering the page that precedes it and, in fact, records later visits, because they will be the subject of evidence, so it could be useful if they were both together. I assume that's page 220 in the - - -

40 COMMISSIONER: All right.

MR SAPSFORD: Relating to the visits of 15 April 2020 and 20 April 2020.

COMMISSIONER: All right. So it's just those two pages that you're proposing, 45 Mr Sapsford?

MR SAPSFORD: That's all I'm going to ask about, your Honour.

COMMISSIONER: You have any difficulties with that, Mr White?

MR WHITE: No, I don't.

5 COMMISSIONER: All right. Well, I'll tender those two pages – sorry, I'll admit those two pages from the clinical notes of Dr Harrison with respect to the attendances by Ms Kelly upon him on 3 April 2020 and then later in April 2020, marked as exhibit 10.

10

EXHIBIT #10 ADMITTED AND MARKED

MR WHITE: Thank you, Commissioner.

15

Dr Harrison, you indicated that as part of this attendance with Ms Kelly, your notes reveal that she – you issued her with a medical certificate, standard. Do you have a copy of that medical certificate?---I would have a copy.

20 For the Commission, that's on page 207 of the plaintiff's – sorry, appellant's bundle.

WITNESS: I have that medical certificate on the 3rd of April 2020.

MR WHITE: And the period to which that relates?---My medical certificate reads:

25

This is to certify that Ms Lynette Kelly is unable to work from the 3rd of the 4th to the 14th of the 4th, 2020, inclusive, due to a medical condition.

I tender that, Commissioner.

30

COMMISSIONER: No objections, Mr Sapsford?

MR SAPSFORD: No objections, your Honour.

35 COMMISSIONER: All right. The medical certificate issued by Dr Gavin Harrison on 3 April 2020 is admitted and marked exhibit 11.

EXHIBIT #11 ADMITTED AND MARKED

40

MR WHITE: Doctor, that was referred to in your notes as a standard medical certificate. Do you recall issuing a workers' compensation medical certificate?---The workers' comp certificate would've been issued on the 15th.

45

Do you have access to that in front of you?---I have, yes.

This is page 209 of the appellant's bundle, Commissioner.

COMMISSIONER: Yes, I've got that.

5 MR WHITE: Thank you.

Dr Harrison, does the document in front of you provide a certification from you that on the 15th of April 2020 you attended on Ms Kelly?---Correct. I've got it in front of me, yes.

10

And can you speak to the diagnosis that you attest to there?---Anxiety/insomnia with depression.

15 And below that it's – there's a reference to worker's stated cause of injury?---So [indistinct] the worker's date of injury was the 6th of the 4th and state – worker's stated cause of injury:

Longstanding bully and stress in the workplace documented over years.

20 I tender that, Commissioner.

COMMISSIONER: No objection, Mr - - -

25 MR SAPSFORD: No objection, your Honour.

COMMISSIONER: - - - Sapsford. The worker's compensation medical certificate dated 15th of April is admitted and marked exhibit 12.

30 **EXHIBIT #12 ADMITTED AND MARKED**

35 MR WHITE: Doctor, in your files in front of you, do you have a record of a fax sent to WorkCover Queensland on the 4th – apologies – on the 28th of April 2020?---Twenty-eighth. So we issued another worker's comp certificate.

It's on page 198 of the bundle, Commissioner.

40 COMMISSIONER: I've got that.

MR WHITE: Doctor, I'm looking for a fax if you have that on your record from - - -?---You dropped out then.

45 Apologies?---Fax of - - -

I understand that you just said that you issued a further medical certificate on the 28th. What I'm asking is whether or not you have in your file in front of you a copy

of a fax sent on the 28th of April to WorkCover Queensland?---We would have sent the worker's compensation medical certificate rev – update. So, yes, I've got that. It would have been sent to them.

5 Yes. Do you have a copy of the fax itself?---Let's have a look. Fax. So that actually is the – the certificate.

Yes. Doctor, the document that I'm asking you to find will have a WorkCover Queensland header. It'll be - - -?---Right.

10

- - - described as a facsimile and it will have some questions and your responses below?---Okay. Well, let's have a little look.

15 COMMISSIONER: It might be in amongst the correspondence on your file, Doctor, rather than the medical records?--- [indistinct] documents, okay. So what date we looking – sorry, was the 29th of April, was it?

MR WHITE: Twenty-eighth of April. Apologies, it may very well be the 29th. Actually - - -?---I've got it. Yep. Okay.

20

Yes?---So - - -

Apologies. It is the 29th, yes?---Yep. So this is WorkCover Queensland, dated the 28th, number of pages 2:

25

Dear Marina Medical Practice. Subject: Lynette Kelly. Claim number: S19JB690881.

That's the one. So - - -?--- [indistinct]

30

So this fax contains some questions. The first - - -?---Correct.

The first question is:

35 *Can you please confirm what Lynette mostly spoke to you about during her initial consultation with you?*

Can you just outline what you've said there in response?---So:

40

Please see attached a note from the history of her employment with this company.

And then the next question says:

45

What is the significant contributing factor that is causing her injury?

And I've said:

Workplace harassment.

And the third question is:

5 *Has Lynette suffered a similar condition previously? If so, has she aggravated a pre-existing condition?*

And I've said:

10 *No, not to my knowledge.*

And where you say, "Please see attached notes to the history", if you flick over a few pages, do you have those notes there in that fax?---So you will see attached -- now, this is a -- a document that I asked Lyn to put together for me after that first
15 consultation where I've said that it's really important she go back and documents it as clearly as she possibly can for me so that I can understand exactly what was going on from the medical perspective and you'll notice that there's a document that's attached that starts with:

20 *Rough history.*

I've written in my own handwriting at the top:

25 *Lyn Kelly --*

and she's written:

For doctor.

30 And that is one, two, three, four, five -- five pages altogether.

Yes. Thank you, Doctor. I tender those, Commissioner.

35 UNIDENTIFIED SPEAKER: They're exhibit 4.

MR WHITE: Apologies.

40 COMMISSIONER: Exhibit 4, are they? I was just looking for those because I was just going to say it's no longer in my -- just bear with me for a moment.

MR WHITE: Yes.

45 COMMISSIONER: All right. So I have the rough history, which is the separate -- the back part of that document as exhibit 4.

MR WHITE: So perhaps if this could be a new exhibit annexing exhibit 4?

COMMISSIONER: All right. Well, what I will do is I will make the facsimile correspondence from Dr Harrison to WorkCover Queensland, which he has signed and dated the 29th of April even though the front page is dated 28 April – that's a two-page document – it's that plus exhibit 4. Is that what you're talking about? All
5 right. Well, I'll just simply make the facsimile document exhibit 4A.

EXHIBIT #4A ADMITTED AND MARKED

10 MR WHITE: Thank you, Commissioner.

Doctor, now having regard to those notes that Ms Kelly prepared for you, are they consistent with some of the matters that Ms Kelly spoke to you about in respect of
15 the cause of her stress?---Yes.

Yes. And having regard to those matters and your correspondence to WorkCover, was it your opinion that Ms Kelly has suffered an injury?---Correct.

20 And what's the nature of that injury?---The nature of the injury would be workplace stress, which has then manifested itself in anxiety, depression and insomnia.

And did that arise out of her employment in your opinion?---Yes.

25 Did she raise matters unrelated to her employment during the course of these sessions with you?---Not that I can recollect. When I'm dealing with WorkCover related issues, I try and make sure that all my patients remain directly focused on the workplace problems and that we do not try generically to confuse workplace related with non-workplace related issues.

30 Was Ms Kelly's employment a significant contributing factor to her injury in your opinion?---Yes.

35 Were there – was – were there any other contributing factors that you could identify?---No, not at the time.

Did you take any further action in respect of Ms Kelly's care, aside from issuing the medical certificates and the prescriptions?---Yes. So discussed with Lynette – most important thing with mental health care is not only necessarily just simply seeing me
40 as her professional health provider but also to get the – the services of a professional psychologist. I find this really helpful in all mental health treatments and, specifically, with workplace stress and distress related matters and you'll notice that I referred her to a colleague of mine, Gale Baker, who's a clinical psychologist at Sunshine Coast Psychological Services and Lyn has attended a number of sessions
45 with Gale over a long period of time and has diligently followed the advice that's been given by both myself and by Gale.

Do you have on your file, Doctor, correspondence from yourself dated the 20th of April 2020? This is page 249 of the bundle, Commissioner?---Who would this correspondence be to?

5 It's to Ms Baker?---Sorry, the 20th of April?

That's correct?---Yep, I have that letter.

10 Is that the referral to which you referred?---Yes, that's the 20th of the 4th 2020 to Gale Baker and if you've got that in front of you, it reads:

15 *Dear Gale, thank you for seeing Lynette. I'll leave her to describe her history to you. She's been working for a very abusive man in a small company for years that has left her both depressed and anxious. Please see both the DASS21 and K10 scoring. I've started her on some Effexor 37.5 milligrams today and seen some improvement already. She does need your help in addition.*

20 The DASS21 and K10 scores, were they assessments undertaken by you?---And by Gale as well. So there's a number of those that we have.

25 In respect of those that were undertaken by you, what did they indicate?---I've just got to get those up, sorry. Sorry, I'm just struggling to find that case here. So the DASS21, which is an abbreviation for depression, anxiety and stresses for D-A-S-S, and you have a document, here at the very bottom marked by the scoring and that's certainly indicative of high levels of stress, anxiety and depression. And on the K10, which is a much more generic document that we use, just general mental health, let me get that one up as well. It's just a bit slower. That also again, in all the markings that we had, were very much up in the most extreme parts of the – of the four and
30 five scoring. So both of those were highly indicative of – of some mental health and distress.

35 And were those undertaken on the 15th of April 2020?---These were scanned on the 16th, so I'll just have a look. I'm not absolutely sure when they – I'll just see if there's a date on the bottom of that one.

Commissioner, for your evidence, these appear on pages 282 and 283.

40 WITNESS: They were scanned into my records on the 16th, so they may have been done on the 15th and my girls took overnight to scan them in. So it's either the 15th of the 16th. There's not a date on – no, there isn't a date actually on the document.

MR WHITE: Commissioner, I tender the referral to Ms Baker on page 249 of the bundle.

45 COMMISSIONER: It's just the one page, is it?

UNIDENTIFIED SPEAKER: Two.

COMMISSIONER: Two pages.

5 MR WHITE: Yes. Thank you, Commissioner.

COMMISSIONER: Any objection, Mr Sapsford?

10 MR SAPSFORD: No, your Honour.

COMMISSIONER: The correspondence from Dr Harrison, that is, the referral for Ms Kelly to Ms Gale Baker, which appears to be dated the 20th of April 2020, is admitted and marked exhibit 12 – no, exhibit 13, sorry.

15 **EXHIBIT #13 ADMITTED AND MARKED**

20 MR WHITE: Thank you, Commissioner. Doctor, did you continue to see Lyn in respect of this matter?---Correct.

On what – how regularly did you see her?---Monthly.

25 And does she continue - - -?---And - - -

Apologies, you can - - -?---Monthly, but there's been occasions where we've seen each other a little bit more frequent than that.

30 And in your opinion, does she continue to suffer her injury?---Correct.

Doctor, in respect of Ms Kelly's injury, do you recall her accounting to you how that was manifesting itself in her day-to-day life?---At the beginning of the injury, or now - - -

35 At the beginning of the injury?--- - - - or continuously – I can certainly, from my notes – that is, you know, she continued to have ongoing insomnia, she had these bouts of anxiety where she felt that she couldn't really leave the home, she couldn't really do very much, is almost transcribed [indistinct] from anxiety almost to a panic attack, and then she had these ongoing depressive thoughts, whereby she felt that she
40 actually, you know, had just no feelings to do anything else, and that they were kind of, almost, overwhelming her.

45 And when abouts was this, in terms of her visits to you?---These would have been – so the panic attacks – and those related, on the 28th of May, so if you have a look at my notes, Thursday, May the 28th, at 10.47, reason for contact, anxiety/panic, the actions were a WorkCover claim, anxiety remains, won't go out by herself, insomnia persists, have not had any formal correspondence from WorkCover.

And in terms of on the first day that she visited you being the 3rd of April, do you recall anything about her demeanour, or how she presented on that day in particular?---This was Thursday, May the 28th?

5 No, this is on Friday, the 3rd of April?---The 3rd – there was a lot of those early consultations, where Lyn was very, very careful, and she did attend – and I can't remember exactly which consultation she attended with her husband, but she was so distraught at that stage that she felt that she needed her hubby with her during the consultations, you know, and they both were very markedly upset by what had
10 happened, and she certainly needed all that support from her husband, so I can't absolutely tell you about Friday the – April the 3rd, whether – but I do recall, on most of those early consultations, that Lyn was certainly very distressed and careful.

15 Thank you, Commissioner, I have no further examination-in-chief for the doctor.

COMMISSIONER: All right. Thank you. Just hang on a moment, Dr Harrison. Mr Sapsford is now going to – for the regulator – is now going to ask you some questions.

20

CROSS-EXAMINATION BY MR SAPSFORD

[10.26 am]

25 MR SAPSFORD: Yes. Thank you, your Honour.

Doctor, Stuart Sapsford speaking, I'm counsel for the respondent regulator in this matter, I won't keep you long. Doctor, you were referring to a consultation in May, which consultation was that, that you were talking about?---So May of – the 28th of May. So that's Thursday, May the 28th, at 10.47. This is where, specifically
30 [indistinct] was saying that some of the anxiety had transcribed itself to more of, like, a panic, so within the spectrum of anxiety disorders, sometimes people progress to more of a panic attack, a panic disorder, and as I said, she, at that time, explained to me that she had had this anxiety that had remained, but she wouldn't go out by herself, and had remained – spent a lot of time at home.

35

And while it remained, Doctor, it seems from your evidence – and it's only cognate that by that stage it attributable to the worker's compensation claim?---In that we hadn't had any formal correspondence from WorkCover, is that what you're saying?

40 Well, that's what your note is, there, W.C. Claim, so - - -?---Correct.

- - - whether it's in correspondence or otherwise, the anxiety at that stage was primarily attributable to the worker's compensation claim, is that right?---That would be correct.

45

Now, Doctor, when you first saw Ms Kelly in relation to these events – and I refer to the mental distress she exhibited as a result of events occurring in her workplace on 3

April 2020, I quite appreciate that you got to go by your clinical notes, and you see a lot of patients, and it's been over a year since this notation of 3 April 2020, but are you able to remember anything she told you that was the source of your distress?---I can't absolutely recall exactly what was stated, other than generically, over a long
5 period of time now, there's been lots of documentation, through my notes, through the notes of Gale Kelly – sorry, Gale Baker, and the documentation that I asked Lyn and her husband to put together at that time, whilst it was still fresh in her mind. So I would have to rely on all that documentation, rather than a pure recollection of what I said or heard at that time, of that consultation.

10 And you, in fact, sent her away to compile that further document of the stressors, if I can put it that way?---That is correct.

But at that time, you were told were you, by her, that it was attributable to
15 work?---So whenever one has a patient attending for whatever reason, obviously, we'd like to try and find a causality, and in the patient's own words, we'd like them to describe that. We don't make any assumptions until such time as the patient tells us. And that's why I said to her, to go away, and to document really clearly, what had happened and what she felt those main stressors were at work, because it's
20 important that I don't make any assumptions until such time as I've actually got the documentation in front of me, and that's why I asked her and her husband to sit down and to document it clearly in their minds as far back as they could remember anything that may be related to that workplace that could be attributable to what's causing her symptoms.

25 Is there a reason why, Doctor, you issued a generic medical certificate as opposed to a workers' compensation medical certificate?---For two reasons. (1) Normally I don't get paid by WorkCover until such time as they've accepted the claim, so I'm not in the habit of actually just issuing WorkCover certificates until such time as I've
30 got proper documentation. And the second thing is that I needed proper documentation to be clear in my mind what exactly had happened. You can appreciate that in general practice, sometimes a patient arrives and has only booked a normal standard consult. These things are highly complex, and we do sometimes ask patients to go away outside the consultation time and actually spend some time not
35 under the stresses of the consultation to really clearly document things. So this may not necessarily only be in this case, but that's generically how I would practise, is that I would ask patients to go away, to clearly document things and actually to bring that back to me so that we – the second opportunity, we'd be able to go through the events and then plus anything that may come to light.

40 And I take it, Doctor, that occurred on the next consultation at 15 April?---So yes, that would've been the 15th of the 4th.

45 And that's when you issued the first workers' compensation medical certificate. Had you been supplied with her list of events by then?---That's a good question. I would not absolutely 100 per cent be able to answer that right off the top of my head. I would have to have a look, but I'm not sure.

The eventual reference you made - - -?---I beg your pardon. I've got my notes in front of me. If I can – I actually have said here – so:

5 *Workers' compensation form completed. See notes from the patient. Obvious anxiety and insomnia today with her mood being flat and some depression.*

So yes, to answer your question, I did have the notes from her at that time.

10 And, Doctor, it wasn't, however, until 20 April 2020 that you referred her to Gale Baker?---So if you have a look at my notes on the Wednesday, April the 15th, I started her on some Effexor, 37.5 milligram, which is an anxiolytic antidepressant, and I wanted to see what type of effects – so sometimes what happens is we have patients that are started on medication. We have given them an opportunity of seeing how that medication works and also the opportunity of just seeing how their
15 symptoms present. So I don't refer every single patient that I see for medical – sorry, for mental health-related issues to psychologists.

All right. Thank you. Thank you, your Honour.

20 COMMISSIONER: Before you re-examine, I just wanted to ask Doctor some questions.

Dr Harrison, it's Commissioner Dwyer speaking. I just wanted to ask you some questions myself. Just having a look at your clinical notes from the 3rd of April
25 2020. Perhaps you – I just wanted to see if you could explain to me the abbreviations that you've made and the notations there. Under the – following the title Actions, you've got, "stress ++ at work". What does the "++" indicate?---So that's an abbreviation I use where it could indicate significant or more than – like, if you had to scale it from mild to moderate to severe, "++" would be severe.

30 And then you made a reference to "longstanding". Can you recall why you made that reference?---So I do recall – and that was one part of why I suggested to Lyn that she actually goes back and clearly document what had happened in the past, because doing that short consultation that I initially saw her, there was obviously significant
35 things that had happened in the past, and I wanted her to clearly document that for us, and that's why I wrote that "longstanding".

I see. So does the "longstanding" refer to the "stress++ at work"?---Correct.

40 All right. Do you recall – she's presented to you apparently with insomnia and reports stress at work. Did you recall taking any history from her at that time as to how long she'd been experiencing those sorts of symptoms?---I haven't documented in my notes, but I certainly can recall that Lyn had explained to me that it had gone on for some time and there had been a number of episodes whereby she had not acted
45 in any kind of adverse way, but that she'd actually kind of – this whole event had come to a head due to those circumstances around that time.

Can you recall whether she reported to you any symptoms historically over a lengthy period – a longer period of time that were consistent with your diagnosis of anxiety and depression?---So no, and she certainly – I’m looking back now at her notes where she saw a colleague of mine, Dr Roos, who’s one of the lady doctors here, as well as myself prior to that, and I’m sure you have these notes in front of you, but there’s no evidence that she presented with any mental health prior to that, so they’re the routine consultations that do not have any relation to mental health.

All right. So with respect to the medical certificate – the workers’ compensation medical certificate that you’ve issued, you’ve – there’s a stated date of injury of the 6th of April 2020. That’s three days after she’s first seen you with respect to this condition. Are you able to express any view with respect to when the condition of anxiety or depression became manifest in a diagnosable form?---Well, even when I saw her on the 3rd, you know, by implication that I’d given her the temazepam and the diazepam, the Valium – by implication, that’s saying that her insomnia needed treatment in the form of the temazepam, and the anxiety in the form of the Valium. So although the date of the 6th – I think we put in there – we could certainly have put that on the date of the 3rd. I mean, it’s a fairly arbitrary date. I can’t – in mental health, it’s sometimes a little bit difficult. It’s not like a physical injury where you can give the exact time and the date. So - - -

Sure?---It could’ve been the 3rd.

All right. Doctor, in the – you mentioned in your evidence that you asked Ms Kelly to provide you with a more detailed written account of events and you took us to that just recently. It was under the cover of your facsimile to WorkCover. It’s the document that’s got – that’s headed Rough History?---Correct.

And having regard to that rough history that’s set out over those four or five pages, you no doubt appreciate there’s a series of events that are described as being contributing factors to her presentation in April 2020?---I think so, yes.

Having regard to those factors, do you have a view with respect to their significance or otherwise with respect to their contribution to her presentation on the 3rd of April 2020? Do you say they’re all significant or they’re not significant at all or there’s a mixture of significance and not significant in respect of these events?---I think they were all significant. The fact of the matter is that most mental health-related conditions don’t just start instantaneously. You know, we all come under stress in our jobs all day, every day, and particularly as, you know, professional people. But not every single stress leads to distress, and not every single distress will lead to anxiety and mental health that goes on. So often these things are related to issues that continue over a long period of time. And finally, the pathophysiology of the mental health-related condition takes over and becomes that the person is then ill and, you know, then has to be adequately medically treated. So – and I would suggest to you that there are contributory factors that continued to happen over a long period of time, and it was that event that was then that final insult that caused the presenting mental health condition or conditions.

Do you regard those contributing factors as significant?---Yes.

Anything arising from that, Mr Sapsford?

5 MR SAPSFORD: Yes, thank you, your Honour.

10 Doctor, you've just referred in answer to questions posed by his Honour to your perusal of the clinical – the complete clinical record relating to Ms Kelly in the period of time prior to contact that was had on 3rd April of 2020, and I think your answer was, Doctor, that there was no entry of a psychological or psychiatric nature in any of those consultations?---Looking at the abbreviated entry of how we put our notes in, I can't find anything, so this goes back to 2010, and no, I couldn't find any related mental health issues.

15 And yes, and I'll tender the rest of that set of clinical notes then, your Honour.

COMMISSIONER: All right. Any objections to that, Mr White?

20 MR WHITE: None, Commissioner.

MR SAPSFORD: I'll just try and identify the page numbers - - -

25 COMMISSIONER: That's all right, I can do that. Before I do that – that's all right. No, thank you. So it's – the remaining pages of the clinical records are from 216, it appears to – with respect to Dr Harrison, it appears to end at 226, and then it switches to a Doctor Yates, I think. So I take it, this doctor can really only identify - - -

MR SAPSFORD: His own - - -

30 COMMISSIONER: - - - his own clinical records?

MR SAPSFORD: Yes. Yes.

35 COMMISSIONER: Yes.

WITNESS: No. No, it's not – in our practice, we have an open record, so I can actually identify and open all of our notes, so whether it be about Dr Yates or Dr Prittam or - - -

40 COMMISSIONER: Do you require the notes going back to 2007 Mr – prior to the employment commencing with - - -

MR SAPSFORD: Well, no.

45 COMMISSIONER: No. Thank you.

MR SAPSFORD: Only since the date of employment.

COMMISSIONER: All right. So I'll admit the remaining medical records from the Marina Medical Practice, that are found from pages 216 to 227, inclusive, in the appellant's bundle of documents, and that will be exhibit 14.

5

EXHIBIT #14 ADMITTED AND MARKED

MR SAPSFORD: Thank you, your Honour. Thanks.

10

COMMISSIONER: I had one further question arising from that exchange, Mr Sapsford.

15 Dr Harrison, how do you reconcile your evidence that you gave in response to my questions, that the events between say, 2014 and 2020, were all significant events, with the fact that there doesn't appear to have been any consultation at the medical practice, for treatment with respect to any mental health issues?---As I try and explain, is that – sometimes, mental health may not manifest itself with one episode, and that stress may not necessarily lead to distress, which may not necessarily lead
20 directly to mental health illness. However, if it's contributory over a long period of time, the flight, or fright, or the mental health-related issues can actually manifest themselves, so I would still put to you that you stress the person for long enough, you may distress them eventually, which then could lead to a mental health illness.

25 Do you say – you mentioned the phrase, "Over a period of time", by reference to the medical – the worker's comp medical certificate that you issued, where there was a reference to a nominated date of injury, do you have an opinion with respect to whether this is an injury that occurred by reference to a specific date, or is it an injury that occurred over a period of time, in your view?---It's difficult when you're
30 talking about mental health, because you can't actually put it down to a specific time and date, but it would appear that the events leading up to that consultation where we issued the medical certificate were certainly the major contributory events.

35 Okay. Thanks, Doctor. Sorry, Mr Sapsford, do you have anything arising from that?

MR SAPSFORD: No thank you, your Honour.

COMMISSIONER: Mr White.

40 MR WHITE: No. Thank you, Commissioner.

COMMISSIONER: Dr Harrison, thank you for giving your evidence, you're now excused?---Thanks so much.

45

WITNESS EXCUSED

[10.44 am]

COMMISSIONER: Mr Harrison, your next witness is Ms Mossop?

MR WHITE: Apologies, yes that it correct.

5 COMMISSIONER: Are you ready to proceed with her now?

MR WHITE: Yes, we are, Commissioner.

10 COMMISSIONER: All right.

JULIE ANNE MOSSOP, SWORN **[10.45 am]**

15 **EXAMINATION-IN-CHIEF BY MR WHITE**

COMMISSIONER: Thanks, Ms Mossop. Just take a seat, thanks.

20 MR WHITE: Ms Mossop, could you please state your full name for the record?---Julie Anne Mossop.

And whereabouts do you live?---At Burnett Street, Buderim.

25 And what do you do for a living?---I'm retired.

I understand you're a former employee of Kokoda Spirit?---That's correct.

30 So when did you first become an employee there?---Sometime in 2010, following a trek that I undertook in 2009 with that company, I was asked to come and do a bit of administrative work and marketing for them.

And what did you do as a job before that?---Police officer.

35 All right. And how long were you employed in that capacity?---Twenty-two – three years. Excuse me.

40 So this period that you began to be employed by Kokoda Spirit, you indicated 2010. How long did that then last for after that?---Till about April of 2011.

And then did you subsequently be re-employed by Kokoda Spirit after that?---I did, in June of 2017.

45 So there's two period there, let's speak about the first, 2010 and 2011 - - -?---Yes.

- - - what was your role at that stage?---Administrative duties, office work.

And who were the other employees at the time?---Wayne's wife; they were still together at the time, so she was managing the office.

5 So just in terms of names, you mentioned Wayne - - -?---Wayne Wetherall and - - -
And his wife's name?---Michelle Wetherall.

Okay. So you were assisting her?---Yes.

10 And whereabouts were you based when you were doing that work?---In their home office at Sippy Downs, so there was a little front office to their principal residence.

Okay. So that was the first period, 2010 to 2011, what about the next period in 2017, what did you work look like at that stage?---It was, again, administrative booking,
15 potential trekkers, organising people who wanted to go across the Kokoda Trail, or perhaps Everest Base Camp, or to Borneo to trek the Sandakan Death March.

And who else was working for Kokoda Spirit at that time? This is now 2017?---Lyn Kelly.
20

Anyone else?---Lyn and I, and then there was Kate, who was Wayne Wetherall's son's girlfriend, she was doing a little bit of side work with merchandising, but she might only come in once a week or once a fortnight, so it was primarily Lynn and I, she was the office manager.
25

And can you describe what the workplace was like at that time, so 17 onwards?---It was, again, at Wayne's home in Sippy Downs, so it was a small office at the front of the house. I use to, tongue-in-cheek, refer to it as the broom closet, it was a very small area, and Lyn and I both worked side-by-side, really, in that small area.
30

And whereabouts did Mr Wetherall work?---He was in an adjoining room, which was – bedrooms were either side of that, so he used that as his office.

Was he there often, at the office?---He was out on the track a lot. You know, I
35 couldn't give you a percentage of the times that he was there, but the treks would start in March each year, and go through to late October or November, and he would be away a lot of the time.

And what was it like when he was there in the office?---Terrible.
40

What do you mean when you say that?---Wayne is a complex person, and you never knew, from day to day, when you went in, what mood he would be in. He could be quite pleasant and over the top, really, but you never knew when that would change. Or you could go in one day, and straight off, he wouldn't speak to you. He would
45 just ignore you, and be in an angry mood. So the atmosphere in the office was ever changing, and that caused quite a bit of anxiety.

5 So how would he express himself in a way that would indicate to you that it was one of the bad days, his bad days?---Straight off, he would come – not even say hello sometimes, wave a bit of paper, an email, “What the fuck is this? What have you done here? Why did you answer this email in that way?” He swore a lot. He yelled a lot. He was aggressive. His body language on bad days was very intimidating. He’s a large fellow and he lost his temper frequently. He was quick to rise to anger for matters that you would think, “I don’t know what has happened here”.

10 So the office was situated within his house?---Yes.

15 Did you ever have an indication that things were happening elsewhere in the house aside from the office when you were there?---Yes, because there were – beside the computer area where I was sitting, for example, if I was sitting here, there was a big cut-out in the wall beside me which led into the adjoining room where he was located, so you could hear everything that was going on there. You could hear from the kitchen. You could hear from – into the dining room and the other lounge room so - - -

20 And what kind of things would you hear?---Again, conversations when he was on the phone, conversations that he may have been having with whatever girlfriend he had at the time, so there were no boundaries there. It was personal parts of Wayne’s life often were part of our daily life. He never tried to keep that private. He’s got a loud voice and you could hear.

25 And did those any effect on how he interacted with yourself and Lyn at the time?---Depending on if he had a good reaction from someone that he was talking to, he would be – yes, quite buoyant and uplifted but then if things went bad with a particular relationship he would plummet and would come in and overwhelm us, really, when we’re trying to work or be on the phone with, “Why do you think so-and-so blocked me? What do you think this test message meant? Why wouldn’t they want to go out with me?” It’s – I used to ponder on it and think that he was quite immature. It was nearly like a teenager with girlfriends and things that didn’t work out.

35 Did you ever identify any damage within the house?---Well, the house was in a fair state of disrepair from what I remembered it when he and Michelle were married. They’d been divorced by the time I returned. There were obvious repairs to walls where I had been told that a fist had gone through the wall.

40 MR SAPSFORD: I object.

MR WHITE: Well, in respect of - - -?---Yeah, I was told – yes, I’m sorry. Yeah.

45 COMMISSIONER: You can only tell us what you know directly?---Yes, I’m sorry. So there were patches to walls.

MR WHITE: Okay?---Yeah.

What about his interactions with Lyn?---They were difficult to witness and, again – Lyn was the manager. She’d been there for a long time and she’d been there during what was a very messy divorce and different girlfriends and I believe that Wayne assumed that he had control over Lyn because (a) he was the employer and I think
5 that he would belittle Lyn any chance that he could. He wanted to be the boss. He would say – swearing – that – that was part of his day and he would stand – if we were sitting down, and he would come behind either of us but in reference to Lyn, he would stand over her and yell at her from behind and use – use language that was humiliating.

10 So what would be an example of something like that?---Again – and I apologise, but “What the fuck are you doing with these expenses? Explain this to me. You’re paying them too much. I’m not fucking putting up with this anymore.” It would be a barrage of questioning her ability and interspersing the comments with profanities.

15 Did he raise with her matters that were purely work-related?---No. It was very often personal – his personal life. And on occasion I did overhear and was in the presence of when he would say, for example, to Lyn, “You think you’re better than me”. Lyn’s husband Bill and therefore children, he’d say, “You’re Miss Hoity-toity. You
20 think that everything you do is better than what I do” and there was no need for it. It was – I’m not sure if it was jealousy or just whatever rant he was on at that time.

So in your experience, how would you describe working in that relationship?---It was toxic.

25 So you began the second stint in 2017. Whenabouts did you leave?---On April the 12th 2019.

30 And what do you recall from that day?---That da, from the outset Wayne was in a very angry mood and he came into the office and directly attacked me by saying when I conducted interviews which were to start the following week for some applicants who were shortlisted to really take over my position; I had wanted to get out and I had discussed this and the arrangement that had been reached was that I would stay on and do a job-share for a while, help train someone up and then I would
35 retire.

So how old were you at the time?---Sixty-five.

40 Okay?---And I think it was either six or eight applicants had been shortlisted and Wayne said to me, “When you do the interviews next week, I want you to cut your direct approach. I want you to be pleasant to these people. I hear how you speak to people” and it came out of nowhere and I was really – I was quite shocked and offended and I said, “Are you going to be part of the interviews?” and he said “No, but I’m telling you how to conduct them.” And I said, “Well, maybe you need to be
45 part of the interviews because the way you’re speaking to me, it may well be that it’s a full-time job straight off”. And then I said, “I have had experience with interviewing applicants. When I had been in the police service I had two or three

years in the recruiting section and part of that role was I was on the – a police person on the panel for potential applicants. And I said, “I know how to put people at ease, to talk about, you know, “How did you get in here today?”, offer a drink of water. And he said, “Yes, well, these aren’t police recruits you’re talking to” and I said, 5 “I’m well aware of that”. And he turned to Lyn then who was in the office and he said, “What do you think about the way she’s speaking to me?”. And Lyn said, “If you were speaking to me the way you’re speaking to Julie, I’d be offended” and he just stormed off after that. He never spoke to me for a couple of hours. I had to speak with a trek guide who came to the house at 11 o’clock to get details for a new 10 trek that Wayne was trying to organise to the Swiss Alps, and Angelo was going to be the trek guide. Angelo and I sat down in the kitchen. Wayne did initially make Angelo a cup of coffee, and then Wayne paced around. He never spoke to me. If I spoke to Wayne while I was talking to Angelo about logistics for this trek, he would ignore me. He just cut me out of it. It was – it was rude. I just persevered with 15 Angelo. We got on well and that session went for two hours, and then Angelo left.

So just before you move onto the next part - - -?---Yep.

- - - so you spoke about that exchange that you had with Wayne where he made some 20 comments to you about how he wanted you to conduct the interview?---Yes.

So who else was present for that conversation?---Lyn. Lyn was there.

For the whole conversation?---Yes. 25

Okay. Sorry, so you spoke about the meeting with Angelo. What happened after that?---Angelo left and Wayne never spoke to me. He went into that area that he used as an office. I went into our small office area. I continued with my work. I updated notes that I had made with Angelo. Wayne was calling Lyn into his office and whispering about me. I could – I could hear my name being mentioned and I 30 just said, “I have a name. My name is Julie” trying to facilitate a conversation. He ignored me. And it got to about 2 o’clock in the afternoon and I said to Lyn, “I’ve got a couple of hours up my sleeve. I think I’ll call it a day today if that’s okay” and, yes, and I said, “But I’ll go out and speak to Wayne before I leave”. And I went 35 from the office to find him. He was in the laundry and I just stood in the doorway and I said, “Wayne, I’m leaving a bit early today. I have a couple of hours that I’ve worked up. I just wondered what you thought of the interview with Angelo.” And he was pulling clothes out of the washing machine and he just turned and came at me with fists clenched, angry in his physique and body language, and started yelling and 40 abusing me. He was right in my face. I could feel the spittle coming out of his mouth. It was very distressing, saying, “How dare you speak to me the way you do? I’ve had enough of you,” and I was totally shocked. I didn’t know where this – or why this was coming at me. I thought he was going to punch me in the face and I stood there and I said, “Wayne, step away from me.” I said it a second time. He 45 stepped back and I felt it was safe, then, for me to step back and turn around and I walked the 20 or so steps back to where the office was and I said to Lyn – I had the folders there, ready for Monday for – start the interviewing and I said, “This, now, is

a full-time job.” Lyn was standing there, looking at me in shock, when I walked back into the office.

5 How loud was that interaction that you had with Wayne?---Very loud and as I’d left, I heard two loud thumps and I thought, one, probably the laundry door being slammed and probably the other was a fist into the wall. I didn’t know because I wasn’t in vision. Lyn gave me a cuddle. She was visibly shaken and I picked up my bag and turned around, and Wayne was standing in the doorway of the office, again screaming at me, “How dare you speak to me the way you did today, with my
10 daughters in the house?” And there was no point having a conversation with him and I asked him to move out of the doorway and he did. I went out the front door. I got in my car. As I was reversing out, Parry McCutcheon, who was Wayne’s IT manager, was walking up the driveway. I just waved through the window to acknowledge him and went home, and I resigned. I sent a resignation letter that
15 night.

Can I ask for Ms Mossop to be shown a copy of the appellant’s bundle. So can you please turn to page 190 of that bundle in front of you?---Yes, I have that.

20 Do you recognise that document?---That’s the email that I sent – I see, at 3.08 am on Saturday, the 13th, and addressed to Wayne and that was resignation letter, formalising that I would not be returning.

25 You make some – sorry, I recognise there’s some highlighting in here. Do you know who’s done that? The highlighting in that document in front of you?---No.

No. Okay?---I don’t.

30 But if you go down to – there’s a paragraph that’s significantly highlighted in green. So you make reference there to – well, you make some statements there. I might just get you to read those?---Is this the paragraph starting, “Of course, Wayne, you have every right”?

35 Yes. That’s the one?---Yeah.

Yes?---“Of course, Wayne, you have every right” - - -

No, that’s okay. If you just read - - -?---Sorry.

40 If you just have a read of that and - - -?---Yes.

- - - just in terms of what – just explain what you’re referring to in that paragraph?---I touched on that he’d obviously been angry for a couple of days and that anger had built up, and that I bore the brunt of his anger on the day I left and I describe there
45 that – that he has anger issues, that I’m not the first and I’m not going to be the last to face those anger issues.

I tender that, with permission.

COMMISSIONER: The resignation letter of Ms Mossop, which is dated 13 April 2019, at 3.08 am, is admitted and marked exhibit 15.

5

EXHIBIT #15 ADMITTED AND MARKED

10 MR WHITE: Thank you, Commissioner.

So that's sent at 3.08 am?---Yes.

COMMISSIONER: It appears to be.

15

WITNESS: Yes, it was.

MR WHITE: So in terms of it being sent at that hour, can you comment on that?---The day of the 12th had been a very distressing day.

20

How would you characterise it, by reference to other periods of employment that you've had?---Well, obviously, as a police officer, I've been in some difficult situations, but I'd been out of the police for 10 years. I was a 65 year old woman. I felt that the way I was treated was humiliating and uncalled for. I had done nothing for him to treat another person in that regard, however when I made that decision in leaving the laundry to the office and driving out, I felt relief that I would not have to have anything more to do with this person and I didn't sleep well, and I thought, "I need to probably formalise this," so I went down to my office in my home and – to make it clear that I wouldn't be returning. So I – it was 3.08 and I sent it.

30

And you make reference in that email, where you say, "In closing, I want to mention, too [indistinct] that sadden me," and then one of the paragraphs – it's the second – is leaving Lyn?---Yes.

35 So what did you mean when you said that?---I did. I felt terrible not giving notice, that there was no one to take my place. It was a very, very busy trekking time of the year with ANZAC treks going out. We were a two-person operation, literally running a very, very successful trekking company and ANZAC – there's a lot of logistics when – when there's eight or nine groups out on the track and I – I felt sad that I was leaving Lyn with all that work and I was sad that I was leaving her with him. She was on her own.

40

Okay. As part of the role that you undertook for Kokoda Spirit, did that involve the use of Facebook?---Yes.

45

So what did that role involve?---When there was groups out on the trail and the guides rang into the office and gave us information on how their progress was and

what camp they'd made it to at night, I was then to put a post on the Kokoda Spirit Facebook page of how they've travelled, that group, so that friends at home, or if it was a school group, their school could see that they'd progressed from one camp to the other and what a highlight was. So it was an ongoing progress report of the safety and the highlights that the group had had during the day.

And how would you access the Kokoda Spirit Facebook page?---It was – it was Wayne's Facebook. I mean, it was logged in. It was on the toolbar and I just had to hit Facebook and it opened up.

And was this in the office?---Yes.

Yes. Did you have access elsewhere, aside from there?---It was on all the – it was on my computer, Lyn's computer and the computer that Wayne used.

And they were all logged into Wayne's Facebook?---Yeah. Yes.

As part of access to the Facebook account – and, in particular, Kokoda Spirit Facebook page – were there ever times that you would see messages pop up?---Yes. They did start to pop up some time, obviously, after I started in 2017. I couldn't tell you the exact date, but sitting in front of the computer posting and as happens, I imagine, with all of us when a message pops up, it pops up the side so it was in view. It was on the screen.

And what were those messages, to your understanding?---They were Wayne's messages. When I did first start to see them, I went – hit the X to close them. They would – they continued coming up and the content was disturbing.

So what do you mean when you say that?---It's disturbing when a picture pops up of your employer having oral sex with another man while being penetrated from behind by another man.

That was the tenor of the things that would pop up?---Yes. A close-up of female genitalia, dildos and text messages that you – you could – as I say, you're working and the words were there of gangbangs, sexual preferences - - -

What was your response to seeing those?---I was disturbed. I was offended. That was my workplace. Workspaces are supposed to be safe environment. And I was embarrassed.

To your knowledge, did other employees ever have any conversations with you about having witnessed this sort of thing?---Yes.

Did that include Lyn?---Yes.

In that bundle that's in front of you, if you can please turn to page 363. So do you recognise what's depicted there?---I don't remember that exact message, but that was the - - -

5 COMMISSIONER: What page are we looking at, Mr White?

MR WHITE: Apologies. Three-sixty-three.

COMMISSIONER: It's exhibit 7. Okay.

10

MR WHITE: Yes. Apologies.

WITNESS: As I say, I don't remember that exact message, but messages of that ilk were often seen.

15

MR WHITE: Okay. And do you recall having taken pictures of the messages that [indistinct] on the screen?---Not the one you're showing on page 363.

So you don't specifically recall taking that photo - - -?---No.

20

- - - in particular?---No.

Okay. Do you recall the conversation that it appears to depict in that photograph?---Could you repeat that. I missed it.

25

So if you have a look at the words that appear, on their face, to be depicted in that photograph, do you recall having witnessed a conversation to that effect at some stage whilst seeing these Facebook messages? So for example, this says:

30 *Okay. We'll use the restraints more often. We fuck too –*

etcetera. Do you recall seeing that conversation when you were looking at Facebook – these Facebook messages?---Well, similar content. I – as I said, I don't remember that exact message.

35

I see?---Yep.

If you turn, please, to page 367?---Yes.

40 So 367, 368 and 369?---Yes.

So do you recognise these documents?---I – I do. When I was asked to identify particular messages, I scrolled back through the period of time on my own phone that I was working there and I found those messages that I'd sent to Lyn.

45

Okay?---Yep.

So these are messages and they appear to depict photographs; is that correct?---Well, they're messages, aren't they?

COMMISSIONER: What are we looking at, Mr White?

5

MR WHITE: Apologies. This is page 367 - - -

WITNESS: Yes.

10

MR WHITE: - - - 368, 369.

WITNESS: Yes. So that's - I call that a message.

MR WHITE: Yes. And the message - - -?---Yeah.

15

- - - appears to, within the body of the message, depict a photograph of Facebook messages?---Yes.

Am I right in saying that?---Yes, I'm sorry.

20

Yep. Okay?---Yes, I understand now.

So the photograph of the Facebook messages - - -?---Yes.

25

- - - who took that?---I did, for - - -

Okay?--- - - - for that - - -

Okay?--- - - - those three pages that you're talking about, those three messages.

30

And the Messenger messages that appear in the photograph: did you witness those?---Yes.

And where did you see those?---On the - when I was obviously on the computer - - -

35

Yep?--- - - - doing a Facebook update - - -

Okay?--- - - - and they've come up.

40

All right. So the messages that you were describing before having seen: were they to the same effect as these messages - - -?---Yes, they were.

- - - that we're looking at? Okay. And in terms of these messages, there are some that are in white and some that are in blue. What did you understand that to

45

mean?---Blue was Wayne, and in that particular message stream that you're referring to there, in the white was his girlfriend at the time.

Okay. I tender those three pages, Commissioner.

COMMISSIONER: The series of text messages depicting photographs of a Messenger conversation that are found at pages 367, 368 and 369 of the appellant's
5 bundle of documents are marked – are admitted and marked exhibit 16.

EXHIBIT #16 ADMITTED AND MARKED

10

MR WHITE: So, Ms Mossop, you mentioned having shared those messages with Ms Kelly. Did you have a discussion about them?---We did.

15

And what was the effect of that discussion?---We were trying to determine what to do about the situation in our workplace, and the reason for taking a photo of – me taking a photo of those particular messages that have just been referred to was because we were thinking how do we – how do we address the situation? Would anyone believe what we are seeing? Would I need proof, for example, because one part of a discussion was should we seek some legal advice? And we would need to
20 perhaps present, “Well, this is an example of what is coming up in our work environment.”

25

And did you resolve, as a consequence of those discussions, to raise the issue with Wayne?---No, we never did. It was what I considered to be a very awkward and difficult situation. He was our employer. There was no one above Lyn or I that we could go to – you know, for example, a supervisor – to broach it. It was to him. That was one option. Being very aware of his very volatile and violent nature, that was fraught with some difficulties. It was one that we tossed around and thought, “How would he react?” Went on to talk about, perhaps, another option was Parry
30 McCutcheon, who was Wayne’s IT manager who looked after the computers and had access, obviously remotely, about the situation. And then we – they’re very, very close friends, Parry and Wayne, and again, that’s probably not going to be a satisfactory avenue to try and address the situation. There was a discussion about, “Do we go to a solicitor to get advice?” And the fourth one was, “Do we ignore it?”
35 And that’s what we did. Just kept shutting them down.

40

And did you see at the time anything that you witnessed in Lyn’s demeanour that indicated to you that it was having an effect on her?---Definitely. I’m probably a little bit more worldly wise than Lyn because of my previous career, and Lyn had never been subjected to anything of this nature, and it was distressing.

45

In respect of Lyn and her employment with Kokoda Spirit, a number of things are alleged against her. One of those is that she downloaded Facebook messages and saved them onto USB. Can you comment on your knowledge as to anything connected with that allegation?---Never.

When you say “never”, what do you mean by that?---Lyn never downloaded anything from a work computer onto a USB to my knowledge. I – I – I don’t mean to insult you, Lyn, but Lyn wasn’t that au fait with computers. I don’t think she would know how to download off a computer, to be quite honest, but no.

5

When you were discussing the Facebook messages with Lyn, did she ever provide to you any indication that she had copies of those that she’d downloaded to USB?---Never.

10 A further allegation that’s made against Lyn is that she overpaid herself. Can you provide any comment on whether you would have any information in respect of the truth or otherwise of that allegation?---I was stunned when I first heard that allegation. Lyn is so pedantic about her bookkeeping, and when I was told what Wayne’s allegation was – that she’d overpaid herself to \$50 an hour, not 45 – again,
15 it was disbelief, because I had been in the room with Lyn and Wayne when our wage packages were being discussed, and Lyn’s was – she’d been on \$45 for around three years, I think. Could have been a bit lot longer. And she was given a \$5 an hour pay increase, and I was in the room when it was spoken about with Wayne there.

20 MR WHITE: When abouts what that?---That was 29th of June 2018, because finally there was a new accountant in the mix, and he said to Wayne that he needed to have a proper payroll process, which was a Xero package. And they were inputting the information of our wage packages on that day so it was ready for the new financial year. So there was discussions around our pay at the end of June of 2018. And I
25 noted in one of my work diaries that day, when we did come to the agreement of what our packages would be, that, you know, finally this has been sorted where I’m getting \$40 an hour, tax will be taken out and super is going to be paid. Lyn is getting 50, and it was on that date – I believe it was the 29th – that I jotted it down in my diary.

30

And why the comment about super?---Wayne hadn’t been paying us super. When I started towards the end of June 2017, no super was being paid. I knew that Lyn had not been paid for a number of years. I knew that the lady whose position I took had not been paid super for five or six years and went to the ATO to make a complaint.

35 And on a visit to my own tax agent and to tell him that I was now working for Kokoda Spirit, I said, “Super is not being paid”, and he said, “Well, that can be a criminal offence and your employer must pay super as a required entitlement”.

40 So, Ms Mossop, you have spoken about some of the matters that you experienced in that workplace. Why did you stay there for the period that you did?---I liked the work. During my policing, as a form of destressing I took to walking and to trekking and I really loved it. And it was – in the work environment when you were talking to trekkers or potential trekkers, it was quite a joy to discuss the challenges that might be involved. That part of the job was good. I enjoyed that. And, you know, when I
45 look at it, I wasn’t there all that long, and probably within six to eight months I started to look for work elsewhere, because I was jotting down, “I cannot put up with Wayne any longer”. I believed Wayne to be a narcissist from the characteristics that

he displayed, and I thought I was at an age – I just didn't want to put up with that. I didn't need to. And as I mentioned, I was working my way out of it by doing a part time or job share, and that was done so that Lyn would have someone in the office with her, and unfortunately that didn't work out after the incident with Wayne.

5

And then did you have any dealings with Wayne after your departure?---My dealing's after were sending me the email on the early hours Saturday. I blocked him then from my phone and email, until sometime later on the 13th, because he was harassing Lyn, asking Lyn to ring me. And I discussed with my husband later that Saturday afternoon, "I need to draw a line in the sand here, because my resignation letter, I don't think he's accepting it". He had even offered through Lyn, "Tell Julie I will pay for her and Darryl – for a \$10,000 trip if she will come back", which, of course, I said not to. And I did unblock him on my phone to – you know, it's a term. You know, take the higher road. I sent him a message to say, "Look, Wayne, that was an ugly incident. I'm not changing my decision. I'm not coming back. Thank you for the flowers". He had sent flowers, as he tends to do when he knows that he has stuffed up. And I think I was even quite flippant about I hope you enjoy the football game tonight. But it was really my way of saying que sera, sera. It's over. Done. Sent it and blocked my phone, and I've never seen him since. Not that I saw him. I sent that message.

10

15

20

I have no further examination-in-chief, Commissioner.

COMMISSIONER: Mr Sapsford?

25

MR SAPSFORD: Thank you, your Honour.

CROSS-EXAMINATION BY MR SAPSFORD

[11.25 am]

30

MR SAPSFORD: Ms Mossop, would you have a look please – and this is page one hundred and – page 192 through to page 197 of the appellant's trial bundle, your Honour.

35

WITNESS: Starting at 192?

MR SAPSFORD: Starting at 192?---Yes.

40

Just going through, please, Ms Mossop, to page 196?---Yes.

That's the message that you sent to Mr Wetherall, isn't it, following the disciplinary which led to your resignation?---Yes.

45

All right. That refers to a text from him and a heartfelt message where he apologised, and acknowledged, didn't it, that yesterday there were two of you involved in an ugly exchange? You also offered you apology to Mr Wetherall,

5 stating you could not respond in full at that time due to being exhausted emotionally, and an attempt to be funny by saying you were “brain bugged”. You stated your decision to leave remained the same, and it saddened you deeply, and asked him to enjoy the game and share his passion with Alyssa – and that was his current partner – and reference to becoming a [indistinct] that’s the nature of that - -?---That’s right.

- - - communication?---Yes.

10 Yes. And then on page 196, I don’t know if this is separate or part of the same communication:

Thank you for the very beautiful flowers and kind words in your message. May the future be kind to us all. Great trekking over Anzac.

15 That’s right?---Yes.

Yes, I tender that as one exhibit please, your Honour.

20 COMMISSIONER: The text messages from Ms Mossop to Mr Wetherall – they’re not dated – that are found at pages 192 to 196, inclusive, in the appellant’s bundle of documents are admitted and marked exhibit 17.

25 **EXHIBIT #17 ADMITTED AND MARKED**

MR SAPSFORD: And the next page please, Ms Mossop, is the response dated 15 April from Mr Wetherall:

30 *Thanks, Julie. I appreciate your response. It has been an emotional few days all around. Your solicitor is now converted, and [indistinct] yesterday.*

That’s correct?---Yes.

35 I tender that document, your Honour.

COMMISSIONER: Do you want to make it part of exhibit 17 or do you want to make it a separate exhibit?

40 MR SAPSFORD: I don’t mind, your Honour.

COMMISSIONER: Manage that at 17. I will include the text message from Mr Wetherall to Ms Mossop – you’re Julie Elliot by another name, are you?---Yes, that was my previous married name.

45 Okay?---And my name through my police service. So - - -

All right?---Yep.

That will form part of exhibit 17.

5 MR SAPSFORD: Thank you, your Honour.

The event which led to your resignation mirrored, aren't they, in your resignation letter, in relation to the conversation you had with Mr Wetherall, in particular, about interviewing a prospective applicant for a job?---Correct.

10

And as outlined in your resignation letter, you accept – and that Mr Wetherall is the owner of the business and it's up to him to state how he wants things to be run?---That's correct.

15 You accept also in your resignation letter:

Yes. I do have direct manner when needed and this is when I have to deal with fools or rude people.

20 ?---Yes, and that was my way of saying, "And that's who I think you are, Wayne: stupid" - - -

I see?---But he didn't get that.

25 What Mr Wetherall was saying to you that you took offence at was and that you should temper that approach when you were interviewing people. That's correct, isn't it?---Yes.

30 At that stage, you were in the process of leaving, in any event, weren't you?---Yes, although the time of my leaving hadn't been determined.

35 And the discussion, according to your evidence, Mrs Mossop, went along the lines of him giving you information as to how he wanted you to conduct the interviews and saying words to the effect, "These aren't police recruits"?---Yes. They were the words. It was the manner in his yelling those comments to me, not discussing how he wanted the interview to go, but in a very aggressive and insulting, loud voice.

40 And, see, I suggest it was simply a discussion about the manner in which you were to conduct an interview?---I disagree.

And, thereafter, your evidence seems to be that you took offence because he ignore you. Is that right?---I did, because that was one of Wayne's tactics and how to try and divide the office to exclude, whisper, not include you in the workings of the office. He did that often. He did that with me, to Lyn - - -

45

And you - - -?--- - - - also.

- - - found him. You went after him and found him in the laundry, didn't you?---Yes.

5 And you started an altercation between yourself and him in the laundry?---Absolutely not. I did not start an altercation. I went to the laundry door to tell him I was leaving and to ask what he thought of the interview with Angelo and to see if he would respond in some manner in a decent way. He turned on me immediately. I didn't start any altercation. He threatened me.

10 What did he say?---He screamed at me, "How dare you talk to me the way you do? Who do you think you are?", and as he was saying the words, as I mentioned before, his fists were clenched, he was approximately 30 or 40 centimetres away from my face and I firmly believed he was going to assault me physically.

15 Now, I suggest that wasn't so. I suggest that you were the aggressor in this interchange?---You can suggest that and it's not true.

20 Parry McCutcheon was there at the time, wasn't he?---Parry was not in the house. As I said when I was reversing out the driveway, Parry walked up the driveway, I turned and acknowledged him and he then entered the house. He was not in the house during that episode and this is – Wayne lies continuously and this is yet another lie.

25 Now, you had a number of periods of employment – well, two periods of employment with – can I just call it for the sake of complicity, Kokoda?---Yes.

You'd know what I'm talking about?---Yes.

30 The first of those was from July 2010 – I beg your pardon – July 2020 to April 2011. That's right?---Yes. That's right.

35 How did you find Mr Wetherall during that period of time?---I found him quite a difficult person, but he was still married to Michelle then so I wasn't as exposed to him as I was at the later date. I thought he was a very self-opinionated, a grandiose character. He stretched the truth. Very vain; he needed his ego stroked all the time. I didn't particularly like him and he didn't particularly like me.

When you left in 2011, I think you started your own business, didn't you - - -?---I - - -

40 - - - as a marriage celebrant?---I did, a marriage celebrant and funeral celebrant.

How was that? Was that successful?---Yes.

45 Why did you go back to Kokoda?---I was on the Kokoda Trail in April of 2017. That was my fourth trek and, unfortunately, I broke my ankle badly - - -

Yes?--- - - on day three, had to be medevaced off and – and I – it was quite a serious injury, took a – a few months of recuperation so I couldn't go back to my own business because I couldn't drive my car and Lyn was very kind in keeping a check on my recovery and happened to say one day, “You're not looking for work are you, because Cherin's left and - - -

Now, is that Ms Cheran Carter?---Cheran Carter. Yes. And I said, “Well, who knows? Maybe I am because I can't resume my other – my other business at the moment”, and I had a visit from Lyn and Wayne and decided I'd give it a go because it was office-bound and I could Uber there until I could drive.

And the business accommodated your incapacity? You were still incapacitated at the time?---I had a moon boot on but it didn't mean I couldn't work at a computer which is what my duties were.

You were provided with work suitable to your incapacity and you were also provided with work on a part-time basis, weren't you?---To start with - - -

Yes?---That was the agreement and there was a temp assisting Lyn for a couple of months at the time I went back to be orientated but probably within four weeks I was working four to five days a week and the temp was – was made redundant. She – she was gone.

The work that you were provided was in accordance with your ability to do it, though, wasn't it?---There was nothing I couldn't do.

But what I'm getting at is the increase in the number of days per week was when you proved you were capable of doing it?---I disagree. I think for the two or three or four weeks when it was – when Carlie was still there and I was getting au fait with the – the processes which hadn't – hadn't changed all that much and the only thing was I had to put my – my foot up on a stool. I still did the number of hours I needed to do. I did all the required duties, regardless of my broken ankle.

The proposition I'm putt to you, Ms Mossop, is not complex. What I'm saying is that on your return to work to Kokoda you were offered a job that was not full-time in light of the fact that you'd suffered an injury and that increased when you proved yourself capable of doing the job?---I proved I was capable of doing the job I would say from the first two days I returned.

Not just the day to day aspects of the job, but the ability to work in a job full-time with the moon boot?---I could walk with the moon boot. It didn't have me tied to a chair.

All right?---I was still able to do every duty that was required of me as an office administrator regardless of whether I had a moon boot on or not.

All right. Well, would you have a look at this document, please. It's number – in the – it's not in their bundle. It's number 15 in the respondent's bundle, please, your Honour.

5 WITNESS: Thank you.

MR SAPSFORD: Does your Honour have it?

COMMISSIONER: I do. Yes.

10

MR SAPSFORD: Ms Mossop, is that an email from yourself to Mr Wetherall of 15 April 2017?---It is. That was subsequent to me breaking my ankle on the track and I'm actually very pleased that this has been presented because I have no problem with expressing my thanks to Mr Wetherall, to Lyn, about the way that – that I was
15 helped during that very traumatic time on the track with both bones in my ankle broken through. I tend to do that when I appreciate something. I send people a letter of thanks.

Just after halfway, the paragraph beginning:

20

I know that you know how disappointed I was/am that I could not be with you all from start to finish. Even so, I will never forget how supported, cared for and loved I felt when I injured myself.

25 ?---Yes.

And on the next page, six paragraphs down. It's the paragraph above that:

30

I'm eternally grateful for that gesture.

And then:

35

As I am to you, Wayne. The reassuring, supportive, generous words you said to me. I was touched and humbled, and again turned into a blubbing mess. You saw me onto the chopper and reassured me that I would be fine, and I was.

That's right?---Yes.

And you wrote all of that?---I did.

40

Yes. I tender that document, your Honour.

COMMISSIONER: Email from Ms Mossop to Mr Wetherall dated the 15th of April 2017 is admitted and marked exhibit 18.

45

EXHIBIT #18 ADMITTED AND MARKED

MR SAPSFORD: So it would be fair to say, Ms Mossop, that things weren't all bad with Mr Wetherall, were they?---Not every day, no. And that particular episode in the email that you just referred to, I – I hadn't had anything to do with Wayne for a number of years. And I was very, very grateful to be removed from the track with a
5 traumatic injury, home safely, and I expressed my gratitude for the way Wayne, the porters, the other members of that group cared for me on the side of a mountain in the jungles of Port Moresby, and how Lyn assisted from the office. I – I've – support every word that I said in that letter of gratitude.

10 COMMISSIONER: This is before you'd returned to work for the second time?---That's right, yes.

MR SAPSFORD: But you relate generalised observations as to the conduct of Mr Wetherall in the office where you say he used expletives and spoke in a harsh
15 manner; is that right?---Yes.

Specifically, you say you referred to Mr Wetherall, saying to Ms Kelly:

20 *What the fuck are you doing with these expenses?*

That was your evidence-in-chief?---Yes, that was an example.

What – what – when – when was that said?---On more than one occasion.

25 On any one occasion are you able to identify when it was said?---I can't give you a date. I was there for – for months. And Wayne's general mismanagement of running an office was to confront, to swear, to shake bits of paper in front of someone's face, "What do you mean in this email? You're paying them too much". These were just regular occurrences. I can't give you give you specific dates when
30 these comments were made.

The comment about Mr Wetherall referring to Ms Kelly as being hoity-toity, when was that made?---Again, I don't have a specific date for that. I recall the conversation, however, because it – it was – it was insulting and it was an interesting
35 term, "hoity-toity". And I know that Lyn was offended by that because she told me after.

She told you after that she was offending, or was it the fact she told you about the conversation?---I was there when it was said and she discussed afterwards how
40 insulting and frustrating it is when you're referred to in those terms by your employer.

Yes. Now, can the witness please see exhibit 7, your Honour?---Thank you.

45 You will see there, Ms Mossop, that there are three photos, the first of which is a photograph of what appears to be an iPhone. Is that – is that your iPhone?---Is this page 363?

COMMISSIONER: Yes?---Yes.

MR SAPSFORD: Yes?---Yes. I had – I don't believe that was my iPhone. I – I don't recall that particular message.

5

Do you own an iPhone?---Of course. Yes, I do.

Well, you might – might've owned a Samsung. That's all - - -?---I referred – yes. I'm sorry. My mistake.

10

And are you saying you don't believe that was your iPhone?---I don't – I don't believe it was.

Ms Kelly's given evidence, she says it was?---I don't recall that.

15

Well, you see the three photographs progress, of these produced by Ms Kelly from her own records, to photographs of computer screens in the next three photos?---Mmm.

20 Are you able to shed any light on how it came to be a photograph of a telephone and then photographs of computer screens?---I can't shed any light on that. As I mentioned earlier in my evidence, I did take on my iPhone pictures of other messages that I took to have as proof of what was happening in the workplace. I can't specifically say who took these, where they came from.

25

And the ones that you took are now the subject of exhibit 16. Pages 367, if you'd like to turn to it just to clarity, to 369?---Okay, thank you. Thanks. Yes.

30 And my note of your evidence, and I'm sure my learned friend or his Honour will correct me if I'm wrong, was that you forwarded those to Ms Kelly?---Yes.

35 Why did you do that?---When I looked back just last week to see if I had anything and I found that I had forwarded them to Lyn I thought I couldn't recall the day, maybe Lyn hadn't been there, maybe I had said to her a content in there and there was relevance in the context because Lyn had expressed her distress at seeing messages that were also referring to gangbanging as were the ones in these that I took.

40 But in those images you give evidence [indistinct] images which caused Ms Kelly distress and you forwarded more?---They caused me distress too. We were both in a distressful situation.

45 My question is why, if you knew they caused Ms Kelly distress, did you forward her more images?---Because we were in discussions about what the content of the messages that were appearing on our work computer and our work office as we tried to determine what we could do to address the situation.

Why was it necessary to forward more messages to determine what you were going to do?---As I said, perhaps she wasn't there and I told her about them. Lyn may well have said, "Could you forward them to me?"

5 Why didn't you simply go to Mr Wetherall and say, "Hey, there's something wrong with the computer; we're seeing things we shouldn't"?---I have asked myself that on a number of occasions and it seems like it is simply, "Couldn't you have gone to Wayne and said, 'There are some personal messages that are being seen.'" And I will reiterate that unless you know Mr Wetherall and what he's capable of in his
10 physicality, his anger, his reactions which are unpredictable; it didn't seem, really, a safe and easy option.

Are you honestly saying to this court, Ms Mossop, as an ex senior sergeant of police you didn't feel safe in simply informing Mr Wetherall that private messages were
15 coming up on the screen?---I am saying that. I had been - - -

Why - - ?---I had been out of the police service for 10 years. I was a 65 year old woman; I was working as an admin in an office. And that – yes, I had dealt with much more difficult situations as a police officer but I was working for a man who
20 disliked me – I didn't like; he was a violent man – and it just wasn't an easy solution. It was embarrassing, it was awkward, it – I didn't know what the outcome would be.

Why is it then that you didn't go simply to the person who controlled the IT for the
25 company, Mr McCutcheon?---I didn't trust him either.

Then, Ms Mossop, why is it in the full knowledge that Ms Kelly was distressed by these messages and exposed to them that you didn't inform either Mr Wetherall or Mr McCutcheon at the time of your resignation of the situation? You weren't in
30 danger then, were you?---No, I wasn't; I was just glad to be rid of him in my life.

COMMISSIONER: Do you recall approximately when you would have forwarded those photographs of the screenshot messages to Ms Kelly?---I found them last week and it was the – it was in August of 2018.
35

But do you recall when you forwarded them to Ms Kelly?---I don't remember doing it on that date; I had forgotten about it – I didn't even know they were on my phone.

No, just in respect of these ones that are exhibit 16?---Yes.
40

The screenshots of the message. When did you forward these to Ms Kelly?---On my phone it's dated August 2018.

Is that date mark here? I can't see it on the exhibit. So, so we're looking at the same
45 thing, pages 367, 368 - - ?---Yes.

- - - 369. Are you able to say when you sent those images to Ms Kelly?---From my phone it's to Lyn and it was dated – it might have been 8 August – I'm just trying to think back to last week – 2018 at 3 o'clock in the afternoon.

5 All right.

MR SAPSFORD: What's the significance of the date on photo number 367 up the top there of 4 July 2020?---367.

10 See the handwritten date, 4 July 2020, what's the significance of that?---I don't know, it's not my handwriting.

COMMISSIONER: Do you know, Mr White?

15 MR WHITE: I will just try to - - -

MR SAPSFORD: Your Honour, I have a matter that it's necessary to get some instructions on before I put it to this witness. I was hoping that I could avoid it; it should be a fairly short telephone call.

20

COMMISSIONER: Sure.

MR SAPSFORD: But if I could have 10 minutes, that would be greatly appreciated.

25 COMMISSIONER: You can have 15.

MR SAPSFORD: Thank you.

COMMISSIONER: Quarter past 12.

30

MR SAPSFORD: Thank you.

COMMISSIONER: We will adjourn till quarter past 12.

35

ADJOURNED

[11.53 am]

RESUMED

[12.14 pm]

40

JULIE ANNE MOSSOP, CONTINUING

45 **CROSS-EXAMINATION BY MR SAPSFORD**

COMMISSIONER: Thank you.

MR SAPSFORD: Thank you for that indulgence, your Honour.

5 COMMISSIONER: Thanks, Mr Sapsford. No problems.

MR SAPSFORD: The whole purpose of going into the computer was, wasn't it, to update, in relation to treks?---Yes. Unless Wayne would ring me to say, "Check out" – something on Facebook, which he did frequently about his opposition trekking
10 companies.

And in the computer, there was Wayne's Facebook page from which you'd go to the Kokoda trek page. That's right, isn't it?---Yes.

15 And when you were in the Kokoda trek page, anything that popped up in that page was only an icon that you had to click on to see what it was about?---Yes.

Whereas in Wayne's Facebook page, that was the area where items would come up unexpectedly?---No, it wasn't on his. It was – messages from his phone would come up beside the Facebook page that I was working on updating.
20

But what I'm saying is the area where – what I'm putting to you is the area where you were meant to be updating the Kokoda Facebook page, in that page, only icons came up, and you had to click on them to see what the message was?---No, they –
25 messages just came up. I didn't click on anything to open it.

I suggest if they came up, they only came up in Mr Wetherall's Facebook page, which was the conduit or the manner in which you accessed the Kokoda page?---I'm confused with what you're saying. I would click on a Facebook page on my work
30 computer. That was the only Facebook page I would go onto to update the trek posts. And messages of Wayne's would come up in a – beside it in a message format.

But you – in order to update the Kokoda trek page, you had to go from the Facebook page into the Kokoda page; that's right, isn't it?---No, it just opened up on the one – the one click.
35

Well, I suggest that the updating you were doing of the treks was specifically done on a page that can best be described as the Kokoda Facebook page, and that that was
40 a separate page to Mr Wetherall's own private – or rather, his own personal Facebook page?---Well, that's correct, yes.

And when in the Kokoda page, any messages that came were only messages in relation to icons that you had to click on to get those messages?---I didn't have to
45 click on anything. The messages just appeared. They were open.

Right. Just to be clear, what I'm suggesting to you – because the respondent will be calling evidence of this – what I'm suggesting to you is there were two pages: one was Mr Wetherall's Facebook page and the other was the Kokoda page. But to get to the Kokoda page, you went through Mr Wetherall's page, and once in the Kokoda page, the only thing that came up were icons. Now, I think you've agreed with me in relation to that?---I'm actually quite confused at how this is being presented to me. My – I would just click on the Facebook icon that was the Kokoda Spirit Facebook page, which is where I would put the posts on. That wasn't Wayne's personal Facebook page, because I wouldn't be putting updates of treks groups on his personal page, because no one else could view those posts.

And what I'm suggesting to you is that when you were in the Kokoda page updating treks, the only thing that would come up would be icons that you'd have to click on to get the message?---Which messages are you specifically referring to?

These sorts of messages that you're giving evidence of?---No, they just appeared. They just appeared as – if I'm on my computer at home and I'm on Facebook and someone sends me a message, it opens up beside. I didn't open anything of his. I was shutting them down as they appeared.

But do you agree that it was a dual process, first of all of entering into Facebook and then going to the Kokoda page?---Well, that was my job.

COMMISSIONER: She's already said no, though, Mr Sapsford.

WITNESS: That was my job.

COMMISSIONER: She said she clicks on an icon on a screen and it opens up the page.

MR SAPSFORD: Well, I don't think I can take it a lot further, then, your Honour.

COMMISSIONER: She's answered that question a couple of times in that way.

MR SAPSFORD: I think I fairly – I just wanted to fairly put to the witness what the evidence would be from the respondent, your Honour.

COMMISSIONER: I understand. Can I ask you around that, Ms Mossop, did you have to – when you clicked on that icon, did you have to enter a password or anything like that?---No, it would open up. But occasionally if computers were shut down or there was a glitch or something was happening, you had to reopen, it was – well, it was written in a notebook for staff to put in - - -

A password?--- - - - with a password, yeah. But, generally, it was already programmed in [indistinct]

And the page that opened up in front of you, that was the Kokoda Spirit
- - -?---That's - - -

- - - page, was it?---That's right.

5

And is Mr Wetherall – to your knowledge, is he an administrator on that page? Does he have access to that page?---Yes.

All right.

10

MR SAPSFORD: And that's the cross-examination of Ms Mossop, thank you, your Honour.

COMMISSIONER: Thanks, Mr Sapsford. Mr White.

15

MR WHITE: I have no re-examination, Commissioner. But in respect of the question you asked earlier in respect of a notation that appears on - - -

COMMISSIONER: Yes.

20

MR WHITE: I've taken instructions. I understand that that resembles the – that handwriting of Mr Boyce's assistant.

COMMISSIONER: Right.

25

MR WHITE: And it appears that that might've been made upon receipt – as the date of receipt of that.

COMMISSIONER: Okay. Well, that solves that.

30

MR WHITE: Thank you.

COMMISSIONER: I won't have any – I won't pay any regard to that.

35

MR WHITE: Thank you.

COMMISSIONER: All right. So the next witness you've got is Ms Baker; is that correct?

40

MR WHITE: That's correct. She's scheduled for 2.15.

COMMISSIONER: All right.

45

MR WHITE: We otherwise have Ms Carter, who's scheduled for an hour. She may perhaps go a little bit longer than that. I'm in your Honour's hands as to how you want to approach that.

COMMISSIONER: Is Ms Carter available now?

MR WHITE: We've made sure she is, yes.

5 COMMISSIONER: Are you ready to proceed with Ms Carter?

MR SAPSFORD: Yes, your Honour.

10 COMMISSIONER: Well, we might as well get started with her then because we've got – I mean, I wasn't planning to break till about 1. And we might still break – well, we'll see how long you go with Ms Carter and we'll see – and we'll take a break after that.

15 MR WHITE: Thank you, Commissioner.

COMMISSIONER: Ms Mossop, sorry, you're excused. Sorry, I forgot you were there?---Thank you, your Honour.

20 You're excused. Thank you?---Thank you.

WITNESS EXCUSED

[12.21 pm]

25 COMMISSIONER: Ms Carter, just stand there in the witness box. You're going to give evidence in these proceedings now. Do you want to take an oath on the Bible or make a solemn affirmation?

30 MS S.P. CARTER: Solemn affirmation.

COMMISSIONER: Sure. Just stay standing while my Associate administers the oath.

35 MS CARTER: Yeah.

COMMISSIONER: Affirmation.

40 **CHERAN PAIGE CARTER, AFFIRMED**

[12.22 pm]

EXAMINATION-IN-CHIEF BY MR WHITE

45 COMMISSIONER: Thanks, Ms Carter. Take a seat.

MR WHITE: Ms Carter, could you please state your full name for the record?---Cheran Paige Carter.

And whereabouts do you live?---In Mountain Creek on Sunshine Coast.

5

These proceedings relate to Lyn Kelly and her employment by a company called Kokoda Spirit. Were you also an employee of that company?---I was.

And when abouts did that begin?---May 2011.

10

And what was the role that you had in the business?---Just office administration.

Do you recall who else was working there at the time?---Yeah, there was Lyn Kelly. There was also Michelle Wetherall and Wayne Wetherall.

15

Okay. And who are each of those people and what did they do in the business?---Wayne Wetherall was the managing director and Michelle Wetherall was his wife.

20 Okay. And Ms Kelly: what was your understanding of her role?---She was office administration. Senior, sort of, manager to me.

And in terms of your role, what did they involve?---Daily administration tasks, answering inquiries from trekkers, preparing bookings and paperwork for the trekkers.

25

And the period that you began your employment: when abouts was that?---I began in May 2011.

30 And how long did that continue for?---Until May 2017.

Can you describe – and I understand it's not in controversy. This office is based whereabouts?---It is based on Wayne's house in Sippy Downs.

35 Yes. Okay. And can you describe the environment when you were working there?---On a – it was – could be quite tense sometimes. It could be quite hostile sometimes.

40 And then what do you mean when you say that?---Wayne's mood sometimes can change daily. Some days, it would be quite okay and then other days, it could be – he could be quite angry and aggressive, blunt, sometimes dismissive

MR WHITE: So when he was asking that way, how would that play out? So can you give us an example of what that might look like?---We would try and limit out interaction with him. We would pretty much just put our heads down and just get our – our work done for the day.

45

5 All right. And in terms of those matters you described, so angry and aggressive, blunt, things like that, can you think of any examples that you might describe in Wayne's character?---He becomes – he would become quite angry at – at – little things would trigger him off. It could be a phone call from someone, it could be a bad review, it could be anything that can turn a mode quite quickly.

Were they all related to work?---No.

10 What else might they be related to?---Personal matters, fights with girlfriends. Once he did separate from his – his wife, there was some – many arguments between those two.

So when abouts was that?---When they separated? I believe it was January 2013.

15 Okay. And what kind of things did you identify during that period?---Arguments and things over possessions, things in the house. There was an incident once where they were yelling about car keys and he had sort of aggressively gone to snatch the keys from Michelle in our – they were in our office at the time.

20 Did you ever see any damage to the house?---Yes.

Can you describe what that was?---There was holes in several walls and the toilet door had been kicked off – there was no toilet door remaining.

25 Did you talk to Mr Wetherall about that?---Yeah, we – I did ask him, actually, what had happened. He said that he had had a fight with his girlfriend the night before and – we also spoke about getting the toilet door replaced.

And did that occur?---Not for a few weeks.

30 And when abouts was that conversation, can you remember?---No, I don't.

Before or after he separated from Ms Wetherall?---After.

35 What types of things would you talk to Mr Wetherall about in the office?---Day to day tasks would – would be the conversations that I would have with him.

Did you ever discuss matters not related to work?---Yes. He brought up several conversations that were not related to work.

40 What did they involve?---Personal text messages between himself and his then girlfriend, some text messages between himself and his ex-wife. He would explain – he would also talk about his sex life with his girlfriend.

45 Did you ask him about those matters?---No.

In your experience, did those conversations have any reflection in his mood or temperament or how he behaved?---Yes, at times, if the conversations weren't all that positive between himself and his – his girlfriend at the time. He could become quite agitated and angry.

5

So what would that look like when Wayne was agitated or angry?---He would start pacing around the house, he would become quite red in the face, agitated, saying lots of things at once.

10 And how did you interact with him during those periods?---I tended to keep quite a distance and not – not engage.

Okay. Were there ever any other aspects of his personal life that were discussed in front of you or with you?---He would talk about, you know, dating websites and things like that that he was – he was engaged in. He would ask opinions sometimes on – on what we thought of people that had contacted him through those websites and whether we thought they were attractive or not.

15

Ms Kelly was working there at the time?---Yes.

20

Did you evidence any interactions between Mr Wetherall and Ms Kelly?---In regards to outside of their daily duties or - - -

Yes?---They – they communicated mostly sort of about daily tasks. There was an incident that I did not witness but did come back into after the – the incident happened. Lyn was visibly upset. There clearly had been something that had happened in the office.

25

Do you remember when abouts that was?---It was 2013 and it would be sometime after August of – June, sorry. I was diagnosed with cancer in June 2013. I was actually out of the office that morning for an oncology appointment.

30

So sometime after that diagnosis?---Sometime after, yep.

And what did you see when you came back to the office?---Lyn was at her desk. She was head down. She was crying a lot. She was quite shaky.

35

Who else was present in the house at that time?---At the time there was Wayne.

Did you have any conversations with Ms Kelly about what had occurred?---I kind of – I tried to, but it was hard at the time with Wayne around, so we couldn't say a great deal.

40

Did anyone else come into the office that day?---I believe Parry McCutcheon came in at some point.

45

Do you recall any conversations about the incident between other parties [indistinct]?---Not that I could hear.

5 Did you speak with Mr Wetherall later that day?---He asked me to drive him to the Bluff Bar at Alexandra Headland and I drove him down, and he was in my car and we – he instantly said when we jumped in the car that, “I didn’t swear at her. I didn’t swear at her. I didn’t swear at her.” And he just kept sort of repeating that on the drive.

10 What did you take that to mean?---That something occurred in the office. I knew that he was referring to Lyn, and I knew that there had obviously been something that had happened between them.

15 So did you then drop Mr Wetherall off at the Bluff Bar?---Yes.

And then what did you do after that?---I went straight back to the office.

20 And do you recall anything from there?---I could – I talked to Lyn more freely then, and she explained to me what had happened, that Wayne just unleashed a tirade of abuse at her, was swearing and was finger pointing at her and he had – I remember she said that he was standing so close to her that there was spit landing on her face.

25 Did she provide an indication as to what might have prompted that interaction?---It was something simple. She just asked him about a work-related matter that she needed clearing up and – and he just turned.

30 Did she recount any of the things that she said that Wayne had said to her?---Yeah, lots of – there was lots of swearing. There was – I think he accused her of being hoity-toity or thought she was better than everyone else, and I believe that he was upset about not being invited to – to Lyn’s husband’s 50th birthday.

That particular expression, hoity-toity, have you heard that before?---Yes, I have.

35 In what context?---Wayne had mentioned it to me once before.

And what did he say?---Words to that – that Lyn thinks that she is a bit hoity-toity.

40 The events that were described to you by Ms Kelly, had you witnessed similar events from Mr Wetherall in the past?---Myself, personally?

Yes?---Not towards me, no.

45 Towards other people?---I have seen him in that kind of rage talking about other people. When he referred to maybe his ex-wife or an ex-girlfriend, he’d become quite angry.

Okay. The role that you undertook for Kokoda Spirit, did that involve having access to the Kokoda Spirit Facebook page?---It did, when I was required to provide updates for treks.

5 So what would that look like, in practical terms?---I – we would generally get a message, a text message through from the track, and then we would provide that update onto Facebook. They would give us a location and how everyone was going.

10 And then what would the process look like once you'd received that message to put it onto Facebook?---The Facebook was just pinned to our toolbar. I clicked on it, and the Kokoda Spirit Facebook page would just instantly open.

15 And do you recall, when you went to that Facebook page, how it was logged in?---Yeah. It was just opened onto the home screen.

In respect of the Facebook page itself, do you know if that was connected to anyone's account?---I wasn't aware of it being connected to anyone.

20 Was it ever the case that you saw messages that would present on the screen when you were accessing the account?---Yes.

And what were the nature of those messages?---They were sexual of nature.

25 Do you understand – did you understand at the time that they related to any particular person?---They were – it was communications between Wayne and one of the offi – ladies that worked in the office in Papua New Guinea.

Did you understand at the time why they were popping up?---No.

30 What would you do when they did pop up?---Would just close them down.

Can you describe, in a general sense, the nature of those messages?---That he wanted to meet Helen for sex when he arrived in Papua New Guinea.

35 So who's Helen?---She was the lady in the office at – of – that worked for Kokoda Spirit, as well, in Papua New Guinea.

Do you recall her last name?---It starts with a T, and it's a Papuan name.

40 Okay. Do you recall seeing any other messages aside from those?---There – there was a – the ones that were from Helen that were popping up, and they were going backwards and forwards between each other, so Helen was sending messages, as well.

45 Was it only messages?---There was photos, as well.

And what was the nature of those photos?---They were naked photos of Helen.

If I could ask for the witness to please be shown a copy of the appellant's trial bundle – could you please turn to page 370. Can you please just take a moment to look through pages 370 to 376. Do you recognise those documents?---Yes. I do.

5 And what are they?---Messages between Wayne and Helen.

There's a – it appears to be an – if you turn to page 370, at the top there, there appears to be a name in white in top left-hand corner. Can you identify what that is?---Is it Tuakara?

10

Yes. Do you understand that word to have any meaning? Perhaps if you turn to the next few pages, where it appears also - - -?---So the – yeah. That would be Helen's surname.

15 Okay. And the presence of her name there, particularly on page 373 - - -?---Yep.

- - - what do you understand to be the relevance of that name appearing there?---She was the lady that worked in the office at PNG.

20 Okay. And the messages – some are in white and some are in blue. What do you understand that to mean?---I believe the ones that were in blue were Wayne, and the ones that were in white are Helen.

25 When you spoke about seeing messages and photographs passing between Mr Wetherall and Ms Tuakara, how do they fit within the context of those? So these examples were what you were describing?---Yes.

So these are photographs, they appear?---Yes.

30 Were they taken by you?---Yes.

Do you recall when abouts?---Not date-specific, no.

35 And in terms of the photographs, they depict these messages, but do you recall what you took a photo of in order to produce these photos?---I took a photo of the computer screen of where they were popping up.

40 And which computer screen was that?---That was the computer screen that I was working on.

And was this at the Kokoda Spirit office?---Yes.

45 Why did you take those photos?---I didn't know what to do at the time with – the messages keep popping up. Sometimes, on a Friday, I would be in the office by myself, so I had taken the photos to show Lyn and send to her as to what I should do and – and how I should sort of go about it, I guess.

And then what transpired from that? Did you have any further conversations with Lyn?---She just advised me to just keep doing what I was doing, just keep shutting it down.

5 So beyond those messages that – apologies. I tender those, Commissioner.

COMMISSIONER: Photographs of – all of them, Mr White? How many pages are we here?

10 MR WHITE: It should be 376 to 370 – sorry – 370 to 376, I understand.

COMMISSIONER: Photographs from pages 370 to 376 in the appellant's bundle of documents are admitted and marked exhibit 19.

15

EXHIBIT #19 ADMITTED AND MARKED

20 MR WHITE: Sorry. Before you go past those documents, on page 372, there seems to be a reference to August 2015. Do you understand any relevance of that notation there? Was that done by you?---That notation is not done by me. No.

Okay.

25 MR SAPSFORD: Sorry. I didn't hear that.

MR WHITE: It wasn't done by her. She didn't do that notation.

30 So we spoke about messages that you witnessed between what you understood to be between Mr Wetherall and Helen, the employee. Beyond these ones that we've just had a look at, do you recall any other messages between them and the content of those?---Beyond these ones?

35 Yes?---It was – it – I do believe that there were other messages that were sent.

Do you remember the effect of those?---Yeah. They were same sexual content, the same nude photos of Helen.

40 So you said that you showed the photos to Lyn, and her advice was just to delete them when they popped up. Did you raise these issues with Mr Wetherall?---No.

And why not?---It was embarrassing, and because of his volatile nature, I was – I was too frightened to. I didn't know how he'd react.

45 Okay. You ultimately did leave Kokoda Spirit. When abouts was that, again?---It was May 2017, I believe.

And what was the basis for you leaving?---I actually – I got another job, and I felt my time at Kokoda Spirit had come to an end and it was – it was time to – to find another job.

5 Why did you come to that conclusion?---Wayne's behaviour was – it's quite – it was quite erratic, and it was quite a toxic environment to work in, so I – I did seek other employment.

10 And then when you did depart, were you paid your entitlements on leaving?---No. I pursued my superannuation through the ATO.

Had that been paid?---Eventually. Yes.

15 Did you ever have any discussions with Lyn in respect of her relationship with Wayne?---Only just different incidents and behaviours and things that he would – he would produce. Just – I guess – yeah. How – how the office was kind of going and things like that.

20 Did you have ever have any conversations with Lyn about interactions that she'd had with Wayne in particular?---Maybe general conversations. I can't really recall the content of them. It was – it was a very busy time in the office. There was a lot of work that had to be done, so Lyn handled a lot of that.

25 And did you at any time witness anything of note in respect of Lyn and her responses to her interactions with Mr Wetherall?---Lyn was always just doing her job and just asking work-related questions, and depending on how Wayne would react to some of the questions she – she would ask would determine as the – the rest of the interaction. You know, whether he was short, brief, dismissive, you know, be – be quite abrupt. Sometimes the interactions were limited.

30 And did you witness Lyn's reaction to those?---Yeah. She would just generally go back to her desk into, you know, our office and – and just resume work. It was uncomfortable sometimes just having those communications with Wayne.

35 Okay. Did you and Lyn – no. I have no further examination. Thank you.

COMMISSIONER: Thank you, Mr White. Mr Sapsford.

40 MR SAPSFORD: Thank you, your Honour.

CROSS-EXAMINATION BY MR SAPSFORD

[12.48 pm]

45 MR SAPSFORD: The evidence you have given, Ms Carter, with respect to the interaction between Mr Wetherall and his wife, was Ms Kelly present for that?---Yes, she was.

And it, in fact, was, wasn't it, it was an argument where he had asked her for the keys to the company car? I'm going to need you to speak up. We're recording it?---Yes. Yes, it was an argument in regard to the keys - - -

5 And she wouldn't?--- - - - to the company car.

- - - give them to him?---I'm sorry?

And she wouldn't give them to him?---No. No.

10

So he reached out to grab them - - -?---Yes.

- - - that's correct?---Yes.

15 All right. Both persons were angry, and voices were raised; that's right?---Yes.

But that wasn't necessarily projected onto any stuff, was it?---Not projected onto the staff, but it did transpire in our office.

20 Yes. And the event that occurred between Mr Wetherall and Ms Kelly at the time when you were getting chemotherapy treatment, you weren't there for that?---No, I wasn't.

25 At best you heard Ms Kelly's version of that event?---I also had some conversations with Wayne about it, where he did keep saying to me, "I didn't swear at her. I didn't swear at her". And he repeated that.

30 When you left, it was quite amicable, wasn't it? You were leaving for a job which was much to your liking, insofar as you were leaving for a job where you would be working from home. That's right, isn't it?---That's correct.

And in relation to a motorcycle dealership in Victoria?---That's correct.

35 So that you had a job that you wanted to go to, and that's the reason you left, isn't it?---No, it's not the reason I left. It was a job in a similar industry. We were still doing - in the tourism industry, and it was actually being owned by a friend of - it was actually owned by a friend of mine.

40 And the updates that you did for [indistinct] were on the Kokoda Facebook page, weren't they?---That's correct.

45 And how did you access that? Did you access that directly or through Mr Wetherall's Facebook page?---It was directly. It was pinned to the taskbar. I just clicked on the icon and it would open to Kokoda Spirit website - Facebook page.

Okay. And these popups that you've spoken of, you say they just happened without clicking on them?---That's right.

All right. But you relate, don't you, that what you would do is you would immediately cross them out and get rid of them?---That's right.

5 But you stopped at least those ones that are exhibit in exhibit 19, didn't you?---Yes, I did. To show context of the type of message that was popping up and why I was concerned.

To show to whom?---To show Lyn initially, because I couldn't approach Wayne with it.

10 Right. And these seven photographs that comprise exhibit 19, did you give them all to Ms Kelly at once?---Yes, I did.

15 And I take it they're not all relating to the same day?---They're not date stamped, so I couldn't be sure if they're on the same day, but the conversations did – would proceed for many – many hours of the day.

Well, can you tell the commission over what period of time you took those photographs?---I believe it was on that Friday that I was in the office on my own.

20 On one day?---Yes.

And when you spoke to Ms Kelly about it, did she ask you to provide them to her?---No, she didn't.

25 You have given evidence that you were not comfortable approaching Mr Wetherall about what you had found to be the content?---That's right.

30 Why didn't you go to Parry McCutcheon?---Parry never really came into the office all that regularly. I didn't really have a working relationship with him. He was – more worked with Wayne in regards to the website and IT things. So I wasn't comfortable with talking to Parry about such personal – personal messages.

35 But he's the IT man. He's the man to fix such a problem, isn't he?---To my knowledge, he worked on our website. He fixed some – I think he may have fixed some of the computers. Basic technology or something. I'm not sure. To me he did a lot of the website content.

40 Surely you could say to him, "This computer is showing inappropriate content"?---I didn't have that kind of relationship where I could say that to him. When he did come into the office he was generally working on the computer in Wayne's office, doing a lot of the website updates.

There's no doubt that the content is private?---That's right.

45 And that Mr Wetherall had no knowledge this was occurring?---I'm not sure if he had - - -

COMMISSIONER: Can she answer that question?

MR SAPSFORD: Well - - -

5 COMMISSIONER: Can she say what Mr Wetherall – what knowledge Mr Wetherall had of it?

MR SAPSFORD: Well, she can say whether she knew had knowledge.

10 COMMISSIONER: Do you know whether Mr Wetherall knew that these messages were popping up?---No, I don't know if he knew or not.

MR SAPSFORD: Well, you didn't tell him, did you?---No, I did not.

15 Ms Kelly didn't tell him, did she?---That's correct.

Ms Mossop didn't tell him, did she?---Not that I'm aware of.

20 And all three of you took photos of them?---I took photos to show what was happening.

Well, I suggest the appropriate person to approach if you were uncomfortable with Mr Wetherall was Mr McCutcheon?---I didn't have that kind of relationship with Mr McCutcheon in the office. I would maybe see Mr McCutcheon maybe once a month, if he was doing any website updates. Excuse me just a second, your Honour.

25

COMMISSIONER: That's all right.

MR SAPSFORD: Yes, that's all I have, thank you. Thank you - - -

30

COMMISSIONER: Any - - -

MR SAPSFORD: - - - Ms Carter.

35 COMMISSIONER: - - - re-examination, Mr White?

MR WHITE: No. Thank you, Commissioner.

COMMISSIONER: Ms Carter, thanks for giving your evidence. You're excused.

40

WITNESS EXCUSED

[12.56 pm]

45 COMMISSIONER: We'll adjourn until 2.15.

ADJOURNED

[12.56 pm]

RESUMED

[2.14 pm]

5

COMMISSIONER: Take a seat, thanks. Ms Baker, it's Commissioner Dwyer. I've got you on the phone.

10 MS G.P. BAKER: Thank you.

CONDUCTED VIA TELEPHONE CONFERENCE

15

GAIL PATRICIA BAKER, AFFIRMED

[2.14 pm]

EXAMINATION-IN-CHIEF BY MR WHITE

20

COMMISSIONER: Thank you, Ms Baker. You're next going to hear from Mr White, who's counsel for Ms Kelly?---Okay.

25 MR WHITE: Ms Baker, this is Mr White. Can you please state your full name for the record?---Gail Patricia Baker.

And you're a registered psychologist?---I am.

30 And what are your qualifications?---I've got a Bachelor of Science Psychology (Honours) from the University of Southern Queensland.

And how long have you been in practice for?---I've been in – well, I've been a psychologist since 2001 and I've been in private practice since 2005.

35

And do you operate from a practice location?---I do. So I operate from Sunshine Coast Psychology Services in Buddina.

40 This proceeding is brought by the appellant, Ms Lyn Kelly. Do you know Ms Kelly?---Yes, I do. She's my client.

Okay. When did she first become your client?---She first became my client on the 22nd of April 2020.

45 Was she referred to you by anyone?---She was referred under a GP mental health care plan by Dr Gavin Harrison on the 20th of April 2020.

Do you recall on that first visit on the 22nd of April - - -?---Yes.

5 - - - how Ms Kelly presented?---Yes. Well, it was actually a telehealth appointment because we were in – pretty much in lockdown at that – that appointment, so I didn’t actually get to meet her face-to-face until September of last year, early September. I think it was the 2nd of September 2020. However, I got quite a detailed background via telehealth and I was able to take notes as the client spoke to me. So yes – so
- - -

10 So, Ms Baker - - -?---Yes.

- - - just in respect of those notes - - -?---Yes.

15 - - - did you receive a bundle of documents from Butler McDermott lawyers?---Yes, I did.

And am I right in saying that that’s a paginated copy of some of your notes?---Yes, it is. Yes.

20 Okay. If I can – so if I can please take you to page 346 of those?---Yes.

Commissioner, this should correspond with our pagination.

25 COMMISSIONER: Three-forty, did you say?

MR WHITE: Three-forty-six.

Ms Baker, do you have page 346 in front of you there?---Yes, I do.

30 And there’s an – what appears to be a notation there, “22 April 2020”?---Yes.

Can you – when you said that you took some notes, are these the notes to which you refer?---Yes. Yes, it is.

35 Can you speak in respect of those notes, please?---Okay. So the client advised me that – that, yes, so she’d actually been working for a company for a 10-year period. She’d taken over a new role in 2013 as office manager. I guess she was telling me about a whole bunch of incidences that had happened over – over time. She mentioned her manager had responded to her with a tirade of verbal abuse, and – and
40 the manager was yelling and screaming at her. I guess at that – at that period – yes, so firstly, I guess, she was referring to the manager was reportedly offended that he wasn’t invited to her husband’s 50th birthday party two years previously. The client presented as distressed and upset and anxious during – during that phone call, and she was considering not returning to work. So she did, however, return to work, but
45 the next day, apparently – yes, so I think she was referring back to – back to that – that period that the manager hadn’t apologised. Yeah. So in terms of speaking to the notes, my client advised me that she had – she’d witnessed physical altercations

between her manager and his ex-wife. She was a witness on one occasion. She mentioned other situations where she came into work one day, the door from the toilet had been taken off and there was a – there was a hole in the wall of the kitchen and somebody had punched a hole in the toilet door.

5

So in terms of the notes - - -?---Yes.

- - - that are set out there, if you just take a moment - - -?---Yes.

10 - - - just to read through them, and then if you can just - - -?---Okay.

- - - let me know if they accord with your memory of the matters you spoke about on that day?---For which point, sorry?

15 So the entry that you've made for this date, for this initial assessment on the 22nd of April?---From – starting – working – working for a company for 10 years; is that - - -

20 Yeah. So I apologise; I don't need you to kind of go through everything in detail in terms of reading it back?---Okay.

25 It's really just making sure that you're comfortable that that's an accurate reflection of what you spoke about that day?---Absolutely. Okay. I guess – yes, so the client basically – yes, she spoke about physical altercations between the manager and his ex-wife and how she had witnessed, yeah, the environment being changed with the door of the toilet being – being taken off the toilet door. Yeah, she mentioned that the manager had been intimidating and she was worried about being in the office on her own. She had mentioned that she'd witnessed the client yelling and screaming at his daughter, who was distraught, and witnessed that the manager had been angry, 30 and the client, you know, was obviously quite distressed, anxious. And we completed a DASS, I think, on that day. I'm not sure if it was exactly that day. But yeah, I – I kind of – yeah, so there are features of, yeah, severe anxiety and stress at that time.

35 So that was an assessment that you formed after that first consultation?---Yes.

40 Okay. When did you next see Ms Kelly?---The next time I saw her was the – the 23rd, actually. Yeah, there was so much to go over that – and the client was so distressed that I saw her the next day. Yes. So we had a telehealth appointment on the next day.

Okay. And if you have your notes there, are those the notes that appear at the top of page 346?---Yes, they are. Yes.

45 Okay. And again, if you just take a quick moment to look through those. I'll just ask if - - -?---Okay.

I'll just ask if you can just confirm that they accord with what you remember from that?---Yes, they are.

Okay?---Yes, they accord with my memory of – yes, absolutely.

Okay. So that was the 23rd of April. When did you next - - -?---That's - - -

- - - see Ms Kelly?---The next time I saw her was the following week on the 30th of April 2020.

And if I take you to page 345?---Yes.

Is there an entry there?---There is. There's an entry on page 345 for a visit on the 30th of the 4th.

Okay. And if you can just again confirm that that's an accurate reflection of what you spoke about on that day?---That is. That's correct.

Okay. So that was the 30th of April 2020. If I can - - -?---That's correct.

If I can now please take you to page 311 of that bundle that you have?---Yes.

So this appears to be a letter also dated the 30th of April 2020; is that correct?---That's correct.

And can you just speak in respect of what this letter is?---So this is a letter to the general practitioner Dr Gavin Harrison, yeah, basically doing a letter after the referral for the GP mental health care plan and letting the GP know that the client attended an initial appointment on the 22nd of April and she presented with work-related stresses with extremely severe features of depression, anxiety and stress, and that her manager had made unsubstantiated allegations of the client, and just acknowledged that the client had applied for a WorkCover claim. The – and that was pending at that point. Yeah. And that was basically it. And to let the GP know that the client had follow-up appointment on the 30th of April.

And did you send that letter?---Yes, we did.

If you can please turn to the next page?---Yes.

Three hundred and twelve. And just - - -?---Yes.

- - - please explain to the commission what we're looking at there?---Okay. So that's a – that's a depression, anxiety and stress scale 21, which is just a very brief 21-item self-report questionnaire, which was completed on the 22nd of April, the client's first session. So given that it was a telehealth appointment, I read each of those statements to the client. I explained what the – yeah, the – the – the scores meant and we filled that out whilst the client was online, I believe. Yeah [indistinct] as

said, read each individual statement out to the client and then – or – yeah. And, so basically, the DASS is designed to measure emotional states of depression, anxiety and stress, yeah, with three – seven – seven items for anxiety, stress and depression each.

5

And what was the outcome of that test?---The outcome was that her depression severity and stress were all in the extremely severe range.

10 And what did that indicate to you?---That indicated to me that the client was – obviously had features of depression, anxiety and stress and that, you know – I mean, it was apparent, given her presentation, even though she was – it was a telehealth appointment. I absolutely got that there was – yeah, there was, you know, quite a lot of anxiety and there were features of depression and stress.

15 You indicated that it was a self-reporting test - - -?---Yes. That's correct.

Is it possible, in respect of the responses that were elicited in this, that it was simply Ms Kelly overreacting, I guess, to the matters that she described to you?---No, I don't believe so. Because as I've said, I got quite a detailed background and, you
20 know, in that – in that first session. I definitely got quite a good background, and I really got a good sense that the client was experiencing – yeah, severe – quite significantly severe features of anxiety, depression and stress.

Commissioner, I apologise – I propose to tender that letter to Dr Harrison which is
25 on page 311.

COMMISSIONER: Is it just the one page?

MR WHITE: That's correct.
30

COMMISSIONER: The letter from Ms Baker to Dr Gavin Harrison dated the 30th of April 2020 is admitted and marked exhibit 20?

MR WHITE: Twenty, I believe.
35

COMMISSIONER: Exhibit 20, thank you.

EXHIBIT #20 ADMITTED AND MARKED
40

MR WHITE: And then I'll also tender that DASS21 that we were just taken to.

COMMISSIONER: The DASS21 form dated 22 April 2020 is admitted and marked
45 exhibit 21.

EXHIBIT #21 ADMITTED AND MARKED

MR WHITE: Thank you. So, Ms Baker, that's taken us to the 30th of April. If I can
5 now take you back to your initial notes, please?---Yes.

Page 345 of the bundle?---Okay, all right. Yes.

So the last entry we spoke about then was on the 30th of April. If you can now move
10 forward, please, to - - -?---Okay.

- - - a conversation at the top of that page from the 7th of May?---Okay.

Does that appear there?---Yes, it does. On page 345?

15 Yes, if you can please - - -?---Okay.

- - - just look at that and again just confirm that accords with your recollection of
20 what was discussed at that meeting?---Yes, it does.

COMMISSIONER: What page was that? Three - - -

MR WHITE: My apologies, 345.

25 And then, Ms Baker, working backwards. If you can just identify the dates of further
visits after that date, the 27th of May?---So from – okay. So there was the 7th of May,
the 18th of May, 27th of May, 10th of June, 24th of June 2020, 14th of the 7th 2020, the
5th of the 8th 2020, 2nd of the 9th 2020, the 12th of the 10th 2020, 9th of the 11th 2020,
30 the 3rd of December 2020, the 4th of January 2021, the 2nd of February 2021, the 2nd
of March 2021, the 30th of March 2021, the 4th of the 5th 2021, the 10th of June '21,
the 6th of the 7th '21 and I – I believe they're the notes that you have up to the 6th of
the 7th '21.

Okay. So that – those are your clinical notes in respect of the visits between that
35 period?---Yes.

Yes. I tender that, Commissioner.

COMMISSIONER: So I've got them right, those are the notes that run from page
40 336 - - -

MR WHITE: That's correct.

COMMISSIONER: - - - to 345.

45 MR WHITE: That's correct, thank you. Apologies, to 347.

COMMISSIONER: Three-forty-seven, sorry. All right. The clinical notes of Ms Gale Baker contained between pages 336 and 347 of the appellant's bundle of documents are admitted and marked exhibit 22.

5

EXHIBIT #22 ADMITTED AND MARKED

MR WHITE: Thank you, Commissioner.

10

Ms Baker, if I can take you to page 313 please?---Sure. Yes.

15

So can you identify that document for me please?---It was a "to whom it may concern". It was dated the 24th of June 2020. It was a letter to advise a client had attended eight consultations with me since their referral from Dr Harrison, and – and basically stating the client had, yeah, obviously experienced or had a series of workplace incidences including which she experienced verbal and emotional abuse and bullying type behaviours by her employer, including intimidation, and that the client had witnessed physical altercations with other people and that these – these workplace incidences had impacted on her mental health. And just – it stated that an impact of events scale administered on that day had indicated a score of 71 which – which basically indicated – yeah, sorry. In the letter it didn't indicate the presence of PTSD but the impact of events scale administered indicated the likely presence of PTSD. So that – that letter was for the client to use. To be honest, I can't remember the – the purpose of the – the letter, "to whom it may concern".

20

25

There's a statement at – at the second paragraph that says:

30

The client's experienced features of extremely severe depression, stress and anxiety.

Was that your opinion at the time?---Yes.

35

If you then turn – at the bottom of that page it says:

I've attached a copy of the ISR and the DASS21 for information.

If you can turn to the next page please?---Yes.

40

This appears to be a different DASS to the one that we looked at earlier; is that correct?---Yes. So the DASS is completed on the, as you see, the visit date. So it's completed on the visit dated the 24th of the 6th 2020. So there was another – another DASS completed by the client on that day.

45

And can you indicate the findings of that DASS?---Extremely severe features of depression, anxiety and stress.

And then if you turn to the next page for me please?---Yes.

Can you describe that document that we're looking at?---Are we on page 315?

5 That's correct?---So this an impact of events scale completed. So basically the
impact of events scale is just – is – is basically, it's – sorry. It's basically just a
questionnaire to – to evaluate the distress a client feels in response to events or – or
any kind of trauma. I guess I've used this because of the – the client had experienced
quite stressful events and so – and yeah, basically, the client, the IES score was 71,
10 which kind of indicated the likely presence of PTSD. Yes, so it kind evaluates the
degree of distress the client – yeah.

How would you characterise the degree of distress evidenced by that score of
71?---Extremely high. Obviously, you can't go any higher than all those fours on
15 that document, so yeah, there was a score of 71 and – and basically, so on page 316,
a score higher than 37 indicates that the score is high enough to suppress the immune
system's functioning even 10 years after an event. Yeah.

And was that your view at to Ms Kelly's current condition when you undertook that
20 test?---Yes. Look, I felt that she was extremely – that almost, like, there had been a
trauma. You know, that she was responding in the same way that, you know,
somebody who was – who had experienced – or witnessed a significant trauma –
yeah, or traumatic event.

25 There's a date that appears on the page before, 315, at the top right-hand
corner?---Yes.

What's the relevance of - - -?---Twenty-fourth of the 6th 2020, so that was the date
that the Impact of Events Scale was administered.

30 Thank you. Commissioner, I'll tender pages 313, 14, and 15, which is the letter of
the 24th of June 2020, and the attached DASS and ISR.

35 COMMISSIONER: Is that going through to page 316?

MR WHITE: Apologies, 316.

COMMISSIONER: The correspondence from Ms Baker, dated the 24th of June
2020, and attached documents found from 313 and 316 of the appellant's bundle of
40 documents, is admitted and marked exhibit 23.

EXHIBIT #23 ADMITTED AND MARKED

45 MR WHITE: Thank you, Commissioner.

And then, Ms Baker, if you can turn to the next page, 317?---Seventeen, yes.

Can you identify that document for me, please?---So this is the letter dated the 25th of June 2020, to Dr Gavin Harrison, basically stating that the client had attended regular sessions, at that point, it was still telehealth. Yeah, so the client was having difficulties, so at that stage, yeah, she attended sessions under telehealth, as she was having difficulties leaving the house. She reported the serious workplace incidences, including verbal and emotional abuse, and bullying type behaviours, including aggression and intimidation, and she was reporting severe levels of stress and anxiety. She had a fear of leaving the house due to that perceived – well, a threat. She felt threatened by the employer [indistinct] she was afraid that the employer would threaten her on – and I guess, it does say several sessions have been conducted by telehealth, due to the difficulties for the client in leaving the house, and it's stated that she was still experiencing extremely severe depression, anxiety, and stress and it – which had impacted on her sleep and her functioning. It does - - -

So this is – is this the summary that was sent to Dr Harrison?---Yes it – yes, I believe so. Yes, it was – it would have been faxed to Dr Harrison.

And the date at the top was the 25th of June 2020, would that have been the date on which that was sent?---Yes, I believe so. Yes.

I tender that further document, Commissioner.

COMMISSIONER: That's with the attached documents, the DASS21, and then – or are you coming to those?

MR WHITE: Yes, apologies. So that will take us through to page 320.

COMMISSIONER: Correspondence from Ms Baker to Dr Harrison, dated 25 June 2020, with attached documents, and pages 317 to 320 of the appellants of documents, is admitted and marked exhibit 24.

EXHIBIT #24 ADMITTED AND MARKED

MR WHITE: Thank you.

Ms Baker, if I can take you to one final entry in your notes, please, it appears on page 342. Thanks?---Okay, 342. Okay. Yes.

For the record, this is exhibit 2 – 22, apologies. There's an entry there from the 14th of July 2020?---Fourteenth of July 2020, yes.

And in terms of the issues discussed under that heading, do you - - ?---Yes - - -

COMMISSIONER: Three-forty-two?

MR WHITE: That's correct, 342.

5 COMMISSIONER: Is that not part of some exhibit already?

MR WHITE: It is, exhibit 22.

COMMISSIONER: Thanks. Thank you.

10

MR WHITE: There's an entry there, Ms Baker, from the 14th of July 2020
- - -?---Yes.

- - - do you recall discussing issues with Ms Kelly - - -?---Yes.

15

- - - as set out below?---Yes, I do, yes.

And do you recall the effect, in particular, of those matters on Ms Kelly, and how she
presented to you?---She was – I mean, I know it states there that she was shocked
20 and in disbelief, but she was still – I guess she was still shocked. You know, I guess
shock that - - -

20

MR SAPSFORD: Your Honour, I'm going to object at this stage. I haven't
objected to the evidence in the past, but it clearly relates to events incurring after the
25 compensation – application for compensation. That can't be relevant to the injury
- - -

25

COMMISSIONER: Right. It does appear – just pardon us for a moment, Ms Baker,
while we deal with this issue. It does appear, Mr White, from the evidence so far,
30 that – and this witness hasn't given any evidence about any opinion she has about the
date of injury, but Dr Harrison clearly has. Dr Harrison first saw her and diagnosed
her on the 3rd of April. The point that Mr Sapsford is making is that events
transpiring after the 3rd of April aren't relevant to the compensable nature of the
injury, because the injury has already occurred, unless there's an argument about a
35 further aggravation, or something along those lines, which hasn't been
foreshadowed, as far as I'm aware?

35

MR WHITE: No, no. I accept that, Commissioner.

COMMISSIONER: So events of the 6th of April postdate the onset of the injury, or
40 the diagnosis of the injury.

40

MR WHITE: After the 6th of April?

COMMISSIONER: Sorry, events after the 3rd of April.

45

MR WHITE: Yes.

COMMISSIONER: Yes.

MR WHITE: Yes.

5 COMMISSIONER: Yes.

MR WHITE: I don't press that any further.

COMMISSIONER: All right. Thank you.

10

MR WHITE: Ms Baker, is it your opinion that Ms Kelly suffered an injury?---Yes, it is. Yes.

15

What's the nature of that injury?---The nature of the injury is, I guess, Ms Kelly has experienced, I would say, features of an adjustment disorder with mixed anxiety and depression, and features of post-traumatic stress disorder. Yes, I guess – I guess there have been features – obviously, there are features of agoraphobia which is, you know, a fear of kind of being in public places, she had – she experienced that for quite some time, and severe anxiety and depression.

20

In the letter of the 24th of June to which you were taken to, you say the client has experienced features of extremely severe depression, stress, and anxiety. Is – does that continue to be your opinion?---Yes, it does.

25

On what date do you believe Ms Kelly suffered her injury?---On what date that she suffered her injuries? I guess – okay.

Are you able to attribute a date to it?---No, not really. No.

30

And why is that the case?---Because there were many incidences over a period of time, and it was accumulation of bullying behaviours, intimidation, aggressive, you know, approaches to – incidences where the client witnessed her manager being abusive, verbally abusive and, you know, intimidating, and also with members of his own family, you know, there had been – Ms Kelly had been a witness to incidences where the manager had physically – had physical altercations with his ex-partners or ex – his ex-wife, and another work colleague. So there was a number of – a number of incidences, and not just one that I can attribute it to.

35

40

Your first consult with her was on the 22nd of April 2020. Is it your view that -- --?---That's correct.

Is it your view that she had suffered her injury by that time?---Yes.

45

In respect of Ms Kelly's injury, how was that manifesting itself? So what were the signs and symptoms that she exhibited that you were able to identify?---Okay. So basically – so – okay. So what – what I was able – able to identify was she had an intense fear of going out in public. She wasn't leaving the home. There was

avoidance about leaving the home or even going out into the front garden. There were many times over the next – up until the – I think the 2nd of September 2020, the client had – had telehealth appointments. So I think it was the first face to face appointment that I'd seen the client, and prior to that, there was – the client was
5 hardly leaving the home. She was experiencing difficulties concentrating. There were – sorry. So basically, there was – I guess – I guess she was isolating. She was withdrawing from – from friends. She wasn't able to concentrate. She felt overwhelmed. You know, there – there were thoughts of, you know, somehow I failed. There was, you know, fatigue and exhaustion, unsettled stomachs, sleep
10 problems. There was a change in appetite so – and there was weight loss as well. So in terms of the anxiety, there was an excess of fear, there was avoidance of – you know, behaviourally, there was an avoidance of situation where she – where there was situations when she felt she might – yeah – anxiety-evoking situations, basically, so – and she was having panic attacks and a racing heart. There was [indistinct] as I
15 said, difficulties sleeping.

Okay. So in respect of her injury, in your opinion did it arise out of her employment?---Yes, it did, absolutely. There was no – from my understanding, I've met – the client never reported any pre-existing conditions. She'd never been on
20 medication prior to – prior to the time when she was medicated, I think, early in April or in April some time. There'd never been any other stressors in – in the client's life, no other significant stressors which would cause these symptoms.

In your opinion, was her employment a significant contributing factor to her injury?---Absolutely.
25

Can you identify any other contributing factors to her injury beyond her employment?---No.

30 Do you continue to see Ms Kelly?---Yes, I do. Yes. I believe she has an appointment in – scheduled in a couple of weeks, I believe.

And, in your opinion, does her injury continue to affect her?---Yes, it does. Yes.

35 That's the evidence-in-chief of this witness, Commissioner.

COMMISSIONER: Thank you. Ms Baker, just hold on for a moment. Mr Sapsford, who's counsel for the regulator, is going to ask you some questions now.

40

CROSS-EXAMINATION BY MR SAPSFORD

[2.49 pm]

MR SAPSFORD: Thank you, your Honour.
45

WITNESS: Okay.

MR SAPSFORD: Ms Baker, my name's Stuart Sapsford. I'm a barrister. I represent the respondent, Workers' Compensation Regulator, just so you know who I am and where I'm coming - - -?---Okay.

5 - - - from?---Okay.

Now, Ms Baker, I don't mean to sell you short, and correct me if I'm wrong in any of this, but if you go first of all to what's become exhibit 20 which is page 311 - - -?---Yes.

10

And have with you as well exhibit 23 which is page 313?---Yes.

Please, the first page of it, you refer – going first of all to page 311, and to the work-related stressors with the resulting extremely severe features of depression, anxiety and stress. Similarly - - -?---Yeah.

15

- - - in your document which is exhibit 23 of 24 June 2020 you refer and to Ms Kelly having experienced features of extremely severe depression, stress and - - -?---Yes.

20

- - - anxiety?---Yeah.

Now, I noted in your evidence you also, when you asked to provide a diagnosis of Ms Kelly's injury, that you referred - - -?---Yeah.

25

- - - to features of - - -?---Yes.

- - - certain psychiatric injuries - - -?---Sure.

Is there a reason - - -?---Okay.

30

- - - why you phrase it in that fashion?---I guess it's a – it's a term used in terms of saying – rather than saying symptoms there, we're using the term features, you know, of – of, say, depression, anxiety and stress, so pretty much, I guess, you could say – I could've said symptoms so I could've said symptoms, rather than features so, I guess, you can use that term interchangeably.

35

If a person presents with symptoms or features of a certain illness of a disease, that doesn't necessarily - - -?---Yeah.

40

- - - mean they've got the disease, does it?---No. No, it doesn't necessarily mean they've got the disease or they meet the whole diagnosis. No.

All right. Well, then, in fairness to you, what is your diagnosis?---What is my diagnosis? Well, my diagnosis is – I actually didn't make a diagnosis and that's why I've stated that the client has features of post-traumatic stress because she does have features of post-traumatic stress disorder. She has features of an adjustment disorder

45

chronic with mixed anxiety and depression. She has features of depression, anxiety and stress.

5 And you're saying, then, that you don't and cannot make a diagnosis?---I'm saying I didn't make a formal diagnosis. No. But I'm saying she presented and she consistently presented over that time since the 22nd of April 2020 until this point.

10 With certain features?---With consistent – consistent features or symptoms of post-traumatic stress and adjustment disorder with mixed anxiety and depression chronic.

All right. Would you go, please, to exhibit 22?---Which is – which is?

I'm sorry. I beg your pardon. Page 336?---Okay.

15 It's the first page - - -?---Yes.

- - - of exhibit 22 for your Honour's benefit.

20 WITNESS: Sure.

MR SAPSFORD: You'll see down the bottom there, Ms Baker - - -?---Yes.

25 You note there that Ms Kelly initially recorded a first recording and due to concerns - - -?---Yes.

- - - that her manager may become abusive while negotiating a contract. Is that right?---Yes.

30 Was that a contract - - -?---Sorry. I'm just trying to find that.

Page 336?---Yes. Okay.

35 Was that a contract of employment for Ms Kelly or don't you know?---Sorry. I'm just trying to find it. Was that the visit 10th of June 2021?

Yes?---Okay. So – so I'm just going to read it: “Noted she initially recorded the first recording due to concerns her manager may become abusive while negotiating a contract”. Yes. I believe that was an employment contract.

40 For Ms Kelly?---Yes.

See, and did she tell you whether she informed the employer she was making that recording?---I've – I'm not sure.

45 You record then – or you note then a second recording in the next paragraph in 2020 - - -?---Yes.

- - - which is no better identified?---Yes.

I have been able to find them. Are there any further references to recordings made by Ms Kelly?---In my notes?

5

Yes?---I'm not – I'm not 100 per cent sure. I would need to go with – through it with a fine toothcomb.

10 We don't want to have to force you to do that. I'm just asking you if you can identify at the present time any further entries?---No, I can't. I – I can't see further references to the recordings.

All right. Now, would you go, then, please - - -?---Mmm.

15 - - - to your entry of 2 September 2020 which is at page 341 of exhibit 22?---The 2nd of September 2020, yes.

Yes, please, and go down to the - - -?---Okay.

20 - - - heading 'Plans and Strategies'?---Over on the next page, 342?

Thank you. Thank you?---Okay.

25 Under 'Plans and Strategies' you've put there in the first line:

Provided and discussed dep tip and strategies in stress management.

?---Yes.

30 What's dep tip, please?---Sorry. It's depression – depression strategies, so it's basically just – I guess the notes are – yeah – so basically they're tips for depression and strategies relating to stress management strategy.

35 Right. There is a change that occurs in all of the entries, and you're welcome to have a look through this. In all of the - - -?---Sure.

- - - entries in relation to visits on 2 September 2020 and the visits prior to that date - - -?---Yes.

40 It changes after that date, as you will see if you have a look in the next entry in time of 12 October 2020, also on page 341 - - -?---Yes.

45 You'll see under that entry, under the heading 'Plans and Strategies', you then start to include – and you can satisfy yourself of this as well – and do thereafter for the rest of the entries going forward in time the - - -?---Sure.

- - - inclusion of anger-management strategies?---Okay. Yes.

What's the significance - - -?---Yes.

- - - of that? Why did that start to be included?---Why did that start to be included? Okay. I guess – okay. So that was on the 12th of October. So the client had been
5 really struggling. I guess it's – looking at my notes, basically the client had indicated she had signed the unfair dismissal due to court costs and she'd made a decision. She noted feeling angry about signing the document and the document was signed with the condition that she was not allowed to discuss any kind of workplace issues and she valued her honesty and integrity and that kind of – and that went against her
10 values. She was feeling exhausted. She was – she was presenting with features of depression. She was feeling flat, she was feeling she was being silenced and, yes, so she was feeling angry. So we talked about some anger management strategies. Anger is as a normal, natural emotion, you know, from mild annoyance to extreme rage. I mean, the client obviously didn't present with any of extreme rage. There
15 was – she was just noting she felt angry.

And I'm correct though in saying, aren't I, that those discussions about anger management issues continued on from that assessment and relate to the further assessment you made?---Yes, look, it doesn't mean we discussed anger management
20 in every single session, no.

All right. Yes. Thank you, your Honour. That's all I have of Ms Baker.

COMMISSIONER: Ms Baker, it's Commissioner Dwyer. I just had a couple of
25 questions I wanted to ask you as well?---Sure.

You – Mr Sapsford asked you a number of questions about your comments about features of depression and features of anxiety - - -?---Yes.

30 - - - and you indicated you didn't make a diagnosis. Is that – in terms of your - - -?---No.

In terms of your normal clinical practice, do you make a diagnosis for clients generally?---Not if I – generally, like, in – in – in things like this, sometimes the
35 diagnosis is made by a psychiatrist. I mean, pretty – pretty much mostly we – I would identify any kind of, you know, whether a condition, you know, presents as, you know, a diagnosis – I mean, and generally – so you know, I prefer to avoid making a diagnosis and, I mean, but basically the client presented with those features of post-traumatic stress and features of an adjustment disorder chronic with mixed
40 anxiety and depression.

Are you capable in your clinical practice of formally making a diagnosis; is that something you're allowed to do?---We are capable and, generally – generally, we – that is completed by a psychiatrist, generally. We are capable of making a diagnosis
45 but I guess I'm seeing a client under a GP mental health care plan and the sessions are sort of, you know, sort of 50 to 60 minutes and – yeah.

You're aware of the diagnosis made by Dr Harrison?---Not entirely, no.

All right. Thank you. Anything arising out of that, Mr Sapsford?

5 MR SAPSFORD: No. Thank you, your Honour.

COMMISSIONER: Mr White.

10 MR WHITE: Just briefly, Commissioner.

RE-EXAMINATION BY MR WHITE

[3.00 pm]

15 MR WHITE: Ms Baker, the proposition was put to you that someone could present with symptoms of an injury without necessarily having the injury. What's the case here; has Ms Kelly suffered an injury in your view?---Yes, she has.

20 How would you describe that injury?---How would I describe the injury; I mean, the client has suffered – it's – it's been an ongoing kind of adjustment, you know, to what happened in the workplace over – over a long period of time and now she's having difficulties adjusting to – to – to that, you know, to – to that injury and so therefore it's been – it's been ongoing for, you know, more than six months so therefore it is – it is a chronic – there are features of that, you know, a chronic
25 adjustment disorder. And it has had significant impairment in her functioning. The client hasn't been able to return to any kind of workplace. The client has – has had difficulties, you know, being involved in the community again or even just functioning as in terms of being within the community on the weekends with her family. And certainly, her – her functioning has been impaired because she hasn't
30 been able to do the things that she would normally do.

Are you able to put a name to the injury?---Okay. I'll – I'll put a name to it in terms of – I'm going to say an adjustment disorder chronic with – with mixed anxiety and depression.

35 COMMISSIONER: Is that a formal diagnosis, Ms Baker?---No, I'm – I'm not going to say it's a formal diagnosis but I'm saying that's why I – as I said, I've said all along that the client is presenting with features of post-traumatic stress and significant features of an adjustment disorder.

40 All right.

MR WHITE: Thank you, Commissioner.

45 COMMISSIONER: All right. Thank you, Ms Baker, for giving your evidence. You're excused. Thank you?---Thank you.

WITNESS EXCUSED

[3.03 pm]

5 COMMISSIONER: Does that bring us to the end of evidence and the close of your case?

MR WHITE: That's the case for the appellant. Yes. Thank you, Commissioner.

10 COMMISSIONER: All right. And, Mr Sapsford, you've got Mr Wetherall tomorrow.

MR SAPSFORD: Tomorrow morning, yes, your Honour.

15 COMMISSIONER: All right.

MR SAPSFORD: We did think about trying to get him up this afternoon but it was envisaged that it would be splitting his evidence-in-chief and probably not a good thing to do.

20 COMMISSIONER: Are you going to be giving an opening tomorrow morning?

MR SAPSFORD: If your Honour requires.

25 COMMISSIONER: I probably would be assisted by a brief opening from you - - -

MR SAPSFORD: Certainly.

COMMISSIONER: - - - Mr Sapsford.

30 MR SAPSFORD: I will, your Honour.

COMMISSIONER: I don't expect it to go on forever but something just brief – a brief outline of what your submissions or what your evidence is going to be - - -

35 MR SAPSFORD: Yes, your Honour.

COMMISSIONER: - - - and what your submissions are likely to be.

40 MR SAPSFORD: Certainly.

COMMISSIONER: All right. We're adjourned till 10 am tomorrow.

45 **MATTER ADJOURNED at 3.04 pm UNTIL WEDNESDAY, 29 SEPTEMBER 2021**

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QUEENSLAND INDUSTRIAL

RELATIONS COMMISSION

DWYER C

No WC/2020/175

KELLY, LYNETTE GRACE v. WORKERS' COMPENSATION REGULATOR

BRISBANE

9.57 AM, WEDNESDAY, 29 SEPTEMBER 2021

Continued from 28.9.21

DAY 3

HEARING

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

COMMISSIONER: Take a seat, thank you. All right. I just want to address this masks situation first, Mr Sapsford. I'm not happy about it either. I don't like conducting hearings with masks on. Apart from the difficulty with the transcript, I think it just impedes communication. But it is what it is, and I understand that you
5 have made a request that Mr Wetherall remove his while giving evidence and - - -

MR SAPSFORD: I didn't actually make the request. It was mentioned by my instructing officer.

10 COMMISSIONER: I see. I see. Sorry, I'm sorry.

MR SAPSFORD: I'm quite happy for him to suffer along with the rest of us, your Honour.

15 COMMISSIONER: Yes. It's just that I don't have any power to override the health directive.

MR SAPSFORD: Yes.

20 COMMISSIONER: And so I've got to ensure that if we're all going to be here crammed into this room, and there's quite a lot of people here. And I understand, ordinarily, for example, I'd be – I'd have no difficulties with anyone who wants to sit in the hearing room can sit in the hearing room and listen. But I'm – and given people are wearing masks on noses, I don't want people with masks hanging under
25 their nose. I have the same difficulty as you'd have, no doubt, Mr Sapsford, with glasses fogging up.

MR SAPSFORD: That's so, your Honour.

30 COMMISSIONER: But if we're all going to be crammed in here for the day, and it looks like we are, I want masks worn properly and I want masks worn by everybody because I don't want to be on the front page of The Courier Mail as the Commissioner that allowed the super-spreader event to occur in hearing room 2104 when the next COVID outbreak happens. So if everyone's happy to proceed on that
35 basis, then we can crack on. The other option – and I was going to ask this of you – the parties anyway – is that if there is any concern about proceeding under these circumstances, I'm happy to hear from anybody in respect of that. But it seems that we – well, what are we, two days into it, three days into it. It would be a shame to not complete it. But I'm also mindful that there might be concerns held by one or
40 both parties about the difficulties with the transcript and being impeded by – the microphones being impeded by the masks. Do the parties want to express any view about that, or have a moment to talk about it, or - - -

MR WHITE: It's obviously unfortunate because of the transcript issue, but also the
45 assessment and the credibility issue, but that I'm with the Commissioner. It is what it is. I mean, I prefer for it to run its course.

COMMISSIONER: All right. What's your view, Mr Sapsford?

MR SAPSFORD: Yes, your Honour. Yes. Given we've completed two days and, if we're lucky, we might complete the next two days - - -

5

COMMISSIONER: Yes.

MR SAPSFORD: - - - that we should proceed. Of course, who knows what's going to happen today.

10

COMMISSIONER: All right.

MR SAPSFORD: So we can address that if and when it raises its issues.

15 COMMISSIONER: Yes. Okay. Well, are you ready to proceed with your opening this morning?

MR SAPSFORD: I am, your Honour.

20 COMMISSIONER: Thank you.

MR SAPSFORD: If at any stage I am unclear or your Honour doesn't hear me, just let me know.

25 COMMISSIONER: Same goes for all of us, I think, yes.

MR SAPSFORD: Thank you, your Honour. Your Honour, the respondent in accordance with the cross-examination that it's conducted of the appellant and her witnesses will be calling four witnesses, and the respondent will, firstly, call Wayne
30 Wetherall. It will also call Christine Wilson. It will call Parry McCutcheon and Carlie Brial, spelt B-r-i-a-l. The first witness, Mr Wetherall, will give evidence he was the owner and director of the employing entity Kokoda Spirit, in particular, the company Wild Spirit Pty Ltd, and it was the employer of Ms Kelly.

35 To speak to the generalised allegations maintained by the appellant, he'll deny that he was unpredictably rude and abrupt in his dealings with staff, and give evidence as to a generally pleasant and happy working atmosphere at Kokoda Spirit. He will state that he did not frequently have angry outbursts and aggressive behaviour and uncertainty of mood, as alleged. He will give evidence specifically in relation to the
40 events said to have occurred in June 2014, firstly, with respect to the allegation that he stood over the top of Ms Kelly while she was sitting down, that he yelled and screamed at her and was spitting on her, or at all, and say that none of that occurred.

45 Mr Wetherall will give evidence that Ms Kelly at the time did not exhibit any observable signs of psychiatric distress. He will give further evidence that at or around that time in relation to the allegations maintained by Ms Kelly and by Ms Carter, that there was an occasion when the toilet door had to be removed, and that

was through a delamination due to a build-up of water, but not through any damage to the door. He'll give evidence that there was at no time any hole in the kitchen wall.

5 Mr Wetherall will have reference to the exhibits, in particular, exhibit 2, being the employment contract, and he will confirm that that is an employment contract signed by him and created by Ms Kelly outlining the circumstances of her retainer. With respect to the amount that Ms Kelly was to be paid, he will give evidence that at no stage was there any oral agreement for that to change from \$45 per hour to \$50 per
10 hour. He will confirm in relation to other employees, being Ms Mossop and Elliott, that she was found by the ATO to be entitled to superannuation which he paid. He will give evidence as to his belief, initially, that Ms Elliott or Ms Mossop and Ms Carter were retained only as independent contractors.

15 Mr Wetherall will give evidence that, yes, there was some personal matters that impinged upon the work environment. He will say that at times the lines were blurred between friendship and business, but that at no time did he engage in anything inappropriate. Indeed, the evidence that Mr Wetherall will give is that, until the 8th of April when appraised by Ms Wilson of the texts that were coming up
20 on the computer, he had absolutely no idea that these texts were appearing and that he was horrified when he found out.

Mr Wetherall will refer to his return to Queensland from Darwin on 25 March 2020 and to a discussion which occurred on 26 March 2020, in particular, where the staff,
25 including Mr Wetherall, were stood down from work and a discussion was had about Ms Kelly returning to work in the following week on the following Wednesday for the purpose of doing the pays, being a job which she was peculiarly capable of doing as opposed to others.

30 He will give evidence that at this stage when that discussion was had, Ms Kelly asked that she be paid pro rata for her long service leave, which was not due and owing until July when the time and the 10 years for leave came to fruition. He'll relate a further conversation on 27 March 2020 where Ms Kelly again asked to draw on her long service leave and requested that she speak to the accountant. He'll give
35 evidence of her attempts to contact the accountant.

Mr Wetherall will give evidence of the events of 1 April 2020 in relation to the interaction with Ms Kelly, noting that he was concerned about the manner in which she left work on the 1st of April 2020 without saying goodbye. He'll give evidence
40 of a short discussion which occurred on 2 April 2020, where he brought to Ms Kelly's attention that she hadn't made eye contact or said goodbye when she left on the preceding day, and a further discussion occurring on that date where he questioned what work she had performed where she said she had performed five hours of work.

45 He'll relate that he was then informed by email and attached medical certification on 3 April 2020 of Ms Kelly's illness, and refer to the subsequent interactions by

reference to the exhibits, which are already before the court consisting of exhibit 6, in circumstances where those emails speak for themselves, your Honour. I won't outline what the actual evidence will be, but he will refer to them, in particular the change in the tenor of the emails which occurred by 8 April 2020 when Mr Wetherall was first informed as to the pop-ups which were occurring on the screen and the fact that these were being recorded. Mr Wetherall will confirm that he considered that and, that is, the recording of the private information and the overpayment by Ms Kelly in relation to her wages would be a matter for the police and that he notified the police accordingly.

Christine Wilson will give evidence that she was an employee of Kokoda Spirit, having commenced in or around May of 2019, and she'll relate a conversation that she had with Ms Kelly on the 6th of April 2020, in particular, where Ms Kelly asked her in the course of that conversation to – asked her whether – in particular, where Ms Kelly in the course of that conversation asked her whether Ms Wilson had her back. She'll state that at a no stage did Ms Wilson state to Ms Kelly to watch her back. And she'll relate a discussion about the standdown on 26 March 2020 with Ms Kelly, which was not the effect of there being a question about whether they were stood down or not, but, rather, Ms Kelly raising the issue that the standdown agreement was only verbal and not in writing.

Ms Wilson will state at this stage she referred to Ms Kelly stating she had a verbal amendment to her employment contract with respect to a pay increase and considered that she could not allege one stood and the other did not. She'll confirm that both Ms Kelly and Ms Wilson were stood down on Friday, 27 March 2020. She'll relate a discussion with Ms Kelly about the conduct of Mr Wetherall and whether Ms Kelly was going to accuse him of bullying, to which she stated, "If you are talking about going down the workplace bullying path, then I have never witnessed that and will not lie for anybody".

She'll give evidence as to a discussion in that discussion about eligibility for JobKeeper, and she'll confirm that, eventually, she ended the conversation abruptly because she thought she had said too much to Ms Kelly. She'll give evidence that Ms Kelly was her boss and her manager, and that it was part of Mr Wetherall's job to advertise through social media. She'll give evidence that Ms Kelly, amongst others, had access to his Facebook platform, which allowed them to get into his messages, and the story they provided that these messages would pop up on the screen at work. She'll give evidence that Ms Kelly referred to these messages as "keeping them as leverage for further down the track if he" – meaning Mr Wetherall – "ever decides to fuck me over".

Ms Wilson, as will Ms Brial, will give evidence as to a discussion they had with respect to these issues, namely, the retaining of these images by Ms Kelly and others, and that the discussion was that one of them needed to say something to Mr Wetherall about this occurring. And she will give evidence that Ms Kelly, in fact, said to her with respect to the purchase of a new car, "Please don't tell him I bought a new car", and that at one stage she observed the interaction between Ms Kelly and

Mr Wetherall and that she said to Ms Kelly, “You play him like a fiddle”, to which Ms Kelly responded, “Yes, I know”.

5 Ms Brial will give evidence that she worked for Kokoda Spirit until approximately March 2021 as an events and marketing manager and, prior to that, engaged in walks and provided administrative assistance. In particular, Ms Brial will give evidence that she, too, was to be responsible for the posting of information regarding treks on the Kokoda Facebook page, and that, in order to facilitate that process, she was
10 provided administrative access which allowed her direct access to the Kokoda Spirit page, and at no stage did she witness any of the pop-ups that are referred to by witnesses for the appellant.

Mr Parry McCutcheon will give evidence that from early 2016, Ms Kelly was posting on Facebook, as requested by Mr Wetherall, with respect to the progress of
15 treks and trekkers involved in Papua New Guinea. He’ll relate a suggestion he made at the time that Ms Kelly become an administrative operator and which would allow her to access the Kokoda Spirit Facebook page through her own Facebook page without having to use the access through the page belonging to Mr Wetherall. He notes that at this stage Ms Kelly said she didn’t do Facebook, however, since
20 discovered that she had a Facebook profile created on 27 April 2016. And he suggested to Ms Kelly to create a Facebook page just using the Kokoda inquiries email that both herself and Ms Carter could use, noting that Ms Kelly replied, “No, it’s easier” or, alternatively, “Leave it as it is”.

25 He’ll give evidence that in mid-2019 the business employed Ms Brial as a marketing consultant and that part of Ms Brial’s position required her to have access to both of the Facebook pages. He contends that Ms Kelly made it clear to him that Ms Brial shouldn’t have the same access as they had in the office and would need her own logins, at which stage he suggested she could be added as an administrator and could
30 accept this through her own Facebook account. He’ll state that this is similar to what he had previously suggested for Ms Kelly to gain access to where she needed to go. And that will be the evidence for the respondent, your Honour.

COMMISSIONER: All right. Mr Sapsford, just for some further clarity, the
35 statement of facts and contentions filed by the regulator talks in terms of – at the conclusion in paragraph 7 under Contentions, that the Commission may well find that the employment was a significant contributing factor, but it’s submitted that the injury arose out of reasonable management action. First of all, in relation to the first part, which definition of injury are you approaching – is this matter being taken
40 from? The injury occurred on 3 April 2020.

MR SAPSFORD: Which paragraph are you looking at, I’m sorry?

COMMISSIONER: Paragraph 7 of the statement of facts and contentions.

45 MR SAPSFORD: Yes.

MR WHITE: In the conclusion.

COMMISSIONER: Now, I'm just going off the top of my head. I think there was
- - -

5

MR SAPSFORD: I'm just - - -

MR WHITE: It's the second part. There's a – in the contentions.

10

MR SAPSFORD: I beg your pardon. I'm looking at the wrong paragraph 7.

COMMISSIONER: Is this matter dealt with under the older definition of injury?

15

MR SAPSFORD: I just haven't got that page before me, I'm sorry, your Honour.

COMMISSIONER: That's all right. I don't mean to put you on the spot. I just - - -

20

MR SAPSFORD: If you just – if your Honour just outlined it again, I'm sorry, I wasn't listening.

25

COMMISSIONER: So paragraph 7 of the statement of facts and contentions makes a concluding comment to the effect that it may well be that the Commission finds that the employment was a significant contributing factor, but that, to the extent that it was, it was a result of reasonable management action.

MR SAPSFORD: Yes.

30

COMMISSIONER: And that in a nutshell that, as I understand from the statement of facts and contentions, is the case being presented by the respondent.

MR SAPSFORD: Yes.

35

COMMISSIONER: The reference to significant contributing factor caught my attention because my recollection is that this injury arose in April 2020.

MR SAPSFORD: Yes.

40

COMMISSIONER: Is there any position from the regulator with respect to which definition of injury applies?

MR SAPSFORD: Yes. It's the definition post-October 2019 amendments - - -

COMMISSIONER: All right.

45

MR SAPSFORD: - - - which is a significant contributing factor.

COMMISSIONER: A significant contributing factor. Right.

MR SAPSFORD: And I think from what your Honour's read, I've put it in those terms.

COMMISSIONER: Okay. Yes.

5

MR SAPSFORD: I'll be submitting - - -

COMMISSIONER: No, that's right. I'm just double checking that, yes.

10 MR SAPSFORD: I'll be submitting in those terms as well, your Honour, I might add.

COMMISSIONER: All right. And so that the – so in respect of the reasonable management action argument, that's really the key issue then, I guess, in respect of
15 the matters arising in late March/April 2020.

MR SAPSFORD: Yes. Yes.

COMMISSIONER: All right.

20

MR SAPSFORD: Yes, it – without jumping the gun on my submissions, your Honour, I've been updating them on the way through and it will be the respondent's submissions that these matters of March/April 2020 were the matters – it will be consideration that the others are not proximate in – not of great relevance.

25

COMMISSIONER: Yes.

MR SAPSFORD: And it will be the appellant's submission that there is – the appellant has failed to establish that there was a miscarriage of management action
30 such that it was either unreasonable or taken in an unreasonable way. I am certainly not in a position, given the medical evidence, to dispute that Ms Kelly sustained an injury, that it arose out of her employment, and that employment was a significant contributing factor to that injury. Does that clarify for your Honour?

35 COMMISSIONER: Yes. Thank you. All right. I'm not meaning to ride you too hard on this, Mr Sapsford, but your mask slipped under your nose again.

MR SAPSFORD: I'm sorry.

40 COMMISSIONER: And my view is if we're going to wear them, we're going to wear them properly.

MR SAPSFORD: I keep putting it up, your Honour.

45 COMMISSIONER: No, no. I understand. I understand. I'll keep reminding you.

MR SAPSFORD: Thank you, your Honour. I call Wayne Wetherall.

WAYNE STEPHEN WETHERALL, AFFIRMED

[10.21 am]

EXAMINATION-IN-CHIEF BY MR SAPSFORD

5

COMMISSIONER: Thanks. Take a seat, thanks, Mr Wetherall.

10 MR SAPSFORD: Would you state your full name for the record, please, Mr Wetherall?---It's Wayne Stephen Wetherall.

And where do you reside, Mr Wetherall?---15 Sandleigh Crescent, Sippy Downs, Queensland 4556.

15 And what is your occupation?---I'm a company owner of a trekking company.

And what's the name of that company?---Kokoda Spirit and Wild Spirit Adventures.

20 And what is the business of that company?---We run treks across the Kokoda Track in Papua New Guinea. We also run treks into Everest Base Camp, Kilimanjaro, the Sandakan Death March in Borneo, and also in New Zealand.

25 All right. In relation to your operation of the business, where are you physically located, and can you just tell the court, please, at different times where you're physically located?---Our business is located at 15 Sandleigh Crescent, Sippy Downs. It's a -- it is a home office set up for -- office with two offices set up there. I also have an office in Papua New Guinea.

30 All right. Now, I'll come to this, but could the witness be shown, please, exhibit 1. You see there's three photographs, Mr Wetherall. What do you say about those photographs?---That is the office that the administration staff works out of.

35 Now, in the course of running your business, it's not in dispute in these proceedings you had occasion to employ the appellant in these proceedings, Lyn Kelly?---Correct.

40 Would you have a look at those photographs, please, and would you select from those photographs the one from which you can best describe where it was Ms Kelly performed her duties?---Looking across the wall in the -- there's a -- there's a photocopier there. There's a chair up in the right-hand corner there underneath the -- this -- if you're looking at the second photo, in the right-hand corner.

45 And is that the one that depicts on the very left-hand side another office with a chair?---No, that's my -- that's my office on the - - -

Yes, I know. I'm talking about the photo. Is that the photo that depicts another office - - -?---Yes.

- - - on the left-hand side?---Yes.

And in the photo itself it depicts three computer screens and two chairs?---Correct, there's – yes. In the main office there, there was two chairs there where Lyn Kelly
5 worked from.

Which of those did Ms Kelly occupy?---Ms Kelly occupied the right-hand side one.

And the other office depicted on the left-hand side, whose office is that?---No, that's
10 my office on the far left-hand side down – around the corner.

Right. Yes, you can hand them back. I was asking you, Mr Wetherall, about your presence in the office. Were you in the office 9 to 5?---I could be on the office 9 to 5 sometimes, yes, sometimes.
15

Were you ever out of the office and, if so, for what reason?---I was out of the office a large proportion of the year. I actually – as the owner of the company, I'm also the trek leader. I could be out of the country for more than 150 days a year. I could be doing 10 to 12 treks a year in different parts of the world.
20

Now, all of that may be interpreted by whoever hears your evidence, but just explain for clarify what a trek leader is and what you were doing in that regard?---We run tours in remote locations across to the Kokoda Track, which means, as a tour leader, you're responsible for guiding a group of people across Kokoda, which is just
25 normally an eight night, nine day tour with a night before and a night after. So you're responsible for the full safety and historical values for those trekkers.

All right. Well, did the business and, in particular, yourself have occasion at some stage to employ the services of the appellant, Ms Kelly?---Yes.
30

When was that?---Lyn Kelly originally started in two thousand – around about 2010, June or July 2010.

And what was the nature of that employment?---She was employed as a casual or a,
35 yeah, administration person in the office.

Was she employed full time, part time?---Well, she was employed as a subcontractor on her own ABN.

40 All right. Was she paid hourly or - - -?---Yeah, she was paid on an hourly rate

- - - was she paid holiday pay or sick pay?---She was – as a – as an independent contractor, she was responsible for her own hourly rate – sorry, for - - -

45 All right. Did – I'll continue with the subject of employment, your Honour. Did that employment change at some stage?---Yeah. I was emp – yeah, Lyn was employed as a – on contract in July 2017 as a full-time employee.

Right. Could the witness please see exhibits 2 and 8, your Honour. Now, you see there, Mr Wetherall, two documents, and one of which appears to be an email which is – it doesn't have the particulars of it at the top, but it's an email regarding Ms Kelly's employment, and the other one is an employment contract?---Yes.

5

First of all, what do you say about the email?---That wasn't actually an email. That was a photocopy that was hand delivered to me.

I see. And what is – do you recognise that document?---Yeah, I do.

10

What is it?---Well, it's a document from Lyn Kelly requesting to go on – become a full-time employee of Kokoda Spirit. She no longer wants to be a subcontractor. She wants certainty in her employment.

15

All right. Well, what happened pursuant to that?---Then we – we had a discussion and a contract was drawn up.

Who drew up the contract?---The contract was provided to me by Lyn Kelly herself.

20

And I take it, given the signatures that occur at the foot of exhibit 2, that the agreement was reached?---Yeah, agreement was reached, yeah.

All right. In relation to the agreement that was reached, you'll see in the body of exhibit 2 an agreement as to an hourly rate. Can you outline what that was?---45 – this on the contract? Yep.

25

Yeah?---Yeah, \$45 an hour.

Was that ever changed?---This contract has never changed.

30

And did you at any subsequent stage have a discussion with Ms Kelly about a different rate of remuneration - - -?---No.

- - - per hour?---No.

35

Okay. Now, when you're answering, you'll need to actually give an answer - - -?---Sorry. No, sorry. Yep.

- - - because we've got to record it. All right. You can hand those documents back.

40

No, sorry, I've got a couple more questions with exhibit 2. I beg your pardon. Does exhibit 2 also outline the number of weeks per year for which Ms Kelly would be paid?---Yes, that's correct, 42 weeks.

So did you discover at a later time that she paid herself – well, who was responsible for formulating the pays?---Lyn Kelly.

45

And did you discover at a later stage that Ms Kelly formulated pays different to the 42 weeks per year?---I got my accountant to do an audit of my business and my Xero account.

- 5 And what did that reveal?---Well, it reveals that 52 weeks a year had been paid of annual leave.

- Ms Kelly has given evidence that she was entitled to 52 weeks because, while the contract represented 42, she, in fact, due to the requirements of the business was
10 required to work 52. What do you say about that?---Lyn Kelly didn't work 52 weeks a year. She would have more than six to eight weeks annual leave. Normally, we'd finish around about the 1st of December and not come back till mid-January.

- While I'm on this topic as well, your Honour, could the witness please see exhibit 3
15 and exhibits 1 and 2 for identification. All right. Are you able to identify any or all of those documents?---Well, they appear to be documents from our Xero account, payslips from our Xero account.

- Firstly, if you would compare, please, exhibit 3 and the other two documents for
20 identification. Is that clear on the documents before you, Mr Wetherall?---I've got the -- I've got three documents here, yes.

- But do you -- are you able to distinguish which is exhibit 3 and which are the
-- -?---One's just -- no, I can't, sorry. There's two and - - -
25

Perhaps if your Associate could - - -?---There's one, two and three.

ASSOCIATE: So that's exhibit 3?---That's 3. Okay. Thank you.

- 30 MR SAPSFORD: Okay. Have a look in exhibit 3, please, Mr Wetherall?---Yep.

- And have a look at the other two documents. Would you outline, first of all, what you can ascertain to be the difference between the documents?---On the documents they've got the -- the high hourly rate and, also -- that's -- so I can identify it as a
35 higher hourly rate.

Is there anything in relation to the leave balance?---Leave balance, annual leave -- balance, sorry. Yes, there is a difference in balance, yeah, yes.

- 40 All right. First of all, in relation to the higher hourly rate at \$50, was it ever agreed between yourself and Ms Kelly that she was to be paid \$50 per hour?---No.

- In relation to the leave balance, what do you say about the difference in the documents?---Well, my accountant did an audit on the leave balance. I had no
45 access to Xero. Lyn Kelly had full access to the payroll and Xero accounts. I had no access to the Xero account there. My accountant has done an audit and made the adjustment of the - - -

So the two documents for identification, were they created by you, or by your accountant, or by whom?---No, not by me. They were created by my – by – well, the first – I can't tell you which documents were created by – I can tell you that any adjustments were created by my accountant.

5

Well, those documents having been explained, your Honour, perhaps they could be made exhibit 3A.

10 COMMISSIONER: The difficulty I've got – and I'll hear whether Mr White's got any objections in relation to this.

MR WHITE: Yes, sir.

15 COMMISSIONER: But this witness doesn't appear to know a great deal about these documents, where they were sourced from, who authored them, and I'm not sure that we've had any evidence to that effect from anybody at this point, have we?

MR SAPSFORD: No. No, your Honour. No. Well, it's my learned friend that tendered them for identification. I - - -

20

COMMISSIONER: Mr White?

25 MR WHITE: That was on the expectation that they were disclosed by the respondent and the respondent would be relying upon them. We're not going to be hearing from this accountant who has conducted this report. I've never seen any audit report. I have no idea of the information upon which the accountant relied in making these adjustments to the payslips, and Mr Wetherall is not the author of the payslips. So, I mean, in my respectful submission, I don't see how they can be admitted.

30

MR SAPSFORD: I won't press it. There's no need, your Honour, from the respondent's point of view.

35 COMMISSIONER: All right. I mean, obviously, we can accept his evidence from what is, you know - - -

MR SAPSFORD: I was trying to anticipate why it was my learned friend tendered them for identification.

40 COMMISSIONER: All right.

MR SAPSFORD: I thought he was going to make some use of them. Anyway - - -

45 COMMISSIONER: All right. Well, we'll put those to one side.

MR SAPSFORD: Just to make it clear, please, Mr Wetherall, when you received exhibit 8, being the document provided by Ms Kelly with respect to her desire to

enter into a form of contractual engagement and during the completion and signing of exhibit 2, being the employment contract, did she approach you, or did you approach her?---No, she – well, the original letter that she approached me to become a full-time employee.

5

I see. And this was according to the date of the contract – what's the date of that document again?---9th of June 2017.

10 I see. Ms Kelly alleges that prior to that date certain events occurred, in particular, in mid-2014 that a – an interaction occurred between she and you consisting of you engaging in what's referred to as a tirade of verbal abuse. And do you remember an event of that nature?---No, certainly no tirade of verbal abuse.

15 She alleges you were so agitated, yelling and screaming at her, that you were spitting on her. Did that occur?---No. There was no spitting and not possible.

20 Consistently with that, it's alleged by Ms Carter that she after that event drove you to the Buff Bar. Do you remember an occasion when she drove you to the Buff Bar?---I cannot recall that. It's 2014.

25 Similarly, there are allegations that in or around 2014 it was observed that the toilet door was missing and found in the laundry with a hole in it. What do you say about that?---Some renovations were going on. There was – lamination had lifted from the toilet door because it's right next to the shower area.

Was there a hole in the toilet door?---The lamination had lifted off it and split.

30 There's also an allegation that there was a hole in the kitchen said to have been punched in the wall?---That's - - -

What do you say about that?---That's absolutely not true.

35 Did you at any stage tell Ms Carter that damage to the toilet door and the hole alleged in the kitchen were caused due to a fight you had with a girlfriend?---Sorry, can you repeat the question, please?

40 Did you at any stage tell Ms Erin Carter that the damage alleged to be to the toilet door and to the kitchen wall occurred in a fight you had with your girlfriend?---No. I don't recall any conversation in that regard.

All right. You're aware, are you, Mr Wetherall, of an employee retained by the name of Ms Julie Elliott who became Ms Julie Mossop after marriage?---Yes.

45 Can you remember when she was first retained?---It is a long time ago and I can't recall complete the details, but, yes, she was employed as an administration person the first time around.

If I was to suggest she commenced work as a casual employee in July 2010
- - -?---Yeah, that's when my – my wife was still running – running the business
back then.

5 And that she ceased work on the first occasion for Kokoda Spirit in April
2011?---That seems correct, yes.

All right. And then you had dealings with Ms Mossop independently of her
employment, but also through the company Kokoda Spirit?---Yes, we had
10 interactions outside work.

And can you tell me what they were?---Julie's been on trips, adventures to Borneo
and to Papua New Guinea, and also utilised my company for two other trips to Papua
New Guinea, if I recall. You know, we've had social drinks and things like that.
15

All right. Can the witness please see exhibit 18?---Thank you.

Do you recognise that document?---Yes, I do.

20 And that's an email from Ms Mossop to you of 15 April 2017?---Correct.

Do you recognise the contents of that email?---I do.

How was your relationship with Ms Mossop at that time?---I believed it was a close
25 friendship and a very close bond we had then, and on that trip – on that trek and
during that period of time a very close bond and I treated her as a very close friend.

You can hand that document back. Did Ms Mossop eventually recommence in an
employment capacity with Kokoda Spirit?---Yes.
30

If I was to suggest to you that occurred on 4 July 2017, would you agree?---Around
about that time, yes.

And how did that go?---I'm not sure what you mean.
35

How was the employment with Ms Mossop? Was it a harmonious employment
relationship, or were there difficulties?---It was a very successful relationship in how
we ran our business. Julie was an absolute fantastic worker and contributed greatly
to the business. She was a great asset.
40

And Ms Mossop eventually left the business on 13 April 2019, followed by tendering
a letter of resignation. Could you tell the court, please, Mr Wetherall, what were the
interactions between yourself and Ms Mossop immediately prior to that
occurring?---On the particular day in the morning, we had some interactions in
45 regards to my dog being left in the car, also some interactions in regards to we had
- - -

Well, what – Mr Wetherall, what were those interactions? Who left the dog in the car and what happened?---I left the dog in the car after coming back from a walk.

5 MR WHITE: Commissioner, I'm not sure if this is a matter for closing, but I don't believe any of this interaction was put to Ms Mossop in her evidence.

COMMISSIONER: No, that's right, Mr Sapsford.

10 MR SAPSFORD: Well, did - - -

COMMISSIONER: But I understand the witness took us there to the issue with the dog. But if we're going to explore it, I think there's a problem because it hasn't been put to Ms Mossop.

15 MR SAPSFORD: I wasn't exploring it for any reason other than having Mr Wetherall identify what had occurred and should it be a matter that my - - -

20 COMMISSIONER: And why it occurred. I think we'll just let it go for a little while, Mr White and see where it goes.

MR SAPSFORD: Yes. Should it be a matter that my learned friend thinks is of some significance and it was not put to Ms Kelly, then quite properly he shall raise it in submissions. It doesn't render it inadmissible.

25 In any event, there was an episode with the dog?---Correct, yeah.

30 What happened after that?---I came into the office. I'd come back from a walk with the dog and in the office there there was a discussion about – we were in the process – Julie was in the process of leaving the company anyway. We – we were in the process of hiring to replace her either as a full-time employee or on a part-time basis. So we were in the process. We'd already advertised on Seek to replace Julie. I did have some concerns about interviewing style and I did bring that to Julie's attention that, you know, I'm more of a, "Hey, let's see people talk", as opposed to more of an interrogation, which I was concerned about. That wasn't received so well and then,
35 all of a sudden, I was – was made aware that my dog was still in the car and I'd left my dog in there. And I got accused of a criminal act on that day for leaving my dog in the car and I could have been sent to jail for that. That's how my day started. And then we had an interview with one of my new guides for Italy who was coming - - -

40 What was his name?---His name was Angelo.

45 Who was to interview Angelo?---Well, we were all going to. Lyn and Julie and myself were all going to talk to Angelo because it was a very exciting new tour for us, Italy and the Swiss Alps, and I – Julie was running the interview and I actually had said to Julie, "Can we just be kind to Angelo? He's actually a friend of mine as well". And then, you know, in hindsight, Julie didn't like that and she mentioned – and I kind of get it. She's a professional lady. And – but I just wanted to keep it

light and open and things like that, and I don't think it was that well received. So – in fact, I know it wasn't that well received. And then the interview – or the discussion went on about itineraries, how the place was going to run. We had three people already booked onto the tour. I came and went. I let Julie run it and talk to
5 Angelo because, ultimately, she was going to be administering the trek. So I just came in and out of the – out of the interview process, or not in the interview, the discussion process and left it at – kind of left it at that.

10 All right. Well, what occurred after that?---Angelo left and we, basically, went about our day's business. There was – there was some tension in the office. It was – and I went back into my office and I was doing admin. I was actually doing some expenses and trying to look at invoices for – from our Wild Spirit Tour. We actually had Everest Base Camp trips going out. So with the US dollar, there was some confusion on how much I should be paying. And I had asked Lyn to have a look at
15 the invoices for me as well so we made the correct payments and – which was what Lyn's role was, to authorise payments and – not authorise payments, but help me with the invoices and make sure that I wasn't overpaying or underpaying the bills. And that's what happened for most of that day. I just basically just did my job in the office there. The office was quiet, but we just went about our business.

20 All right. Well, what happened after that?---After that, later that afternoon I was in the laundry doing my washing out the back of the house, and loading my washing in the washing machine. And Julie's come into the laundry to ask me how the – how she believed the interview process went with Angelo, and I said, "I thought it went
25 really well and thank you". And she kept continuing to ask me about it, and I said, "Yeah, it went really well". I said, "It was good. Thank you". And then it got tense in the laundry there. I was backed up against the laundry – it's a small laundry – against my washing machine and it just got quite tense in there. And I didn't understand there was so much tension, and I still don't understand why there was so
30 much tension there. And then I basically asked Julie to leave the laundry.

What happened after that?---Julie did leave the laundry and she went back to the office and, basically, packed her bags and left for the day.

35 And do you remember a subsequent exchange between yourself and Ms Mossop with respect to the events that had occurred on that day?---I'm not sure what you – what events you're asking there, Stuart.

40 All right. If the witness could see exhibit 17, please, your Honour?---Yes.

Do you see right at the back of that there's a message with a date on it of 14 April?---Yes.

45 Is that – the message in blue, is that a message from you?---Yes.

The first message where it starts with:

Wayne, thank you for your text and heartfelt message.

?---Yes.

5 *I accept your apology and acknowledge yesterday there were two of us involved in an ugly exchange.*

Is that from, as it appears to be, Ms Mossop?---Correct.

10 All right. Was that with respect to the manner in which Ms Mossop left from the preceding day?---That's my understanding, yes.

All right. Yes, you can hand that back now, thank you. Could the witness see exhibit 15, please. Were you subsequently provided, Mr Wetherall, with the document exhibit 15 by email? It's dated 13 April 2019 at 3.08 am?---Yes.

All right. And that was the end of the employment of Ms Mossop; is that right?---Correct.

20 Now, when Ms Mossop first came to be employed on the second occasion, was she still suffering from the injuries she sustained on the trek?---That's my – that's my remembrance, yes. She was – still had a – if she still had her foot in the moonboot, I can't recall, but her foot was not good.

25 Was there any accommodation made with respect to the hours of work she was to perform?---Absolutely. There was a delayed start and only a couple of days a week on a need-to basis until she could bring herself up to speed.

30 And I think you gave evidence that by the time of the events of 13 April in 2019, Ms Mossop was not retained full time; is that right?---Yeah. My understanding is that she also was paid an hourly subcontractor's wage.

Was she – was there - - -?---A much higher hourly rate.

35 - - - attempts being made to secure someone to occupy her position?---Sorry, what's that?

40 Were there attempts being made to secure someone to occupy her position?---Absolutely. We'd already advertised in Seek. We'd already been processed and we'd already – the ladies at this stage, Lyn and Julie, had already gone through the applications and got rid of – brought it down to a smaller number of people. So the process was well – we were well advanced down the track of replacing Julie.

45 All right. And do you remember returning to your residence and place of business following being in Darwin? Was that on or around 25 March 2020?---Yes, that's the day – the day that the Queensland borders were shutting.

All right. And do you recall a conversation occurring at the workplace on 26 March 2020?---Yes, I do.

5 Who was present in that conversation?---The – in the office there was myself, Christine Wilson and Lyn Kelly.

10 And what was the state at that stage of the COVID situation in Queensland?---It was – it was an unfolding situation. It was – it was very hard to get a grasp on actually what was happening. It was a really, really difficult time. Borders were shutting, trekkers were cancelling treks, and, you know, as we all know, every hour there was an update going on. So it was a difficult situation to – and it was an unfolding situation that we were trying to manage and that was my conversation with the staff. “Guys, we’re just going to have to manage this and work through this as best we can.”

15 The nature of your business, was it affected by the borders being closed and the actions taken by the government?---Yeah, the international borders had closed earlier that month. So I’d just returned from Papua New Guinea. I was one of the last people to get back out of Papua New Guinea and before the international borders closed. And then we had treks going out in late March, or a trek. There may have been two treks, but at least one trek was going out in late March. So we were right on the cusp on these treks being cancelled, and so there was a lot of confusion going on.

25 All right. Well, what was the discussion that occurred on 26 March 2020?---Well, as I’d just said before, “Guys, we’re just going to try and work through this process. You know, it’s an unfolding situation, you know. We’re going to work through this together. We’re going to get through this all together”. There was a conversation later on with Lyn Kelly out the back of my – back pergola area there.

30 Was that again on the 26th or the following day?---No, that was on the 26th as well, yeah, our conversation out the back there where she’s asked me for her long service leave.

35 I see. And what did you say about that?---I said the same thing again. “It’s an unfolding situation. Can you give me some time, please? Can you give me some time? I don’t know where this is leading. I need another week to sort this out. I don’t know what’s going on at this particular time. Just please give me some time”.

40 And what did Ms Kelly say about that?---“I just want my long service leave and I’ll leave.”

45 Was there a discussion about superannuation?---Not that I can recall about superannuation. It was all – the main conversation was all about, “Please, I want my long service leave. I want my long service leave”. It was a constant ask.

I see. Was there any discussion – I think you said – who was present at the initial discussion?---Christine Wilson was – not – not about the long service leave, but certainly about our general business, Christine and Lyn were both there in the – in the office on the – on the 26th there just discussing where we were, what we were
5 doing, how we were going to handle trekkers, what our response to was for trekkers when they were ringing, you know, and trying to seek information, trying to get some guidance of – on borders and how bad this was going to be.

Was there a subsequent discussion on the 27th of March?---Correct, there was. There
10 was a discussion on, “Guys, were standing down”. We had a standdown meeting.

Who was present for that discussion?---Myself, Christine Wilson and Lyn Kelly.

And when you say it was a standdown meeting, what do you mean by that?---Well,
15 “Guys, we’re – our business had closed”. So we were all stood down.

Yourself included?---Myself included. I had – we had no business. We had no – we weren’t – we weren’t functioning.

20 Was there a further discussion on that date about some work that Ms Kelly might perform in the following week?---There was a discussion in the same spot out in the back pergola there, where Lyn Kelly once again asked me for long service leave. “I want my long service leave. You need to pay me at least two days a week long service leave”. And I said, “Give me some more time, please. Just give me some
25 time. You know I will pay. I just need some more time to see where this is all going to go”. And I said, “We can work. We can – just got to come in and try and sort things out”.

All right. Well, was that the extent of the discussion?---It was. Yeah, it was about –
30 it was about the long service leave and, you know, come back in and - - -

Was there - - -?---Sorry – come back in on – on April 1 and do the pays. Lyn was the only person who was authorised to do the pays and it was the following Wednesday, which I think is 1 April, was our pay run, which would have been our
35 last pays. And I wasn’t authorised to do the pays in my own company.

Did Ms Kelly work on the Monday or the Tuesday?---No.

Would she have normally worked on the Monday?---If we were a normal,
40 functioning business, yes, that’s correct.

And do you remember a subsequent discussion occurring on 1 April 2020?---In regards to?

45 With Ms Kelly about the hours she’d worked or the work she’d performed?---I’m not really sure what the – what the question is there, Stuart. I’m sorry, I’m - - -

Did you have a discussion with Ms Kelly on 1 April 2020?---Yeah, there was – there was discussions. Once again, it was about, like, “Guys, we’ll get through this. You know, we’re still trying to find out information, still trying to find out what’s going on”. You know, Lyn had come in to do the pays and had subsequently been in the office for close to five hours.

Did you discuss with Ms Kelly about her performing any work perhaps on the next day?---I did ask Lyn if she could come in the next day and, you know, help me with some applications or plan. Lyn was an integral part of my business. She was, you know, my right-hand, left-hand person, and integral part of the business to – and I – and I said, “Come in, and let’s – let’s try and work out how we can get through this.” That was the conversation – that was the general basis of why – “Come on, we can get through this.”

All right. And was Ms Kelly able to come in on the Thursday and assist you?---No, she was unable to come in.

I’m sorry?---She was unable to come in. She had prior – prior appointments.

And were you unhappy about that?---To be hon – I – I was – I was – I was probably annoyed. Yeah. And I was probably annoyed, and I just thought, come on, we can get through this. How are we going to – how are we going to get through this to – you know, as a – as a team?

Was there anything in particular about the manner in which Ms Kelly departed her work on 1 April 2020?---Yeah, I – I – I was – I – I was quite shocked how the departure took place. They were working in the office. I was actually out in the – out in the backyard. I was actually on the phone, and – and I can’t – well, I’m just having a conversation on the phone, and then Christine Wilson came out and said, “I’m – we’re – I’m – we’re leaving.” And I said, “Okay, I’ll come in”, and Lyn had already disappeared; run out the door, and – and which was – she’s never done that in her life to me before – never left the building without saying goodbye. I – and I just, “What is going on here?” I had no understanding why she’d left in such a hurry. I didn’t even have – have the conversation with her. I was out the back. And I had to hang up the phone and – and try and find out what was going on, because it was really unusual.

Right. Well, did you subsequently have a conversation with Ms Kelly on 2 April 2020 about that event?---Yeah, eventually Lyn rang in, and – on the office phone – and I answered it, and we did have a discussion about it – about that. Yeah.

And what was that discussion?---Why did you leave without – why did you leave the – why did you leave the office, like, we’re in this together. What – what happened? Like, I – I just wanted an explanation what happened. Why did you leave in such a hurry without saying goodbye? And Lyn subsequently apologised three or four times to me for – for that, and – and told me that she’d been at [indistinct] and she had an urgent appointment to get to.

Was that the extent of that discussion?---Pretty much, that I can recall.

All right. And did you receive an email on the 3rd of April 2020?---I – I did. I – I received an email, if I recall correctly, it was a sick leave certificate.

5

Could the witness see exhibits 11 and 12 – 11 and – just – it's part 6, is it? Eleven and six, please. Now, if you turn firstly, please, Mr Wetherall, to exhibit 11. And is that the medical certification you received?---Yeah, that's correct.

10 And turn then, please, to exhibit 6?---Yes.

And if you just flick through that exhibit, you will find towards the end of that exhibit, there's an email identified as occurring on 3 April 2020. Can you find that? Second page, I beg your pardon?---Second page. Yes. Yes, I have that.

15

Having received those documents – now, I'll let the witness keep that email file because I'll come back to it, your Honour. Just put that to one side for the moment, please, Mr Wetherall. Having received that email, and that sick leave entitlement – or that – rather, the email and the certificate – did you make inquiries as to Ms Kelly's entitlement to that – to payment for that sick leave?---Yeah, I – I did.

20

Who did you make those inquiries of?---To my accountant and to an employment lawyer.

25 Okay. And did you subsequently, by email dated the 6th of April 2020 – and if you look, it's the first page of exhibit 6. And they – the two – Ms Kelly – your position, with respect to her being stood down, and your liability to pay her personal leave during the period of the standdown?---Yes, that's correct.

30 Now, if you look at that email from you to Ms Kelly – it's 6 April 2020. Does that convey to her your sentiments in that regard?---I did – I did receive legal advice onto – onto the – my obligations, and in regards to the – the stoppage of work, and the standdown.

35 Did you receive then a response, if you go to page 3 of that document, it's the one with the 181 in the bottom corner – an email of 6 April 2020 at 2.19 pm from Ms Kelly to yourself?---Yes, I have the document. Yeah, I – I – I recall this document.

40 You'll see the allegation contained in that email – that on the 1st of – you instructed Ms Kelly to attend on the 1st of April to do the "shit jobs" that you didn't want to do. Was – was that what you said to her?---No, I never mentioned the word "shit jobs", and I – I asked her to come in and do the payroll.

45 All right. Did there then follow an email from yourself to Ms Kelly – page 184 in the bottom corner – of 7 April 2020 – outlining your position with respect to the standing down confirmation in writing?---Yes.

Her request to be paid two days each week as long service leave while she was stood down?---Mmm.

And the [indistinct] matter outlining that you stood by your position?---Correct.

5

The final paragraph: “You are not legally entitled to receive paid personal leave where you are stood down without pay due to a stoppage with work.” That was the 7th of April 2020, and you’ll see the next email – with 186 in the bottom right-hand corner – of 8 April 2020, is one where you give Ms Kelly a request – a notice of a request for meeting regarding serious misconduct?---Correct.

10

Had something come to your attention in the interim?---Yeah, I’d been – I’d been advised that personal messages – personal images – had been downloaded and saved by Lyn.

15

Personal to whom?---Personal between myself and my partner. And my personal messenger had been accessed.

All right. Could the witness please see exhibit 7, 16 and 19? Now, they are messages which have been, respectively, tendered through Ms Kelly, Ms Mossop and Ms Carter. I give them to you, Mr Wetherall, solely for the purpose of identifying whether you recognise the messages contained in those documents, and accept they were your messages?---I had a conversation with Helen Tuakara.

20

I beg your pardon?---Yeah, with this lady. I’ve had a conversation with this lady.

25

You’re holding one set there?---Sorry. What’s the - - -

Sorry. The - - -?---Sorry.

30

The purpose of looking at them is to identify them - - -?---Yeah.

- - - and have you say whether or not you accept they were messages sent and received by you?---The – the second one I find hard identify, but it’s – it’s – you can see my name listed – on the right-hand side, but – I – I – hard to iden – oh, sorry [indistinct]

35

Do you accept, Mr Wetherall, that they were messages between yourself and other persons?---Correct. They were.

40

Did you, Mr Wetherall, have any idea that those messages were appearing on the screens that were being operated by Ms Kelly, Ms Mossop and Ms Carter?---Absolutely not. Absolutely not.

And who was it, do you say, that informed you of this occurring?---Christine Wilson and Carlie Brial on the 8th of April.

45

Now, if the witness could please see the exhibit for identification involving the records of access to computers?---Thank you.

5 What do you say about that exhibit, Mr Wetherall?---This exhibit is logons to the computers in the Kokoda Spirit office at times when I wasn't present in the office.

Yes. And there's notations on those logons – what do you say about them?---I was in Darwin, in Papua New Guinea; I wasn't in the office, so it wasn't me logging onto those in the office there, and there was no need over those dates for anyone to
10 be logged on, as there was no treks out.

When you say no need to be logged on as there were no treks out, what's the relationship between logging on and treks?---Well, we do a Facebook update to notify our clients of, you know, daily update of the status of our treks in Papua New
15 Guinea, so those people at home have an idea where their loved ones are. And that occurs at 4.30, thereabouts, every afternoon, when we have a – when we – only when we have a trek out.

And are you able to say by looking at that document who it was who was logging on at those times?---Well, it wasn't me, and there's only possibly one other person in
20 the office at that time.

And who was that?---Lyn Kelly.

25 Well, what's the conclusion to be reached, then, from the areas where it was logged on when there weren't treks occurring?---That someone was logging onto my system to monitor what was going on in my life.

Right. Now, in relation to logging on, are you aware of what's necessary to log on to the Facebook page for the employee, the Kokoda page, for updating treks?---Yep.
30

What – what's necessary for that, Mr Wetherall?---Well, they – they – it's quite possible that the login was – was kept on. Lyn had access to the logon to the Kokoda Spirit Facebook page – to the password.
35

Are you aware of a method of access that was provided to Ms Brial by Mr McCutcheon - - -?---Correct. Mr - - -

- - - following her employment?---Mr McCutcheon gave Carlie Brial, who was
40 looking after the Wild Spirit Adventures Facebook page, a separate logon.

And what's the import of that - - -?---Well - - -

- - - Mr Wetherall?--- - - - it keeps everything separated, so all – all Carlie Brial
45 could see was Wild Spirit Adventures – the – the business page.

There was no possibility of seeing anything on your personal page?---Correct, and that was organised by Lyn Kelly, the office manager, to make sure she had a separate logon.

- 5 And was that offered at any stage to Ms Kelly?---It was. To my – to my knowledge, it was offered for them to have their separate logons, and they were refused.

I tender that series of records comprising the exhibit for identification, your Honour.

- 10 MR WHITE: Commissioner, could I just confirm that this witness prepared that extract from that document?

MR SAPSFORD: Did you prepare that extract?---I did.

- 15 MR WHITE: Thank you.

COMMISSIONER: The logon – the Facebook logon records are admitted and marked exhibit 25.

20

EXHIBIT #25 ADMITTED AND MARKED

MR SAPSFORD: Excuse me just a second, your Honour.

25

COMMISSIONER: Can I – while you're doing that, Mr Sapsford – Mr Wetherall, could I just ask – in respect of this document – these logon records – is there any way at all – it just says search Facebook, and it just has a series of – identifies devices – - - ?---Yes.

30

- - - and dates. How do I identify from this information that this is - - -?---The iPhone 7 - - -

Hang on, I haven't finished - - -?---Sorry.

35

- - - my question yet?---Sorry. Sorry.

How do I identify from this information that it is a login to your Facebook – your personal Facebook account?---Because it actually identifies the – the Mac and the location of where – it's been taken off my system. So it comes off, actually, the – the Apple system. The – the Mac actually identifies – and it's downloaded off the actual Mac – it's actually downloaded off the actual phone – the location.

40

And everybody's got a Mac in the office; is that right?---Yeah, there's – there's – yeah.

45

So how do we identify this is your Mac?---It's - - -

Because I noticed from the photographs that there's Macs on all the desks?---Yeah, they are Macs. So it could be any one of those Macs. Any of those – any two of those Macs.

5 All right?---My Mac's – my – my Mac is a separate logon in my office, so it's not that one. So it's only two Macs inside that other office.

So talk me through the process as to how you came to produce – did you produce this document?---I did.

10

So how did you produce this document?---I took it off my system. The – so the Apple system actually tells you your logon. So when you go into your – into your phone, or into the Mac system, it shows you where all your logons – so if there's been any illegal logons, or if someone's logged into the system when you're not there. So this is my logon, so I know I'm not there, so someone else has logged onto my phone – or – into my – into my system. So it – Mac is very good – or the Apple system is very good that it actually tells you if somebody actually has logged into your computer, or – or into your phone when it's not you. It tells you the location that that actually happened at.

20

So you produced – this is a list of use, is that what you say, of the logins on – recorded on your actual computer – the one that's - - -?---Correct.

- - - photographed here in the - - -?---Yep. Yep.

25

- - - in your office?---Yeah, and my phone. So this is – this is – this has come off my – my phone and my – my personal Mac are linked.

Yes. Okay. So this – these – this data here - - -?---Yeah.

30

- - - reflects – there's someone physically accessing the computer that's in your office then - - -?---Correct.

- - - in that photograph?---Correct.

35

Okay. And if – when it says search Facebook at the top there, obviously that's not – that doesn't identify anything in relation to whether it's your account; whether it's your Facebook messenger account; whether it's your – whether it's the Kokoda Facebook account. It just is – it's a bunch of dates - - -?---Yeah, it identifies - - -

40

- - - and the location?--- - - - that they've logged onto the computer – onto Facebook. It doesn't tell me if it was Wayne Wetherall, Wild Spirit or Kokoda Spirit, but it tells me that they logged on into Facebook.

45 Okay?---When there was no need to.

And your Facebook account, presumably, would have – your personal Facebook account – or you may not have been active, even if you'd logged in, but there would be ways to examine it to try to correlate between these logins and any activity?---Yeah. Yeah.

5

Whether you liked something or whether you commented on - - -?---Correct.

- - - on something, or - - -?---Yep. Correct. Or you could just look – without making – you – you can look without doing anything. You can actually just leave it up and not make a comment, not make a like, but it also gives you access to messages. So it means – means that someone's quite possibly logged on there, and gone into messages, and – and just looked, and watched.

10

Well, where does it say messages?---Well, it's all linked. The whole – that whole - - -

15

I see. So it's - - -?---Everything's linked. So it wouldn't – if you – if you were on Facebook, you went into Wayne Wetherall's Facebook account, you can then click into the messenger. So it's all – everything's linked inside with the Macs. So it just shows that I wasn't there, and someone else has actually gone in and logged on.

20

All right.

MR SAPSFORD: And how are we to conclude from that document, Mr Wetherall, that the logon wasn't with respect to the duties to be performed of updating in relation to treks?---There was no – no – no – no treks out.

25

No treks out for the whole of the document, or in relation to those that are marked?---The ones that are marked. The – the – the documents that I've produced here; there's no treks out.

30

You see a reference there also to iPhones logging in. What's that?---Well, the iPhone is me.

I see. All right. Now, in relation to that logging on, Mr Wetherall, is it the case that it was simply a matter of pressing an icon on the desk, and immediately the Facebook page for Kokoda came up?---No, you – you've got to go and log on.

35

All right. Well, what's the process, then? Can you explain that?---Well, you go into Facebook, and then you've got to – unless someone's pre-saved the password; if you pre-save the password, then you can just click on that, but if you haven't pre-saved the password, you've got to go onto Facebook, and put the – the – the login in – login and password into the system to log on.

40

Now, when Ms Kelly provided you with the email and certification of 3 April 2020, do you recall sending her messages with respect to that?---Sorry, Stuart.

45

When Ms – sorry – when Ms Kelly provided you with the email and the doctor’s certificate of 3 April 2020, do you remember responding by way of text messages?---Yeah, I did. I – I – I responded to her husband, Bill, and – and to Lyn by text, “Hey guys” – I don’t have the message in front of me, but I do – I did
5 respond. I said, “Hey” – it was basically, “Guys, what’s going on? I don’t understand what’s going on.” I can’t – I don’t have the text in front of me, but I do – I did res – I did ask the question.

10 Could the witness see exhibit 5, please, your Honour? Do you recognise that document?---Yes.

You’ll see the second page contains the full - - -?---Yes.

15 - - - message from – firstly, from Ms Kelly, at 7.52 am, and your subsequent response at 10.55 am. Does that accord with your recollection of what occurred?---Yes.

20 I’m sorry – I beg your pardon. I got the dates wrong. The first date is 3 April 2020, and it’s the response of Ms Kelly of 6 April 2020?---Yes.

My apologies. All right. Do you recognise those?---Yeah, I recognise the text. Yes.

25 Yes. Excuse me. Just a second, your Honour. So that’s the evidence-in-chief of Mr Wetherall. Would it be possible to have a short comfort adjournment, your Honour?

COMMISSIONER: Absolutely. How long are you anticipating to be with cross-examination, Mr White?

30 MR WHITE: Perhaps two to three hours.

COMMISSIONER: All right. Well, do you want to adjourn now before an early lunch, and then come back at 1 o’clock?

35 MR WHITE: Yes. I’d be content with that, Commissioner.

MR SAPSFORD: I’m in your Honour’s hands. I’m happy either way.

COMMISSIONER: All right.

40 MR SAPSFORD: Even an earlier start if your Honour wished.

COMMISSIONER: All right. Look, we – what we might do – it’s only half past 11, anyway. We might just have a 10-minute break, and then you can get started, and we’ll go through until 1.
45

MR WHITE: Thank you.

COMMISSIONER: We'll adjourn for – we'll adjourn until 20 to 12.

ADJOURNED [11.22 am]

5

RESUMED [11.45 am]

10

WAYNE STEPHEN WETHERALL, CONTINUING

CROSS-EXAMINATION BY MR WHITE

15 COMMISSIONER: Take a seat, thanks. Mr White.

MR WHITE: Thank you.

20

Mr Wetherall, you're the owner and director of Kokoda Spirit?---Correct.

You're also the owner and director of Kokoda Xtreme?---Kokoda Xtreme is a business name, yes.

25

And you're the owner and director of Wild Spirit Adventures?---Correct.

You employ staff both in Australia and in PNG?---Certainly in Australia under the Kokoda Spirit, yes.

30

And in PNG?---Yeah, under a separate company.

Okay. Are you the director of that company as well?---I'm a – yes, I'm a foreign director. Yep.

35

So you appreciate, don't you, then, the duties and responsibilities that come with being a director of a company. Yes?---Yes – sorry. Yes.

Yeah. And that includes the duty of care that you owe your staff to provide them with a safe work environment?---Yes.

40

Yeah. Ms Kelly commenced her employment with Kokoda Spirit on the 1st of July 2010?---Yes – to my knowledge, yeah.

And your wife at the time, Michelle, made the introduction and appointed her?---Correct.

5 At the time, the role was simply a part-time administrator. Lyn was there to assist Michelle, who was the office manager full time, originally two days a week?---My understanding, yes.

10 And within two months, this increased to three days a week?---I'm not sure of that. I was travelling a lot, so I don't know how many days it increased to. But it's quite possible the workload increased, but I can't tell you exactly how many days it went to.

So who was overseeing Ms Kelly's employment at the time?---Michelle.

15 Okay. Her hourly rate was \$25 an hour at the time?---I believe so, but I don't have that information handy.

20 Okay. But by 2013 she took on more duties, didn't she?---I – yes, after – after Michelle left, yes.

She began to work full time, five days a week?---I don't know if it was five days a week, but it certainly increased – hours certainly increased.

25 So Michelle had left at this stage?---Michelle left in about January 2013.

Okay. So after she left, who was keeping track of the hours that Lyn was working?---Lyn was keeping her own timesheets.

30 And did she submit those to you?---She did.

Did you review those?---Not – not regularly, no.

35 Okay. So who was responsible, then, for reviewing the hours that Lyn worked?---Well, Lyn was self-managing herself. I was away a lot. It's - - -

And you didn't have any regard to the hours she was reporting?---No, I had regard to what she was doing, but I had full trust in how Lyn operated.

40 Okay. So 2013, the marriage with Michelle had become volatile?---No, certainly not volatile. No.

Well, it was acrimonious at the very least, was it?---Well, it's between my wife and I, but certainly – there are certainly some difficulties in any breakup of a marriage.

45 It would only be between your wife and yourself if the home office wasn't also in your home. It strayed into the office as well, didn't it?---No, not to my knowledge. No.

There was never a dispute that you had with Michelle in respect of some car keys?---There was certainly not a dispute, but certainly she – I asked for my car keys back.

5 And then what I'd suggest happened there is that she refused to give them to you, so you physically tried to pry them out of her hands?---No, I did – I did go to grab the keys, yes. That's it. I went to grab the keys.

10 There was some shouting involved, during the course of that?---There was a probably a little bit of muffled words, yeah, certainly, but I just wanted the keys back and that was it, and she didn't give them to me and that was it.

15 Well, there's a distinction between shouting and muffled words, isn't there?---Well, I certainly wasn't shouting.

Okay. But this didn't happen, when you say it was private. It certainly wasn't private. This happened in the office at the house, didn't it?---Well, I didn't instigate it. My wife came in.

20 So she was the instigator of that altercation. Okay. It happened in front of Lyn and Seran Carter?---Look, I don't know who was there, but certainly Lyn probably was there. I can't speak for anybody else there.

25 Okay, so they witnessed that?---Well, possibly, yeah. As I said, I don't have a full recollection of that. That's a long time ago. And all I remember is car keys and that was it, and I stepped back.

30 Okay. Lyn and Seran Carter remained as employees after Michelle left?---Lyn certainly did and, yeah, Seran Carter did as well, yes.

Lyn took over the office manager role?---Lyn was – yes – supervising the office, and she didn't become the officer manager in 2017, though.

35 She didn't, did you say, I'm sorry?---Yeah. Well, she was running the – ran the – when I wasn't there, she was running the office.

And when did that commence?---Well, as soon as Michelle left she took over supervision roles.

40 And at that stage, she was then being paid \$40 an hour?---I don't have the – I don't have the figures in front of me, I'm sorry. I can't tell you exactly what the figures were back then.

45 Lyn's duties, once she became office manager and took over from Michelle, she was reconciling the banking. Do you agree?---Yeah, absolutely.

She would organise the flights, accommodation and everything for the treks?---Yep.

She'd do the logistics in both PNG and Australia?---I did the logistics, in the sense of expenses and stuff like that.

5 She'd be doing - - -?---Weights for aeroplanes, and things like that.

I see. She'd be answering the phones - - -?---Correct.

- - - and doing the banking and accounting?---Correct.

10 Yep. She pretty much ran the office when you weren't there?---Yeah.

That included the payroll for the staff every fortnight?---Correct.

15 And this is pre-Xero, so it's still a very manual system at the time, isn't it?---That's correct.

So how did you review the hours that employees were working at that time?---Well, Lyn was reviewing the hours.

20 You didn't have any oversight over that?---Not really. Like, Lyn was - - -

You - - -?---Lyn was supervising the office there and she was responsible for the hours and what they worked.

25 So you're a director of this company?---Yeah, but I'm also out of the office, overseas a lot.

How did you ensure the financial statements at the end of each year were accurate?---Well, from my accountant.
30

Not through Lyn?---No, from – my accountant was making sure – my accountant would do the tax returns and things like that, and trusted Lyn to make sure that we were paying people correctly.

35 Okay. And, again, I refer to the office, but it's your home office, and you were taken to some photos that demonstrate where people were sitting within the office?---Yep.

If I can describe it, we've got the little office with the computer set up there, there's one in the corner that I think you described as Lyn's, and then there's a cut-out in the side of that office area?---Yep.
40

And that looks out into the rest of the house and the bedrooms?---No, it doesn't.

What does that look out to?---That just looks out to a wall. It's a walkway there.
45

I see. And then there's an access to your office across – from that office?---Down from the – down from the walkway out the back to my office, yes.

I see. And that's the one that has the hallway that leads to the bedrooms?---Correct.

5 Okay. It's partially the fact that there was this overlap between your home and the office that led to there being a bit of a lack of a divide between your personal life and the work life. Is that a fair comment?---It certainly -- it certainly was a -- yeah, certainly working at of a home office creates -- certainly creates a different environment.

10 Well, I'd suggest that there was no real divide between your personal life and your work life in that house?---No, that's not true. There was certainly a massive divide between work and personal.

How did you identify that divide?---Sorry?

15 What was the divide?---The divide was we actually got on and got the job done. We had -- we did our work, as was required there.

20 But your personal life did stray into the work environment. Would you accept that?---Well, what sort of personal life?

Well, was it the case that you'd bring women into the house from time to time through the office?---That's my home and anything I do on the weekend is my personal business.

25 Not during the weekend. During work hours?---No.

There wouldn't be women coming to collect items of clothing they left behind in the house?---That's quite possible. It may have happened on one occasion.

30 You also had your daughters living there in or about 2018?---Yeah, late 2018 they -- yep, they came in.

35 Your son, Blake, had been living there for a while before as well?---True, for a few months.

Did they have computers as well?---My girls had their own laptops.

They were Macs as well?---They had -- they had iPads.

40 Okay. So no Mac computers, just iPads?---No, iPad and their phones.

iPhones?---Yeah.

45 Okay. The overlap between your personal life and your work life also meant that that would affect your mood from day to day as well?---I'm not sure what you mean by that.

Well, you'd have very good days and very bad days?---Well, certainly, I think, I – certainly there's times where things were more difficult than others with work.

5 What about when things were more difficult than others in respect of relationships with women?---I can – I can certainly tell you that there's times where, you know, if – a difficult personal situation, yeah, it probably – it probably flavoured my day somewhat.

10 And this is when you were in the office, because there would be times that you'd be overseas trekking?---Lots of times I was overseas trekking, yeah.

And there were other times when you'd be overseas or interstate seeing partners and girlfriends?---Correct.

15 So you'd be away for weeks at a time when you were doing that?---Yep.

But there were times when you're away that you'd call in at 9 am and 4.30 pm to make sure that people were there and they were working their hours?---As you pointed out as a director of the company, I wanted to make sure what emails were coming in and what needed to be addressed each day and how the day progressed.

20 And then when you returned from those trips, sometimes you'd show the women in the office photos and text messages from partners?---I'm not sure what – in regards to what, though? I don't know what you mean by that.

25 In regards to their appearance?---Which – who are we referring to, though? What people are we referring to?

30 Well, would you ever show the women photos of women on Tinder or dating sites and say things like, "Oh, why has she blocked me", or, "Why won't she go out with me"?---On Tinder? Why they blocked me? No, it's not true.

No. On any dating apps at all?---No.

35 You would never show the women in the office pictures of women and ask them to comment on their appearance or their relationship with you?---Not – no, I can't recall if it ever happened.

40 I'd suggest you did. You dispute that, obviously?---Yeah, and I can't recall that, sir.

What about comments on trekkers' appearances?---That's absolutely not true.

You'd never make comments like that?---No.

45 Again, I'd suggest that you did have those conversations. You disagree with that?---Yeah, I – yeah, I'm not sure what you mean by that, but certainly any time I'd talk about trekkers if they had medical conditions they need to be aware of.

So you're saying it was purely medical conditions. It wasn't anything to do with their appearances or anything?---No. God, no.

5 Right. So there was never – well, was there ever an occasion after Seran left in April of 2017 that you were hiring a temp for a period?---Yeah, we did hire a temp.

For a couple of weeks?---I can't tell you how long it was, but certainly the lady was there to help because it was certainly a busy time of year for us. Over April is a really busy time for the ANZAC treks for us.

10 You had a conversation with Lyn in the kitchen about this person coming in. Do you recall that conversation?---No, I don't.

You asked her what she was like, referring to this person?---I can't recall that.

15 And then she responded and then you said, "No. I mean, what does she look like? Would I do her"?---Really? I don't recall that conversation.

You said that there was tension in the office on the date that Julie left. I'd suggest to you there was actually tension in the office quite regularly?---Certainly – certainly it was a high energy office and we had lots going on with treks all over the world going out, so there certainly was – certainly tensions of meeting deadlines for charters and trekkers and – yeah, it's a full-on business running a trekking company. There can be some tensions involved.

25 It would also, though, be influenced by what was happening in your personal life with your relationships with women as well?---No. I run a professional business and we get the job done.

30 You were either okay and up-beat or you were very sullen and grumpy?---I can certainly – certainly can have some moods there. There's no question about that.

When Lyn and the other workers would come in they'd say, "Good morning", and they'd either get an enthusiastic response from you or just a grunt, and no real response?---There's certainly different times. It depends how the day was going, who I was talking to, but I always acknowledged politely to my staff.

35 There were times when you had girlfriends in the house and you guys would have big arguments?---I'm not sure what you're referring to, but I have partners, not girlfriends.

40 Okay. Arguments - - -?---I'd have a partner who would come and stay. Yep, absolutely.

45 You'd have arguments with your partners in the house?---There's occasions where a partner could be a bit more robust than others, but certainly on a weekend. Certainly not during work hours.

What do you mean when you say, “a partner could be a bit more robust”?---Well, this is on weekends. This is not during work hours. My partners had nothing to do with the business during work hours.

5 Okay. I’d suggest that you did have arguments with partners in the house during work hours?---Well, I don’t recall that, but I certainly – I can’t not say I’ve never had an argument with my partner.

10 There’d be swearing in the office?---There was always swearing in the office, yep.

You were?---Yeah.

You were sometimes making derogatory comments or crude jokes - - -?---No.

15 - - - including about homosexuals around the office?---No.

You’d yell at Lyn and Seran, accusing them of not being friendly enough to your daughters?---No, not true.

20 In particular, Erica?---Not true, not yelling.

So what do you say those conversations involved?---No. We just had a conversation to be polite to my – to my daughter, please.

25 You were concerned they weren’t being polite enough to you?---I was concerned there were X-rated conversations going on and I just wanted them to tone it down from X-rated to PG.

30 So you say they were the ones having the X-rated conversations?---Yeah, there was a conversation. I just asked them just to be respectful to my children. That’s all I asked.

Well, I’d suggest to you that that’s not true?---Okay.

35 It was you that was having these X-rated conversations?---No, that’s not true.

40 There was also physical damage around the house from time to time, so in 2014 the ladies came into work to find the toilet door missing?---Yeah, toilet door was missing.

And they later found it in the laundry, and there was a big hole in it?---No, it’s not true. It had lamination missing from the toilet door.

45 So can you just explain how that works? So - - -?---It’s right next to - - -

- - - describe the lamitation missing – the lamination?---Well, it split. The house was getting – getting the house repainted and stuff like that, so – the house was 16 years

old, so there was damage to doors and stuff like that. There were scratches over the house, dogs living in the house and things like that, so it was – the door was getting replaced.

5 So did it mean the door didn't work?---The door didn't work.

Okay. And your solution was to take the door off its hinges?---Correct, and get it replaced. And it took some time to get it replaced, but that – we have an ensuite, which I gave access to the staff to use.

10

So you – the door was delaminating, so you took the door off its hinges. You put it in the laundry - - -?---I don't know if it went into the laundry, but - - -

15

- - - and you hung a sheet in the meantime?---Yeah. I don't know if it went in the laundry. I can't – I can't tell you if it went in the laundry, because the laundry's a very small area.

20

So if the issue was with the state of the door, why didn't you wait until you had a new door before you took the old door off and hung a sheet there?---Because it was – wasn't functioning properly. It was – it was – look, in hindsight, yeah, I probably should have done that.

25

Well, I'd suggest to you that that's not the case. The real reason why you took it off its hinges was because it had a hole in it from an argument you had with a girlfriend?---Well, if it had a hole in it, how would it make any difference to the door's functionality?

30

I'm sorry. Can you say that again?---If it had a hole in it, how would it make any difference to the door's functionality?

Yeah. Okay. So you deny that there was a hole in the door from a fight you had with a girlfriend?---Mmm.

35

You didn't tell Seran Carter that that was what happened?---I can't recall. It's a long time ago what conversation I had with Seran Carter.

Well, surely you'd recall that. You'd recall if you told Seran Carter - - -?---Well, I don't have - - -

40

- - - that there was a hole in the door from an argument?---I didn't have that conversation then, right, so I don't recall having that conversation with Seran Carter.

45

Okay. It took you about two weeks to reinstate the door?---Yeah, it could've. Yeah. I actually do know, yeah. I'd rung around to try and get it replaced and it took much longer than I anticipated.

And in the meantime, you hung that sheet where the door went?---That's correct. I did.

5 Yep. And Lyn and the other women refused to use the bathroom under that system?---I let them use the ensuite bathroom. Correct.

Sorry. Can you say that again?---They used the ensuite bathroom.

10 No, no, they didn't. Lyn would drive home to go to the bathroom?---Well, that was Lyn's choice. She had the offer to use the ensuite bathroom.

Yes, but she didn't, though, did she?---I can't tell you. I wasn't always there.

15 Were you there during this period when the toilet door was missing?---Yeah, I was around when the toilet door went missing, certainly. Yes.

So you were there for this period, then?---Yeah. I can't remember if I was there all the time forever. I was certainly there for some period of it.

20 Lyn would drive home to go to the bathroom?---Well, Lyn would go home quite often to go - - -

And - - -?---Lyn would go home often and hang her washing out.

25 You didn't like the fact that she was going home to use her own bathroom?---I had no comment about that. I wasn't even aware of that. I know Lyn would go home and hang her washing out.

30 In fact, I'd suggest that you berated Lyn about the fact - - -?---No, I never berated anybody.

- - - that she was going home and not using the bathroom in the house?---We had a very open office where Lyn came and go as she pleased.

35 Now, there were works that were being done to the house – the house got repainted at some stage as well, didn't it?---A number of times the house has been painted, at least twice.

40 That wasn't this occasion that we're talking about?---I can't recall exactly when it happened.

45 Were there other holes or damage in the walls?---There's – as I said, there's marks on cornices, there's marks on the bottom parts of the lamination. There's a few scratches in doors where stools have hit them. There's kids living in the house. There was a dog living in the house. The dog chewed stuff. The house had wear and tear, yes.

And when you say “the house”, you also mean the office of the house where these ladies were working?---Well, I don’t know inside the office, no. There’s no wear and tear in the office that I was aware of.

5 There was a ding in the wall opposite the kitchen bench in the kitchen. You know that?---That’s in the kitchen. Yeah, there was a ding in there.

What was that caused by, do you say?---Well, I don’t know exactly how that was caused there, but there’s a whole lot of – there was – the ding is still there.

10 So it wasn’t caused by an argument?---Not by – not by me, I didn’t have an argument and I certainly didn’t create the hole in the wall.

Okay. Which hole in the wall?---Well, if you’re saying there’s a hole in the wall and 15 a mark on the wall, I didn’t create any mark on the wall.

Okay?---And the mark’s still there.

When you had your bad moods, you’d take them out on Lyn in particular?---No, I – I 20 didn’t take anything out on Lyn.

You’d call her into the office by saying things like, “What the fuck have you done here”?---That is so not true. I would certainly call Lyn often. Lyn and I would often have conversations. We would talk regularly. She was my right-hand person. She 25 was my – the person who was – you know, we would talk about, “How are we going to run this? How are we going to make these things work?” We had meetings all the time, regularly – regular meetings, discussions all the time.

So you – I believe your evidence before was that you did swear a lot in the office?---I 30 didn’t swear a lot, but I got frustrated sometimes, yeah. I would use the eff word, but not at anyone in particular. It was just that in a given situation if I was doing a thing and emailed to Papua New Guinea, I would drop the eff word occasionally.

Where were you when you were doing that?---In my office. 35

And then the women could hear what you were saying at that time?---Quite possibly, yeah, as I could hear what they were saying as well.

Would you ever say:

40 *What the fuck are you doing with these expenses?*

?---No.

45 *You’re paying them too much.*

?---Who are we referring to?

There's a conversation that you had with Lyn where you're referring to the payment of employees in PNG?---To employees in PNG? Yeah, I often had a conversation with Lyn about expenses, expenses in Australia and expenses in PNG.

5 And I'd suggest that during the course of those conversations you said:

What the fuck are you doing paying these expenses? You're paying them too much.

10 ?---I pay the expenses. I do the expenses. I do all the expenses for PNG. I don't know how that conversation could've taken place. I do every single expense for PNG. I don't understand how that conversation took place.

So – sorry – when you say you do every expense - - ?---Yeah.

15 - - - what do you mean when you say that?---Well, the amount of porters, the food, the allocations, everything. The costings are all done by me, the expenses for PNG.

20 So it's your evidence you didn't say that, because that wasn't something Lyn was doing. Is that what you're saying?---I can't understand what you're saying, sir. Sorry.

The allegation that I'm putting to you is that you've made the statements to Lyn:

25 *What the fuck are you doing with these expenses? You're paying them too much.*

?---Is this in regards to PNG?

30 Yes?---I paid the expenses for PNG. That conversation would never have taken place.

Okay, so you deny that conversation?---Yeah.

35 Yep. You were referring – I'd suggest that this was a conversation in respect of paying expenses for the PNG workers and the fact that you'd often ridicule Lyn as being the defender of the workers in PNG?---I wouldn't ridicule Lyn about the people in PNG at all.

40 What about nicknames? You wouldn't call her names like the Irish union rep?---Sorry?

The Irish union rep?---No, no.

45 You've never heard that expression before?---No. Well, I mean, I certainly know Lyn's got Irish heritage.

But you've never used those words?---Not that I – not that I can recall that at - - -

What about Jiminy Cricket?---I don't even know what you're talking about there.
What does that refer to? I don't know what you're - - -

5

That's you referring to Lyn?---No, not true.

You also expressed the view that she and Bill thought they were better than
you?---Well, it was certainly – it's certainly a – I thought a lot of people were better
10 than me.

Well, no. Did you express that - - -?---To - - -

- - - to Lyn and other people in the office?---No.

15

No. You never expressed that to anyone. What about hoity-toity? You called Lyn
Ms Hoity-Toity?---I didn't call anyone hoity-toity.

You've never used the expression "hoity-toity" before?---Not that I can recall. I
20 don't even know, like, who – what hoity-toity is.

So if Lyn, Julie and Seran have all referred to this expression "hoity-toity" and you
using it in the office, they're lying?---Did I – how often did I use that and who did I
25 use it on?

25

In reference to Lyn Kelly, you referred to her as being hoity-toity?---Right, but who
else heard that?

Those three women?---Are you sure?

30

That's their evidence?---Well, I'm telling you, that's not true.

Okay. In June of 2014 – you're aware that there's an allegation that there was an
interaction you had with Lyn in that period?---Yep, I've read that. Yep.

35

Now, can I just confirm what your evidence is on that. Is that that – do you say no
interaction occurred with her at all?---We – Lyn and I often had interactions on a
daily, hourly basis.

Well, this is the one I want to take you to?---Yep.

40

So in June of 2014, Seran's receiving treatment in Nambour for cancer. Does that
sound about right, that time?---Yeah, yeah. Seran had breast cancer, yes.

So she's out of the office - - -?---Yep.

45

- - - and it's just you and Lyn alone in the office?---Yeah. Well - - -

Did that occur during that period?---What occurred during that period?

Was it the case that Seran would be out receiving treatment, such that it would just be you and Lyn in the office?---Yeah, it's quite possible. Yes. Seran was receiving a
5 lot of treatment.

So I'd suggest that on one of these days you walked past Lyn in a grumpy mood, and she asked you if you were okay?---There's no question occasionally I could be grumpy, but certainly not -- yeah, and she may have asked me, but I don't know what
10 -- do we know what month or what day this was?

This is in June of 2014?---It is definitely June?

Yes?---Okay. I - - -
15

Does that assist you in remembering?---No. Well, as I said, Lyn and I had lots and lots of conversations.

She asked if you were okay and you - - -?---And she asked me often if I was okay.
20

And on this occasion, you swung around and started yelling at her?---That's not true.

So she was sitting in the corner chair that you identified in the picture, and you walked over to her and started yelling and screaming?---That's not true.
25

You were standing over the top of her - - -?---That's not true.

- - - and you were saying things like you wanted to know why Bill hadn't invited you to his 50th birthday party?---That's -- well, you know what? I actually asked that
30 question once before but if it was that day, I don't know.

So in what context do you say you asked that question?---I just said, "Yeah. How come I didn't get invited to Bill's 50th birthday", simple as that. I don't even know if it was that day, but I can certainly say I asked that question.
35

So I'd say that on this occasion you asked why you hadn't been invited to Bill's 50th birthday party, you told Lyn that she was too hoity-toity for her own good?---I don't recall that, no.

40 That she and Bill thought that they were better than you?---I don't recall that at all.

And that nothing that you said during this incident had anything to do with work. It was just a personal attack?---Yeah -- no, we'd have -- often had personal conversations, but - - -
45

You were pointing at her?---I wasn't pointing.

You were that angry that you were spitting at her inadvertently?---That's not true.

Every second word was "fuck"?---That's not true.

5 It went on for a long time - - -?---How long - - -

- - - for a few minutes, at least?---How long's a long time?

10 At least a few minutes – six to eight minutes?---I don't recall six to eight minutes of anything like that.

15 She just sat there and she didn't respond?---I don't – I don't even recall if there was any massive issues. We had lots of – lots of conversations. I kept saying we had lots of conversations constantly, and the 50th birthday conversation would've come up at some stage and I would've asked the question why.

20 Yep. What I'm suggesting to you is that this was an occasion which, effectively, you embarked on a viable – on a verbal kind of tirade at Lyn and she just sat there, didn't respond and she had tears running down her face?---No, that's not true.

After this, you just walked out and left Lyn there?---Walked out of where?

25 This is the office area?---I wasn't even in the office area, if you're referring to any particular time. I stand over – I stand near my office and a wall, so just – I hardly ever go into the office, sir.

Okay. So you deny that you were in the office on this occasion?--- Yeah, that's – I - - -

30 Then later in the day, Seran came back in after – back from her treatment and you were in the office with Parry McCutcheon?---Once again, it's – I – it's – I cannot recall. It's seven years ago. I just don't really - - -

35 You'd remember something like this?---No, I don't, because it wasn't a serious incident.

You said to Parry words to the effect of, "I had to put her back in her place"?---No, I don't recall that at all.

40 You've never said those words to Parry McCutcheon?---Well, you know, I can't recall and I do not remember having that conversation.

45 Have you ever said those words to Parry McCutcheon?---I cannot recall I ever said those words. What Parry and I say in private, I don't know, but I've never – I don't – I had to put her back in her place.

Have you ever said that to Parry?---Don't know. I can't recall, to be honest with you.

5 After that conversation you come back into the office, Seran's now sitting beside Lyn and you say to Lyn:

We're good, aren't we, Lyn.

10 ?---I would often to say to Lyn, "We're good now, aren't we."

The reason why you said it this time was to justify what you'd just done?---No, that's not true. I'd often say to Lyn, "Are we good? Are we good? How's things? Are we good? Let's keep going."

15 Lyn didn't respond to this, and you asked Seran to take you to the Bluff Bar. Do you recall that?---What day was that?

This is in June of 2014?---Yeah, but what day?

20 I can't recall – well, I don't have that material?---Yeah. Well, you can't – I can't recall either.

Okay.

25 COMMISSIONER: It's June 2014. That's as clear as it's going to get?---Yeah. No, I don't - - -

Do you recall going – did you go to that bar?---Yeah, I go to the – I went to the Bluff Bar often.

30 Okay?---And it would've been a – it would've been a Friday afternoon. It's the only time I'd go to the Bluff Bar.

35 MR WHITE: And was there an occasion during June of 2014 that you asked Seran to give you a lift to the Bluff Bar?---It's quite possible Seran has given me a lift to the Bluff Bar, but if it was that day or not I can't tell you, but she has given me a lift to the Bluff Bar.

40 Well, when you got in the car and she was giving you the lift, you said to Seran – the first thing you said to Seran, in fact, was that you hadn't sworn at Lyn?---That I hadn't what?

That you hadn't sworn at Lyn?---Well, that's quite possible, but I have never sworn at Lyn.

45 So you kept saying over and over:

I never swore at her. I never swore at her.

?---Well, I never swore at Lyn, so - - -

5 No, but can you answer this precise question?---I can – I can answer that question, because I’ve never sworn at Lyn.

I don’t want to know if you’ve ever sworn at Lyn. What I want you to answer, please, is when you were in the car with Seran, you saying to Seran over and over:

10

I never swore at her. I never swore at her.

?---No, never, ever, ever, no. That’s not true. I would’ve said, “I’ve never sworn to Lyn”, but I don’t know if it was that day or whenever because I’ve never sworn to
15 Lyn. So to say I’ve never sworn to Lyn is what it is. I’ve never sworn to Lyn.

Just – the specific question is you were in the car with Seran - - -?---Yeah, but I don’t – I can’t recall which day that was.

20 She’s - - -?---I don’t know if that’s the same day that Seran Carter has given me a lift to the Bluff Bar.

Okay. So just to be clear, what I’m asking you to accept or reject is that you’re in the car with Seran and you’re repeatedly saying to Seran:

25

I never swore at her. I never swore at her. I never swore at her.

Referring to Lyn?---I could’ve said to Seran, “I’ve never sworn at her.”

30 You would have?---I could’ve said, but I have not said it repeatedly, though.

Okay. All right. What I’d suggest is you said on this occasion, and you’re referring to the early interaction that you’ve just had with Lyn in the office. Do you accept that?---No, I won’t accept.

35

Well, after this has occurred, the next day you go into the office and you apologise to Lyn for what had happened the day before?---Yeah, it’s quite possible if I apologised. Often – I found myself often saying, “Hey, Lyn, are we good”, and, “How’s things?” “Let’s” – “How do we get on? How do we move” – “How do we
40 move our business forward? How do we move things forward?”

You told her that she was an integral part of your business and you didn’t want to lose her?---Yeah, I told her that often.

45 You asked her if Bill was going to come and punch on with you after what you did?---I don’t recall that, but I certainly recall that she’s an integral part of my business. That was something I kept telling her. “We’re” – you know, “We’re good.

We're an integral part of my business." You know, "We could" – "We're going to turn this something into something very special."

5 And that second part, you asked her if Bill was going to come and punch on with you after what you did?---No, I don't recall that.

No. You never said something similar to that to Lyn?---It's quite possible at some stage, you know - - -

10 Yeah?--- - - - but I can't recall that was – that incident or even if it was referred to Bill.

So in what kind of context would you have that conversation with Lyn where you'd say"

15 *Is Bill going to come and punch on with me after what I've done.*

?---No, it wouldn't been about Bill. Bill and I were good mates, though. My impression was Bill and I were good mates so I never would've said that about that.

20 Well, when did you have the conversation with Lyn about being worried that someone's going to come and punch on with you, even if it wasn't Bill?---You know, because this is life. Like, PNG – PNG's a difficult place and just bits and pieces like that. It's just a general conversation, like – it's a harsh environment that I
25 work in in PNG, but certainly not with Bill. Bill and I were really good mates, I thought.

Well, I'd suggest that what happened after this is – you had that conversation with Lyn, you said you were worried that Bill was going to come and punch on with you,
30 and then you went around to Bill and Lyn's house on a weekend shortly after this?---I did go around to Bill and Lyn's place but I don't recall it being a weekend, I refer it being an afternoon, and, once again, the conversation was around about, "How do we" – "How do we develop this business? How do we get on? How are we going to, you know, make this work better and more efficient and more
35 effectively?" I was always about – I did lots of conversations to Lyn about, "How can we make these things better? How can we get on" – "How can we get" – you know, "make this really roar", because I trusted her so much, her opinion and I trusted Bill's opinion as well, so I'd seek counsel from Bill a lot.

40 So on this occasion, you went around to their house, you were unannounced, uninvited, there was nothing to organise this?---That's not true. I would not just roll up unannounced.

45 You brought a sixpack?---I can't tell you if it's a sixpack or not, but I did go around.

When you say you couldn't tell me if it was a sixpack - - -?---I don't remember having a beer, certainly don't remember having – taking beers around, but it's quite possible because I always take beers everywhere I go.

5 Well, this has only ever happened on one occasion that you went around to their house?---Yep.

Do you accept that?---Well, I accept that's all I can recall going around, that ever been – ever been invited around there once.

10

It was in the aftermath of this incident in June of 2014, and then you go around to their house and during that conversation with Bill and Lyn you suggested that Lyn had given as good as she'd gotten on the day and she just pushed you too far?---I can – to answer that question, Lyn's no shrinking violet. She would – she would pull me up if my – if my – if she deemed that I needed to be spoken to or – Lyn was – we had open conversations, Lyn and I.

15

Okay. So just for clarity around this precise conversation - - -?---Yeah.

20 - - - there's a conversation. You go to Lyn and Bill's house - - -?---Yep.

- - - after this incident in June of 2014?---Yep.

25 And during that conversation, you're referring to the incident at work and you're saying Lyn had given as good as she'd gotten and that she just pushed you too far?---Well, I'm not referring to the incident, but I can say that Lyn would give as good as she gets in all situations. She - - -

30 Well, do you recall ever having a conversation with Bill and Lyn in which you said those words?---I recall having a conversation with Bill and Lyn about how we can, you know, move forward with our business and how we can develop our business and get on with things, certainly - - -

35 Again, can I just ask you to – so this is the question?---Yep.

A conversation with Bill and Lyn in which you said that she'd given as good as she's gotten and she just pushed you too far?---No, not about pushing too far but I can say certainly about she always gives as good as she gets.

40 Okay. Seran left in about April of 2017. Is that right?---April, yeah. I remember April, because it's our busiest time of year. It was a week or two before the ANZAC treks.

45 And she brought a claim for unpaid superannuation?---When? At that particular time? No, not at that particular time. No.

Was that later, do you say?---My understanding it was, yeah. Seran was employed as a subcontractor and paid a higher hourly rate.

5 Well, just to be clear, the ATO did order you to pay her superannuation?---Yeah, that's certainly -- and I did pay it.

Yep?---There's no - - -

10 On the basis that she was an employee?---There's no question that I paid her a higher hourly rate which I believed at the time to have been legitimate, and then I did pay the superannuation in full, paid.

15 This prompted the employees -- well, Lyn, in particular, entering into an employment contract?---Yeah. Lyn approached me for an employment contract.

Can I ask the witness to be shown exhibit 2, please. That's page 60 of the bundle. So you were shown this document in your evidence-in-chief. At the top, it's -- well, it's got [indistinct] at the top is letter of engagement?---Yes.

20 You identify that as being the document that you signed with Lyn?---Yes.

So in terms of the key conditions of that, it says her start date is the 1st of July 2010?---Correct.

25 And her employment's full time?---Correct.

In remuneration at 5.1, she's to be paid the fortnightly rate of \$45 per hour plus 9.5 per cent super?---Correct.

30 And then she also had an on-call allowance, didn't she?---Correct.

That's Monday to Thursday at \$50?---Correct, when the treks were out.

35 And then at 5.3 on the next page, her remuneration would be reviewed annually on the 8th of May?---Correct.

You remember signing a contract with that clause in?---Yeah, I did sign the contract. Yeah.

40 She was entitled to 20 days annual paid leave at 6.1.1?---Yep.

And at 6.1.4, long service leave 1.3 weeks per year, accrued from commencement of employment 1 July 2010?---Correct.

45 So that entitled her to long service leave commencing on the 1st of July 2010?---Correct.

Yeah. All right. So that contract that I've just taken you to contemplated a review of remuneration in May of 2018, didn't it. So would you like to look at that clause again?---Yep.

5 It's clause 5.3. It says:

Your remuneration will be reviewed annually on the 8th of May.

?---Right.

10

So I'd suggest that that did actually occur, that in May of 2018 Lyn approached you and asked to review her remuneration?---No, I don't recall that at all.

15

During that conversation, you agreed to increase her pay from \$45 an hour to \$50 an hour?---Yeah – no, I don't recall that at all having that, because we would've renewed the documentation.

So I'll give you some details of this meeting - - -?---Yep.

20

- - - and you can tell me if you agree or not?---Yeah.

So it's a meeting on your back veranda in or about – sorry – on or about the 29th of June 2018, end of the financial year. Do you recall having a conversation - - -?---No, I don't.

25

- - - with Lyn on the veranda? No. She said words to you to the effect of, "I'm on \$45 an hour. I'm asking for \$50 an hour." And you said, "What? Plus super?" And she said, "Yes, plus super." Do you recall that conversation?--- That conversation could've – could've taken place, yeah.

30

Yep. And then you did some calculations in your notebook and you quoted the figure that it was going to cost you back to her?---Possibly.

35

And she said, "Oh, well, I run your business and you're not here most of the time. I do everything"?---Yeah, she just often said that.

40

And then you said, "Yes, okay. Let's just do it from the 1st of July to keep everything neat"?---Yeah – no, I don't – I don't ever recall agreeing to it, but I remember having – her asking and telling me that she runs my business and she deserves it.

45

Okay. Well, I'd suggest that during that conversation she asked you for an increase from 45 to 50, and you agreed to that?---I'd certainly – and she'd constantly tell me how much she ran my business.

Then after this conversation, you then had a subsequent conversation in the office later that afternoon. So present for this one is you, Lyn and Julie. Do you recall a

meeting with them at about this date?---No, I don't. What was the meeting regards – regarding?

5 Well, during the meeting, this was where you agreed to the pay rates for Lyn, Julie as well as for Kate Schumacher for the upcoming financial year?---Right. Well, I don't recall that, but - - -

Well, during the course of that you identified that Lyn was going to be paid \$50 an hour?---So identified that to Lyn and to – during that meeting?

10 During the meeting?---Yeah, I do not recall that at all happening.

Okay. Lyn asked you if you were comfortable with her, Julie and Kate getting the amounts that were quoted during the meeting, and you said you were
15 comfortable?---How much were they quoted?

Lyn, in particular, was quoted \$50 an hour?---How much was Julie quoted?

I don't have that material?---Well, nor do I - - -

20 Okay. Well - - -?--- - - - and Kate should - - -

- - - surely you can recall a meeting in which - - -?---No, I don't.

25 - - - Lyn then passed that information on to the accountants. This is Dawn at Thomas Business Accountants. She was the bookkeeper there. Yes?---Lyn was also the one doing the bookkeeping and the Xero – Xero was around that time.

Well, that's why this whole conversation happened - - -?---Yeah. I don't - - -

30 - - - because you guys were transitioning to Xero?---I don't – I don't recall that conversation taking place.

Well, did you recall having a conversation with Lyn in which you said that you'd be
35 drawing \$5000 a fortnight?---No, I don't.

How much did you draw from the business from the 1st of July?---Sorry, is that question – have I – that I'm drawing \$5000 a – that I'm personally?

40 That's correct?---I wouldn't – I couldn't tell you how much I was drawing from the business.

Okay. What I'm suggesting is that you told Lyn to convey to Dawn at Thomas Business Accountants that you'd be drawing \$5000 a fortnight?---I talked to Thomas
45 Business Accountants directly. I had regular meetings with my accountants. I don't actually understand why that – that \$5000 figure that's been plucked.

As we said, this was the time the business was transferring its payroll accounting over to Xero, so this would be kicking off on the 1st of July 2018. Does that sound - - -?---Are you referring to my salary?

5 No, no, apologies. This is your accounting and bookkeeping software?---Right.

It was previously not electronic and now you're transitioning across to Xero - - -?---Yep, yep.

10 - - - on the 1st of July 2018?---Yep.

That's right, isn't it. Lyn's practice from there was that she would print a payroll employee summary report and a payroll details activity report for each pay cycle, and she'd put them in each staff member's file in the office?---Lyn was doing that. I
15 can't tell you that happened or not. Lyn was doing that.

You had access to all the staff files in the office, didn't you?---The staff files were there, but I had an administration person looking after all that kind of stuff. I had a trusted employee who looked after all the payrolls and all the accounting and all my
20 banking.

So at what point in time did you identify how much you were paying your staff?---Identified late – late in life I realised what was going on, because I trusted everybody that was doing the right thing in my business.
25

So you didn't have a say in how much your staff were getting paid at that point?---I had a say, but we agreed to \$45 an hour and I agreed to whatever Julie Elliott was on and I agreed to whatever Seran Carter was on and I agreed to whatever Kate Schumacher was on.
30

All right. In April of 2019 – so this is, in particular, on the 12th of April 2019 – in your evidence-in-chief you were taken to an exchange you had with Julie Mossop, so I want to take you to that, please?---Yep.

35 So this is on a Friday?---Right.

Is that right?---I think so, yes.

Your mood had been bad for two or three days leading up to this, because you'd found out on the Wednesday that you had an illegitimate son with a woman in PNG?---Correct.
40

She'd contacted you to tell you it was yours?---Correct.

45 You thought it had been sorted out by way of an abortion?---No, that's not true.

Well, you had a conversation with Lyn and asked her for advice on how to handle it?---Can you please just go back to that conversation? What are you saying there?

So you're contacted by a woman in PNG - - -?---Yes.

5

- - - on a Wednesday?---A Jessica, yep.

She'd contacted to tell you that you had a son?---Correct.

10 And you then had a conversation with Lyn about how to handle it?---Correct. I did.

And during that conversation with Lyn you said that you thought it had been sorted, that she'd had an abortion?---No, that's not true. That's absolutely not true.

15 Okay. But - - -?---I had a – definitely had a conversation with Lyn about this, because – I trusted Lyn's advice on this because it rocked me to my core.

Well, you were particularly concerned - - -?---This is a 10 year old – it was a 10 or 11 year old boy and it rocked me to my core, to be honest with you, so, yeah, I did
20 have a conversation with Lyn about it.

And you were particularly concerned, because your children didn't know about it?---Correct.

25 Yep. That, on the Wednesday, set you in a foul mood for the rest of the week?---Not foul. I certainly was – I certainly would've had high anxiety. I certainly was – like, it took me by surprise. It really did.

30 So what I'm suggesting is that that was brewing and that led to this interaction with Julie on the Friday?---No, I actually went – I actually went into my shell a bit. Like, I don't understand what's going on here.

35 So at the time - - -?---I was withdrawn – more withdrawn and – and trying to contemplate how this unfolded and how it was – how it was going to affect my life and how it's going to affect the young boy's life. So, yeah, I certainly was quiet. I certainly was withdrawn. I certainly – it certainly changed the flavour of my moods. There's no question about that.

40 What I'm going to suggest to you now is that carried into the workplace and led to this Friday interaction?---You know what? It could've carried. My mood of being quiet and withdrawn, yeah, it probably did affect the workplace.

45 So at this time, Julie had decided she didn't want to work five days a week any more?---Well before that. We'd already started advertising on SEEK to replace Julie.

5 Yep, that's right, because she was 65 at the time. She didn't want to work full time any more?---Well, I don't know if she was 65, but she said she was coming up to retirement age and we were – we were phasing her out of the business because she wanted to go and do other things. And she was gracious enough to help in the assistance of going to SEEK, she was gracious enough to assist in the recruiting, and she was even going to hang around to train the new person up.

10 That's right, because the arrangement was that it would just be a job share and then work her – slowly work her out?---Yeah, she certainly – that was the – that was the big picture, because Julie had some massive skills that any business would find, you know, a big part, and she was a big part of my life and a big part of my business.

15 So come that Friday, you were going to be doing interviews the next week for the new person to come on board?---I – my understanding is that Lyn and Julie were going to do the interviews, the culling. That was my understanding, and I was going to come in when we got down to the nitty-gritty, the last few people.

20 So only the last few people you'd only be involved in them?---Yeah. That – like, I can't recall exactly but there was, like, hundreds of applicants.

25 So - - -?---And I said, "Look, guys, I don't have time to do the hundreds of applicants. Let's just" – "Let's whittle it down and then when you're pretty happy with a few people, I'll come in and we'll all have the" – "we'll all sit down and work out the best person for the job."

 So on this Friday, in anticipation of those interviews, you came and stood in the office and you said to Julie:

30 *When you do these interviews, I want you to lose this direct attitude. You put people off and it makes people uncomfortable.*

35 ?---Yeah, something to that – something along those lines it did happen. Julie had a very direct, almost like an interrogation – and, look, it probably did come across not so well, how I wanted her to describe. I kind of wanted it to be a bit more, you know, "Let's try and be more expansive in how we do our interviews." And it probably come across a bit too direct to Julie and, in hindsight, I probably should've been a little bit more – how I delivered it to Julie, what I wanted to happen.

40 You said to her:

You can be so rude. I want you to be pleasant.

 ?---I didn't say "rude". I definitely would've said, "You can be very direct."

45 She told you that she knew how to interview someone. She'd done interviews often in her past job?---She told me she had interviewed plenty of people in the police force.

And you said:

Well, these aren't police recruits.

5 ?---Correct. Something very similar to that was said, yes.

So – and she said:

Well, would you like to sit in on the interviews.

10

?---Probably – she probably would've said that to me.

And you said, "No"?---Correct.

15 And then she said:

Well, I think you should, if you think that about me.

?---Yeah, that's quite possible that was said. Yes.

20

And then you tried to bring Lyn into the argument. You asked Lyn what she thought?---Yeah, I involve Lyn in everything. Every aspect of my business, I involve Lyn in.

25 And then Lyn said:

Well, if I was Julie, I'd be really offended.

30 ?---Well, she probably could've said that, but, you know, I wasn't meaning to be offensive. I did actually make those comments, so I won't deny I said those comments about the direct approach.

And then you left the office at this point?---Yeah.

35 And you were out doing your laundry, then, later in the day?---Much later in the day. I was actually – I went to my own – went to my office because we had expenses to be done, I had – as I said earlier on, we had an Everest Base trek – we had a number of Everest Base treks coming up. I had these invoices that didn't line up, the expenses for the US dollar and things that weren't lining up. I'd actually asked
40 Lyn's opinion on the US dollars, "Are these invoices correct?" Lyn was a money lady. She knows figures. That was her – one of her massive fortes was - - -

45 So you were under a lot of stress and pressure at the time?---No, it's a normal working environment of looking at expenses. I'm just asking someone for a second opinion on the funds, because it doesn't look right to me. That's it, that's all I did, ask for – as Lyn would do every single time in my office – wouldn't matter if it was my PNG expenses, my African expenses, my Borneo expenses, Lyn would run her

eye over it to make sure I didn't sign a cheque or an expense that was incorrect. That was – that was Lyn's – one of Lyn's gifts was the numbers, was a dollar person. She would not let me pay a cent over anything that was wrong.

5 So you went off to do that work in your office and then later in the day you were in the laundry. You described that before, you're getting clothes out of the washing machine?---No, I was putting clothes in the washing machine. I was doing my washing.

10 Yeah?---I was actually doing my washing.

And Julie walked in?---Yeah, she walked right into the laundry when I was doing my washing.

15 And she said she was going to be leaving a bit early for the afternoon?---Something like that, and she wanted to know how - - -

And she asked - - -?---She wanted to know how the - - -

20 The chat with Angelo went?---Yeah, correct.

And she was referring there to an early conversation with a new Italian tour guide who was going to do tours through the Swiss Alps?---Which is Angelo, yeah.

25 Yep, that's him. You spun around and you came back at her?---I don't know if I spun around. I was inside my laundry.

You came back at her with your fists clenched?---No, that's not true.

30 And - - -?---Absolutely not true.

And you were screaming into her face?---No, that's certainly not true.

You were saying:

35

How dare you speak to me the way that you do.

?---No, it's not true.

40 You're about 30 centimetres away from her?---Can I say – I was up against my washing machine. If anybody was walking towards me, it was Julie. I was against my washing machine in a very small cubicle. I'm not walking towards anyone. I'm against my washing machine.

45 You were shouting and you had spit coming out of your mouth?---No. I did ask her to – what is going on, to move away from me in my laundry while I was doing my washing. I don't know why she came into that space.

I'd suggest it was the opposite of that, that she then told you to step back?---No, she – I was in my washing machine – in my laundry. I don't know why she walked into my laundry. I actually don't – I cannot fathom that, when I look back at that, why
5 to have a conversation about something that happened earlier today. I really struggle with that when I'm – when I'm recounting this.

Well, surely this is another example of your house and your office
overlapping?---It's quite possible. You're probably right there, the house and office
10 overlapping, yeah. It's probably, you know, in – yeah, it's certainly - - -

Because before you were concerned that Lyn had left without saying goodbye to you
- - -?---When was this?

15 - - - when you were out the back on the phone?---When was this?

This is – you gave that in your evidence earlier?---No. Which date was that on?

It was on the 2nd of April?---Sorry?
20

On the 2nd of April?---I wasn't – nothing happened on the 2nd of April. Lyn didn't come to work on the 2nd of April.

No, apologies. This was on the date that - - -
25

COMMISSIONER: First of April.

MR WHITE: On the first of April, day before?---All right.

30 In your evidence, you were concerned that Lyn had left without saying goodbye
- - -?---Correct.

- - - when you were outside on the phone?---Yep.

35 So there was an expectation she would've walked through the house and come
outside to say goodbye?---Yeah, yep, yep, absolutely. The kitchen was used for
coffee, for tea making, which is right there – right where I was.

So is it really that extraordinary that Julie would come and see you in the laundry
40 - - -?---Correct, it is. Laundry - - -

- - - to say that she was leaving early for the day?---The laundry's a terribly small
space.

45 So you - - -?---Why would you come into my laundry for?

So you do regard that as being unusual, that Julie would come and see you where you were?---Absolutely. In the laundry, absolutely unusual behaviour.

5 All right. She told you to step back, and then you swung around?---I can't step back. I'm against my washing machine. There's nowhere to go.

She then turned around and left?---Yeah, she did.

10 And then you slammed the door?---No, I didn't slam the door. You know what slammed, the washing machine lid.

So you slammed the washing machine lid?---I probably – the washing machine lid probably dropped quite heavily down.

15 So there were two bangs. Was one of those you slamming - - ?---It wasn't two bangs.

- - - the washing machine?---I recall only one bang and I remember the washing machine lid, and – yeah.

20 You slammed that one down?---I wouldn't say "slammed". It certainly dropped.

Well, you were angry?---I was frustrated. I was frustrated that I was in my laundry backed up against my washing machine. I was frustrated. "Why are you in my laundry? Why are you" – "Why are you here? Why are you stepping towards me?"

30 So after this, Julie left and then you came out of the laundry a short while later. So Julie's now in the office. You come out to where the office area is, Julie and Lyn are there, and you start screaming at her again?---I didn't scream. You know what? I probably asked her, "What happened there? What's going on?"

You were saying, "How dare you"?---I probably said, "How dare you come into my laundry?" There's certainly no – there's certainly no swearing, certainly no screaming.

35 You said:

Who do you think you are?

40 ?---You know, I can't recall the exact words but I would've said, "What is going on here? Why have you come in here for?"

You said your daughters were in the house and they were asking what was going on?---Yeah, my daughters were in the house. They were a bit concerned about the –
45 what happened in the laundry.

You were standing in the doorway and you were blocking her exit at that point?---Which doorway are we referring to?

There's the doorway for her to be able to leave?---Sorry?

5

The doorway for her to be able to leave?---Which doorway, though? There's a few doors there. Sorry. I'm not being difficult. I just want to be clear on which door you're talking about.

10 Well - - ?---The door to leave the house or the door to the office or - - -

It was the door to leave the office?---Yeah – no, I wasn't standing in the way. No.

Okay. Were you standing in the door to the exit?---No.

15

She asked you to step aside, because she was leaving?---We had a conversation – there's no question we had a conversation. There was a two-way conversation that took place.

20 Okay. Well, I'm putting to you that this is how that conversation transpired. Do you agree or not?---No, I'm not agreeing entirely what you're saying. No. I'm agreeing that there was a conversation and there were words spoken between two people who had known each other for more than 10 years, and – but certainly I didn't yell at anybody but certainly there was a conversation taking place and, you know, it wasn't
25 the – yeah, it's – it was a difficult situation.

Julie leaves, and then Parry arrives a short while later. Do you recall that?---I don't recall, but apparently Parry was there. I do not recall Parry being there, but according to people - - -

30

Well, no, just what do you recall? Do you recall Parry being there?---What we just said then, how it – I don't remember Parry showing up, to be honest.

Okay?---Parry's statement will probably be that he was there, but I don't actually recall it because it was fairly – I was a bit rocked. I was actually rocked. My world was rocked, what was happening here.

35

So what occurred then was you were having a conversation with Parry in the kitchen after this?---Right.

40

Do you recall having a conversation with Parry in the kitchen after this?---I often have conversations in the kitchen with Parry, I really do. That was, like, my meeting room with Parry. He's my IT guy. I – yeah, constantly have meetings.

45 And during this meeting with Parry in the kitchen, you screamed at Lyn to come into the kitchen. You said:

Get in here now.

?---No, I don't recall that at all. I do not remember yelling. I would not yell at that. I would – if anything was like that, I would've gone, "Hey, Lyn, can you come out
5 here and help me what happened here unfold?" I would not yell. I certainly
would've asked and I cannot seriously recall, but I would've said, "Hey, Lyn, can
you come out here and let's have a conversation? Can you ask me what happened" –
"show me what happened here?" I'd certainly not yell at anybody.

10 So Lyn comes into the kitchen, you're already in there with Parry, and then you say:

How fucking dare she come out near my own laundry.

?---Yeah, that's – look, you know, that's quite possible that I was going, like, "What
15 has happened?" Why would someone come into my laundry and step towards me
like that?

So you're just unloading on this incident that's just occurred?---I'm having a – I'm
having a discussion with people that I trust because I didn't understand what just
20 happened, what unfolded.

And then you come over to Lyn right up to her face and you say:

Why aren't you speaking?
25

?---No, that's not true.

Why aren't you fucking talking?

30 ?---That is not true, absolutely not true. That is not true.

And then Parry said:

*Well, she's probably trying to figure out how the hell she's going to get through
35 ANZAC Day.*

?---Well, Parry could've said that, but Lyn may have been quiet and Lyn may have
been shocked, but I certainly didn't swear or anything like that. I had – as I said
once again, I had lots of conversations with Lyn. Lyn was my trusted person in my
40 life – the one trusted person in my life – I trusted in every aspect of my life, and I
would've called her in to have the conversation. Never, ever would I have yelled at
her or abused her.

Well, it makes sense for Parry to have said something like that on this date, because
45 ANZAC Day's your busiest – well, ANZAC Day and around that period, that's your
busiest period of the year, isn't it?---It certainly is the busy – it's certainly a busy –
it's the absolute busiest time of our year.

Then a day or so later, you realised that you'd had this inappropriate – or you'd acted inappropriately in how you handled the situation with Julie?---In hindsight, not – the word “inappropriate” is not correct, but certainly the situation could've been handled differently. I - - -

5

Can I ask Mr Wetherall to be shown exhibit 17, please. You were taken to this in your evidence-in-chief?---Yep.

Julie says:

10

Wayne, thank you for your text and heartfelt message. I accept your apology.

So you apologised to her?---I acknowledged yesterday there were two of us involved in an ugly exchange.

15

Sorry. Can you just – can you say that again for me, please?---Well, just – you've got the document here as well.

Yes, I do, and what did you say, sorry?---What it says in that.

20

So I'm reading page 192 at the bottom right?---Yep.

It says:

25

Wayne, thank you for your text and heartfelt message. I accept your apology.

Apologies. Sorry. You're wanting me to read the rest of the sentence?---Yeah.

30

Okay. I accept that that's said in the rest of the sentence, but what I want to ask you about is – she says:

I accept your apology.

35

So do you recall that apology?---Yeah, I would've apologised, because, once again – once – I don't want anybody to feel – you know, if – that could've been handled differently. There's no question about that. It could've been. Like, right from the start I spoke to Julie about the interviewing style, like, getting pushed up against my washing machine. It could've been handled so much differently.

40

So you apologised to Julie?---Yeah.

You asked Lyn to reach out to Julie on your behalf, because Julie had blocked you?---Julie hasn't blocked me. She's responded to me.

45

She sent you – well, you sent her flowers, didn't you?---Yeah, of course I did.

To apologise?---Well, I did apologise.

And you offered to pay for an overseas trip for her and her partner?---No, that's not true. I need to clarify that, because it's the same trip that Angelo's doing. Because I can't – we can't sell a trip unless someone goes and does it, so someone has to go and be the – go and suss out the trips for us, be it Borneo, be it Italy, be it Kokoda.
5 Someone has to be the expert on it, and I offered them – and I'd already spoken to her about these opportunities before and she'd been to Borneo with me, she'd been to Kokoda, and that was an opportunity to go and do the Italy/Swiss trip, because I cannot in our businesses sell a trip that not one of my staff or myself has been on to explain to our trekkers, and that's what that was about. That was a genuine offer of,
10 "Let's move forward."

And she declined that?---Well, I don't know if she – well, clearly, she can go.

So what I'd suggest is that you apologised, you sent flowers and you made this offer
15 of a trip, because you realised that you'd acted inappropriately in the way in which you'd acted to Julie on that day?---Not inappropriately, but certainly it could've been done differently. I acknowledge that things could've been done differently when I approached her about her interviewing style, maybe I – how I'd done that, but certainly – I don't know how I do anything differently, being inside my laundry.

20 It was her fault for approaching you in there?---Well, it's my laundry.

On the 27th of March 2020, you'd been in Darwin with your current girlfriend then you came back to Queensland on the 25th?---No, it's not my current girlfriend.

25 Who was she?---Sorry, what was - - -

Who were you with in - - -?---What's your statement?

30 Who were you with in Darwin, such that you returned to Queensland on the 25th of March 2020?---Yeah, with my partner at that time.

I see, your partner. Apologies. So you spoke earlier in evidence-in-chief about a last flight out of PNG. What were you referring to when you said that?---The borders
35 were closing down. Like, I just got back out of Papua New Guinea then the international borders closed.

So were - - -?---That was early March, and then the one you're referring to is the 25th of March coming back out of Darwin back to Brisbane, when the Queensland
40 borders closed.

I see. Okay. So when you got back on the 25th, there was a conversation in the office on the 27th. Again, you were in a bad mood?---I'm not in a bad mood. There was certainly some anxiety there. There's no question there was anxiety. COVID
45 was evolving. The world was changing. There was certainly some – certainly some stresses in my life. There's no question about that.

Well, you're in a particularly bad mood this day when Lyn would ask you
- - -?---No, that's not true. I was not in a particularly bad mood. I certainly had
some anxiety.

- 5 When Lyn would ask you questions, you told her to fuck off?---No, that's not true,
absolutely not true. That is such a lie.

- This is first up in the morning on the 25th, you guys have a meeting in the office.
You say to Christine that there would be reduced hours and she wouldn't be needing
10 to come in from that point?---Sorry. Which date's this again?

This is on the 25th of March – sorry – 27th of March 2020?---All right. Twenty-
seventh of March, they were stood down.

- 15 Well, what I'd suggest is this is how the conversation happened. You said to
Christine there'd be reduced hours, she wouldn't need to come in from that
point?---No, they were stood down.

- 20 Lyn was still going to be coming back in on the Wednesday?---Correct, because she
was the only person that could do the pays, but she was stood down as well.

- Well, no, she was going to come in and do the shit jobs that you didn't want to
do?---There's no shit jobs. She came in – if paying the payroll is a shit job, then so
be it, but I never said the word "shit". I said, "Come in. You're the only one that
25 can do the pays."

So you didn't say, "You can come in and do the shit jobs", that you didn't want to
do?---Absolutely not, definitely not.

- 30 So it was a conversation all about the impact of COVID and you were saying that
you were going to have trouble paying BASes, etcetera?---No, I never mentioned
anything about BASes or anything like that. That was not a conversation at all. The
conversation was around about her long service leave.

- 35 You were worried about the state of the business?---Absolutely.

You were trying to reduce working hours?---I wasn't trying to reduce them. We had
no working hours. We were stood down.

- 40 Lyn was – well, you keep saying this word "stood down"?---Yep.

Did you actually use the word "stood down" during this meeting?---Absolutely, I
did.

- 45 You say you did?---Absolutely stood down. We're all stood down.

Okay. So can you just describe in your words how you told them that they were stood down?---We were sitting around the kitchen bench there and I said, “Guys, we’re all standing down.” Christine Wilson said, “I’m standing down.” I said, “Okay. We’re all standing down, guys. There’s no work here.”

5

So Christine volunteered first that she was standing down?---And then we said we were stood down.

10 So Christine used those words as well, “stood down”?---Yeah, we’re all – I clearly verbalised to the staff sitting there that they were stood down, including myself. We were stood down.

15 Lyn suggested to you that you could call your accountant to try and sort it out?---Lyn asked me to ring my accountant often. She said, “Wayne, you need to find out about JobKeeper. You need to find out about this. There’s lots of grants.” And I said, “Lyn, I’m trying. I’ve already been on to my accountant. I’m trying to find out what’s going on.” I kept saying, “Please give me some time to let me find out. This is going to unravel.”

20 So you - - -?---“I don’t know at the moment. It’s still happening and I’m asking for time. Just give me some time. I’ve already spoken to my accountant.”

25 So what I was going to put to you was that you snapped at her and shut her down?---No, I didn’t snap.

30 So you accept that?---There was certainly some – I was certainly getting badgered – consistently getting badgered about the same thing about long service leave and I kept repeating the same thing, “Please give me some time to work this out. This is an unfolding situation. I don’t know how this is going to” – “I don’t know how this is going to end. I don’t know. Please just give me some time.” That was my repeat thing to her. “Please just” – “I’ve never let you down before. Please just give me some time.”

35 You were frustrated?---Frustrated, absolutely, anxiety, and I kept asking, “Please just give me time.”

40 This is first up in the morning, then mid to late morning you call Lyn outside to have a chat out the back in the pergola at your house?---No, no. Lyn actually asked me to come outside.

Well, I’d suggest that you did that, because you didn’t want to talk in front of Christine?---It was about Lyn’s long service leave. She asked me once again about her long service leave.

45 Well, I’d suggest this is the first conversation. It didn’t happen on the 26th. It happened on the 27th?---It happened on the 26th and the 27th.

Well, this conversation, you walked outside - - -?---It happened on the 23rd – 23rd as well in Darwin.

5 You went outside, closed the door to the house. Lyn said something like – or words to the effect of, “My long service is due. It would be good if I could draw down at least a day or so of that a week”?---Lyn’s long service leave wasn’t due. This is – this is March. Her long service leave wasn’t due to July. She wasn’t entitled to it at that stage.

10 That was the point at which she’d reach 10 years service?---According to the – yep.

Any discussion about pro rata long service leave?---There’s no – there’s no facility for me to pay pro rata.

15 You said:

I’ll get you in, as I need you to do the shit jobs I don’t want to do.

20 ?---No, that’s not true. I said to Lyn, once again – I’ll repeat the same conversation – “Lyn, please give me some time. Just give me some time to see how this is going to unravel, how this is going to unfold. I’ve never let you down” - - -

What I’m suggesting to you - - -?---“I’ve never let you down before. Just give me some time.”

25 What I’m suggesting is you did repeat the same conversation. Again, you said:

I’ll get you in to do the shit jobs that I don’t want to do.

30 ?---That is so not true.

That was maybe a day or two a week or fortnight?---I would’ve had a conversation with Lyn that, “We can work through this together.” Like, “You and I are a team”, but never the word “shit jobs” were ever used. That’s so untrue.

35 But she was – there was still the expectation she was coming to do more work?---She was coming in to do the pays on the 1st of April.

40 And that was it?---That’s it.

You had no expectation that she’d come in after that?---Well, I did ask her. I said, “Can you come in on the Thursday and let’s see if we can form a plan as a team.”

45 This is the conversation you had on the 1st, though, wasn’t it?---Yeah, quite possibly. Yeah.

Yeah, so not this conversation?---Look, for my conversation it's, like, "Come on, Lyn, we can work this together. We can work this as a team and get through this."

Well, then, during this conversation you also said to her:

5

I'm worried about you.

And she said:

10

Why?.

And you said:

15

I'm worried you're going to come after your super.

?---Well, I was worried about Lyn at that stage because what – no one's mentioned on the 23rd of March when I was still in Darwin, a phone conversation where Lyn said, "Wayne, give me my long service leave" - - -

20

Well, no?--- - - - "and I'll leave."

I didn't ask you a question in respect of that matter?---I'm sorry.

25

The reason you were worried about the super is because you'd already had to pay Seran and Julie their super?---We didn't – we hadn't – Lyn and I hadn't had an agreement about the – she was a contractor up to about 2017.

30

Well, no. You had a written agreement?---Yeah – no, but – yes, I agree that the contract is there. I've got the contract in front of me there. But we had a – prior to that, the other documentation that Lyn came to me about when she acknowledged that she was a subcontractor and she was responsible on her own ABN in paying her own tax and her own superannuation right up to 2017, I signed this document and I honour that. And, you know what, I've paid her long service leave and the superannuation is – been done with the ATO as well. So all benefits have been paid or are in the process of being paid to Lyn.

35

Yep. It was the fact that you just had to pay Seran and Julie their super that prompted you saying to Lyn:

40

I'm worried about you. I'm worried you're going to come after your super.

?---No, that's not true. I was worried about that comment she made to me, "Pay me my long service leave and I'll leave." I said, "What is that about?"

45

So she said those words?---Absolutely.

"Pay me my long service leave and I'll leave"?---Yeah, absolutely.

Well, I'd suggest she didn't - - ?---And that's why I was concerned. That's why I'm going, "Where does that come from? I don't understand where that conversation came from."

- 5 I'd suggest she didn't. She said, "Pay me my long service leave"?---I can tell you that was said.

All right. She said:

- 10 *So it's okay to give Seran her outstanding super, it's okay to give Julie her super, but stiff shit, Lyn.*

?---No, I never said the words "stiff shit."

- 15 She said this to you?---That's not – that is – she said, "Stiff shit, Lyn." Well, she might've said that, but I certainly didn't say that to her.

- Do you recall her saying that?---I don't actually – I actually don't remember saying that – about that. She may have mentioned the Seran and Julie superannuation to me,
20 but I don't remember saying, "Stiff shit, Lyn." That's – I don't – that never happened.

So just to be clear, I'm saying that she said to you:

- 25 *So it's okay to give Seran her outstanding super, it's okay to give Julie her super, but stiff shit, Lyn.*

?---No.

- 30 No. You said:

Well, I don't trust you.

- ?---I had some – I did have some concerns there, because she kept asking me about
35 the long service leave. And I said, as I refer back to the conversation on the 23rd of March when she said, "Pay me my long service leave and I'll leave", and I'm going, "I don't actually understand. What is that about?" I never saw that. I never saw that coming. I never saw that – those reasonings for that.

- 40 So you said:

I don't trust you.

- ?---It's quite possible I said – I had an open, honest conversation with Lyn.

- 45 And she said:

After this long, all of a sudden you don't trust me.

And you said:

5 *I don't think I should have to give you super.*

?---I don't recall that at all.

That wasn't your sentiment at the time?---No. Could you repeat that again, please?

10

She said:

I don't trust you.

15 ?---She said she doesn't trust me?

No. Sorry. Apologies. You said:

I don't trust you.

20

You said – no, apologies. You said:

I don't trust you.

25 She said:

After this long, all of a sudden you don't trust me.

You said:

30

I don't think I should have to give you your super.

?---No, I – the conversation about trust did happen, but the conversation about super I'd have to dispute it because I don't remember. But the conversation about trust did happen.

35

But that was the sentiment - - -?---There was a trust conversation.

That was the sentiment you had at the time, is that you didn't believe that you should have to pay her her super - - -?---No, that's not - - -

40

- - - because of the arrangement you had before the contract?---Well, my understanding was that I had paid her correctly. That's the truth. I actually thought I paid her correctly.

45

So that was the view you held at the time - - -?---Yeah, absolutely.

- - - but you don't recall saying those words?---No, I don't, but I certainly – with the other – first-half of that conversation you said – I can't remember what you said, but the trust thing did happen.

5 You said:

I'm not going to give you your long service. Bill's still working and you don't need the money.

10 ?---I did mention – yep, I did mention the conversation. Once again, “Lyn, please give me some time”, because Lyn did actually ask me. She said, “Wayne, please give me at least two days a week because I can buy the groceries.”

And then you said:

15

I want you to shake my hand. I want a handshake agreement - - -

?---No, no, can I just finish – and I said I - - -

20 Well, no, no. You've answered the question, thank you?---Okay.

You said:

25

I want you to shake my hand. I want a handshake agreement that you're not coming after your superannuation.

?---We had a handshake agreement and it was about, “You and I, we're going to get through this together and we're going to make this work.”

30 That wasn't it. It was you wanting her to shake your hand to acknowledge that she wasn't coming after her super?---We - - -

Do you accept that?---We – no, I don't accept that. We shook hands - - -

35 And she shook your hand and she said:

Whatever, Wayne.

40 ?---No. We shook hands to say that we're going to get on with this and we'll work through this together.

Lyn then went back inside and sat at her desk. You came back in after that and you were still in that foul mood. In fact, you were swearing all day that day?---No, that's not true.

45

And, in fact, it wasn't uncommon for you to be swearing around the office generally?---You know what? The occasional F-bomb happened and everyone in that office swore.

5 Then on the 1st of April 2020 – so this is now – we're moving forward to the Wednesday.

COMMISSIONER: Is that a convenient time, Mr White? It's 1 o'clock.

10 MR WHITE: It would be, Commissioner.

COMMISSIONER: We're moving on to the 1st of April and we might pull it up there. Right. We'll adjourn to 2.15. Mr Sapsford, you can give Mr Wetherall the instruction with respect to what he can and can't do over the lunch break.

15 MR SAPSFORD: I have and I will again, your Honour.

COMMISSIONER: Thank you. Adjourn to 2.15.

20 **ADJOURNED** [12.54 pm]

RESUMED [2.16 pm]

25 COMMISSIONER: Take a seat. Thank you. Mr White.

30 **WAYNE WETHERALL, CONTINUING** [2.16 pm]

CROSS-EXAMINATION BY MR WHITE

35 MR WHITE: Mr Wetherall, before the break we just finished up on the 27th of March 2020. I'd like to take you now to the 1st of April 2020. That's a Wednesday. You and Lyn and Christine came back into the office on that date?---Correct.

Do you recall that?---Correct.

40 Lyn and Christine both went in at the same time about 10 am?---That's quite possible, yes.

And they ended up being there for about five hours?---Five hours – around the five hours, yes.

Christine said to you that she had just come in to give Lyn a hand?---Yes.

5

And that she wasn't charging for the day?---It's there was no charge anyway. It was stood down.

So do you recall Christine saying that to you?---No, I don't.

10

At the time Lyn was dealing with – Lyn and yourself were in dealings with Paul Thomas, your accountant?---I was dealing with Paul Thomas.

15 You were talking about JobKeeper and trying to determine the hours of work that Lyn could do so she would be paid under that?---No, I was just talking to Paul Thomas about JobKeeper and generally how I keep my business going.

20 And Lyn said words to the effect that JobKeeper was to assist with wages, not to replace them?---I don't know what Lyn's words were, but I was talking to my accountant in regards to what – when JobKeeper was coming in and how JobKeeper was going to work. That's how I can recall having conversations with my accountant.

25 You don't recall having a conversation with Lyn about JobKeeper?---I had conversations with Lyn – if that was that specific I can't tell you, but clearly I had conversations with Lyn on that day.

30 You were at the time trying to get your daughter, Alicia on to the Kokoda Spirit JobKeeper role?---No, look, not at that stage, because JobKeeper to my knowledge at that time – I could be really wrong – wasn't – hadn't even been finalised. It was still in really early days, so I would have had conversations with Paul Thomas, my accountant, where we're at as far as the business was concerned and what was necessary.

35 So do you accept or deny that you had a conversation with Lyn on that date about you trying to get Alicia put on JobKeeper?---No, I – I won't accept that, because I don't know if that's specifically that day or if I spoke to Lyn about that.

40 Do you know if you spoke to her at all about that?---No, I can't – seriously, I cannot recall if I actually spoke to her about that.

Okay. Parry was there also for a period. He was updating Lyn's work iPad and iPhone so that she could work from home with them?---Correct.

45 Then he finished them and said to Lyn, "They're ready to go". Were you there for that?---What's that sorry? I missed what you said.

Just Parry said to her, "Okay, there you go" and gave her the iPad?---Look, I – no, I
- - -

5 You don't remember that. Okay. You came in to the office and you were standing
over Lyn at this time?---I wasn't standing over Lyn.

10 You were in a foul mood. You were grey in the face and you weren't talking to
her?---No, that's not true. I can't tell you if I was grey in the face. I didn't look in
the mirror, to be honest with you, so - - -

You were ignoring her at the time?---No, that's not true. They were doing their work
and I was just doing my stuff.

15 You were under a fair bit of stress this day, though, weren't you?---Yes, absolutely.
There's some anxiety in my life.

Were you agitated?---I wouldn't say I was agitated. I, certainly, had some anxiety.
My anxiety levels were high.

20 Did that come across in your dealings with Lyn and Christine?---Well, maybe it
came across that way, but I'm saying I had some anxiety there. The world was
changing very quickly.

25 Lyn left at 3 pm?---I can't tell you. I don't know. She left without saying goodbye,
so I didn't have a confirmed time.

Well, she, I'd suggest to you, did say goodbye. She said to you that she hadn't eaten
all day and that she was late for an appointment?---No, that's not true.

30 You asked her if she could come in the following day, being a Thursday?---Yes, I did
ask at some stage to come in. Yes.

35 So that did happen. It just didn't happen at the end of the day?---Yes, I don't know
what time it is, but I did actually ask her to come in on the Thursday – if she could
come in and help and we can work through some programs.

She said she had already committed to something that day?---Correct.

40 She said, "Well, you didn't want me in here all week" or for the whole
week?---Well, it's – yes. Yes, that's correct, because we had stood down – she was
just asking if she could give me some guidance. That was all.

45 Well, you said, "Come in tomorrow and we can update the files". You saw it as an
opportunity to do some legacy work for the business. You were talking about
updating the files, updating the marketing websites, etcetera?---Yes, I wanted – yes,
seriously, I wanted to see what we could do to stay afloat.

So the expectation was she was going to come in and keep doing some work with you?---The expectation was just come on the Thursday and talk to me.

Well, was she stood down or not?---Yes, she was stood down.

5

But you had an expectation she was going to come in and keep doing work for you?---No, expectation as my office – and who I thought was a friend.

10 So, what, she - - -?---That we could work through this. We were just going to try and work through where we could be at. Whether - - -

15 So when you say as a friend, you meant she would help you out for free?---No, she would come in and just talk how we can keep the business going, because we were – it was a – it was a – it was a long – long-term working and friendly relationship we had there and I just – “Can you come in. Can you – can we talk about how we can get this better?”

20 She said that she couldn’t come in on the Thursday because she had something else on. You said, well, what could she possibly have on?---I don’t know. But she did tell me she had something else on.

You said, “You’re supposed to be in lockdown”?---No.

25 “So how could you have something on on Thursday”?---No, I never said that. But I – no.

She said she could come back in on the Friday?---No, I don’t recall that either.

30 Or possibly the Thursday afternoon?---No. No, I don’t recall that either. It was a clear, “I can’t come Thursday”.

Okay. She then left the office. You tried to call her after that?---Yes, I – I believe so, yes.

35 She tried to call you back twice and left a message?---I don’t recall a message, but, yes, she – according to the paper where she did try to ring me back, yes.

Then moving to the next day, the 2nd of April. This is now a Thursday?---Yes.

40 She sent you a text saying she could call you at about lunchtime?---Yes, quite possibly. I don’t have it in front of me, but, yes, we did – we did – yes.

45 And this time she called the office line on a private number at lunchtime?---Well, it wouldn’t matter. It comes through on the office phone, anyway, regardless if it’s private or public.

And you answered it?---Yes.

And you had a conversation?---Yes.

For about an hour or so?---I couldn't tell you if it was an hour. That seems quite a long time.

5

Half an hour?---It was, certainly, less than half an hour, but it could have been half an hour, but I don't know how long it was. It, certainly, could have been 20 minutes, but it was – certainly a conversation took place.

10 And during that conversation you were angry?---No, I wasn't angry. I asked questions.

You were swearing at her?---Definitely not swearing.

15 Every second word was "fuck"?---No, that is not true.

You said you had never been so disrespected in your whole life?---No. I did ask her about why she disrespected me on the Wednesday. I did ask that question.

20 You were referring to when she left at three and said she had to go?---Well, no, she didn't – didn't say goodbye. That's the whole thing. She didn't – just left and disappeared and I was quite surprised by that. That was all.

Well, you were incensed by that?---I wasn't incensed, no.

25

You were angry she didn't make eye contact with you?---No, not angry.

You raised that with her. You said – you raised with the issue that she didn't make eye contact with you on that day?---No, I never said that.

30

She said she never meant to insult you?---She probably could have said didn't mean to insult, because she did apologise and she - - -

Well, she apologised four times?---Yes, three or four times she apologised.

35

You mentioned that in your evidence-in-chief?---Yes. No, no, she did. And, clearly - - -

Why did she – why did she need to apologise four times during the course of the conversation?---Well, you would probably need to ask her, because it's – clearly she must have done something to - - -

40

She apologised four times because you kept berating her about her conduct from the day before?---No, I didn't berate her. That is not true.

45

She explained to you that she had a commitment on the Gold Coast and that's why she couldn't be there?---No, she didn't – never mentioned the Gold Coast to me at all.

5 It concluded by you saying, well, maybe she should keep her distance from you for a while?---No.

Are you sure?---Yes, not distance for sure. It could have been something in terms of, like, "We will just have some space and let's work through this". The word would
10 have been "space", not "distance".

She should keep some space from you for a while?---No, we should just have some space and work through this.

15 So you're saying this wasn't a tense kind of conversation?---No. Look, there's – Lyn and I have a really – as I said, I have an open – really open conversation and it was – that was the conversation, you know.

If it wasn't a tense conversation why would you need to conclude it by saying, "And
20 we should keep some space"?---Because we were just working, because the conversation – clearly, there's some tension. There's clearly – there's tension, but not aggravation or aggression.

Wasn't it your intention that she would keep working with you and you guys would
25 work through it together?---No. At that stage we were all stood down, so it was – it was a matter of just seeing how things unfolded at that stage.

Okay. Well, on this matter of being stood down, I ask for the witness to be shown
30 exhibit 5, please. These are some messages that you sent to Lyn?---Yes.

This is on the 3rd of April?---Yes.

All right. So this is the day after that conversation?---Yes. This is on the – the 3rd is
35 a Friday, I think. Yes.

Saying:

Hey, Lyn, give me a call, please.

40 ?---Yes.

Continuing:

*Hey, Lyn, I realise you are sick and stressed. Can we please have a
45 conversation and try and clear the air.*

?---Yes.

Continuing:

Have a long history and our relationship is worth fighting for.

5 ?---Yes.

Again, this is borne out of the conversation from yesterday, isn't it?---On the – on the Thursday?

10 From the Thursday, that's right, the day before?---Yes, I'm not sure if I'd received the doctor's certificate by this stage.

Well, in the next message you must have received it by that stage. At 2.38 you say:

15 *Hi Lyn, sorry to disturb when you're sick.*

?---Yes.

Continuing:

20

Is it possible for you to leave the iPad somewhere so I can pick it up –

?---Yes.

25 Continuing:

...so Christine can work from home while you're off work.

?---Yes.

30

So you used those expressions there. There's no reference to her being stood down in there, is there?---There's – stood down on that – on that Friday they were stood down.

35 Yes. But there's no reference in that message to her being stood down?---Not in that message there's not.

What you're saying in that message really is, "You're sick, so you're away from work. Can you leave the iPad and the iPhone so Christine can do your

40 work"?---That – that text message was someone who actually cared about somebody and was a bit upset and worried about them.

Well, no, what this message indicates is that you've received a medical certificate and you're saying to Lyn, "While you're sick Christine is going to do your

45 work"?---Christine was just taking the iPad, yes.

So if we then go to – this is exhibit 6. And if I can ask the witness to be shown exhibit 6, please. So if you go to page 2 of that, please. That's the 3rd of April, so that's Lyn sending you the medical certificate?---Correct.

5 And then we go back to the page on 179. That's your response sent to her on the 6th?---Yes.

Now, I don't want you to tell me what the legal advice was, but you indicate in your evidence that you did get some advice from Aitken Legal between the 3rd and the 6th.
10 Is that right?---Yes.

Yes. Because now you're using that expression "stand down". And I'd suggest to you this is the first time you've actually ever used the word "stand down" - - -?---No.

15 - - - in your dealings with Lyn?---No. No, I'd actually – I've actually had conversations prior to that about being stood down.

And paragraph 4 there commences, you know:

20 *You and the other employees were stood down from your employment on the 27th of March due to a stoppage in work.*

And, in fact, you indicated during your evidence-in-chief before that there was – you were all stood down because there was no work, but there was still work to be done
25 in the business during this period, wasn't there?---No. The only – the only thing that had to be done was the – was the salaries.

So you didn't have trekkers calling in saying, "We've heard about what's happening with COVID"?---Well, I was there – I was – I was there in the office.
30

So you were still working there?---Well, I'm the – I'm the managing director and the boss of the business. I'm going to pick up the phone if it rings.

So what did you mean before when you said that you were stood down as well?---Well, the thing is the business was stopped. As a business we were stood down.
35

Okay?---Like, I stopped receiving pay as well.

40 What I suggest is that you hadn't indicated to Lyn that she was stood down?---No, I had indicated that Lyn was stood down. Very clearly on that Friday that she was stood down. Christine and Lyn very clearly was said the words "stood down".

Okay. Well, on that day why was Parry in there updating Lyn's iPad and iPhone so that she could continue to work from home if she was stood down?---Well, that was previously organised and things like that. We were trying to work through how –
45

how this pandemic was going to – and Lyn asked if she could have the iPad and I accepted it. “That’s no problem, you take the iPad”.

5 So you say to Lyn, “You’re stood down” and she says, “Can I have the iPad and the iPhone, please”?---Yes. Yes, absolutely. She was stood down.

10 So for what purpose would she be using the iPad and the iPhone if she was stood down?---Well, just to – I don’t know, keep an eye on the business, keep an eye on the emails. I don’t know. I don’t know.

Well, that sounds like work?---Well, she was stood down, though.

15 What I suggest is the real reason why she was getting the iPhone and the iPad updated was because she was going to continue to work a day or two a week just like you told her on that day?---No, we hadn’t – we hadn’t agreed. At that stage, as I said earlier on, I said, “Give me some time to work through this”. And because we still had a – a good working relationship at that stage I just asked for – I said, “We’re going to try and work through” – my constant thing was, “Give me time. Let’s work through this”.

20 Well, if I can now, please, take you to – in that bundle that you have in front of you there’s a note at the bottom that says page 181. This is Lyn’s response to you. She says she wasn’t aware she has been stood down. She has nothing in writing stating it and she doesn’t consider herself to have been notified. She says on the 27th of March
25 you instructed her not to come into work on Monday or Tuesday until you could sort things:

30 *At this time I was also instructed on the Wednesday that, “You come in on the Wednesday to do”, in your words, “the shit jobs you didn’t want to do”. Also I’m the only one in the company that could do certain tasks, which is the reason for you needing me to come in, which did occur for five hours. The events that took place didn’t align with a stand down. There was no formal notification.*

35 Now, again, isn’t that a proper summary of what happened on that day?---The formal – there was a formal verbal stand down.

40 If you then go to the next one. This is now on page 184. So now this is your version of events. You’re saying you were told that there’s no requirement in the Fair Work Act for you to give notice of standing down. So that second paragraph there:

I’m told there’s no requirement in the Fair Work Act for me to provide notice of standing you down, nor to confirm it in writing with you.

45 ?---In writing, yes.

Well, is that you saying you didn’t provide her with notice of standing her down
- - -?---No. I provided - - -

- - - because you didn't need to?---I provided her with notice of stand down on the – on the Friday.

5 Wouldn't you have said that in this email if you stood her down?---I stood her down verbally.

Wouldn't you have said, "Lyn, I stood you down"?---Yes, that's – it says in writing I stood her down verbally.

10 Whereabouts does it say that?---Well, I stood her down verbally.

It doesn't say that in here, though, does it?---No, but I did stand her down verbally.

15 Okay. What I suggest is that email there – that's you rewriting history about what actually occurred on the 27th?---No, it's not. I stood her down on the 27th.

Right. If you now then turn to page 186. So now this is you asking Lyn to attend a meeting with you on the 9th. Sorry, at 9 am on the 15th?---Mmm.

20 It said you've taken advice from your legal team and the QPS about "your unlawful obtainment and downloading and storage on two USBs of photos and videos from my personal Messenger account". So where did this information come from about there being two USBs?---I was informed from my employee, Christine Wilson and Carlie Brial.

25 So those are questions for her?---They - - -

Those are questions for those witnesses, are they?---They told me.

30 Okay. You've never seen them yourself?---I hadn't seen them at this stage. I hadn't seen them, but I was informed by them.

35 When you say "at this stage", have you ever seen a USB containing this material?---No, I haven't seen it. Sorry, I'm saying I had not – I was informed on that 8th.

It says at the bottom:

40 *The meeting will also cover your alleged overpayment of wages and holiday pay over a number of years.*

?---Correct.

45 And then you've got a statement there in inverted commas just about support people?---Correct.

This is after you've taken some legal advice about dealing with the matter?---Correct.

5 Okay. Then if you go, please, to page 188. It's the next document. So on the other line – the third one there you say:

My children and myself have real fears and anxieties over threats you've made to use the images.

10 So what threats did Lyn make to you?---There were – the threats were put through Christine Wilson and Carlie Brial - - -

So nothing directly to you that you can comment on - - -?---Not – I can't - - -

15 - - - or just what they've recounted to you?---I can't recall anything directly to me, but they came through a third party that they were going to use them against me.

Okay?---They were going to be publicised. They were going to be published.

20 All right. Well, I'd suggest that that's just not true?---Well, I suggest that's the information I received, that they were going to be put on the web - - -

And that's the most - - -?--- - - - to destroy my reputation.

25 Okay. So what will Christine and Carlie say – that that – I should ask – defer those questions. Yes?---I'm saying that's what – well, you need to ask - - -

Okay. So after this email exchange – then responded to you through her solicitors just saying she wouldn't be attending the meeting?---Correct.

30 Do you remember that?---Correct.

Okay. Now, the Facebook account – so your staff are expected to update the Kokoda Spirit Facebook page?---When a trek was out, yes.

35 Well, it was more than just that, though. It wasn't just when a trek was out, was it?---No, it was when a trek was out.

40 Well, you didn't ask them to have a look to see what other competitors were doing on Facebook?---Not on Facebook. Well, sorry, that may – that may have occurred, possibly. I can't - - -

It did, didn't it?---It maybe did. I cannot recall if it did or not, but the main task was to go on to look on – to update treks.

45 You'd sometimes ask them to log on to have a look at reactions to matters that you would put on your personal Facebook account?---No, not that I – no.

In terms of the treks, what they would do is they would go on to Facebook every afternoon or evening to update the page on where the trek was at the time?---Correct.

5 So they would wait for guides to call in and provide an update on the location?---Correct.

Seran would normally do that. Then when Seran left Lyn did it a little bit?---Lyn – I don't think Lyn ever did it. I could be wrong, but I don't think Lyn ever – Lyn didn't like to do it.

10 I would suggest that she did: that she was required to do that?---I would suggest she did it very rarely.

15 It was part of her employment obligation?---No, I'd suggest she did it very rarely.

You accept that, don't you, that it was part of her employment agreement that she would do that? She would update Facebook?---Well, yes – yes, it was part of her – but if she performed that duty, I'd dispute that she did it very often.

20 Were you ever in the office when they were updating Facebook?---If – if I was there I'd be doing updates myself – if I was in the office.

25 But if you weren't in the office you wouldn't know who was doing the updates, would you?---No.

So it could have been Lyn? So it could have been Lyn on any given day?---I can – I can tell you most days it wasn't, because it would be whoever – whoever else – it would have been Seran or it would have been Julie or it would have been myself.

30 Okay. So the system that you had was that you've got the computers set up in that office, so I think we looked at the two computers in that photo. They had a bookmark on the browser that you take – if you clicked on that bookmark it would take you to the Kokoda Spirit Facebook page. That's right, isn't it?---Correct.

35 So if they clicked on that it would go to the back end of the Kokoda Spirit Facebook page and to do that it would automatically be logged into your personal Facebook account?---No, they had to remain logged in. They had to go into log-in. If someone stayed – they could stay logged in if they chose to stay logged in, but they were supposed to log-in and log-out.

40 So who set that expectation for them they were supposed to log-in and log-out?---Well, that's the expectation when you go on to Facebook. You don't stay logged on.

45 Did you ever communicate that to anyone?---Well, quite possibly, yes, I did. I can't recall exactly when. This has been going on for eight years.

Well, I'd suggest you never communicated that to anyone?---I suggest that you log on [indistinct].

5 The system of work was that you can't – do you accept this proposition? You can't edit a Facebook page without being logged into a Facebook account?---You've got to be on a Facebook account.

10 And the system of work that you had at your work was that if you clicked that icon on the browser then it would log into your Facebook account and present in front of you the Kokoda Spirit Facebook page?---No, you had to go in – you had to go in and log into Kokoda Spirit Facebook page and put a password into it. If they left it open, yes, that's quite possible. They could just leave it in the bookmark there. If it – if they had already logged on and kept the log-on on, that's quite possible.

15 Can you comment on that? On the system that - - -?---Well, I'm not the expert on the Facebook, but all I know you've got to log on to a Facebook page. You've got to log on.

20 Okay?---You might want to ask an expert, but it's a log-on to go into Facebook.

All right. I think I've put it to you, but just to be crystal clear what I'm suggesting to you. You click on an icon and it takes you straight to the Kokoda Spirit Facebook page?---If you – if you're logged – if you're already logged on.

25 Okay. All right. Do you know what cookies are on a computer?---Sorry?

Do you know what cookies are on a computer?---No, not really.

30 Would it be the case that if the computer had saved your password by clicking on that icon it would automatically go to the Facebook page using your password and log you straight in?---If someone had saved my password that's quite possibly.

35 What if the computer had saved the password?---Well, I – the only way a computer would save the password is if someone actually actively saved the password.

I'd suggest that's not the case: that the computer could save the password?---Well
-- -

40 Can you comment on that?---Well, I can comment on it, but I'm not a computer expert. But I can tell you the only way you can do it is if you accept the computer to save your password. So someone has actually had to physically do that.

45 All right. What it would mean is if you were then logged into the Kokoda Spirit – or if you were updating the Kokoda Spirit Facebook page and it was logged in through you – because you're an administrator of the Kokoda Spirit Facebook page, aren't you?---Correct. Yes.

As I said before, you have to be logged into an account in order to access that page. If someone was in editing that page in your account all they would see on the screen is the Facebook page, the Kokoda Spirit?---If they're updating a trek. Correct.

5 So your personal messages would pop up on the screen?---No, only if you logged into Wayne Wetherall.

Okay?---That's my understanding. You'd have to probably ask the IT guy about that, but my understanding is it's -- Kokoda Spirit is -- you log on, you type in your
10 trek and that's it. The only way you could see my messages is if you stay logged on all the time.

Okay. Do you accept that in order to edit a Facebook page you have to be logged into someone's account?---Yes, you need to be logged on to Kokoda Spirit's
15 Facebook page.

I'm sorry, those are two distinct things. In order to edit a Facebook page you need to be logged into someone's Facebook account?---Yes, which is Kokoda Spirit's logged in -- Kokoda Spirit's Facebook page.
20

Okay. In order to edit a Facebook page you would have to be logged in to a person's personal Facebook account?---Well, it's the Kokoda Spirit's -- it's a company -- it's a company Facebook page.

25 Do you understand there's a distinction between a Facebook page - - -?---I do understand there's a - - -

- - - and a Facebook - - -?---I do understand there's a distinction.

30 And a Facebook account?---I do understand there is, yes.

What I'm suggesting to you is it's impossible to edit a Facebook page unless you're logged into someone's Facebook account?---Well, I don't -- I can't -- I - - -

35 You don't know?---Yes, I -- I'm sorry, I can't.

Who set up the system for - - -?---My IT guys.

40 So you didn't have anything to do with setting up the system?---No, it's not my specialty. My specialty is walking the track.

So who set up the system that - - -?---That's a long time ago. I -- it could have -- it's -- it, certainly, wasn't probably Parry to start with. It could have been Parry, I don't know. It could have been someone like Kook Multimedia. It could have been a few
45 different people set the system up for me.

5 It was before Lyn's time, though, wasn't it?---Not – the system has been upgraded so many times, so, yes – no, certainly, during Lyn's time Parry – we did new websites and new Facebook pages in the IT guy's we have now time. Prior to that the original one back in 2004/2005 was someone else, but the website and the Facebook pages have been upgraded over the years.

10 All right. Irrespective as to your involvement in that, I'm going to put to you that this was how it would work if you were going to update the Facebook page in your work. You could click on an icon that would take you to the Kokoda Spirit Facebook page logged in as yourself as Wayne. That was how it worked in your office. Do you accept that?---I accept that you had to log in to the Kokoda Spirit Facebook page.

15 Okay. That's – with respect, that's not answering the question?---Yes, I know. You're asking me the same question. I don't know the answer. I'm saying you have to – you have to – like, you log in to the Kokoda Spirit not Wayne Wetherall.

20 All right. This might be something that you can't answer?---Wayne Wetherall is a separate account.

25 All right. This is what occurred, is what I'm putting to you. When people were in updating the Kokoda Spirit Facebook page your personal messages were arriving on the screen? Do you accept that that was the case?---Well, you're telling me. I never saw that until – until I become aware of it.

Okay. That they wouldn't need to click on anything. They wouldn't need to log in as you. They wouldn't need to type in a password. These messages would just pop up?---If they were in the Kokoda Spirit Facebook page?

30 If they were on the Kokoda Spirit Facebook page logged in as you, your personal messages would pop up?---Well, I – I'm not sure about that – how that works like that.

35 Okay. And what occurred here is that when your staff were updating the Facebook page your messages were popping up. The messages that you were sending to and from other people?---When they were on the – so in the afternoons?

40 Whenever they were on the Kokoda Spirit Facebook page - - -?---So when would they be on the Kokoda Spirit Facebook page?

I'm sorry?---When would they be on - - -

45 You should be able to answer that question?---No, no, I'm not sure. They should be on there in the afternoons.

Okay. Well, when they were on the Kokoda Spirit Facebook page performing their duties as they are required to do - - -?---Yes.

- - - in order to meet their obligations to you, their boss - - -?---Yes.

- - - your personal messages were popping up on the screen?---All right.

5 They were messages that you were sending and receiving?---All right.

They were between you and other women?---All right.

Between you and your girlfriends?---All right.

10

Some of the messages that you were sending and receiving at the time were messages from you to women in which you were trying to get them to engage in group sex with other men?---Who would that be?

15 Actually, if you don't mind I will come back to that and take you to a message in which that occurs. Messages in which you were negotiating with your girlfriend about how many men she would agree to have sex with at the same time?---These are personal messages between myself and my partner.

20 So did you send and receive those?---I did receive messages like that, yes.

Sexually explicit messages from you to other employees of the company
- - -?---Sorry?

25 - - - based in PNG?---I sent messages to – to people in my personal Messenger.

Messages in which you made explicit statements?---I sent messages on my private Messenger.

30 So I'm suggesting to you these are the messages that were popping up on the screen at the time?---And I also sent messages to my children through Messenger and to other friends as well. It just seems surprising that's the only messages they saw.

35 Well, there were messages – well, it moved beyond messages. It moved to photos?---All right.

There were close-up photos of women's genitalia?---How did they see the photos?

40 How did they see them? They've popped up in the messages on their screen?---They didn't click on them.

No. Naked photos - - -

45 COMMISSIONER: You can send a photo opened in Messenger. So you can just open the message and there's the photo. If the photo – and if it's just popping up and there's the photo. You're familiar with that aspect of the technology, aren't you?---Yes. Yes. It's a little box down the bottom there.

When you're live messaging photos come up. You can send the photo direct. Boom, it comes up. It's a pretty common experience with Facebook Messenger. It doesn't have to be clicked on.

5 MR WHITE: Have you ever had that occur on other devices that you've been using before?---No.

Have you ever logged into a computer and accessed Messenger?---I've logged into my Messenger, yes.

10

Yes. On a computer?---On a computer, yes, I have.

When you've received a message from someone else has it popped up on the screen?---Yes, but it was my Messenger. I thought it was on my Messenger screen.

15

Okay. But do you accept you've been on Facebook before?---Yes, I've been on Facebook.

You've received a message from someone?---Yes. Because I've been - - -

20

And the message block has popped up on the screen?---Yes, because I've been communicating with them. Yes.

So without you instigating anything or clicking anything the message bar pops up on the screen?---Yes, the - the little square down the bottom comes up or there's a little message mark there that says there's a message there for you to look at.

25

So in your workplace this is what the women were seeing. They were seeing naked photos your girlfriends, naked photos of you. Were you sending those kind of messages during this period?---I was sending them to my partner, yes.

30

And photos of you performing oral sex on other men?---There was photos for my partner, yes.

35 Photos of you being penetrated by other men?---Photos - messages to my partner.

Having sex in a group?---I don't know, but there's photos for my partner.

If I can take you, please, to exhibit 7. So if you turn to page 363, 364, 365, 366.

40

You asked me who these women were. There's a reference there to Liss?---Yes.

That's who it was with?---Yes. Yes, that was my partner.

Yes. And if you then, please, have a look at exhibit 16?---Which one is that?

45

So you were taken to these in your evidence-in-chief. So I'd suggest to you this is a photo taken of your work computer?---Yes.

Your computer is at work and that's an indication of some of the messages that were popping up on the bottom of the screen on your work computers?---Mmm.

So can you comment on that at all?---Yes, I sent those messages.

5

What about the fact that they were popping up on the computers - - ?---I had no – I had absolutely no idea that anybody else was seeing these messages. I thought these were private messages between myself and my partner. I had no idea these were popping up. None whatsoever. And no one ever brought it to my attention ever.

10

If I could ask for the witness to, please, return exhibit 19. So I've taken you to some of the messages that Lyn saw. I've taken you to some of the messages that Julie saw. These are now the messages that Seran saw. You asked about an employee. This appears to be with Helen Tuakara. Was she an employee?---She was at one stage and not – early on in the piece she was.

15

So these are just some of the messages that Seran saw. She also saw a message exchange in which you told Helen – you told Helen that she should organise a hotel for you when you land in PNG so that she could be there to perform oral sex on you. Do you recall sending that message in this exchange?---Well, it's probably – it's probably more than likely I sent a message like that to Helen, yes.

20

And she would be compensated with a bottle of Johnny Walker Red?---Well, she always wanted Johnny Walker. Yes.

25

So I'd suggest Seran saw these messages pop up on her screen. You accept you were sending messages along those lines?---Yes, I'm sure – I don't – I don't have date clarify on that but, certainly, I – I sent messages. So there's no denying I sent messages.

30

So, Mr Wetherall, these are the messages that were popping up on your work computers. This is in a place of work where you're a director of the company. So you're responsible for that place of work, aren't you?---Yes, I'm responsible for the place of work, yes.

35

What steps did you take to identify the process that the staff were taking in order to update matters on Facebook? So what process did you set for them to update things on Facebook?---Just to get on and log on to – on to Kokoda Spirit's Facebook page and upload the treks in the afternoons. That's it.

40

Did you explain to any of your staff how to do that?---A long time ago. How – how to do a Facebook post was pretty – pretty easy to do a Facebook post.

45

How did you know how they were logging in to the computers in order to update the Facebook page?---Well, I'm assuming they had to log in to – to the Kokoda Spirit page that had been set up for them.

By whom?---Whoever set the original Kokoda Spirit Facebook page, the log-ins on for them.

5 All right. This was before Lyn's time, though, I'd suggest?---No, no, the log-ins changed regularly.

What about the system of work where Lyn was required to update the Facebook page, how was it explained to her how to do that?---Well, I don't – once again, I think Lyn rarely did Facebook updates. In fact, she – she's very anti – she would tell
10 me she was very anti-Facebook.

Okay. So you can't describe the process that you had in place in the workplace - - -?---Go into – go into Kokoda Spirit Facebook page, log on, do the post, tell the – like, the post is the trekkers are in such and such camp and that's it.
15

That was it?---Out you go. It's a five, 10 minute exercise, that's it. Log off. Simple as that.

20 So go on to the work computers?---Go on to the Kokoda Spirit Facebook page.

Go to the Kokoda Spirit Facebook page?---Log on. Log on.

Update the account?---Update it and log off.

25 Okay. All right?---It's a – it's a five, 10 minute process.

So the allegations regarding the USB that we were just talking about before, that's just not true. There's no USB with all of your material on it?---Right.

30 Lyn never downloaded anything on to USB?---Right.

How would you describe Lyn's technical prowess with computers, USBs and things like that?---Well, I wouldn't know what her prowess is like. I don't – I don't know.

35 Well, sure - - -?---She was the office manager, so she - - -

She was your office manager?---Yes.

40 You were relying upon her to do all of this stuff?---Yes. No, I'm saying she was the office manager, so she's clearly quite competent in handling office computers.

Well, I'd suggest to you, with respect to Lyn, she's not particularly technologically savvy. Do you agree?---No, I'm not saying that at all. She – her job – role as office manager was to utilise – if she was unsure about how the computer worked or had
45 computer problems to ring the computer guy.

All right. Have you ever seen her use a USB?---I can't -- it's not something I stated if she -- USBs -- plugging into the -- into a computer, it's quite simple. It's a very simple process of plugging a USB in.

5 Have you ever seen Lyn do that?---I can't say I've ever seen Lyn do that, no.

In respect to these other allegations regarding over-payment, Lyn never over-paid herself. That the increase from \$45 to \$50 was agreed with you in 2018?---No, I -- I disagree with that.

10

So, again, you're a director of this company. You had access to the accounts. And, in fact, I think you said in some evidence before you weren't authorised to do pays in your own company. That's just rubbish?---No, I wasn't. I didn't have access to Xero. I had none of that whatsoever. I didn't do that. That was not my responsibility.

15

You're a director of the company and you didn't have access to it?---It's like anyone -- it's like -- the director in any company doesn't do the payrolls. I didn't do the payroll.

20

So you didn't have access to Xero?---No, absolutely not.

How did you know how much the staff were being paid?---Well, I didn't.

25

Any of the staff?---No. Well, we had certain conversations that we spoke about earlier on which I understood the original wages that they weren't on -- hourly rates that they weren't on was -- is what I understood that they were still on.

30

Okay. When you did your financial statements at the end of the financial year did you sign them to say they were accurate?---This is the tax -- this is the tax ones.

The tax and your financial statement?---Yes, tax. Yes, tax. The tax.

35

Yes, so that's the tax?---So reporting to the taxman, yes. As a director I had to sign off on that when I went to my accountant.

40

What about the financial accounts as distinct from the tax returns?---No, these are tax returns. I didn't have to sign off on the financial accounts. Anything -- what I was required to send to the tax man.

45

When you were doing that did you ever have regard to how much you were paying your staff?---I didn't do the BAS. Someone else in the office did the BAS. I didn't -- I went and saw the accountant and he said, "Wayne, this is what you're paying in tax. Sign the document".

Did you – you said before if there had been an increase in Lyn's pay from 45 to 50 an hour then it would have been in writing?---Yes, it would have been a new contract, because Lyn was quite pedantic about contracts and paperwork.

5 What about the other staff, what – did they have written contracts?---The new – the new staff did. Certainly, in the early days, as we've spoken about earlier on, there was – there wasn't the contracts in place until 2017.

And Lyn had had pay increases in the past, hadn't she?---What's that sorry?

10 Lyn had had pay increases in the past?---Well, as you said earlier on, Lyn went from \$25 an hour.

And none of those were documented?---Not that I can recall, unless they were with my ex-wife. I – I wasn't party to that when that happened.

15 In terms of the days and hours of work – well, let's start by confirming – you agree Lyn should be paid for the days that she worked, don't you?---What's that, sorry?

20 You agree Lyn should be paid for the days that she worked?---I agree if someone comes to work they should be paid, yes.

How many weeks did Lyn work for in 2018?---Twenty eighteen. Probably 42 weeks. I'd have to look at the numbers there, but Lyn would have six to eight weeks off every year.

25

Have you looked at the numbers?---I don't have it in front of me, no.

But have you looked at the numbers before?---I – I've looked at the numbers after – afterwards, yes.

30

And what did you calculate?---Well, that she had paid herself 52 weeks a year.

When she should have paid herself what? How many weeks did she actually what?---She worked – I can't remember if it's 42 or 46, but she had paid an extra six weeks annual leave.

35

So I think you indicated before she would take about six to eight weeks leave each year?---Yes.

40

So 58 – sorry, 52 minus six to eight, that's not 42 weeks, is it?---What is it? Forty-six.

Well, yes, it's certainly not only 42. Do you know how many weeks she worked in 2019?---I don't have it in front of me, but I know she finished around about the 1st of December.

45

What I'd suggest to you is that in 2018 she worked 48 weeks and she had four weeks of annual leave?---Right. When did she finish work?

I don't know. What do your records say?---Well, the 1st of December.

5

Which of your records say that she finished on the 1st of December?---Well, the 1st of December. I don't have it in front of me, but I have the 1st – roughly, the 1st of December. That's when she finished work.

10 And what document did you look at to figure out that was when she finished work?---That she didn't come back to work any more.

What document did you look at to identify that she finished work on the 1st of December?---The payslips.

15

Whose payslips?---The payslips that were – that she did through Xero.

20 So you're saying that - - -?---This is afterwards – after the fact. When I actually got access to what was going on in my business I was able to see how many weeks had been paid. Prior to this I had no knowledge.

Right?---I knew when she finished on the 1st of December each year and wouldn't come back until mid-January.

25 So these payslips that she completed - - -?---No, no, this is the – this is the Xero – from my understanding the Xero. Afterwards I saw – after this – you know, from the 8th onwards or from the late – early April onwards I was able to see what pays were done. That's when I started investigating what had happened.

30 And from Xero you could ascertain the weeks that she worked in 2018, you say?---When I got access to it, I knew that she left on the 1st of December or thereabouts. I could – it could have been the 30th or it could have been the 2nd of December, but she left worked.

35 Have you provided any of this material to the Regulator in this proceeding?---I'm not sure what has been provided to the - - -

40 What about 2019 and 2020, do you have accurate records as to the weeks that she worked?---The same time and another – there was a big trip to Italy. That was a considerable amount of time off work. That could have been 1st of December as well right through to mid-January.

45 I'd suggest to you that Lyn worked 46 weeks. She took four weeks of paid leave and two weeks of unpaid leave?---Yes. I don't recall that at all. Yes. She was gone for a long period of time there.

In 2020 she worked the whole period under her termination?---No, well, she didn't come back to work until mid-January.

5 What date?---I – I can't – probably around about – it could have been the 13th, 14th or 15th of January. I don't have the figures on me, but it was – it was closer to mid-January.

10 So you indicated that your accountant did an audit report for you?---Yes, we had a look at the figures afterwards.

Did he provide that to you in writing?---Yes, there's a figure on – on the hours done. Yes, the pays and hours and things like that was certainly done. Yes.

15 Again, have you provided that to the anyone in the course of this proceeding, that report?---I provided it to – I haven't provided it – I don't know – I don't have any information in front of me if it has been provided or not. But it was, certainly, supplied to Fair Work Australia. And it was, certainly – certainly, supplied to the police.

20 Those – you say it was provided to the police?---Mmm.

All you provided to the police was a two page statement?---With that information on it, the hours.

25 No, no, just a two page statement. Are you saying you provided more than just a two page statement to the police?---Well, about – about the times and about the hours of weeks worked.

30 I'd suggest to you, you only provided the police a two page statement?---All right. Well, it's – whatever that police report there – I thought it had the weeks of work on it.

35 No, it doesn't. Have you gone back through those written records that Lyn was preparing for all the staff in the office that indicate the hours that they were working and payslips?---No, I haven't. I don't – no, which staff are we referring to now?

This is the staff who were working at the office at the time. This is 2018, 2019 and 2020?---Right. Which was who?

40 So that was the process that we would take – is when you converted to Xero from the 1st of July 2018 she would print those employee reports and put them in the staff files?---Yes. No, I don't know about printing them off, but once you go into Xero you can actually see – you can actually see hours of work and – sorry, the – the pay periods. Xero actually keeps the record for you.

45 And you can edit that at any time, can't you?---You can go back and if you – if you have editing rights you can go back in and edit that.

Even historical entries?---That's my understanding. I'm not a Xero expert, but I'm understanding you can – you can make changes.

5 Well, can I ask you to have a look at exhibit 3, please. So does that say 170 at the bottom?---Yes.

This is Lyn's payslip for the period 23 March 2020 to the 5th of April 2020?---Mmm.

10 This is what was generated in Xero and emailed to her from your company's Xero accounts?---Mmm.

15 So it indicates that she performed 36 and a-half hours at a rate of \$50 an hour. It provides an indication as to her pay in the amount of 1825. And she has got accrued annual leave at the bottom there with a balance of 32.7680?---Yes.

If I can ask for the witness to now, please, be shown two payslips marked for identification. So what are we looking at here? So these payslips are for the same period. Correct?---Yes.

20 So what are these that we're looking at now, these two new documents?---Yes. That's the payslips. Yes.

Yes. So what are they?---That's Lyn Kelly's payslips.

25 And who produced them?---Xero produced them.

So if Xero produced them then why - - -?---These – this has been adjusted.

30 By whom?---By my accountant.

So is that why the annual leave balance is now at negative 6.15?---Because the original annual leave balance was incorrect.

35 On what basis?---On the basis of when it was inputted into Xero.

So how was it incorrect?---It was over-inflated.

40 How do you know that?---Well, we know how many hours – how many days leave were taken in that period of time.

By reference to what?---By the reference of how – when she wasn't in the office. When was on leave.

45 And who inputted the times that she was in the office and that she was on leave?---Lyn did her own inputs into – into Xero.

So Lyn has artificially inflated her accrued annual leave - - -?---Correct.

- - - by accurately recording - - -?---No, no.

- - - the periods that she worked?---No, when Xero – when Xero came on board the wrong figures were put into the system.

5

If the wrong figures were put into the system then how could you still get the right balance for annual leave?---So - - -

So when Lyn left she had been putting all the material into Xero?---Yes.

10

And it showed that she actually had accrued annual leave?---Which – which document am I looking at now, sorry?

If you can go back to the first document. You were shown the exhibit?---Is it number three, page 170, or - - -

15

And she has got an annual leave balance of 32?---Right.

So you're saying that you had to go into Xero and correct it?---No, I didn't correct that in there. Sorry, it's a bit – which one – which one are you showing there? So there's – which one – which sequence do they run in?

20

So what I'm trying to understand is this principle?---Yes.

Lyn was inserting her own hours into Xero. Correct? She was inserting into Xero the period that she worked for?---Correct.

25

Yes. So how did you know that that was wrong, the period that she was working for?---Well, when I got my accountant to audit the system and with the amount of leave that she was taking it wasn't – it didn't add up.

30

So where were you recording the amount of leave that she was taking? She was recording that into Xero, wasn't she?---Yes, but you can physically tell when someone is not actually in your office.

35

So you instructed your accountant on the dates that she was in the office?---No, when she wasn't in the office. You know when someone is not in the office for six weeks.

So you provided those instructions - - -?---It's not hard – it's not hard to know – it's not hard to know when someone is actually not at work and she says, "I'm going on leave now from this point".

40

So you went to your accountant and you said, "These records are wrong. Here's the period she actually worked"?---I said to my accountant – I said, "This is the annual leave. This is the amount of leave that has been taken. This is when the person hasn't been in the office".

45

And how did you know that information?---That she hadn't been in the office?
Because I actually work in the office there and she wasn't there.

5 So did you record that in any – by any means?---Well, the fact that she wasn't sitting
in the office was - - -

10 Do you know what she was doing on the 2nd of – if you're not sure – what she was
doing on the 2nd of November in 2018? On that day was she working or not?---I
don't know what the 2nd of November is. I don't have that in front of me.

So you must have recorded it somewhere?---No, I know the fact that she didn't –
from the point of view from December onwards she had holidays.

15 Every year?---Because we had – we had to organise the Christmas party around
when the annual leave was going to be.

So you're saying that's not recorded anywhere in writing. You just remember
that?---Yes.

20 All right. Well, I'd suggest to you that that's just not the case?---I suggest that it is
the case.

25 COMMISSIONER: How did you instruct the accountant about this error?---We just
went - - -

In writing?---I went and saw him – physically went and saw – actually, via email.
There's an email trail here. So I have an email trail to my – to my accountant.

30 Did you give the accountant instructions in writing about this error in terms of the
recording of annual leave?---I gave – I gave instruction to my accountant, "Can you
please have a look at this for me?"

Did you give it to him in writing?---Yes, I did. I gave an email to him.

35 All right. Well, where is that email?---I don't know.

Right.

40 MR WHITE: So in terms of these documents - - -

COMMISSIONER: Well, we've still got another day. It could be produced. It
would be worth having a look at what instructions he gave to the accountant in that
regard.

45 MR WHITE: It may be the case that there's a fair bit of material, in my respectful
submission, that has arisen out of this that - - -

WITNESS: My accountant has got that information, sir.

MR WHITE: So these were provided – these additional payslips that you’ve got there, they were just provided for the purposes of this proceeding, weren’t they?---I
5 didn’t provide – are you talking about these ones here? I haven’t provided these, sorry. I don’t – I’m only just discussing these.

Well, what I’m saying is Lyn got emailed her actual payslip, so why was it the case that we had – that you had to print these additional different payslips?---Well, I
10 haven’t printed these off, but all I can – all I can tell you is when we did the audit on the 8th of – or in-between the 3rd and the 8th of April there was a discrepancy there that my accountant found.

That’s as much as you can attest to?---Well, yes, I’m – like I said, Xero and the
15 accounting side wasn’t my – I have an accountant and I had Lyn looking after my Xero accounts to do that for me.

Okay?---But there was an email to the – to the accountant after that information.

20 So as a consequence of this – of Lyn’s pay – and the situation with the USB, you reported Lyn to the police. They executed a search warrant on her. They found nothing. She provided a full account of her version of events and then just nothing further came of it. That’s all correct, isn’t it?---No, that’s not true. It was – it proceeded and was removed when the Fair Work agreement was done. There’s an
25 agreement with Fair Work.

So you discontinued the – the complaint?---I was – I was pressed as part of my deed to undo the police report for the deed to be signed and I agreed to that if they were not going to – there was a Fair Work agreement as a settlement in that regard. Lyn
30 made a declaration in the – in the deed that she had – that she had no images.

Sir, so you say that you did that in the course of that?---As part of the deed.

That that was the [indistinct]?---I removed the police report due to the deed.
35

Okay. Did you [indistinct] before to say that you said that you would pay her long service leave and you did?---Yes, we had – yes, certainly.

You’ve paid her super, have you? Well, have you paid her long service
40 leave?---Yes, I have. That’s part of the – yes, I have.

When did you pay that?---That was part of the – that was part of the Fair Work agreement as well.

45 That was part of the compromise?---No, it wasn’t a compromise. It was part of the Fair Work agreement. She was paid her entitlements in full.

It wasn't just a lump sum?---It was – she was paid her entitlements in full.

Well, I'd suggest to you that she was simply paid a lump sum?---She was paid her entitlements in – which long service could be a lump sum, I guess. But she was paid
5 her entitlements in full.

Can I ask you to, please, have a look at exhibit 25. Before you look at that, Mr Wetherall, you paid the applicant a gross sum of \$30,000?---Which is long service leave.
10

You say it was rolled up in that?---It was – it was her entitlements.

Okay. So that document that you have in front of you there - - -

15 COMMISSIONER: I take it – just before – while you're talking about that, I take it that the amount that you paid there was in full and final settlement of claims arising out of the employment?---Correct. Yes. Yes. Everything, leave, long service leave, the whole – everything. And the deed was also in regards to me terminating the police charges and her also terminating the fact that she had no images. She had
20 none of these images. She had no USB. And that was part of the settlement that she had no images and I would remove the police report.

MR WHITE: In terms of that document you've got in front of you now, is this the document you were taken to in your evidence-in-chief as being records of log-
25 ins?---This is just a rough – I don't have all the log-ins. This is just a rough period of log-ins when there was no treks out.

So you - - ?---No reason to be on Facebook.

30 So you created this document?---I pulled it off my phone.

How did you create this report?---It – if you have an iPhone it actually sits in your iPhone and you can see the log-ins.

35 So these are – and can you explain again what this – what this is meant to show?---This shows these Macs.

Yes. So there's - - ?---You can show – you actually see where I am in the country or out of the country on any particular day and that somebody has logged in to these
40 Macs when I haven't been in the State. It shows you the Mac log-in on the Sunshine Coast on this particular date. I'm not in the – I'm not in the office. I am in Darwin or I'm in Papua New Guinea. So somebody in that office - - -

Has accessed the Macs?--- - - - has accessed the Macs on – straight into Facebook on
45 those dates and they are not authorised to go into my Kokoda Spirit only when we have treks out. So someone has gone in here when there is no treks out.

And in fairness to you this – this looks on its face as though it’s actually a report from Facebook, not a report generated by an iPhone?---Well, it comes off the – off your phone. Yes.

5 Yes. But it’s a Facebook record?---Well, it says Facebook. Yes.

Yes?---Which is what your Messenger is attached to.

10 There were more than two Mac computers in the office, weren’t there?---Yes, absolutely.

So there was the two in the office that we looked at. Was there one in yours? You had a Mac as well?---Yes. Yes. Yes. Mine is a separate, though.

15 And your daughters had Macs as well?---No, they had iPads.

They had MacBooks?---Yes, which doesn’t show – it would say – it would say iPads. And my daughters had separate log-ins and their own internet accounts.

20 I’d suggest that they are not iPads, they are Mac laptops. They are - - -?---I can tell you, this is not my daughter’s log-in when they had their own.

25 Okay. Can you just answer that question for me, please?---I just – I just answered a question. This is from a Mac. This is from the Mac computers in the office.

How do you know that? How do you know that these Macs are from the Mac computers in the office?---Well, they’re Macs. That’s the Mac in the office. The other ones are not.

30 This report says “Mac Sunshine Coast, Queensland”?---Yes. It’s not – they’re the Macs from the office computer.

35 How do you know that looking at this report?---I know that from the – I know that. That’s the Macs in there. That’s – the only log-ons is for those Macs. It tells me who is logged on to those Macs. It tells me when those Macs were logged on to.

Do you accept there’s nothing in this report that says that?---Sorry?

40 There’s nothing in this report that says - - -?---I can tell you that someone has logged on through the Mac computers in that office on dates when I’m not in the office and when there is no treks out.

45 Did you instruct them on – well, did you instruct anyone in the office on the – apologies. I was going to try and indicate a year for you, but this document doesn’t show any of the years, does it?---For what?

COMMISSIONER: The last post, 3.57, 3.58 make reference to 2019.

MR WHITE: So on the 15th of – so if you turn to page 357, please. So on the 15th of November 2019 someone has logged into a Mac in Townsville?---Mmm.

Who was that?---Well, that could be – it could be me.

5

So you would have taken one of the two physical Macs sitting in the office to Townsville?---I actually don't know what that one – yes, I actually don't know what that one actually is. Actually – I actually don't know what that one is either.

10 Well, that's the only explanation given your reading, isn't it?---Well - - -

Aren't you saying this has to show the two Macs in the office?---Yes. Well, it has to show the two Macs in the office. Yes.

15 So on that reading this could only mean someone has physically taken one of the Macs from the office to Townsville?---Well, yes. What you're saying there, yes. I don't know how the Mac Townsville is showing there.

20 Well, I'd suggest, Mr Wetherall, this doesn't actually say what you say it does?---Well, I'm suggesting to you that it actually shows that someone has logged on to my Mac computers when I'm not there.

25 Well, what about on the 23rd of March on page 252. Again, someone has taken a Mac to Adelaide to open?---That's – can I tell you how that happened? That's actually Darwin. When I'm in Darwin. That's what – that's – to my understanding, that's what – Darwin and Adelaide align.

30 So this report would inaccurately show an open of the Mac in Adelaide when you've got a physical - - -?---No, I actually don't know, but I just say that I – I had a Mac in Darwin as well and – so my – my Darwin Mac would - - -

35 Your Darwin Mac would show as Adelaide?---Well, it could do, because Adelaide and Darwin are on a similar – they could be on a – I don't – and I'm not the Wi-Fi technology expert there, but I had a Mac in Darwin.

Well, can you turn to page 356, please?---Yes.

The bottom entry says:

40 *Mac Darwin, Northern Territory.*

Not Adelaide?---Correct. Yes. Yes, that's true. Yes.

45 So you can't explain it either, can you?---No, I can't. But Mac Darwin is me. The Mac Darwin is me. I have a Mac in Darwin as well. I had an office in Darwin as well. That's my Mac in Darwin. I can guarantee you that's my Mac in Darwin.

COMMISSIONER: While you're doing that, Mr White, Mr Wetherall, I took you to this before and Mr White has taken you to it as well. At the very top of each page - - -?---Yes.

5 - - - there's an eyeglass icon and it says:

Search Facebook.

?---Yes.

10

Now, the only place that I'm aware of that particular phrase and that icon appearing anywhere is when you log in to a Facebook account?---Yes. Well, that's my understanding too.

15

So this would – this would suggest to me if that's all part of the one document – that's all part of the one screenshot that you've got, that this is a screenshot of log-in records on a Facebook account?---Yes. When I go into my – sorry, sir, when I got to my phone it actually shows all the log-ins. Because you go into history and it shows you all your - - -

20

But when you say when you go into your phone, you mean when you go into your Facebook account on your phone?---I wish – I don't have my phone on me, but I could actually demonstrate it. It actually shows you where all your log-ins – it's a protection device to see if anyone has logged on to your system somewhere else.

25

Yeah?---So, it likes a safety mechanism. So, you can actually see where log-ons have actually happened. So, I don't – I don't have my phone here to show you - - -

30

But is it – does it – is it– are you saying that your phone will show who's attempted to log-in to your phone?---Yeah. Phone and Macs. Because my phone and my Mac are – are - - -

35

So, why is there a Facebook icon at the top of the – these screenshots?---Well, that's – that's when you're on the – like I say, once again I wish I had my phone with me because that's how – that's how it comes up. Because I'm actually going into history.

40

You produced this document?---Yeah. I pulled it off – I pulled it off my phone and took a photo of it, a screenshot of it. So, that's straight from my - - -

45

Are you sure it's not a record of log-ins to your Facebook account?---Well, it could be – it could be that – it could be that as well. But it's log-ins to saying someone has logged on to my Facebook from that Mac or from my phone.

45

Okay?---So, there aren't – they – well, you could be correct too that they're logging on to my Facebook from my Mac. So, on that – when you pull your phone up, you can actually see the history of log-ons and that is logging on Facebook. So, someone

has logged on to my Facebook account from that Mac in the Sunshine Coast office when I'm not there. I mean there's no treks out.

All right.

5

MR WHITE: Thank you, Commissioner. I have no further questions.

COMMISSIONER: I just have a couple of questions, Mr Wetherall, before we go back to Mr Sapsford. There was some evidence about the discussions you had with
10 Ms Kelly between the 26th and the 27th of March 2020 where she was – she was seeking access to her long service leave, and you recall giving evidence about that?---Yes.

15 Did you at any point – I mean, I understand your answer was, “You're not entitled to it”, and there was a lot of confusion and pressure at the time. Did you suggest or give any consideration to Ms Kelly accessing any other accrued leave she might have had, like annual leave?---I – once again, Commissioner, I asked, “Can you just give me – can you give me a week please?” That was my repeated conversation. I need time to clear cashflow, refunds, can you please give me a week. That was my
20 constant response, please give me a week to sort this out. Please just give me a week. And that was my – I'd been repeating myself all day, that was my response.

But – but, I take it in answer to the question I just asked you, that's a no. You didn't raise with her the possibility of taking annual leave as an alternative?---At the stage,
25 no. I didn't, Commissioner, I just said just give me some time to work through this please.

All right. You might not know the answer to this question, but in respect of the Kokoda Dream Facebook page, do you know whether or not it is a standalone page,
30 as in it's an account holder with Facebook? Or, is it a group that is created by a Facebook account holder?---Sorry, Commissioner, it's Kokoda Spirit.

Kokoda Spirit. Sorry. Yeah, Kokoda Spirit. The dream at the moment - - -?---It's a long dream, sir.
35

But, but – do you know whether there - - -?--- It's a business account. So, we actually have Kokoda Spirit, Wild Spirit Adventures. I have – so, it's Kokoda's a bit more – they're standalone business Facebook pages.

40 But, I appreciate you may not know the answers and it's okay if you don't, but as an account holder with Facebook, you can create a group. So, you know, if you wanted to create a group about people that like a particular type of car, you can create - - -?---I understand, yes. Yep.

45 - - - and you have a group, and as an account holder, as you know, Mr Smith, you can start an account for people that like XT Falcons, and you can have the XT Falcon, you know, supporters page?---Yep.

And, as an administrator, then you can open that up publicly and you can invite people to join that group. Alternatively, you could, as an account holder, with an email – a valid email address, open up an actual second account. You don't have to be an account holder with Facebook already, as long as you've got an email address,
5 you can go on to Facebook, you can open an account. You can call that account, Kokoda – sorry, what is it? It's not dream?---Spirit.

Kokoda Spirit, and that is the name of the account, and the account can be managed by the person has opened it and that's usually established by providing an email
10 address to Facebook. Do you know, in terms of Kokoda Spirit, which one of those two it is?---I can't answer – I – my IT guy's coming tomorrow.

Yeah. Yeah. Well, I'll ask him?---Yeah. He would be able to answer that question for you.

15 Hopefully he knows the answer?---Yeah.

All right. All right. And that's all I have. Thanks. Mr Sapsford?

20 **RE-EXAMINATION BY MR SAPSFORD** **[3.21 pm]**

MR SAPSFORD: Mr Wetherall, in particular with respect to the payment of superannuation to Ms Erin Carter and Ms Julie Mossop, you agreed that you didn't,
25 prior to being contacted by the ATO, pay them those payments?---I didn't pay officially, no.

And, after being contacted by the ATO, you paid them those payments?---Correct.

30 Had you formed a view yourself as to whether they were entitled to those payments?---In my – my belief is that I paid them a highly – higher hourly rate which covered the superannuation and all their entitlements, but I found out that to be incorrect from a business perspective.

35 You were asked in relation to a conversation you had with Ms Kelly, with respect to the standing down and the payment of long service leave on or about the 26th or 27th of March and in particular, you were referring to a statement made by Ms Kelly requesting two days per week, so that she could buy her groceries. You were
40 stopped by my learned friend. What was that conversation?---Lyn had actually asked me if I could pay her long service leave, just two days a week, so she could at least pay for her groceries.

45 Now at the time of the – and I'll put these in parentheses, “stand down”, because it's a matter in dispute, but at that time you arranged for Ms Kelly to give – arranged a couple of things. First of all, for the laptop to be updated by Mr McCutcheon in

order to enable it to work from home. Is that correct?---It was certainly updated by Mr McCutcheon.

And, secondly, for the laptop to be provided by Ms Kelly to Ms - - -?---Wilson.

5

Ms Wilson - - -?---Mrs Wilson.

That's correct. Now, if these employees were stood down, and were not performing work, why was that necessary?---I – that – I – the reason they had the laptops – I
10 really don't know why we issued the laptops to them, because there was no work going on. That was a request given to me to supply the iPads, and I just take the iPad – there was no other reason, expectations to take the iPads because it was just, once again, a relationship thing. You want the iPad, take the iPad.

15 In relation to the updating of them being Kokoda, if I can use that term generically, Facebook page. There's been some evidence that that updating occurred in the afternoons. Is that the case? And, if so, why is it the case?---Because the treks – our Australian guides would ring in in the afternoons when they – when they were – everyone's safely back in to camp. They'd ring me by satellite phone and then the
20 updates were done. So, there was no reason for anyone to be on Facebook prior to 4.30.

In relation to the material about which you've been cross-examined at length, involving your private conversations with certain persons, did you have any
25 knowledge prior to 8 April 2020 that that information was being [indistinct]?---Absolutely not. I'm absolutely horrified. No. Definitely not. Definitely not. I was devastated to learn.

Now, your Honour, I'm going to ask please that Mr Wetherall be stood down
30 pending whether he's capable of locating overnight the material that your Honour was questioning about - - -

COMMISSIONER: The email to the accountant? Yeah.

35 MR SAPSFORD: The email to the accountant. It's still up in the air at the moment.

COMMISSIONER: I suppose also, reflecting on it a bit further. I mean, that – that sort of stuff might be relevant in terms of credit, or it might be relevant in terms of an overall sense of reasonableness of the behaviour in that week. But given that the
40 injuries occurred by the third, and the issues with the police and the overpayment occur after that, there might not be much that – else, other than that will turn on that evidence. But, I'm – I'm

MR SAPSFORD: It was only because there seemed to be some interchange
45 whereby it was going to be sought by Mr Wetherall that I adopted that approach.

COMMISSIONER: Yes.

MR SAPSFORD: I quite appreciate the point your Honour makes.

COMMISSIONER: Yeah. It's something maybe we can all reflect on overnight

- - -

5

MR SAPSFORD: Yes.

COMMISSIONER: - - - and if you feel there's a need to produce it then I will give consideration to it. And it may be that the more I reflect on it, the less important it becomes.

10

MR SAPSFORD: Yes.

COMMISSIONER: But at the time, in the moment, it seemed like it might have been important.

15

MR SAPSFORD: Yes.

COMMISSIONER: I certainly, in those honours – issue of credit and that, you know, the overall reasonableness of the behaviour that occurred that week, even though that behaviour was post injury, it might add to the flavour about – but I won't get in to.

20

MR SAPSFORD: Well, perhaps it's best resolved by Mr Wetherall seeing if he can locate the material.

25

COMMISSIONER: Sure.

MR SAPSFORD: And, if he can't, simply coming along and saying he's made it, he can't locate it.

30

COMMISSIONER: Yes.

MR SAPSFORD: So, there's been some effort to comply with producing the document.

35

COMMISSIONER: All right. That's fine.

MR SAPSFORD: Thanks.

40

COMMISSIONER: Look, before – are you finished with your re-examination?

MR SAPSFORD: I'm finished with Mr Wetherall.

COMMISSIONER: Yes.

45

MR SAPSFORD: If he might be stood down.

COMMISSIONER: I just have one other question for him.

MR SAPSFORD: Certainly, your Honour.

5 COMMISSIONER: I apologise. I forgot to ask. But it might actually help us resolve the issue in terms of where these messages were popping up.

MR SAPSFORD: Thank you, your Honour.

10 COMMISSIONER: Mr Wetherall, there's a document, it's Exhibit 16. Do you have a copy of that in front of you? You may not. It's got – it's the document with page 367 at the bottom of the page. I hate to keep demonstrating my in-depth knowledge of the way Facebook works, but it's probably time for me to concede I've got a bad addiction. So, if you've got that in front of you - - -

15 WITNESS: Sorry, sir. What number?

COMMISSIONER: So, it's Exhibit 16. It's this page here. It's got 367 at the bottom of it.

20 WITNESS: I've got 366 - - -

COMMISSIONER: That one there, with the laughing face icon.

25 WITNESS: Yes, sorry. I have it. Yep.

COMMISSIONER: All right. You may not be able to answer this, but I thought I'd ask in any event. That – that to me, you know, looking at that, looks like a photograph of a desktop screen. You can see from the icons that just - - -

30 WITNESS: Yep.

COMMISSIONER: Can be made out at the bottom there. And, it looks to be Facebook messenger message that's open on a Facebook page.

35 WITNESS: Yes.

COMMISSIONER: And, down the side of that page, on the right hand side, are a number of – they're all chopped off, but there's a bunch of names there.

40 WITNESS: Yes.

COMMISSIONER: Now, I mean, I'm just guessing at this point, but I'm wondering whether or not you can shed any light on this. Those names there, that's your Facebook page, would be potentially your direct Facebook friends.

45 WITNESS: I can see those contacts. Some of them look like my contacts.

COMMISSIONER: And, if – but they may also be contacts through the Kokoda trekking. There's also a reference to group conversation, and there's a – there's a conversation that's not live, but has taken place involving a group called Kokoda 2018, I think it is.

5

WITNESS: Yep.

COMMISSIONER: It's more clear in the last one.

10

WITNESS: Yep.

COMMISSIONER: And there's some of those names there like, Brock and Stacey and Lau, Whitty - - -

15

WITNESS: Yep.

COMMISSIONER: - - - and Malcolm someone or rather.

WITNESS: Yes.

20

COMMISSIONER: That – that might assist the parties potentially in identifying whose computer that was – well, what Facebook page that message had popped up in.

25

WITNESS: But that's my private – that's my private messages.

COMMISSIONER: Well, I suppose it would depend on cross-referencing your friends list on Facebook and the people who are - - -

30

WITNESS: Well, they - - -

COMMISSIONER: - - - followers of the Kokoda page.

WITNESS: That – that group is created in my messenger.

35

COMMISSIONER: Well, that's – that's a matter that can be proven.

WITNESS: Yep. It's in my messenger that group.

40

MR WHITE: Commissioner.

COMMISSIONER: Yes.

MR WHITE: I have something arising out of that. That's the page earlier.

45

COMMISSIONER: Yes.

MR WHITE: Three hundred and sixty six.

COMMISSIONER: Bear with me for a moment, 366.

5 MR SAPSFORD: I haven't got that.

MR WHITE: Apologies.

10 COMMISSIONER: Not one of the ones that hasn't gone in? Because there was some photos that didn't go in, Mr White.

MR WHITE: My apologies, it has. It's the back of Exhibit seven.

15 COMMISSIONER: The back of the exhibit.

MR WHITE: Seven.

COMMISSIONER: Yep.

20 MR WHITE: In my respectful submission, that puts the matter to bed that the page that sits behind those messages - - -

COMMISSIONER: You can see the photograph up the top.

25 MR WHITE: It says, "Call now", you won't have that on a personal Facebook account.

COMMISSIONER: Yep.

30 MR WHITE: It says, "Social posts on this page", that's - - -

35 COMMISSIONER: And there's a portion of an image there as well which looks like it's outdoors. That doesn't necessarily – looks like someone's – looks like a hiker's leg in the corner over here, but that doesn't necessarily exclude. This is page 366, Mr Wetherall. It's Exhibit 7.

WITNESS: Yes.

40 COMMISSIONER: It has references there to things like, "Visitor posts" - - -

WITNESS: Yes.

45 COMMISSIONER: "Call now". I mean, look, it's not conclusive, but I think the observation Mr White just made is at least heading towards the right direction, but it would be, I guess, a fairly simple exercise to work out whether that image – that portion of the image matches any image that's ever been used by the – by the Kokoda page.

MR WHITE: This might be a matter for submissions, your Honour, but - - -

COMMISSIONER: Yes.

5 MR WHITE: - - - to my knowledge, no Facebook – no personal Facebook account has the - - -

COMMISSIONER: “Call now”.

10 MR WHITE: - - - “Call now” option. Yes.

COMMISSIONER: All right.

15 MR SAPSFORD: Well, Mr McCutcheon is coming along tomorrow. He might be able to - - -

COMMISSIONER: He might be able to shed some light on all of that. It just might kill one of the issues off that we’ve been dealing with.

20 MR SAPSFORD: Yes. I – I have, once Mr Wetherall’s been stood down, I have one small matter to raise prior to your Honour - - -

COMMISSIONER: Sure. Mr Wetherall, you are not excused. You are stood down. You may ultimately be excused subject to the necessity to give any further evidence
25 tomorrow. But you are free to go now.

WITNESS: Okay.

COMMISSIONER: You’re still under oath, Mr Wetherall. So, it’s important that
30 Mr – Mr Sapsford would have given you an instruction at lunch-time that you are still bound by that instruction that you can’t talk about this matter with anybody and best that you don’t have any contact with anybody associated with this matter and keep to yourself for the next 12 hours or so.

35 WITNESS: Okay.

MR SAPSFORD: If I can ask that Mr Wetherall remain outside, so that we can at least liaise with him.

40 COMMISSIONER: Yes.

MR SAPSFORD: As a matter of logistics, because - - -

COMMISSIONER: Sure.

45 MR SAPSFORD: - - - he’s from the Sunshine Coast.

COMMISSIONER: Of course.

MR SAPSFORD: It may be that he goes up there, doesn't find the material and doesn't come back, or - - -

5

COMMISSIONER: Sure.

MR SAPSFORD: So, that we can - - -

10 COMMISSIONER: Of course.

MR SAPSFORD: Thank you, your Honour.

WITNESS: Sorry, Commissioner, does that mean I come back tomorrow?

15

COMMISSIONER: No. Mr Sapsford is going to talk to you about that after close of proceedings today.

WITNESS: Okay.

20

COMMISSIONER: So, you just hang around outside.

WITNESS: Okay.

25 COMMISSIONER: Mr Sapsford will want to have a chat to you about those logistical matters.

MR SAPSFORD: Just go into the interview room, would you, Mr Wetherall, please?

30

WITNESS STOOD DOWN

[3.32 pm]

35 MR SAPSFORD: Your Honour, it's my recollection that I mentioned on the record, and I just haven't gone through the transcript, and don't pride myself of this, but the photographs comprising Exhibit 7, Exhibit 16, and Exhibit 19, were discovered by the appellant at - on Friday afternoon.

40 COMMISSIONER: On Friday. Yes. I recall that, yes.

MR SAPSFORD: Yes. Yes. It - well, I'm just establishing that it's not in dispute that in fact they were discovered at 4.27pm on Friday the 24th.

45 COMMISSIONER: Sure.

MR SAPSFORD: Now, if that's not in dispute, I won't need to call my instructing officer. If it is in dispute, first thing tomorrow morning, I'll call my instructing officer.

5 COMMISSIONER: Is there any problem with that?

MR WHITE: I don't believe that to be in dispute.

10 COMMISSIONER: I didn't understand there had been a dispute. When you made the submission, there was no objection - - -

MR SAPSFORD: No. No. I was just making sure of it because it will be part of my submissions and I just couldn't remember how I put it on the record. Thank you, your Honour.

15 COMMISSIONER: No problems. All right. Well, subject to what transpires overnight in respect of Mr Wetherall, and whether or not the parties take a view that – that further evidence is necessary, you've got the remaining witnesses tomorrow will be Mr McCutcheon, Ms Wilson, and Ms Brial. Is that correct?

20 MR SAPSFORD: That's so.

COMMISSIONER: All right. All right. We will adjourn until 10 am tomorrow morning.

25 MR SAPSFORD: Thank you, your Honour.

MR WHITE: Thank you.

30 **MATTER ADJOURNED at 3.34 pm UNTIL
THURSDAY, 30 SEPTEMBER 2021 AT 10.00 AM**

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QUEENSLAND INDUSTRIAL

RELATIONS COMMISSION

DWYER C

No WC/2020/175

KELLY, LYNETTE GRACE v. WORKERS' COMPENSATION REGULATOR

BRISBANE

10.08 AM, THURSDAY, 30 SEPTEMBER 2021

Continued from 29.9.21

DAY 4

HEARING

Any Rulings that may be included in this transcript, may be extracted and subject to revision by the Presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

RESUMED

[10.08 am]

5 COMMISSIONER: Take a seat. Thank you. Mr Sapsford.

MR SAPSFORD: Your Honour, inquiries overnight of Mr Wetherall revealed there's some documentation but not the documentation that was being sought – namely, the letter from him to the accountant providing instructions.

10 COMMISSIONER: Right.

MR SAPSFORD: I indicated to my learned friend – I showed him what documentation we had and indicated to my learned friend I didn't intend to take it any further, and asked him whether he wished me to make Mr Wetherall available
15 for further cross-examination. He said not in the circumstances. But, as I understand it, he'd like to tender those two exhibits for identification that are indeed two different payslips.

COMMISSIONER: All right. Is that the case, Mr White?

20 MR WHITE: It is, Commissioner.

COMMISSIONER: All right.

25 MR SAPSFORD: I don't object to that course of action.

COMMISSIONER: All right. So, to the extent that they've been able to be identified by Mr Wetherall, I think he said this is what was produced after the accountant did the audit, or something to that effect.

30 MR WHITE: My submission would be that he has sufficiently established that provenance for them to amount to business records to be admitted pursuant to section 92 of the Act.

35 COMMISSIONER: All right.

MR SAPSFORD: They could be 3A, your Honour, perhaps.

40 COMMISSIONER: Yes. But it might be best to attach them to the other payslips. All right. Well, the additional payslips, said to be the payslips that were produced after the accountant's audit, will be admitted and will be exhibit 3A.

EXHIBIT #3A ADMITTED AND MARKED

45

COMMISSIONER: Now, your next witness then, Mr - - -

MR SAPSFORD: Yes, your Honour. For your Honour's benefit and for my learned friend's benefit, seeing that we've got all this business up on the screen here, I'll call Mr McCutcheon first. And then I'll call Ms Wilson, and then Ms Brial.

5 COMMISSIONER: All right. Just bear with me for a moment while I get my stuff organised. So it's Mr McCutcheon first, is it?

MR SAPSFORD: Yes, please. I call Parry McCutcheon.

10

PARRY JAMES McCUTCHEON, SWORN

[10.10 am]

EXAMINATION-IN-CHIEF BY MR SAPSFORD

15

MR SAPSFORD: Your full name is Parry James McCutcheon?---That's correct.

And your surname is spelt M-c-C-u-t-c-h-e-o-n?---That's correct.

20

You reside, Mr McCutcheon, at 20 Oakdale Circuit, Currimundi?---Correct.

And your occupation is that of a business consultant?---Correct.

25 Have you at any time provided business consultancy services to Kokoda Spirit, in particular Mr Wayne Wetherall?---Yes, I have.

When did you commence doing that?---Mid 2013.

30 And what was the nature of the services you provided?---Website design, business consultancy around marketing, and also cutting costs within the business and costs of marketing and going to market.

Are you aware of the nature of Mr Wetherall's business?---Yes.

35

And are you aware of the use of certain Facebook pages by the business in the course of promoting that business?---Yes, I am.

40 How is that done?---Basically the pages are created behind a personal profile. And then, from there, you switch from your personal profile to the page to post whatever is required, whether it be a post about the business itself or a trek coming up, or anything along those lines.

45 And, the personal profile in this instance, was it that of Mr Wetherall?---That's correct.

And what was the nature of the postings that occurred?---Postings would be for people on the track, families here back in Australia would like to know how the families are proceeding along the track. And they would get a post put up and said your – well, the team – “The trekkers are in camp tonight” – at a certain location
5 along the track. “Tomorrow they head for” – whatever the next location is. “They’re safe and well.”

All right. Do you know the appellant in these proceedings, Ms Kelly?---Sorry?

10 Do you know the appellant in these proceedings, Ms Kelly?---Yes.

And do you remember at some stage discussing with Ms Kelly as to the nature in which she might access the Kokoda Spirit Facebook page?---Yes, correct. I do.

15 What was that discussion and when was it had?---It would be 2016, as I remember. I came into the office to do some work on a couple of computers, mainly to clean up Wayne’s computer. And they were saying that there was notifications coming up. And they said they were coming up all the time. And I discussed it with him. I said,
20 “Look, I can create yourself an admin profile so that you don’t have to have the notifications pop up. Then you’ll have your own logins to do what you need to do on the Kokoda Spirit page and make them an admin.

Did they advise you of the nature of the notifications?---No.

25 Did they advise you whether they were related to Kokoda Spirit or otherwise?---No.

And what was the response when you offered the opportunity to become an admin?---They said, no, leave it the way it is.

30 And what is the effect of making a person an admin?---Basically they can be admin of a page and not have it attached to a profile page, a personal one.

Would that then mean that the pop-ups or the notifications that were occurring
35 - - -?---Yep.

- - - wouldn’t occur?---Wouldn’t exist.

Did you subsequently create such an access for another employee?---Yes, I did.

40 Who was that?---Carlie Bryce.

Brial?---Brial, yep.

45 B-r-i-a-l is her surname?---Correct.

When did you do that?---I did that 2019; it was before Covid.

All right. Now, you've got a demonstration there. But, just prior to that, I'd just like to ask you, were you present at the premises – at Mr Wetherall's premises – at some stage when he had a disagreement with Ms Mossop?---With who?

5 Ms Mossop – Ms Elliott?---Oh yes. Well, I walked in sort of midway through their conversation. I came in the property and Lyn said to me, "Stay out of there. You don't want to go in there." And I didn't bother; I just went in. From what I understood, from what I heard – that Julie was dealing with a customer. And Wayne had seen the communications. He wasn't happy with the way she was
10 communicating. And he asked her to stop communicating with the customer; he'd take it from there. Julie's comment was she has worked for the Police Department for such a long time in communications; she knows what she's doing – or, "I know what I'm doing and I can continue doing this." Then Julie attempted to leave. She came back in and she said, "I'm going to finish this." And Wayne was apparently in
15 the laundry at the time. And she followed him into the laundry. The next thing, we heard a lot of noise from Julie. And she came out, grabbed her bag and, that's it, she said, "I'm out of here," and jumped in the car.

Now, Mr McCutcheon, you've arranged to show a demonstration in relation to
20 access to the Kokoda Spirit Facebook page?---Well, I'm doing an example of another page because I don't have Wayne's logins. But this is my personal profile so if I click Home, I'm here. Sorry. So, if I click there, it'll take me to my personal profile. To switch between any of the pages I look after, I just click on - - -

25 MR WHITE: Your Honour, I understood that Mr McCutcheon was being called in order to – not as an expert, but in order to demonstrate the process associated with the Kokoda Spirit Facebook page. In circumstances where he doesn't propose to go to the Kokoda Spirit Facebook page at all, I'm unsure as to how this could be relevant to the proceeding.

30 COMMISSIONER: Yes, Mr Sapsford. It doesn't seem particularly helpful to hear about Mr McCutcheon's home page.

MR SAPSFORD: I must say, your Honour, I was under the impression he was
35 going to go to Kokoda as well.

COMMISSIONER: Do you want me to stand it down for 10 minutes and you can sort it out?

40 MR SAPSFORD: He's given evidence he can't go to Kokoda because he doesn't have the logins.

COMMISSIONER: Mr McCutcheon's sitting in the back of the hearing room - - -

45 MR SAPSFORD: Mr Wetherall.

COMMISSIONER: Sorry – Mr Wetherall is sitting in the back of the hearing room,
so - - -

5 MR SAPSFORD: Yes. Well, if you would, your Honour, I'll see if I can do
something - - -

COMMISSIONER: I'll stand it down for 10 minutes.

10 MR SAPSFORD: Thank you.

ADJOURNED [10.17 am]

15 **RESUMED** [10.23 am]

PARRY JAMES McCUTCHEON, CONTINUING

20 **EXAMINATION-IN-CHIEF BY MR SAPSFORD**

25 COMMISSIONER: Take a seat, thanks. All right.

MR SAPSFORD: Have you now obtained access, Mr McCutcheon, to the Kokoda
Spirit page?---Yes, I have.

30 Could you show the court, please, how it is that one would go about entering that
page in order to update particulars with respect to a trek?---Okay. So I'll go back to
Wayne's profile page and then what I'll do - - -

35 Is that the first page that - - -?---Yes. Once you're logged in, you go to the actual
profile. And then you'll go to – let's go to feed, sorry. Sorry, I've gone to the wrong
page. Sorry. Apologies.

Right. Now, just stop there. What's that on the left-hand side?---I'm doing a search
- - -

40 Don't go pressing buttons until you've explained what you're doing?---I'm doing the
search on the left-hand side for the Kokoda Spirit page. I've gone to his profile page
which I need to actually go to Posts page and – sorry, I'll just go back. Okay. So I'll
go back to Wayne's. So if I go Home, I'll go back to his profile there, on the left-
45 hand side you'll see shortcuts to the pages that Wayne has worked with, click on
Kokoda Spirit - - -

So you're indicating that the access is initially through his own profile page?---Yep, because it's built behind. It's attached to his profile page.

Right. And having gone to the profile page - - -?---Yep.

5

- - - you've then now clicked on Kokoda Spirit?---Correct.

And you're now in Kokoda Spirit?---Correct.

10 Now, if a post is made via Instagram or some other communication on Wayne's personal profile page - - -?---Yep.

- - - does that come up on the Kokoda Spirit?---On his personal page, no.

15 I beg your pardon?---On his personal page – anything on his personal page won't appear on the Kokoda Spirit page. You're in a different page altogether now. So you're actually on the Kokoda Spirit page. And, if you want to create a post here, click on Create a Post. And, yeah, this is where they would put a post about the trek, about the trekkers being in camp for that night.

20

I see. Could the witness please see exhibits 7, 16 and 19. Have a look first, would you, please, Mr McCutcheon, at exhibit 7?---Yes.

And you'll see a number of conversations occurring?---Yep.

25

Of a personal nature. Are you able to determine from those photos what page the person recording those conversations was in?---Yep. Well, I can see one of them is in the Kokoda Spirit page.

30 Now, which one is that? Page number bottom right-hand corner, please?---Okay. Actually, no, neither of those are; none of those are. I'd say page 364.

In exhibit 7, is it – second page of exhibit 7?---Yeah. That's correct.

35 Now, how are you able to identify that's the Kokoda Spirit page?---Based on the likes, 25,034 and 19 new likes that week. That's the people following the posts.

And how is it then that that messaging appears in the Kokoda Spirit page?---Well, it can come up when – I'm just looking at this one, this image here - - -

40

Now, which one is that bottom corner numbered, please?---It's 367.

That might be the first of – first page of exhibit 16, your Honour?---Correct, yep.

45 The actual messages have been clicked on because on the right-hand side of that image is all the contacts in a messenger list that have been conversation. So I might do it – if I do this now on the screen, if I may, I click on Messages. And there's the whole lot of lists of people that have recently messaged.

Recently messaged - - -?---Wayne.

- - - Kokoda, or messaged - - -?---Wayne.

5 - - - Mr Wetherall?---Wayne. Wayne Wetherall.

So that when in Kokoda, if Messages is activated, there's a list of people who have messaged?---Yeah. If I click on the messages on the right-hand side, it will show me the messages of Wayne's private page behind it.

10

While you're still in Kokoda Spirit?---Correct.

Is it possible for what is depicted at page 1 of exhibit 16 to simply appear on the Kokoda Spirit page without clicking on messages and on the particular person who

15

- - -?---That list on the right-hand side can't appear without clicking on it.

COMMISSIONER: Not the list, Mr McCutcheon; the message?---The message – it is possible to pop up at some point in time if it's activated, yes.

20

MR SAPSFORD: How do you mean if it's activated?---Well, if it's an active conversation at the time.

So are you saying it's possible while in the Kokoda Spirit page - - -?---Yep.

25

- - - for a message such as page 1 of exhibit 16 to pop up?---There is a message pop-up, if it's active, yes.

If it's active?---Correct. If it's an active conversation at the time, it'll pop up. If it's not, it won't.

30

I won't take that further, thank you, your Honour.

COMMISSIONER: Any further examination-in-chief, Mr Sapsford?

35

MR SAPSFORD: Oh, I beg your pardon. No, that's the - - -

COMMISSIONER: Thank you.

MR SAPSFORD: ...that's the evidence-in-chief, Mr McCutcheon.

40

COMMISSIONER: All right. Thank you. Mr White.

CROSS-EXAMINATION BY MR WHITE

[10.30 am]

45

MR WHITE: Mr McCutcheon, you indicated that you began work for Kokoda Spirit and Mr Wetherall in mid 2013; is that right?---That's correct, yeah.

5 And you and Mr Wetherall are friends?---We're colleagues, yeah, and friends, outside of - - -

Were you friends before that date in 2013?---No. I was introduced by a third party.

10 But you've become friends over time?---Yep.

Close friends?---We catch up occasionally, yeah, for a drink, yeah.

15 Do you think it would have been apparent to the other people in the office that you and Mr Wetherall were close friends?---Yeah.

So the work that you performed involved web design, marketing and cutting costs?---Correct.

20 And you're an IT professional?---Yes. Well, I do run an IT company, yes.

And you're obviously aware of how Facebook works in particular?---Yes, I do. And I'm aware of the changes that have happened in the last six to eight months as well. So - yep.

25 What are they?---Businessweek has been introduced for people with business pages like this, to do postings, so you can actually separate yourself away from everything else and just be actually in the page. So it's a Businessweek brings everything together such as Instagram and other media that you want to go out on. So, if you see on the left-hand side of that screen it says Businessweek there? You click on
30 that. It takes you into everything related to Kokoda Spirit only.

So that functionality is all new?---Sorry?

35 That functionality is all new then?---The Businessweek? Yes, it's been introduced in the last 12 months.

Just in the last 12 months. So none of that functionality that you went to before - - -?---No.

40 - - - would have appeared on the work computers - - -?---No.

- - - accessing Kokoda Spirit?---No, not back then, no. There was less functionality back then.

45 Okay. Because, back then, it was the case, wasn't it, that, in order to access a Facebook page, you needed to be logged into a Facebook account?---Yes.

5 You mentioned a discussion that occurred – actually, apologies. You made some statements about the requirements for the staff to access the Kokoda Spirit Facebook page to make posts in respect of people who were out on treks?---Yeah, it was supposed to – it was usually done at the end of the day, about 4.30 in the afternoon, just before they finished, because that's when most of them were at the – were in camp. So the last thing they did before they left was put a post up about it. Yep.

10 How much time did you actually spend in the Kokoda Spirit office?---Sometimes twice a week, sometimes more, depending. We had a lot of issues with Telstra. I was there daily, because Telstra lost all their internet connections and everything. Well, I was there daily trying to fix that and then – which ended up in a claim because they lost it for about six months.

15 And what time of day would you normally be in there?---Oh, I'd probably get there around 9, 9.30.

Yes?---Could be there till midday if I'm on the phones to Telstra – those calls are with Telstra – or could be there for 10 minutes.

20 So you weren't often there in the afternoons?---Been in the afternoon as well over the years.

25 From time to time?---Yeah. I've been there as well. I've gone after lunchtime and been there till – whatever time.

Other matters that Mr Wetherall asked the staff to do in respect of Facebook involved looking at what competitive trekking companies were doing?---We all – we all did that, yeah.

30 Yes. At Mr Wetherall's request?---Sorry?

The staff would do that at Mr Wetherall's request? Can you comment on that?---Yeah, we all did, yeah.

35 He might also ask for staff to look at responses that he was getting to posts on his personal page?---No.

Did he ever ask you to do that?---No.

40 I suggest he asked other staff to do that. Can you comment on that?---I couldn't comment on that, no. That's not something I would have expected.

45 Are you aware of an incident that occurred in June of 2014 – this is an interaction between Wayne and Lyn. Do you recall anything along those lines?---You jog my memory.

You walked into the office and Seren and Lyn were talking to each other?---Yep.

And it would have been clear from the way in which they were talking that there had been some sort of interaction that had happened in the office?---Yeah.

5 And it would have been a heated interaction, an argument. Do you recall walking into the office and seeing that?---I recall walking into the office many times when there was discussions going on.

This is where Seren and Lyn were talking?---Yep.

10 Lyn would have been in a state of distress?---Okay.

Do you recall that?---No.

15 You were working on some computers off to the side whilst they were standing and talking?---Yeah.

And then, after this, Wayne called you into his office?---Mmm.

20 And you guys had a whispered conversation which related to this incident?---Okay.

And he said to you words to the effect, "I've had to put her back in her place," referring to Lyn?---I don't remember that at all, sorry.

25 Okay. Well, I'd suggest that that occurred?---Sorry?

I'd suggest to you that that did actually occur?---Did it? Okay. I didn't - - -

You don't remember?---No, don't even remember that at all.

30 You spoke about a discussion with – well, it was unclear who it was with – a discussion in 2016, presumably with at least Lyn, in the office where they were talking about messages coming up?---I came in. They said there was messages popping up, yes.

35 So who's they?---Seren and Lyn Kelly.

So Lyn and Seren. Okay?---Yep.

40 And you said that – or, you didn't know the nature of the messages that were popping up?---No.

So they didn't tell you that. And they didn't say if it was related to Kokoda Spirit or not?---No – oh, yeah, they said it was related to Wayne.

45 Oh, so they did say that. They said it was related to Wayne?---They did say that was related to Wayne – he's got messages popping up.

Okay. And you didn't inquire at all about what those messages were?---No. No need to.

Well, that - - -?---There's no need for me to inquire about what his messages are.

5

Well, your evidence is that they were concerned about the fact that - - -?---Sorry?

Your evidence was that they were concerned?---They weren't - - -

10 That's why they came to you?---They weren't upset about the messages coming up. They just said, "Gee, they're coming up all the time," things like that. There was no cause for me to think anything else.

And you say the solution you offered was to create an admin profile?---Correct.

15

Now, we just established, didn't we, that the only way that you could access a Facebook page back then was through someone's personal Facebook account?---Or you could be made an admin, as I suggested.

20 So what are you – or you could make an admin account?---I could make another Kokoda Spirit account, make an admin account, using the inquiries email. Then they could be made an admin of the Kokoda Spirit page and wouldn't have to use Wayne's login at all.

25 So how would you create an admin account without a Facebook profile?---You can add anybody who has got a Facebook page to an account like Kokoda Spirit and make them an admin. I'm an admin on Kokoda Spirit.

30 So when you say - - -?---So I don't access it through Kokoda Spirit or Wayne's profile. I go to my profile, and then I switch from that to Kokoda Spirit.

Sorry - - -?---I could make a direct sign-in for that.

35 So when you say you could make an admin account, what you really mean to say is you could make them with their personal profiles - - -?---No. No.

40 - - - an administrator of the Facebook page?---No. No, I could make a completely different profile, because at that time Lyn said she didn't do Facebook, so it would be a waste of time. So I can create a Facebook profile using inquiries at Kokoda Spirit, email, and have that as a business login.

Just a dummy account or something like that?---Yeah. Yeah.

45 I see. Okay?---And then they could log in using that to do any posting required.

So you say you had this whole conversation with Lyn at this time?---I said – yeah – “I can create an admin account for you that you can log in and you won’t have to use Wayne’s account.”

5 I suggest that this conversation actually didn’t occur?---It actually did occur.

The only time that - - -?---Your suggestion was wrong.

10 The only time you had a conversation with Lyn in respect of her having admin access was when Seren was leaving. So this is in April and May of 2017, after Seren had left?---No. Seren was still there at the time. And she was still working there. They were both - - -

15 And the reason for you having that conversation about her becoming an admin - - -?---Yeah.

- - - was because she already had access to the Kokoda Spirit Facebook page through the work computers?---Mmm.

20 But then, when she had to access it remotely, from home - - -?---Mmm.

- - - she no longer had access to the work computers. So you needed to make her an administrator so she could access Facebook away from the office?---What I suggested – correct, yes.

25 That’s the real context in which this was raised?---No, it wasn’t. No, that was the other conversation when we got an iPad away from the office. The iPad didn’t exist when I had the first conversation.

30 So it wasn’t a case that Lyn had computers at home that she could use to access?---No, that was later.

35 Well, again, I’d suggest that she did. She had an iPad and a Mac at home in 2017?---Well, I’m saying you’re wrong.

In respect of the event that occurred when Julie – or the event that you witnessed where you said you were there and there was a conversation between Julie and Wayne?---Yep.

40 So your evidence was that you walked in midway through a conversation - - -?---Yep.

45 - - - with Wayne and Julie in the – where did this occur?---There was a conversation happening in the office side of things. But that was after I’d walked in, because as I’ve walked in, as I said before, they were outside the building. Julie went back inside - - -

So who was outside the building?---Lyn and Julie. Julie was at her car at the time. And she went back inside. She just was fretting about something. She's gone back in. She's said, "I'm going to finish this." Wayne was, as I found out, in the laundry and - - -

5

Oh, so that was the first time you saw Julie and Lyn was outside?---Yep.

Okay?---Yeah, outside.

10 And she said, "I'm going to go in and finish - - -?---I just pulled up, and she was going back in.

And she said, "I'm going to go in and finish this"?---Yep.

15 And then she goes and has the interaction with Wayne in the - - -?---Correct.

...in the laundry?---Correct.

20 Now, did I misunderstand your evidence before – so that's the first time that you saw Julie that day?---That day, yeah, because I'd only just turned up.

So there was no conversation before that, when you overheard her and Wayne having a conversation about - - -?---No, as I said - - -

25 - - - the way in which Julie - - -?---As I said earlier - - -

- - - had been dealing with a customer?--- - - - I found out that that was a conversation – I said, I found out later that a conversation - - -

30 Oh, you found that out later?---That's what I said earlier.

So you weren't present for any of that conversation?---No. I found – as I said earlier, I found out it was to do with a client. That's what it was all about.

35 Who told you that?---Wayne. Wayne told me it was to do with a client. Then I heard Julie talking about it while I was there. She said, as Lyn and her were sitting there – and she was saying, "I've worked in the Police Department a long time. I'm good at communications. I know what I do. He doesn't know what he's talking about. I can communicate with this customer." And that's what happened. He was
40 taking her off the case, so to speak, and he was going to take control of it.

This is what Wayne has told you?---That's what Lyn told me as well.

45 When did Lyn tell you that?---Lyn was there. She was saying, "Keep away from all of this. It's to do with a customer." And Lyn was sitting in her chair and then that's when it all sort of exploded. She said - - -

How was Lyn sitting in her chair if the conversation happened outside?---That conversation – no, they were outside when I turned up and pulled up. They walked back inside, as I just said. I said I pulled up. Julie was in her car. She got out of her car. She walked back inside. She said, “I’m going to finish this.” Lyn said. “Stay
5 away from it. Keep away from it.” So I said okay. So I did. And then I heard it all happen out in the laundry. And then I found out more about it when she was saying – when she was picking up her stuff and – before she picked up her bag, she’s saying, “I’m going to finish this. I’ve worked in the Police Department for years and years. My communication is great. I know how to communicate with customers.”

10 Before she picked up her bag, she said, “I’m going to finish this”?---Yeah. She went out the - - -

15 She said that outside?---Sorry?

She said that outside when you first arrived? She said, “I’m going to go back in and finish this”?---Yep, she did. And she went back in and she started going on about it in the actual office. And then she went into the laundry and that was it. That was the last of it. She went in there, discussed it with Wayne, and then she came out,
20 grabbed her bag and left.

I thought she said, “I’m going to go and finish this,” when she was grabbing her bag?---Sorry?

25 Didn’t she say, “I’m going to go finish this,” as she was grabbing her bag?---No, she came back and grabbed her bag after she finished it. She went and did it, said what she wanted to say, came in, grabbed her bag and was gone.

30 And you say the version that Wayne recounted to you was that he wasn’t happy with Julie’s approach with a client?---Yeah – well, to a client, yes – her dealings – I don’t know whether it was by email or phone, but he was taking control of it.

35 And then you said that they were in the – were they in the laundry? This is Wayne and - - -?---Yeah.

...and Julie?---Yeah.

And you heard a lot of noise?---Heard a lot of noise, yeah.

40 Yes. And then Julie came out after that, you say?---Yes.

I suggest to you that that doesn’t make sense because it’s not true. This is what actually happened - - -?---Yep, you say that.

45 You arrived in the car park just as Julie was leaving?---She was out of the car, yeah.

And then she left?---No, not at all.

You weren't there for this interaction that she had with Wayne?---It happened; don't worry.

What you're saying now is what Wayne has told you happened?---No. I was there.

You didn't actually see it?---I was there.

You then go on - - -

COMMISSIONER: Sorry to interrupt you, Mr White.

Mr McCutcheon, in your evidence-in-chief - - -?---Sorry?

And I've made notes of your evidence-in-chief?---Sorry?

In your evidence-in-chief, you said you arrived that day and Ms Kelly was out front?---Yes.

And she said to you, "You don't want to go in there"?---Yeah.

You didn't mention Ms Mossop. And you also said you came in at the tail end, or halfway through. Now, was - when you arrive - - -?---Yes.

- - - was Ms Kelly out the front on her own or was she with Ms Mossop?---No. Julie was at her car and Lyn was out there. They went back inside and they sat back down at their desks. And she said, "I'm" - just started talking about it - she was angry about the whole thing. And she was saying, "I have communicated with people for many, many years in the Police Department. I have no problems with this. I'm going to finish this." That's when she went to the laundry.

You need to listen to Mr White - - -?---And I just continued - - -

You need to listen to Mr White's questions before you answer. You don't want to be confusing me?---Okay.

Carry on, Mr White.

MR WHITE: Thank you, Commissioner.

So the conversation where Julie said, "I've been doing this a lot - - -?---Yep.

- - - with the police" - - -?---Yep.

- - - that wasn't something that Wayne recounted to you as Julie having said to him.

You're saying that's actually something she said to you - - -?---Yes.

5 - - - outside?---Yeah – no, not outside; inside. They went back inside as I arrived. And that’s when she went to her desk. She said that. She said, “I’ve been communicating with people in the police force for years and years. I know what I’m doing.” And that’s when she has said, “I’m going to finish this.” She was angry and took off. That was it.

10 I was taking you through a version of events. You tell me if you agree or you disagree. You arrived just as Julie was leaving. She is driving off in her car. She waves to you through the window. She’s leaving. You disagree with that?---Yep.

 You then go in and talk to Wayne in the kitchen?---This is after it all happened and she’d left.

15 Well, that’s – that’s right?---Yep.

 After she’s left you go and talk to Wayne in the kitchen. That’s when he tells you what happened. You weren’t there for the interaction; he tells you what happens in the interaction, in the kitchen?---No. I only heard what she said in – when she sat down at her desk before she went and spoke to Wayne.

20 All right. So you’re in there talking to Wayne in the kitchen about what he’s – and he’s telling you what happened. And then Wayne yells out to Lyn?---Mmm.

25 He screams out to her to come into the kitchen. He says, “Get in here now,” to Lyn?---Not scream - - -

 Do you remember that?--- - - - I don’t think so. We were out there and she came out.

30 So you’re in the kitchen talking to Wayne?---Yeah.

 Then Lyn comes in?---He might have called Lyn.

35 And then Wayne goes over to Lyn – oh, sorry, Wayne’s talking to you about this interaction?---Yeah.

 He’s saying, “How fucking dare she come at me in my own laundry.” That’s the conversation you and Wayne were having at the time?---Yeah.

40 Yes. And then Lyn comes in. He goes over to Lyn, goes up close to her, and he yells at her, “Why aren’t you speaking? Why aren’t you fucking talking?”---I don’t remember him saying that. I remember him saying that, you know, how dare she.

45 What about – so that’s referring to Julie. But he then goes over to Lyn and he says these things to Lyn. Do you recall that?---I remember him asking her, “Have you got anything to say?” yes.

And he was agitated when he said that, wasn't he?---He was agitated from what Julie had done, yeah.

5 Yes. He was angry at this stage. He was, wasn't he?---He was – he was agitated, yeah.

Yes. And you could sense that from the way in which you guys were interacting in the kitchen?---Yeah, being bailed up in the laundry like that, yeah.

10 Yes?---Anybody would be.

So he's riled up, goes up to Lyn – “Why aren't you speaking? Why aren't you fucking talking?”?---Mmm.

15 Then you say, “Well, she's probably trying to figure out how the hell she's going to get through Anzac Day”?---She's probably thinking about how she's going to get through Anzac Day, yes, because she would be down one person.

20 Yes – because that was the context in which this happened. This was 12th of April 2017 just before Anzac Day?---Yep.

And Anzac Day is – well, it's the biggest period of the year for the business, isn't it?---Correct.

25 So you accept that that interaction in the kitchen happened?---Yes.

We then move to – do you recall the 1st of April 2019? This is post-Covid. You're in the office. You're doing some work to update Lyn's work – iPhone and iPad. Do you recall being in there to do that?---Yes.

30 And that was so that she could work from home with them?---Correct.

So she was going to continue doing work from home from that period onwards?---Correct.

35 She wasn't stood down at that stage, was she?---Sorry?

She wasn't stood down from her employment; she was going to keep working from home. Do you agree?---Yep.

40 You spoke about access to the Kokoda Spirit Facebook page. So – early in your evidence you said anything – if you were doing anything on the Kokoda Spirit Facebook page - - ?---Mmm.

45 - - - it wouldn't show any messages from Wayne, or to and from Wayne. But then later in your evidence I think you then accepted that if you were on the Kokoda Spirit Facebook page - - ?---If – if a conversation was active, yes.

It was described to you in your evidence-in-chief and - - -?---Yep.

- - - you were invited – well, commenting on the process that you followed
- - -?---Mmm.

5

- - - there was a two-step process. You had to first log into Wayne's account. And then you had to go to the Kokoda Spirit Facebook page?---Correct.

That page you're on right now, Kokoda Spirit - - -?---Yep.

10

- - - if you set that as a bookmark - - -?---As a bookmark, yeah.

Yes – and you clicked on that bookmark on the tool bar - - -?---Yeah.

15

- - - if Wayne's login was saved, using cookies on the computer, it'd just take you straight to that Facebook page, wouldn't it?---Probably, yes.

So there wouldn't be a two-step process. It would just take you straight to the Kokoda Spirit Facebook page?---Correct.

20

So right now we – you're logged in at Kokoda Spirit Facebook page?---Mmm.

There's an indication up the top that says Wayne?---Yep.

25

That's because it's logged in to his account?---Yep.

If Wayne sends or receives a message it'll pop up in the bottom right-hand corner?---Correct.

30

Those messages you were taken to related to some quite personal messages that related to Mr Wetherall?---Mmm.

When did you first become aware of the fact that they were popping up on the Kokoda Spirit Facebook page?---Probably – it was post-Covid, post-Covid when I was told that there had been messages up there.

35

Well – no, no. Weren't you told, on your version of events, that there were messages popping up much earlier in the piece?---I had no idea of the content. You were asking me about the content.

40

I see. Okay. So you didn't make any inquiries at any stage prior to or after Covid?---I'd had no reason to make inquiries about posts – about the pop-ups, because they're private messages I didn't need to know.

45

You didn't know they were private messages because you said they didn't say if they related to Kokoda Spirit or otherwise?---No. They said Wayne's – Wayne's

messages were popping up. That's what they said when I walked in. And that's when I suggested the admin account.

5 So when you said that they didn't advise you of the nature of the messages, you say – you say in this conversation they actually went up to you and they said, "Wayne's personal messages are popping up"?---That's it.

10 And you took no steps whatsoever to stop Wayne's personal messages from popping up on the work computers?---Yes, I did. I offered them the admin account. They said, "No, leave it the way it is."

What did you say to Wayne about the situation?---Wayne was away on the trek at the time.

15 So nothing?---No. He was away on the trek.

You never had any conversation with Wayne about the situation?---No, because I didn't see there was any need to.

20 You knew, though, didn't you that, the work computers, in order to access the Kokoda Spirit Facebook page - - -?---Yep.

- - - had to log into Wayne's personal account?---Yeah.

25 Because that was the system of work that was set up in the office, wasn't it?---Yep.

And it's been the case the whole time you were working at Kokoda Spirit?---Yep.

30 All the work computers were always logged into Wayne's personal account?---No, not always. No, they shouldn't have been. They should have been logged in at the end of the day, then logged back out again. But keeping it as a favourite made it a shorter shortcut and made it live all the time.

35 Who gave that direction, that they had to log out and log in?---Well, there's no reason for them to stay in the page. It's just log in and make the post.

You didn't give them that direction?---No.

40 Wayne didn't give them that direction?---Wayne asked them just to get in, make a post in the afternoon. The expectations about - - -

Well, when do you say - - -?--- - - - staying in - - -

45 - - - he told them that?---Hey?

When you say Wayne told them that?---To make posts? Before he went away on the trek.

When do you say Wayne told the people in the office that they had to log in, make the post, and then log out? That just didn't happen, did it?---It was before the trek. He would have said, "Can you log in in the afternoons - - -

5 He would have said. Did - - -?--- " - - - can you make a post and then - - -

You said he would have said. Did you ever hear Mr Wetherall say that to the staff? No?---No. But he did tell me that's what he said. He asked them to put posts up in the afternoon on the trek while they were on the track.

10

Excuse me, your Honour.

That date, the 1st of April, when you went in to update Lyn's work iPad and iPhone, that was arranged that day for you to come in and do that?---Yep.

15

It was arranged prior?---Oh, 24 hours before.

Okay. So this was the 1st. And the earliest you could have been advised to come in and update the iPad and iPhone so Lyn could work from home would have been end of March, last day of March?---Yeah, if that's around the time of post-Covid.

20

If I can please ask the witness to be shown exhibit 25?---Yep.

Have you seen that document before?---Yeah. Yep.

25

You produced it?---Yes, I did.

How did you produce it?---You can go into the back of Facebook and generate a log-in list, a log-in database, where someone's logged in, but – in these instances, because they're Apple - - -

30

No, just – so you've answered the question?---Yes.

How did you produce that?---From the back of Facebook.

35

So if Mr Wetherall said he produced that, he's lying - - -?---Sorry?

- - - he didn't? So if Mr Wetherall said that he'd produced that, that's not true, is it?---Well, we – we both produced one. I showed him how to do it.

40

That's the one you produced?---Looks like it. Yeah, that's the one I increased the size, because when they first come out, they're very small. It looks similar, but it's the same report.

45 And what about the notations? Did you make them?---No.

Who do you say made them?---That was made by Wayne, based on his calendar.

Did you take them from his phone? You didn't produce that report from his phone, did you?---No.

You produced that, what, on a computer from - - -?---Correct.

5

- - - Facebook? All right?---And then, yep, sent the images.

So definitely it wasn't on an iPhone?---Sorry?

10 Couldn't have been produced on an iPhone, that?---No.

No?---No, not like that. But that was actually an – an iPhone image sent, so - - -

15 Just excuse me for one moment, please. I have no further cross-examination. Thank you.

COMMISSIONER: Re-examination, Mister - - -

MR SAPSFORD: Yes.

20

COMMISSIONER: - - - Sapsford?

MR SAPSFORD: Thank you, your Honour.

25

RE-EXAMINATION BY MR SAPSFORD

[10.53 am]

30 MR SAPSFORD: You made some mention, Mr McCutcheon, about being able to access the Kokoda site directly as an administrator - - -?---Yep.

35 - - - but you had to do it through your own personal Facebook - - -?---You could do both. You could do both. You can actually generate a brand-new account – Facebook account with a new email attached to the business and then use that to log in and be an admin. I can then assign that as an admin - - -

Did you - - -?--- - - - account.

40 - - - ascertain when Ms Kelly was first on Facebook – or first had a Facebook account?---Yeah, she – she didn't have a – she didn't do Facebook.

45 Right. All right. Now, in relation to exhibit 25, there's been some confusion – or, rather, some questions raised in relation to where the login might've occurred, particularly by reference to areas such as, you'll see on the first page, Adelaide and - - -?---Yep.

- - - on the second page - - -?---Yeah.

- - - or - - -

MR WHITE: Commissioner, it was a relatively limited cross-examination in respect
of this document. I'm not sure if this is really a matter that was opened up for re-
5 examination.

COMMISSIONER: It's a fair enough observation, Mr Sapsford, but do you want to
explain where you're going with this and how it - - -

10 MR SAPSFORD: I was wondering - - -

COMMISSIONER: - - - relates to - - -

MR SAPSFORD: - - - if Mr McCutcheon could assist the Commission with respect
15 to where the entries came from.

WITNESS: Yes, I could - - -

COMMISSIONER: Well, that wasn't raised in cross-examination.

20 MR SAPSFORD: Well, the document was, with respect, your Honour.

COMMISSIONER: Yes. But broader cross-examination – broader examination in
relation to the document wouldn't seem to be in relation to the matters arising from
25 cross-examination. If you want to go there, I'll give you leave to do so as further
evidence-in-chief, but I'll give Mr White a right to cross-examine on that.

MR SAPSFORD: Thank you, your Honour.

30 Are you able, then, Mr McCutcheon, to say why those entries might have areas such
as Adelaide - - -?---Yes.

Are you able to explain that, please?---Yes. You'll notice on there a lot of these
logins are Safari. Apple do not track IP addresses - - -

35 COMMISSIONER: Sorry to interrupt you, Mr Sapsford and Mr McCutcheon.
Sorry, something just occurred to me that is prob – could be of importance and – Mr
Wetherall's still in the room, and Mr Wetherall is still under oath. Is there any
expectation - - -

40 MR SAPSFORD: He hasn't been excused.

COMMISSIONER: - - - that Mr Wetherall was going to be returning to the witness
box?

45 MR SAPSFORD: He's not. I should've asked that he be excused, your Honour.

COMMISSIONER: Yes. All right. Mr Wetherall is excused.

MR SAPSFORD: Thank you, your Honour.

5 COMMISSIONER: Thank you. I just thought I'd better get that out of the way before - - -

MR SAPSFORD: Yes.

10 COMMISSIONER: - - - we went too much further with this.

MR SAPSFORD: That was my error, your Honour.

15 COMMISSIONER: No, oversight on my part as well.

MR SAPSFORD: All right. Mr McCutcheon, what were you saying about the various areas there?---Yeah, okay. Safari – well, Apple – Apple don't track IP addresses. That's why they built Safari and - - -

20 MR WHITE: Commissioner, I accept that we're embarking on this process, but – and I've highlighted before that this is now straying into the territory of expert evidence, if the Commission's content to hear that, but again, I understood Mr McCutcheon was being called to speak specifically in respect of matters relating to Kokoda Spirit. He's now talking about how Apple track IP addresses and things
25 along those lines.

COMMISSIONER: It is getting a bit outside the foreshadowed area of Mr McCutcheon's evidence, Mr Sapsford.

30 MR SAPSFORD: Well, with respect, your Honour, what happened during the course of this trial is those areas were raised. I'm simply trying to have him clarify it. Mr McCutcheon has the expertise to do so. He's an IT expert, and he's able to say why these might have different addresses. With respect, your Honour, I would've thought the court would want to know and clarify exactly what's - - -

35 COMMISSIONER: All right.

MR SAPSFORD: - - - contained in that - - -

40 COMMISSIONER: Look, I'm going to allow it, Mr White, in respect of those matters, Mr Sapsford, but – I'll allow it, and we'll see where you go with it.

MR SAPSFORD: All right.

45 What's your answer to that question, then, Mr McCutcheon?---Apple use a server – they have servers throughout Australia. They don't track people's IP address for reason. Android phones and – and any other phones that aren't Apple they track.

They track your movements, they track where you are, and they track exactly where you are. Apple don't do that. If I was to set up a computer here for somebody else and I logged in and they wanted me to set it up for them, I would probably come up as – if I was on the Sunshine Coast, I'd come up that someone's tried to log in in
5 Brisbane. And that's their security pattern; they don't let – allow people to find out where people are logging in. It gives the person the opportunity to say, "Was it me?", or, "Wasn't me. Wasn't me". So Apple shuffle where you appear; they pick it across Australia, but it's sort of straight up and down. If you're in that vicinity, you will be marked in that vicinity in a time zone. So you could be logging in in
10 Alice Springs; it might bring you up as Adelaide. You could be logging in in Darwin; you could be coming up as Alice Springs. Logging in in Cairns, you could come up in Brisbane.

COMMISSIONER: Could log in in Darwin and could come up as Sunshine
15 Coast?---Sorry?

You could log in in Darwin and come up as Sunshine Coast?---It's more straight up and down time zone - - -

20 You just said - - -?--- - - - across the country.

- - - Alice Springs and Brisbane, you know?---Sorry?

You just said Alice Springs and - - -?---Alice Springs.
25

- - - Brisbane?---Darwin. I said if you're in Darwin – in Adelaide, it could come up in the centre of the country. So it – it chooses what it wants to, what's closest to it, but not the actual location.

30 MR SAPSFORD: Yes. That's all I had to ask. Thank you, your Honour.

WITNESS: Okay.

COMMISSIONER: Thank you. Anything further from that, Mr White?
35

MR WHITE: Just briefly, Commissioner.

FURTHER CROSS-EXAMINATION BY MR WHITE **[10.58 am]**
40

MR WHITE: So, Mr McCutcheon, on that evidence, if this reflects a login on the Sunshine Coast, the person wouldn't necessarily be on the Sunshine Coast?---May
45 not be.

Okay. Thank you, Commissioner.

WITNESS: May not be.

COMMISSIONER: Thank you, Mr McCutcheon. You're – sorry, Mister - - -

5 MR SAPSFORD: No. No.

COMMISSIONER: - - - Sapsford. No.

10 MR SAPSFORD: Thank you, your Honour.

COMMISSIONER: All right.

15 Mr McCutcheon, thank you for giving your evidence. You're excused. Thank you?---Okay. Thank you.

WITNESS EXCUSED

[10.58 am]

20 COMMISSIONER: Are you ready to proceed with your next witness now - - -

MR SAPSFORD: Yes, your Honour.

25 COMMISSIONER: - - - Mr Sapsford? All right.

MR SAPSFORD: I call Christine Wilson.

30 COMMISSIONER: Just come up here to the witness box, please, Ms Wilson. Ms Wilson, you're about to give evidence in the proceedings.

CHRISTINE ANNE WILSON, SWORN

[11.00 am]

35 **EXAMINATION-IN-CHIEF BY MR SAPSFORD**

COMMISSIONER: Just take a seat, thanks, Ms Wilson.

40 MR SAPSFORD: Ms Wilson, would you state your full name for the record, please?---Christine Anne Wilson.

45 And do you reside, Ms Wilson, at 16 Boccaccio, B-o-c-c-a-c-c-i-o, Court, Mountain Creek?---Correct.

Is your current occupation that of an administration officer at Kawana Private Hospital?---That's correct.

All right. Ms Wilson, do you know the appellant in these proceedings, Ms Kelly?---Yes, I do.

5 And did you at some stage engage in employment with Kokoda Wild Spirit Pty Ltd?---Yes, I did.

When did that commence?---April 2019, I believe.

10 And what was the nature of your role?---I was office administrator working under Lyn Kelly.

During the course of performing your role, did you become aware of any conduct on the part of Ms Kelly with respect to the recording of information?---In regard to what, sorry?

15 In regard to images on the computer?---I was aware of a USB stick, yes - - -

And what - - -?--- - - - of images.

20 - - - what were you aware of, and what did you observe?---I never saw any of the images. I was just made aware of – of images on a USB stick.

What - - -?---But I was aware of that prior to my commencement of employment.

25 And who made you aware?---A previous employer had told me about it.

All right. Did you speak to Ms Kelly about it?---The subject came up in the first few weeks of my employment commencing, yes.

30 And what was the nature of that conversation?---Ms Kelly just asked me that – she – she was aware that I was aware that there was a USB stick with some rather, you know – images on it that weren't very pleasant.

And were they images of a person in particular?---Of our boss.

35 Mr Wetherall - - -?---Sorry.

- - - you're talking about?---Mr Wetherall, yes.

40 And who was in possession of that USB stick?---I was led to believe Lyn Kelly had it.

And did you speak to her about keeping those sorts of images?---I – I did ask, "Why would you have such images?"

45 And what did she say?---She told me that she had kept them for – for future use if the need was to arise, so that in case he ever tried to fuck her over.

All right. Do you remember a discussion with Ms Kelly, yourself and Mr Wetherall present towards the end of March – in particular, 26 March 2020 – about continuing to work in the presence of COVID-19?---Yes, I do.

5 What was the nature of that discussion?---We had been discussing about due to the COVID crisis and the potential of no – not being able to get back up to Papua New Guinea, that we would possibly be looking at being stood down.

I see?---We hadn't had much work for the last few weeks leading up to that anyway.
10

Did you have a discussion with Ms Kelly about the nature of being stood down, whether it was verbal or in writing, or - - -?---We'd – we had had a discussion in my time, which was obviously our office space. We were in the kitchen and we were talking about it, but – but it was all done verbally, yes. We had been discussing
15 about the possibility of us standing down considering there was not much work available.

And did Ms Kelly express a view in relation to it being verbal and being unsatisfactory or otherwise?---Lyn and I had had a discussion prior. Wayne had
20 been up north, and we were talking about what our future was going to look like considering the Kokoda Track had been closed down and there was no international travel, and I said to her, "I think we need to take the pragmatic approach." You could tell that Wayne was getting nervous and anxious about – sorry, am I supposed to be addressing you or talking - - -

25 COMMISSIONER: Talk to Mr Sapsford?---We were talking about how – sorry – we were talking about how there wasn't much work, and I had made the suggestion that – because I could tell that Wayne was getting quite stressed about his cash flow and was concerned, and I just said to her that I thought that perhaps we should then
30 make the offer of being stood down. Lyn had then asked me not to say anything but – but that that had to come from Wayne; it was his call.

MR SAPSFORD: All right. But did that occur?---Yes, we had a meeting the next morning when he came back from up north.
35

So can you remember the date of that meeting?---Well, I remember it was the – it was the – the 27th of March was the Friday, and I remember that date distinctly because it's my brother's birthdays and we were going out, so we'd – we'd had the meeting the day before, and it was discussed then that we should stand down, and I
40 offered to stand down myself. And Wayne actually thanked me for – for making that suggestion.

All right. Excuse me just a second, your Honour.

45 Do you remember a subsequent discussion with Ms Kelly on 6 April 2020?---But – but Lyn and I had had a – a discussion as to the date. I guess that's correct.

And a discussion about whether Mr Wetherall would keep Ms Kelly on the books and payment of leave, and discussions to that effect?---After we'd had the discussion pertaining to the standdown, Lyn and Wayne then went off separately to have a discussion about what it might look like for – for us standing down and about Lyn's
5 entitlements. I'd only been in employment for 11 months, so there was not – there was no need for me to be involved in that discussion, but Lyn and I had had a discussion. She was concerned that she was not going to get her entitlements had we stood down, and – and there was no real clear view of what the future looked like financially for the company, so that she was certainly concerned about that, yes.

10 And what was – can you remember, if anything, what Mr Wetherall was saying about that?---Wayne's approach to that was – because there was some – such unknown, his concern was that she'd just hold off and perhaps if she waited, we would look like – we would see – because there was – had been – the talk had just
15 come out about some payment plan like the JobKeeper, and he talked about if she could just hold off and wait and see what that looked like, and possibly further down the track, she may get some entitlements.

Do you remember discussing with Ms Kelly about whether you had her back and what was said in that regard?---I don't quite under – I – I – I never really quite
20 understood that. I do remember there was a conversation where I was asked did I have her back, and my answer to that was – because there was – had been a discussion about looking at going down the workplace bully – bullying line, and I said I wouldn't have her back for that. I would not lie for anyone. I wouldn't lie for
25 her. I never witnessed any of that, and I – and I would not lie for that, if that's the track she was going down.

Do you remember the conversation that you're talking about, how it ended?---How that particular conversation - - -

30 Yeah?--- - - - ended? I think by that stage, I – Lyn and I were on the phone, and I hung up. I said, "Look, I – I've – I've already said too much. I don't want to get involved," and then I hung up.

35 Okay. All right. Do you remember any mention in the discussions of 26 and 27 March 2020 of Ms Kelly seeking to get her long service leave?---Yeah, she had said – mentioned that. I believe - - -

What was - - -?--- - - - I believe that was the entitlement she was talking about.

40 All right. All right. Did you have occasion to ever make entries in the Kokoda Spirit Facebook page?---No.

Did you ever suggest a course of action that Ms Kelly might adopt in relation to pop-ups on the screen?---Not long after I started, we had another lady coming on board. I was con – because I had been told about how these Facebook posts would – would supposedly pop up. This lady was going to be doing a lot of our marketing. Now,

whilst I hadn't witnessed what was on the particular – you know, the incident involved, I was concerned that someone new to the office – and if that was case, if she was doing our marketing, that she would prob – probably then be exposed to that, so my suggestion was that we perhaps either went to our boss, Wayne, to let him
5 know that that was coming up or at least – the very least – speak to the IT fellow, Parry. So Lyn said to – to leave it to her; she would speak to him. So that was the only time I got involved in that conversation.

10 All right. Did Ms Kelly ever indicate to you that she'd bought a new car?---Just prior to her leaving, yes.

And can you remember a conversation on or around 6 April in relation to – between you and Ms Kelly in relation to how she handled Mr Wetherall?---Look – well, as I said, I sit next – I sat next to Lyn Kelly for 11 months in the office. I – I think when
15 you have a home office environment, that sort of does present its own problems in itself within a working relationship. I found Lyn and Wayne – I thought they had a fairly amicable relationship. At times, it – it got a bit testy. I thought they had a very enmeshed relationship. There were certainly blurred boundaries. But I – apart from that, I thought they got on quite well.

20 I see?---There were certainly times where there were moments where obviously the boss was a bit stressed about things that were happening and – and Lyn would become frustrated. There were definitely moments where they had heated discussions, but I – as far as workpl – as far as bullying, I wouldn't say it was
25 bullying. I think they both gave as good as they got.

Did you ever mention anything about a fiddle?---A who?

30 A fiddle?---A fiddle? No.

All right?---What's a fiddle? What do you mean? I don't understand the question.

I can't put words in your mouth, Ms Wilson?---Okay.

35 That's the evidence-in-chief of Ms Wilson. Thank you, your Honour.

COMMISSIONER: Thanks, Mr Sapsford. Mr White.

40 **CROSS-EXAMINATION BY MR WHITE** **[11.12 am]**

MR WHITE: That expression that Lyn "gave as good as she got": Mr Wetherall would say that from time to time as well, wouldn't he?---I think they both ga – like I
45 said, I think they both gave – that's my – that was my words out of my mouth.

But you've never heard him say words to that effect: that Lyn "gave as good as she got"?---Possibly.

He did say that from time to time to you?---Possibly.

5

You said that you were only there for 11 months, so you started – in your evidence, you said April, but I'd suggest it was the 8th of May that you started your employment in 2019?---If you say so, I guess. I thought it was April.

10 It was after Julie Mossop had resigned - - -?---Correct.

- - - in Ap – in - - -?---Yes.

And she resigned in April?---Okay.

15

So it was after that; yep?---Sure.

And then there was a – the office closes down for quite a period across Christmas/New Year, doesn't it?---Correct.

20

So the reality was that you only really spent about eight or nine months in the office with Lyn and with Wayne?---Well, I sat a lot closer than you and I are now, so that would warrant did I spend a lot of time with her in the office.

25 In the context of how long Lyn was there, she was there for 10 years?---I think she was coming up to her tenth year, yes.

And you've spent about eight or nine months of that 10-year period in the office with her and Wayne?---Correct.

30

I'd suggest that Wayne – well, you said a home office environment can create its own problems. What - - -?---Of course.

35 - - - what do you mean by that?---Well, we're – we're – we're working in a man's home, so familiarity can breed, absolutely.

And that meant that sometimes his personal life would stray into what was happening in the office, didn't it?---Absolutely.

40 So if he was having trouble with his personal life, sometimes that would manifest itself in how he was dealing with you guys?---Not me in particular, no - - -

But it could - - -?--- - - - never.

45 - - - it could lead to him being up and down with his moods, though?---Fair to say.

And you'd never really knew what you'd get each day when you come into the office with his moods?---Well, I never found that with Wayne at all. I – I had a very different relationship to Wayne, I'll grant you that, than what Lyn – than what Ms Kelly did, for sure.

5

And there would've been times when he and Ms Kelly were interacting that you just weren't privy too?---Correct.

There were other times when he was very moody. So in other words, he could be very happy and then he could be very angry?---So was Lyn Kelly.

10

Yeah, but my question was about Mr Wetherall. That's true, isn't it?---Fair to say.

He'd be angry?---I didn't – I – I hardly ever saw Wayne angry, no. I saw him frustrated.

15

But you saw him swearing. He'd swear quite a bit in the office, didn't he?---Not in front of me, he didn't.

Not once?---I didn't say not once, but you – you – you just said he swore a – a fair bit. I didn't hear him pretty much swear at all, no.

20

So how often did you hear him swear? I'd suggest it was regularly?---You can suggest what you like. That's not true.

25

Okay?---Not – not in front of me, he didn't.

So, again, I said not once. Is it true that your evidence is that you never heard him swear in front of you?---Not – not never, but maybe once or twice. But certainly not on a regular basis, I can assure you of that.

30

Okay. Raised voice. He'd be yelling?---I never heard him yell.

Never when he was in his office?---I heard raised voices when he was on the phone.

35

When he was particularly agitated?---Frustrated.

And then he'd come out?---Sometimes, yeah. Sure. He'd have to walk past the office, yes.

40

And then that'd play out in how he dealt with you guys?---Not necessarily, no.

But it would on occasion?---He would often go and take the dog for a walk to calm down or go and climb a mountain.

45

In any event, it did make for a tense office environment?---Well, not that I witnessed.

So he'd then go off and do his treks and get it out of his system, and that was the opportunity that you guys had then to get some work done while he was out of the office?---Sure.

- 5 You agree with that?---Well, I could – I could work when he was in the office or not in the office. It really didn't make much difference to my working capabilities, no.

He came back – this is Mr Wetherall – came back from Darwin, where he'd been visiting his girlfriend, on the 25th of March 2020?---Corre – well, yeah, he – he came
10 back from – from north, yes, true.

And he was in a particularly bad mood on that occasion once he'd come back?---Not that I recall, but, look, there was the whole issue with work going on, so possibly, but whether it was to do with whatever – his relationship or what was going on with –
15 with COVID and – and Papua New Guinea treks, I don't – I couldn't tell you – I couldn't speak to that.

You couldn't speak to the reason, but, in any event, he was - - -?---Correct.

- 20 - - - he was in a bad mood during this period?---I think he was frustrated.

Lyn had asked questions and offered suggestions, and he'd shut her down. Do you remember that?---I think Ms Kelly might've not liked the answer she was getting.

- 25 Okay. But my question was was there occasion where Lyn would offer a suggestion or raise matters and - - -?---Possibly, yes.

- - - and he'd just shut her down because - - -?---Possibly, yes.

- 30 - - - he was in that mood. Yep?---Yes.

So then we go to, first up, in the morning of the 27th of March 2020. This is when you guys had the conversation about the future. This happens in the office, doesn't it, this conversation?---Yes. Yes. Correct.

- 35 Before you mentioned the kitchen. It didn't happen in the kitchen, did it?---We're at the kitchen bench.

Was it in the kitchen bench or in the office?---In – in which year are you relating to?

- 40 This conversation in – of 27th of March 2020 where Wayne had a conversation with you and Lyn about what's happening with the business?---We're in the – we're at the kitchen bench.

- 45 You say this was at the kitchen bench. Okay?---Correct.

So I'd suggest it was at the – in the office. It wasn't there?---I suggest it was at the kitchen bench. He made us coffee.

5 Wayne gave an indication that there would be reduced hours because of what was happening?---Correct.

You said, "Okay. Well, if there's not enough work, then I'll leave"?---I believe this was on the 26th, actually. It was the day before.

10 Okay. Whether it was the – I'd suggest it was the 27th, but, in any event, this is the conversation we're talking about, the one that you and Lyn and Wayne have -- -?---Okay.

15 - - - about the future. He says there's going to be reduced hours. You said, "Okay. If there's not enough work, I'll leave"?---Correct.

The arrangement was that Lyn was still coming back in on the Wednesday, though?---She was going to come back and do the pays. Correct.

20 Well, she was going come in and do the "shit jobs" that Wayne didn't want to do. That was the expression that was used?---But whose words was that?

Wayne?---That is not true.

25 He said Lyn will be coming in to do the shit jobs that he didn't want to do. And the conversation was Wayne talking about how he was going to have trouble paying BASes?---Okay. My recollection seems to be a little bit different. We sat and had a discussion, and I offered – I said I wanted to be pragmatic. I wanted a job to come back to. I could clearly see that Mr Wetherall was very frustrated and concerned
30 about how the business was going. I under – I understood that Lyn and he had to have a further conversation about what her entitlements were, which had nothing to do with me.

35 Yeah, I'll bring you to that one shortly?---Okay.

But this is the conversation we're talking about?---Well, I don't recall him saying she had to come back and do any "shit jobs".

40 Okay. And he was worried about the state of the business, and he was trying reduce the hours?---Correct.

Lyn suggested he could call his accountant and try and sort it out?---Correct. Yes.

45 And he shut her down. He snapped at her and said, "No"?---I don't believe he snapped at her, but he – he was very frustrated at the time.

There was no discussion – well, during this discussion, there was no discussion of standdown during this conversation?---We did talk about being stood down.

5 In what context do you say it was discussed? The circumstance I’ve just described?---Previous to that, I had to said to Lyn Kelly, “I’m finding it very frustrating coming in, but there’s not mu – there’s clearly not much to do” - - -

Yep, I accept - - -?--- - - - “I miss” - - -

10 - - - I accept that was your evidence. What about this conversation in particular, the one with Wayne and Lyn? The words “stand down” weren’t used during that conversation, were they?---When I was present?

15 Yes?---It was so. Yes, it was.

And who do you say said that?---Wayne said it. I said it.

20 And what words did Wayne say to say that you were stood down?---Wayne thanked me for offering to stand down, and then we agreed the three – that the – the both of us would stand down.

So what - - -?---But - - -

25 - - - what words did Wayne use to indicate to you that you were stood down?---I just said. He thanked me because I offered that I would stand down, so then he said, “So we’ll all agree that – that we will – that you – you ladies will stand down.”

30 Okay. I’d suggest that the words “stand down” wasn’t used during this conversation?---Well, you weren’t in the room.

I know.

35 COMMISSIONER: Ms Wilson, Mr White has to put these propositions to you?---I understand that, but it’s - - -

All right?--- - - - it’s quite - - -

He’s going to - - -?--- - - - frustrating.

40 - - - ask you question - - -?---I’m trying to tell the truth. I am - - -

He’s - - -?--- - - - telling the truth.

45 - - - he’s going to just ask you – he has to put these propositions - - -?---Okay.

- - - to you and seek your response to them. All right?---Sure.

MR WHITE: Did Wayne say that he was standing down too?---I can't – I don't remember. I don't know whether he was going to stand down. It's his business.

Okay. My question was did Wayne say the words that he - - -?---I can't remember.

- - - was going to stand down too. Can't remember. Your evidence was that Lyn and Wayne then went out and had a conversation?---Correct.

You weren't privy to that?---No.

That's mid to late morning?---Correct.

Lyn came back in and sat at her desk?---Yes.

She told you what had happened during the conversation, which was that Wayne had refused to give her access to her long service leave?---Correct.

Wayne then came back in, and he was in a particularly bad mood at that stage. He was swearing for the rest of the day?---I didn't hear him swearing. He – he was definitely frustrated. I didn't hear him – he certainly wasn't swearing at – at – at – at us.

Was he standing in the office at that stage - - -?---No, he - - -

- - - standing over Lyn and yourself?---Pardon?

Was he standing in the office when he came in from outside?---He may have walked past the office. I don't recall him coming back into the office.

Okay?---There was definitely a strained enviro – you know, element in the air, yes.

Borne out of Mr Wetherall and Lyn?---I think on both parts.

Okay. First of April 2020 – this is the subsequent Wednesday now?---Sure.

Now, the arrangement was that just Lyn was coming back in to do the pay, as you said?---Yes. And I was to come in. Lyn didn't want to go into the office on her own.

That's right. So that wasn't organised by Mr Wetherall?---No.

That was an arrangement. Yes?---Correct.

You came in because she had told you that she was scared and anxious of being in there by herself?---Well, yes. She didn't want to be on her own. Correct.

And then you said, I'll do you a favour and come in, did you?---I said I would come in and check my emails.

5 Well, you did more than that, because you both went in at 10 am and you stayed there for five hours?---We did.

You said to Wayne that, you'd just come in to give Lyn a hand?---Correct.

10 And that you weren't charging for the day?---Correct.

And the reality was, you were there to support Lyn. That was why you were there?---Well, we were expecting to tidy up. Lyn was – Lyn was, yes. She was a bit anxious about going in, because things between her and Mr Wetherall had obviously soured.

15 She was dealing with Mr Thomas, who is Wayne's accountant. Did you know – were you privy to that?---I think – yeah, I believe she did have a conversation with the accountant. Yes.

20 They were talking about JobKeeper and - - -?---Correct.

- - - working out how to determine the hours that they'd worked so Lyn could be paid under that?---Correct.

25 Because she was going to – well, she was, you know, she was going to continue to do some work from this point on?---I'm not sure.

30 So you have no idea if Lyn was coming in after the 1st? I'd suggest she was. That was the arrangement. That Lyn was going to continue to perform work after the 1st, wasn't she?---I have – I – I – I have no idea. I – I believed that we were stood down and – and she was going to be – she could have access from home, her home computer.

35 To do work from home?---Possibly.

So Lyn said, in a discussion with Mr Wetherall, that JobKeeper was to assist with the wages, not to replace them. Do you remember that?---Could you, sorry, could you say that again? JobKeeper was going to?

40 You were talking about JobKeeper?---Yes.

45 And there was a conversation with Wayne about JobKeeper, and Lyn said to Mr Wetherall that JobKeeper was to – designed to assist with the wages, not to replace them?---From my recollection there was a conversation, not – not necessarily about mainly this was going to be on JobKeeper because I think there was – might have been a talk about a top-up for Lyn Kelly. Correct.

Because she was going to – well, on the basis that she was going to keep working, surely?---Well, I – I don't know what – what work there would be to – to do when no one is travelling. I just – I – I – I was led to believe it was just going to be checking orders and just making sure that the trekkers that we ordered had – were aware and
5 be kept up to date with what – what we were – what we were being made aware what was happening with travel.

Because there was still work to do, because trekkers were calling in to ask what effect COVID had on their treks?---Correct.

10 So there was still work to do in the office?---There wasn't much. It was pretty quiet.

And the other part about JobKeeper, it wasn't just Lyn, it was also – because Wayne was trying to get Alicia put on the JobKeeper role as well?---I don't know anything
15 about that.

Okay. Harry was there. Do you remember him being there?---Harry would often come in and out of the office, so it – as to whether – if you want – wanted any – a particular I couldn't say. But, definitely Harry's presence was – was – was known
20 around. Yes.

He was there on this particular day because he was updating Lyn's work iPad and iPhone so she could use them from home?---Correct. Yes. She took an iPad home.
25 Yes.

Yes. Then he said, "Finished with them. They're ready to go." He gave them to her and then, after that, Wayne came in. This is later in the afternoon now, closer to you guys departing, and the relationship is tense with him and Lyn?---Yes.

30 Yes. He's in a foul mood at this stage in particular?---Things were tense.

Yes. He was standing – well, he was effectively ignoring her. He was not talking to her. He's standing close but was making no interaction with her. Do you remember that?---I remember it was very awkward. Yes.

35 So then, because it was awkward we get to 3 o'clock, Lyn said she hadn't eaten all day and that she was late for an appointment. Do you recall her saying that to Wayne?---I recall that things went very bizarrely south with Ms Kelly, and I – I don't know what happened. I was in the office. Things took a turn. I don't know whether
40 Lyn had spoke to – she was – she had made a phone call and then she couldn't wait to get out of the office. I just remember that.

Yes. And she suggested that you should leave with her too?---We were leaving. We had been there a long time.

45 And you both left together?---Correct.

Wayne was at the front door?---Yes.

And you both said goodbye to him on the way out?---Yes.

5 So any suggestion that Mr Wetherall could make that Lyn didn't say goodbye to him that day, that just wouldn't be true, would it?---No. Lyn – there – there was something – something had definitely changed and Lyn was quite odd in the afternoon. In the last half an hour – as I said, I don't know what happened. It was very bizarre.

10 You guys both said goodbye to Mr Wetherall on the way out?---I think Lyn just walked out.

15 Well, no. I'd suggest that both – if I understood your answer before, both you and Lyn - - ?---We walked out. But there was definitely something different with Ms Kelly's behaviour.

20 Okay. Do you agree or disagree that you both said goodbye to Mr Wetherall on the way out?---I don't think Lyn did.

Where was Mr Wetherall at the time? He was at the front door, wasn't he?---He was just inside from – from recollection.

25 He wasn't out the back on the phone?---No. Oh actually, he might have been. Yeah, actually he was, because I walked up to say goodbye and Lyn – Lyn didn't want to go and say anything to him. And then, he came back into the house.

30 All right. I'd suggest it was what you said the first time, which is that, you both walked past him on the way out and you left together?---No. Well, anyway. Obviously I – I think that was wrong but, anyway.

6th of April 2020 you came around to Lyn's house to collect the iPhone and the iPad back?---Yeah. I collected the iPad. I'm not sure if the phone was involved.

35 That was because Lyn was off sick. Correct?---I'm not sure. Was that before she'd come back in to do the pays, prior? Was it - - -

This is after?---Okay.

40 This was on the 6th. So the pays were earlier, on the 1st?---Sure.

So this is the 6th, so about five days later - - -?---Sure.

45 - - - you go round to the house to collect the iPad. It's because Lyn was sick at the time?---Okay.

That's right, isn't it?---Okay. Yes.

And you collected the iPad so that you could do the work on her behalf while she was sick?---I think Wayne just wanted the iPad back in the office. Yes.

Okay. Lyn didn't do any work again after that, to your knowledge?---No.

5

When you were there collecting the iPad you said to Lyn that you were nervous about going back to work and how Wayne was going to be when you got back?---Not those particular words. No.

10 How do you say you expressed the same thing to Lyn?---Well, the whole thing was – was – it was quite sad how it had all unfolded. I didn't – I wasn't aware of what – what – if you're – if you're trying to get to the point that I was nervous about being in – in Wayne's presence, no, I wasn't.

15 Okay. I suggest that you were, because you knew what his moods could be like?---Wayne was – Wayne never was like that with me. I never had a problem with Wayne, with his moods. Ever.

20 Is it just the case that he was like that with Lyn?---Like I said. I think they had a very bizarre relationship, as far as worker and – and boss went.

You told Lyn that you'd call her later that night to let her know how it went?---No. Not at all. Not at all. From when we left and the behaviour that I had witnessed on the last day that we had left the office, I knew that things were going to go in a different direction, and I didn't want to have anything to do with it.

25

30 So if Wayne sent Lyn a text on the 3rd of April to say to Lyn that, he wanted to pick up the iPad so you can work from home while Lyn was off work, would that be correct?---I wasn't going to work from home. No, with the iPad. No. I went in to pick the iPad up to take it back, because I think Wayne wanted Harry to do some work on it.

Okay?---From my recollection.

35 All right. Well, I'd suggest that you did tell Lyn you'd call her back later that night, because you then – you actually did call Lyn back later that night, didn't you?---No. I can't remember.

40 This is the 6th of April 2020. You had a phone conversation with Lyn at night?---Oh actually, yes. That's true. Yes.

You rang and said – you basically started saying that she needed to watch her back?---Never did I say those words.

45 You said that Wayne had spent a long time on the phone that day?---Wayne had made some phone calls about – in relation to payment of whatever this JobKeeper scheme was going to be and how it would look for us.

That's right. And then, you told Lyn that that night. You said, "Wayne had spent a lot of time on the phone that day"?---Possibly.

5 That Wayne was looking into her pay rise in 2018?---I didn't know anything about that at that stage.

Lyn said, she had no idea what you were referring to. And you said, "Oh, I've seen some things today"?---Okay. Yes. Now, I do remember. Yep.

10 Okay. And then, you said that Wayne had asked you to sign an affidavit saying that both you and her had been stood down on the 27th?---We – we were never asked to sign an affidavit.

15 So you didn't say those words to Lyn?---No.

You said that, Wayne was concerned that Lyn was going to accuse him of bullying?---She – Lyn Kelly said that?

20 No. You said to Lyn that, from what you'd seen that day, Wayne was concerned that Lyn was going to accuse him of bullying?---No. No. That's not true.

He said he was going to keep Lyn on the books until July and then pay out her leave to make things go away?---Was I supposed to have said that to Ms Kelly?

25 That's correct?---No. No. I had no idea at that – I don't think Wayne knew what he was going to do about Lyn Kelly's payments.

30 And you said that, Wayne had told you that, if you stuck by him then he'd look after you?---That is an out and out lie. And what would that look like to me? I find that very offensive, that statement.

And you insisted that Lyn confirm that she had your back and wouldn't repeat the conversation?---I didn't need Lyn Kelly to have my back.

35 Did you say those words?---No.

And then you said, "Okay. I've said too much" and then you hung up?---I might have made a reference about her hourly pay rate.

40 And what did you say?---That might have been when I said, about the fact that – the whole conversation came around, and I don't know why. I still don't understand why it's been such an issue that – that it had to be documented whether we were stood down or not. But my whole thing was, we definitely had a verbal agreement about being stood down. I'm sorry if I get emotional. I just find this whole thing
45 very unpleasant. We had a conversation about a – there was a verbal conversation about us being stood down. Then, for some reason, Lyn wanted it to be more about it in writing. But, I was then privy to the fact that Lyn's pay rate – which again, it

has nothing to do with me, but, that her pay rate had been differed, but I – and I had a conversation with her about that, and she said, her and Wayne had a verbal agreement about that. And then, that’s when I mentioned, “Well, how can you have a verbal agreement about your pay rate but you’re wanting it – it in writing, about us
5 being stood down, when we had a verbal agreement? You can’t change the goal posts to suit yourself.”

So you’re advocating for Wayne at this stage?---In – in regard to what?

10 Well, you’re saying that, the things you saw that day. You said that you’d seen some things today?---Correct.

That’s what you’re referring to?---Correct.

15 You’d had a conversation with Wayne and he’d given you this version of events as to what Lyn had done with her pay?---No. That’s not what I was referring to, actually. I was referring to Lyn Kelly’s work ethic.

20 So you said, “I’ve seen some things today”, referring - - -?---That was in – that was in regard to the pay – the – the pay rate.

I see. Okay. So you discovered that that day, on the basis of things that Wayne had said to you?---No. I believe that come from the accountant’s office.

25 And that’s why you called Lyn that afternoon, to say she needed to watch her back?---Not at all.

All right?---Do you know the sad thing about this is, Lyn Kelly and I were friends.

30 If you can just answer my questions, please?---Sure.

I’m sorry. That’s how this works. In respect of the Facebook account, did you ever access Facebook from the work computers?---No.

35 And did you ever see any inappropriate content on the work computers?---No.

Was it ever the case that someone else saw inappropriate content on the work computers - - -?---Correct.

40 - - - while you were there, and mentioned it to you?---No, it was – well, that was prior to me commencing.

So you say during the period that you were there, there was never any inappropriate content coming up on the work computers?---Not at all.

45 Was it your job to update Facebook at that stage?---No.

No?---No, it wasn't.

In respect of the situation with the USB, you said that you were aware of images being on a USB. Correct?---Correct.

5

You never saw any of the images?---No.

But you – but a previous employer had told you?---Correct.

10 Who was that previous employer that you worked for?---That told me?

Yes?---Julie Mossop or Julie Elliott.

You meant former employees. Someone else who used to work there?---Yes.

15

Okay.

COMMISSIONER: I think – no, the difference is, you said “employer”?---Well, sorry, an ex-employer.

20

MR WHITE: I understand.

COMMISSIONER: And the term is “employee”?---Employee. Sorry. An ex-employee.

25

MR WHITE: No. I apologise. So okay. So you said Julie Mossop told you that. I – so apologies. So that was what – all right. So in terms of this USB, did you have – you never saw this USB?---No.

30 Well, I'd suggest that there never was a USB?---Of course there was.

Of course there was? You never saw it?---Well, it was certainly talked about a lot. For something that didn't exist.

35 All right. I'd suggest that it's just not the case, that Lyn ever downloaded anything on a USB?---She may not have been the one that downloaded it, but I can assure you that a USB stick – a – with images was somewhere.

40 On the basis of what you're saying Ms Mossop had told you?---And – and Lyn Kelly, herself, told me, she was in possession of it.

Did you ever see Lyn use a USB in the office?---No.

45 How would you describe Lyn's use of technology? Would it be the case that she would be using a USB regularly or ever?---We didn't have to use a USB in the work that we were doing. No.

Okay. So no. So there were no USBs in the office?---There could have been some in the office drawer. I don't know.

Okay?---There was lots of stationery around.

5

In respect of these – or the allegations regarding overpayment, so you said that there was a conversation that you had with Wayne on the 6th, where he told you that Lyn had overpaid herself. Is that right?---Correct.

10 Were you privy to any of Lyn's pay arrangements prior to this period?---No. No.

Was – are you basing that on any discussion, aside from this discussion you had with Wayne on the 6th? Any other indication that - - -?---Well, when I had the conversation with Lyn Kelly that night she said that Wayne and her had had a – a
15 verbal agreement about her having a pay increase. So I assumed that that was correct.

That's the extent to which you are aware of any - - -?---Correct.

20 - - - arrangement between her and him about her pay?---Correct. Yes.

Okay. Excuse me for one second please. Actually, sorry, did the allegation – or sorry, your evidence in respect of Lyn having a new car, how was that – how is that relevant to your discussions with her?---I don't even know how – how it is relevant
25 now, but, we were having a discussion because a gentleman come round to do a inspection on her vehicle – a pre-inspection on her vehicle that she was selling, because she had purchased a new vehicle.

All right. Well, I'd suggest that she didn't purchase a new vehicle during that
30 period?---Okay.

I have no further cross-examination.

COMMISSIONER: So is it the case that you're saying you assumed she was buying
35 a new vehicle because she was having her old vehicle - - -?---She told me she bought a new vehicle, but she didn't want Wayne Wetherall to know.

All right. You never saw the new vehicle?---I saw her driving around in it. Yes.

40 You saw her driving around in it?---Yes.

What sort of vehicle was it?---It's a – like a grey Mazda.

Can I just ask you about this USB issue?---Sure.

45

Do you know how it is that Mr Wetherall became aware of the USB instance?---Yes, I do.

How did he find out about it?---Well, I unfortunately was – my hand was forced and someone else coerced me to tell him, because he had to – he – apparently he had to be told.

5 How were you coerced into telling Mr Wetherall about the USB?---Because after Lyn Kelly left and it all became apparent that we were being stood down and that – that things had gone pear shaped with Lyn Kelly’s relationship with Wayne, I was approached by a – a colleague of mine who said, “You must tell Mr Wetherall about the USB stick and the position that Lyn Kelly has it.”

10 Who was the colleague?---A lady that I worked with, with – in Wayne’s office, Carlie Brial. And I told her I didn’t want to get involved. I didn’t want to - - -

15 Are you saying that you told Ms Brial about the USB?---She told me that she knew.

Why didn’t she tell Mr Wetherall? Why was she coercing you to do it?---I don’t know. I don’t know. She knew well before I knew.

20 All right. And so, so what was the purpose of telling Mr Wetherall about it?---I – I honestly don’t know. I honestly don’t know – that he had the right to know, because concerns of what Lyn was going to do with it.

All right. Anything from that, Mr White?

25 MR WHITE: Just one moment please, Commissioner. Ms Wilson, Carlie started work in July of 2019. That’s correct, isn’t it?---Yes.

You started work in April or May of 2019?---Correct.

30 How is it that she came to know about the USB before you did, if you were advised of the USB before you started your employment?---Because I knew the – I knew a previous employee. I knew she wasn’t happy with her position at Kokoda Spirit. But she used to kind of – I – I knew her from my previous employment. I – I worked in the gym where I used to coach her. And her job sounded very exciting to me and
35 thrilling.

So how is it the case that Ms Brial knew about this USB?---Well, apparently a lot of people knew about it.

40 But before she had started work at Kokoda Spirit?---Because they all – they’re all in a group of friends that go trekking, and apparently they all were aware of it.

Okay. I won’t press that any further, Commissioner. Thank you.

45 COMMISSIONER: Mr Sapsford.

MR SAPSFORD: Thank you, your Honour.

RE-EXAMINATION BY MR SAPSFORD

[11.41 am]

MR SAPSFORD: Just in relation to you informing Mr Wetherall of the USB, are
5 you okay? Okay to continue?---Yes.

Can you remember what date it was that you informed him?---No.

And in relation to the conversation you had with Carlie Brial, where you say she
10 coerced you into telling Mr Wetherall, can you remember what she said to
you?---She said, "You have to tell Wayne about the USB stick. He has a right to
know." I said, "I can't do that. I don't want to discuss it." And she said, "How do
you think you'd feel if he knows – if he finds out that you knew and you didn't say
anything?"

15 Right?---And she kept pushing me to tell him.

All right. Yes. Thank you, your Honour. That's the evidence of this witness.

20 COMMISSIONER: Thank you, Mr Sapsford. Ms Wilson, thank you for giving
your evidence. You're excused. Thank you.

WITNESS EXCUSED

[11.41 am]

25

MR SAPSFORD: Thank you, your Honour. I call Carlie Brial.

COMMISSIONER: Are we still planning to proceed to aural submissions today?
30

MR SAPSFORD: Yes, your Honour.

COMMISSIONER: Great.

35 MR SAPSFORD: In fact, I think Ms Brial is going to be a relatively short witness.

COMMISSIONER: Sure. All right.

MR SAPSFORD: But, what I was going to suggest, your Honour, is, maybe a 10
40 minute break after Ms Brial and then proceed straight to submissions, and perhaps go
through submissions and keep going beyond 1 o'clock if we need to, so that we can
finish the day, instead of having an hour and a half at the lunch break and coming
back half way through submissions. I don't know whether my learned friend is
happy with that.

45

MR WHITE: I'm in the Commissioner's hands. Anything that - - -

COMMISSIONER: Look, I'm fine with that if both of you are, but, if you, Mr White – I mean, Mr Sapsford is clearly ready to proceed, but if you wanted a luncheon adjournment to collect your thoughts and prep your submissions a bit more carefully I'd be open to that as well.

5

MR WHITE: Thank you, Commissioner, but I'll be ready to proceed as well.

COMMISSIONER: All right.

10 MR WHITE: Thank you.

COMMISSIONER: No problems.

15 MR SAPSFORD: And certainly it will mean that, I've done some written submissions, but that part of those written submissions that relates to the evidence that went on here this morning will - - -

COMMISSIONER: I understand. Yes.

20 MR SAPSFORD: - - - will – and this is fresh in your Honour's mind in any event, so - - -

25 COMMISSIONER: I've been trying to ex temp them where I can, Mr Sapsford, but this one, I think, probably is going to require me to take a bit of time to write something out. So - - -

MR SAPSFORD: Yes.

30 COMMISSIONER: - - - I can't promise you any ex temp today.

MR SAPSFORD: Thank you, your Honour. I certainly wasn't expecting your Honour - - -

35 COMMISSIONER: No. I - - -

MR SAPSFORD: - - - to undertake such a feat.

COMMISSIONER: Mr Webster would have, back in the day.

40 MR SAPSFORD: Yes. Having made his mind up already.

COMMISSIONER: We're reminiscing about an old industrial magistrate, Mr White.

45 MR WHITE: I see.

MR SAPSFORD: Your Honour, if I could be excused, just enquiring - - -

COMMISSIONER: Why don't I stand down for - - -

MR SAPSFORD: Five minutes.

5 COMMISSIONER: - - - five minutes.

MR SAPSFORD: Thank you, your Honour.

10 **ADJOURNED** [11.45 am]

RESUMED [11.51 am]

15

COMMISSIONER: Take a seat, thank you. Ms Brial, you are about to give evidence in these proceedings. Do you want to make an oath on the bible or a solemn affirmation?

20 WITNESS: Bible oath, thank you.

COMMISSIONER: Sure.

25 **CARLIE BERITA BRIAL, SWORN** [11.51 am]

EXAMINATION-IN-CHIEF BY MR SAPSFORD

30

COMMISSIONER: Thanks Ms Brial. Just take a seat.

MR SAPSFORD: Is your full name Carlie, C-a-r-l-i-e, Berita, B-e-r-i-t-a, Brial, B-r-i-a-l?---It is.

35

And do you reside, Ms Brial, at 13 Barellan, B-a-r-e-l-l-a-n Avenue, Buddina?---I do.

And is your occupation that of a colour consultant?---It is.

40 Do you know the appellant in these proceedings, Ms Kelly?---Yes, I do.

And the employer of Ms Kelly being the incorporate entity associated with Kokoda Spirit run by Mr Wayne Wetherall?---Yes.

45 Speak up a little?---I'm sorry. Yes.

And you'll need to put your mask over your nose?---Sorry, my nose – my glasses are fogging up.

His Honour's - - -

5

COMMISSIONER: I suffer the same problem, Ms Brial, but given we've had a truck driver wandering around the inner city, this is probably the worst spot to be non-compliant with the mask?---I'm sorry.

10 We'll just have to – well, we'll have to cope?---Absolutely.

MR SAPSFORD: Ms Brial, when did you commence employment with – I'll term it generically as Kokoda?---July 2019.

15 What was the nature of your employment?---I was employed in marketing and events for Wild Spirit Adventures, mainly, at Kokoda Spirit.

Are you still employed?---No, I'm not.

20 When did you cease your employment?---At the end of the JobKeeper period, which was March this year – was it March this year, I think.

MR WHITE: Sorry, Commissioner. Can I just - - -

25 WITNESS: End of JobKeeper.

MR WHITE: Can I just inquire. Ms Brial seems to be looking down. Is she - - -

30 WITNESS: I'm sorry – I'm sorry, I've got things in front of me to remind me of dates.

COMMISSIONER: No, Ms Brial. Hand them over, would you?---Oh, can I? Oh, sorry.

35 You can't have that?---Do I put them here?

Yes, please. I'm sorry, I didn't notice.

MR WHITE: No, that's okay.

40

COMMISSIONER: Otherwise, I would have corrected it.

MR SAPSFORD: Ms Brial, in the course of your employment, were you required at any stage to access the Kokoda Spirit Facebook page to update it with respect to treks and the like?---I was given access to the Wild Spirit Adventures Facebook page.

45

What was the nature of that access?---I was to put up posts while we were away, or Wayne was away doing trips.

5 Was it necessary when you did that access, to access the Kokoda page through Mr Wetherall's personal page or could you access it directly?---No, I accessed it directly through my account. I was given it as part of my Facebook account.

Who did that for you?---Parry.

10 Are you referring to Mr Parry McCutcheon, the IT - - -?---I am.

- - - fellow?---Yes.

15 Did you at any stage, when accessing the Kokoda Facebook page – if I can term it that way – encounter anything popping up on the screen or anything of a personal nature relating to the Mr Wetherall?---I didn't have access to the Kokoda Spirit page, so I only could see what the public could see on Kokoda Spirit's page.

20 COMMISSIONER: Sorry, Ms Brial, I'm sorry to be a pain in the neck about this mask thing?---Sorry.

But it has to be over your nose?---Yeah.

25 We're just at a very critical time here in the CBD - - -?---Yes.

- - - that by this afternoon the coffee shop downstairs might be announced as a hotspot?---Sure.

30 So you just need to keep that on your nose at all times?---Sure.

I'm just looking after the safety of everybody in the room?---I know. I do understand.

35 MR SAPSFORD: What was the page you accessed and updated?---Wild Spirit Adventures.

40 Okay. I'm sorry. I think because of accessing Wild Spirit Adventures, did you ever see any personal comment on those pages in relation to Mr Wetherall?---No, I did not.

Did you become aware of there having been personal comment popping up for other employees?---Yes, I did.

45 What was the nature of your knowledge in relation to that?---I was told that there was explicit material popping up through Messenger on the Kokoda Spirit while access – while the Kokoda Spirit page was being accessed.

Who told you that?---I was told that by Christine Wilson.

I see. And were you aware of whether any of this material was being saved in any fashion?---I was told – I cannot recall when this was – but I was told at one point that
5 they had – that it had been saved onto a USB stick.

And when you say they, who are you talking about?---That Lyn Kelly had saved it onto a – and Julie Elliot had a USB stick.

10 Now, did you eventually have a conversation with Ms Wilson about this issue?---I did. It was after we were stood down, that Christine made me aware again that that existed, and I told her that she needed to tell Wayne about it.

I see. Can you remember what you said to her in that regard?---I said if you didn't
15 tell Wayne that that existed, that I would.

Right. That's the evidence-in-chief of Ms Brial, your Honour.

COMMISSIONER: Mr White.
20

CROSS-EXAMINATION BY MR WHITE

[11.57 am]

25 MR WHITE: Ms Brial, if I understand your evidence correctly, you were engaged as a contractor; is that right?---I was employed part-time during that, so I was actually employed.

30 Gotch you. So you didn't do any work in the office – you worked remotely?---From home, yes. So I rarely was in the office.

So you can't really comment on any of the interactions that happened in the workplace?---No, I can't.

35 You had access to Wild Spirit Adventures Facebook page?---I did.

Nothing whatsoever to do with Kokoda Spirit Facebook page?---Absolutely not.

40 So you can't comment in respect of any pop-ups or messages that appeared on there?---Absolutely not. I never saw anything of that nature.

Okay. You were told of explicit material popping up through Messenger when accessing the Kokoda Spirit Facebook page?---Yes.

45 And you were told that by Christine Wilson?---I was.

So it wasn't the case that you told her about it?---No.

You didn't know about it until she told you?---Absolutely not.

So she tells you that there's this USB floating around. You never saw the USB, did you?---No, I have not seen the USB.

5

And she was the one that told you that Lyn and Julie had it?---That's correct.

And then when things came to a head after COVID, you went to Christine and said, you know, that USB you told me about, you should tell Wayne about that?---Yes, and I – and the nature of our conversation was around what was on the USB as opposed to the USB itself. And I said Wayne needs to know that you can – you have been able to see all of that.

10

And you never saw what was on the USB?---No, I did not.

15

You were just recounting back to Julie what she'd told you was on the USB?---To Christine – that's correct.

I apologise, to Christine?---Yes, that's correct.

20

All right. I have no further cross-examination.

MR SAPSFORD: No re-examination, thank your Honour.

25 COMMISSIONER: I just have a couple of questions. What was the impertinence for wanting Mr Wetherall to know about the USB at that point in time? So we're in the week of the 1st of April, or thereabouts – around about that time the business is going into a shutdown – what is it about that point in time that you felt Ms Wilson had to tell Mr Wetherall about the USB?---I just felt like if there was – if they had had access to being able to see those things, that they shouldn't have access to being able to see those things any longer, but they – our IT – someone needed to shut that down. It wasn't acceptable that they could see it.

30

35 So but why was it at that – I mean, you'd known about it for months and months and months - - -?---No, I hadn't actually known about it for months.

35

When did Ms Wilson tell you about it?---Ms Wilson told me about it quite late – like it would have only been – I can't recall that exact date, but I was only working at that stage for them for – from July until March, and it was certainly not for the first five or six months I was working for them, that I knew that that existed.

40

When did Ms Wilson tell you about the USB – roughly. You started in July of 2019, I think you said?---If – I would be – I would actually be guessing and I don't like to say that, but I really can't recall exactly when it was, but I would most certainly say it was not until at least January/February – it was very late in that - - -

45

All right?--- - - - and in fact, it could have even been – even coming into March. It was when everything was falling apart, because Christine and I didn't have conversations like that, nor did Lyn and I, where I was not in the office, so I wasn't a part of the office dynamic.

5

So – so how did it come up in conversation with Ms Wilson that she told you about this USB?---That's what makes me think it was March, because it was when everything was for – it was when everything was starting to really unravel with COVID, and it was then that conversations started to happen about who was going to be still doing what? What was going to be happening from here? You know, everyone was concerned about whether or not they still had a job. There was all of a sudden that unrest in the office that was creating the situation where those conversations were taking place.

10

15

How does uncertainty about employment then trigger the thought, oh well we better tell him about the USB thing? I'm just trying to understand why was – why was it at that point because you're the one that's there – you're the one that's approached Ms Wilson on your evidence – you've rung Ms Wilson and said, "You've got to tell him about the USB." I'm just wondering what was it about that – the events of that moment in time - - -?---Yes.

20

- - - that made you say to Ms Wilson, you've got to tell him - - -?---It was - - -

25

- - - or I will?--- - - - and now I can remember. Actually, I think I can now remember the exact moment I said that to Chris. We were actually at Wayne's. It was after Lyn had – after Lyn had finished. It was after we'd been told to stand down, and Chris was there saying that she had held all of that information and that she had all of that information. And I said, "well, if you have" – Christine was worried that Lyn would do something with that information. And I said, "If you're worried about that, Wayne absolutely needs to know. He needs to know that you know that that exists and that you have seen all of that. He needs to know that you've seen it all." During that period of time, was when that conversation happened with Christine, that Wayne's - - -

30

35

So to forearm Mr Wetherall - - -?---Yes.

- - - of a perceived - - -?---Yes.

- - - attack?---Potential attack.

40

All right. Any subsequent?

MR SAPSFORD: No, thank your Honour.

45

MR WHITE: Just to, if I may?

COMMISSIONER: Yes.

MR WHITE: So this all happened and in close proximity, so it was the case that Ms Wilson told you about the USB, and in your response to her at that same time was, “Well, you had better tell Mr Wetherall about it.”?---It all – it was all – all of those conversations were taking place in a very close period of time and recalling exactly
5 where, how, the order in which they took place is very difficult and I thought long and hard about it, and it wasn’t until then that you asked me exactly that, that I remembered the exact conversation that I said at that moment, “You need to tell Wayne about it” and Chris actually got Wayne to come back into the room – because he was out of the room in the study – to come back in and tell him. So I remember
10 that exact moment when I actually told her to do that.

So was it the same day you found out about it, that you told Christine to tell him?---No, it wasn’t the same day that I found out about it. I had – I had - - -

15 It was a matter of how long?---Weeks.

Okay?---Yeah, weeks. Not a long time at all.

And again, it was Christine that told you about it. You had no idea until she told
20 you?---I did not know about – that there – that – I was not aware of any of that until then. That’s right.

Thank you.

25 COMMISSIONER: Anything further, Mr Sapsford?

MR SAPSFORD: No, thank your Honour. Might Ms Brial be excused?

COMMISSIONER: Yes. Ms Brial, thank you for giving your evidence. You’re
30 excused. Thank you.

WITNESS: Thank you.

35 **WITNESS EXCUSED** **[12.04 pm]**

MR SAPSFORD: That’s the case for the respondent, your Honour.

40 COMMISSIONER: Thanks Mr Sapsford. All right. Are we going straight into submissions?

MR SAPSFORD: Thank your Honour. I hand up to your Honour, two copies of submissions on behalf of the respondent, and once again, take to your Honour, that
45 some of the entries in relation to the evidence given this morning, may not be entirely correct.

COMMISSIONER: Yes.

MR SAPSFORD: But I do, and just prior to going into those submissions, commend your Honour and to the evidence of the last two witnesses that have given
5 evidence in these proceedings, their evidence was straightforward and clearly by way of a recollection of the events which occurred, and with respect, bearing all the hallmarks of a credible and reliable witness.

In particular, Ms Brial, in answer to questions proposed by your Honour, was able to
10 recall the circumstances of this coming to her attention of the USB, or the recording of images coming to her attention, and the conversation he – she had with Ms Wilson in that regard where it was to the effect that if Ms Wilson didn't tell Mr Wetherall, she would, or that she was asking Ms Wilson to tell Mr Wetherall, given the circumstances.

15 Now, that all coincides, your Honour, with the email exchanges contained in exhibit 6 which revealed – and I'll come back to these, but revealed a courteous but frank discussion between Mr Wetherall and Ms – telling about what her entitlements were in the circumstances of COVID and in the circumstances of the "stand down". Now,
20 your Honour, whether the discussions of 26th and 27th April can realistically - - -

UNIDENTIFIED SPEAKER: March.

MR SAPSFORD: March – can realistically be regarded as a formal stand down or
25 otherwise, is not of the greatest importance in your considerations. The – there is no particular magic in that term, that there occurred a discussion at the time of COVID and on Mr Wetherall's return from Darwin, is no doubt on all of the evidence. The circumstances that pertained at that time by all of the evidence were that Mr Wetherall had escaped out of PNG at a time when lockdown as just about to occur.
30 He'd gone to Darwin and flown from Darwin back to the home where he lived on the north coast, and it was at that stage that a discussion occurred with Ms Kelly, Ms Wilson and Mr Wetherall with respect to work at a time when COVID had impacted upon Mr Wetherall's business.

35 Now, it doesn't take any great analysis to come to the conclusion that what had occurred in an international business with the advent of COVID and there was no business. The business had ground to a halt. Quite clearly, actions needed to be taken, and on all of the evidence, once again, and this honourable Commission would come to the conclusion that there was an expressed inability by Mr Wetherall to
40 retain the services of Ms Kelly. Now, your Honour might find that he was perhaps a bit cheeky in expecting her to still provide services by way of doing the pays the following Wednesday, and then by asking her to come in on the following day to discuss further aspects of what might be done to promote the business and to keep it going. But with respect, your Honour, that doesn't change the basic premise that
45 there was no business – there was no work to be done at that time. I'm sure my learned friend will point to various things that could be done on an ongoing basis, but the whole premise – the whole business had ground to a halt through COVID-19.

COMMISSIONER: I just – I just – sorry to interrupt you, Mr Sapsford. And it's not a particular importance to my consideration is with respect to the reasonableness, but the notion of a stand down is in fact a statutory one. There is provisions in the both the State and Federal Act around the provisions of stand down without pay, and
5 Mr Wetherall in his email says he evoked references to legal advice and his rights etcetera, etcetera, and we don't need to hear any of the advice, nor does it necessarily go to reasonableness as to whether or not he's complied with the letter of the law. But it's not just a colloquialism.

10 MR SAPSFORD: Yes.

COMMISSIONER: A stand down has a particular – in this context in particular, it appears that Mr Wetherall was evoking or trying to evoke, particularly on the issue of the sick leave payments, was trying to evoke the statutory provisions.

15 MR SAPSFORD: Indeed, I didn't mean to detract from that aspect of it, because it's certainly part of the respondent's submissions that the actions taken by Mr Wetherall to gain – to get advice in relation to what had occurred and how to approach it, had all the hallmarks of reasonable management action. At the end of
20 the day, if it be seen that the advice he received was wrong, or the manner in which he implemented it was not entirely correct, that doesn't detract from the reasonableness of obtaining it.

COMMISSIONER: It's not a question of industrial fairness.

25 MR SAPSFORD: But industrial fairness in obtaining advice and applying that advice as best he saw fit. And I – as I will, in my submissions, I commend your Honour and to the solution the way through and the dichotomy of evidence in this matter is by reference to the exhibits. They're the things that can't be changed.
30 What can be changed by way of recollection, by way of perspective, by way of the manner in which witnesses give evidence, is their oral evidence and that in these proceedings has differed greatly between the appellant and her witnesses and between the respondent and witnesses called on the part of the respondent. As I will come to the exhibits, I commend your Honour to the exhibits as being
35 contemporaneously straightforward of the interchange between the parties. In particular, exhibit 6, which is the email trail of those crucial events occurring in April following on upon the meetings of March 2020.

40 But I don't digress your Honour, from the submissions that I've handed up to you. If I could just go to them, your Honour will see, and I won't traverse these word for word, but your Honour will see in relation to the issues as outlined on page 2, that the respondent doesn't take issue with Ms Kelly being a worker and concludes on the medical evidence, but it's likely the Commission will find she sustained the psychiatric injury which arose out of her employment where, with the relevant
45 statutory test, her employment was a significant contributing factor. It follows then, that in accordance with the appellant's onus of proof and it is the appellant's onus of proof that she must then establish that either the injury arose out of the events which

5 did not involve management action or alternatively that it arose out of management action which was either unreasonable or taken in an unreasonable way. It's the respondent's submission the injury quite clearly arose either out of or in the course of, and more properly, out of management action. It's no part of the respondent's submissions that there's any application of that part of section 32(5) of the Act relating to disciplinary action or action taken against the worker, and the section of the worker in relation to that action.

10 COMMISSIONER: Could I ask you, Ms Mr Sapsford, and I don't intend to keep interrupting you, but this is a matter that was on my mind, and you may not be immediately in a position to respond to it, but I could never wonder with respect to the inappropriate images that will – the inappropriate messages and images that came up on the Facebook page when Ms Kelly was accessing it, Mr Wetherall has indicated that he wasn't aware that that was happening - - -

15 MR SAPSFORD: Yes.

20 COMMISSIONER: - - - and no doubt that he'd – I've no doubt that he wasn't aware that was happening. In circumstances where it's an incidence of her employment to be accessing that page and those things were coming up unintentionally on the part of, you know, Mr Wetherall sending these messages and I wondered whether that might even be within the characterisation of management action. I mean, it's the actions of a manager, but you know, in the circumstances under which it arose, did it even have the characterisation of management action, given that he had no idea that she was being exposed to it?

30 MR SAPSFORD: Well, there's a number of issues there, your Honour. It could be said it was management action by way of his failure to address and ensure it wasn't happening.

COMMISSIONER: I didn't mean to put you on the spot, it's just something that I had meant to raise with you, and I forgot to, and as you were traversing management action, I thought now is the time to do it.

35 MR SAPSFORD: I appreciate your Honour's point such that if the injury arose out of being exposed to the images independently of management action, the injury may well be put in section 32 in any event.

40 COMMISSIONER: But I wanted to hear the parties on that. I didn't necessarily form any views.

MR SAPSFORD: I quite - - -

45 COMMISSIONER: I hadn't formed any view about it, but I just wanted to hear the parties on their, you know, my thoughts on that.

MR SAPSFORD: I quite appreciate your Honour's point. I think both that argument and the other argument I identified in relation to it being management action in relation to ensuring what was on the computer, those are relatively easily answered by the fact that there was no miscarriage of management action where Mr
5 Wetherall was not informed of this occurring. Information provided to him would have led to appropriate management action to address the issue. And to the extent – to the extent that the injury occurred due to this occurring and that nothing was done about it by Ms Kelly, save for harvesting and collecting the images – and I use that term quite openly where you have before you exhibits 9, 16 and 19 – and that it
10 would be a perverted result to find that an injury occurred by the positive actions of the voices themselves to allow such exposure. But don't, please your Honour, hesitate to bring up anything that comes to your Honour's mind because I'm not sure I have addressed everything in my submissions that might be of significance.

15 Well, your Honour, and the events which occurred in 2014 are addressed in pages 2 and 3 of my submissions. In particular, the first event where it's alleged Mr Wetherall was standing over the top of Ms Kelly and yelling and screaming at her to the point of spitting at her, well that's all well and good to make such an allegation in relation to an event occurring some six or seven years prior to the date on which Ms
20 Kelly is said to have sustained injury, but as I submit in my written submissions, there's no record of the event by way of complaint, email, diary note or other contemporaneous notation, there was no complaint to authorities or another party, no report by Ms Kelly to her general practitioner, no decision by Ms Kelly to leave her employment after that event.

25 Similarly, with respect to the other events now promoted as having occurred in 2014 with respect to the toilet door and with respect to the alleged hole in wall, that's not in the statement of facts and contentions. It's not in her statement to her general practitioner in exhibit 4. It's not in her statement to WorkCover exhibit 8. Wasn't
30 even opened by her counsel.

Those events most certainly appear to be events which are now drawn upon to lend some credence and to an allegation of bad behaviour on the part of Mr Wetherall. Your Honour, with respect, will regard them with the proper weight they are to be
35 given, given that their relationship to the injury sustained by Ms Kelly is tenuous at best. Your Honour would note further that Mr Wetherall has explained the circumstances in relation to each of those and provided evidence to the contrary.

The term significance really of those events is best found – and their contribution to
40 Ms Kelly's injury is best found by reference to her conduct exhibited in exhibit 8 and exhibit 2. By exhibit 8, your Honour, Ms Kelly sent Mr Wetherall an email seeking to confirm and to put in writing the nature of her contractual retainer. She then proceeded to draw up the actual contractual retainer which was exhibit 2, which both Ms Kelly and Mr Wetherall signed. These, your Honour, are not the actions of a
45 dissatisfied employee. They are not the actions of an employee that has been exposed on a almost daily basis as Ms Kelly would have you believe, to bad moods, bad behaviour and erratic behaviour by Mr Wetherall. They're the actions of an

employee who is happy with her employment and wishes to put it in writing and to continue. Interestingly, the events giving rise to Ms Kelly's psychiatric injury traverse the period from 2010 to the contraction of the injury in 2020, and the best Ms Kelly is able to point to, are two events of dubious reality in 2014. And that's –
5 that's it, your Honour. That's the only event she's able to actually give evidence of and one would think that if her contentions with respect to the conduct of Mr Wetherall had any merit, then there would be others.

10 I go on to make submissions in relation to the conversations of 26 and 27 March as related by Ms Kelly and the subsequent conversations of 2 April and 3 April 2020. Well, it's a matter for your Honour having regard to the actual evidence, but on any view, on Ms Kelly's view, on Mr Wetherall's view, the interaction between Ms Kelly and Mr Wetherall on 2nd April 2020 and 3rd April 2020, was of a relatively benign nature. And it is clear they weren't getting on. Ms Wilson has given
15 evidence of that, and I submit you would accept the evidence of Ms Wilson as to the manner in which Ms Kelly left on the afternoon of 2 April 2020, leading to the subsequent discussion with Mr Wetherall on 3 April 2020.

20 The consequence of all of that was Ms Kelly attended a general practitioner on 3 April 2020, provided the general practitioner's script certificate as opposed to a workers compensation certificate and did so with the expressed – as contained in that part of exhibit 6 which contains the email from Ms Kelly to Mr Wetherall with the expressed intent of being compensated for the period of time she was off sick. Well, this led thereafter, to an email or a message from Mr Wetherall of 3 April 2020
25 which is exhibit 5. Once again, your Honour I commend you to the exhibits in this matter and the message from Mr Wetherall is with a view to trying to have a conversation and clear the air. It is supportive, concerned and appropriate to the information Ms Kelly had then provided to Mr Wetherall. It's a message which bears, with respect, all of the hallmarks of reasonable management action taken in a
30 reasonable way.

There followed, of course, the interchanges which became exhibit 6 in relation to the standing down and I've already addressed them in part. Your Honour, I don't intend to traverse the wording and the import of each of those documents. It's sufficient to
35 commend once again, your Honour to the contents of those emails and the nature of the information provided by Mr Wetherall. They support exactly what Mr Wetherall said in his evidence was the situation, that he was saying to Ms Kelly that she should just hold off to allow him to investigate the situation and to determine what was occurring. As I submitted earlier, they support that Mr Wetherall did not act off the
40 cuff. What he did was he sought advice prior to providing his position to Ms Kelly and he did so in a fair, if straightforward manner, in those emails.

It's apparent Ms Kelly was quite dissatisfied with the provision of that information. Their tenure changed by the email of 8 April and that email of 8 April from Mr
45 Wetherall coincides with the evidence of Ms Brial, coincides with the evidence of Ms Wilson, that it was on the 8th that Mr Wetherall was first informed as to the position with respect to Ms Kelly saving images which she'd observed on the screen

which were quite clearly unrelated to her employment, of a private nature and none of her business.

5 The reasons provided by Ms Kelly for the retention of those images do not hold up and are in my submission inherently implausible. There was nothing to stop Ms Kelly going home and discussing with her husband what happened, discussing what she had seen, not necessary to take the image to show it to her husband. The whole of the scheme of Ms Kelly, Ms Mossup and Ms Carter appears for Ms Kelly to retain from her own endeavours and from information provided to her by Ms Mossup and 10 Ms Carter, this information. The provision by Ms Carter to Ms Kelly of the images she had observed is perhaps explicable by Ms Carter being under the command or being directed by Ms Kelly and Ms Carter seeking advice, well, that wasn't so with Ms Mossup. There was a collaboration between Ms Mossup and Ms Kelly for the retention of that photographic material.

15 Now, there's much being made about the existence or otherwise of a USB. Well, that's simply addressed your Honour. You don't need a USB if you've got a phone to put the images in. The fact that the images were retained, that they were kept and that they were subsequently used as they have been in these proceedings, is not in 20 doubt. There was no question about that. The fact that they were, your Honour, used in this – these proceedings in the – in a manner designed quite deliberately to cause Mr Wetherall the maximum amount of embarrassment that could possibly occur, is also not in doubt. And I commend your Honour to the transcript, in particular the cross-examination of Mr Wetherall which quite unnecessarily for the purpose of the 25 matters to be proved on the part of the appellant, quite unnecessarily and scandalously put to Mr Wetherall each and every salacious part of those images in order to cause him the maximum amount of embarrassment possible in front of a crowd gathering. Mr Wetherall admitted the images in his evidence-in-chief. That, your Honour, was sufficient for the appellant's purposes, but that your Honour, did 30 not satisfy the approach taken by the appellant in these proceedings.

COMMISSIONER: Ms Sapsford, in respect of the issue of retaining the images, there was evidence from both Ms Kelly and Ms Mossup to the effect that they weren't sure what they ought to do, whether there was any – they were going to get 35 some advice from a Mr Bathersby, a solicitor on the Sunshine Coast, and given the fickle nature of electronic records and particularly those in private message services, I think the evidence was – I could stand corrected on this – the evidence was they weren't sure that people would believe them if they just went and told the solicitor about that, so they retained images for that purpose. That would be a legitimate 40 purpose to retain the photographs.

MR SAPSFORD: Indeed it would be. It would be a definite purpose to retain the photographs if they did what they said they were going to do. They didn't go and consult a solicitor. They didn't do anything after speaking to Ms Kelly – after 45 speaking with her husband, didn't do anything. What they did, was they kept them thereafter and did nothing. They weren't being kept for the purpose of doing something and having a hard copy of something that might be ephemeral on the

computer. What they were doing was retaining them for future use. And this is where, of course, the other evidence of Ms Wilson comes in which, and with respect your Honour wouldn't doubt, that Ms Wilson was told by Ms Kelly that they were being kept for a specific purpose; for use at a later time. There's no doubt they
5 were. They were kept for that purpose, and they were used for those purposes in these proceedings to cause Mr Wetherall the maximum amount of embarrassment possible. It's not - - -

10 COMMISSIONER: Well, they're also represented evidence of one of the alleged stressors.

MR SAPSFORD: Yes. Of the exposure.

15 COMMISSIONER: Yes.

MR SAPSFORD: Well, that indeed would have some merit, your Honour, if they were in fact provided to the respondent in a timely fashion. As your Honour is aware, the photographs comprising exhibits 7, 16 and 19 were provided to the respondent at 4.27 pm on the Friday before trial commenced on the Monday. And
20 this, your Honour, was in the presence of a statement of facts and contentions of which the appellant was well aware, where the respondent specifically referred to the retention of these materials and there was no response by the appellant in relation to them having been retained.

25 COMMISSIONER: Did we ever get evidence about where those documents of the exhibits of the photos – where those images were sourced from for the purpose of these proceedings? Did we ever get any evidence about that?

30 MR SAPSFORD: I understood, and I stand to be corrected by my learned friend, that it was from Ms Kelly's mobile phone.

MR WHITE: Ms Kelly's images were retained from her - - -

35 COMMISSIONER: From her mobile phone.

MR WHITE: - - - mobile phone. That's correct. That was the extent of the evidence.

40 MR SAPSFORD: That's why I say, your Honour, there's no need for a USB when you've got a mobile phone. It doesn't matter which name you call the carriage device that's being retained.

45 COMMISSIONER: Well, the letter from Mr Wetherall on the 9th – the email – talks about USB and any other storage devices.

MR SAPSFORD: Yes. They were well aware – they give it to us on the Friday - - -

COMMISSIONER: But Ms Wilson and Ms Brial are quite clear in their recollection about references to a USB stick.

5 MR SAPSFORD: Yes. Yes. My submission is not much turns on that. The fact that they alleged they were retained and the fact they were retained, whether it be by phone or USB, I submit there's not much turns on that. You see, the conduct of the appellant in these proceedings in fact is a lot worse than that. The appellant goes so far at paragraph 8 of the notice of appeal and at paragraph 19(g) of the statement of facts and contentions, to positively abhor that Mr Wetherall was aware of the content and of the appellant having access to the content. That was not part of the appellant's case. It was not the conclusion that your Honour would have in relation to all of the evidence, in particular that at best of Mr Wetherall, and taking into account his response part of exhibit 6, which was his letter of the 8th of April. With such a contention, is once again with a view to simply scurrilously besmirch the character of Mr Wetherall without any evidence.

20 The other submission that perhaps I don't even need to make having made this point in cross-examination so many times, should Ms Kelly maintain that she was offended by these items, one wonders why she did not simply say to Mr Wetherall that he should examine his computer to ensure that personal information wasn't becoming public. Ms Kelly would have the court believe that Mr Wetherall was such an ogre, she couldn't approach him to say that. Well, that just does not make sense. What makes even less sense is that she said she couldn't approach Mr McCutcheon. Now, while Mr McCutcheon was unable to assist the court in relation to the dual nong-nong and the pop-up issue – which I'll come to seeing I've raised it at this stage – but while he was unable to assist in that regard, he gave clear evidence that Ms Kelly was offered the opportunity to become an administrator and to access the employer's Facebook page as did Ms Brial without the necessity of having any association with Mr Wetherall's personal account. This, Ms Kelly refused, and I'd submit that your Honour would accept that evidence and it became – and it therefore makes clear the reason for the refusal was for the further harvesting of images to be used against Mr Wetherall.

35 Now, the – at times when this exposure to these images occurred, did not lead to any mention of those facts to Ms Kelly's general practitioner as revealed in the consultation notes, did not lead to her saying, I don't want to be employed here anymore, this is no good, this is not suitable, and did not lead to her taking any practical steps to ensure it wouldn't occur again. Your Honour, Dr Harrison's evidence is not in dispute as to injury occurring on 3 April 2020. It took some questioning of your Honour – of Dr Harrison to eventually get him to concede that it was the events approximate to that date which were of greater contribution to the injury he diagnosed.

45 Ms Mossup gave evidence, and I haven't made detailed submissions in relation to that evidence because she at best gave evidence of a generalised nature as to the office environment and events surrounding her departure on 13 April 2019. Once again, in determining whether the events described by Ms Mossup were as severe or

as bad as she made out in relation to the conduct of Mr Wetherall, the way through and that issue is to have once again, regard to the exhibits. With respect to Ms Mossup, they're exhibits 15, 17 and 18.

5 Exhibit 15 with respect to Ms Mossup's departure, certainly outlines that an argument occurred on that day. It can be noted though, it's not in any dispute on the evidence that by that time, Ms Mossup was working part-time or working half the normal time she would and that efforts were being made to secure someone else to at least perform the duties of that other half with a view eventually to Ms Mossup
10 proceeding to retirement. The altercation which occurred with Ms Mossup on 13 April 2019 is one with differing accounts from Ms Mossup and Ms Kelly, Mr Wetherall and Mr McCutcheon. Your Honour, it is the respondent's submission that on all of the evidence, an argument took place. It was generated by an observation made by Mr Wetherall as to the interviewing style of Ms Mossup to which she took
15 offence and a subsequent discussion with raised voices. The true perspective in which that discussion should be placed, should be with respect, your Honour, by reference to exhibit 17 which comprises the message exchange between Ms Mossup and Mr Wetherall with respect to that event and their various views. That puts it in perspective as simply being an argument between Ms Mossup and Mr Wetherall. To
20 the extent it's relevant to Ms Kelly's injury, it can be observed that it is only insofar as that occurred in her presence.

Now, there's the further evidence at this time, that once again, popped up from Ms Kelly in her evidence in chief as to Mr Wetherall approaching her and saying words
25 to the effect of, why didn't she fucking say something. Well, that your Honour, is not contained in the statement of facts and contentions. It's not contained in the statement by Ms Kelly to her general practitioner. It's not contained in her statement which is a statement to the general practitioner being exhibit 4, or her statement to WorkCover, exhibit 9, and there's no mention of it in the general practitioner's
30 evidence or notes. Your Honour, it's something that once again, comes late to the defendant as an allegation against Mr Wetherall and it is specifically denied by him.

The significance of the evidence of Ms Baker, the psychologist, is in relation to the first page of her clinical notes being exhibit 22, I think they are, where it's clearly
35 recorded that as early as 2017 when contractual negotiations were being undertaken between Ms Kelly and Mr Wetherall, Ms Kelly recorded the conversation and as Ms Kelly has said in her evidence-in-chief, this was done so, without doing Mr Wetherall the courtesy of informing him that she was doing so. Well, your Honour, the reason as recorded in the clinical notes was her fear that he might spiral out of
40 control or become violent or something like that. That is entirely unrealistic, first of all on the evidence of Ms Kelly as to the nature in which that contractual agreement was entered into. It's entirely – it's a matter which is highly unlikely in circumstances where Ms Kelly had sought the contractual agreement, she wrote the contractual agreement, and she had Mr Wetherall agree to it. There was nothing
45 more to that exchange than that and the reason for the recording quite clearly was to use it at a later time if needed, similar to the images she had recorded.

Well, then the appellant calls Ms Seran Carter, who affords this Commission with information as to a disagreement between Mr Wetherall and his ex-wife over a set of keys. The relevance of that and to Ms Kelly's injury is a mystery. The further evidence of Ms Carter with respect to attempting to besmirch the character of Mr Wetherall, was in relation to various observations about his interaction with girlfriends and dating websites. None of this informs your Honour as to a miscarriage of management action, but rather as to an unhealthy preoccupation by Ms Carter with Mr Wetherall's personal affairs. Ms Carter was also part of the triumvirate who harvested and collected the information now before the court.

Your Honour, the evidence of Mr Wetherall was straightforward, and I won't go into great detail with respect to that evidence, save to observe that he admitted to certain conduct which was less than perfect. And the respondent submits that the termination of reasonable management action is not management action which is perfect, but management action which in all the circumstances is reasonable. And the admissions by Mr Wetherall are indicative of an honest witness, and it can be noted that he agreed to having a discussion with Ms Mossup on 12 April 2020, with respect to her interviewing style, however related an entirely different perspective on the manner in which the final discussion occurred and Ms Mossup departed. He readily declared – he readily agreed to his displeasure at the manner in which Ms Kelly left work on 1 April 2020 and the evidence of Ms Wilson in this regard had the ring of truth about it. She was saying that by this stage, something had occurred, where the relationship had soured. It doesn't take a great amount of investigation with respect, your Honour, to see what had occurred. What had occurred was Mr Wetherall had said that due to COVID-19 and his allegation that Ms Kelly had been stood down, he was unable to further provide Ms Wetherall – Ms Kelly with work and with wages and that he would not agree to allowing her to access her long service leave and she performed two days of work per week being paid with those monies.

I've referred to the cross-examination of Mr Wetherall with respect to issues involving his wife, his disappointment at not being invited to Ms Kelly's husband's birthday party, his attendance at the Bluff Bar, and the existence of a 10 or 11 year old son in Papua New Guinea, which are all at best, peripheral issues. They do not amount to events which are indicative of Mr Wetherall exhibiting management action which was either unreasonable or taken in a reasonable way. Indeed, the fact that Mr Wetherall had such a friendship with Ms Kelly, with res – that he sought her advice with respect to his 10 year old son, speaks a very different relationship to that which is now contended by Ms Kelly. Mr Wetherall readily conceded his mistake about the payment of superannuation to Ms Mossup and Ms Carter, and noted that was rectified after information provided from the Australian Tax Office. He confirmed that he was a party to the exchanges in exhibits 7, 16 and 19, and up until 8 April 2020 he had no knowledge of that material having been capable of being viewed on the computer.

Now, I won't press the evidence of Ms Wilson and Ms Brial as recorded in my written submissions, however, note that in accordance with what your Honour has

heard here this morning, Ms Wilson confirmed that she had discussions with Ms Kelly as to why she was keeping the images and that Ms Kelly confirmed they were for the purpose of use against Mr Wetherall at a later date. That evidence is contrary to any allegation that Ms Kelly was keeping them because she was confused and didn't know what to do about them. And that evidence is given by a person who to all intents and purposes is independent. She is no longer employed by Mr Wetherall and was at the time, simply an employee along with Ms Kelly.

The evidence of Mr McCutcheon, I've already canvassed and while it was not particularly helpful to the respondent in relation to the two-stage process of accessing the Kokoda Facebook page, it nevertheless confirmed that Ms Kelly was offered as early as 2016, the opportunity to access the Kokoda page independently of Mr Wetherall's Facebook page, thereby relieving her of any problems which might have occurred and indeed this was the approach taken in relation to Ms Brial. Your Honour, the respondent concedes that the conduct of Mr Wetherall was not without blemish, however, submits that by way of global assessment, reasonable management action taken in a reasonable way is the conclusion this court should reach in relation to his conduct.

The resolution of the conflict in the factual evidence as I've submitted and will submit again, your Honour, is best achieved by reference to the physical exhibits before this court which cannot be faulted, conflated, exaggerated or distorted in evidence in the witness box. They include the contract sought by Ms Kelly in exhibit 2 and the request for that contract by exhibit 8. They include the text messages of 3 April 2020 from Mr Wetherall, which are undoubtedly a bit conciliatory and polite nature following the events of 1 and 2 April 2020 and the certification provided by Ms Kelly. The email exchange of 6, 7 and 8 April 2020 is central to the events giving rise to the injury sustained by Ms Kelly and a perusal of those documents in detail, will with respect inform your Honour as to reasonable management action being undertaken by Mr Weatherall with respect to the problem faced by an international business with the advent of COVID-19. The email of Mr Wetherall of 8 April 2020, also part of exhibit 6, corroborates his evidence of having been appraised, at that time, of the Facebook posts on the office computer.

Exhibit 15 confirms the argument between Mr Wetherall and Ms Mossop. However, exhibit 17 places that in perspective. Exhibit 18 reveals an entirely different relationship between Mr Wetherall and Ms Mossop being the document of a historical nature in relation to the injury Ms Mossop sustained on a track. Your Honour will notice – or know that the evidence is that having sustained that injury, Ms Mossop was employed by Mr Wetherall and accommodated by way of hours she wants to work, taking into account her injury. Now, Ms Mossop [indistinct] said she didn't have any trouble doing the work at all but that wasn't the principle. The principle was that she didn't have to do it full-time.

I have already made submissions in relation to the approach by the appellant to this matter, in particular, the provision of the images which were clearly in contention, not being until 4.27 pm on the last [indistinct] day prior to trial. And the cross-

examination of Mr Wetherall which was entirely unnecessary for the establishment of any of the elements of the appellant's case.

5 Your Honour, unless there's something specific, it is the respondent's submission that the manner in which you would approach this matter with the greatest of respect is by way of a global consideration of the interaction between Ms Kelly and Mr Wetherall in the determination of whether his management action was reasonable and taken in a reasonable way. It remains the respondent's submission that that is best achieved by reference to the documentary exhibits. Is there anything I can help
10 your Honour with?

COMMISSIONER: No. Thank you for those submissions Mr Sapsford.

15 MR SAPSFORD: No. Thank you, your Honour.

COMMISSIONER: Mr White are you ready to proceed?

MR WHITE: Yes. I am. Thank you. Yes, I also have an outline of argument that I'll hand up. I have two copies here, a working copy for yourself. Thank you.
20

COMMISSIONER: Thank you. Are you placing the same qualification on these in respect to how they might refer to evidence of the witnesses we heard from today?

25 MR WHITE: I've omitted any submissions relating to today's evidence.

COMMISSIONER: I see.

MR WHITE: So, in effect, what I propose to do is take your Honour through this initially, just to outline my submissions in respect of the law and the medical
30 evidence. And then I'll make some oral submissions in respect of the witnesses and the approach – well, the issues that really remains in dispute, which is management action. It's accepted it's hearing de novo and onus rests on the appellant. It's accepted the appellant was a worker and I set out the elements of section 32 of the Act at paragraph 9. I speak in respect of the medical evidence and that the appellant
35 suffered an injury.

Consistent with the medical certificate, Dr Harrison's evidence was that the appellant had suffered a psychiatric injury in the form anxiety, insomnia and depression. They were severe upon the appellant's first presentation on the 3rd of April. Whilst the
40 Workers' Compensation medical certificate indicated a self-reported injury date of 6th, his evidence eventually [indistinct] to the fact the injury may very well have occurred on – before that, on the 3rd of April 2020.

Ms Baker, the appellant's psychologist gave evidence that the appellant suffered a
45 psychiatric injury. She presented with extremely severe features of depression, anxiety and stress [indistinct] emerged in the evidence was that when pressed, she said if she had to give a title to the appellant's injury, it'd be an adjustment disorder

chronic [indistinct] anxiety and depression but she didn't pronounce it as a formal diagnosis. As to whether the injury arose in the course of employment, my outline of the authorities say in respect of that – my ultimate submission will be that the medical evidence squarely resolved that, as well as the fact that the employment was
5 a significant contributing factor to the injury.

I then take, at part 7 on paragraph 34, the Commission to the stresses giving rise to the injury which is the endorsed approach to identifying the nature of the injury and whether it arose out of management action. But at paragraph 36, I then highlight a
10 matter that I think – well, in my respectful submission, looms large in this proceeding. Certainly, my learned friend's taken you to the reasonableness of the management action but that's the second step. The first step is we need to identify which of the stress was identified could actually properly be characterised as management action.

15 I extract at paragraph 36, observations of Deputy President O'Connor in Reid v Workers' Compensation Regulator. Your Honour will note it concludes by saying, "In other words, it must be something more than what was part and parcel of her employment." So that includes, in my submission, ultimately, her access and use of
20 the Facebook page. Further, at the bottom of paragraph 37, I extract the Deputy President's comments in Allwood v Workers' Compensation Regulator again. And that is [indistinct] said to enliven section 32(5) of the Act the [indistinct] provision: "There must be something different to the everyday duties and incidental tasks of the appellant's employment."

25 So we've got this list of eight stresses. It's really only, in my respectful submission, stresses 2, 3 and 4 – so those are the conversations between Mr Wetherall and the appellant between the 27th of March to the 2nd of April – those are really the only stresses that, in my submission, could be characterised as management action. Now,
30 inside the scope of that, if the Commission is satisfied the evidence occurred as Ms Kelly, Ms Mossop and Ms Carter assert, and that they amounted to stresses giving rise to the appellant's injury, we need [indistinct] go no further. She's entitled to compensation. That doesn't arise out of management action. Therefore, the reasonableness or otherwise of that is irrelevant.

35 I then outline the authorities in respect of what amounts to reasonable management action. It's accepted management action doesn't have to be perfect. It merely has to be reasonable. It encompasses the notion there may be some blemishes in the management action. But my ultimate submission will be that we're not in that
40 category here either. So those are my submissions in respect of the law and the medical evidence to establish that injury was suffered. It arose out of the course employment and employment was the significant contributing factor to it.

45 In terms of the stresses that I've set out, and again, this is in part 7 of my submissions, for your Honour's reference – if I can, perhaps, first take your Honour to stresses 5 and 6. So these are the – Mr Wetherall was unpredictably rude and abrupt in his dealings with his staff including the appellant and clients and would

frequently ignore, intimidate and harass people in his interactions with them. This caused the applicant to suffer stress and anxiety. Second being Mr Wetherall would frequently have angry outbursts and aggressive behaviour, uncertainty of mood with – which Mr Wetherall would be – which caused the applicant more stress and anxiety.

So questions were raised as to the relevance of some of the material to which the witnesses were taken. Clearly all of them related to the workplace environment. And certainly no objection's ever been taken during the course of the hearing to the witnesses being taken to those matters. I might also, while I'm here, just expressly reference submissions made by my learned friend about matters that have been raised now for the first time, a suggestion being that they were recent inventions. So if I – I'll take your Honour to, I guess, the first example, on paragraph 9 of the respondent's submissions: This event in 2014 about the hole in the door giving rise to damage.

The submissions made to your Honour that this is a recent invention not mentioned anywhere in the appellant's statement of facts and contentions or the applicant's statement to a GP, a statement of tour cover, appellant's opening by her counsel. If I can take your Honour to the respondent's bundle and just page 13 of that.

COMMISSIONER: Tab 13 or page 13?

MR WHITE: Page 13. Tab 2, I understand. At the bottom of the page, "Also, the previous times, Wayne had punched holes in the wall and the toilet door had been removed on one occasion due to holes in the door. Should add that Wayne [indistinct] hang a sheet over this toilet which the staff [indistinct] used was sufficient for privacy needs.

COMMISSIONER: This isn't a document that's in evidence before me though.

MR WHITE: No, no. The suggestion is that these are matters to which the respondent was not aware before he attended to trial. I mean, that's certainly never been the case. In respect of Ms Kelly's evidence, generally, particularly in respect of these incidents - - -

MR SAPSFORD: I might indicate I object, your Honour, to my learned friend referring to evidence that's not before the court.

COMMISSIONER: Mr Sapsford, on the first day of the proceedings, when you raised an issue with the particularisation of the stressors, particularly stressors 19(e) and (f), I think I took the view that it was a fair enough request to seek further particulars in relation to those matters. And because as it's set out in the statement of facts and contentions, it's not more particularised than what you can read there. And I understand the technical argument. I understand that the statements of facts and contentions and the list of stressors largely defines the matters that we – that we're going to deal with in this hearing.

But in the process of the next morning – in preparing for the next day’s proceedings and I was flipping through the documents that I had that hadn’t yet been tendered but just observed – and I just make this as an observation – I noted that there was a significant amount of detail around the matters. Now, obviously they’re not matters
5 that are formally before me. They’re not part of the stressors. And I couldn’t help but reflect, at that point in time, that the objection might have been managed differently by simply calling for one of those documents that were in the bundles ready to go.

10 But, in any event, I don’t – I’m not going to have regard to the – Mr White, I think, is simply responding to a criticism that’s been made on the record that this incident with the hole in the door is a recent invention. And whilst that document’s not before me, I’m – I can’t ignore the reality that there’s a statement there that you would have had in your possession that says she complained about the hole in the
15 door. I’m not going to make any – there’s – nothing much turns on it other than: I don’t necessarily think – accept your submission that you didn’t know about this or you couldn’t have known about this because you had a statement for some time.

MR SAPSFORD: Your Honour, I’m not submitting that. No. No, your Honour.
20 And indeed I didn’t – I’m just reading through again; I didn’t recall making a submission at paragraph 9 that this was a recent invention. The submission is more that it was - - -

COMMISSIONER: It’s not mentioned.
25

MR SAPSFORD:

ASSOCIATE: - - - not an incident of sufficient gravity - - -

30 COMMISSIONER: Yes.

MR SAPSFORD: - - - to be included in the statement of fact and contentions, the statement to the GP, the statement to WorkCover, the opening by her counsel.

35 COMMISSIONER: I think that the – I think it’s a matter of the semantics. I understand what you’re saying and I think that’s right although it – the opening sentence paragraph 9 has a suggestion. It says, “Now adds to her – in her evidence.”

MR SAPSFORD: Yes. It - - -
40

COMMISSIONER: It might be a matter of the interpretation of those semantics where it’s – where Mr White has interpreted that as a suggestion it’s a recently added – or a recently added event or stressor whereas it’s simply a case that your saying, is it, that in the course of the proceedings, it’s taken on some – it’s been given some
45 more attention. And it certainly didn’t appear in – it wasn’t important enough to be included in the statement of facts and contentions?

MR SAPSFORD: Yes. That's so, your Honour, but the "Now adds in her evidence" – that reference to a toilet door – the hole in the wall – is that she now added it in her evidence when she didn't see fit to include it in all of them.

5 COMMISSIONER: I know and there's no coming back to what we talked about on the first day when you raised the objection about the particulars and I said these things – there might be things that are referred to. There might be things that are brought up to – as general examples of the stressful work environment, that is, the stressors identified at (e) and (f). There was going to be matters – and I think I said
10 to you, "If any of those matters take on a life of themselves or become, you know, standalone stressors, we might have to deal with that, if that arises."

MR SAPSFORD: Yes.

15 COMMISSIONER: But I don't know that the risen – the evidence about the hole in the door has risen to that level.

MR SAPSFORD: Yes.

20 COMMISSIONER: I think that it's been one of those examples of the stressful work environment.

MR SAPSFORD: And – yes. And perhaps I could have included a paragraph in my submission at paragraph 9 accordingly – in accordance with your observations at the
25 start and little or no weight should be given to this event.

COMMISSIONER: All right.

MR SAPSFORD: I won't take further. Thank you, your Honour.
30

COMMISSIONER: No, no. I'd say – it's important we're all clear on that. And I appreciate your response, Mr Sapsford.

MR SAPSFORD: Thank you.
35

COMMISSIONER: I don't think the suggestion's made that it's a recent invention [indistinct]

MR WHITE: I believe it's mixed up in submissions made as to the appellant's case and criticism's levelled at the appellant's approach to her case. I think both of those submissions [indistinct] by my learned friend I'd perhaps put in one category and not the other.
40

COMMISSIONER: So the parties are aware, in terms of how I understood that evidence around the hole in the door, is that it's one of the examples of the stressors that are referred to at (e) and (f), the stressful work environment, for example - - -
45

MR WHITE: [indistinct]

COMMISSIONER: - - - there was [indistinct] came in one day, there's a hole in the toilet door and it's been moved into the laundry.

5

MR WHITE: Exactly. And that's why I raise in the context of those two stressors 5 and 6, precisely, your Honour. Ms Kelly, in giving her evidence, was credible. She presented as a person of morals and integrity. She was clearly distressed by many of the matters that she recounted and the effects that these had on her. She was reliable. 10 She had a quite clear recollection of details, dates and events. And where she was unsure, she made reasonable concessions. Ultimately, she was truthful as – compared to Mr Wetherall's evidence, whose evidence I'll come to in a moment, the situations and events that she described made sense, both chronologically and by reference to the contemporaneous documents.

15

I agree with my learned friend's submission that the documents are important because they're contemporaneous but, equally, that they bear out more closely the appellant's case than the respondent's by reference to those documents such as the employment contract, for example – and what actually occurred; for example, a 20 review of remuneration that occurred in May of 2018 as contemplated by the contract. A great deal of weight seems to have been placed on the fact that Ms Kelly prepared that agreement. It wasn't clear in the evidence because a hint of Mr Wetherall attempting to distance himself from that document which I'll come to as being evident of his reluctance to really accept a great deal of responsibility for 25 anything that was happening in his workplace and sheeting that home to Ms Kelly.

It's borne out of the employment contract, the medical clinical notes, the text messages and the emails that they accord with Ms Kelly's version of events. Ms Mossop and Ms Carter in respect of their evidence as to the workplace environment 30 largely corroborated Ms Kelly's description of the workplace: Mr Wetherall's erratic mood and his temperament, how they'd keep their heads down whenever he was in one of his moods, the way that he would interact with Ms Kelly, in particular. We had three witnesses all attesting, largely, to a very similar mental picture as to what it was like to work in the office during the period that they were there.

35

Mr Wetherall's evidence was just described as being straightforward and that he was an honest witness. With respect, your Honour would have significant concerns with respect to his credibility. There was a common theme in his evidence. I would walk through each of them in great detail, as this is my duty as a barrister on behalf of the 40 appellant, despite the fact that some criticism's been levelled at the matters that I took into including stressors. He didn't admit many of those details; those minor details that I would take him to.

45

But then whenever we got close to any allegation that he believed was going to be unfavourable to him, we got diverted off along the course that he adopted, of him describing what he always did or what he never did in attempt to deflect from answering the actual question about what occurred on an actual day. That was the

common theme in his evidence. Sure he'd say Lyn gives as good as she gets and that she could push him too far. But he'd never admit that he could have possibly said it on this particular occasion. Sure he would regularly swear around the office but couldn't possibly have sworn on – during his interactions with Ms Kelly that I put to him in cross-examination during the events in question.

He was combative. He would ask me to further particularise my questions in respect of matters to which he – or – clearly knew or should have known the answer. He wanted me to tell him what his staff were alleged to have been paid. But then when I asked if – him if he knew that, he had no idea. He had no insight into the fact that his office was in his home and the implications that that had. His version of events with regards to the toilet door was fanciful. In his version of events, the door was delaminating. So his solution was he took it off its hinges, left it in the laundry, hung a sheet before arranging for replacement to arrive a few weeks later. That was his view as to an appropriate solution for access to a toilet in the workplace. That just can't be true.

His description of the interaction with Ms Mossop was frankly quite bizarre. He seemed to imply that Ms Mossop was the party at fault for attempting to engage with him in his own laundry. That was the effect of the – how he characterised that. This is despite the fact that he also allegedly took offence at Ms Kelly allegedly having left on the 1st without coming out the back of his house, where he was on the phone, to say “Goodbye”. Your Honour will remember, I put that to Ms Wilson as not being the case – that both of them were there at the front door and they said “Goodbye” to him together, which she first accepted and then she said it might have actually occurred differently to that, that he might have been out the back on the phone.

It was his taking offence to something as innocuous as this of Ms Kelly not saying “Goodbye” which adds credibility to Ms Kelly, Ms Mossop and Ms Carter's evidence, that they were walking on eggshells around the office, never knowing what might set him off. He took no responsibility for the workplace, despite being the owner and director of the company. He has happy, really, to lay all of that at Ms Kelly's feet as his “right-hand woman”, as he described it.

In terms of the stand down, my learned friend made a submission that there's no magic in those words but the reality of the matter is that it does become perfectly – or – precisely relevant in the context of management action because this is one of the areas that we do actually [indistinct] to the territory of being management action, that his, his dealing with the ongoing employment. And the words do become quite relevant.

With respect, he didn't present as someone with a full appreciation of human resources sufficient to even be aware, in my submission, of the implication and – so as to use those precise words “stand down”, despite the fact that he was unequivocal and clear in his version of [indistinct] that he used those words “stand down”. This is from someone who was under the mistaken belief that his employees were all

contractors. But he has a sufficient appreciation of HR to know to use that expression “stand down”. He was adamant – and this is also from a person who, in an office with three employees, didn’t have a proper appreciation as to what they were being paid.

5

He’s the director of a company and his evidence was to the fact that he had, effectively – to the effect that he’d just sign the financial statements that were presented to him by his accountant, without having a detailed knowledge of what was actually happening in the company. There were three things that were
10 inconsistent with the stand down. So there’s his frustration that Ms Kelly wasn’t coming back into work on the 2nd. And it was clearly his expectation that she would. That’s not consistent with a stand down. His explanation for parity updating Ms Kelly’s iPad and iPhone just made no sense. In terms of his description of that was he couldn’t – well, he couldn’t explain it. He said words to the effect, “Okay, well, if
15 she wants to take the iPad, she can take the iPad.” That is entirely inconsistent with his version of events that there was a stand down and that she wouldn’t be doing any further work.

In terms of the documentary evidence to which your Honour’s been referred, his
20 message to Ms Kelly in response to the doctor’s certificate was to the effect that Christine would be collecting the iPhone and iPad while she was off sick. Now, that’s the effect of what that text message says. That’s the contemporaneous document to which the Commission’s been taken. It’s not that she’s stood down and that’s why those items need to be collected. It’s so Christine can do her work while
25 she’s away sick. He couldn’t explain any of those matters and how they reconciled with his suggestion that the employees were stood down but, in particular, Ms Kelly.

He gave the impression that he’d never heard the expression “hoity-toity” in his life although it was the way in which his evidence was presented. Despite the fact that
30 each of Ms Kelly, Ms Mossop and Ms Carter all attested to having heard him refer to Ms Kelly that way, he was – he hadn’t heard that expression before. He’d never heard the expression “Irish union rep” before. But then his evidence was that he knew Ms Kelly was Irish and that was it. His evidence was not credible, at all. If the Commission was to prefer anyone’s evidence, it would be the evidence of Ms Kelly,
35 Ms Mossop and Ms Carter whose evidence was consistently the same in recounting what it was like to work in that office at the time. That includes the matters in respect of the accessing of Facebook and what they were exposed to in a course of doing that.

40 In terms of the medical evidence, Dr Harrison identified the significant cause of injury as workplace harassment. That was how he characterised it. It wasn’t some precise, eventful item or a particular dealing on a particular day. It was general workplace harassment by reason of the environment. If the Commission is to look at the clinical notes from Ms Baker, many of the matters discussed during the very first
45 meeting – they relate fundamentally to that office environment generally rather than the events of late March, early April of 2020, specifically, despite this being her first visit.

So, in my submission, in respect of stressors 5 and 6, that is the workplace environment, generally, they did give rise to the injury. And they can't be management action. So, in those circumstances, the appellant should succeed in respect of those.

5

COMMISSIONER: Mr White, just having regard to your statement of facts and contentions and particularly with respect to the portions of the contentions – and the contentions are all essentially around the notion of management action being unreasonable. There isn't a contention contained here about certain stressors being taken outside the exclusion in section 32(5) by virtue of not being management action. What'll I do with the submission that I've now got, that there are certain matters that are stressors that you now say are not outside of management action, given that the respondents aren't on notice of that.

10

15 MR WHITE: Well, 21 to 23 certainly talk about Mr Wetherall's conduct on the 1st and on the 2nd amounting to management action.

COMMISSIONER: I've been through them. They all talk about management action.

20

MR WHITE: In respect of each of the stressors?

COMMISSIONER: Well, the last one – 23 is probably the most broad. The management action – it, again, talks about management action.

25

MR WHITE: Yes.

COMMISSIONER: I just couldn't see – I mean there's no – not a [indistinct] there may not be a problem and Mr Sapsford might want to be heard on that in his reply submission. But it's – that's not something that's featured, I think, in the matter until now.

30

MR WHITE: Yes.

COMMISSIONER: Certainly it was on my mind. I didn't, you know, in respect of that issue – which is why I raised the issue about the photographs popping up involuntarily with Mr Wetherall not knowing about it. But that's the extent to which my mind had gone to it. But - - -

35

40 MR WHITE: Yes.

COMMISSIONER: I hadn't considered the other matters in that context.

MR WHITE: I accept that it's not raised.

45

COMMISSIONER: Well - - -

MR WHITE: It – well, it’s raised to the extent that it is in the facts and contentions. But my submissions made in respect of the evidence that was presented before the Commission, that’s what I can speak to. In respect of stressor 7, this is the access to the Kokoda Spirit Facebook account. There was very inappropriate content on that account. Mr Wetherall was aware of the content and the appellant having access to the content [indistinct] this material caused the applicant to become extremely distressed.

10 The messages themselves really speak for themselves in terms of the content that was contained there – that each of Ms Kelly, Ms Mossop and Ms Carter recounted and their reaction to those messages. They recounted their feelings of distress, embarrassment and angst as to what to do about the situation and how they can possibly raise the issue with Mr Wetherall, given their evidence as to his volatility.

15 That – it should go, without saying, that no employee should be exposed to messages from their employer to a partner negotiating how many men she’ll agree to have sex with at the same time. I shouldn’t need to make submissions in respect of how inappropriate that is in the workplace. Mr Wetherall accepted no responsibility for the fact that that was occurring in the workplace and that that was the system of work in his workplace – was that employees were to, in order to access the Kokoda Spirit Facebook page, click on a bookmark, it would take them to that page and that would automatically mean that popups would appear at the bottom of the page.

25 Mr McCutcheon’s evidence – it was characterised as not being particularly helpful. It was particularly helpful to the appellant because it perfectly confirmed the version of events that’s been presented from the very outset. If you were on the Kokoda Spirit Facebook page, using the word “computers”, then Mr Wetherall’s personal messages would pop up in the right-hand corner, without you having to click on anything, which was, again, the earlier allegation that was made. That’s just simply not the case.

35 The other thing that Mr McCutcheon confirmed was that it was his understanding that Ms Kelly was still working from that point, from the 1st of April. And that was why he was preparing the iPhone and the iPad, which is entirely inconsistent with her being stood down. To the extent that any criticisms addressed to my approach to cross-examination of Mr Wetherall, this is identified as a stressor, it’s the actual content – as to the actual content of his Facebook messages, his private matters are his private matters. It’s not an attempt to call him out for his sexual proclivities and activities.

40 The only extent to which the content of the messages themselves might otherwise be the consideration to the Commission are, I suspect, in respect of the broader consideration, is that the suggestion of besmirching the character of Mr Wetherall in circumstances where he’d demonstrated a lack of insight to the extent that his – it would be inappropriate in the workplace for him to engage in the kind of relationship that he described with his employee in PNG or be his worker in PNG. The lack of insight that that relationship demonstrates as to his what would be appropriate in a

work setting – it is particularly telling any employer who doesn't see any issue with telling an employee to meet them in a hotel to [indistinct] oral sex on them clearly has no comprehension of what amounts to a safe and healthy workplace, an obligation that he acknowledged at the start of cross-examination was his duty as the
5 director of a company that employees staff.

That's what the Facebook messages are really about. It's Mr Wetherall's overwhelming failure to separate his personal matters from the workplace and his refusal to accept any responsibility in respect of the system at work that was taking
10 place in his office in his house regarding how the Kokoda Spirit Facebook page was to be accessed from the work computers.

His attempt to explain the login schedule, exhibit 25, was a farce. With respect, I don't believe he really had any idea where that schedule had come from or what it reflected, in my submission. If anything, it would be, perhaps, just established what
15 Mr McCutcheon's evidence was, which was really he prepared that schedule, which was his evidence. And that would explain what he'd want. Mr Wetherall couldn't explain it.

In any event, the state of the evidence was that it really proved nothing. The matter wasn't explored with Ms Kelly in cross-examination, in any of that, as in the allegation that she was the one who was doing the logins. That wasn't put to her. So in respect of that aspect of the evidence, with respect, it's the appellant's version as to what occurred in the workplace with respect to accessing the Kokoda Spirit
20 Facebook page was overwhelmingly conferred by Ms Kelly, Ms Mossop, Ms Carter and then by Mr McCutcheon today.
25

In respect of stressor number 1, this is the June 2014 incident where Mr Wetherall's standing over the top of the applicant while she was sitting down. He was yelling and screaming at her to the point he was spitting on her. She felt extremely
30 intimidated, she had numbness, pins and needles in her arms and legs, and had lost the ability to verbalising anything, is how the stress is described. Ms Kelly's version of events should be accepted in respect of that. This was another circumstance in which Mr Wetherall accepted all the facts around the periphery of the actual
35 allegations, but then in respect of the matters that might place him in a – in an unfavourable light, was unable to agree. She recounted the event in great detail. Ms Carter's recollection of returning to the office and seeing the state Ms Kelly was in, was certainly consistent with this version.

Mr Wetherall had no memory of the exchange – of any exchange of note during that period, but he accepts that he was then in the car whilst Ms Carter's giving him a lift to the Bluff Bar and saying to Ms Carter that he didn't swear at Ms Kelly during the exchange. So, in those circumstances, that's – that's simply difficult to reconcile but it entirely accords with Ms Kelly's version of events, as well as Ms Carter's version
40 of events as to both what occurred and any aftermath that was witnessed by Ms Carter.
45

5 In respect to the second stressor, number 2, on the 27th of March, Mr Wetherall refused to allow the applicant access to paid leave without having any reasonable basis. This caused the applicant to become very stressed. Again, Ms Kelly's evidence was clear and credible on that point in terms of how that conversation itself actually played out. And particularly, what had occurred earlier that morning in respect to the discussions regarding the future of the Kokoda Spirit office and what that meant. It's entirely consistent with what Ms Wilson indicated this morning. That after that conversation, Ms Kelly came in and recounted to her that that conversation had actually occurred, that it related to access to long service leave.

10 Your Honour asked Ms Wilson Mr Wetherall in respect to whether any other obligations or capacities could be explored in respect of looking after or providing some form of assistance to the appellant at that – at that point, and they simply hadn't been.

15 Stressors three and four relate to the incidents on the 1st and 2nd of April. Mr Wetherall being aggressive, defensive and angry in his interactions with the applicant, and the consequence associated with that, and her being caused to become physically sick. Again, she went in to see her general practitioner, Dr Harrison, the next day. His account confirms the reactions that certainly Ms Kelly asserts to have suffered as a consequence of those particular interactions. There shouldn't really be any doubt that the interactions occurred, largely consistent with what Ms Kelly explained, such as to give rise to that response that was evident to Dr Harrison the following day.

25 It wasn't a benign conversation. It was a circumstance in which Ms Kelly was multiple times, over and over, apologising to Mr Wetherall and Mr Wetherall didn't accept that that must have been borne out of some earlier compulsion or a need to apologise, by reason of his continued berating of her, or a perceived slight that he said was borne out of her not saying goodbye to him the day before. In those

30 circumstances, Mr Wetherall's account simply wasn't credible. Ms Kelly's evidence should be accepted in respect to what those interactions on those dates look like.

In terms of stressor eight. This relates to Mr Wetherall making a complaint in respect of the stealing of money by overpaying herself and the USB. I took Mr

35 Wetherall to the paylips. We went through the allegations. I mean, certainly, the allegation in respect of the USB now emerges really to be hearsay on hearsay on hearsay. It's difficult to establish the origin of this. Ms Wilson gave evidence that it was Mr Brial that told her. Ms Brial saying it was Ms Wilson that told her. Neither of them had ever seen the USB. It's – it's difficult to identify really that the – the

40 genesis of this allegation save that it was something certainly that caused Mr Wetherall to point to the appellant and report her to the police.

The state of the evidence in respect of there being any substance to the allegation that the appellant stole money or overpaid herself, or that she incorrectly stated her

45 annual – her annual leave or anything along those lines, just wasn't really worn out in the evidence. I'm live to an observation made by the Commissioner yesterday in terms of this post-dating decompression in [indistinct] So, to the extent to which the

stressor might relate to being a direct cause in respect to the injury, I'm, subject to Dr Harrison's evidence in respect to the date associated to that.

5 It does, nonetheless, just give an indication as to Mr Wetherall and the approach that he's taken in respect of his response to the – to the appellant. But also, the basis upon which he felt it appropriate to produce payslips that weren't the payslip that was issued to the appellant and what they were supposed to reflect by reference to [indistinct] annual leave, and that – that aspect remains unclear.

10 COMMISSIONER: Just on the point, and I suppose just to – to flag a post for both parties in terms of how I intend to deal with evidence around the events after the 3rd of April. I'm looking at the reasonableness of the management action in that key period from 27 March to 3 April. But it doesn't – the management action that took place in that period is part of a longer course of action that extends beyond the 3rd of
15 April on the evidence that's been put before me by both parties. There's the – there's the, you know, the meeting where the alleged standdown has occurred and there's the attendance on the 1st to do the payroll and there's the discussions on the 2nd about coming in or not coming in. There's the tendering of the medical certificate and then – then the first response is in those – in those emails about the – that are part of
20 Exhibit 6. But there's an escalation very quickly from the tendering of the medical certificate to disciplinary action.

MR WHITE: Yes.

25 COMMISSIONER: For fraud and for - - -

MR WHITE: The USB.

30 COMMISSIONER: The USB stuff. In very close proximity. It appears to me to be an escalation that – that might give some insight into where things were at on the 27th, that's progressed to that point on the 8th of April where she's getting a letter on the 9th of April saying, "Come in, I want to talk to you about these very serious matters and I'm involving the police." It's, I think, provides for some insight potentially into how the relationship was deteriorating, whether that's reasonable or
35 not, whether is another matter for me to give some consideration to, but – and I'll hear from you on that proposition, Mr Sapsford, I guess, momentarily. But that's, I mean, there – whilst the injury occurred on the 3rd of April, I don't think I can necessarily have to completely ignore the behaviours that occurred after that in terms of what they might – what insight they might give in to what was happening before
40 the 3rd of April.

MR WHITE: That would be my submission on – on the best approach to deal with it. Also, it highlights that comment that the Commissioner will recall Dr Harrison mentioned the difficulty associated with identifying with precision of the date of the
45 injury when you're dealing with a psychiatric injury, this compounding effect in circumstances where it might only display itself and have that physiology on particular days. I don't want to contend against the fact that his evidence ultimately

was the 3rd of April, but that I would endorse the approach of considering that period of time in a general sense also. Those are the submissions to which I propose to take your Honour. Did your Honour wish me to address you on anything further beyond those stressors?

5

COMMISSIONER: No. Thank you.

MR WHITE: Thank you, your Honour.

10 COMMISSIONER: Mr Sapsford, are you ready to go in to reply at this point?

MR SAPSFORD: Yes. Thank you, your Honour.

15 Just firstly to address the issue that your Honour raised in relation to what's being taken into account. There is authority, albeit not binding, but highly persuasive from Magistrate Lee in relation to the very issue of management action and events occurring after the date of injury, and I'll hand that up to your Honour. It's Q-Comp and Jeanette Finch – Flinch – Finch.

20 COMMISSIONER: Thanks. Did you raise this for any particular reason, Mr Sapsford?

MR SAPSFORD: No, your Honour. No. No. But I thought your Honour might recognise this.

25

COMMISSIONER: I recognise it, yes.

MR SAPSFORD: The authority. Your Honour, that is where Magistrate Lee explored the concept of taking into account matters after the first diagnosis of injury and came to the conclusion that the injury in its fully developed form had not occurred and accordingly, matters up until that date can be taken into account. Now, I think my learned friend and myself are at one with respect to the ability of your Honour to take into account all of the matters, indeed up until the 15th of April 2020, and I don't pick that date arbitrarily, your Honour. Because it was the 15th of April 35 2020 that Dr Harrison issued the appellant with a Worker's Compensation Medical Certificate and the application for compensation was made. So, anything after that date, can't be considered.

40 But it's the respondent's submission that it is open on all of the evidence to conclude that the injury sustained by Ms Kelly was not in its fully developed form until that date. Accordingly, the matters relevant to it in consideration of the reasonableness of management action can be taken into account.

45 COMMISSIONER: Up – up to the 15th, do you say?

MR SAPSFORD: Up to the 15th. Anything after the 15th can't be, of course, because - - -

COMMISSIONER: Okay.

MR SAPSFORD: - - - that doesn't pertain to the application for compensation [indistinct] considering. Your Honour, I accept the law as outlined by my learned
5 friend, in particular the observations of Deputy President O'Connor – President O'Connor in Reid v Workers' Compensation Regulator and in Allwood v Workers' Compensation Regulator. And, it may be that your Honour comes to the conclusion that those stressors identified by my learned and consisting of the stressors one, five, six, seven and eight, were not matters of management action. And that necessarily
10 will involve your Honour engaging then in an examination of the competing aspects contributing to the psychiatric injuries sustained by Ms Kelly and the weight to be given to them in the aetiology of that injury, such that you have generalised allegations in relation to the conduct of Mr Wetherall over a historical period dating back to 2014 on the one hand.

15 And, on the other hand you have the approximate and pertinent events described, as my learned friend, as beginning in stressor two on the 27th of March. Now whether that be the 27th or 26th of March 2020, it is the respondent's submission that your Honour, in a consideration of the events of 26 March through to 15 April, being the
20 last date for consideration would conclude those events so greatly outweigh any other considerations as to lead to a conclusion that the injury arose out of management action with respect to those events. And, of course, it's the respondent's submission that those events were a reasonable management action taken in a reasonable way.

25 Your Honour is assisted in that evaluation by two factors. The first of which is the evidence you eventually managed to obtain from Dr Harrison as to the weight to be given to those events more proximate to injury. And the second to be – of course, is by reference to the in disputed time periods in which these events occurred. The
30 events which would be somewhat, in the respondent's submission, would be somewhat surprising to attribute greater weight to events of a historical nature in 2014, when faced with the proximate and serious events occurring between 26 March and 15 April, and the appellant's eventual sustaining of injury. That – that, if your Honour finds those other stressors outline by my learned friend are not management
35 action, would be in the respondent's submission, the matter is resolved [indistinct] Does your Honour have anything arising?

COMMISSIONER: No. Thank you, Mr Sapsford.

40 MR SAPSFORD: Thank you, your Honour.

COMMISSIONER: All right. I thank the parties for the – for the way in which the matter's been conducted. I'll reserve a decision and I'll attempt to get something out as quickly as possible.

45 MR WHITE: Thank you, your Honour.

COMMISSIONER: Thank you.

ADJOURNED

[1.34 pm]