

Summary of Extracts of Evidence from Mrs Lyn Kelly’s Appeal to the Queensland Industrial Relations Commission (QIRC) Hearing: 27 – 30 September 2021

Mrs Lyn Kelly is a mother of four children. Her husband is a High School teacher. They are practising Catholics, and Mrs Kelly needed work to help pay for the fees for her fourth child to complete his university studies.

A full transcript of the QIRC hearing can be accessed at this link:

- [Queensland Industrial Relations Hearing WC/2020/175: 27-30 September 2021](#)

The outcome of the QIRC hearing was reported in the Brisbane Times on this link:

- [Kokoda Tour Employee Wins Appeal over claims boss spat on her during outbursts.](#)

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Background

Mrs Kelly was initially employed by Wayne Wetherhall of Kokoda Spirit on a part-time basis and later, on a full-time basis. after his marriage broke up.

Mrs Kelly enjoyed her interactions with trekkers who had signed up for Kokoda Spirit and took a personal interest in each one. One of her co-workers, Julie Elliott – a former Police Sergeant, became a good friend, and they worked well together.

Wayne Wetherall was away from his home office most of the time as he travelled extensively overseas – when in Australia, he spent much time interstate with various girlfriends.

However, when Wetherall was back in the office, it quickly turned toxic due to what Julie Elliot described as his narcissistic character, his decadent sexual lifestyle, his uncontrollable temper and his lack of any sort of moral code.

This came to a head when trekking was suspended due to the COVID pandemic, and staff layoffs were inevitable.

Mrs Kelly enquired about accessing her superannuation; however, she discovered that Kokoda Spirit had not been contributing to it over the previous 10 years.

In the meantime, Wetherall tried to discredit her by reporting her to the Queensland Police and falsely accusing her of overpaying herself and downloading incriminating information from his computer.

The police investigated the issue but found no evidence to support his accusations.

The toxic workplace culture with Wayne Wetherall caused Mrs Kelly to seek medical help, and she is now under the care of a psychologist.

She then lodged a compensation claim with the Queensland Workers' Compensation Regulator. The hearing was held at the Queensland Industrial Relations Commission from 27 to 30 September 2021.

The following are extracts from Mrs Lyn Kelly's evidence at the hearing:

Extract: Mrs Lyn Kelly's Barrister to the QIRC Commissioner

BARRISTER (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.

'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.

'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, effectively, no distinction between the business and personal matters that arose or that she was exposed to in the work environment.

'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 participating in treks run by Kokoda Spirit.

'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 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.

'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 her to her psychologist who, again, the commission will hear from Ms Baker, and that he provided her with a medical certificate.

‘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.

‘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.

‘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.¹’

Extract of Mrs Lyn Kelly’s Evidence:

Barrister:

Do you recall any events immediately before she (Mrs Julie Mossop) finished up at Kokoda Spirit?

Mrs Kelly:

‘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 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 - - -

‘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 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 culminated and

¹ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers’ Compensation Regulator 27 September 2021. Pages 1-7, 1-8, 1-9

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 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 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 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 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.

And then did you see Mr Wetherall after that?

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 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 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 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 - - -

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 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.***

Okay. Do you recall during the course of you doing those updates on Facebook seeing any messages appear in respect of that Facebook account?²

'There were many messages that popped up on – when you're on Facebook. We didn't understand what was going on, but if Julie – 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 - - -

So let's go back. So when did you first start seeing these messages on the computer?

'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 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 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 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.

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 - - -³

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 - - -

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.

² Ibid: 1-47, 1-49, 1-49

³ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 1-48

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?

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 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 that stuff. I was too scared, and I was far too scared. There’s no way I could’ve approached him about this.⁴

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.⁵

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.

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 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.⁶

I didn’t want her subjected to such an awful situation. They told 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

⁴ Ibid: 1-49

⁵ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers’ Compensation Regulator 27 September 2021. Pages 1-52

⁶ Ibid 1-53

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 one of the most horrendous, frightening, shocking experiences in my life.⁷

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 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.⁸

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

No. Nothing.

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.

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 got 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”.

‘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 . . .⁹

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’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

⁷ Ibid: 1-53

⁸ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 1-53

⁹ Ibid: 1-54

*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.*¹⁰

That’s the evidence of Ms Kelly.

Extracts from Wayne Wetherall’s Evidence: Day 3 - 29 September 2021

Barrister:

‘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.

‘Messages in which you were negotiating with your girlfriend about how many men she would agree to have sex with at the same time

‘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?’¹¹

Wayne Wetherall:

‘I was sending them to my partner, yes.’

‘And photos of you performing oral sex on other men?’¹²

‘Photos of you being penetrated by other men?’¹³

‘Photos – messages to my partner.’

‘Having sex in a group?’

‘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, Was she an employee?’

‘She was at one stage and not – early on in the piece she was.’

‘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.’¹⁴

‘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.’¹⁵

‘And she would be compensated with a bottle of Johnny Walker Red?’

‘Well, she always wanted Johnny Walker. Yes.’

‘I’d suggest Seran saw these messages pop up on her screen. You accept you were sending messages along those lines?’

¹⁰ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 3-84

¹¹ Ibid: 3-85

¹³ Ibid 3-85

¹⁴ Ibid: 3-86

¹⁵ Ibid: 3-86

*'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.'*¹⁶

'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.'

'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.'

Extracts Mrs Julie Mossop's Evidence: Day 2 – 28 September 2021

Julie Mossop served as a NSW Police Officer for 23 years – she retired as a Sergeant and worked for Wayne Wetherall at Kokoda Spirit on a part time basis.

'And what were those messages, to your understanding?'---
*They were Wayne's messages.*¹⁷

'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.'¹⁸

'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' - -¹⁹

'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.'²⁰

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.

Extracts from Dr Harrison's Evidence

Dr Harrison BSc, MBChB, FRCGP, MBA and a Diploma in Occupational Medicine.:

¹⁶ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 3-86

¹⁷ Ibid: 2-25

¹⁸ Ibid: 2-25

¹⁹ Ibid: 2-25

²⁰ Ibid: 2-25

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:

*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.²¹*

'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?'

'At the beginning of the injury?'

*'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 actually, you know, had just no feelings to do anything else, and that they were kind of, almost, overwhelming her.**'*

'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?'

'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 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.**'²²*

Extracts from Mrs Gail Baker's Evidence:

Mrs Gail Baker is a psychologist.

Barrister:

'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 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 the next day, apparently – yes, so I think she was referring back to – back to that – that*

²¹ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 2-10

²² Ibid: 2-12

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.**²³

'Yeah. So I apologise; I don't need you to kind of go through everything in detail in terms of reading it back?

'Okay.'

'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, 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.*²⁴

'And what was the outcome of that test?'

'The outcome was that her depression severity and stress were all in the extremely severe range.'²⁵

'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.'*²⁶

'Ms Baker, if I can take you to page 313 please?'

'Sure. Yes.'

'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*

²³ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 2-56

²⁴ Ibid: 2-57

²⁵ Ibid: 2-59

²⁶ Ibid 2-59

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".²⁷

'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 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.'²⁸

'And was that your view at to Ms Kelly's current condition when you undertook that 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.'²⁹

'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 - - -'*³⁰

'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.'

MR WHITE: Ms Baker, is it your opinion that Ms Kelly suffered an injury?

'Yes, it is. Yes.'

'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.'*³¹

²⁷ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 2-61

²⁸ Ibid: 2-62

²⁹ Ibid: 2-62

³⁰ Ibid: 2-63

³¹ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 2-65

‘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.’

‘In respect of Ms Kelly’s injury, how was that manifesting itself?’³²

‘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 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 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 said, difficulties sleeping.’³³

‘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 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.’³⁴

Concluding Remarks by Mrs. Lyn Kelly’s Barrister:

‘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 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.’³⁵

‘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.

‘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

³² Ibid: 2-65

³³ Ibid: 2-66

³⁴ Ibid: 2-66

³⁵ Ibid: 4-73

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.³⁶

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 director of a company that employees staff.**³⁷

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 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 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.³⁸

'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.'³⁹

³⁶ Queensland Industrial Relations Hearing: Kelly, Lunette Grace v. Workers' Compensation Regulator 27 September 2021. Pages 4-75

³⁷ Ibid: 4-75

³⁸ Ibid: 4-76

³⁹ Ibid: 4-77