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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000*

NOTICE

The following Agreements have been certified by the Commission:

No/s	Title	Certified on and certificate issued	Cancelling No.
CA/2008/126	DJ & MJ Evans Certified Agreement 2008	1/10/2008	

G.D. SAVILL,
Industrial Registrar.

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INDUSTRIAL COURT OF QUEENSLAND

Workplace Health and Safety Act 1995 - s. 164(3) - appeal against decision of industrial magistrate

Brian Marfleet AND Kaptive Pty Ltd (C/2008/21)

PRESIDENT HALL

6 October 2008

DECISION

On 24 April 2007 Brian Marfleet, a Public Officer within the meaning with s. 142A of the *Justices Act 1886*, and an inspector duly appointed under the provisions of the *Workplace Health and Safety Act 1995*, made a complaint before a Justice of the Peace on the 29th day of April 2006, at the Coral Sea in the Magistrates Courts District of Caboolture, that Kaptive Pty Ltd, being a person upon whom a workplace health and safety obligation was imposed by the *Workplace Health and Safety Act 1995* (the Act), failed to discharge the obligation contrary to s. 24 of the Act. The obligation

nominated was the obligation at s. 28(1); *viz.*, the obligation imposed upon persons conducting a business or undertaking to ensure that the workplace health and safety of other persons is not affected by the conduct of its business or undertaking. It is convenient to reproduce the Particulars and to reproduce also the circumstance of aggravation which was alleged:

"Particulars

Other person:	Joseph Norman Armstrong
Workplace:	A dive site in the Coral Sea at or near latitude 26 degrees 58.707 minutes South, Longitude 153 degrees 29,460 minutes East
Business or Undertaking:	Scuba diver training
Hazards:	The source of the risk emanates from: <ul style="list-style-type: none"> (a) descent and ascent in a liquid environment under pressure; and (b) the use of plant, namely a buoyancy control device in a liquid environment under pressure; and (c) the system of work for the supervision, training and instruction of a recreational dive student.

The risk that may result because of the hazards is the risk of death or injury to other persons, including the risk of arterial gas embolism injuries to Joseph Norman Armstrong.

AND IT IS ALLEGED that as a consequence of the failure to discharge the workplace health and safety obligation Joseph Norman Armstrong sustained grievous bodily harm." [Emphasis added]

The complaint was subsequently amended (on 15 May 2008) to delete the circumstance of aggravation and to delete the "specific risk" of "arterial gas embolism injuries to Joseph Norman Armstrong".

Kaptive Pty Ltd pleaded guilty. The Industrial Magistrate imposed a fine of \$7,500.00 and ordered Kaptive Pty Ltd to pay \$6,336.00 by way of investigation costs and \$65.40 costs of court. Kaptive Pty Ltd was allowed 12 months to pay. In default there was to be levy on distress. No conviction was recorded. This is an Appeal against the quantum of the fine imposed by the Industrial Magistrate.

Counsel for the Appellant properly concedes that the quantification of a fine is very much a matter of discretion and that an Appellate Court should interfere with the exercise of the discretion only in very limited circumstances. For the present purposes, I am prepared to accept that the relevant principles are encapsulated in the well known passage from *Harris v The Queen* (1954) 90 CLR 652 at 655-666 per Dixon CJ, Fullagher, Kitto and Taylor JJ:

"The jurisdiction to revise such discretion must be exercised in accordance with recognised principal. It is not enough that the members of the Court would themselves have imposed a less or different sentence or that they think the sentence over-severe. There must be some reason for regarding the discretion confided to the Court at first instance as improperly exercised. This may appear from the circumstances which that Court has taken into account. They may include some considerations which ought not have affected the discretion, or may exclude others which ought to have done so. The Court may have mistaken or been misled as to the facts, or an error of law may have been made. Effect may have been given to views or opinions which are extreme or misguided. But it is not necessary that some definite or specific error should be assigned. The nature of the sentence itself, when considered in relation to the offence and the circumstances of the case, may be such as to afford convincing evidence that in some way the exercises of the discretion has been unsound. In short, principals which guide Courts of Appeal in dealing with resting in the discretion of the Court at first instance restrain the intervention of this Court to cases where the sentence appears unreasonable, or has not been fixed in the due and proper exercise of the Court's authority ... Before we interfere with the discretion exercise by the learned Chief Judge, we must be satisfied that in some way his discretion miscarried or the exercise of it was unsound or unreasonable."

Here, in my view, the errors are explicit.

Having properly taken into account the Defendant's early plea of guilty and co-operation with the Authorities, the Industrial Magistrate continued:

"It seems to me that this is a first offence and an offence simpliciter. I consider that the excellent first aid is a mitigating factor but for that, of course, the person who is not now named in the complaint may have suffered a much more serious fate and that, to me, goes in terms of the overall - whether it's the system of work or the responsibility of the operator or demonstrating it's a corporate citizen, that they certainly had in place systems that

were appropriate and were able to be acted on, and that seems to me to be the point of Exhibit 2 and 3 that were placed before me and it's fortunate that that outcome happened on this occasion."

The happy circumstance that no person is injured and that a complaint is made about an offence simpliciter, is no basis for sentencing at the lower end of the available scale. Section 24 of the Act fixes a significant maximum penalty for an offence simpliciter and provides for significant increases in the maximum where injuries of varying degrees of severity flow from the breach. Section 24 provides:

"Discharge of obligation

(1) A person on whom a workplace health and safety obligation is imposed must discharge the obligation.

Maximum penalty -

- (a) if the breach causes multiple deaths - 2000 penalty units or 3 years imprisonment; or
- (b) if the breach causes death or grievous bodily harm - 1000 penalty units or 2 years imprisonment; or
- (c) if the breach causes bodily harm - 750 penalty units or 1 year's imprisonment; or
- (d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm - 750 penalty units or 1 year's imprisonment; or
- (e) otherwise - 500 penalty units or 6 months imprisonment.

(2) Subsection (1) applies despite Criminal Code, sections 23 and 24.

(3) If more than 1 person has a workplace health and safety obligation for a matter, each person -

- (a) retains responsibility for the person's workplace health and safety obligation for the matter; and
- (b) must discharge the person's workplace health and safety obligation to the extent the matter is within the person's control; and
- (c) must consult, and cooperate, with all other persons who have a workplace health and safety obligation for the matter."

[Note that by s. 181B of the *Penalties and Sentences Act 1992*, a multiplier of 5 applies whereas here the offender is a Corporation.]

It is not consistent with the structure and apparent purpose of s. 24 to treat the absence of injury as a factor warranting retreat from the upper range allowed by s. 24(1)(e).

The second error lies in treating the availability and efficacy of the first aid system as a basis for "good corporate citizen" mitigation. By s. 26(i) of the Act if a regulation prescribes a way of preventing or minimising exposure to risk, a person discharges his workplace health and safety obligation to prevent or minimise exposure to the risk only by following the way prescribed by the regulation. Here, by s. 86(d) of the *Workplace Health and Safety Regulation 1997* (the Regulation), the Defendant was required to ensure the availability of persons capable of rendering first aid of the type which was made available to assist Mr Armstrong. Section 26(3) of the Act and the *Compressed Air Recreational Diving and Recreational Snorkelling Code of Practice 2005* (the Code of Practice) impose a comparable limitation on the ways of performing the obligation. The availability of adequate and effective first aid was not a mitigating factor. It was the avoidance of a breach which would, in itself, have exposed the Defendant to the risk of prosecution. For completeness, I should say that I do not act upon Counsel for the Appellant's submission that the first aid was provided, not by the Defendant, but by other persons. The circumstances were that a number of scuba dive schools/groups went to sea on the one vessel. Modern competition policy is supportive of such sharing of resources. As a matter of first impression, it seems to me to be not inconsistent with s. 86D of the Regulation and s. 1.3.12A of the Code of Practice for schools/groups in that situation to draw upon the services of a first aid person provided by the master of the vessel.

I accept the submission of Counsel for the Respondent that the Industrial Magistrate was entitled to take a global view of all of the circumstances. The difficulty is that in doing so, one cannot avoid noticing that the breach of the obligation did not merely create risks but was actually life threatening. That is as much a part of the global view as provision of first aid and as Mr Armstrong's quick and full recovery.

In all of the circumstances, I set aside the quantum of the fine imposed by the Industrial Magistrate.

Since the matter of sentence at first instance was dealt with on the basis of agreed facts, it is convenient to set forth those facts before I turn to the matter of the appropriate sentence. The agreed facts were:

- (a) Joseph Norman Armstrong ('Armstrong') entered an agreement with the defendant whereby they were to provide him with scuba diving training to an advanced open water level including in particular training in open water diving on a boat named 'Big Cat Reality' for the weekend commencing 28 April 2006.
- (b) As a part of entering into that agreement, Armstrong signed a 'Waiver, Release and Indemnity Agreement' whereby he outlined that his diving ability in the range of 'novice - some experience - fairly experienced - very experienced' was that of 'novice' and the maximum depth he had ever dived was 12 metres.
- (c) On 29 April 2006 Armstrong as one of three scuba divers, undertook a 'checkout' dive under the control of an instructor and dive master within the employ of the defendant.
- (d) At the start of this dive Armstrong exhibited an inability to properly control his buoyancy control device (BCD).
- (e) Armstrong was directed to the anchor chain for the purpose of controlled descent to the requisite depth for a 'checkout dive' of not more than 18 metre.
- (f) Armstrong descended unsupervised in an uncontrolled fashion to the ocean bottom at a depth of 26.2 metres, a fact made possible by the choice of site by the defendant.
- (g) The dive master Allen approached Armstrong and they exchanged 'ok' signals. Thereafter Armstrong exhibited lack of control over his buoyancy and was in the words of Allen 'still bouncing all over the place' and '... he didn't really seem to be – really know what to do'.
- (h) The dive master Allen took the step of forcibly emptying air from Armstrong's BCD. Thereafter Armstrong indicated that he was not ok and was breathing heavily and an ascent to the surface was commenced.
- (i) In the course of that ascent Armstrong (who was at this stage unrestrained) suffered breathing problems and proceeded to ascend to the surface without pause or regard to decompression.
- (j) Upon reaching the surface Armstrong was taken on to the boat by employees of the boat 'Big Cat Reality' where a check revealed that Armstrong had no breathing or pulse.
- (k) Emergency first aid resuscitation techniques were commenced by employees of the boat and Armstrong was resuscitated and evacuated by helicopter to hospital."

On its face, the matter is one of some gravity. By selecting a site where the depth to the ocean bottom was 26.2 metres, the Defendant made it possible for Mr Armstrong to descend below the depth selected as appropriate to his level of expertise. The error occurred in the near presence of a ridge at 15 metres depth. It is apparent from the "Waiver, Release and Indemnity Agreement" signed by Mr Armstrong, that he had not previously dived below 12 metres. (Though I note that only six weeks earlier Mr Armstrong had been certified as competent by another operator.) On the most charitable view there were four incidents. The Defendant failed to intervene when Mr Armstrong exhibited inadequacies in buoyancy control at the surface. It was a failure to control the most basic device at his disposal. The Defendant permitted Mr Armstrong to attempt a descent to 18 metres with the assistance only of his grasp upon the anchor chain. When he lost his grasp he descended in an uncontrolled fashion to the ocean floor. At the sea bottom the Defendant failed to intervene when Armstrong once again manifested inadequacy of buoyancy control. After Mr Armstrong communicated that he was in difficulty, the Defendant permitted him to attempt an unassisted (though supervised) ascent. I do not share the Industrial Magistrate's view that the Defendant "certainly had in place systems that were appropriate and were able to be acted on". The "systems" referred to were instructions contained within the "Pro-Dive Instructors Guide" and the "Pro-Diving Employment Policy". There was not at the time, any arrangement in place to ensure that the written guidelines were observed. Further, going to the detail, it is apparent that the guidelines were not, in fact, observed. Normally administrative controls are not favoured. In this industry, administrative controls may be all that is available. In those circumstances, I do not accept the Industrial Magistrate's distinction between inadequate systems and inadequate implementation.

There are very significant mitigating factors. The Defendant is a first offender. The Defendant entered a timely plea of guilty and co-operated with the investigation. There has been post incident improvement in the way in which the Defendant conducts its business. Those matters are matters of very great weight. However, it is important that mitigating factors should not be given such weight that the fine which the objective gravity of the offence would

otherwise attract is entirely whittled away. Fines are not imposed to punish obligation holders. Fines are imposed to protect health and safety.

Whilst I have no difficulty in accepting that balance requires the courts to notice that any fine is imposed against a background of significant investigation costs, I reject the submission that the costs are part of a "total fine" or that there should be an arithmetical discount. Counsel for the Defendant is correct in contending that there is no evidence of systemic failure. However, that is not a circumstance of mitigation. The presence of systemic failure would be a circumstance of aggravation. I acknowledge that the Defendant's staff/student ratio was very much better than the ratio required by the Code of Practice.

The comparators which were handed up in first instance seem to me to be of little assistance. The history of the factual matters is inadequate in each case. Many of the fines were imposed under earlier versions of the Act when the maximum penalty was much lower. The fines may well be post-mitigation fines. There is no note of mitigating factors. If initiated, appeals may well have succeeded. Bearing in mind that the Appellant has nominated an upper figure of \$25,000, bearing in mind that a Defendant who thought matters were concluded should not be arbitrarily subjected to an Appeal in which the Court goes beyond the relief sought, and having regard to the significance of the mitigating factors, it seems to me that the appropriate course is to impose a fine of \$25,000.

I set aside the decision of the Industrial Magistrate imposing the fine of \$7,500 and in lieu thereof order Kaptive Pty Ltd to pay a fine of \$25,000. I otherwise confirm the decision of the Industrial Magistrate. I reserve liberty to apply in the event that there is an issue about time to pay.

Dated 6 October 2008.

D.R. HALL, President.

Appearances:

Mr S. Sapsford, directly instructed for the Appellant.

Mr D. Atkinson, instructed by Herbert, Geer and Rundle, Solicitors for the Respondent.

Released: 6 October 2008

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INDUSTRIAL COURT OF QUEENSLAND

Workers' Compensation and Rehabilitation Act 2003 - s. 561(1) - appeal against decision of industrial magistrate

Darlene Ann McLean AND Q-COMP (C/2008/26)

PRESIDENT HALL

7 October 2008

DECISION

On 29 September 2005, Q-COMP confirmed an earlier decision by WorkCover Queensland to reject Ms McLean's claim for damages for unassessed injuries. Ms McLean appealed to the Industrial Magistrate at Caboolture. By a decision of 12 May 2008 the appeal was dismissed. On 10 June 2008 Ms McLean lodged an appeal to this Court.

When the matter was called, Mr See of Counsel (who appeared *pro bono*) sought an indefinite adjournment. Mr See, who had taken instructions to appear on the adjournment application, advised the Court that Ms McLean had no legal representation on the Appeal and was not presently capable of arguing the Appeal herself. Mr Sapsford for Q-COMP, on instruction, accepted the reality of the situation.

In those circumstances, on 2 October 2008, I ordered that the matter be adjourned to the Office of the Industrial Registrar until such time as Ms McLean or her legal representatives make application for the matter to be re-listed.

Should an Application for Re-listing be made, the Appeal is to be mentioned so that each of Ms McLean (or her representatives) and Q-COMP may be heard upon the question whether Ms McLean is capable of giving instructions or arguing the Appeal, and so that the Grounds of Appeal may be articulated.

Dated 7 October 2008.

D.R. HALL, President.

Appearances:

Mr A. See, directly instructed for the Appellant.

Mr S. Sapsford, directly instructed for the Respondent.

Released: 7 October 2008

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003 - s. 550 - appeal to Commission

Ronni Leigh AND Q-COMP (WC/2008/3)

COMMISSIONER FISHER

7 October 2008

Appeal against decision of Q-COMP - Adjustment disorder with anxiety - Workplace stress - Stressors - Evidence - Appellant suffered personal injury s. 32(1) of the Act - Employment a significant contributing factor to the injury - Whether injury arose prior to any management being taken - If not, whether claim excluded by s. 32(5) of the Act arising from reasonable management action taken in a reasonable way - Excessive workload on handover - Mediation agreement - Psychological condition - Reasonable management action taken in a reasonable way by employer - Injury withdrawn from s. 32(1) by the operation of s. 32(5) of the Act - Appeal dismissed.

DECISION

Ronnie Leigh has appealed against the decision of the Review Unit, Q-COMP confirming the decision of the workers' compensation Self-Insurer, Qantas Airways Limited (Qantas), to reject her claim for workers' compensation.

Background

Preparation for the commencement of Australian Airlines started in 2002. Simon Brown, Manager, Cabin Crew; Peter Quinn, Chief Pilot and later local general manager, and Maggie Phillips were engaged for the start up operations. Ms Phillips was appointed as Cabin Crew Duty Manager when Australian Airlines commenced operating. Mr Brown was initially seconded into his position from Qantas for 18 months and then returned to Qantas. He recommenced with Australian Airlines in 2004 as Manager, Cabin Crew. Ms Leigh was unsuccessfully interviewed for this position as she too had had substantial airline experience. When the position of Cabin Crew Duty Manager subsequently arose she was interviewed by Ms Phillips and was appointed. Ms Leigh commenced employment with Australian Airlines based in Cairns on 7 January 2005. Ms Leigh was trained by Paul Paisio who was acting in the position of Cabin Crew Duty Manager.

In early 2006 a decision was made that Australian Airlines would cease to operate as a separate entity and its operations were folded into Qantas. The crew of several hundred was to be based at Cairns and operate as Qantas short haul crew. This necessitated much administrative work to be undertaken such as planning, training of staff and provision of uniforms within a three month period. Mr Brown was integrally involved in the changeover planning and implementation in the Cairns office. The rebranding of Australian Airlines to Qantas occurred on 1 July 2006. Mr Brown proceeded on leave in July/August 2006 and Ms Leigh acted in his position for that period.

In late 2005 after experiencing a period of worry Ms Leigh attended her local doctor and was prescribed the sleeping tablet, Stilnox. Ms Leigh does not appear to have sought any further medical attention until October 2006. She was absent from work on rostered days off between 27 September 2006 and 1 October 2006. On 2 October 2006 Ms Leigh did not attend work and submitted a medical certificate stating total incapacity for work for the period 2 October to 6 October 2006. She then made an application for workers' compensation dated 11 October 2006 in which she describes her injury as a "stress related disorder" and stating that she first noticed symptoms "approx 6 months ago". Her claim was supported by a Workers' Compensation Medical Certificate which gave a diagnosis of "stress related disorders" attributed to "harassment by management, anxiety, sleep disorders, caused by the working environment, lasting over one year". Ms Leigh did not return to work after submitting the claim.

The claim was made to the Self-Insurer. By letter dated 11 January 2007, the claim was rejected in accordance with s. 32(5)(a) of the *Workers' Compensation and Rehabilitation Act 2003* (the Act) that Ms Leigh's condition arose out, or in the course, of reasonable management action taken in a reasonable way.

Ms Leigh made an Application for Review of that decision to Q-COMP dated 5 April 2007. By reasons for decision dated 13 December 2007 the Review Unit confirmed the Self-Insurer's decision to reject the claim in reliance on s. 32(5) of the Act. Ms Leigh then appealed that decision to the Queensland Industrial Relations Commission (the Commission).

Ms Leigh's case

Ms Leigh was referred to Dr Gary Persley, Consultant Psychiatrist, by the Self-Insurer. On 27 November 2006 Dr Persley provided his report with the diagnosis that Ms Leigh had an Adjustment Disorder with anxiety. No personality factors or medical condition were found to be present but workplace stress was found.

According to Dr Persley's medical report dated 29 November 2006 Ms Leigh identified "she became 'stressed' by the accumulation of a series of inter-related problems in her workplace". These stressors are summarised as follows:

1. Volume of work undertaken without sufficient support.
2. Failure by the other Cabin Crew Duty Manager, Ms Phillips, to fulfill all of her duties due to her private business activities.
3. Ms Leigh's immediate manager, Mr Brown's personal relationships with other staff were impacting on his management of staff.
4. Mr Brown had a dismissive attitude towards her proposals for improved staff management and performance.
5. Lack of transparency and impartiality in local management because of Mr Brown's friendship with the local general manager, Mr Quinn.
6. Ms Leigh raised a number of these issues with Mr Quinn but this was unsuccessful because he was a close friend of Mr Brown.
7. Mr Brown had behaved inappropriately towards her.
8. After Mr Brown returned from a period of leave during which Ms Leigh had acted in his position and had made suggestions for improved efficiency, Mr Brown made a number of changes without consulting or advising her.
9. Mr Brown had broken a mediation agreement by sending her an harassing memo.
10. A Human Resources Officer had dissuaded her from proceeding with a formal complaint against Mr Brown.

In support of her case evidence was given by Ms Leigh, Dr Persley and Deanne Prior who had acted in the position of Cabin Crew Duty Manager at Australian Airlines.

At the opening of Ms Leigh's case, her Counsel, Mr Gordon, said that the injury suffered by Ms Leigh did not arise through the reasonable actions of management but rather through an ongoing lack of reasonable management action, in particular, from Mr Brown. Mr Gordon submitted that the injury arose from Mr Brown's ignorance, indifference and insensitivity.

In his closing submissions Mr Gordon added an extra dimension to his opening by arguing that Ms Leigh had developed the symptoms of her injury in 2005, before any management action was taken. He contended that by decompensating prior to any management action being taken, s. 32(5) of the Act, which operates to exclude a psychiatric or psychological disorder from s. 32(1) of the Act, was not relevant to Ms Leigh's injury.

Q-COMP's case

Mr O'Neill of Counsel, who appeared for Q-COMP, rejected the belated submission made on behalf of Ms Leigh that her condition arose in late 2005 and that as a consequence s. 32(5) of the Act did not apply. He said that the evidence of Dr Persley was that there had been a progression of symptoms commencing in late 2005 and continuing into 2006.

Mr O'Neill said that Q-COMP conceded Ms Leigh was a worker within the meaning of the Act and it appeared that Ms Leigh was able to establish she had sustained a personal injury, being Adjustment Disorder with anxiety. However, Mr O'Neill submitted that in light of the evidence which cast doubt on Ms Leigh's perceptions of issues, great weight could not be placed on Dr Persley's report and opinion. As a result Mr O'Neill said the Commission should find that Ms Leigh had failed to establish that her employment was a significant contributing factor to her injury.

Mr O'Neill also addressed in detail the action taken by management in relation to Ms Leigh and submitted the Commission would find that reasonable management action had been taken in a reasonable way. Accordingly, Q-COMP contended that Ms Leigh's condition was removed from s. 32(1) by the operation of s. 32(5)(a) of the Act.

Evidence was given for Q-COMP by the following witnesses:

- Paul Paisio, formerly Cabin Manager, Australian Airlines;
- Simon Brown, formerly Cabin Crew Manager, Australian Airlines;
- Maggie Phillips,* formerly Cabin Crew Duty Manager, Australian Airlines;
- Tricia Rossiter, formerly Manager, People Relations, Australian Airlines;
- Karen Heber, formerly Rehabilitation Officer, Australian Airlines; and
- Peter Quinn, formerly General Manager, Australian Airlines.

* Ms Phillips was known during the period that the events with Ms Leigh occurred as Ms Phillips-Moffat but is now known as and prefers the title of Ms Phillips.

Qantas' case

By application WC/2008/27 Qantas was given leave to appear in the proceedings. The terms of that appearance were set out in an Order issued by the Commission as constituted dated 16 April 2008.

Qantas did not call any evidence but cross-examined the witnesses and made submissions.

Mr O'Sullivan of Counsel, who appeared for Qantas, said that Ms Leigh suffered from a psychiatric condition and the central issue for determination was whether that condition was an injury within the meaning of s. 32 of the Act. After canvassing the evidence Mr O'Sullivan submitted that Ms Leigh's condition had not been caused by the work stress of which she complains. Further, the matters raised by Ms Leigh involved reasonable management action taken in a reasonable way.

Issues for determination

The Commission accepts the agreed position of the parties that Ms Leigh was a worker within the meaning of the Act.

The issues that arise for determination are:

- Whether Ms Leigh has suffered an injury within the meaning of s. 32(1) of the Act;
- Whether Ms Leigh's employment at Australian Airlines was a significant contributing factor to the injury;
- Whether Ms Leigh injury arose prior to any management action being taken;
- If not, whether Ms Leigh's claim for compensation is excluded by the operation of s. 32(5) of the Act as arising from reasonable management action taken in a reasonable way.

The onus rests with Ms Leigh to establish on the balance of probabilities that she has an entitlement to workers' compensation.

Given the way in which the case unfolded I intend to approach my decision by considering the evidence that was presented in relation to each of the stressors identified in Dr Persley's report and other issues raised in evidence before expressing my conclusions on the above issues.

Stressors identified in Dr Persley's report

It is convenient to deal with the first two stressors together.

1. Volume of work and failure by Maggie Phillips to fulfill all her duties because of private business activities.

The role of Cabin Crew Duty Managers is operational. They are responsible for a range of staffing matters affecting flight attendants including the reporting of staff discipline breaches; absences from work; recognition of good service; ordering uniforms and a variety of administrative matters. The system of work for the Cabin Crew Duty Managers was, for most of Ms Leigh's period of employment, worked on the basis of a continuing rotating roster of five days rostered on and five days rostered off. Hours of work were 4.30 am until 2.30 pm for each of the rostered days on. These hours were scheduled in order to meet flight requirements. The evidence is that the Cabin Crew Duty Manager's office was busy between 4.30 am to 6.30 am but was generally quiet from 6.30 am until 8.00 am.

Two permanent Cabin Crew Duty Managers were employed, Ms Leigh and Ms Phillips, however several Cabin Crew Managers acted in the positions. The position of Cabin Crew Duty Manager reported to the Manager of Cabin Crew, Mr Brown.

Dr Persely reported that Ms Leigh:

"... stated that the workload was such that she usually worked at least two hours overtime each day and did not take lunch breaks. This issue of volume of work without sufficient staff support had been taken up with her immediate manager (Simon Browne) (sic) but she believed met with an inadequate response.

She further complained that the person who worked as the other duty manager (Maggie Moffat) failed to fulfill all of the duties when she was at work as she was attending to her private business during working hours."

Excessive hours/volume of work

Ms Leigh said that in about April/May 2005 she became concerned about the hours of work extending beyond her rostered ceasing time of 2.30 pm and the volume of work she was required to undertake. She said she made casual comments about this to Mr Brown who was dismissive of her.

Ms Leigh attributed the excessive workload to the sheer volume of work and that either no procedures were in place or there were no up to date procedures to deal with the issues raised. Ms Leigh complained that the procedures manual was very outdated and on commencement of her employment she had not been given any official training for the position.

Mr Paisio gave evidence in response to the allegation about inadequate training. Mr Paisio was part of the inaugural team that had established Australian Airlines. He was involved with setting up procedures and acted as Cabin Crew Duty Manager. He rejected Ms Leigh's evidence that she had been given inadequate training for the position and outlined the type and extent of training he had provided to her on her appointment. This involved on-the-job training taking her step by step through the various procedures.

The procedures manual was referred to as being a "living" document. It needed to be changed to reflect new or altered circumstances. The evidence of Ms Phillips and Mr Brown was that although Mr Brown had ultimate responsibility for the manual the Cabin Crew Duty Managers had the task of ensuring that it remained up to date.

Concerning the volume of work issue Ms Leigh said the position was busy from 4.30 am until 7.00 am or 8.00 am and then again from 10/10.30 am through to 1.30 pm. This left about a three hour window in which to perform the administrative tasks that had arisen from the morning flight crews and one hour for the issues that had arisen from the later flight crews.

Ms Leigh said that she often worked past her ceasing time of 2.30 pm to 4.30 pm or 5.30 pm. On occasion she worked until 6.00 pm or 7.00 pm. She did not have a lunch break as such because it fell in the second busy period of the day. She ate at her desk as she worked. On two occasions in 2006 she went home between 6.00 am and 7.00 am with the permission of Human Resources.

The proposition that the volume of work hours necessitated working beyond the rostered ceasing time was supported by Ms Prior who relieved in the position of Cabin Crew Duty Manager for two or three occasions totalling four weeks over the period in issue in this matter. She said she generally finished at 3.00 pm but sometimes at 4.00 pm.

In respect of the number of hours worked the evidence given by Mr Brown was that Cabin Crew Duty Managers (both Ms Leigh and Ms Phillips) continued to work past their rostered ceasing time especially on the last day of the rostered shift. Both he and Mr Quinn believed additional hours were a periodic requirement of all managers. Mr Brown also believed there was sufficient flexibility in the position to have lunch, including leaving the office to purchase lunch. It was unnecessary for Ms Leigh to have lunch at her desk. Mr Brown said the first he was aware of the excessive hours complaint was on receipt of an email from Ms Leigh dated 24 August 2006.

Ms Heber was aware that the Cabin Crew Duty Managers continued to work past their ordinary ceasing time. According to Ms Heber it would be only on the odd occasion that Ms Leigh continued to work past 4.00 pm.

Excessive workload on handover

One of Ms Leigh's major complaints was that Ms Phillips was leaving an excessive amount of work for her to do. Ms Prior supported this view. She said Ms Phillips was leaving work she was capable of doing and it was not merely work that could not be completed because there were outstanding issues. Ms Prior complained to Ms Leigh, when she was acting in Mr Brown's position, about the volume of work being left by Ms Phillips on handover.

Ms Phillips rejected the allegation that she left Ms Leigh with an excessive workload on handover. In fact she said the "shoe was on the other foot". Mr Paisio, who had also worked as acting Cabin Crew Duty Manager with both Ms Leigh and Ms Phillips, said that he had not experienced the latter leaving an excessive workload on handover for him. His experience was that of Ms Phillips, that is, that it was Ms Leigh who left the excessive workload.

Ms Phillips openly acknowledged owning a homewares store in Cairns. This seems to have been well known to Australian Airlines staff. Ms Leigh complained that she occasionally received personal phone calls for Ms Phillips when Ms Phillips was on rostered days off. The conclusion drawn was that Ms Phillips was attending to her private business during Australian Airlines' working time and as a result was the basis of her complaint that Ms Phillips was leaving an excessive workload on handover.

Ms Prior also said she received such telephone calls but was unable to be certain whether the calls were personal or Australian Airlines related.

Ms Phillips acknowledged receiving the occasional call about her private business at Australian Airlines but said she employed three staff in the business whose job was to run the store on a day to day basis. She strongly denied that any personal calls or her private business interfered with her duties at Australian Airlines or that as a result she was leaving excessive work for Ms Leigh.

Ms Leigh said she had conversations where Ms Phillips had indicated that all she wanted to do is to eventually be able to run her business. Ms Leigh also seemed to suggest that the conversations indicated that Ms Phillips was devoting her Australian Airlines time to her personal business.

Other complaints about Ms Phillips not devoting all of her work time to Australian Airlines were made by Ms Prior. Ms Prior said that Ms Phillips left the Cabin Crew Duty Manager's office on Fridays to purchase flowers from the markets for her business. Ms Phillips agreed that she went to the markets to purchase flowers but they were not for her business. She does not sell genuine flowers in her store. Moreover, Ms Phillips said she went to the markets with the approval of Mr Quinn and purchased flowers for her personal use, other staff and the office.

Ms Prior also said that a flight attendant had brought back a suitcase full of items for Ms Phillips' shop. This was also denied by Ms Phillips.

Ms Phillips agreed that she had received champagne which had been brought back from overseas but said this was not for use in her business.

Ms Leigh said she first raised the issue of excessive workload informally with Mr Brown in May/June 2005 but he was not interested in dealing with her concerns. Ms Leigh described his attitude as flippant.

Because she was becoming increasingly concerned about the workload issues Ms Leigh again raised her concerns informally with Mr Brown in November 2005. The underlying source of her concern was that Ms Phillips was running her private business from Australian Airlines but it does not seem that this was articulated to Mr Brown.

In May 2006 she raised concerns with Mr Brown about the workload that was being left by Ms Phillips. Ms Leigh said Mr Brown was not initially receptive to her concerns. It seems that Mr Brown's initial reaction was that as the role was operational work being left for the next person was part of a natural handover. Mr Brown was familiar with the requirements having previously worked in such a position.

Mr Brown later agreed to talk to Ms Phillips about the workload being left by Ms Phillips. Although Ms Leigh said nothing eventuated she also said that Ms Phillips had telephoned her distressed about Mr Brown reprimanding her for not doing her job. In his evidence Mr Brown said he raised Ms Leigh's concerns with Ms Phillips who became quite angry because she complained that Ms Leigh was leaving more work for her. He did not however put to Ms Phillips the allegation that she was devoting time to her private business activities for the reasons that he had not seen any indication of this and his experience with Ms Phillips' work suggested otherwise. He just did not believe the allegation to be true. Mr Brown did not recall whether he had reported to Ms Leigh that he had spoken to Ms Phillips about the workload being left, however, importantly, Ms Leigh said that he had.

Ms Leigh said she spoke to Mr Brown at length in May/June 2006 about getting someone in to assist with the administrative work because the workload was getting out of hand. From her perspective this was due to Ms Phillips' attention being focused on her private business. The issue was again discussed during the handover with Mr Brown just before he embarked on annual leave in July 2006. Mr Brown suggested she put a proposal together and he would consider it on his return from leave in August 2006. Ms Leigh also raised the matter with Mr Quinn while she was Acting Manager Cabin Crew. He told her that it was unlikely further funding would be available given the restructure that had just occurred but to talk with Mr Brown on his return. These discussions occurred however the focus of the discussions at that point was a restructure of the Cabin Crew Duty Manager positions, an issue which Mr Brown had asked Ms Leigh to consider during his absence. In the result no additional resources were provided. Despite these discussions Ms Leigh reported to Dr Persley that the issue of volume of work without sufficient staff support met with an inadequate response.

Findings

In relation to the matter of working hours this is not a case where time records can be produced. Ms Leigh was a manager and as such was not required to keep time sheets. Despite there being no formal records of time worked there is some evidence which shows that Ms Leigh worked beyond her 2.30 pm finishing time. One email from Ms Leigh dated 24 May 2006 is written at 5.08 pm and another dated 17 August 2006 was written at 4.53 pm. In a

meeting with the WorkCover investigator Ms Leigh said she usually left by 3.40 pm but was sometimes at work to 5.30 pm and occasionally to 7.00 pm. Further, evidence from Ms Heber was that although the Cabin Crew Duty Managers did not often leave on time they did not often leave late. Ms Prior also said she usually ceased work half an hour after the rostered ceasing time.

Accordingly, on the basis of evidence to which I have just referred I am prepared to accept that Ms Leigh regularly worked in excess of her rostered working hours but there is nothing before me except Ms Leigh's own assertions that supports her complaint to Dr Persley that she worked at least two hours' overtime each day. The evidence of Ms Prior, an inexperienced Cabin Crew Duty Manager, does not support that contention. Given that formal time records were not kept the handover emails would be good evidence of the time Ms Leigh ceased work. Such evidence was available as Q-COMP produced two handover emails. In the absence of the production of such emails by her I am not prepared to accept that Ms Leigh worked at least two hours' overtime each day.

Ms Leigh also complained about Ms Phillips attending to her private business whilst performing paid work for Australian Airlines and as a result Ms Phillips left an excessive amount of work on handover. Dealing with the first aspect, Mr O'Neill pointed out in his submission that the difficulty with Ms Leigh's complaint that Ms Phillips was unable to complete her duties due to her being occupied by her private business interests is that Ms Leigh was in no position to know how Ms Phillips spent her time at work as they did not work together at the same time. The most that has been put forward is that personal telephone calls for Ms Phillips were received during her rostered off period and a belief that these related to her business. No cogent evidence has been presented to show that Ms Phillips was conducting herself in the manner alleged and accordingly the complaint is considered to be without foundation.

The Commission has before it competing evidence from Ms Leigh and Ms Prior on the one hand and Ms Phillips and Mr Paisio on the other as to whether the volume of work being left by Ms Phillips was excessive. Ms Prior's evidence is of limited value because she infrequently worked in rotation with Ms Phillips over the period in question.

Handovers were initially conducted by tape recorded messages and later by email. Ms Leigh did not produce any documentary evidence to substantiate her complaint about Ms Phillips. If Ms Leigh wanted to substantiate her case on this issue then the handover documentation could have been produced and by her evidence identified the matters which Ms Phillips had unreasonably left for her. Given such documentation exists (as Q-COMP produced several emails to and from Ms Leigh and Ms Phillips from the period towards the end of Ms Leigh's employment) the Commission does not accept that Ms Phillips was leaving excessive amounts of work for Ms Leigh to complete.

The other issue raised in Dr Persley's report is that adequate staff support to cope with the volume of work was not provided despite Ms Leigh raising the matter with Mr Brown. The evidence about this is that Ms Leigh discussed the matter of administrative support with Mr Brown around the time of the rebranding of Australian Airlines. The evidence also shows that a number of discussions occurred, including with Mr Quinn, who advised that additional resources would not be forthcoming. In my view given the timing of Ms Leigh originally raising the matter and Mr Brown's preparedness to discuss the proposals I do not believe Mr Brown's reaction could fairly be characterized as "inadequate".

2. Mr Brown's personal relationships with other staff were impacting on his management of staff.

Ms Leigh reported to Dr Persley that:

- Ms Phillips was allowed to attend to her private business during working hours *"because of the close personal relationship between her and her immediate manager"*; and
- *"it was known that her manager was having a relationship with one member of the crews and this was causing him personal problems and led to him being distracted from his job"*.

Ms Leigh said in her evidence that she believed that Ms Phillips and Mr Brown had worked together in Sydney for Qantas as cabin crew duty managers. She thought they had been co-workers for about 10 years. She described the situation in Cairns as "a bit of a club" and said she was "a little bit intimidated" by Mr Brown and Ms Phillips.

It was established in evidence from Mr Brown and Ms Phillips that although they had knowledge of each other from particular roles they each had in Qantas dating back to about the late 1980s/early 1990s they had not worked directly with each other until commencing with Australian Airlines in 2002. Further, this working relationship was interrupted by Mr Brown's return to Qantas after his secondment concluded.

In relation to the second complaint Ms Leigh declined to elaborate on it in her evidence and it was not put to Mr Brown in cross-examination.

Findings

In submissions made on behalf of Ms Leigh this stressor was used to highlight the alleged ignorance, indifference and insensitivity on the part of Mr Brown to matters happening at the Cabin Crew Duty Manager level. However, the evidence does not establish that the type of personal relationship asserted by Ms Leigh to have existed between Mr Brown and Ms Phillips. This undermines the contention that Ms Phillips was given latitude in her work at Australian Airlines.

The other complaint about the alleged personal relationship Mr Brown was having with another staff member simply cannot be sustained given the absence of evidence.

The evidence about this stressor does not establish any ignorance, indifference and insensitivity by Mr Brown.

3. Mr Brown had a dismissive attitude towards her proposals for improved staff management and performance.

In particular Dr Persley reported that:

"She had indicated that her immediate manager had a dismissive attitude towards matters such as performance planning and participation in in-house development and training seminars and quality assurance training programs."

In her evidence Ms Leigh referred to a couple of instances where staff discipline issues had arisen. One concerned a flight attendant who had returned from a flight to Japan and was quite distressed. Ms Leigh considered that the flight attendant was struggling in her work and that the matter should be addressed by her or Mr Brown. On raising the matter with Mr Brown he was dismissive and made derogatory comments about the flight attendant concerned. Another concerned a performance issue on board an aircraft where on raising the matter with Mr Brown it was dismissed.

With respect to the first issue Mr Brown acknowledged that the issue had been raised with him but he did not believe the matter required further action. The allegation about his making derogatory comments about a particular flight attendant was not put to him in his evidence.

In response to the staff discipline issues generally, Mr Brown said that he made appropriate management decisions at the time which he believed the Cabin Crew Duty Managers would accept. He explained some of his decisions on particular issues in his evidence.

Reference was also made by Ms Leigh to Mr Brown cancelling her attendance at a course in May 2006. Ms Leigh said she was upset by this but acknowledged that it occurred at the time of the changeover from Australian Airlines to Qantas when there was a heavy workload. In his evidence Mr Brown confirmed that the reason for the cancellation of both his and Ms Leigh's attendance at the course was that the priority was the changeover from Australian Airlines to Qantas short haul in July 2006.

Mr Brown also recalled saying that doing performance appraisals at the time of the changeover was not a priority. He said the focus was on saving the airline and making the transition to short haul.

Findings

The issue of proposals for improved staff management and performance received little attention in the proceedings. Some evidence was given about particular performance issues with flight attendants and the training course in which Ms Leigh was to participate. The Commission is prepared to accept that Mr Brown gave the appearance of being dismissive of the performance management issues relating to the flight attendants, however, I am also prepared to accept his evidence that he had appropriate management reasons for adopting the positions he did. It may have been helpful had he explained his reasons but as the manager ultimately responsible for deciding whether to take action he was under no obligation to justify his position.

In relation to the cancellation of Ms Leigh's participation in the training course it is understandable that she was disappointed but in the context of the events that were happening at the time the decision was not unreasonable.

4. Ms Leigh raised a number of these issues with the local general manager, Peter Quinn, but this was unsuccessful because he was a close friend of Mr Brown.

Dr Persley's report went on to say:

"This led her to perceive that there was a lack of transparency and lack of impartiality in the local management."

These are the next two stressors identified from Dr Persley's report and are also conveniently dealt with together.

Mr Quinn said that Ms Leigh had made the occasional conversational comment that Ms Phillips was "not pulling her weight". The comments began about the time when Ms Leigh started to "conflict or compete" with Ms Phillips in about mid-2006. Mr Quinn said that the comments he heard were mostly second hand. However, when Ms Leigh raised the issue about workloads with him he raised it with Mr Brown. Mr Quinn said that it was his expectation that Mr Brown would manage the matter and he tried to distance himself from it in case it was necessary for him to be brought into the matter at a later date.

Ms Leigh said that Mr Brown and Mr Quinn had worked together for "a long time" with Qantas before commencing with Australian Airlines. In cross-examination Mr Brown said he had not had any dealings with Mr Quinn until 2002 when Australian Airlines commenced and Mr Quinn became the chief pilot and general manager of site operations. Mr Quinn did not become the local general manager of Australian Airlines until May 2006. Mr Brown reported to Mr Quinn from 2002. Mr Quinn said that he did not have any great knowledge of Mr Brown and may have met him on two or three occasions before commencing to work with him at Australian Airlines in mid-2002.

Findings

The evidence does not support the contention that Mr Quinn and Mr Brown were close friends. Nor does the evidence support any conclusion that Mr Quinn failed to support Ms Leigh because of any friendship he had with Mr Brown. Accordingly, Ms Leigh's complaint to Dr Persley is unfounded and her perceptions of lack of transparency and impartiality in local management are not accurate.

5. Mr Brown had behaved inappropriately towards her.

The complaints made by Ms Leigh as reported in Dr Persley's report are:

"He would hug and kiss her without invitation and was generally flirtatious in his manner. She wondered if this was an attempt by him to cajole her into accepting that he was neglecting his own work and getting her to cover for him."

Another complaint made to Dr Persley about Mr Brown's behaviour was that:

"She believed that even during the mediation his manner had been arrogant and flirtatious. She said that he had even kissed her during the mediation."

A further complaint was made by Ms Leigh in evidence about Mr Brown's conduct. She said that from the commencement of her employment Mr Brown's consistent pattern of behaviour was to come into the office in the morning, roll a chair towards her, straddle it and ask her how things were going. She said she did not feel comfortable with this behaviour and felt it was done to impress her.

The evidence from Ms Leigh is that Mr Brown once hugged and kissed her on her return from holidays in 2006 and said word to the effect, "Welcome back. I missed you more than I should have". Ms Leigh's interpretation was that he would have missed her because he would have had to perform the work himself.

Mr Brown denied that his approach to Ms Leigh was flirtatious. He said he was a very, friendly outgoing person and believed it was because of these characteristics that he was given the role of Manager, Cabin Crew so as to create a culture of engagement with people in Cairns.

Mr Brown agreed that he had hugged Ms Leigh on her return from holidays in June 2006 but that Ms Leigh had also given him a hug and a kiss on the cheek on his return from leave. He said it was a natural reaction from him.

Mr Brown had approached the mediation believing that there had been a misunderstanding between him and Ms Leigh and thought that the problem was really between Ms Leigh and Ms Phillips. In that context, at the end of the mediation he had kissed Ms Leigh on the cheek. He described it as no more than a peck on the cheek and intended it to be a gesture of friendship and to signal that they could work together in future.

Findings

It seems on the evidence that the culture of this workplace may have been one where physical contact of a hug and a kiss on the cheek was generally accepted. This case, like many others, shows that despite occasional acceptance of physical contact it should not be assumed that such contact will always be welcome.

It is noted that the evidence shows that the kiss on the cheek did not occur during the mediation but after it. Irrespective of when it occurred, the kiss on the cheek was certainly unacceptable behaviour by Mr Brown and his intentions or nature are not to the point. The mediation occurred after an emotional outburst from Ms Leigh which Mr Brown said was unlike anything he had experienced before. In those circumstances he ought to have realised that his relationship with Ms Leigh had altered and regardless of his nature a "peck on the cheek" was no longer appropriate behaviour. Mr Brown was also aware that the mediation was a formal process and as a manager he ought to have continued to respect that formality at its conclusion.

6. After Mr Brown returned from a period of leave during which Ms Leigh had successfully acted in his position and had made suggestions for improved efficiency, Mr Brown made a series of changes without consulting or advising her.

No dispute exists that Mr Brown went on four weeks leave commencing 13 July 2006 and Ms Leigh successfully acted in that position. What is in contention are the alleged changes. This refers to the restructure of the Cabin Crew Duty Manager positions and the decision to train staff to act in those positions.

In addition to the matters contained in Dr Persley's report, Ms Leigh complained the handover provided to her by Mr Brown prior to his departure on annual leave was inadequate. However, even on Ms Leigh's evidence, and supported by Mr Quinn, the handover meeting lasted for approximately 2½ to 3 hours, *albeit* it was periodically interrupted.

The more substantial complaint is about the restructuring of the Cabin Crew Duty Manager's positions. Prior to Mr Brown proceeding on annual leave Ms Leigh had raised with him the possibility of having another person to assist the Cabin Crew Duty Manager in performing administrative duties. According to Ms Leigh, Mr Brown suggested that she raise the matter with Mr Quinn.

Mr Brown acknowledged that Ms Leigh raised this issue with him but strongly refuted the proposition that he said to raise it with Mr Quinn. He also said that he asked her to consider, during his leave, a restructure of positions using the current staff because with the change to Qantas their procedures would have to become more consistent with those in operation in Qantas.

Ms Leigh discussed her proposal with Mr Quinn on the first day of her acting position. Mr Quinn explained to her the cost pressures associated with employing an extra person and indicated it would be unlikely that it would be approved. Mr Quinn suggested she raise her proposal with Mr Brown on his return from leave.

As part of her handover for Mr Brown's return from leave Ms Leigh sent Mr Brown an email to update him on events that had occurred during his absence and suggested they meet to discuss the contents. Included in the email was a heading "discuss ideas re additional resources". Ms Leigh and Mr Brown met shortly after Mr Brown's return to work. Ms Leigh explained that she was proposing a role redesign where the Cabin Crew Duty Manager's role would be separated into two discrete areas. One Cabin Crew Duty Manager would be solely responsible for performance management issues and the other would be responsible for operational issues. In evidence, Ms Leigh said that her proposed structure was aimed at reducing the handover workload from Ms Phillips, although this rationale was not articulated to Mr Brown at the time. Mr Brown agreed to consider her proposal.

Mr Brown subsequently discussed the proposal with Ms Phillips. After doing so he told Ms Leigh that he was proposing an alternative model where the role would be split into front office where the Cabin Crew Duty Manager would undertake operational matters and back office where performance management would be done. The two Cabin Crew Duty Managers would alternate week about in the two roles. This would allow the workload to be evened out between the two Cabin Crew Duty Managers; would ensure the Cabin Crew Duty Managers were multi-skilled and would require them to work standard business hours. It would also necessitate other staff being trained in the role to work on weekends. Ms Leigh was unhappy with the proposal because in her view it had not resolved the fundamental issue of workload being left by Ms Phillips.

Ms Leigh said Mr Brown informed her that he had decided to proceed with his model. She advised him that because of the stress she was feeling she could not cope with his decision regarding the role redesign. In an email she sent to Mr Brown in the evening of 24 August 2006 after the discussion earlier that day she expressed her disquiet. In it she said:

"I have been completely frank and honest with you since our association regarding the Duty Manager role and the situation with Maggie and ... I am not at all comfortable with what was tabled to me today...".

She said she would detail her concerns in a subsequent email.

Before she had time to do that Ms Leigh was informed by a Cabin Crew Manager that she was commencing training the following weekend as an acting Cabin Crew Duty Manager and that she (Leigh) and Ms Phillips were going to be working Monday to Friday. Although Ms Leigh consulted the roster and confirmed the scheduling of Acting Cabin Crew Duty Managers she did not speak to Mr Brown or anyone else in authority about this matter.

Ms Leigh sent another email after finishing work on 27 August 2006. For the first time Ms Leigh set out in writing and at length her frustrations with Ms Phillips, the proposed restructure and assorted other complaints. On receipt of the email Mr Brown contacted Human Resources for advice about how to respond as he was concerned that the issue was getting out of control. The response forwarded to Ms Leigh from Mr Brown was prepared by Human Resources. In that response Mr Brown advised, amongst other matters, that the restructure was being considered but at that point no changes had been made to Ms Leigh's duties and responsibilities. Mr Brown advised that Ms Leigh could make a formal complaint about Ms Phillips and it would be investigated in line with the Employee Grievance Policy.

The evidence from Mr Brown is that the restructure was a proposal only and no final decision had been made on it. He said he was trying to develop a model that would appease both Ms Leigh and Ms Phillips as well as a structure that fitted the business.

On 28 August 2006 an email was sent to Ms Leigh from Sydney formally advising her of a trial of weekday/week-end Duty Managers. Mr Brown said he apologized to Ms Leigh for not informing her of the trial but he was unaware Sydney was moving as quickly as it did to implement the training. However, the decision to train additional staff for the Cabin Crew Duty Manager positions was also part of the normal business process as several people who had previously acted had indicated they were no longer interested. Ultimately the proposed restructure to the Cabin Crew Duty Manager positions did not proceed because a decision was made to close the business.

Findings

The evidence does not support the complaint that Mr Brown made a series of changes without consulting or advising Ms Leigh. In fact the only change to emerge was the trial of the Cabin Crew weekend/weekday working arrangements. Certainly, this was to be a significant alteration to the method of working for Ms Leigh and it was an unfortunate omission on the part of Mr Brown to have not advised Ms Leigh in advance of the trial especially given the discussions which had been occurring about role redesign. However, the evidence also showed that training of additional relief staff was necessary. No final decision about the role redesign had been made and could not be made without approval from Human Resources because of the staffing and cost implications.

In considering the evidence in its totality, the conclusion to be drawn is that Mr Brown was receptive to listening to proposals for change and consulted with a range of staff including Ms Leigh and Ms Phillips.

7. Mr Brown had broken a mediation agreement by sending her an harassing memo.

After forwarding the response of 30 August 2006 Mr Brown also agreed to meet with Ms Leigh to discuss her concerns. The meeting occurred on 1 September 2006. It lasted a couple of hours, although not all of it was devoted to a discussion of Ms Leigh's concerns. Ms Leigh said she was "very, very upset and emotional". She became distressed when Mr Brown would not commit to mediation. Mr Brown described Ms Leigh as being "very, very aggressive, angry and animated" and he was "flabbergasted" by her demeanour. He acknowledged that Ms Leigh had raised the prospect of mediation with him at that time and although he was not initially interested, after seeking advice from Human Resources subsequent to the meeting he agreed to participate.

The mediation was held on 15 September 2006 and was convened by an independent mediator. The mediation lasted approximately five hours. After the mediation the mediator prepared a summary of agreed outcomes which was forwarded to both parties on 18 September 2006.

Ms Leigh told Dr Persley:

"... she believed the agreement was broken within a few days by the sending of an harassing memo."

One of the matters raised during the mediation was that the Procedures Manual which was kept on the G:/ drive of the computer was not up to date. According to Ms Leigh's evidence this had been a source of concern for her for some time. The Mediation Agreement records that it was agreed to produce/update the standard operating procedures manual. The details of the action to be taken were that the Manager, Cabin Crew and the Cabin Crew Duty Managers were to "review current procedure and documentation and complete within 6 weeks from project commencement". Documentation was to be changed and the G:/ drive was to be updated.

Also with respect to the issue of "Standard Processes and Procedures" the action noted in the Mediation Agreement was that "[i]t is estimated that this (the updating of the procedures manual) will reduce work load and assist any role redesign process". The details of the redesign procedures are that the "Duty Managers (are) to undertake with one assistant to perform computer duties" and it would take "3-5 days to complete".

On 21 September 2006 Mr Brown left a memo for Ms Leigh in the in-tray she shared with Ms Phillips. Ms Leigh was rostered off work at the time. She returned to work on 22 September 2006. The memo was in the following terms:

"Attached is a copy of the Duty Manager procedures. Would you please review and make the necessary changes via the G:/ drive so that it correctly reflects your *current* procedures. I would like this completed prior to October 3rd.

On completion, please sign and return this memo.

Thank you.

Simon Brown
Manager-Cabin Crew."

Ms Leigh complained that the memo was "harassing" because the timeframe specified for completion of the task breached the mediation agreement. She said it was impossible to undertake the task given "the state of mind that I was in and the workload I was under and the sheer volume of work that there was to do". Ms Leigh said that when she received the memo she telephoned the mediator who proposed she discuss the matter with Mr Brown. She declined to do this because she did not feel comfortable in doing so and it would be "pointless".

Ms Leigh believed that under the mediation agreement six weeks had been allocated for the project to review and update the procedures manual. The Cabin Crew Duty Managers and Mr Brown were to collate the information over this time and then three to five days were to be taken to input the information. By bringing the timeframe forward Ms Leigh felt she was being put under pressure to perform the task.

Ms Leigh said that after receiving the memo she felt "empty" and she had exhausted all avenues for resolution of her concerns. Ms Leigh completed her shift that day but does not seem to have returned to work thereafter.

Ms Phillips also received a memo in the same terms as Ms Leigh. In fact in the handover email from Ms Phillips to Ms Leigh on 21 September 2006, which Ms Leigh read before seeing Mr Brown's memo, Ms Phillips refers to "Simon having given both of us the Duty Manager procedures to review". This note does not seem to have registered with Ms Leigh given her adverse reaction to her receipt of the memo.

When Ms Leigh proceeded on sick leave Mr Brown undertook the task and completed it in four hours one evening at home.

Findings

On its face the mediation agreement suggests that the review of the Procedures Manual was to occur over a period of six weeks. Ms Leigh considered his memo was harassing because of the shorter timeframe provided for completion of the task than that agreed at mediation. Mr Brown believed he was trying to address in a short period an issue which was obviously distressing Ms Leigh and was not deliberately trying to put Ms Leigh under pressure. However, by requiring the task to be completed in a much shorter timeframe I consider that Mr Brown breached the agreement.

Although I consider that the memo cannot fairly be described as harassing as that term connotes an element of repeated behaviour I accept it caused considerable distress to Ms Leigh.

8. A Human Resources Officer dissuaded Ms Leigh from proceeding with a formal complaint against Mr Brown.

This matter was not raised by any of the parties. It is noted that after ceasing work Ms Leigh made a formal complaint against Mr Brown on 20 October 2006 which was investigated by Qantas. Ms Leigh's complaint against Mr Brown was not sustained.

Findings

Given this issue was not pressed the Commission is unable to make any findings in relation to it.

Conclusions on issues

Earlier in this decision the Commission set out a number of issues that need to be determined in this matter.

Whether Ms Leigh has suffered an injury within the meaning of s. 32(1) of the Act.

Based on the report of Dr Persley, Q-COMP submits, and I accept, Ms Leigh is able to establish that she sustained a personal injury, that injury being diagnosed as Adjustment Disorder with anxiety.

Whether Ms Leigh's employment at Australian Airlines was a significant contributing factor to the injury.

Section 32(1) of the Act provides that:

"An injury is a personal injury arising out of or in the course of employment if the employment is a significant contributing factor to the injury."

Dr Persley concluded that Ms Leigh's condition fell within this definition. In cross-examination Dr Persley acknowledged that the accuracy of his diagnosis was to a large extent dependent upon the accuracy and completeness of the information provided to him by Ms Leigh. If the history provided by Ms Leigh was incorrect then his diagnosis would be undermined. It was the accumulation of stressors identified by Ms Leigh that led her to suffer the psychiatric condition he diagnosed and if one or more of the issues that Ms Leigh identified that formed part of the history was unreliable, then the diagnosis of anxiety disorder would still stand but the significant contributing factors to it would be called into question.

Both Q-COMP and Qantas submit that Ms Leigh did not accurately inform Dr Persley about a number of matters including:

- Her system of work. Ms Leigh did not inform Dr Persley of her rotating roster. In his evidence he said he understood that she worked five business days out of seven;
- The extent and frequency of physical contact initiated by Mr Brown towards Ms Leigh. Dr Persley said he understood there was more than one hugging incident; that Ms Leigh was frequently hugged and kissed by Mr Brown and confirmed that he understood her to have been kissed during the mediation. He also understood from Ms Leigh's comments that Mr Brown interacted with her in a consistently flirtatious manner; and
- That the memo sent by Mr Brown to Ms Leigh regarding the review and updating of the Procedures Manual was harassing. When the memo was read to Dr Persley he conceded that it did not sound harassing.

In addition the evidence did not establish that:

- Ms Phillips was conducting her private business whilst at work;
- Mr Brown was having a personal relationship with a crew member;
- Long standing relationships existed between Ms Phillips and Mr Brown and between Mr Brown and Mr Quinn; and
- Mr Brown failed to discuss the proposed restructure with Ms Leigh and implemented changes without consultation.

In his submissions Mr O'Neill referred to various authorities which establish that a medical opinion is only of value if the facts upon which it is based is grounded on proven admissible evidence: see *Pollock v Wellington* (1996) 15 WAR 1 at 3 and *King v Pampano & Ors* [2001] WADC 237 at 74. Based on the misleading information given to Dr Persley the submission from Q-COMP and Qantas was that reliance could not be placed on Dr Persley's report and diagnosis. The effect of this was that both Q-COMP and Qantas contended that the Commission could not be satisfied that the employment was a significant contributing factor to the injury suffered by Ms Leigh.

Against those submissions it was said for Ms Leigh that Dr Persley considered but rejected other stressors such as personality and medical condition. Accordingly, as only the workplace stressors remained the Commission could only conclude that the employment was a significant contributing factor to the injury.

I accept in this case that Ms Leigh has not presented an accurate history to Dr Persley. It has been embellished and distorted. Some distortion or misperception can be expected as the history is presented through the eyes of the affected party. In this case, however much of the information provided by Ms Leigh to Dr Persley has not withstood scrutiny. In particular reference is made to usually working at least two hours' overtime each day; Ms Leigh's complaints about Ms Phillips conducting her private business whilst performing paid work at Australian Airlines; Mr Brown not consulting her about the proposed restructure and the close relationships between staff impacting on management of staff. Consequently, considerable doubt exists about the foundation on which the report and opinion was grounded. Despite the cogent arguments put by Q-COMP and Qantas I have somewhat hesitantly decided to reject them for the reason that there is no other evidence before me, or information given to Dr Persley, to suggest that factors other than employment were present. Dr Persley's evidence was that he made enquiries about other aspects of Ms Leigh's life that may have contributed to or caused her condition but there was no suggestion of other factors. In the absence of other factors I consider I can only find that employment was a significant contributing factor to the injury.

Whether Ms Leigh's injury arose prior to any management action being taken.

Mr Gordon submitted that Ms Leigh's injury occurred prior to or in the absence of any management action that might be considered under s. 32(5) of the Act occurred. He said that based on Dr Persley's report the actual symptoms of the disorder developed in 2005. (It was in late 2005 that Ms Leigh was prescribed Stilnox). Mr Gordon said that the symptoms developed as a result of the workload issues and her perception of how she was being dealt with by Mr Brown. It was contended there was no effective action, or any action, taken by Mr Brown in 2005 with respect to Ms Leigh. By the time the issues had arisen in 2006 concerning the restructure and the associated issues of management of Ms Phillips and the mediation, the injury had occurred.

Mr O'Neill strongly opposed this submission arguing that the medical evidence did not support the conclusion being contended for by the appellant. He referred to Dr Persley's evidence where he said:

"the onset of symptoms occurred at the end of 2005 ... and I think there was a progression from that point reaching the climax or the most difficult situation being around September 2006. So I've painted it not as a situation where suddenly it happened on a particular day, but rather there was a progression ... a progressive increase in symptoms over a period of time." (Transcript Day 4, pp 5, 6).

In light of Dr Persley's evidence I am unable to accept the submission that the injury occurred in late 2005 thus removing the injury from the reasonable management action exclusion in s. 32(5) of the Act. Dr Persley's evidence is that although the symptoms may have started to arise in late 2005, there was a progressive increase in those symptoms culminating in the events of September 2006. Because of that progression it cannot be said that the injury occurred at the end of 2005 before any management action occurred. In addition, Ms Leigh's application for workers' compensation does not support the proposition that her injury occurred in 2005. Her application dated 11 October 2006 records that the symptoms commenced "approx 6 months ago". On the basis of this documentation the symptoms commenced in about April 2006, well after the period suggested by her Counsel.

Dr Persley said it was possible that the close temporal connection between the role redesign issue, Mr Brown's preference for a proposal other than Ms Leigh's and the mediation were the events which ultimately gave rise to Ms Leigh's decompensation. The Commission has had the benefit of hearing lengthy evidence from Ms Leigh and evidence from a number of key participants. In my view the evidence establishes that close temporal connection. However, the critical episode is the meeting of 1 September 2006 which Ms Leigh had requested with Mr Brown and which lasted several hours. Mr Brown described Ms Leigh's demeanour at this meeting as being "very, very aggressive and animated and angry" and that he had not witnessed that type of behaviour with anyone with whom he had dealings in 30 years. He was so taken aback by the whole episode he had difficulty recalling the conversation. Ms Leigh also confirmed her very distressed state which she said was caused by Mr Brown's prevarication on the matter of mediation.

This meeting followed emails sent by Ms Leigh on 24 and 27 August 2006. The last mentioned email outlined for the first time her discontent and distress about a number of matters including the restructuring proposal and Ms Phillips. The following day Ms Leigh received formal advice about trial arrangements affecting Cabin Crew Duty Managers. This exacerbated her distress. In my view the progression of symptoms quickened in late August culminating in the episode of 1 September 2006. That was the climax or most difficult situation. The memo of 21 September 2006, while causing considerable distress to Ms Leigh, was connected to but was not the cause of the decompensation.

- *If not, whether Ms Leigh's claim for compensation is excluded by the operation of s. 32(5) of the Act as arising from reasonable management action taken in a reasonable way.*

Despite the failure of the case put by Ms Leigh, I still need to consider whether the injury is excluded because of reasonable management action taken in a reasonable way. Failure to do so would mean that the determinations made so far that Ms Leigh is a worker who suffered an injury arising out of or in the course of her employment to which employment is a significant contributing factor would stand and not be subject to the application of the reasonable management action exclusion provisions in s. 32(5) of the Act. Given that I have found that the injury suffered by Ms Leigh was a psychiatric or psychological disorder which did not occur prior to management action being taken, consideration must be given to whether the injury arose out of or in the course of management action reasonably taken or otherwise in order to completely apply the whole of the relevant section of the Act.

Because the case for Ms Leigh was conducted on the basis that her injury occurred prior to any management action being taken I do not have the advantage of having submissions made on her behalf on this issue.

Under the heading "Stressors identified in Dr Persley's report" I considered the stressors reported to Dr Persley and reached some conclusions about those matters. I found that:

- Because the role of the Cabin Crew Duty Managers was operational it was often very busy and not always possible for all of the work to be completed during rostered hours. Ms Leigh regularly worked beyond her rostered ceasing time, but her claim that she worked at least two hours overtime each day was not accepted.
- Ms Phillips was not leaving excessive work for Ms Leigh on handover.
- Ms Phillips was not conducting her private business during working hours with Australian Airlines.
- No evidence was presented that Mr Brown had a personal relationship with another staff member and that was affecting his work performance.
- Personal relationships between Ms Phillips and Mr Brown and Mr Brown and Mr Quinn did not exist and did not influence Mr Brown's management of Ms Leigh or Mr Quinn's management of Mr Brown. As a result findings of lack of transparency or impartiality on the part of local management could not be made.
- Mr Brown appeared dismissive of performance planning and training issues but had other priorities in relation to the matters affecting Ms Leigh and different means of dealing with the performance management issues of flight attendants.
- Mr Brown on occasion hugged and kissed Ms Leigh, however, that Ms Leigh had also hugged Mr Brown in the workplace. In the context of the mediation the kiss on the cheek was inappropriate behaviour.
- Mr Brown had consulted Ms Leigh about the restructure of the Cabin Crew Duty Manager positions and no final changes had been decided on or implemented. The training of relief Cabin Crew Duty Managers was appropriate in the circumstances especially where staff who had previously relieved in the positions did not wish to continue. It was an unfortunate omission for Mr Brown not to advise Ms Leigh in advance of her learning of the trial work arrangements for Cabin Crew Duty Managers.
- That the mediation agreement was broken by Mr Brown in respect of the review of the Procedures Manual and the memo from Mr Brown regarding this while not able to be described as harassing caused considerable distress.

In light of the above findings, the matters falling for consideration within the context of s. 32(5) of the Act are, in my view:

- The action taken by Mr Brown with respect to Ms Leigh's complaints about Ms Phillips;
- The response by Mr Brown to the restructuring proposal and administrative support request;
- Mr Brown's initiation of physical contact with Ms Leigh after the mediation; and
- Mr Brown's response to the mediation agreement.

In the context of reasonable management action the following matters also need to be considered:

- Mr Brown's response to:
 - The salary differential between Ms Leigh and Ms Phillips; and
 - Higher duties allowance when Ms Leigh acted in his position.

In considering the latter two matters I note the submissions of Mr Gordon that they were not raised by Ms Leigh as stressors. I have not dealt with them as such but I have decided to consider them under the heading of management action because they emerged during the hearing as issues that were obviously of concern to Ms Leigh and she expressed some dissatisfaction with Mr Brown's handling of them.

The phrase "management action" is not defined in the Act. The decisions show that a broad view has generally been adopted: see *Avis v WorkCover Queensland* (2000) 165 QGIG 788; *Ivey v WorkCover Queensland* (1999) 162 QGIG

392 and *Jeffers v WorkCover Queensland* (1999) 161 QGIG 534. "Reasonable" has been held to mean "reasonable in all of the circumstances of the case": *Priddle v WorkCover Queensland* (1999) 162 QGIG 170; *Delaney v Q-COMP Review Unit* (2005) 178 QGIG 197.

Mr Brown's response to complaints about Ms Phillips.

Ms Leigh had two complaints about Ms Phillips *viz.* the amount of work being left on handover and that she was conducting her private business during working hours with Australian Airlines. It was Ms Leigh's evidence that she informally raised those concerns with Mr Brown on about two or three occasions over the period from May 2005 until August 2006. It was not until late August 2006 that Ms Leigh put any of her complaints in writing to Mr Brown. Once the written complaint was received Mr Brown advised her of the option to make a formal complaint which would be investigated in accordance with policy.

Ms Leigh's own evidence was that she understood that a complaint did not have much strength unless it was put in writing. Despite this Ms Leigh criticised Mr Brown for not acting on her oral, informal complaints. From the evidence Ms Leigh only made conversational or passing comment to Mr Brown about Ms Phillips yet she complains about Mr Brown's inaction about the matter.

This complaint is made yet Ms Leigh's evidence is that she knew Mr Brown had spoken to Ms Phillips about her leaving work on handover because both Mr Brown and Ms Phillips told her this. The action of Mr Brown in speaking to Ms Phillips is reasonable management action taken in a reasonable way.

The fact that Mr Brown decided not to raise with Ms Phillips the allegation of her devoting Australian Airlines time to her private business because of his observation that she was not acting in such a manner is not unreasonable. Management action, or lack of management action, does not necessarily become unreasonable simply because a manager exercises a discretion based on a reasonable belief or observation and the worker disagrees with the exercise of that discretion.

Mr Brown's response to the restructuring proposal and administrative support request.

Prior to Mr Brown's departure on annual leave Ms Leigh raised a proposal for administrative support. In relation to this matter I found that Mr Brown's response had been adequate in the circumstances. For completeness I find that it was also reasonable management action given he discussed the proposal on several occasions. That nothing came of it was not a result of any inactivity or unreasonable response by Mr Brown.

Included in Ms Leigh's handover report to Mr Brown was a comment to discuss additional resources. Discussions on this matter took place shortly after Mr Brown's return from leave but the focus was more about a restructure of the Cabin Crew Duty Manager positions, the issue which Mr Brown had asked her to consider while he was on leave. The premise of Ms Leigh's proposal was to address the workload issues, especially her perception of the workload being left by Ms Phillips. Mr Brown was receptive to Ms Leigh's ideas. He spoke about them to Ms Phillips. After discussions with both women he advised Ms Leigh that he had a different idea about how the roles would be performed. Certainly, this idea did not accord with Ms Leigh's proposal nor from the perspective of Ms Leigh did it remedy the workload issues so she then put her concerns in writing.

At that time on her own evidence Ms Leigh had not made any formal complaints to Mr Brown about Ms Phillips. In fact only about two or three conversational comments over the last 12 months had been made by her. Reasonable management action does not require the manager to be psychic or to guess at the underlying reasons for a particular proposal for change. A manager would be entitled to believe that without elaboration, the rationale a proposal for change is to improve business efficiency, particularly when that was the context in which the manager asked for the proposal to be developed. Even Ms Rossiter from Human Resources, to whom Ms Leigh had complained periodically about Ms Phillips, was not aware that the proposal was designed to address Ms Leigh's concerns about Ms Phillips. Ms Leigh was upset but failure to obtain a preferred outcome does not equate to unreasonable management action.

Once being informed by Ms Leigh of her distress about the matter and the reasons for her proposals Mr Brown agreed to participate in a mediation with her. Again this is not the action of an unreasonable manager.

The other issue that comes under this heading is the training of additional Cabin Crew Duty Managers. Ms Leigh was first informed by another staff member and then by an email dated 28 August 2006 emanating from Sydney that a trial of work arrangements for Cabin Crew Duty Managers had been approved. She was naturally upset about not being previously advised by Mr Brown about this when it was going to impact on her work arrangements. Although Mr Brown said the training was part of the normal business arrangements and it was required irrespective of any role restructure it was an obvious omission on his part not to advise Ms Leigh of this personally especially when they had discussed the proposed restructure on a number of occasions.

Management action is not required to be perfect but it is not unreasonable to expect a manager to advise staff of changes in the workplace that will directly affect them. Mr Brown may have been taken by surprise at the speed with which the training was implemented but the fact that approval had been given by Sydney for the training to occur shows that the proposal was more advanced than acknowledged by Mr Brown to Ms Leigh during their discussions on 24 August 2006. His failure to advise Ms Leigh at that time about a trial when a number of discussions about the proposed restructure had occurred between them was unreasonable management action in the circumstances.

Mr Brown's physical contact with Ms Leigh after the mediation.

I have already expressed the view that Mr Brown behaved inappropriately after the mediation. That was neither the time nor the place for physical contact with Ms Leigh. Despite Mr Brown's belief going into the mediation that the real problem lay between Ms Leigh and Ms Phillips it would have been apparent from Ms Leigh's emails of 24 and 27 August 2006 of her discontent with him as a manager. While he acted reasonably by agreeing to participate in the mediation the basis of his participation was that of Ms Leigh's manager. His conduct must be construed in that context and hence as management action. In my view it was not reasonable management action taken in a reasonable way to demean Ms Leigh or the process by a kiss on the cheek at the end of the mediation.

Mr Brown's response to the mediation agreement.

Ordinarily a memo of the type forwarded by Mr Brown to Ms Leigh dated 21 September 2006 written in a fairly formal style, requiring a task to be completed by a certain date and signed off on completion would be characterised as reasonable management action taken in a reasonable way. What distinguishes this memo and puts it into the category of unreasonable management action is that the time line is inconsistent with the Mediation Agreement. I have previously noted that although Mr Brown believed the timeframe he set was consistent with the agreed position, I have accepted Ms Leigh's view, based on the words in the document, that a longer timeframe had been agreed. It matters not that Mr Brown was himself able to complete the task in a relatively short period. Mr Brown acknowledged the importance of acting in accordance with the Mediation Agreement and that he had received advice from Human Resources to ensure that he did so. By requiring the task be performed in advance of the agreed timeframe Mr Brown's request became unreasonable management action taken in an unreasonable way.

Mr Brown's response to the salary differential.

It seems that the genesis of Ms Leigh's dissatisfaction with Ms Phillips work ethic first developed when she discovered in May 2005 that Ms Phillips was being paid approximately \$7-\$8000 per annum more than her. She complained to Mr Brown who made enquiries with Human Resources.

On raising the issue initially Mr Brown was informed that because Ms Leigh had signed a contract for a certain salary that nothing was going to be done. He advised Ms Leigh of this but she was dissatisfied with this response. Mr Brown agreed to pursue that matter further with Human Resources. He acknowledged that it took him some time to do that but he eventually did and reported to Ms Leigh that he had been advised by Human Resources that the reason for the differential was that Ms Phillips had more years of service and so had received annual increments.

Although it took some little time for Mr Brown to further pursue the issue with Human Resources he did not sit on his hands completely. It is not always possible for managers to do things in the timeframe wished for by employees. In my view Mr Brown's actions were the actions of reasonable management taken in a reasonable way.

Mr Brown's response to the higher duties allowance.

Ms Leigh queried Mr Brown on his return from annual leave in August 2006 about an entitlement to higher duties while acting in his position. Mr Brown pursued this matter with Human Resources and was initially advised that she was not entitled to such an allowance. Mr Brown reported this to Ms Leigh who was dissatisfied with the response. Mr Brown again raised the matter with Human Resources and was advised that he had a discretion in the matter to grant her a skills allowance. Mr Brown decided that a 10% increase on her then wage should be paid and requested Human Resources to arrange payment.

Mr Brown was responsive to Ms Leigh's concerns, was prepared to pursue them and achieved a resolution in Ms Leigh's favour. Again these actions by Mr Brown can be characterized as reasonable management actions taken in a reasonable way.

Conclusions on reasonable management action

Section 32(5) provides for both reasonable management action taken in a reasonable way and the worker's expectation or perception of reasonable management action being taken against the worker. It is the reality of the employer's conduct that must be taken into account and not the employee's perception of it: *Prizeman v Q-COMP* (2005) 180 QGIG 481.

In this matter I have found three unreasonable management actions on the part of Mr Brown. These were Mr Brown's failure to inform her about the trial work arrangements; the timeframe for the review of the procedures manual and the kiss on the cheek after the mediation. Only one of these unreasonable management actions occurred prior to the critical episode on 1 September 2006. Although not informing Ms Leigh of the trial work arrangements was an oversight of some consequence it was but one management action taken over a period of time by Mr Brown in respect to the issues of concern to Ms Leigh and up to that point all other management actions taken have been found to have been taken reasonably. If the problems causing Ms Leigh to decompensate are considered in the context of the continuum of management action it cannot be said that the injury arose out of or in the course of unreasonable management action taken unreasonably.

In the circumstances the Commission accepts the submission of Q-COMP that it has established that Ms Leigh's psychological condition has arisen out of, or in the course of, reasonable management action taken in a reasonable way. In that light Ms Leigh's injury is withdrawn from s. 32(1) by the operation of s. 32(5) of the Act.

The appeal is dismissed and the decision of the Review Unit, Q-COMP of 13 December 2007 is confirmed.

Order accordingly.

G.K. FISHER, Commissioner.

Hearing Details:

2008 11 April, 26, 28, 29 and 30
May
31 July and 1 August

Released: 7 October 2008

Appearances:

Mr S. M. Gordon of Counsel instructed by Hall Payne
Lawyers on behalf of the Appellant.
Mr P.B. O'Neill of Counsel instructed by Q-COMP on behalf
of the Respondent.
Mr M.T. O'Sullivan of Counsel instructed by HWL Ebsworth
on behalf of Qantas Airways Limited.

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