FEDERAL COURT OF AUSTRALIA

Morton v Commonwealth Scientific and Industrial Research Organisation (No 2) [2019] FCA 1754

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| File number: |  |
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| Judge: | **RANGIAH J** |
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| Date of judgment: | 29 October 2019 |
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| Catchwords: | **INDUSTRIAL ACTION** – adverse action – where applicant alleges adverse action taken against her because of sex or sexual orientation – where applicant alleges to have exercised or proposed to exercise workplace rights – where applicant alleges adverse action taken or threatened with intent to coerce her not to exercise workplace rights – interaction between *Fair Work Act 2009* (Cth) and *Sex Discrimination Act 1984* (Cth) – vicarious liability of respondent for acts committed by employees **PRACTICE AND PROCEDURE** – application to withdraw an admission made in amended defence – where application made in closing address – leave to withdraw not freely granted – application refused  |
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| Legislation: | *Disability Discrimination Act 1992* (Cth) ss 15(2) and 16.02*Evidence Act 1995* (Cth) s 140*Fair Work Act 2009* (Cth) ss  340(1), 341(1), 342(1), 343(1), 345, 346, 351, 351(1), 351(2), 351(3), 360, 361(1), 545, 793(1)*Safety Rehabilitation and Compensation Act* *1988* (Cth)*Science and Industry Research Act* *1949* (Cth) s 8(2)*Sex Discrimination Act 1984* (Cth) ss 5, 14(2), 28A, 28B and 106*Federal Court Rules 2011* (Cth) r 16.02(3) |
|  |  |
| Cases cited: | *Aon Risk Services Pty Ltd v Australian National University* (2009) 239 CLR 175*Auimatagi v Australian Building and Construction Commissioner* (2018) 363 ALR 246; [2018] FCAFC 191*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2018) 350 ALR 190; [2018] HCA 3*Australian Building and Construction Commissioner v Hall* (2018) 277 IR 75; [2018] FCAFC 83*Australian Building and Construction Commissioner v Upton (The Gorgon Construction Case)* (2017) 270 IR 190; [2017] FCA 847*Australian Licensed Aircraft Engineers Association v International Aviation Services Pty Ltd* (2011) 193 FCR 526*Board of Bendigo Regional Institute of Technical and Further Education v Barclay* (2012) 248 CLR 500*Briginshaw v Briginshaw* (1938) 60 CLR 336*Cigarette & Gift Warehouse v Whelan* [2019] FCAFC 16*Commonwealth Bank of Australia v Finance Sector Union of Australia* (2006) 154 IR 467; [2006] FCA 1048*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission* (2007) 162 FCR 466*Construction, Forestry, Mining & Energy Union v Pilbara Iron Company (Services) Pty Ltd (No 3)* [2012] FCA 697*Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Services) Pty Ltd* (2015) 238 FCR 273*Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* (2014) 253 CLR 243*Dafallah v Fair Work Commission* (2014) 225 FCR 559*Drabsch v Switzerland General Insurance Co Ltd* (unreported, Supreme Court of New South Wales, 16 October 1996)*Esso Australia Pty Ltd v The Australian Workers’ Union* (2016) 245 FCR 39*Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (The Hutchinson Ports Appeal)* [2019] FCAFC 69*Hollis v Vabu Pty Ltd* (2001) 207 CLR 21*Jeans v Commonwealth Bank of Australia Ltd* (2003) 204 ALR 327; [2003] FCAFC 309*Kakavas v Crown Melbourne* (2013) 250 CLR 392*Maritime Union Authority v Geraldton Port Authority* (1999) 93 FCR 34*Maritime Union of Australia v Fair Work Ombudsman* [2015] FCAFC 120*National Tertiary Education Industry Union v Commonwealth* (2002) 117 FCR 114*New South Wales v Lepore* (2003) 212 CLR 511*Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia (No 3)* (1998) 195 CLR 1*Prince Alfred College Inc v ADC* (2016) 258 CLR 134*Qantas Airways Ltd v Australian Licenced Aircraft Engineers Association* (2012) 202 FCR 244*RailPro Services Pty Ltd v Flavel* (2015) 242 FCR 424*Sayed v Construction, Forestry, Mining and Energy Union* (2015) 149 ALD 88; [2015] FCA 27*Seven Network (Operations) Ltd v Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* (2001) 109 FCR 378*Shea v TRUenergy Services Pty Ltd (No 6)* (2014) 242 IR 1; [2014] FCA 271*Squires v Flight Stewards Association of Australia* (1982) IR 155*State of Victoria (Office of Public Prosecutions) v Grant* (2014) 246 IR 441; [2014] FCAFC 184*Tattsbet Ltd v Morrow* (2015) 233 FCR 46*Transport Workers Union of Australia v No Fuss Liquid Waste Pty Ltd* (2011) FCA 982*Western Union Business Solutions (Australia) Pty Ltd v Robinson* [2019] FCAFC 181*Whelan v Cigarette & Gift Warehouse Pty Ltd* (2017) 275 IR 285; [2017] FCA 1534 |
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|  | Salmond JW, *Law of Torts*, (Stevens and Haynes, 1907) |
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| Date of hearing: | 8–12, 15–19, 22–26, 29–30 October 20181–2 November 2018 |
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ORDERS

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|  | QUD 234 of 2017 |
|   |
| BETWEEN: | KATHERINE MARILLA MORTONApplicant |
| AND: | COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATIONRespondent |

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| JUDGE: | RANGIAH J |
| DATE OF ORDER: | 29 OCTOBER 2019 |

THE COURT DECLARES THAT:

1. The respondent contravened s 340(1) of the *Fair Work Act 2009* (Cth) by the action of its employee, Heather Campbell, on about 3 August 2015, in failing to comply with the requirements of the Grievance Procedures under the CSIRO Enterprise Agreement 2011–2014 to perform her duties with professionalism when dealing with a complaint made by the applicant against Gavin Drury.

THE COURT ORDERS THAT:

1. The respondent pay the applicant $1,000 by way of compensation for its contravention of s 340(1) of the *Fair Work Act*.
2. The parties provide written submissions upon the questions of any penalty, other orders and costs on dates to be fixed.
3. The proceeding is otherwise dismissed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

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RANGIAH J:

1. The applicant, Dr Katherine Morton (**Dr Morton**) seeks compensation and other relief against the respondent, Commonwealth Scientific and Industrial Research Organisation (**CSIRO**). Dr Morton was employed by CSIRO as a scientist between 2012 and 2016.
2. Dr Morton alleges that during the period of her employment, CSIRO:
3. contravened s 351(1) of the *Fair Work Act 2009* (Cth) (**the FW Act**), by taking adverse action against her because of her sex or sexual orientation;
4. contravened s 340(1) of the FW Act, by taking adverse action against her because she exercised or proposed to exercise workplace rights; and
5. contravened s 343(1) of the FW Act, by taking or threatening to take action against her with intent to coerce her to not exercise workplace rights.
6. The principal focus of CSIRO’s defence is to:
7. deny that much of the conduct alleged by Dr Morton occurred;
8. deny that any conduct that did occur was “adverse action”; and
9. assert that if there was “adverse action”, it was not taken because Dr Morton exercised any workplace rights.
10. I will proceed by:
* Describing Dr Morton’s position within CSIRO, and the positions of various CSIRO staff against whom her allegations are directed.
* Summarising the claims made in Dr Morton’s further amended statement of claim.
* Setting out the relevant provisions of the FW Act.
* Considering the law concerning those provisions.
* Separately assessing the credibility and reliability of the more controversial witnesses.
* Considering each of the claims made in Dr Morton’s further amended statement of claim.
* Considering any compensation.
1. I will summarise the evidence in an Appendix to these reasons.

# THE POSITIONS OF DR MORTON AND THE RELEVANT CSIRO EMPLOYEES

1. Dr Morton’s further amended statement of claim makes allegations against a number of CSIRO employees. It is necessary to give a brief description of the positions and roles of those persons in order to give context to Dr Morton’s claims.
2. Dr Morton commenced employment with CSIRO on 5 March 2012. She was a Level 6 scientist employed within the Aquaculture area of the Agriculture Business Unit (noting that the names of the various sections or units within CSIRO have varied over time). She was based at the Ecosciences Precinct (**ESP**) at Woolloongabba in Brisbane, but also carried out work at CSIRO’s aquaculture facility at Bribie Island, north of Brisbane.
3. On 28 November 2014, Dr Morton made a formal complaint against two of her colleagues, Dr Brett Glencross and Dr Nigel Preston, alleging sex discrimination, bullying and other misconduct. On 6 July 2015, Dr Morton was certified unfit for work with a psychiatric illness, and did not return to work. Her employment with CSIRO ended when her position was made redundant with effect from 11 November 2016.
4. Mr William Croft is Dr Morton’s partner. They met in about November 2012. Mr Croft was employed at CSIRO until 2013.
5. Dr Glencross was a Level 8 scientist within the Aquaculture area of CSIRO. He was Dr Morton’s immediate supervisor in respect of her scientific work. They had a difficult working relationship. Dr Morton’s complaint against Dr Glencross was never formally investigated, as he left CSIRO in February 2015.
6. Dr Preston was Director of the Agriculture Business Unit until July 2015. He was the senior manager of Dr Morton’s team. Dr Morton’s formal complaint alleged that Dr Preston discriminated against her on the basis of her sex. An investigation commissioned by CSIRO found that the allegations against Dr Preston were not substantiated.
7. Dr Matthew Cook was a senior scientist in the Aquaculture area, occupying several different roles during the period when Dr Morton was employed at CSIRO. Dr Cook was Dr Morton’s administrative line manager from March 2012 to August 2013 and again from July 2014 until her position was made redundant. Dr Cook and Dr Morton had a friendly relationship for much of that time, often involving the exchange of light-hearted banter in text messages and emails. Dr Morton made no complaints about Dr Cook while she was employed at CSIRO, but has now alleged that he sexually harassed her and discriminated against her on the basis of her sex.
8. Dr John Manners is the director of what is now the Agriculture and Food Business Unit. In February 2015, he decided that Dr Morton’s complaint against Dr Preston should be investigated, and appointed Mr Trevor Van Dam, as the investigator. Dr Manners was also one of the persons who later authorised Dr Morton’s position being made redundant.
9. Ms Julie Carroll was employed at CSIRO as a human resources (**HR)** advisor. Dr Morton made verbal complaints to Ms Carroll about her difficult relationship with Dr Glencross.
10. Dr Sigrid Lehnert was a scientist at CSIRO. In October 2014, Dr Morton discussed her poor relationship with Dr Glencross with Dr Lehnert.
11. Ms Alysha Davis was a HR advisor in CSIRO’s Agriculture Business Unit. In November 2014, Dr Morton made a verbal complaint about Dr Glencross and Dr Preston to Ms Davis. Ms Davis managed the grievance process and various issues about Dr Morton’s leave and other entitlements.
12. Mr Gavin Drury was an injury management coordinator employed by CSIRO. He was responsible for managing Dr Morton’s case when she ceased work in July 2015. Dr Morton made a complaint about Mr Drury’s management of her case.
13. Ms Heather Campbell is a senior manager within CSIRO. She was responsible for dealing with Dr Morton’s complaint against Mr Drury. Ms Campbell decided that the complaint was not established.
14. Ms Lynne Gaal is a senior HR advisor. She was involved in managing Dr Morton’s payroll and leave entitlements.
15. A number of other witnesses also gave evidence at the hearing, but it is unnecessary, at this stage, to describe their roles and positions. Their evidence is summarised in the Appendix to these reasons.

# SUMMARY OF DR MORTON’S CLAIMS

1. In her further amended statement of claim, Dr Morton makes ten claims, described as Claim 1A to Claim 9. I will briefly summarise Dr Morton’s claims.

## Claim 1A

1. CSIRO contravened s 351(1) of the FW Act by taking adverse action against Dr Morton because of her sex or sexual orientation.
2. The adverse action consisted of:
	1. Five incidents of sex discrimination or sexual harassment perpetrated by Dr Glencross, one by Dr Preston and five by Dr Cook.
	2. Failing to address, or adequately address, Dr Glencross’ behaviour in a timely manner upon becoming aware of his conduct.
	3. Affording Dr Morton less favourable conditions of employment than those that would be experienced by a male.
3. The incidents of sex discrimination or sexual harassment were:

### Dr Glencross

* 1. On 26 April 2012, Dr Glencross asked Dr Morton what her sexual preference was.
	2. On 2 May 2012, Dr Glencross referred to Dr Morton as a “prostitute”.
	3. On 2 May 2012, Dr Glencross made a comment about Dr Morton’s “crow’s feet”.
	4. On 16 October 2012, Dr Glencross slapped Dr Morton on her backside with a riding crop.
	5. On 17 October 2012, Dr Glencross stared at Dr Morton’s breast area and said, “Women only wear pendants to draw attention to their cleavage. I don’t know why you bother Katherine, you don’t have any”.

### Dr Preston

* 1. On 2 May 2012, Dr Preston called Dr Morton a “hussy”.

### Dr Cook

* 1. On 9 August 2012, Dr Cook told Dr Morton that Dr Preston’s nickname for her was “dizzy blonde”.
	2. On 10 September 2012, Dr Cook circulated an email with a picture of a scantily dressed woman.
	3. On 7 November 2012, Dr Cook circulated an email with a picture of a half-naked man and a woman, describing them as candidates for positions at CSIRO.
	4. On 19 March 2014, Dr Cook circulated an email discussing, in a sexualised way, the potential candidates for a post-doctorate position.
	5. On 2 December 2014, Dr Cook said to Dr Morton, “take a blonde to Tasmania, dress her up and double your money”.

## Claim 1

1. CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton.
2. The adverse action consisted of:
	1. Failing to address Dr Morton’s complaints about Dr Glencross’ behaviour towards her in a timely manner after her complaint was made.
	2. Removing Dr Morton as a team leader.
	3. Decreasing her allocation to the Huon project.
	4. Dismissing Dr Morton from her employment by making her position redundant in circumstances where there was no genuine redundancy.
3. The adverse action was taken because Dr Morton exercised the following workplace rights:
	1. Making complaints to Dr Cook about Dr Glencross’ behaviour.
	2. On 28 October 2014, making a complaint to Dr Lehnert about Dr Glencross’ behaviour.
	3. On 28 November 2014, making a formal complaint about Dr Glencross’ behaviour.
	4. On 6 November 2014, having a meeting with Ms Davis and Ms Sturton to discuss her complaint.
	5. On 5 December 2014, meeting with Ms Davis who requested that Dr Morton submit her allegations in writing.
	6. On 16 January 2015, submitting further information concerning the complaint.

## Claim 2

1. CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton.
2. The adverse action consisted of:
	1. Permitting Dr Manners to manipulate the terms of reference for the investigation of Dr Preston’s conduct by reducing the time-frame for the review and not referring to Dr Morton’s allegations that Dr Preston had made inappropriate and inaccurate comments about her.
	2. Removing Dr Morton as team leader.
	3. Decreasing her allocation to the Huon project.
3. The adverse action was taken because Dr Morton exercised the following workplace rights:
	1. In March 2015, notifying CSIRO that she wished to lodge a claim for workers’ compensation.
	2. In October 2014, making a complaint against Dr Preston.

## Claim 3

1. CSIRO contravened s 340(1) by taking adverse action against Dr Morton, and contravened s 343 by taking action against her with intent to coerce her to not exercise her workplace rights.
2. The adverse actions and the coercive actions consisted of:
	1. On 8 July 2015, Mr Drury engaging in intimidating and coercive behaviour by:
		1. stating, “Three months off would not do your career any good”;
		2. claiming he was qualified to advise her of this position as he was, “a clinician”;
		3. despite medical advice, Mr Drury saying he was going to plan her return to work, “within the next couple of weeks”.
	2. Mr Drury first contacting Dr Morton in early March 2015, even though she was not notified of the appointment of an investigator into her grievance until 27 March 2015.
	3. Mr Drury telling Dr Morton that if she did not file a claim with Comcare, then he would ensure that CSIRO would cover the treatment she needed.
	4. Removing Dr Morton as team leader, decreasing her allocation to the Huon project and dismissing her from her employment by making her position redundant in circumstances where there was no genuine redundancy.
3. The adverse action and coercive action was taken because Dr Morton proposed to exercise the following workplace rights:
	1. Make complaints or enquiries to exercise her entitlement to workers’ compensation benefits.
	2. Initiate or participate in proceedings under a workplace law, namely the *Safety Rehabilitation and Compensation Act* *1988* (Cth) (**the SRC Act**).

## Claim 4

1. CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton.
2. The adverse action consisted of:
	1. Mr Drury ignoring Dr Morton’s request to provide him with the name of his supervisor so that she could exercise a workplace right to make a complaint about his behaviours.
	2. Dr Cook also failing to respond to the request that Dr Morton made to Mr Drury, despite being copied into the email.
	3. Ms Pickering responding to Dr Morton’s complaint of 29 July 2015 by saying that she was no longer Mr Drury’s line manager, but copying Ms Campbell into the response.
	4. On 3 August 2015, Ms Campbell taking no action to initiate a grievance process and instead dismissing Dr Morton’s complaint.
	5. Ms Campbell not applying correct policy and procedures to Dr Morton’s complaint against Mr Drury.
	6. Decreasing Dr Morton’s allocation to the Huon project and dismissing her from her employment.
3. The adverse action was taken because Dr Morton had or exercised the following workplace rights:
	1. On 24 July 2015, requesting that Mr Drury provide her with the name of his supervisor so that she could make a complaint about his behaviour.
	2. On 29 July 2015, making a complaint to Ms Pickering about Mr Drury’s behaviour.

## Claim 5

1. CSIRO contravened s 340(1) by taking adverse action against Dr Morton, and contravened s 343(1) by taking action against her with intent to coerce her not to exercise workplace rights.
2. The adverse action and coercive action consisted of:
	1. Mr Drury engaging in a course of threatening behaviour as follows:
		1. On 8 July 2015, telling Dr Morton that, “Three months off would not do your career any good”;
		2. Telling Dr Morton that he was qualified to advise her of this because he was a “clinician”;
		3. Stressing the obligations the applicant had under the SRC Act to begin to plan her return to work “within the next couple of weeks”;
		4. Telling her that if she did not make a workers’ compensation claim, CSIRO would pay for all expenses.
	2. Removing Dr Morton as team leader, decreasing her allocation to the Huon project and dismissing her from her employment.
3. The workplace rights Dr Morton proposed to exercise were:
	1. To claim workers’ compensation.
	2. To initiate or participate in proceedings under the SRC Act.

## Claim 6

1. CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton.
2. The adverse action consisted of:
	1. On 7 October 2015, placing the applicant on Sick Without Pay Type 2 (**SW02**) leave that did not count for service despite Dr Morton maintaining a balance of paid recreational leave.
	2. Logging Dr Morton’s unpaid sick leave beyond the date of her medical certificate.
	3. Decreasing Dr Morton’s allocation to the Huon project, transferring her allocation on the Huon project to another staff member and dismissing her from her employment.
3. The adverse action was taken because Dr Morton exercised her workplace rights to make a complaint or enquiry with CSIRO in relation to the terms and conditions of her employment by having her partner, Mr Croft, query her leave entitlements.

## Claim 7

1. CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton, and contravened s 345 of the FW Act by knowingly or recklessly making a false or misleading representation about the exercise of Dr Morton’s right to return to work.
2. The adverse action consisted of:
	1. Correspondence from Ms Somerville dated 25 February 2016 misrepresenting Dr Glencross and Dr Preston’s employment status and work location with CSIRO.
	2. Dismissing Dr Morton from her employment.
	3. Placing Dr Morton’s name on the voluntary redundancy substitution register, but not completing that process as CSIRO considered there were no available substitutions.
3. The adverse action was taken because Dr Morton exercised her workplace right to participate in a return to work process under the SRC Act.
4. The false or misleading representation was that CSIRO had taken steps to facilitate a safe return to work.

## Claim 8

1. CSIRO contravened s 340 of the FW Act by taking adverse action against Dr Morton.
2. The adverse action consisted of:
	1. Not offering Dr Morton an available position in the redeployment process or making her aware of such a position.
	2. On 24 June and 14 July 2016, Ms Walsh advising Dr Morton that her position had been made redundant under the policy for voluntary redundancy.
	3. Failing to undertake the mandatory redeployment process.
	4. On 10 October 2016, advising Dr Morton that Mr Roy had given approval for the redundancy process to proceed.
	5. On 28 October 2016, informing Dr Morton that her position had been made redundant.
3. The adverse action was taken because Dr Morton exercised her workplace right to the benefits of the *CSIRO Enterprise Bargaining Agreement 2001–2014* (**the Enterprise Bargaining Agreement**), including its redundancy and redeployment process.

## Claim 9

(1) CSIRO contravened s 340 of the FW Act by taking adverse action against Dr Morton.

(2) The adverse action consisted of:

* 1. Manually reducing Dr Morton’s sick leave balance by 73.5 hours.
	2. Failing to properly consider, investigate or act on Dr Morton’s complaints.

(3) The adverse action was taken because Dr Morton exercised her workplace right to make a complaint and enquiry in relation to the terms and conditions of her employment by emailing Ms Gaal about being logged on SWO2 unpaid sick leave despite her claim for workers’ compensation benefits having been accepted.

# THE LEGISLATION

1. Part 3–1 of Ch 3 of the FW Act is entitled “General protections”. Division 3 of Part 3–1 is entitled “Workplace rights”.
2. Section 340 is within Div 3 and provides, relevantly:

(1) A person must not take adverse action against another person:

(a) because the other person:

(i) has a workplace right; or

(ii) has, or has not, exercised a workplace right; or

(iii) proposes or proposes not to, or has at any time proposed or proposed not to, exercise a workplace right; or

(b) to prevent the exercise of a workplace right by the other person.

Note This subsection is a civil remedy provision (see Part 4–1).

…

1. Section 341 of the FW Act defines “workplace right” as follows:

*Meaning of* ***workplace right***

(1) A person has a ***workplace right*** if the person:

…

(b) is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or

(c) is able to make a complaint or inquiry:

(i) to a person or body having the capacity under a workplace law to seek compliance with that law or a workplace instrument; or

(ii) if the person is an employee—in relation to his or her employment.

*Meaning of* ***process or proceedings under a workplace law or workplace instrument***

(2) Each of the following is a ***process or proceedings under a workplace law or workplace instrument***:

…

(k) any other process or proceedings under a workplace law or workplace instrument.

…

1. Section 342(1) of the FW Act sets out a Table that describes when a person takes “adverse action” against another person. Under Item 1, adverse action is taken by an employer against an employee if the employer:

(a) dismisses the employee; or

(b) injures the employee in his or her employment; or

(c) alters the position of the employee to the employee’s prejudice; or

(d) discriminates between the employee and other employees of the employer.

1. Section 343 provides, relevantly:

**343 Coercion**

(1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person, or a third person, to:

(a) exercise or not exercise, or propose to exercise or not exercise, a workplace right; or

(b) exercise, or propose to exercise, a workplace right in a particular way.

Note: This subsection is a civil remedy provision (see Part 4 1).

1. Section 351 of the FW Act provides, relevantly:

**351 Discrimination**

(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person’s race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Note: This subsection is a civil remedy provision (see Part 4–1).

(2) However, subsection (1) does not apply to action that is:

(a) not unlawful under any anti-discrimination law in force in the place where the action is taken;

…

(3) Each of the following is an ***anti-discrimination law***:

…

(ad) the *Sex Discrimination Act 1984*;

…

1. Section 360 of the FW Act provides:

**360 Multiple reasons for action**

For the purposes of this Part, a person takes action for a particular reason if the reasons for the action include that reason.

1. Section 361 of the FW Act provides, relevantly:

**361 Reason for action to be presumed unless proved otherwise**

(1) If:

(a) in an application in relation to a contravention of this Part, it is alleged that a person took, or is taking, action for a particular reason or with a particular intent; and

(b) taking that action for that reason or with that intent would constitute a contravention of this Part;

it is presumed that the action was, or is being, taken for that reason or with that intent, unless the person proves otherwise.

1. Section 793 of the FW Act provides, relevantly:

**793 Liability of bodies corporate**

*Conduct of a body corporate*

(1) Any conduct engaged in on behalf of a body corporate:

(a) by an officer, employee or agent (an ***official***) of the body within the scope of his or her actual or apparent authority; or

…

is taken, for the purposes of this Act and the procedural rules, to have been engaged in also by the body.

*State of mind of a body corporate*

(2) If, for the purposes of this Act or the procedural rules, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is enough to show:

(a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and

(b) that the person had that state of mind.

# THE PRINCIPLES

## Section 340(1) of the FW Act

1. Under s 340(1) of the FW Act, a person must not take adverse action against another person because the other person, relevantly, exercised or proposes to exercise a workplace right. The applicant bears the onus of proving that:
2. the conduct alleged by the applicant occurred;
3. that conduct constitutes “adverse action” for the purposes of s 342(1);
4. the right alleged was a “workplace right”; and
5. the applicant had, exercised (or not exercised), or proposed to exercise (or proposed not to exercise), the “workplace right”.

(See *Tattsbet Ltd v Morrow* (2015) 233 FCR 46 at [119]; *Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Services) Pty Ltd* (2015) 238 FCR 273 at [76].)

1. If s 361 of the FW Act is engaged, the onus is on the respondent to prove that the adverse action was not taken *because* the applicant had exercised (or did not exercise), or proposed to exercise (or proposed not to exercise), the “workplace right”.

### Workplace rights

1. Dr Morton pleads that she exercised, or proposed to exercise, “workplace rights” within the meaning of that expression in s 341(1) of the FW Act. The workplace rights alleged include her right to make complaints under the *Enterprise Agreement 2011-2014* (**the Enterprise Agreement**), to receive redundancy and redeployment benefits under the Enterprise Bargaining Agreement and to apply for and to receive benefits under the SRC Act.
2. In *Shea v TRUenergy Services Pty Ltd* (No 6) (2014) 242 IR 1; [2014] FCA 271, Dodds-Streeton J said at [29], in relation to a “complaint”:

(a) a complaint is a communication which, whether expressly or implicitly, as a matter of substance, irrespective of the words used, conveys a grievance, a finding of fault or accusation;

(b) the grievance, finding of fault or accusation must be genuinely held or considered valid by the complainant;

(c) the grievance, finding of fault or accusation need not be substantiated, proved or ultimately established, but the exercise of the workplace right constituted by the making of the complaint must be in good faith and for a proper purpose;

(d) the proper purpose of making a complaint is giving notification of the grievance, accusation or finding of fault so that it may be, at least, received and, where appropriate, investigated or redressed. If a grievance or accusation is communicated in order to achieve some extraneous purpose unrelated to its notification, investigation or redress, it is not a complaint made in good faith for a proper purpose and is not within the ambit of s 341(1)(c)(ii);

(e) a complaint may be made not only to an external authority or party with the power to enforce or require compliance or redress, but may be made to persons including an employer, or to an investigator appointed by the employer;

(f) a complaint that an employee is able to make in relation to his or her employment is not at large, but must be founded on a source of entitlement, whether instrumental or otherwise; and

(g) a complaint is limited to a grievance, finding of fault or accusation that satisfies the criteria in s 341(1)(c)(ii) and does not extend to other grievances merely because they are communicated contemporaneously or in association with the complaint. Nor does a complaint comprehend contemporaneous or associated conduct which is beyond what is reasonable for the communication of the grievance or accusation.

1. Justice Dodds-Streeton added at [625], in a passage recently approved in *Cigarette & Gift Warehouse v Whelan* [2019] FCAFC 16 at [28]:

In my opinion, the requirement that the complaint be one that the employee “is able to make” in relation to his or her employment suggests that there are complaints which the employee is not able to make in relation to his or her employment. The ability to make a complaint does not arise simply because the complainant is an employee of the employer. Rather, it must be underpinned by an entitlement or right. The source of such entitlement would include, even if it is not limited to, an instrument, such as a contract of employment, award or legislation.

1. I do not understand CSIRO to dispute that the rights pleaded by Dr Morton were “workplace rights”, or that Dr Morton had such rights. In some instances, however, CSIRO disputes that she in fact exercised those rights.

### Adverse action

1. Under s 342(1) of the FW Act, adverse action, relevantly, consists of (a) an employer dismissing the employee; (b) injuring the employee in his or her employment; (c) altering the position of the employee to the employee’s prejudice; or (d) discriminating between the employee and other employees of the employer.
2. In *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia (No 3)* (1998) 195 CLR 1, the High Court held at 18:

Paragraph (a) covers termination of employment; par (b) covers injury of any compensable kind; par (c) is a broad additional category which covers not only legal injury but any adverse affection of, or deterioration in, the advantages enjoyed by the employee before the conduct in question.

1. In *Maritime Union Authority v Geraldton Port Authority* (1999) 93 FCR 34, Nicholson J held at [244] and [246] that an offer of voluntary redundancy is not a dismissal or a threat to injure an employee in his or her employment.
2. In *Squires v Flight Stewards Association of Australia* (1982) IR 155, the words “injure in his employment” were considered at 164:

The words ‘injure in his employment’ are in the context of s.5 words of wide import. I do not regard them as referring only to financial injury or injury involving the deprivation of rights which the employee has under a contract of service. They are, in my view, applicable to any circumstance where an employee in the course of his employment is treated substantially differently to the manner in which he or she is ordinarily treated and where that treatment can be seen to be seen injurious or prejudicial.

However, that expression seems to have been more narrowly construed in *Patrick Stevedores*.

1. In *Qantas Airways Ltd v Australian Licenced Aircraft Engineers Association* (2012) 202 FCR 244, the Full Court said at [32]:

The authorities thus establish that a prejudicial alteration to the position of an employee may occur even though the employee suffers no loss or infringement of a legal right. It will occur if the alteration in the employee's position is real and substantial rather than merely possible or hypothetical.

1. In *Auimatagi v Australian Building and Construction Commissioner* (2018) 363 ALR 246; [2018] FCAFC 191, the Full Court held at [114] that “prejudice” is a word of wide import. The Full Court also held at [109] that prejudice is a matter of fact, and is therefore necessary to be proved.
2. I will consider the meaning of “discriminate” later in these reasons, in connection with s 351 of the FW Act.
3. For the purposes of this case, it is unnecessary to consider the precise distinctions between the four relevant categories of “adverse action”.

### Adverse action taken because the person has exercised, or proposed to exercise, a workplace right

1. Section 361(1) of the FW Act provides, relevantly, that if the applicant has alleged that a person has taken action for a particular reason or with a particular intent, and taking that action for that reason or with that intent would constitute a contravention of Part 3, it is presumed that the action was taken for that reason or with that intent, unless the person proves otherwise.
2. In order to take advantage of s 361(1), an applicant must plead the relevant intention or reason and all the material facts concerning the contraventions alleged against the respondent: *Australian Building and Construction Commissioner v Hall* (2018) 277 IR 75; [2018] FCAFC 83 at [13]–[19].
3. In *State of Victoria (Office of Public Prosecutions) v Grant* (2014) 246 IR 441; [2014] FCAFC 184, the Full Court described at [32] the principles from *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* (2012) 248 CLR 500 and *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* (2014) 253 CLR 243 as follows:
* The central question to be determined is one of fact. It is: “Why was the adverse action taken?”
* That question is to be answered having regard to all the facts established in the proceeding.
* The court is concerned to determine the actual reason or reasons which motivated the decision-maker. The court is not required to determine whether some proscribed reason had subconsciously influenced the decision-maker. Nor should such an enquiry be made.
* It will be “extremely difficult to displace the statutory presumption in s 361 if no direct testimony is given by the decision-maker acting on behalf of the employer.”
* Even if the decision-maker gives evidence that he or she acted solely for non proscribed reasons other evidence (including contradictory evidence given by the decision-maker) may render such assertions unreliable.
* If, however, the decision-maker’s testimony is accepted as reliable it will be capable of discharging the burden imposed on the employer by s 361.
1. In *Hall*, the Full Court held at [100]:

The orthodox approach to dealing with allegations of adverse action said to be engaged in “because” of a particular circumstance requires the party making such an allegation to establish the existence of the circumstance as an objective fact. If an applicant, on the whole of the evidence, establishes, to the *Briginshaw* standard, that the elements of a particular contravention (other than the reasons for the respondent taking action) exist and if the respondent wishes to avoid an adverse finding in respect of the alleged contravention the respondent will bear the onus to establish, on the balance of probabilities, that he or she had not acted for any proscribed reason. As has already been noted above, s 360 contemplates that there might be multiple reasons for a respondent taking action to the prejudice of the applicant. A reason will not be proscribed unless it is “a substantial and operative factor” in the respondents’ reasons for taking the adverse action.

(Citations omitted.)

## Section 343 of the FW Act

1. Section 343(1) of the FW Act provides, relevantly, that a person must not take or threaten to take any action against another person with intent to coerce the other person to not exercise a workplace right.
2. Coercion under s 343(1) of the FW Act involves two elements:
3. an intention to negate choice; and
4. the use of unlawful, illegitimate or unconscionable means in relation to the exercise, non-exercise or proposed exercise, of a workplace right.
5. In relation to the first element, Weinberg J held in *National Tertiary Education Industry Union v Commonwealth* (2002) 117 FCR 114 at [103]:

What is required is an intent to *negate* choice, and not merely an intent to influence or persuade or induce. Coercion implies a high degree of compulsion, at least in a practical sense, and not some lesser form of pressure by which a person is left with a realistic choice as to whether or not to comply.

1. Similarly, in *Seven Network (Operations) Ltd v Communications, Electrical, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* (2001) 109 FCR 378 at [41], Merkel J said:

First it needs to be shown that it was intended that pressure be exerted which, in a practical sense will negate choice.

1. In *National Tertiary Education Industry Union v Commonwealth*, Weinberg J held at [97]:

The expression “the intent to coerce” should be construed as requiring something more than a mere inducement to comply. The term “coercion” connotes something akin to the use of force, or at least threat of harm to the interests of another.

1. In *Esso Australia Pty Ltd v The Australian Workers’ Union* (2016) 245 FCR 39, it was held at [194] that the second element—whether the conduct is unlawful, illegitimate or unconscionable—involves an objective test.
2. In *Commonwealth Bank of Australia v Finance Sector Union of Australia* (2006) 154 IR 467; [2006] FCA 1048, it was held at [50] that conduct would be illegitimate if it would, “strike the reasonable observer as seriously contrary to generally held notions of morality”. In *Kakavas v Crown Melbourne* (2013) 250 CLR 392, the High Court held at [118] that there is unconscionable conduct where there is:

an unconscientious taking advantage by one party of some disabling condition or circumstance that seriously affects the ability of the other party to make a rational judgment as to his or her own best interests.

1. In *Auimatagi*, the Full Court held:

[157] The notion of unconscionability, as imposing a standard of right behaviour formed around conscience, will take its content from the values and expected conduct in an industrial setting. It is a word best understood in its practical application to real life settings where there can be an articulation and expression of why, in an employment and industrial context, the pressure sought to be exerted should be ascribed such a description of departing from right behaviour.

[158] Although illegitimacy can be seen to be a similar conception to unconscionability as a word connoting a degree of right behaviour, illegitimacy has emerged (rightly or wrongly) as its own separate category of behaviour…

[159] The notion of proportionality has been said to inform the concept of illegitimacy, in an assessment whether there is a reasonable or justifiable connection between the nature of the demand made and the nature of the pressure exerted.

(Citations omitted.)

1. In *Hall*, the Full Court held at [26] that if there is a failure to plead the intent to negate choice required by the first element of coercion in s 343, the presumption under s 361 will not operate. The burden will then remain on the applicant to prove that the action was taken with the requisite intent. In that case, the Court concluded at [41] that the expression, “intent to coerce”, without more, was ambiguous and did not convey the particular intent required.

## Section 351 of the FW Act

1. Section 351(1) of the FW Act provides that an employer must not take adverse action against a person who is an employee of the employer because of, relevantly, the person’s sex or sexual orientation. Under s 351(2)(a), 351(1) does not apply to action that is not unlawful under an applicable anti-discrimination law set out in s 351(3).
2. In *Western Union Business Solutions (Australia) Pty Ltd v Robinson* [2019] FCAFC 181, O’Callaghan and Thawley JJ said:

[114] The general operation of s 351 can be stated in the following way.

[115] First, putting to one side whether any of the exceptions in s 351(2) apply, the Court’s task in determining the application of s 351(1) is to determine, on the balance of probabilities, why the employer took adverse action against the employee, and to ask whether it was for a prohibited reason or reasons which included a prohibited reason.

[116] Secondly, where adverse action is taken as a result of a decision made by an individual within a corporation, the identification of the operative reasons for taking the adverse action turns on an inquiry into the mental processes of the relevant individual.

[117] Thirdly, the object of that inquiry is to determine the actual reasons. These are determined from all of the facts and circumstances and inferences properly drawn from them. In light of s 361, one would ordinarily expect direct evidence from the individual responsible for the employer’s action as to their reasons for that action, which may properly include positive evidence that the action was not taken for a prohibited reason. Of course such statements must be assessed against all of the facts and circumstances…

[118] Fourthly, s 351(1) does not apply, even though it otherwise would have applied, if the relevant action falls within s 351(2)…

(Citations omitted.)

1. Dr Morton submits that s 351(1) of the FW Act incorporates the anti-discrimination laws described in s 351(3), including the *Sex Discrimination Act 1984* (Cth). She submits that any conduct that is sexual harassment or sex discrimination under the *Sex Discrimination Act* is necessarily also adverse action in contravention of s 351(1) of the FW Act.
2. The judgment of Perry J in *RailPro Services Pty Ltd v Flavel* (2015) 242 FCR 424 is against that submission. In that case, Perry J held that the first instance judge erred in making a declaration that an employer had contravened s 351(1) of the FW Act by unlawfully terminating an employee’s employment in contravention of s 15(2) of the *Disability Discrimination Act 1992* (Cth). Her Honour held that the primary judge had erred in several respects:

[112] First, it is true that s 351(2) of the FW Act provides that s 351(1) does not apply to an action that is, relevantly, not unlawful under any anti-discrimination law, including the *Disability Discrimination Act*. However, the primary judge has effectively substituted the “carve-out” in s 351(2) for the test to be applied under s 351(1). However, the question under subs (1) is simply “why did RailPro dismiss Mr Flavel?”. Thus, if the dismissal was “because of” Mr Flavel’s mental disability, s 351(1) is breached unless the dismissal falls with one of the “carve-outs” in s 351(2)(a), s 351(2)(b) or s 351(2)(c). Save therefore where the adverse action is that defined in column 2, para (d) of Item 1 of the table in s 342(1) (ie that the employer “discriminates between the employee and other employees of the employer”), s 351(1) does not require that any comparison be undertaken between the treatment of the employee in question and any other employee(s). As such, s 351(1) relevantly prohibits specific conduct which the Parliament has adjudged to be discriminatory in a general sense, in contrast to s 15(2) of the *Disability Discrimination Act* where the comparison must still be made in the particular case in order to determine whether there has been a breach of that Act. Moreover under the *Disability Discrimination Act*, it suffices if an act is done for a proscribed reason even if it is not a “substantial reason” in contrast to the need to establish that the proscribed reason is a substantial and operative reason under the FW Act. Moreover it is sufficient under the *Disability Discrimination Act* if the discrimination is referrable to a perceived, as opposed to actual, disability or a disability of an associate (see “disability” defined in s 4(1) of the *Disability Discrimination Act*). That is not the case again under the FW Act.

[113] Understood in its context, therefore, the purpose of the “carve-out” is simply to ensure that conduct which would not contravene the general anti-discrimination laws, including relevantly the Disability Discrimination Act, equally does not contravene the FW Act and thereby avoids a result whereby the FW Act imposed more onerous obligations upon an employer than those already imposed upon her or him under general anti-discrimination laws. It is, in other words, a limitation or a check upon the scope of the prohibition in s 351(1). In effect s 351 proscribes a “subset” of that which is proscribed under the Disability Discrimination Act.

[114] The converse is not, however, true. It does not follow that conduct which contravenes the *Disability Discrimination Act* thereby also contravenes s 351(1) of the FW Act contrary to the assumption apparently made by the primary judge.

(Citations omitted).

1. Accordingly, Perry J held that contravention of the anti-discrimination laws described in s 351(3) does not necessarily mean that s 351(1) of the FW Act has also been contravened.
2. Dr Morton submits that in *Sayed v Construction, Forestry, Mining and Energy Union* (2015) 149 ALD 88; [2015] FCA 27, Mortimer J decided at [161] that, “to contravene anti-discrimination law would also contravene s 351(1) as adverse action”. CSIRO supports Dr Morton’s submission, asserting that Mortimer J held that s 351(1), “incorporated the discrimination legislation, so that an employer contravening an anti-discrimination law would also engage in adverse action on the basis of discrimination”. CSIRO then goes on to submit that Mortimer J’s approach was wrong.
3. In my opinion, the submissions of both Dr Morton and CSIRO misunderstand what Mortimer J held in *Sayed* at [161]. It is necessary to begin by considering the arguments raised before her Honour:

[154] The respondent contended “discriminates” should be given the meaning which is attributed to it in anti-discrimination statutes—namely, less favourable treatment…

[155] The respondent’s submissions did not grapple with indirect discrimination and how this would be encapsulated, given the rather tortured statutory definitions of that term…

[156] The respondent contends that the approach taken by Katzmann J in *Construction, Forestry, Mining & Energy Union v Pilbara Iron Company (Services) Pty Ltd (No 3)* [2012] FCA 697 at [40] supports its submission…

[157] In *Pilbara Iron*, Katzmann J observed (at [40]) that Item 1(d) speaks of discrimination occurring “between employees” and not “against” an employee, but concludes that, especially given the presence in Item 2 of the word “against”, there is no material difference. In the matter before her Honour, both parties accepted that “discriminate” should be construed as “treat less favourably”, so that her Honour did not have to decide this question. In contrast, the parties in this proceeding contended for different constructions…

[158] The applicant submits “discriminates” in Item 1(d) should simply be construed as treating people differently. In this way, the attributes set out in s 351 then prohibit such different treatment by reference to a consideration irrelevant to the performance of an employee’s work…

[160] I accept the applicant’s submission as a matter of construction in relation to Item 1(d)…In my opinion, the language in Item 1(d), and its use of the word “between”, suggests the conduct which is to be examined is the way in which the employer targets the particular employee. Is that employee treated differently from other employees? By s 351, the “irrelevant” reasons for the different treatment…are then specified. The inquiry is thus a straightforward one, to that point, and does look only for differential treatment, as the applicant submits.

[161] However, the terms of s 351(2), read with subs (3), then must be applied. Those provisions expressly pick up the detailed regimes of each of the territory, state and federal anti-discrimination statutes. In other words, the requirements that there be “less favourable treatment”, the complicated requirements for indirect discrimination, and the exceptions for which each statute provides are, through these provisions, incorporated so as to limit the protections given by Div 5 of Part 3-1 of the Fair Work Act in a way which is intended to mirror the limits under those other legislative schemes. When read as a whole, s 351 and s 342(1) Item 1(d) will operate to render only conduct proscribed under other anti-discrimination regimes as conduct contravening s 351. That, in substance, is the outcome for which the respondent contended, although not because of the meaning of “discriminates” in Item 1(d) of s 342(1), but rather at the subsequent step of the application of the prohibition in s 351.

1. It may be seen that Mortimer J was concerned with a narrow issue—the meaning of the phrase, “discriminate between the employee and other employees of the employer”, in Item 1(d) of the Table in s 342(1) of the FW Act. Her Honour held that the phrase does not itself require *less favourable* *treatment* of an employee. However, her Honour held that the effect of s 351(2) and (3) is that, *unless* the treatment of the relevant employee *is* *less favourable*, s 351(1) will not apply. That is because the employer’s action will not be unlawful under any anti-discrimination law unless it is less favourable treatment.
2. It may be observed that while the “adverse action” proscribed under s 351 is not confined to discrimination, the passage at [161] of *Sayed* was concerned only with the discrimination category of adverse action. Justice Mortimer held that ss 351(2) and (3) of the FW Act pick up the provisions of the anti-discrimination laws that operate to make actions *not unlawful*. Her Honour did not hold that s 351(1) picks up and incorporates provisions of the anti-discrimination laws that make actions *unlawful*.
3. Although Dr Morton and CSIRO submit that there is tension between the views of Perry J in *RailPro* and Mortimer J in *Sayed*, I can see no such tension. In *RailPro*, Perry J held thats 351(1) did not pick up and apply the offence provisions of the anti-discrimination legislation. That issue was not the subject of consideration in *Sayed.*
4. I reject the submission that s 351(1) of the FW Act operates to pick up the provisions of the *Sex Discrimination Act* that make certain actions unlawful, including the vicarious liability provisions. That would be an unlikely construction of s 351(1) when it makes no reference to the *Sex Discrimination Act*. That may be contrasted with ss 351(2) and (3), which expressly exclude the operation of s 351(1) where the relevant action is *not unlawful* under a relevant anti-discrimination law. There would be other difficulties with such an approach, including how to reconcile the vicarious liability provision in s 106 of the *Sex Discrimination Act* with s 793 of the FW Act. Further, if all s 351 did was mirror the anti-discrimination laws the provision refers to, there would be no need for s 351 at all. I also respectfully adopt the analysis of Perry J in *RailPro Services.*
5. In my opinion, s 351(1) of the FW Act stands independently from the anti-discrimination laws referred to in s 351(3). Therefore, conduct may contravene s 351(1) whether or not it conforms to the definitions of “sexual harassment” and “sex discrimination” under the *Sex Discrimination Act*. Further, s 351(1) does not pick up the vicarious liability provision in s 106 of the *Sex Discrimination Act*. However, under ss 351(2) and (3), the employer receives the benefits of any defences, exceptions or exemptions under the *Sex Discrimination Act*.
6. There is tension between the views expressed about the meaning of the phrase “discriminate between” in Item 1(d) in *Sayed* and in *Construction, Forestry, Mining & Energy Union v Pilbara Iron Company (Services) Pty Ltd (No 3)* [2012] FCA 697. In *Sayed*, Mortimer J held at [158] that “discriminate between” in Item 1(d) should be construed as “treating people differently”. In contrast, in *Pilbara Iron*, Katzmann J accepted at [40]–[41] that “discriminate between” should be construed as “discriminate against”, and means “treat less favourably”.
7. I prefer the construction given in *Pilbara Iron*. It is true that the phrase “discriminate *between* the employee and other employees” is used in Item 1(d) of the Table in s 342(1) of the FW Act, in contrast to phrases like “discriminates *against* the employee” in Item 2(b) and 4(b) of the Table and ss 153, 195 and 354 of the FW Act. However, taking the opening words of s 342(1) into account, the provision reads, relevantly, that, “a person takes adverse action *against* another person…if…the employer…discriminates *between* the employee and other employees of the employer”. The phrase, read as a whole, suggests that it refers to conduct which discriminates against one employee (or a group of employees). That Item 1(d) of the Table in s 342(1) of the FW Act does not merely refer to *different treatment*, including favourable treatment, conforms to the other types of adverse action specified in the Table, each of which involves *unfavourable* treatment of an employee.
8. In addition, while it was held in *Sayed* that the concept of *less favourable treatment* is imported by the anti-discrimination laws described in s 351(3), the word “discriminate” in Item 1(d) applies also to other provisions, namely ss 340 and 346, which adopt the definition of “adverse action”. But the anti-discrimination laws are only picked up by s 351, not the other provisions. The protective purposes of ss 340 and 346 indicate that they are only concerned, relevantly, with less favourable treatment of an employee or group of employees. Accordingly, Item 1(d) requires *less favourable treatment* of an employee (or a group of employees) in comparison to other employees of the employer.

## Section 793 of the FW Act and vicarious liability

1. Dr Morton relies upon s 793 of the FW Act and common law principles of vicarious liability to establish that CSIRO is liable for the alleged contraventions of s 351(1) of the FW Act by CSIRO through the conduct of Dr Glencross, Dr Preston and Dr Cook. CSIRO contends that CSIRO is not liable for any acts committed by its employees in the nature of sexual harassment or sex discrimination. Dr Morton also relies upon s 793 of the FW Act in respect of the other forms of adverse action and coercive action she alleges, but that is less controversial.
2. Under s 8(2) of the *Science and Industry Research Act* *1949* (Cth), CSIRO is a body corporate. The further amended statement of claim alleges, and the amended defence admits, that CSIRO is a “national system employer”. Although not expressly pleaded, it is implicit in the admission of that allegation that CSIRO employed Dr Morton and the persons of whose conduct she complains.
3. CSIRO argues that Dr Morton cannot rely upon s 793 of the FW Act as she has not pleaded the section. However, r 16.02(3) of the *Federal Court Rules 2011* (Cth) allows, but does not require, a pleading to raise a point of law. What is required under r 16.02(1)(d) is the pleading of material facts. While the further amended statement of claim fails to *expressly* plead the material facts required to engage s 793, the parties have, as I have said, conducted the proceeding on the basis that CSIRO employed the persons against whom Dr Morton’s allegations are made. She has only sued CSIRO. Accordingly, she must be relying, implicitly, upon principles of vicarious liability. This is one of a number of deficiencies in the further amended statement of claim. However, CSIRO did not take issue with the pleading prior to its closing address, and I do not think that it can claim to be taken by surprise by Dr Morton’s reliance on s 793. She should not be prevented from relying upon that provision.
4. CSIRO conceded that common law principles of vicarious liability for a tort committed by an employee apply to the liability of an employer for contraventions of the FW Act by its employees. It is not obvious that the concession was correctly made. In *Australian Building and Construction Commissioner v Upton (The Gorgon Construction Case)* (2017) 270 IR 190; [2017] FCA 847, Barker J considered the issue but, at [224], expressly refrained from deciding it. It is unnecessary to decide the issue in the circumstances of this case. In the absence of reference to any other authority or argument, I will proceed upon an assumption that the concession was correctly made.
5. At common law, an employer is vicariously liable to third parties for tortious acts of the employee which are impliedly authorised; that is, acts committed while the employee is acting within the scope of his or her authority and performing the employment duties or acts incidental to the performance of those duties: see *Halsbury’s Laws of Australia* at [165–1045]. In *New South Wales v Lepore* (2003) 212 CLR 511, Gleeson CJ noted at [42] that Salmond JW, *Law of Torts*, (Stevens and Haynes, 1907) at p 83 it is stated that, “an employer is liable even for unauthorised acts if they are so connected with authorised acts that they may be regarded as modes—although improper modes—of doing them, but the employer is not responsible if the unauthorised and wrongful act is not so connected with the authorised act as to be a mode of doing it, but is an independent act”. Provided that there is necessary connection with the employment, an employer may be liable even if there has been an express prohibition against the wrongful conduct: see *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21 at [99], per McHugh J.
6. However, difficulties arise when considering whether an employee is liable for an intentional wrong perpetrated by an employee. In *Prince Alfred College Inc v ADC* (2016) 258 CLR 134, a case dealing with sexual abuse, the High Court said:

[80] In cases of the kind here in question, the fact that a wrongful act is a criminal offence does not preclude the possibility of vicarious liability. As *Lloyd* shows, it is possible for a criminal offence to be an act for which the apparent performance of employment provides the occasion. Conversely, the fact that employment affords an opportunity for the commission of a wrongful act is not of itself a sufficient reason to attract vicarious liability. As *Deatons* demonstrates, depending on the circumstances, a wrongful act for which employment provides an opportunity may yet be entirely unconnected with the employment. Even so, as Gleeson CJ identified in *Lepore* and the Canadian cases show, the role given to the employee and the nature of the employee’s responsibilities may justify the conclusion that the employment not only provided an opportunity but also was the occasion for the commission of the wrongful act. By way of example, it may be sufficient to hold an employer vicariously liable for a criminal act committed by an employee where, in the commission of that act, the employee used or took advantage of the position in which the employment placed the employee vis-à-vis the victim.

[81] Consequently, in cases of this kind, the relevant approach is to consider any special role that the employer has assigned to the employee and the position in which the employee is thereby placed vis-à-vis the victim. In determining whether the apparent performance of such a role may be said to give the “occasion” for the wrongful act, particular features may be taken into account. They include authority, power, trust, control and the ability to achieve intimacy with the victim. The latter feature may be especially important. Where, in such circumstances, the employee takes advantage of his or her position with respect to the victim, that may suffice to determine that the wrongful act should be regarded as committed in the course or scope of employment and as such render the employer vicariously liable.

1. I have already held that s 351(1) of the FW Act does not incorporate the provisions of the *Sex Discrimination Act* that make sexual harassment and sex discrimination unlawful. On that basis, the vicarious liability provision in s 106 of the *Sex Discrimination Act* has no application in the present case.

## Section 140 of the *Evidence Act 1995* (Cth)

1. Section 140 of the Evidence Act provides:

(1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.

(2) Without limiting the matters that the court may take into account in deciding whether it is so satisfied, it is to take into account:

(a) the nature of the cause of action or defence; and

(b) the nature of the subject matter of the proceeding; and

(c) the gravity of the matters alleged.

1. In *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Australian Competition and Consumer Commission* (2007) 162 FCR 466 at [31], the Full Court held that Dixon J’s discussion in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361–363 of the operation of the civil standard of proof “appositely expresses the considerations which s 140(2) of the *Evidence Act* require a Court to take into account”. The considerations include that ss 340(1), 343(1) and 351(1) are civil remedy provisions, contravention of which exposes CSIRO to pecuniary penalties.

## The evidence

1. The trial was conducted over 19 days from 8 October to 2 November 2018. A total of 32 witnesses gave evidence orally. Three other witnesses gave their evidence by affidavit and were not required for cross-examination.
2. The evidence of some of the witnesses was lengthy. In particular, Dr Morton gave evidence over sevendays. There was a great deal of evidence and cross-examination of witnesses about allegations ultimately deleted from the amended statement of claim. This was not objected to, presumably because it was thought to be relevant by way of background, or to credit. However, it substantially lengthened the evidence.
3. In view of the number of witnesses called and the length of their evidence, I propose to summarise the evidence in an Appendix to these reasons, rather than in the body of these reasons. The Appendix should be read as part of these reasons.

# ASSESSMENT OF THE WITNESSES

1. It is necessary to make an assessment of the credibility and reliability of the evidence given by the witnesses.

## Assessment of Dr Morton’s evidence

1. The credibility and reliability of Dr Morton’s evidence is central to several, although not all, of the allegations she has made. I conclude that, except to the extent that it is adequately corroborated, her evidence is not credible or reliable.
2. My reasons for this conclusion may be divided into four interrelated categories. They are:
3. discrepancies between Dr Morton’s reporting of her level of psychiatric functioning and her presentation in the witness box;
4. discrepancies between Dr Morton’s reporting of her level of psychiatric functioning and the level revealed through other sources (such as social media and text messages);
5. Dr Morton’s failure to make timely complaints about the sexual harassment and sex discrimination allegedly perpetrated Dr Glencross, Dr Preston and Dr Cook;
6. various other discrepancies, implausibilities and inconsistencies in Dr Morton’s evidence; and
7. inconsistencies between Dr Morton’s evidence and that of other witnesses whose evidence I consider credible and reliable.
8. I will address the first four of these categories at this stage.

### Discrepancies between Dr Morton’s reporting of her level of functioning and her presentation in the witness box

1. A striking feature of Dr Morton’s evidence was the marked difference between her presentation while giving evidence and the presentation of her symptoms and level of functioning to examining psychiatrists.
2. Dr Morton gave her evidence-in-chief over three days and was cross-examined for a further four days. She appeared to have no difficulty understanding the questions she was asked. Her answers were generally responsive, except on some occasions when she appeared to be deliberately unresponsive. She spoke eloquently and remained composed. To my observation, she rarely hesitated before giving her answers, even under cross-examination. It was evident that her mind was sharp and adroit.
3. Dr Morton’s concentration was remarkable. It did not flag, even towards the end of long days of giving evidence. She was taken to many emails, text messages and other documents, which she was able to read and understand, even under the pressure of being in the witness box, without apparent difficulty. Her command and knowledge of the documents in the case was impressive.
4. Dr Morton appeared to have an excellent memory of the fine details of the various allegations she made and the events that occurred. She exhibited considerable knowledge and recollection of the details of relevant CSIRO policies and industrial instruments, her leave entitlements and their interaction with her Comcare entitlements. Under cross-examination, she was readily able to give explanations of events and communications dating back to 2012. She often professed to be able to remember exactly what she was thinking or feeling at the relevant times and could recall the detail of conversations that occurred throughout the period of her employment since 2012. There were few occasions when Dr Morton claimed to be unable to remember an event or communication.
5. In terms of her concentration, memory, organisation of thought and adroitness in answering questions, I consider Dr Morton to be an impressive witness. But that is not to say that I found her a credible or reliable witness.
6. There was marked discrepancy between Dr Morton’s performance as a witness and the symptoms she reported to psychiatrists, Dr Rees and Dr Mathew.
7. Dr Rees diagnosed Dr Morton with Major Depressive Disorder, which commenced in 2012. Dr Rees last examined her on 13 July 2018. There was no suggestion from Dr Morton that her condition had changed by the time the trial commenced about 2½ months later.
8. Dr Rees consistently reported Dr Morton as having complained of poor concentration, poor memory, reduced motivation, lethargy and difficulties with organisation. In his report of 1 August 2018, Dr Rees described his interview with Dr Morton before addressing some specific questions:

This most recent interview was consistent with previous interviews with Dr Morton. … Her speech was slow and halting and her affect flat…Her speech was rambling and circumstantial. It was difficult to keep her to the subject at hand. She tended to either over elaborate or go off on a tangent.

In general, she was able to address my questions with appropriate answers but on many occasions, she continued to answer previous questions or provide remembered fragments of answers to previous questions…By this, I mean that her answers are sometimes off topic and may relate to previous discussions. It represents a “*sticky*” adherence to topic and an unwillingness to move onto [other] materials.

…

There was no evidence of any psychotic thought content and although her replies were rambling and at times difficult to follow, there was no formal thought disorder. …

She described ongoing memory difficulties and these were apparent when asking her to recall previous content of our discussions. As noted, her intelligence is high and her insight regarding her situation appeared within normal limits.

…

… Certainly, inattention is a frequent problem in my consultations with Dr Katherine Morton and leads to them being longer and less productive than would be the case for an ordinary person of Dr Morton’s intelligence.

…

Additionally, her personality type is markedly obsessional and tends to mean that she will become quite unwilling to move onto a new question or new content if she has not given what she would consider an adequate elaboration of previous answers…It also means that Dr Morton has difficulty focusing on the next question in any given interview. Dr Morton tends to be over inclusive when she eventually latches on to a topic and her answers are over elaborated and then tend to veer off to irrelevant or unnecessary content involving other areas.

… In my opinion, the difficulties of interviewing Dr Morton are largely because of her inattention as a result of her personality style, memory difficulties and anxiety.

…

1. Dr Morton told Dr Mathew that her memory was not very good. She reported difficulties with her concentration, saying she was not reading books because of this and could not focus through a movie. She told Dr Mathew that her energy and self-care were poor and that sometimes she failed to shower for several weeks at a time.
2. In the witness box, Dr Morton exhibited no problems with concentration, memory, inattention, difficulty with organisation of thought, rambling speech, unwillingness to move on from a topic, continuing to answer previous questions, providing remembered fragments of answers to previous questions, over-elaboration or veering off to irrelevant or unnecessary content. If these were genuine problems, at least some of them are likely to have become apparent over the seven days over which Dr Morton gave evidence.
3. In my opinion, the excellent concentration, memory, organisation and quickness of mind demonstrated by Dr Morton in the witness box are so inconsistent with her reporting of her disabilities, that I must conclude that she engaged in substantial exaggeration when presenting her symptoms to her psychiatrists.

### Discrepancies between Dr Morton’s reporting of her level of functioning and the level of revealed through other sources

1. In addition to the symptoms described above, Dr Rees recorded Dr Morton as reporting she suffered from lethargy and loss of pleasure in activities she had previously found pleasurable. She told Dr Rees she had panic attacks, which tended to be related to apprehension regarding any activity that might take her outside of her property in rural Tasmania. Dr Rees also diagnosed her with Agoraphobia, the onset of which was about November 2016.
2. Dr Mathew recorded the symptoms reported by Dr Morton as including no longer enjoying activities such as baking, shopping, walking and catching up with friends. She said she had stopped most of these activities. She told Dr Mathew that she did not go out except for doctors’ appointment or groceries.
3. However, the evidence reveals that Dr Morton has engaged in a number of activities over the years that are inconsistent with the symptoms she reported to the psychiatrists.
4. In the first half of 2015, Dr Morton was still working at CSIRO as a scientist, although she had some time off work with various medical problems. Her Facebook posts show that she went on a holiday to Tasmania, sold numerous personal items on eBay, socialised and would go for long walks. She commenced a Masters of Business Administration (**MBA**) at the University of Queensland. In my opinion, Dr Morton attempted to play down the idea that the MBA course involved any difficulty. However, it is apparent that she, at least, had to regularly attend classes, read articles or chapters of text books, complete group and individual assignments and undertake examinations. She achieved a grade point average of 6.5 (from a maximum of 7) for Semester One 2015. She completed the course in the Semester Two of 2016.
5. Dr Morton did not tell Dr Matthew about her enrolment in the MBA. Dr Matthew indicated that if she had received special awards given by the Dean for high performance, he would need to re-evaluate his assessment of her functioning. Dr Rees at first said that he would not expect a person with Major Depressive Disorder to successfully complete an MBA, although he later said that submitting university assignments and organising papers would not be completely inconsistent with that condition. In my opinion, the ability of Dr Morton to undertake and complete the subjects required to obtain her MBA, let alone achieve her outstanding results, are inconsistent with the symptoms she reported to the psychiatrists, such poor concentration, memory and organisation, and lethargy.
6. On 6 July 2015, Dr Morton ceased work under a certificate from Dr Rees for three months off. However, she continued her MBA studies. Her Facebook posts show that during this time she was enjoying socialising and was still selling items on eBay. She received a Dean’s commendation for academic excellence, attaining a grade point average of 6.6 for Semester Two 2015. Dr Morton went on a holiday to Hawaii, where she reported on Facebook she was, “having an awesome time”.
7. In 2016, Dr Morton was posting on Facebook about going on long walks. She was on a panel of speakers at a women’s conference. She posted that she was celebrating finishing her eleventh MBA subject, receiving a redundancy and having a four month break until her next subject. I do not accept Mr Croft’s evidence that they were not in fact celebrating. She also posted that she was celebrating her university marks and was baking. She attained a grade point average of 7.0 for her MBA in her third semester and 6 for her fourth and final semester. She completed her MBA with an overall GPA of 6.67 and received a 2016 Academic Excellence Award. She posted that she was going to the MBA Awards Dinner. She attended her graduation ceremony and posted a photograph of herself at the ceremony on Facebook.
8. In 2017, Dr Morton went on a cruise for 10 days to the South Pacific. The ship had several thousand people aboard. She claimed that she spent the majority of her time in her cabin and did not spend a lot of time socialising on the ship. Those claims must involve a concession that she at least spent some of her time out of the cabin and socialising. Her Facebook posts show that she was waiting for a bar at the quayside to open before boarding the ship and that, at the end of the cruise, she had attended the Sydney CBD sales and was in a bar at the airport in Sydney. I do not accept Dr Morton’s evidence that she had walked through the Sydney CBD at 5.30 am and that her reference to the CBD sales was a joke about the fact that nothing was open early in the morning. The content of the post does not support it being just a joke, and I formed the impression that she was simply making this part of her evidence up. The activities in Dr Morton’s posts are inconsistent with someone having panic attacks associated with leaving their property.
9. In 2017, Dr Morton travelled from Tasmania to Brisbane for a wedding. She denied that, as maid of honour, she had a central role in the wedding. That denial does not appear realistic. In my opinion, her willingness to attend the wedding (even of a close friend) is inconsistent with her reporting of panic attacks associated with leaving her property.
10. In 2017, Dr Morton appears to have been operating her rural property in Tasmania as a commercial venture, at least to the extent that it was purchased with a negatively geared loan. She was earning some income by selling and agisting sheep, although I accept that this was on a small scale. She had a financial advisor register a company to operate the business. Dr Morton purchased an investment property and engaged a project manager to look after repairs to the property. She had a list of things to do on her property, such as spraying thistles.
11. In 2017, Dr Morton posted on Facebook about a spot of “light weekend reading”, with a photograph of three books. While she denied reading two of the books, including one about animal nutrition, I do not accept her evidence. Rather, the post was consistent with her reading at least part of the books. At about that time, she was looking after sheep, demonstrated by another post where she talked about picking up a book about injuries to sheep. She admitted reading the third book, “The Barefoot Investor”, over a period of time, although she downplayed the amount of text involved.
12. Dr Morton posted on 26 September 2017, “and I read a review of the SRC Act by QC Harding, interesting.”. Under cross-examination, she admitted that she had read a section of the review, concerning superannuation.
13. In her Facebook post of 3 February 2017, Dr Morton referred to buying a container, packing 70 boxes, making appointments, doing the washing, catching up with friends and cooking. She concluded, “Maybe I really am a superwoman”. On 7 February 2017 she posted about getting 91 boxes packed and stacked. She was also looking at listings for property investments.
14. In 2018, Dr Morton was “pondering the jobs market in or around Launceston for professionals”. Whilst she denied that she was surveying the job market herself, her post at least demonstrated that she was interested in the job market. She posted on 1 May 2018 about scanning legal documents and her interest in topics such as human follicle populations in relation to age, genetic and environmental factors. She posted about retrieving an egg from under the roof of her hay shed, tracking down missing parcels and syringing electrolytes into lambs’ mouths, as well as going for a walk. She also accepted that she had to scan a lot of documents for the preparation of her case.
15. Further, in 2018, Dr Morton had the initiative and energy to launch a Facebook page called, “The Sexually Assaulted Scientist”.
16. In my opinion, many of the activities that Dr Morton engaged in from 2015 onwards are inconsistent with the symptoms she was reporting to psychiatrists. She demonstrated an ability to undertake an MBA and achieve excellent results, as well as reading other complex materials, such as part of a report on the SRC Act. She was interested in business and investment matters, as well as the care of animals at her property. She exercised and baked. She celebrated her achievements and milestones. She had the organisational skills and energy to sell items on eBay and to pack numerous boxes. She was able to earn some income from agisting and selling sheep, and able to purchase an investment property and organise to have it renovated. She holidayed in Tasmania, Hawaii and took a ten day cruise in the South Pacific. She travelled to Brisbane for a wedding, at which she was the maid of honour. These are just some of her activities which, I consider, are inconsistent with the reporting of her symptoms to psychiatrists.
17. In reaching the conclusion that many of Dr Morton’s activities since 2015 are inconsistent with the symptoms that she reported, I have taken into account the possibility that doing a particular activity on an occasional “good day” may not represent the usual course of her condition. However, in my opinion, the overall pattern and frequency of the activities reported on her Facebook posts is inconsistent with any substantial loss of concentration, memory, organisation, lethargy, or interest in previously pleasurable activities, and the onset of panic attacks when leaving her property. Again, I am forced to the conclusion that Dr Morton substantially exaggerated in the reporting of her symptoms to the psychiatrists.

### Dr Morton’s failure to make timely complaints about Dr Glencross, Dr Preston and Dr Cook

1. Another area of concern about the credibility of Dr Morton’s evidence is her failure to complain about the alleged sexual harassment and sex discrimination until years afterwards. In contrast, she had no hesitation in making complaints about Dr Glencross’ managerial style and decisions within a few months after she commenced work at CSIRO. The fact that her complaints of sexual harassment and sex discrimination were not raised earlier suggests that they have been recently fabricated.
2. There are eleven incidents of sexual harassment or sex discrimination alleged by Dr Morton in her further amended statement of claim. She alleges that Dr Glencross perpetrated five of these events between April and October 2012, namely: asking what her sexual preference was; referring to her as a prostitute; commenting about her crows-feet; slapping her on the backside with a riding crop; and commenting about her cleavage. There is also a further allegation, related to the riding crop incident, that Dr Morton had corrected Dr Glencross about a comment he made about the sexual practices of dominatrixes on 15 October 2012.
3. In respect of Dr Preston, one allegation is pleaded: that, in May 2012, he called Dr Morton a hussy.
4. There are five allegations pleaded against Dr Cook, between August 2012 and December 2014. It is alleged that he: told her that Dr Preston had a nickname for her of “dizzy blonde”; sent Dr Morton a picture of a scantily dressed woman; sent a picture of a half-naked man and a woman; discussed, in a sexualised way, the potential candidates for a position; and said, “Take a blonde to Tasmania, dress her up and double your money.”
5. The first time Dr Morton made any of these allegations in writing was in an email to Dr Preston on 25 October 2014, where she referred to unacceptable behaviours such as being slapped on the bottom with a riding crop and the cleavage comment.
6. Dr Cook agreed that Dr Morton had verbally mentioned the riding crop incident and cleavage comment in October 2012 and a version of the prostitute comment in April 2012. I accept Dr Cook’s evidence that in respect of the riding crop allegation, Dr Morton specifically said that she did not want any action to be taken. Dr Morton alleges that she raised these matters as complaints and expected Dr Cook to take action against Dr Glencross. But, if so, she is likely to have followed up her complaints in writing, bearing in mind that she was a prolific user of emails and text messages. There were no such emails or text messages. That Dr Morton had not made any complaints to Dr Cook about the riding crop incident and the cleavage comment was confirmed in her email of 25 October 2014 to Dr Preston, where she stated, “While these behaviours are clearly unacceptable I chose not to pursue them any further at that time.” Accordingly, Dr Morton confirmed that she had not made complaints about these matters and, implicitly, had not made complaints about any like behaviour. I accept Dr Cook’s evidence that Dr Morton mentioned the riding crop, cleavage and prostitute comments in passing and did not raise them as complaints.
7. Dr Morton made complaints about Dr Glencross and Dr Preston verbally on 6 November 2014 and then in an email of 28 November 2014. On 16 January 2015, Dr Morton submitted a formal document setting out her complaints (**Grievance Document**). It was lengthy and detailed, consisting of 26 pages and about 40 attachments. Within that document Dr Morton made, with considerable particularity, a number of complaints about Dr Glencross’ management style and his general behaviour towards her. However, the only complaints of sexual harassment or sex discrimination she raised against him were the riding crop incident and the cleavage comment. Dr Morton did not include allegations that Dr Glencross made the sexual preference, crows-feet and prostitute comments. The first time the first two of those allegations were raised was in her amended statement of claim filed on 6 March 2018.
8. Further, in her Grievance Document, Dr Morton did not make any allegations of sex discrimination or sexual harassment against Dr Preston. Dr Morton had said in an email to Dr Cook on 30 October 2012, “Oh, and the Pres, said Ian is a gazzillionairre right before he called me a hussy”. Mr Croft also mentioned in an email of 8 November 2015, that Dr Preston had called Dr Morton a hussy. Apart from those comments, nothing that could be construed as an allegation of sex discrimination or sexual harassment against Dr Preston was raised by Dr Morton until the amended statement of claim was filed.
9. In my opinion, if the sexual preference, the dominatrix, the prostitute and the crows-feet comments had been made by then, they are likely to have been mentioned by Dr Morton in the Grievance Document. Similarly, if Dr Preston had made the hussy comment, that is likely to have been included in the Grievance Document. Further, if the “taking a blonde to Tasmania” comment had been made by Dr Cook or if Dr Morton was offended by any of the emails he sent, that is likely to have been included in the Grievance Document.
10. Dr Morton’s explanation for not including these comments in the Grievance Document is that her memory was poor. She told Ms Sturton in an email of 12 November 2014, that her memory was poor. However, Dr Morton took her time to compile the Grievance Document, submitting it over two months after she verbally raised her grievance in November 2014. She had no apparent difficulty in remembering her detailed allegations about Dr Glencross’ management style and decisions when she lodged the Grievance Document. She apparently had no difficulty remembering various allegations of sexual harassment and sex discrimination when she gave evidence, more than three years after the Grievance Document was submitted. In addition, as I have said, she considerably exaggerated her memory problems when reporting them to her psychiatrists. I do not accept that her memory could have been so poor that she would not have remembered these comments and would not have included them in the Grievance Document if they had occurred and she found them offensive.
11. Dr Morton claims she had told Mr Croft about each of the incidents. If she had told him, then, between them, they are likely to have ensured that they were all included in the Grievance Document. Mr Croft claims that he only proofread the Grievance Document, and did not assist Dr Morton with the content of the document. This is inconsistent with Dr Morton’s evidence. I do not accept that aspect of Mr Croft’s evidence, for reasons I will explain later.
12. In my opinion, the absence from the Grievance Document of three of the allegations now made against Dr Glencross, any allegations of sexual harassment or sex discrimination against Dr Preston, and any allegations at all about Dr Cook is quite inconsistent with Dr Morton’s allegations being true. I consider that if the comments Dr Morton now complains of had been made and had offended her, she would have included them in the Grievance Document.
13. In addition, Dr Morton consulted a psychologist, Ms Pavlov, between at least 30 April and 7 September 2013. Ms Pavlov’s notes are in evidence. They demonstrate that Dr Morton made a number of complaints about the stress involved in her work, her work hours, workload, and issues with her boss (such as changing his mind, not communicating effectively, overwhelming her with tasks and not replying to emails or having regular meetings). However, Ms Pavlov’s notes do not refer to any behaviour by Dr Glencross of a sexual nature, and Dr Morton accepted in cross-examination that she did not raise these matters with Ms Pavlov. Dr Morton claims that she was shocked, embarrassed and humiliated by the incidents of sexual harassment or sex discrimination perpetrated by Dr Glencross. If that were the case, she is likely to have told Ms Pavlov about these incidents. She certainly had no hesitation in telling Ms Pavlov about other aspects of Dr Glencross’ conduct.
14. Similarly, Dr Morton consulted another psychologist, Dr Van Vuuren, between November 2014 and May 2015. Dr Morton did not raise any issue of a sexual nature as being a source of her stress or anxiety. Her explanation that she did not raise such matters because she was seeing Dr Van Vuuren for food issues and was seeing another psychologist, Dr Hand, primarily for her work issues, is implausible. Dr Morton had four sessions with Dr Van Vuuren before consulting Dr Hand. If Dr Morton had experienced the sexual harassment or sex discrimination she now claims caused her distress, it is improbable that she would not have mentioned that to Dr Van Vuuren.
15. Dr Morton gave evidence that she “mentioned and raised specifically the sexual issues” with Dr Hand. However, Dr Hand was not called to give evidence. I am unwilling to accept Dr Morton’s uncorroborated evidence that she raised such issues with Dr Hand.
16. Dr Morton commenced consulting a general practitioner, Dr Tucker, on 30 March 2013 about issues she was having with anxiety. When it was put to her that she had never raised with Dr Tucker that she had been sexually assaulted, she answered, “Not specifically. No.”. It is improbable that she would not have told Dr Tucker of the riding crop incident if, as she now claims, she regarded it as sexual assault.
17. Dr Morton filed a claim with the Fair Work Commission on 1 December 2016, and an amended claim on 29 March 2017. This claim did not raise any allegations against Dr Preston or Dr Cook. Dr Morton has not provided any plausible explanation for failing to raise the allegations until the amended statement was filed on 6 March 2018.
18. I do not accept Dr Morton’s explanation for why she waited until her email to Dr Preston of 25 October 2014 to raise any complaints of sexual harassment. She said she had considered making a complaint in 2012, but, at that stage, was relatively new to the organisation and was on probation. She said she was primarily concerned with the damage that making a formal complaint would do to her career. Dr Morton’s explanation is inconsistent with the fact that she had already been making complaints about Dr Glencross. She had started complaining about Dr Glencross’ shortcomings as a manager to Ms Carroll in about April or May 2012. She also complained in 2012 about Dr Glencross to Mr Brewer, and together they complained to Dr Worby in 2013. She complained about Dr Glencross to Dr Barron in 2013. She also complained about Dr Glencross at the role clarification meeting in February 2014.
19. I consider that it is now well understood that many women who are subjected to sexual harassment or sex discrimination in the workplace are reluctant to complain for fear that their careers may be damaged. However, Dr Morton was not reticent in making complaints about Dr Glencross’ behaviour and management style to a number of people within CSIRO, both senior and junior, starting several months after commencing at CSIRO. If, as she claims, Dr Glencross sexually assaulted and harassed her, it is quite improbable that she would not have also complained of that behaviour.
20. In her evidence, Dr Morton did not claim that she told Mr Brewer, Dr Glencross’ line manager and research group leader, about the sexual preference and cleavage comments. This contrasts with her further amended statement of claim, where she alleges she told him about the riding crop incident and the cleavage comment. Mr Brewer denied that Dr Morton raised any matters of a sexual nature with him. I accept his evidence.
21. Dr Morton alleged she told Dr Worby of each of the allegations she made against Dr Glencross. However, Dr Worby denied that any matters of a sexual nature were raised by Dr Morton. I accept his evidence.
22. Dr Morton gave evidence that she “would have mentioned the cleavage comment” to Ms Carroll. However, in cross-examination, Dr Morton conceded that when she met Ms Carroll in October 2014, she did not raise any allegations of a sexual nature against Dr Glencross. Ms Carroll denied that Dr Morton had told her that she had been subjected to the sexual harassment or sex discrimination she now alleges. I accept Ms Carroll’s evidence.
23. Dr Morton claimed to have told Dr Barron about the cleavage comment, but could not recall whether she told her about the riding crop incident. This contrasts with the allegation in the further amended statement of claim, which alleges that Dr Morton told Dr Barron of each of the incidents she pleads against Dr Glencross. Dr Barron no longer works at CSIRO and was unable to be located by CSIRO’s lawyers. She did not give evidence. In cross-examination, Dr Morton agreed that she sent an email to Dr Cook on 3 December 2013 describing an interesting conversation she had with Dr Barron about Dr Glencross, but making no reference to any complaint about conduct of a sexual nature. If Dr Morton had complained about the cleavage comment to Dr Barron, she is likely to have at least mentioned Dr Barron’s response in her email to Dr Cook. In view of the many other difficulties I have in accepting the credibility of Dr Morton’s evidence where it is uncorroborated, I do not accept that she made any complaint of sexual harassment to Dr Barron.
24. Dr Cook accepted that Dr Morton had mentioned a version of the prostitute comment in May 2012, and the riding crop incident and the cleavage comment in October 2012, although as passing comments, rather than complaints. Dr Cook denied that Dr Morton told him about the sexual preference comment, the crows-feet comment or the dominatrix comment allegedly made on 15 October 2012. If those comments had been made, it is highly likely that she would have told Dr Cook about them. I accept Dr Cook’s evidence that she did not.
25. Dr Cook and Dr Morton were clearly on very friendly terms while she was working at CSIRO. This is demonstrated by their many texts and emails bantering about coffee, alcohol, food and gossip about their colleagues. An example of their banter is that while Dr Morton was at dinner at the Norman Hotel on 15 October 2012, she provided a running commentary, by text message, to Dr Cook, about the conversation she was having with Dr Glencross and Dr Wade. If something as salacious as the dominatrix comment had been said at the dinner by Dr Glencross, it is probable that she would have immediately texted Dr Cook about it. There was no such text. Dr Morton’s explanation that her phone may have run out of battery by that time, or that she may have told Dr Cook verbally about the comment, is implausible. Dr Cook denied that she told him of the comment, and I accept that evidence.
26. Dr Morton was also friendly with Mr Blyth, and they frequently exchanged test messages. Dr Morton accepted that she did not mention to him that anything of a sexual nature had occurred during her employment. Dr Morton said that was because Mr Blyth was a junior member of staff who would have no power to do anything about it. I do not accept that explanation. Mr Blyth gave evidence that Dr Morton had discussed issues concerning Dr Glencross’ management style with him. If she had any concerns about sexual harassment or sex discrimination by Dr Glencross, she is likely to have at least mentioned those matters to Mr Blyth.
27. Dr Morton had many opportunities to make complaints—to her colleagues, her psychologists and her doctor—about the sexual harassment or sex discrimination allegedly perpetrated by Dr Glencross, Dr Preston and Dr Cook. That she failed to raise any complaint about Dr Glencross prior to her email of 25 October 2014 undermines her evidence as to the truth of her allegations. Further, the absence of any complaints of sexual harassment or sex discrimination against Dr Preston and Dr Cook prior to the amended statement of claim of 6 March 2018 undermines Dr Morton’s evidence as to the truth of her allegations against them. I note that Mr Croft’s email of 8 November 2015 was not a complaint by Dr Morton, but even if it were to be so regarded, it was still made more than three years after the hussy comment allegedly made by Dr Preston. Further, the only allegation Mr Croft made against Dr Cook was about “inappropriate sexual comments regarding people he was interviewing for a position”, which may possibly be a reference to the email sent by Dr Cook on 7 November 2012 or 19 March 2014, or both. There was no reference to any of the other allegations now made against Dr Cook and, in any event, there is no plausible explanation for why these allegations were not included in the Grievance Document lodged on 16 January 2015, or otherwise raised at the same time as the allegations against Dr Glencross.

### Various other discrepancies, implausibilities and inconsistencies

1. An area that causes me disquiet about Dr Morton’s evidence concerns contradictions within her evidence about whether she knew Mr Croft was going to secretly record her consultation with Dr Walker, a psychiatrist, on 16 June 2017. There is also a contradiction between Dr Morton’s evidence and the evidence of Mr Croft on that issue.
2. Dr Walker had refused to consent to Dr Morton recording the consultation and she agreed, through her lawyers, that she would not do so. However, it was recorded. Under cross-examination, Dr Morton agreed that, despite her agreement not to do so, she proceeded with Mr Croft secretly record the consultation. She also agreed that she committed a serious deception upon Dr Walker in relation to that consultation. However, she later said, “Mr Croft recorded the assessment, and I found out about it afterwards”. In contrast, Mr Croft frankly admitted that he had told Dr Morton that he was going to record the consultation. On this issue, I accept the evidence of Mr Croft, which is consistent with Dr Morton’s initial evidence. Dr Morton’s willingness to deceive Dr Walker in connection with her claim was compounded by her willingness to deceive the Court about her deception.
3. Another example of deceptive conduct that Dr Morton engaged in concerns a photograph of her taken by Mr Croft on 9 July 2018,shortly before an appointment with Dr Walker, which she tendered into evidence. In the photograph, Dr Morton looks dishevelled. She agreed that the photograph was tendered for the purpose of showing the way she normally looked. She denied that she knew that Mr Croft was going to be taking the photograph and denied that she was posing for the photograph. However, the photograph itself shows Dr Morton looking directly into the camera. Further, she had placed her bag on the ground, which is consistent with waiting for the photograph to be taken. Mr Croft’s evidence on this issue was variable. When asked, “And she has put her bag down, hasn’t she, to have her photograph taken?”, he answered, “Yes”. Later, he denied that she knew that he was going to be taking the photograph. In my opinion, Dr Morton’s evidence that she was unaware that the photograph was to be taken is implausible.
4. In a report of 11 October 2017, Dr Morton’s former general practitioner, Dr Shaw, observed that Dr Morton had always been clean and appropriately dressed at all appointments. In Dr Shaw’s oral evidence, he confirmed that Dr Morton was appropriately dressed at all appointments, as any other patient would be. He believed that she would have been washing herself, and certainly did not present as someone who had not taken substantial care of herself. Dr Shaw’s observations were inconsistent with Dr Morton’s oral evidence, in the context of her grooming, that, “I have largely lost a lot of motivation and care… and feelings of self-worth”. They are also inconsistent with Dr Morton’s reporting to Dr Mathew that she was not attending to her hair and grooming. I prefer Dr Shaw’s evidence.
5. Dr Morton’s evidence concerning her injured right wrist in April 2017 is also implausible. On 13 April 2017, she told staff at a medical facility that she had been tripped over by a dog two weeks before, and that she had again used her hand to break the fall. On 9 May 2017, Dr Morton attended Dr Shaw, telling him that she had punched a wall twice. When the inconsistency in accounts was pointed out to Dr Morton in cross-examination, she asserted that she had injured her wrist four times, twice due to incidents with a dog and twice due to punching the wall, all in April 2017. When asked whether she told Dr Shaw about the dog, she did not directly answer the question, but said that she believed that Dr Shaw, “knew that we had a dog”. When asked again, she said she did not recall whether she had told Dr Shaw about the incident, but that she, “may have mentioned that”. Dr Shaw confirmed that he had not documented anything about falling over a dog and could not recall being told that. He had only provided the specialist with her history of punching a wall, and said that if he was told about falling over a dog, he would have so advised the specialist.
6. In a Facebook post on 17 April 2017, Dr Morton referred to her dog pulling her over two weeks before, and said that she had, “Been as sore as hell since”. Her post continued that the dog had lurched again on that day and, “the pain was unbearable hence a trip to the hospital”. The idea that Dr Morton would then cause further pain to herself by punching the wall on two separate occasions is implausible.
7. Mr Croft’s evidence was that there were only two events, one involving a dog and one involving punching a wall.
8. In my opinion, Dr Morton made up the story that she had injured her wrist by punching the wall twice, when the injury had in fact been caused by two incidents involving her dog, as she had initially reported on 13 April 2017. She is likely to have made up the story to support the idea that she had issues with anger and frustration as part of her psychiatric condition. Dr Morton later told Dr Rees that she had, “hit a wall repeatedly at Easter”. Subsequently, Dr Rees’ report of 13 July 2018 noted that, “her anger and sense of injustice … would impede rehabilitation”.
9. There are so many other implausible or inconsistent aspects of Dr Morton’s evidence that it is difficult to describe them all. However, some examples of the evidence that I found unsatisfactory are as follows:
* Denying that there was any joking around in the sampling room on 16 October 2012, when her Grievance Document clearly indicated that there was.
* Denying that Mr Croft had suggested the language of “sexually assaulted” and “attacker”, when text messages between Dr Morton and Mr Croft on 22 June 2015 demonstrate that he pressed Dr Morton to use that language.
* The sudden change in language used to describe the riding crop incident as a “sexual assault”, only a couple of weeks before consulting Dr Rees.
* Denying that her relationship with Dr Cook remained good up to when she ceased work, when, in fact, on 18 June 2015, they were exchanging friendly messages about restaurants in Tasmania.
* Implausible evidence that it just dawned on Dr Morton one day that the dominatrix comment was connected with the riding crop incident.
* Implausible evidence that Dr Morton had to remain at the dinner on 16 October 2016 because, as the most senior staff member there, she had to pay, when Dr Glencross was more senior.
* Prevaricating about whether, in her text messages to Mr Blyth on 9 December 2012, she was making a joke about sexual harassment within two months of her own sexual harassment.
* The implausibility of her answer that she did not believe that Dr Glencross knew the gender of her partner because she did not generally refer to her partners by gender.
* The inconsistency between Dr Morton’s assertion that she had already informed Dr Cook of the “hussy” comment and the text of Dr Morton’s email to Dr Cook of 30 October 2012, which suggests she had not.
* The implausibility of Dr Morton’s evidence that she complained verbally to Dr Cook about his emails, yet did not respond with any return email saying that they were inappropriate.
* The implausibility of Dr Morton’s evidence that Dr Cook’s email of 16 October 2012 (containing the “Bunny Lovin” lyrics) was inappropriate, in view of her response that she owed him a coffee for it.
* The improbability of Dr Morton interpreting the email from Dr Cook of 11 February 2013 (saying “bend me over and slap me with a cold barramundi”) as a reference to the riding crop incident.
* Telling Dr Mathew that Dr Glencross had told her to wear a short skirt on one occasion, when that allegation has not been pleaded and was not in her Grievance Document.
* Giving a number of non-responsive or evasive answers. An example is when asked whether there was no point in applying for a Voluntary Redundancy Substitution (**VRS**) if she thought her position was going to be made redundant, answering, “At this stage, when I applied for it, I could not see a path back to a career at CSIRO because of the way anything had been handled…”. A further example is that when asked about whether she was drinking with Dr Cook and Dr Glencross until 1 am following the dinner on 16 October 2012, she gave the evasive answer that there may have been other staff members there as well.
* At times, Dr Morton appeared to be making up aspects of her evidence as she went. I have referred to, and will later refer to, examples.

## Assessment of Mr Croft’s evidence

1. I consider that substantial parts of Mr Croft’s evidence were not credible or reliable. There are significant inconsistencies and implausibilities in his evidence.
2. One area of implausibility concerns Mr Croft’s role in the preparation of Dr Morton’s Grievance Document dated 16 January 2015. Dr Morton’s evidence was that Mr Croft had helped her with the preparation of the Grievance Document and its attachments, as well as proofreading. Mr Croft was cross-examined about why, if Dr Morton had told him about all the allegations of sexual harassment and sex discrimination and they had not been included in the Grievance Document, he would not have pointed that out to Dr Morton. His consistent response was that his role was only to proofread the Grievance Document for spelling and grammar, not to assist her with its contents. He did not claim that the alleged incidents had slipped his mind. It is implausible that, if Mr Croft was aware of all the complaints now made against Dr Glencross and Dr Morton, he would not have pointed out to Dr Morton that some were left out.
3. Mr Croft’s insistence that he made no contribution to the Grievance Document other than proofing is quite inconsistent with his role in respect of other documents. For example, he admitted that he drafted the text message that Dr Morton cut and pasted and sent to Dr Cook on 22 June 2015. It is inconsistent with his explanation of his text message of 28 October 2014 that, “I was telling Katherine what she should do in regards to the issues that was going on at work …”. It is also inconsistent with the lengthy email he wrote to CSIRO on behalf of Dr Morton on 8 November 2015, in which he had no hesitation in expressing his strong opinions. In my view, it is quite unlikely that Mr Croft’s only role concerning the Grievance Document was editing it for spelling and grammar. If he was aware of the allegations, including Dr Glencross asking Dr Morton about her sexual preference, referring to her as a prostitute and commenting about her crows-feet comment, he would have reminded Dr Morton to include them in the Grievance Document.
4. Mr Croft gave inconsistent and implausible evidence concerning the text message Dr Morton sent to Dr Cook on 22 June 2015. His evidence was initially that he had composed the text message in Dr Morton’s presence. When asked why, in that case, they were texting each other, he said that she needed the message in text on her phone so that she could copy it and send it. After being taken to other text messages sent at the time showing Dr Morton was at the airport on her way back to Brisbane, Mr Croft admitted that she was not in his presence during the exchange of text messages. That is not something Mr Croft could have simply been mistaken about. The idea that they would be together, but sending each other a series of text messages, was far-fetched. I consider that he fabricated his initial evidence that he composed the message of 22 June 2015 while in Dr Morton’s presence.
5. Dr Morton invited Dr Glencross to a party for Mr Croft’s redundancy and a Christmas party at their home. It was put to Mr Croft that if he considered that Dr Glencross had sexually assaulted his partner, he would not want him in their home. He said, “Absolutely, but it would be bullying for her not to invite him when she invited the whole group.” The idea that Mr Croft or Dr Morton would be concerned about bullying Dr Glencross by not inviting him if he had sexually assaulted Dr Morton is absurd.
6. When Mr Croft was asked whether he assumed that after the sexual assault, Dr Morton would never allow herself to be alone to be with Dr Glencross, he gave a peculiar answer: “Probably, yes. Because, you know, I trust her.” However, Dr Morton conceded that there may have been times when she was alone with Dr Glencross in a car. If Mr Croft regarded Dr Glencross as his partner’s sexual attacker, he would have insisted on her never being alone in a car with him.
7. Mr Croft admitted that he had secretly taped the interview with Dr Walker on 16 June 2017. He denied that Dr Morton had promised not to tape the meeting. However, that denial is quite inconsistent with Dr Morton’s own agreement, through her solicitors, not to tape the consultation.
8. Mr Croft admitted that in 2017, he applied for a licence to get a gun to have on their property. That makes his evidence that there were a number of times when Dr Morton said that she was suicidal implausible. If she was suicidal, it is quite improbable that he would have wanted Dr Morton to have access to a gun.
9. Mr Croft’s correspondence with CSIRO, taken together with his oral evidence, suggests that he was very much involved in directing Dr Morton’s claims. He assumed the role of Dr Morton’s advocate in her dealings with CSIRO. For example, he insisted on CSIRO communicating with him and not Dr Morton, while at the same time refusing to obtain a written authority from Dr Morton to allow that to occur. In my opinion, Mr Croft’s role as an advocate for Dr Morton was reflected in the manner and content of his evidence in the witness box, where substantial parts of his evidence appeared overly defensive of Dr Morton’s case, exaggerated and implausible.

## Assessment of Dr Rees’ evidence

1. Dr Rees has been Dr Morton’s treating psychiatrist since 6 July 2015. He diagnosed Dr Morton with Major Depressive Disorder and Agoraphobia.
2. It is apparent that Dr Rees’ diagnoses were largely based upon what Dr Morton told him about her symptoms and events at CSIRO. He acknowledged that, “90% of diagnosis is history”. Dr Rees expressed the opinion that Dr Morton’s psychiatric conditions were the result of workplace-related events dating from October 2012. As will be seen, I generally reject the factual premises of the allegations Dr Morton conveyed to Dr Rees that she was sexually assaulted and otherwise sexually harassed and discriminated against. Therefore, Dr Rees’ opinion that Dr Morton’s psychiatric condition resulted from such workplace events cannot be accepted.
3. In making his diagnoses, Dr Rees accepted Dr Morton’s subjective reporting of the symptoms she suffered, such as poor concentration and memory, loss of interest in activities and difficulties with organisation. However, as I have found, Dr Morton’s reporting of such symptoms was highly exaggerated.
4. Further, Dr Morton failed to inform Dr Rees of many of the activities she carried out between 2015 and 2018. When Dr Rees was taken to activities that Dr Morton had not disclosed, his responses varied. For example, he agreed that the activities described in Dr Morton’s Facebook posts of 8 and 12 January and 9 and 24 February 2014 were not what, “would be expected of someone with Major Depressive Disorder”. He initially agreed that he would not expect a person with Major Depressive Disorder to successfully complete an MBA, but later said that submitting university assignments, organising papers and exercising was not completely inconsistent with the condition. Dr Rees agreed that it was unusual that a person with Major Depressive Disorder would be able to speak at a conference, but guessed that, as a one-off, people were able to lift themselves up and present something. He said he did not consider that going on an overseas cruise or obtaining an academic excellence award for her MBA was inconsistent with Major Depressive Disorder. When asked whether going on a cruise was consistent with Dr Morton having Agoraphobia, Dr Rees’ response was that the cruise may have preceded the onset, saying that the first mention of panic attacks in his notes was 24 November 2016. However, the cruise was in January 2017.
5. In my opinion, two matters arise from Dr Morton’s exaggeration of her symptoms. Firstly, it undermines Dr Rees’ diagnoses of Major Depressive Disorder and Agoraphobia, which depended substantially upon Dr Morton’s reporting of her symptoms.
6. Secondly, Dr Rees’ responses to Dr Morton’s exaggerations, both in his reports and in his oral evidence, reveal him to be an advocate for Dr Morton’s case. He was too uncritical of her reporting and too readily dismissed facts and matters that were inconsistent with her case. For example, when taken to Dr Morton’s Facebook post of 5 January 2014, Dr Rees’ initial response was to say, “Facebook is fiction”. When asked whether he would ordinarily expect a person with Major Depressive Disorder to go on a four-hour walk, he answered, “I think you are nit-picking, quite frankly”. In his report of 1 August 2018, Dr Rees was at pains to explain away inconsistencies identified by Dr Walker, and explain why the various activities she posted about on Facebook were not inconsistent with his diagnoses. In that report, he often simply uncritically recited Dr Morton’s explanations.
7. Dr Rees issued an initial certificate on 6 July 2015 certifying Dr Morton as unfit for work for three months, a second certificate on 30 September 2015 for a further six months, and then a third certificate on 11 February 2016 for a further twelve months. When asked in cross-examination about issuing the twelve month certificate, Dr Rees said:

It was my way of saying to – I think it was Comcare at the time, I am not sure – that formal assessment of this woman by a third party would basically be harassment …

Dr Rees said later:

I considered that her having independent examinations on a frequent basis would be injurious to her mental state. As a doctor I wanted to reduce injury to her, and I think that, quite frankly, in everybody’s best interests.

1. I accept Dr Mathew’s evidence that it would be improper for a psychiatrist to issue a lengthy medical certificate in an attempt to stop Comcare from arranging an independent medical examination. In my opinion, for Dr Rees to issue a certificate saying that Dr Morton was unfit for work for twelve months when his purpose was to apparently prevent independent medical examinations was disingenuous. It reflects a failure by Dr Rees to maintain his objectivity.
2. A further indication of Dr Rees’ loss of objectivity is that, despite first seeing Dr Morton on 6 July 2015, Dr Rees was prepared to make a retrospective diagnosis of Major Depressive Disorder since October 2012. When asked in cross-examination whether that was “really getting into guess-work territory”, he admitted, “It’s an extrapolation, yes”. It is difficult to see how Dr Rees could have made and maintained that retrospective diagnosis based only upon Dr Morton’s subjective reporting of her symptoms, when she had continued to function as a high-level scientist for the remainder of 2012 and in 2013 and 2014, including receiving a promotion to team-leader.
3. I consider that Dr Rees underplayed the contribution of stressors other than the work factors Dr Morton claimed caused her psychiatric condition. Those factors included a twisted bowel requiring surgery, gastrointestinal problems and bloating, causing Dr Morton to rapidly gain weight at times and fear returning to her previous state of morbid obesity, for which she had undergone lap-banding. In her evidence, Dr Morton referred to “the terror and anxiety that my weight gain triggered”.
4. I do not accept Dr Rees’ diagnoses of Major Depressive Disorder and Agoraphobia. The diagnostic criteria for Major Depressive Disorder are in evidence. I am not satisfied that Dr Morton meets, or met, any of them in view of her exaggerations of her symptoms. I am not satisfied that she has the panic attacks associated with leaving her farm that she asserts. To the extent that Dr Rees attributed her psychiatric condition to the allegations she makes in her further amended statement of claim, I also reject that opinion. I also reject Dr Rees’ opinion that Dr Morton is unsuitable for any future employment, particularly in view of my observations of her in the witness box and her demonstrated ability to perform at a high level in her MBA.

## Assessment of Dr Mathew’s evidence

1. Dr Mathew diagnosed Dr Morton with Major Depressive Disorder and Adjustment Disorder with Anxious Mood. He also expressed the opinion that she sustained the injury the course of her employment with CSIRO, and that she is unfit for any work, now, or in the future. Dr Mathew took into account the history provided to him by Dr Morton, her appearance at the interview and other information, such as the records he was provided with.
2. The difficulty with accepting Dr Mathew’s opinion is that he relied, to a substantial extent, upon Dr Morton’s reporting of events at work and her symptoms. Further, Dr Morton failed to provide Dr Mathew with important information, including that she had commenced and completed her MBA and achieved excellent marks. Dr Mathew agreed that a number of the activities Dr Morton posted about on Facebook were inconsistent with the symptoms she reported. He agreed that it would be a significant matter if Dr Morton could groom herself appropriately for the appointment with him, but chose not to do so—I have accepted Dr Shaw’s evidence which shows that she was able to do so.
3. In addition, Dr Mathew proceeded upon an acceptance of Dr Morton’s allegations as to what happened in the workplace, but, as will be seen, I reject almost all of those allegations. That undermines the opinions expressed by him.
4. Further, the acceptance of the symptoms and the events described by Dr Mathew led him to place too little weight upon other issues that Dr Morton faced in 2014 and 2015, including surgery for a twisted bowel, gastrointestinal problems that resulted in her rapidly gaining weight at times and the fear of returning to her previous state of morbid obesity.
5. In view of these matters, I find that Dr Mathew’s diagnosis is not accurate or reliable. I do not accept Dr Mathew’s opinion that Dr Morton has the psychiatric conditions he diagnosed. Nor do I accept Dr Mathew’s opinion that she sustained any psychiatric injury as a result of the workplace events alleged by Dr Morton, nor that she is unfit for any work, now, or in the future.

## Assessment of Dr Glencross’ evidence

1. Dr Morton submits that Dr Glencross had a motive to lie, due to the damage to his reputation that acceptance of her allegations would cause. She also submits that Dr Glencross’ memory was poor and otherwise appeared to be selective. She argues that his evidence appears to have been influenced by discussions with other witnesses in the case or otherwise suggested to him in preparation for trial. She submits that Dr Glencross’ evidence upon the controversial issues should be rejected.
2. From the written material and Dr Glencross’ oral evidence, I formed the impression that he was very much focussed upon the success of the scientific experiments and projects he was engaged in at CSIRO, and tended to be insensitive to the needs and sensitivities of those who worked under his supervision. That is consistent with the opinions of witnesses, such as Dr Worby, who seemed to regard him an excellent scientist but a poor manager.
3. Dr Glencross’ poor management skills and insensitivity seemed to be reflected in a number of the complaints that Dr Morton made about his behaviour in the period from about May 2012 onwards. For example, Dr Morton complained about his poor communication, tendency to change his mind, failure to respond to emails, and criticising staff. Dr Glencross could be unnecessarily rude in his correspondence. That was demonstrated, for example, in his email to Dr Morton, when she overspent the sampling budget. The last straw for Dr Morton before she made a formal complaint in November 2014, seems to have been Dr Glencross editing the wrong version of her manuscript, but failing to adequately acknowledge his error and appearing to deflect the error into criticism of her manuscript.
4. In his dealings with Dr Morton, Dr Glencross was focussed upon her achieving results in her scientific work, including attracting external funding and achieving publications. That was because Dr Morton’s success would be beneficial for the group he led. Dr Glencross formed the view that Dr Morton was not achieving that which she was employed to do in terms of scientific outcomes, publications and attracting external funding, and was excessively focussed on more peripheral issues of management and administration.
5. In these circumstances, there was a clash between Dr Glencross and Dr Morton. Dr Morton perceived Dr Glencross, amongst other things, as failing to give her consistent direction in her work and as rude and insensitive. Dr Glencross perceived that Dr Morton was not achieving the outcomes he expected.
6. Dr Glencross’ insensitivity, rudeness and other faults do not necessarily mean that his evidence is not credible and reliable. I consider that, generally, he gave his evidence honestly and reliably. He appeared to be genuinely baffled about many of the allegations of sexual harassment and sex discrimination made against him by Dr Morton.
7. However, I have two reservations about Dr Glencross’ evidence. The first is his reasons for leaving Dr Morton off the list of co-authors in the *Aquaculture* article. Dr Glencross submitted the article for publication in June 2015, after he had left CSIRO. His evidence was that he did not think that Dr Morton had done enough work to justify a full authorship, but he considered that an acknowledgment may have been justified. Despite that, no acknowledgment had been given to Dr Morton. That, together with the fact that she had been listed as an author on the manuscript, has caused me some doubt as to whether Dr Glencross honestly believed that her contribution did not warrant her being listed as a co-author.
8. However, Dr Morton joined CSIRO well after the inception of the BAR-12-16 Project. Dr Glencross’ explanation for including her name on the report—that he was trying to help her to generate some industry credibility and visibility—is plausible. Further, once Dr Glencross was advised by CSIRO that it wanted Dr Morton to be added as a co-author, he arranged for that to be done. In the end, I have concluded that there was a genuine disagreement between Dr Glencross and Dr Morton as to the extent of the work she had done in respect of the project.
9. My second reservation concerns Dr Glencross’ evidence that he had no recollection of seeing a riding crop in the sampling room on 16 October 2012. Dr Morton’s evidence that a riding crop was present in the sampling room that day is supported by Ms Trenkner, Ms Habilay and Mr Blyth, whose evidence I accept. Ms Trenkner’s evidence was that she saw Dr Glencross placing the riding crop on a shelf. Dr Glencross was able to clearly remember other events concerned with Dr Morton’s allegations, such as the conversation at the James Cook University campus, the context of his comment about pendants and events at the Agriculture Australia Conference. It is therefore quite peculiar that he professed not to remember the riding crop. It must have been a singular and memorable event for a riding crop to be brandished about in the sampling room. I do not accept that Dr Glencross could have lost his memory of the riding crop. I consider that Dr Glencross was not honest in his evidence that he could not recall the riding crop.
10. I formed the impression that, apart from the aspect of his evidence that I have rejected, Dr Glencross was generally frank when giving his evidence. He was defensive at times, but that was not unnatural, given the nature of the allegations made against him. His evidence was largely undisturbed by his extensive cross-examination.
11. Except in the respect I have identified concerning Dr Glencross’ memory of the riding crop, I consider that his evidence was credible and reliable.

### The application to withdraw an admission made in CSIRO’s amended defence

1. Dr Glencross’ denial that he had no recollection of any riding crop sits oddly with para 2A(c) of CSIRO’s further amended defence, which alleges that:

Morton’s behaviour continued for a period of time, after which, in the presence of the other staff members, Dr Glencross picked up the riding crop, tapped Morton on the buttocks and said words to the effect of ‘that’s enough, get back to work’.

1. This is a convenient place to mention that CSIRO applied to amend para 2A(3)(iv) of the amended defence by deleting the words, “picked up the riding crop, tapped Morton on the buttocks”. That application was made in the course of CSIRO’s closing address, after it was pointed out there was an inconsistency between CSIRO’s submission that Dr Morton fabricated the allegation that she had been hit on the buttocks with a riding crop and the admission in the amended defence that she had been hit on the buttocks with a riding crop. The effect of the amendment would be to withdraw the admission. Dr Morton, unsurprisingly, opposed the amendment.
2. The explanation given by CSIRO’s senior counsel for the making of the admission was “forensic error”. The error was said to be that the circumstances were assessed and a conclusion reached that it was likely that Dr Morton was hit. It was argued that there was no prejudice to Dr Morton resulting from the withdrawal because the cross-examination of the witnesses would have been no different and no other witnesses would have been called, Dr Morton’s case being that only she and Dr Glencross were in the room during the incident.
3. Dr Morton’s counsel argued that no adequate explanation had been given for why the admission had been made and why it was now sought to be withdrawn at such a late stage. She argued that she may well have conducted the case in a different way if the admission had not been made or if the admission had been withdrawn prior to trial. In particular, there were several CSIRO staff members who were present on the sampling day and who were not called by CSIRO, who might have otherwise been called to give evidence by Dr Morton if not for the admission.
4. In *Jeans v Commonwealth Bank of Australia Ltd* (2003) 204 ALR 327; [2003] FCAFC 309, the Full Court considered the principles to be applied in an application for leave to withdraw an admission. The Full Court held at [18] that the Court “had a broad discretion to weigh up all matters with the overall question being to ensure that there was a fair trial.” The Full Court cited with approval the following passage from the judgment of Santow J in *Drabsch v Switzerland General Insurance Co Ltd* (unreported, Supreme Court of New South Wales, 16 October 1996):

1. Where a party under no apparent disability makes a clear and distinct admission which is accepted by its opponent and acted upon, for reasons of policy and the due conduct of the business of the court, an application to withdraw the admission, especially at appeal, should not be freely granted …

2. The question is one for the reviewing judge to consider in the context of each particular appeal, with the general guidelines being that the person seeking on a review to withdraw a concession made should provide some good reason why the judge should disturb what was previously common ground or conceded …

3. Where a court is satisfied that admissions have been made after consideration and advice such as from the parties’ expert and after full opportunity to consider its case and whether the admission should be made, submissions so made with deliberateness and formality would ordinarily not be permitted to be withdrawn …

4. It will usually be appropriate to grant leave to withdraw an admission where it is shown that the admission is contrary to the FW Actual facts. Leave may also be appropriate where circumstances show that the admission was made inadvertently or without due consideration of material matters. Irrespective of whether the admission has or has not been formally made, leave may be refused if the other party has changed its position in reliance upon the admission …

5. …[A] court is not obliged to give decisive weight to court efficiency, such that a party who wishes to defend its claim is entitled to a hearing on the merits, with costs orders being available as a means of compensating the other party for any costs thereby unnecessarily incurred or not fairly visited on the other party.

1. I am not satisfied that CSIRO has provided “some good reason” for permitting the admissions to be withdrawn. While counsel for CSIRO said from the bar table, apparently on instructions, that there was a “forensic error” in pleading that Dr Morton was hit on the backside, there was no evidence from the lawyer who settled the amended defence that he or she made such an error. It is possible that, for example, the admissions were not an error, but based upon the statement taken from a witness who was not called, or a witness who was called and later gave different evidence. In the absence of evidence, the reasons for making the admission are merely a matter of speculation.
2. Further, I am not satisfied that an adequate explanation has been provided as to why the application to withdraw the admission was made at such a late stage. The answer may well be that it was not thought of earlier, but that is not a satisfactory explanation. The parties were required to provide outlines of the evidence prior to trial, so there can be no assertion that the lawyers for CSIRO were taken by surprise by the fact that none of CSIRO’s witnesses gave evidence that they saw Dr Glencross hitting Dr Morton with the riding crop. Counsel for Dr Morton opened her case relying, in part, upon the admission, so that CSIRO’s lawyers were well aware that it formed a significant part of Dr Morton’s case. Senior Counsel for CSIRO opened his case on the basis that, “Dr Glencross took the riding crop, slapped her, and said something along the lines, ‘let’s get back to work’, and put the riding crop away”.
3. The entitlement of a party to a hearing on the merits may be given somewhat less weight than was suggested in the fifth point in *Drabsch* in view of the more recent judgment of the High Court in *Aon Risk Services Pty Ltd v Australian National University* (2009) 239 CLR 175 at [111]–[113]. That is particularly so given the very late stage of the lengthy trial at which the application to amend was made, and the fact that it would be necessary to allow the evidence to be reopened in order to afford Dr Morton procedural fairness.
4. Although counsel for Dr Morton did not submit that cross-examination would have proceeded differently had the admission not been made, some allowance must be made for the fact that CSIRO had not foreshadowed its application and there was no time for counsel to carefully consider how the trial might have been run differently. If the application for leave to withdraw had been made prior to the trial and supported by evidence, the witnesses who were called may have been cross-examined differently; their cross-examination perhaps informed by any explanation for the making of the admissions provided by the lawyer who prepared the further amended defence. Further, even though Dr Morton maintained that she and Dr Glencross were alone in the room at the time she was hit, her case would have been assisted by eliciting evidence from any witnesses who saw her being hit. There were two laboratory technicians who appear to have been present at the Bribie Island facility that day who were not called by CSIRO, but who, in the absence of the admission, might have been called by Dr Morton. It is difficult to assess, in retrospect, precisely how the case might have been run if the application to withdraw had been made and decided earlier. However, I am satisfied that, at least, Dr Morton may have run the case differently. To accede to the application to withdraw the admission would be to deprive Dr Morton of that opportunity, unless she were given the chance to have the evidence reopened. It is simply too late and too inconvenient to allow that to happen, after a trial of such length and complexity.
5. CSIRO’s counsel submitted that leave to withdraw the admission should be granted because it has been shown that the admissions are contrary to the actual factual position. However, it is far from apparent that the admissions are inconsistent with the factual position. The state of the evidence is that Ms Trenkner said that Dr Glencross had hold of the riding crop. That is consistent with part of the admissions now sought to be withdrawn. Dr Morton gave evidence that she was hit on the backside with a riding crop by Dr Glencross. Although Dr Glencross denied that, para 2A(c) of CSIRO’s further amended defence is consistent with that part of Dr Morton’s evidence. In my opinion, it cannot be said that the admission is necessarily inconsistent with the facts.
6. It is significant that the admissions in the further amended defence were made by CSIRO with the assistance of their lawyers, with a full opportunity to consider the case, with deliberateness and formality, and in circumstances where Dr Morton accepted and relied upon the admission. In such circumstances, as was said in *Drabsch*, leave to withdraw the admission should not be freely granted.
7. In all the circumstances, the CSIRO’s application to amend its further amended defence to withdraw the admissions contained in para 2A(c)(iv) of the amended defence should be refused.

## Assessment of Dr Cook’s evidence

1. Dr Morton submits that Dr Cook’s evidence should not be accepted upon the controversial issues. She submits that Dr Cook has a motive to lie due to the repercussions he could face if her allegations are accepted. She submits that he was often evasive in answering simple questions.
2. A number of aspects of Dr Cook’s conduct in the workplace revealed by the evidence leave him open to criticism. Dr Cook, together with Dr Morton, denigrated colleagues behind their backs, sometimes in vulgar and nasty ways. He also distributed emails containing sexually-charged content and photographs, demonstrating a puerile and adolescent sense of humour that was inappropriate to display in a workplace.
3. However, I do not think these faults should necessarily lead to any conclusion that Dr Cook’s evidence was not credible or reliable. Dr Cook at least admitted his role in sending the relevant emails. He also acknowledged that Dr Morton was a capable and talented scientist. He acknowledged that Dr Morton’s lack of publications was not entirely her fault, and that there were factors outside her control that hindered her in obtaining external funding. He admitted that at the meeting with Dr Morton on 22 October 2014, some of the language used could have come across as a bit harsh. He appeared to me to readily make concessions favourable to Dr Morton. While clearly embarrassed about his behaviour, he was willing to admit to his own faults.
4. I consider that Dr Cook was a frank witness. I do not think cross-examination revealed his answers to be inconsistent, implausible or evasive. I accept his evidence as credible and reliable.

## Assessment of Dr Preston’s evidence

1. Dr Morton submits that Dr Preston has a motive to maintain his version of events, since he is directly accused of engaging in discrimination against Dr Morton on the basis of her sex by making derogatory comments about her.
2. Perhaps the most significant aspect of Dr Preston’s cross-examination was that he admitted that he had sent a memorandum to Dr Cook (before Dr Cook was to be interviewed by Mr Van Dam) relating to events that occurred on 22 October 2014, despite being told by HR that he should not discuss the events with other witnesses. He had earlier denied such communication with Dr Cook. I accept that Dr Preston sent the email to ensure that Dr Cook was aware of Dr Preston’s version of events before Dr Cook was interviewed. It should not have been done. However, I do not consider this to have been an attempt to encourage Dr Cook to give inaccurate or false evidence. Further, his initial denials of such a communication was more likely to be a lapse of memory than any deliberate untruth.
3. Overall, I consider that Dr Preston gave his evidence in a straightforward and frank manner. His evidence was substantially undisturbed under cross-examination. I accept Dr Preston’s evidence as being credible and reliable.

## Assessment of the evidence of Ms Habilay, Ms Trenkner and Mr Blyth

1. I will consider the evidence of Ms Trenkner, Ms Habilay and Mr Blyth together because there is a direct conflict between their evidence and the evidence of Dr Morton as to events involving the riding crop in the sampling room at the Bribie Island aquaculture facility.
2. Ms Trenkner gave evidence that on 16 October 2012, Dr Morton had hold of the riding crop and was joking around by hitting other staff playfully on the buttocks and thighs. In cross-examination, it was put to Ms Trenkner that she and Dr Glencross had together made up a story about Dr Morton having the riding crop. She denied that allegation. There is no basis to accept the suggestion that Ms Trenkner and Dr Glencross got together to concoct her evidence. It may be noted that, in fact, Ms Trenkner is the only witness whose evidence supports Dr Morton’s evidence that Dr Glencross had hold of the riding crop that day. There is no apparent reason for Ms Trenkner to have fabricated her evidence. She was a straight-forward witness. I accept her evidence as credible and reliable.
3. Ms Habilay gave evidence that Dr Morton was holding the riding crop and pretending to whip a horse. Ms Habilay was a frank and straight-forward witness. I do not think that there is room for any conclusion that she was mistaken in her evidence. I accept her evidence as accurate and reliable.
4. Mr Blyth gave evidence that Dr Morton had not made any complaint to him about sexual harassment or sex discrimination. Mr Blyth also gave evidence that Dr Morton flicked him playfully with the riding crop on 16 October 2012. His evidence was that she also did so several times subsequently.
5. In cross-examination, Mr Blyth was asked about a discrepancy between his outline of evidence which said that Dr Morton had flicked “people” on the subsequent occasions, and his evidence that only he was flicked. Mr Blyth explained that the reference to “people” in his outline was based on information that had been given to him. I do not think the discrepancy is of any consequence.
6. Mr Blyth was a frank and straight-forward witness. He had a good relationship with Dr Morton when she was at CSIRO, and there is no apparent reason for him to have fabricated his evidence. I consider that his evidence was credible and reliable.

## Assessment of Mr Drury’s evidence

1. There is a direct conflict between the evidence of Mr Drury and Dr Morton about their discussions over the telephone in March and July 2015. Under cross-examination, Mr Drury was challenged as to matters including whether he had a vested interest in getting people back to work, whether he was unhappy about the fact that Dr Rees had given Dr Morton three months off work, whether he made a misleading statement in calling himself a clinician and whether he held a grudge against Dr Morton because she had made a complaint against him.
2. Mr Drury said that he had made detailed notes of his conversations with Dr Morton, but the notes were not produced. Ms Caroline Cook, who was not required for cross-examination, deposed that she was unable to find any notes. In oral submissions, there was some criticism of either CSIRO and Mr Drury for failing to produce the notes. I accept that Mr Drury made notes, that he left them behind when he left CSIRO, and they are now missing. I do not accept that any adverse inference should be drawn from the failure to produce the notes.
3. Some of Mr Drury’s emails at the time of his dealings with Dr Morton were quite defensive of his management of the case. For example, he wrote that, “There is a pattern of behaviour here which is quite alarming. I will need the full support of HSC and HR to manage this case”. I consider that this defensiveness was a not unnatural reaction to the hostility that Dr Morton was demonstrating in response to Mr Drury’s attempts to engage with her, with the aim of achieving her return to work. I do not consider that it reflects adversely upon his credit.
4. Mr Drury was also quite defensive during his cross-examination, but that was a not unnatural reaction to being accused of giving false evidence and engaging in unprofessional behaviour. I do not think that his credit was damaged by the cross-examination.
5. I am satisfied that Mr Drury’s evidence was honest and reliable.

## Assessment of Ms Campbell’s evidence

1. Ms Campbell was challenged upon issues including whether she had responded to Dr Morton’s complaint against Mr Drury by merely copying and pasting an email that had been drafted by Mr Drury.
2. I am not satisfied as to the reliability of Ms Campbell’s evidence. Ms Campbell said that she had properly investigated the complaint. However, when taken to the email chain between Dr Morton and Mr Drury that informed Dr Morton’s complaint, she said that she had not seen those emails. She accepted that she did not ask to see the emails. Mr Drury drafted a response to Dr Morton, and Ms Campbell substantially cut and pasted the draft and sent it to Dr Morton.
3. As I will discuss, I do not accept that Ms Campbell investigated Dr Morton’s complaint against Mr Drury to the standard required under the Grievance Procedures in the Enterprise Agreement.

## Assessment of Ms Walsh’s evidence

1. Ms Walsh was challenged upon a number of issues, including whether Dr Morton’s redundancy was contrived to get rid of her from CSIRO.
2. I consider that Ms Walsh gave her evidence in a frank and straight-forward manner. She impressed me as a person who acted with professionalism. In particular, I accept that she proceeded with arrangements for Dr Morton’s redundancy in order to facilitate her request that she be made redundant.
3. I accept that Ms Walsh’s evidence was credible and reliable.

## Assessment of Dr Manners’ evidence

1. Dr Manners was cross-examined about matters including whether he took Dr Morton’s VRS request as a green light to get rid of her from CSIRO.
2. I consider that Dr Manners gave his evidence in a straightforward and frank way. He impressed me as a professional administrator, who acted with professionalism in his dealings in relation to Dr Morton.
3. I accept that Dr Manners’ evidence was credible and reliable.

## Other witnesses

1. The evidence of the other witnesses was not challenged in Dr Morton’s closing submissions. I accept the evidence of each of those witnesses, which is summarised in the Appendix to these reasons.

## Conclusions upon the conflicts between Dr Morton’s evidence and the evidence of other witnesses

1. There were inconsistencies between the evidence of Dr Morton, and the evidence of a number of the witnesses called by CSIRO, particularly Dr Glencross, Dr Preston, Dr Cook and Mr Drury. Where Dr Morton’s evidence conflicts with the evidence of CSIRO’s witnesses, I prefer the evidence of the latter, subject to the exception I have indicated in respect of Dr Glencross’ evidence. I am only prepared to accept Dr Morton’s evidence to the extent that it is admitted or adequately corroborated by evidence other than that of Mr Croft.
2. I find that Mr Croft’s evidence was generally unreliable. The primary purpose of Mr Croft’s evidence was to provide evidence of recent complaints by Dr Morton. However, I find that by 16 January 2015, the only allegations of sex discrimination or sexual harassment Dr Morton had told him about were those included in the Grievance Document, namely the riding crop incident and the cleavage comment. It is likely that she told him about that incident and comment at about the time she referred to them in her email to Dr Preston of 25 October 2014. She must also have told him at some stage after she submitted her Grievance Document about the allegations made in his letter of 8 November 2015. Except to that limited extent, I find that Mr Croft’s evidence does not corroborate Dr Morton’s allegations.

# CONSIDERATION OF CLAIM 1A

1. Claim 1A is contained within paragraphs 1A(1) to (6) of the further amended statement of claim. The pleading alleges that CSIRO contravened s 351(1) of the FW Act by taking adverse action against Dr Morton because of her sex or sexual orientation.
2. Dr Morton alleges that CSIRO contravened s 351(1) of the FW Act by:
3. Dr Glencross, Dr Preston and Dr Cook engaging in acts of sexual harassment or sex discrimination against her;
4. failing to address, or adequately address, Dr Glencross’ behaviour in a timely manner upon becoming aware of his conduct, including through Dr Morton’s complaints; and
5. affording her less favourable conditions of employment, by reason of the conduct described in the two preceding paragraphs, than would be experienced by a male in the same circumstances.
6. Dr Morton’s allegations of contraventions of s 351(1) of the FW Act raise the following issues for consideration:
7. whether the incidents alleged by Dr Morton happened, and whether they happened in the way alleged;
8. whether any action taken against Dr Morton was “adverse action”;
9. whether any adverse action was taken *because* of Dr Morton’s sex or sexual orientation; and
10. whether CSIRO is liable for any action taken by its employees.
11. I will consider each of these questions to the extent that it is practicable to do so. By that, I mean that if the first question is answered adversely to Dr Morton, the answers to some of the remaining questions may become too theoretical, speculative, or impractical to answer.
12. My consideration of the allegations should, of course, be understood in light of my assessment of the evidence of the witnesses.

## The allegations against Dr Glencross

1. Dr Morton’s pleading alleges that Dr Glencross engaged in sexual harassment or sex discrimination against her by:
2. asking her what her sexual preference was;
3. referring to her as a prostitute;
4. making a comment about her crows-feet;
5. slapping her on the backside with a riding crop; and
6. staring at her breast area and saying, “Women only wear pendants to draw attention to their cleavage. I don’t know why you bother Katherine, you don’t have any”.

### Whether the events involving Dr Glencross happened as alleged by Dr Morton

#### Asking Dr Morton what her sexual preference was

1. Dr Morton alleges that on 26 April 2012 at the James Cook University campus, Dr Glencross noticed a young female Asian student and commented that he was not attracted to Asians, but he found Eurasians particularly sexually attractive. Dr Morton alleges that Dr Glencross then asked her what her sexual preference was, but she did not respond to the question. She alleges that the question made her feel extremely uncomfortable and shocked.
2. Dr Glencross’ version of the event was that he saw a woman of Asian appearance and made a comment, “she’s cute”. His evidence was that, in response, Dr Morton asked, “Do you like Asian women?”. Dr Glencross responded, “They are not really my type. I prefer Eurasian, Latino or sort of Mediterranean women in appearance”. He said that was the end of the conversation.
3. I do not accept that Dr Glencross asked Dr Morton what her sexual preference was. If that comment had been made, Dr Morton is likely to have complained about that to some of her colleagues at CSIRO, as she did about other aspects of his conduct. It is also likely that she would have told her treating psychologists and doctor about it, and complained of it in her Grievance Document submitted on 16 January 2015, as she did about other aspects of Dr Glencross’ conduct. She did not do any of these things. If the comment had been made, it is likely she would have made some complaint about it much earlier than her amended statement of claim filed on 6 March 2018. I reject Dr Morton’s evidence that Dr Glencross asked her what her sexual preference was.

#### The prostitute comment

1. Dr Morton alleges that on 2 May 2012 at the Aquaculture Australia conference in Melbourne, Dr Glencross referred to her as a “prostitute”. Paragraph 1A(1)(b) of the further amended statement of claim, pleads that:

…Dr Brett Glencross referred to the Applicant as a “Prostitute” referring to the Applicant’s dress and appearance, in the presence of a potential barramundi farming investor, Marty Phillips.

1. Dr Morton’s evidence varied substantially from the pleaded allegation. Her evidence was that she made a comment to Dr Glencross that people in Melbourne were better dressed than people in Brisbane, and that she should have worn smarter clothes to the opening drinks and reception, instead of jeans. She commented that she had a nice Prada cocktail dress, which would probably have been more suitable. She told Dr Glencross that the dress cost $5,000 or $6,000. She alleges that he responded, “What, were you a prostitute?”. She said she was humiliated, shocked and upset.
2. Dr Glencross’ evidence was that Dr Morton was wearing a ball gown, and he said, “That’s a bit OTT”. He said that she said people spend a lot more money on clothing in Dubai, and that she had spent a lot more money on clothing there because she earnt a lot more. He denied he had referred to Dr Morton as a prostitute.
3. I prefer Dr Glencross’ evidence. Dr Morton’s evidence was inconsistent with the allegation she made in her pleading that Dr Glencross made the prostitute comment in reference to her dress and appearance. The pleading must be understood as referring to Dr Morton’s dress and appearance at the time the comment was made. However, her evidence was that the comment was made in relation to a dress that she owned, but was not then wearing.
4. Further, although Dr Morton pleaded that the prostitute comment was made in the presence of Mr Phillips, her evidence was that she was alone with Dr Glencross when he made the comment. I do not accept her explanation that the discrepancy, “must have slipped through the cracks”. It is more likely that she adjusted her evidence once it became apparent that Mr Phillips was to be called and that his outline of evidence would not support her allegation.
5. Dr Cook accepted that Dr Morton had told him that Dr Glencross had made a comment using the word “prostitute” in reference to the attire that she was wearing, but said she did not indicate that she was upset by the comment. He said she said it almost in passing when discussing how the conference went. There are two things that may be said about this evidence. First, Dr Cook’s evidence that she said the comment was made about what she was wearing is inconsistent with Dr Morton’s evidence. Second, Dr Cook’s evidence that the comment was made almost in passing is inconsistent with Dr Morton’s evidence that the comment made her feel humiliated, shocked and upset. Although I accept that Dr Morton told Dr Cook that Dr Glencross had referred to her as a prostitute, I do not accept that it is true that he in fact made that comment.
6. Apart from mentioning the prostitute comment to Dr Cook, Dr Morton did not make any complaint about it until her amended statement of claim was filed on 6 March 2018. If the comment had actually been made, she is likely to have complained of it much earlier, together with other complaints she made about Dr Glencross. I reject Dr Morton’s evidence that Dr Glencross referred to her as a prostitute.

#### The crows-feet comment

1. Dr Morton alleges that on 2 May 2012 at the Aquaculture Australia Conference, Dr Glencross made a comment in relation to her “crows-feet”, referring to her facial wrinkles. Dr Morton’s evidence was that when she smiled at something Mr Phillips had said, Dr Glencross remarked, “You know you have crows-feet when you smile”. Dr Morton said she felt stunned, shocked, humiliated and confused. Dr Glencross’s evidence was that he did not make any comment to Dr Morton about crows-feet.
2. Mr Phillips could not recall Dr Glencross making any comment about Dr Morton’s crows-feet. I accept his evidence that if it had been made, he is likely to have remembered it because he would have regarded it as out of character for Dr Glencross to make such a comment.
3. Dr Morton claimed that she told Dr Cook about the crows-feet comment when she returned to Brisbane. Dr Cook denied this. In contrast, he frankly admitted that other comments attributed to Dr Glencross had been mentioned to him. I consider it unlikely that Dr Cook was either mistaken or lying about the crows-feet comment. I prefer his evidence.
4. If the crows-feet comment had been made and Dr Morton felt stunned, shocked, humiliated and confused, she is likely to have complained of it earlier than in her amended the statement of claim.
5. In cross-examination, it was put to Dr Morton that she was comfortable with, and frequently commented on her crows-feet. She was taken to an email sent to Dr Wade, copied to Ms Valparto and Dr Glencross, where she referred to her photographs and said, “Naturally I look shocking in all of them, but he said he would Photoshop out my crows-feet”. Dr Morton said that the people in the email were all well aware of Dr Glencross’ crows-feet comment and this was a pointed reference to that comment. However, upon further questioning, she agreed that she had never met Ms Valparto and had only spoken to her via email. I consider that this was an example of Dr Morton being prepared to make up evidence under cross-examination.
6. Dr Morton sent a text message to Dr Cook on 13 February 2012 where she said, “crows-feet must have been the give-away”. Dr Morton also responded to an email where Dr Cook said “Ryan looks all of 10 years old”, by saying “Maybe I need to give him my crows-feet”. These references to crows-feet appear to be part of the humorous, self-deprecating way that Dr Morton talked about herself, rather than sarcastic comments, pointed at what Dr Glencross had said. I can appreciate that a self-deprecating comment made about oneself is one thing, but the same comment made by another person may be offensive. However, Dr Morton’s evidence that she was stunned, shocked, humiliated and confused by Dr Glencross referring to her crows-feet seems to me to be exaggerated and contrived.
7. I reject Dr Morton’s evidence that Dr Glencross made the crows-feet comment.

#### The riding-crop incident and the dominatrix comment

1. Dr Morton alleges that on 16 October 2012, Dr Glencross slapped her on the backside with a riding crop. She associates this event with an incident that allegedly occurred the night before at a dinner at the Norman Hotel, where she corrected Dr Glencross after he brought up the subject of dominatrixes and how they had sexual relations with their clients. Dr Glencross denied that he had initiated any conversation about dominatrixes.
2. During the dinner on the night of 15 October 2012, Dr Morton was exchanging text messages with Dr Cook, relaying her conversation with Dr Glencross and Dr Wade as it happened. Dr Morton and Dr Cook were making fun of Dr Glencross and Dr Wade behind their backs, speculating that they had a homosexual relationship. If a topic as salacious as dominatrixes had been brought up by Dr Glencross, Dr Morton is likely to have immediately texted Dr Cook about that. She did not. Her explanation that her phone may have run out of battery, or may have been out of reach, seems contrived. Nor did she tell Dr Cook about it later, for example, when he walked her home two nights later.
3. Dr Wade and Ms Trenkner were said by Dr Morton to have been present when the discussion about dominatrixes occurred. However, Ms Trenkner gave evidence that, if Dr Glencross had initiated such a discussion, she would have recalled it. Dr Wade said he did not recall that topic, but felt as though he would remember it if it had been brought up. I accept their evidence.
4. Further, that Dr Morton did not mention the dominatrix comment, whether to her colleagues at CSIRO, or her treating psychologists or doctor, until the amended statement of claim was filed on 6 March 2018, is inconsistent with the comment having been made.
5. I reject Dr Morton’s evidence that the dominatrix comment was made. I consider that she fabricated that evidence to add a sexual or punitive connotation to the riding crop incident that occurred the following day.
6. Dr Morton alleges that on 16 October 2012, she was setting up the blood collection station at the Bribie Island aquaculture facility when she was slapped on the buttocks with a riding crop by Dr Glencross. She gave evidence that she was alone in the room with Dr Glencross at that time, and he did not say anything when he hit her. She said she was shocked and humiliated. She did not say anything to Dr Glencross.
7. Under cross-examination, Dr Morton denied that she had seen riding equipment in the back of Ms Trenkner’s car, or that Ms Trenkner showed her any riding equipment. She denied bringing a riding-crop into the sampling room, and waving it around as if she were riding a horse, and denied that she was jokingly hitting people on the buttocks and thighs.
8. Dr Morton said that there was no joking around that morning. Her evidence was inconsistent with her Grievance Document where she had said, “During the unpacking and setting up of the sample collection equipment, the riding crop was noticed and several staff made jokes about its use in speeding up the sample collection.”. When that was pointed out to her, she said that other staff may have made jokes, but she was not participating in the joking.
9. Ms Trenkner gave evidence that Dr Morton asked to have a look at her riding gear, and they went to her car to look at it. Dr Cook gave evidence that Dr Morton later told him that she had brought the riding crop into the sampling room. Ms Trenkner said that Dr Morton was mucking around in the sampling room with the riding crop, tapping her and a couple of others around the buttocks and thigh regions, mimicking how one would tap a horse. Ms Habilay said she saw Dr Morton holding the riding crop and pretending to whip a horse. Mr Blyth gave evidence that Dr Morton had flicked him playfully with the riding crop, and did so on several occasions after that day. I prefer the evidence of these witnesses to the evidence of Dr Morton.
10. I reject the evidence of Dr Morton that any incident with Dr Glencross occurred during the set-up of the sampling room. I accept Ms Trenkner’s evidence that they went to look at the riding gear in her car during a break in the sampling, so the riding crop could not have been in the sampling room until then. If Dr Morton’s claim that she had been hit with the riding crop during the set-up and felt humiliated is true, it is hardly likely that she would have engaged in the same behaviour with other staff later that morning. It is also unlikely that Dr Glencross and Dr Morton could have been alone in the sampling room at any time that day, given the number of staff present. Further, the idea that Dr Glencross would just come up behind Dr Morton and hit her with the riding crop without either of them saying anything seems far-fetched. That event would have been so bizarre that Dr Morton would have shared it in detail with Dr Cook, given their other exchanges of gossip laced with sexual innuendo about Dr Glencross.
11. I have indicated that I do not accept Dr Glencross’ evidence that he had no recollection of seeing a riding crop in the sampling room. I accept Ms Trenkner’s evidence that she saw Dr Glencross putting the riding crop on a shelf. Ms Trenkner’s evidence is consistent with Dr Morton’s evidence to the extent that they agree that Dr Glencross had hold of the riding crop in the sampling room at some stage. Because it must have been such a singular occurrence for a riding crop to be present in the sampling room, I do not accept that Dr Glencross could have forgotten about it.
12. I accept Ms Trenkner’s evidence that she heard Dr Glencross saying, “That’s enough of that. It’s time to get back to work”. That is consistent with Dr Glencross’ own evidence that he told the staff to get back to work. Ms Trenkner then saw Dr Glencross place the riding crop on the shelf. She did not see Dr Glencross hit Dr Morton. However, having regard to Ms Trenkner’s evidence that Dr Glencross made the comment and then had hold of the riding crop, I accept that Dr Glencross tapped her on the backside at about that time. The tap is likely to have taken place when Dr Glencross made the comment and before he placed the riding crop on the shelf. That Dr Glencross tapped Dr Morton on the backside with the riding crop is admitted by CSIRO in its amended defence.
13. Although I accept that Dr Morton was tapped on the backside with riding crop by Dr Glencross, it is necessary to examine the context in which that incident occurred.
14. I accept that it was a busy sampling day, involving taking double the usual number of samples, and that Dr Morton and Ms Trenkner were joking around with the riding crop in a break between samples. Dr Glencross was diligent, hard-working and energetic in the performance of his work. Dr Morton was mucking around with the riding crop in the way described by the witnesses. When Dr Glencross tapped Dr Morton with the riding crop, he made the comment, “That’s enough of that. It’s time to get back to work”. I accept that Dr Glencross took hold of the riding crop and tapped Dr Morton on the backside as a signal to get back to work accompanying his words. He then put the riding crop away, consistent with wanting the staff to get back to work.
15. I do not accept Dr Morton’s evidence that Dr Glencross slapped her hard with the riding crop. It must have been a light hit, because Ms Trenkner would have otherwise noticed—she said that if a riding crop is swung vigorously, it makes a sound. I do not accept that Dr Glencross said nothing when he tapped Dr Morton on the backside. Dr Morton’s evidence that Dr Glencross just hit her out of the blue and said nothing is implausible.
16. Dr Morton claimed to be shocked and humiliated by being hit with the riding crop. She claimed to have regarded the event as a “sexual assault” and Dr Glencross as her “attacker”. There are a number of reasons for rejecting these aspects of her evidence.
17. Dr Cook’s evidence, which I accept, was that, on about 19 October 2012, Dr Morton said in passing, “And by the way, Brett hit me with a riding crop”. Dr Cook noted that Dr Glencross’ conduct sounded a bit odd and made a comment that, “Perhaps it was so everyone would hurry up”. He asked if there was anything that needed to be done and Dr Morton said, “No, no. That is fine”. Dr Morton and Dr Cook had a very friendly relationship. I consider that Dr Morton would have taken the opportunity to confide in Dr Cook if, as she says, she felt shocked, humiliated and that she had been sexually assaulted. Dr Morton now says she complained to Dr Cook and expected to do something about it. However, I do not accept that she made any complaint about Dr Glencross’ behaviour, as she acknowledged in her email of 25 October 2014.
18. Dr Morton travelled by car with Dr Glencross to and from Bribie Island on a number of occasions after 16 October 2012. She accepted that, on some of those occasions, she may have been alone in the car with him. It is implausible that she would have even contemplated travelling alone in a car with someone who she regarded as her attacker and who had sexually assaulted her. Dr Morton’s friendly and joking interactions with Dr Glencross by text message on occasions when she picked him up from his home after the incident are also inconsistent with her having regarded him in that way. Dr Morton invited Dr Glencross to parties at the home she shared with Dr Croft. It is implausible that she would have done so if she regarded him as her attacker.
19. Further, it is hardly likely that Dr Morton would have flicked Mr Blyth with the riding crop on later occasions if, as she asserts, she felt shocked and humiliated by Dr Glencross’ similar conduct towards her.

#### The cleavage comment

1. In her further amended statement of claim, Dr Morton alleges that on 17 October 2012, Dr Glencross stared at her breast area and said:

Women only wear pendants to draw attention to their cleavage. I don’t know why you bother Katherine, you don’t have any.

1. Dr Morton alleges that the comment was made during a dinner at the Norman Hotel. She said she felt quite horrified, embarrassed and humiliated. Under cross-examination, Dr Morton said she had been talking to somebody seated to her left and heard her name. She looked across and said “Sorry?”. She said that Dr Glencross then repeated the statement regarding her cleavage and included her name.
2. Dr Glencross’ version was that, during the dinner, there was a discussion about a comedy television show, “The Office”. The discussion was about whether women wear pendants to draw attention to their cleavage. A video clip from “The Office” was played in Court, involving an conversation where, on a first date, a man informs a woman that women wear necklaces to draw attention to their breasts, and the conversation becomes more awkward the more the man tries to retrieve the situation. Dr Glencross denied that he said, “I don’t know why you bother, Katherine. You don’t have any”.
3. I prefer Dr Glencross’ version. I accept that there was a conversation between Dr Glencross and others, in the context of the skit from “The Office”, about whether women wear pendants to draw attention to their breasts. Dr Morton, although seated at the same table, was not involved in that conversation. She looked up and heard some words from Dr Glencross which she appears to have interpreted as referring to her. It may be noted that Dr Morton did not mention in her evidence, the allegation in her pleading that Dr Glencross had pointed to her cleavage.
4. It may be that Dr Morton overheard part of the conversation and thought that it was directed at her. It is possible that she mistakenly thought that Dr Glencross had been making a comment about her cleavage. It is unnecessary to reach a conclusion as to precisely what Dr Morton thought. Whatever her perception, I accept Dr Glencross’ evidence that he did not make the comment attributed to him by Dr Morton.
5. Dr Cook gave evidence that Dr Morton told him about the cleavage comment as he was walking her home from the dinner. He said that Dr Morton described the incident almost as an anecdote about how the evening went, and did not say that she was upset by the comment or ask him to do anything about it.
6. Dr Morton sent an email to Mr Blyth the following morning:

Meanwhile I’m at work (will be driving bunny to the airport!) & was up to 1 am drinking with him and & Cook!.

1. The reference to “bunny” was to Dr Glencross. I accept that Dr Morton was up drinking until late with Dr Glencross. If, as she says, she felt horrified, embarrassed and humiliated by a comment he made (not to mention his sexual assault upon her the day before), it is quite implausible that she would have done so.
2. Further, if Dr Morton felt horrified, embarrassed and humiliated by his behaviour, she is unlikely to have offered to drive Dr Glencross to the airport the following day. When asked whether she was anticipating personally driving Dr Glencross to the airport, she denied that, and said that she assumed there was an issue with autocorrect in her text message. That answer was quite implausible, given what appears to be quite deliberate language and punctuation.
3. It may also be noted that Dr Morton sent a text message to Dr Cook on the morning of 18 October 2012, saying:

Meanwhile, bunny refused my lift to the airport & told me to go write my review!

1. Dr Morton’s denied that she was offering to personally drive Dr Glencross to the airport, saying that her reference to, “my lift”, was because she had organised the lift, so she thought of it as being “mine” in terms of a product she had produced. That explanation simply does not ring true and is another example of Dr Morton’s tendency to make up answers.
2. The evidence demonstrates that Dr Morton offered to drive Dr Glencross to the airport on 18 September 2012. It is implausible that she would have done so if, the night before, he had made a comment about her cleavage that left her horrified, embarrassed, and humiliated, and if, two days before, he had sexually assaulted her.

### Whether any action taken by Dr Glencross was adverse action

1. Under Item 1 of the Table set out in s 342(1) of the FW Act, adverse action is taken by an employer against an employee if the employer:

(a) dismisses the employee; or

(b) injures the employee in his or her employment; or

(c) alters the position of the employee to the employee’s prejudice; or

(d) discriminates between the employee and the other employees of the employer.

1. I have rejected Dr Morton’s evidence that Dr Glencross made the sexual preference, prostitute, crows-feet and cleavage comments. As that alleged conduct did not happen, there was no relevant adverse action taken against Dr Morton by CSIRO.
2. While I have accepted Dr Morton’s allegation that Dr Glencross hit her on the backside with a riding crop, in considering whether that was “adverse action”, it is necessary to consider the context in which the incident occurred. In that respect, I have rejected much of Dr Morton’s evidence. The context was that, between batches of fish on a very busy sampling day, Dr Morton was jokingly tapping other members of staff on their thighs and backsides with the riding crop. Dr Glencross took hold of the riding crop and said, “That’s enough of that. It’s time to get back to work”, tapping Dr Morton on the backside with the riding crop. That was done as a signal to get on with her work.
3. I do not accept that Dr Morton in fact felt humiliated, offended or insulted by being tapped on the backside with the riding crop, nor would any reasonable person in her position. That would be inconsistent with her actions in doing precisely the same thing to others on that day, and to Mr Blyth on subsequent occasions. It would also be inconsistent with mentioning the incident to Dr Cook in passing, rather than making a complaint. It would be inconsistent with Dr Morton accepting that she may have subsequently been alone in a car with Dr Glencross and inviting him to parties to her home. It would be inconsistent with failing to raise any complaint about the incident for two years, despite complaining about other aspects of Dr Glencross’ conduct to CSIRO staff in that period.
4. In that context, Dr Glencross cannot be found to have taken adverse action in contravention of s 351(1) of the FW Act by discriminating between Dr Morton and other employees. It was not less favourable treatment of Dr Morton than other employees. It is plain that neither Dr Morton, nor the other employees, regarded her tapping them on the thighs and backside with a riding crop as unfavourable treatment—it was just playful “mucking-around”, to use Ms Trenkner’s expression. In those circumstances, the tap on the backside with the riding crop by Dr Glencross cannot be considered unfavourable treatment of Dr Morton. Although Dr Morton was the only employee Dr Glencross tapped with the riding crop, that was because she was the main person involved in hitting or flicking other employees. I do not accept that Dr Glencross’ action was a form of chastisement or punishment, or that it was in any way sexual. It was simply a light-hearted signal to emphasise his words about getting back to work. Since Dr Glencross’ conduct was not unfavourable treatment, it cannot amount to less favourable treatment of Dr Morton compared to other employees.
5. In *Patrick Stevedoring*, the High Court at 18 described the phrase “injures the employee in his or her employment” as referring to “injury of any compensable kind”. The broader conception in *Squires* required treatment that was “injurious or prejudicial”. In this case, there was no compensable injury, harm or prejudice of any kind to Dr Morton as a result of the riding crop incident. I do not accept that Dr Morton was injured in her employment.
6. In *Patrick Stevedoring*, the expression “alters the position of the employee to the employee’s prejudice” was described as “any adverse affection of, or deterioration in, the advantages enjoyed by the employee before the conduct in question”. The riding crop incident caused no adverse effect upon on, or deterioration in, any advantages enjoyed by Dr Morton.
7. Accordingly, I find that Dr Glencross’ action in tapping Dr Morton on the backside with the riding crop was not “adverse action” within s 351(1) of the FW Act.

## The allegations against Dr Preston

1. Dr Morton alleges that on 2 May 2012, at the Aquaculture Australia Conference in Melbourne, she was approached by Dr Preston at a dinner. She alleges that Dr Preston commented to her, “You are just a hussy”. Dr Morton alleges that Dr Preston’s tone of voice was fairly light-hearted and dismissive. She alleges that Mr Donovan was present when the comment was made. She said she felt upset.
2. On 30 October 2012, Dr Morton sent Dr Cook an email which said, “oh, and the Pres said Ian is a gazzillionairre right before he called me a hussy”. Dr Morton states that this was a reference to Dr Preston whispering to her that Ian, a client, was a “gazillionaire”, right before calling her a hussy. She said she believed that Dr Preston was suggesting that she should be overtly friendly to clients in order to attempt to secure research funding.
3. Dr Preston denied that he made any comment to Dr Morton using the word “hussy”.
4. Having regard to my assessment of the general lack of credibility of Dr Morton’s evidence, I prefer Dr Preston’s evidence. I am assisted in finding that Dr Preston did not make the alleged comment by the absence of any reference to the comment in Dr Morton’s Grievance Document of 16 January 2014, despite her making other complaints about him. Nor was it mentioned in her email of 25 October 2014 to Dr Preston complaining about his comments about other matters. The complaint was not raised until the amended statement of claim on 6 March 2018.
5. Further, Mr Donovan gave evidence that he did not recall Dr Preston saying, “You’re just a hussy”. His evidence was that he would remember something like that if it were said. I accept Mr Donovan’s evidence.
6. The tone of Dr Morton’s email of 30 October 2012 as a whole was light and joking. That is indicated by language such as “gazillionaire”. It contains nothing suggesting that Dr Morton was upset about the comment Dr Preston had allegedly made some six months before. Dr Morton may have simply been making a joke that Dr Preston called her a hussy, without it being true that he did so. Whatever the reason for the statement in the email, I do not accept that Dr Preston actually said it.
7. Dr Morton also alleges that Dr Cook told her that Dr Preston’s nickname for her was “dizzy blonde”. Dr Preston denied that he had that nickname for Dr Morton. He denied that he had a nickname for any staff member. I accept Dr Preston’s evidence.

## The allegations against Dr Cook

1. Dr Morton makes the following allegations against Dr Cook:
2. on 9 August 2012, Dr Cook told Dr Morton that Dr Preston’s nickname for her was “dizzy blonde”;
3. on 10 September 2012, Dr Cook circulated an email with a picture of a scantily dressed woman;
4. on 7 November 2012, Dr Cook circulated an email with a picture of a half-naked man and woman, describing them as candidates for positions at CSIRO;
5. on 19 March 2014, Dr Cook circulated an email discussing, in a sexualised way, the potential candidates for a post-doctorate position; and
6. on 2 December 2014, Dr Cook said to Dr Morton, “take a blonde to Tasmania, dress her up and double your money”.

### Whether the events happened as alleged by Dr Morton

#### The dizzy blonde allegation

1. Dr Morton alleges that on 9 August 2012:

…Dr Mathew Cook told the Applicant that Dr Nigel Preston’s nickname for the Applicant was “dizzy blonde”.

1. Dr Morton did not mention this allegation in her evidence-in-chief. However, she was cross-examined about the allegation. It relates to an email exchange between Dr Morton and Dr Cook on 9 August 2012. Dr Morton wrote:

PS Has Nigel told you what my nickname is? First rule of nicknaming, you have to tell the person!

1. Dr Cook responded:

I think it’s dizzy blonde????

No-one has mentioned mine but I assume it is rather derogatory.

1. Dr Morton responded:

Wouldn’t surprise me! (The blonde bit)

Yours is just “Darth” though I would love to know what Mel says…

1. Dr Cook gave evidence that he had not actually heard Dr Preston use the name “dizzy blonde” in respect of Dr Morton. He said that his comment was based upon Dr Preston having once said, “She comes across as a bit of a dizzy blonde”, when he asked Dr Preston about his impression of Dr Morton.
2. It is not entirely clear from the pleading whether the allegation is against Dr Cook, for informing Dr Morton that Dr Preston had that nickname for her; or against Dr Preston, for telling Dr Cook that he had that nickname for Dr Morton. If it is the latter, then I have accepted Dr Preston’s evidence that he did not have that nickname for her, and that he did not tell Dr Cook that he had that nickname for her. If it is the former, I do not accept that Dr Cook informed Dr Morton that it was Dr Preston’s nickname for her. Dr Cook’s email was in response to Dr Morton asking whether Dr Preston had told her what her nickname was. Dr Cook’s response, punctuated with four question marks, indicated that he was guessing that it could be “dizzy blonde”. It was not a communication that Dr Preston in fact had that nickname for her. Further, Dr Morton’s response, “Wouldn’t surprise me…” does not suggest that she understood Dr Cook to have communicated that Dr Preston in fact had that nickname for her. In addition, her response does not indicate that she took any offence at any such nickname.
3. I reject the allegation that Dr Cook told Dr Morton that Dr Preston’s nickname for her was “dizzy blonde”.

#### The scantily dressed woman email

1. Dr Morton alleges that on 10 September 2012, Dr Cook circulated an email with a picture of a scantily dressed woman. The email was sent to Dr Morton and one other female and two male members of staff. The subject-line of the email was, “Love it”. The email attached a document entitled, “How people in science see each other”. The document contained a number of photographs in a grid pattern showing, in a humorous way, how various people in science perceive others in science. One photograph shows how an undergraduate is perceived by a “PL/Professor”. That photograph is of a woman in revealing clothes bending over what may be the bonnet of a car. The remainder of the photographs contain no sexual innuendo.
2. One of the recipients of Dr Cook’s email responded, “Can I meet your undergraduate please Professor Cook”. Dr Cook replied, “Nah, she is all mine!”. Dr Morton responded:

Can I have an undergraduate too, please? Except I would like to request mine from the 2013 fireman’s calendar. Ta.

1. Under cross-examination, Dr Morton denied that she was participating in the joke, saying that she was making a pointed comment. I do not accept Dr Morton’s evidence. She clearly saw humour in the email and participated in the joke by requesting an undergraduate from a Firemens’ Calendar. There is nothing in her response to indicate that she was offended by any of the emails in the chain.

#### The half-naked man and woman email

1. Dr Morton alleges that on 7 November 2012, Dr Cook sent her an email with a picture of a half-naked man and a half-naked woman, describing them as candidates for positions at CSIRO.
2. There was an exchange of emails between Dr Morton and Dr Cook on that date. An email from Dr Cook had the subject-line, “Guess who is here…”. The email went on to say:

Here are the top two candidates, I have my preference.

1. The email attached photographs of a muscular man with no shirt on and a buxom woman whose shirt barely conceals her breasts.
2. Dr Morton replied:

Hmmm…well clearly both need CSIRO merchandise…

If I have correctly assumed your preference, then you could be on-to something—we could use her to distract the powers that be whilst we run up crazy ass expenses on work trips to say Hawaii do science.

PS

Where is my CSIRO shirt? Natalie has one! The giving of a CSIRO shirt to one employee and not all could be considered bullying! :)

1. Dr Cook responded:

I like the shirt being worn in the picture. Again, probably biased. Sorry, better get back to science (no sign of Natalie, Julie or anyone for that matter)!

1. Dr Morton responded:

That is because they are all at the surf club having a meeting with their new theme leader and her PA! Geez…you really are out of the loop!

Hmmm…as long as it was CSIRO branded it would be okay. Not suitable for those with no cleavage, so the CSIRO needs to fund my boob job…

I should get back to science, but I have about 500 pages of lipid metabolism in fish to read :(

1. Dr Cook’s evidence was that this exchange of emails was made in the context of Dr Preston planning to retire. He said that his intention was to make a joke that he and Dr Morton would be on the selection panel for Dr Preston’s replacement and it would be a hard choice between the two candidates he had sent through. He says that Dr Morton did not complain to him about that email.
2. Under cross-examination, Dr Morton denied that she was participating in a joke with Dr Cook. She said she was trying to change the subject. She said that her comment, “Not suitable for those with no cleavage, so the CSIRO needs to fund my boob job”, was a sarcastic and pointed comment, being a reference to the comment Dr Glencross had previously made about her cleavage.
3. It is evident that Dr Morton was in fact participating in a joke with Dr Cook. That was indicated by her comments such as, “we could use her to distract the powers that be whilst we run up crazy ass expenses on work trips to say Hawaii do science.” I do not accept that the reference to “no cleavage” and “boob job” were pointed references to any comments previously made by Dr Glencross. Instead, they are a further indication that Dr Morton was participating in the joke. I do not accept that she found the email offensive.

#### The candidates for a post-doctorate position email

1. Dr Morton alleges that on 19 March 2014, Dr Cook circulated an email discussing, in a sexualised way, the potential candidates for a post-doctorate position. This involved an exchange of emails between Dr Cook, Dr Morton and Dr Taylor, who comprised the selection panel for a post-doctorate position. Dr Cook had said:

Richard can’t move past [name deleted].

I believe he has pinned her picture up in his office!

1. That was a reference to a candidate who had applied for the position and had included her photograph with her application. Dr Morton replied saying:

So we’re appointing three applicants to look cute, plainly (sic) experiments, manage hamsters & brewing…

Can I amend the duties to include making my coffee…

1. Again, Dr Morton was clearly participating in a joke with Dr Cook and Dr Taylor. I do not accept that she was offended by Dr Cook’s email.

#### The take a blonde to Tasmania comment

1. Dr Morton alleges that on 2 December 2014, Dr Cook said to her, “Take a blonde to Tasmania, dress her up and double your money”.
2. Dr Morton and Dr Cook had a meeting with a client in Hobart. Dr Morton said that the chief vet seemed impressed and offered to increase the cash component of the research funding. Her evidence was that after the meeting, Dr Cook said, “Take a blonde to Tasmania, dress her up, and double your money”. Dr Morton said she felt quite disgusted and humiliated. She said she had recently filed a formal grievance about behaviours of that type from senior managers, and it was still continuing.
3. Dr Cook denied making that comment. I prefer Dr Cook’s evidence. Dr Morton exchanged text messages with Dr Cook in which they arranged to meet for breakfast the following morning. She accepted that there was no hint from her text messages with Dr Cook that she felt quite disgusted and humiliated, and was upset with him. If the comment had been made, and she felt that way, she would hardly have agreed to meet Dr Cook for breakfast.
4. Dr Morton’s evidence was that she had already made a formal complaint about similar behaviour from senior managers, and it was continuing. If it were true that Dr Cook had made the comment, the ideal opportunity to raise it was in her Grievance Document, delivered six weeks later on 16 January 2015. In fact, Dr Morton agreed that she had raised no such allegation against Dr Cook until the amended the statement of claim was filed on 6 March 2018. It is implausible that, if Dr Cook had made the offensive comment, she would not have complained of it earlier.
5. I reject Dr Morton’s evidence that Dr Cook made the comment alleged.

### Whether Dr Cook’s emails amounted to “adverse action”

1. Dr Morton and Dr Cook had a very friendly relationship in which they often exchanged light-hearted emails and text messages sharing banter about topics including food, alcohol and gossip about other CSIRO staff members. It was in the context of that relationship that Dr Cook sent the emails that Dr Morton now complains of.
2. Dr Morton’s responses to the emails indicate that she regarded them as jokes and was not offended by them. In fact, Dr Morton participated in the jokes through her own comments in response. Dr Morton and Dr Cook seemed to share a similar sense of humour.
3. At times, Dr Morton initiated emails with Dr Cook making jokes containing sexual innuendos. In an email she sent to Dr Cook (who was a cyclist) on 4 April 2014, she said:

I have discovered that cyclists have a phrase, bonking. Which seems quite different to the reproductive biologists’ usage. This made me giggle uncontrollably, drug induced, and now my abdo hurts.

1. Both Dr Morton and Dr Cook thought it was funny to speculate about Dr Glencross and Dr Wade having a homosexual relationship. That may be seen in Dr Cook’s “Bunny Lovin’” lyrics, which he attached to an email on 15 October 2012, saying, “Imagine Nick and Brett in mankinis singing”. The lyrics contained crude sexual references. Dr Morton’s response was, “I owe you a coffee for that one!!!”. It is quite clear that Dr Morton appreciated the joke involved in that email and was not offended by it.
2. Five days later, Dr Morton texted photographs of home-made gingerbread men (which she described as “ninjabreads”) to Dr Cook. One of the ninjabreads had been decorated as if it was wearing a mankini. The caption accompanying the texted photo was, “Recognise this one?”. The following week, Dr Morton took the mankini-ninjabread into work. She took a photograph of an apparently unwitting Dr Wade posing with the ninjabread and sent it to Dr Cook. It is apparent this part of the joke, which had a sexual connotation, was initiated by Dr Morton.
3. Dr Morton agreed that on 9 December 2012 she sent a text message to Mr Blyth where she said:

Boogie hey. I would take a picture of our booze, but we are all too pissed. Now I am being teased about my slutty Santa bowl!!!…

I think the quote of the night is, ‘Fancy a handful of my nuts’.

1. These communications demonstrate that Dr Morton was no prude when it came to jokes containing sexual innuendos. It is implausible that she was offended by the emails Dr Cook sent her. She was a willing participant in the jokes involved in the emails that she now complains of. I reject her evidence that she told Dr Cook verbally that she found some of them offensive. If she found any of them offensive, she is likely to have said so by return email. She did not. In fact, she found them amusing.
2. Dr Morton’s Grievance Document did not make any complaints at all about Dr Cook. Some ten months later, in his email of 8 November 2015, Mr Croft referred to, “Dr Cook’s general inappropriate workplace behaviours of inappropriate sexual comments regarding people he was interviewing for a position”. Apart from that, no allegations of sexual harassment or sex discrimination allegations against Dr Cook were raised until the amended statement of claim. That is an indication that her claim to have been offended by Dr Cook’s emails is a recent invention.
3. While Dr Morton pleaded five allegations of emails or comments alleged to constitute sexual harassment or sex discrimination by Dr Cook, she gave evidence of receiving other emails which she allegedly found inappropriate or offensive. These include emails of: 26 July 2012, in which Dr Cook referred to surfing porn; 16 October 2012, containing the “Bunny Lovin” lyrics; 8 November 2012, referring to “titty bars”; and 11 February 2013, referring to being slapped with a cold barramundi. Dr Morton’s responses to the first two of these emails clearly indicate that she joined in the joke and was not offended. She made no complaint of being offended by the third and fourth until she gave evidence. In respect of the fourth, her evidence that she thought Dr Cook was referring to the riding crop incident is implausible. I have been left with the impression of Dr Morton recently trawling through the material trying to find emails sent in the context of her friendly relationship with Dr Cook, which she could claim to have been offended by. I do not accept that she was offended by any of these emails.
4. I do not accept that Dr Cook’s emails injured Dr Morton in her employment, altered her position to her prejudice, or discriminated between her and the other employees.
5. I find that Dr Cook’s emails were not adverse action taken against Dr Morton.

## Dr Morton’s allegations considered under the Sex Discrimination Act

1. I have held, contrary to Dr Morton’s submission, that the sexual harassment and sex discrimination provisions of the *Sex Discrimination Act* are not picked up by s 351(1) of the FW Act. In case I am wrong in that conclusion, I will consider the allegations upon the assumption that those provisions do apply.
2. Section 28B of the *Sex Discrimination Act* provides that it is unlawful for an employee to sexually harass a fellow employee. Section 28A provides:

**28A Meaning of sexual harassment**

(1) For the purposes of this Division, a person sexually harasses another person (the ***person harassed***) if:

(a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

(b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

(1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

(a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;

(b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;

(c) any disability of the person harassed;

(d) any other relevant circumstance.

(2) In this section:

***conduct of a sexual nature*** includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

1. Section 14(2) of the *Sex Discrimination Act* provides, relevantly, that it is unlawful for an employer to discriminate against an employee on the grounds of, relevantly, the employee’s sex or sexual orientation in the terms or conditions of employment that the employer affords to the employee, or by subjecting the employee to any other detriment.
2. Section 5 of the *Sex Discrimination Act* describes sex discrimination as follows:

**5 Sex discrimination**

(1) For the purposes of this Act, a person (in this subsection referred to as the ***discriminator***) discriminates against another person (in this subsection referred to as the aggrieved person) on the ground of the sex of the ***aggrieved person*** if, by reason of:

(a) the sex of the aggrieved person;

(b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or

(c) a characteristic that is generally imputed to persons of the sex of the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different sex.

(2) For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of the sex of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same sex as the aggrieved person.

…

1. I have found that Dr Glencross did not make the sexual preference, prostitute, crows-feet and cleavage comments. I have found that Dr Preston did not make the hussy comment. Further, I have found that Dr Cook did not tell Dr Morton that Dr Preston’s nickname for her was “dizzy blonde”, or make the “Take a blonde to Tasmania” comment. Therefore, these allegations of sexual harassment or sex discrimination cannot succeed.
2. I have accepted that the riding crop incident occurred, although not in the way alleged by Dr Morton. I do not accept that this was sexual harassment within s 28A of the *Sex Discrimination Act* because: firstly, the conduct was not unwelcome; secondly, the conduct was not of a sexual nature; and thirdly, a reasonable person would not have anticipated the possibility that Dr Morton would be offended, humiliated or intimidated. That Dr Glencross’ conduct was not unwelcome is indicated by the fact that Dr Morton engaged in similar conduct on the same day and subsequent days, and the fact that she mentioned the incident only in passing to Dr Cook and did not make a complaint about it for two years. I have rejected her evidence that she was in fact shocked and humiliated. Dr Glencross’ conduct was not of a sexual nature—in the same way that Dr Morton’s similar conduct was not of a sexual nature—but was merely a signal to prompt her to get on with her work. A reasonable person would not have anticipated that Dr Morton would be offended, humiliated, or intimidated, since she had been engaging in the same conduct.
3. Further, I do not accept that the riding crop incident involved sex discrimination against Dr Morton within s 5 of the *Sex Discrimination Act*. I do not accept that Dr Morton’s sex had anything to do with Dr Glencross tapping her on the backside with the riding crop. It was done in response to her similar behaviour and to signal her to get back to work. I do not accept that a man would have been treated differently in the same circumstances.
4. I have found that Dr Cook sent the emails with a picture of a scantily dressed woman, an email with a picture of a half-naked man and woman and an email discussing (in an allegedly sexualised way) the potential candidates for a post-doctorate position. Sending the first two of the emails can be considered to involve conduct of a sexual nature. I do not accept that the third email (which merely said, “Richard can’t move past [name deleted]. I believe he has pinned her picture up in his office!”) involved conduct of a sexual nature.
5. Dr Morton clearly participated in the jokes through her replies. She gave no indication in her replies that she was offended by the emails, and I reject her evidence that she was. The emails were sent in circumstances where Dr Cook and Dr Morton got on very well and shared a similar sense of humour, demonstrated by the mankini-ninjabread photograph sent by Dr Morton to Dr Cook. I do not accept that Dr Cook sending any of the emails complained of was sexual harassment, because the conduct was not unwelcome, nor would a reasonable person have anticipated that Dr Morton would be offended, humiliated, or intimidated by receiving the emails.
6. Further, sending the emails was not sex discrimination because a man would not have been treated differently. The emails were sent, not because Dr Morton was a woman, but because Dr Cook and Dr Morton had a friendly relationship which involved sharing light-hearted and joking emails and text messages. Further, two of the emails were also sent to male recipients.
7. Accordingly, even if s 351(1) of the FW Act picked up and applied the *Sex Discrimination Act*, I would not have found that Dr Morton was subjected to sexual harassment or sex discrimination.

## Liability of CSIRO for acts of its employees

1. I will consider whether CSIRO would have contravened s 351 of the FW Act upon an assumption that Dr Glencross, Dr Preston and Dr Cook took the actions alleged against them.
2. Section 793 of the FW Act provides, relevantly, that any conduct engaged in on behalf of a body corporate by an employee within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body.
3. Dr Glencross, Dr Preston and Dr Cook were each employees of CSIRO. Each of them was in a superior position to Dr Morton within the organisation. The allegations made against them involve acts of adverse action in the nature of sexual harassment or sex discrimination against Dr Morton.
4. I do not accept that any of the acts alleged were engaged in on behalf of CSIRO, nor that they were within the scope of the employees’ actual or apparent authority. The employees were not authorised, or apparently authorised, by CSIRO to engage in acts of sexual harassment or sex discrimination, such as making sexually-charged comments to other employees or sending lewd emails. To the contrary, CSIRO had in place policies which made it clear that it would not tolerate any form of harassment or discrimination. Each of Dr Glencross, Dr Preston and Dr Cook had been given training by CSIRO about appropriate workplace conduct which made it clear that such conduct was prohibited. I do not accept that s 793 of the FW Act applies to their conduct.
5. Dr Morton submits that CSIRO is vicariously liable for the adverse action consisting of sexual harassment and sex discrimination of its employees under common law principles. I will proceed on the assumption that these principles are relevant.
6. The traditional common law requirement was that the employee's wrongful act be committed in the course, or scope, of employment. However, in *Prince Alfred College*, the High Court at [81] said that the relevant approach is to consider whether the apparent performance of any special role that the employer has assigned to the employee may have given the “occasion” for the wrongful act. The relevant features include authority, power, trust, control and the ability to achieve intimacy with the victim. Where an employee takes advantage of such a position with respect to the victim, the wrongful act may be regarded as committed in the course, or scope, of employment and, as such, render the employer vicariously liable.
7. In the present case, the positions given to Dr Glencross, Dr Preston and Dr Cook lack such features. While they were in superior positions to Dr Morton, the extent of that superiority was quite limited. It did not, for example, deter Dr Morton from making complaints about Dr Glencross’ management style both to Dr Glencross and others, or Dr Morton complaining to Dr Preston about his comments. Dr Cook and Dr Morton were on very friendly terms, but that was not related to Dr Cook’s position. I would not find that any relevant conduct of Dr Glencross, Dr Preston and Dr Cook was “occasioned” by their positions.
8. Therefore, even if I had found that Dr Glencross, Dr Preston or Dr Cook had engaged in the adverse action alleged, I would not have found that CSIRO contravened s 351(1) of the FW Act.

## The allegation that CSIRO failed to address, or adequately address, Dr Glencross’ behaviour in a timely manner

1. In paragraph 1A(5)(b) of the further amended statement of claim, Dr Morton alleges that:

The Respondent failed to address or adequately address Dr Brett Glencross’ behaviour in relation to the Applicant in a timely manner, upon becoming aware of such conduct, including the Applicant’s complaints.

1. The relevant “behaviour” is not particularised. However, in the context of Claim 1A as a whole, it must refer only to Dr Glencross’ alleged sexual harassment and sex discrimination against Dr Morton, and not to the bullying and mismanagement allegations contained in the Grievance Document.
2. Dr Morton’s written submissions are inadequate in respect of this claim, and the allegations were not made much clearer in oral submissions. It was explained in oral submissions that the allegation is that Dr Morton complained of sexual harassment and sex discrimination against Dr Glencross to various people at CSIRO, but they failed to act upon her complaints contrary to the requirements of theEnterprise Agreement. However, precisely what CSIRO’s staff were required to do, and what they failed to do, was never made clear.
3. The Enterprise Agreement deals with Grievance Procedures in Schedule 4. In cl 2 of the Grievance Procedures, under the heading, “Matters Covered”, the procedures are said to apply to matters including officers’ concerns about, “issues arising from decisions or actions connected to their employment”. The “Matters Not Covered” include workers’ compensation issues.
4. Clause 4 of the Grievance Procedures has the heading “Principles”, and requires, inter alia, confidentiality, fairness and timeliness. The Principles require that, “All complaints should be dealt with promptly and thoroughly with a view to finding a resolution as soon as practical”.
5. Clause 5 of the Grievance Procedures deals with “Responsibilities”. It provides that managers have the responsibility to, inter alia: ensure that decisions on managing people are ethical and transparent; demonstrate to staff that their concerns are important by taking steps to swiftly address them and resolve any issues as they arise; and comply with the CSIRO Code of Conduct and Values.
6. Under the CSIRO Code of Conduct and Values, staff are required to, inter alia: act ethically; act in good faith and in the best interests of CSIRO; act with care and diligence; and perform their duties competently and with professionalism, honesty and integrity. All CSIRO staff are made responsible for doing something about any illegal behaviour or behaviour outside the spirit of the Code of Conduct. Further, the Code of Conduct requires staff, particularly supervisors and managers, to be aware of the responsibilities placed upon them by CSIRO’s Equal Opportunity Policy. The Equal Opportunity Policy makes supervisors and managers responsible for being aware of and identifying bullying or discrimination in the workplace and eliminating inappropriate behaviour regardless of whether a complaint is received about that behaviour. The Conduct and Ethics—Misconduct Policy states that, if a Business Unit suspects that a breach of the Code of Conduct has occurred, and formal counselling is not considered adequate, the Business Unit Leader must initiate an inquiry.
7. The Grievance Procedures in the Enterprise Agreement set out two stages for the resolution of complaints. Stage 1 is Informal Resolution. Step 1 of Stage 1 is for the officer to discuss the matter with their manager in an effort to reach a resolution. The officer should explain what action or decision is the cause of their complaint: what specifically is their complaint; what is the impact of that decision or action; and what is the preferred outcome or result they are seeking. Step 2 is for the officer to discuss the matter with the next level of management. Step 3 is to consider a range of options to help resolve the issue including facilitation and mediation.
8. Stage 2 involves Formal Resolution. Step 1 is for the officer to initiate the formal process by writing to a Senior Manager. The Senior Manager will encourage the parties to attempt to resolve the matter using the informal procedures detailed at Stage 1. Step 2 is for the Senior Manger to appoint an Administrator and an Independent Investigator. There are also four further steps which may be undertaken.
9. It may be seen that Step 1 of the Informal Resolution process does not require a formal or written complaint to be made. However, it is apparent that not every discussion initiated by an officer with a manager about an action or decision the officer is concerned about will necessarily amount to a complaint under the Grievance Procedures. Staff may well question actions or decisions without making any complaint about them. There is no clear delineation between discussions that are complaints and those that are not. That is left to the common-sense of the officer and the manager.
10. Where a complaint is made, Stage 1 of the Informal Resolution procedures leaves considerable flexibility as to how the complaint is to be dealt with. That flexibility recognises that early, informal resolution will work in many, or most, cases, and that is preferable for all parties. While the manager’s responsibilities include taking steps to swiftly address the officer’s concerns and resolve any issues as they arise, that may require the manager to do very little, depending on the circumstances. For example, sometimes merely explaining a decision or action to the officer may be sufficient. Much will depend upon the outcome the officer wants or what the officer wants done. Having said that, as the Equal Opportunity Policy recognises, in some circumstances, a manager is required to take action regardless of whether a staff member wants particular behaviour to be dealt with. The flexibility built into Stage 1 recognises that a “one size fits all” approach is not appropriate for managers to deal with the great variety of circumstances that may arise in the workplace.
11. I accept Dr Cook’s evidence that Dr Morton did not raise her allegations about Dr Glencross making the sexual preference and crows-feet comments with him. Therefore, no complaint was made about these matters.
12. Dr Morton mentioned the alleged prostitute comment, the cleavage comment and the riding crop incident to Dr Cook. However, as I have found, she mentioned these incidents in passing, rather than raising them as complaints against Dr Glencross. It must be remembered that while Dr Cook was Dr Morton’s administrative manager, they were also on very friendly terms, frequently exchanging gossip. In the context in which these incidents were relayed to Dr Cook, I do not accept that Dr Morton said or suggested that these incidents involved sex discrimination or sexual harassment or another kind of misconduct. I find that these alleged incidents were not discussed with Dr Cook as concerns or complaints. Even if Stage 1 of the Informal Resolution process applied, Dr Morton did not indicate that she sought any outcome or result, and there is nothing further that Dr Cook was required to do under the Grievance Procedures in the circumstances. Further, in respect of the riding crop allegation, Dr Morton specifically told Dr Cook that she did not want any action to be taken.
13. Dr Morton sent an email to Dr Preston on 25 October 2014 in which she referred to the riding crop incident and the cleavage comment. She stated:

…While these behaviours are clearly unacceptable I chose not to pursue them any further at that time.

1. Accordingly, Dr Morton confirmed that she had never made complaints about these matters and, implicitly, had not made complaints about any other similar behaviour. Further, even in her Grievance Document of 16 January 2015, Dr Morton only made complaints about the riding crop allegation and the cleavage comment, but not the other alleged comments.
2. I do not accept that Dr Cook became aware that Dr Morton was making any complaint in the nature of sexual harassment or sex discrimination about Dr Glencross until her email to Dr Preston of 25 October 2014. Dr Preston was senior to Dr Cook and the email was directed to Dr Preston. I do not accept that there was any failure by Dr Cook to address, or adequately address, Dr Glencross’ alleged behaviour.
3. There is no plausible evidence that, prior to Dr Morton’s email to Dr Preston of 25 October 2014, she had spoken to any CSIRO staff-member about sexual harassment or sex discrimination by Dr Glencross. I reject the allegations in the further amended statement of claim that Dr Morton told Ms Carroll, Dr Barron, Mr Brewer, and Dr Worby of the alleged sexual harassment and sex discrimination perpetrated by Dr Glencross.
4. Under cross-examination, Dr Morton was asked whether she agreed that she had not pursued the riding crop and sexual preference comment allegations. Her response was, “No. Beyond telling Dr Cook of those, I had not formally pursued them”. Neither do I accept that she informally pursued these or any other allegations of sexual harassment or sex discrimination.
5. The responsibilities that managers have under the Equal Opportunity Policy are incorporated into the Code of Conduct, which, in turn, is incorporated into the managers’ responsibilities under the Grievance Procedures in the Enterprise Agreement. I do not accept that any manager breached responsibilities under the Equal Opportunity Policy, or the Code of Conduct, in respect of Dr Morton’s allegations of sex discrimination and sexual harassment. In particular, to the extent that Dr Morton alleged that Dr Cook was required to take action upon her mentioning the alleged prostitute comment, the cleavage comment and the riding crop incident, I reject that allegation. The way the comments were relayed to Dr Cook must be considered. Context is particularly important in a case like this, where a particular complexion is now sought to be placed on a few words said years ago. The particular circumstances, including the tone, nuance, and interpretation of the person the words were said to, must be taken into account. I accept that, from the way Dr Morton relayed the comments and the incident in passing, it was not indicated to Dr Cook that the alleged behaviour was offensive, such that there was a breach of the Code of Conduct or the Equal Opportunity Policy. When he did ask about the riding crop incident, Dr Morton indicated that she did not want any action to be taken and, while that was not necessarily decisive of what Dr Cook should have done, I am not satisfied that he was required to take any action in circumstances where it is apparent that Dr Morton was not offended.
6. The further amended statement of claim alleges that Dr Morton discussed the riding crop and cleavage allegations with Dr Preston on 22 October 2014, but she gave no evidence in support of that allegation. Dr Preston received Dr Morton’s email of 25 October 2014, which did refer to those allegations. Dr Preston replied, asking that they have a discussion when he returned from Africa. They did not have such a meeting, because Dr Morton said that she did not want to meet Dr Preston. Dr Preston’s dealings with Dr Morton were then overtaken by her informal complaints against him and Dr Glencross made on 6 November 2014, and then her formal written complaint on 28 November 2014. I do not accept that there was more that Dr Preston ought to have done to address Dr Glencross’ alleged behaviour once the allegations were brought to his attention.
7. At the meeting with Ms Davis and Ms Sturton on 6 November 2014, Dr Morton discussed various complaints against Dr Glencross and Dr Preston and said that she would put them in writing. Dr Morton explained that she was busy with her work and would not be able to do that until January 2015. On 28 November 2014, she made a written complaint, which invoked the Formal Resolution process under the Grievance Procedures. On 16 January 2015, she submitted her detailed Grievance Document.
8. On 22 January 2015, Dr Manners sent an email to Dr Morton explaining his role as a delegate regarding the grievance. Dr Glencross provided a letter to CSIRO on 30 January 2015 saying he was resigning with effect from 27 February 2015.
9. After a preliminary information gathering process, Dr Manners wrote to Dr Morton on 15 March 2015, saying that he had decided to appoint Mr Van Dam to investigate her complaint against Dr Preston. Dr Manners also said he was required by CSIRO’s Misconduct Procedure to discontinue the inquiry into Dr Glencross’ conduct, as he had left the organisation. In my opinion, Dr Manners acted in a timely manner after receiving the Grievance Document of 16 January 2015.
10. In these circumstances, I reject the allegation that CSIRO, or any of its officers, failed to address, or adequately address, Dr Glencross’ alleged sexual harassment or sex discrimination in a timely manner in accordance with the Grievance Procedures, upon becoming aware of Dr Morton’s allegations.
11. If I had found that CSIRO failed to address, or adequately address, Dr Glencross’ alleged sexual harassment or sex discrimination in a timely manner upon becoming aware of his alleged behaviour, a question would have arisen as to whether this was adverse action within the meaning of s 342(1) of the FW Act. I would have found that it was adverse action, because CSIRO’s failure to address Dr Morton’s complaints in accordance with the Grievance Procedures altered her position to her prejudice.
12. The question would then have arisen as to whether such adverse action was taken because of Dr Morton’s sex or sexual preference. The onus would have been on CSIRO to prove that these were not reasons for the adverse action. I would have held that CSIRO discharged this onus. Each of the relevant managers, namely Dr Cook, Dr Preston, Dr Manners, Ms Davis, and Ms Sturton, gave evidence that they did not take any action against Dr Morton because of her sex or sexual preference. I accept their evidence.
13. For these reasons, Dr Morton’s allegation that CSIRO contravened s 351(1) of the FW Act by failing to address, or adequately address, Dr Glencross’ alleged sexual harassment or sex discrimination in a timely manner, must be rejected.

## The allegation that CSIRO afforded Dr Morton less favourable conditions of employment than would be experienced by a male

1. Dr Morton alleges that CSIRO afforded her less favourable conditions of employment than would be experienced by a male in the same circumstances by reason of the sexual harassment and sex discrimination and that CSIRO’s failure to address, or adequately address, Dr Glencross’ behaviour in a timely manner that she alleges.
2. I have found that the riding crop incident was not less favourable treatment of Dr Morton, and that the incident would have been no different if she were a male. Further, I have found that the emails sent by Dr Cook to Dr Morton did not constitute less favourable treatment of her, and would have been no different if she were a male. I have rejected Dr Morton’s other allegations of adverse action constituted by sexual harassment or sex discrimination.
3. Further, I have rejected the allegation that CSIRO failed to address, or adequately address, Dr Glencross’ behaviour in a timely manner.
4. Each of the witnesses called by CSIRO denied that they treated Dr Morton unfavourably on the basis of her sex. I accept that evidence. I reject the allegation that CSIRO afforded Dr Morton less favourable conditions of employment than would be experienced by a male in the same circumstances.
5. I find that CSIRO did not contravene s 351(1) of the FW Act as alleged in Claim 1A.

# CONSIDERATION OF CLAIM 1

1. Claim 1 is contained in paragraphs 3 to 6A of the further amended statement of claim. Paragraph 6 alleges that CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton because she exercised workplace rights to make complaints and enquiries.
2. The allegations of contravention of s 340(1) made in Claim 1, and in other claims, raise the following issues for consideration:
3. whether the events alleged by Dr Morton happened, and whether they happened in the way alleged;
4. whether any action taken against Dr Morton was “adverse action”;
5. whether the rights pleaded by Dr Morton are “workplace rights”;
6. whether Dr Morton exercised any such “workplace rights”;
7. whether any adverse action was taken *because* Dr Morton exercised the pleaded workplace rights; and
8. whether CSIRO is liable for any actions taken by its employees.
9. I will deal with these issues in relation to each of Dr Morton’s claims of contraventions of s 340(1). However, in some instances, it will be impracticable or unnecessary to address all of the issues.
10. Paragraph 6A of the further amended statement of claim alleges that the adverse action in Claim 1 consists of:
11. failing to address Dr Morton’s complaints about Dr Glencross’ behaviour towards her in a timely manner;
12. removing her as a team leader;
13. decreasing her allocation to the Huon project; and
14. dismissing her from her employment by making her position redundant in circumstances where there was no genuine redundancy.

## The allegation that CSIRO failed to address Dr Morton’s complaints about Dr Glencross’ behaviours towards her in a timely manner

1. Dr Morton alleges in paragraph 6A(a) of her further amended statement of claim that CSIRO took adverse action against her by failing to address, or adequately address, Dr Glencross’ behaviours towards her in a timely manner after her complaint was made.
2. I have already considered and rejected Dr Morton’s allegation in Claim 1A that CSIRO failed to address, or adequately address, Dr Glencross’ alleged sexual harassment and sex discrimination in a timely manner upon becoming aware of his alleged conduct, in the context of s 351(1) of the FW Act. The allegation in Claim 1 seems to largely cover the same territory, except that it relies upon s 340(1) of the FW Act. As s 340(1) and s 351(1) both depend upon there being adverse action, the outcome must be the same. I will not further address the allegations of CSIRO’s failure to address, or adequately address, the allegations of sexual harassment and sex discrimination.
3. Dr Morton also claims that CSIRO failed to address, or adequately address, her complaints about Dr Glencross’ behaviour not involving allegations of sexual harassment or sex discrimination in a timely manner. Although the allegations pleaded in Claim 1 are quite difficult to understand, no objection was taken by CSIRO. I will set out the pleaded allegations in some detail in an attempt to understand them.
4. Paragraphs 3(c)–(f) of the further amended statement of claim plead that Dr Morton told Ms Carroll, Dr Barron, Mr Brewer, and Dr Worby respectively that Dr Glencross was very rude and difficult to work with and was excluding her and her attempts to work as part of the team.
5. Paragraph 4(a) alleges that Dr Morton made verbal complaints to Dr Cook about the behaviour described in paragraph 3. Paragraph 4(b) alleges that Dr Morton received an email dated 10 August 2012 from Dr Cook regarding Dr Glencross’ behaviour towards Mr Irvin, but does not allege that the email was about any complaint about Dr Glencross’ behaviour towards her. Paragraph 4(c) refers to correspondence dated 18 April 2013 and other dates between Dr Morton and Mr Bourne, regarding discussions with Dr Worby about issues with Dr Glencross. Paragraph 4(d), refers to Dr Morton’s emails to Dr Cook on 3 December 2013, about Dr Barron saying that Dr Worby was coaching Dr Glencross about his behaviour. As far as I can tell, only paragraphs 4(a) and (d) may refer to complaints made to Dr Cook about Dr Glencross’ behaviour towards Dr Morton.
6. Paragraphs 5(a) and (b) allege that Dr Morton exercised workplace rights to make complaints and enquiries by, relevantly: making a complaint to Dr Lehnert on 28 October 2014 at the direction of Dr Cook; requesting a formal investigation of Dr Glencross’ behaviour on 28 November 2014; meeting Ms Davis and Ms Sturton on 6 November 2014; meeting with Ms Davis on 5 December 2014; and submitting her formal Grievance Document on 16 January 2015.
7. Paragraph 6 alleges that CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act because she exercised the workplace rights described in paragraph 5. It alleges that was done by injuring her in her employment, altering her position to her prejudice, and discriminating between her and other employees. Paragraph 6A(a) then particularises the adverse action as, firstly, failing to address, or adequately address, Dr Glencross’ behaviours towards her in a timely manner, after her complaint was made.
8. The pleading seems to allege in paragraph 6A(a), that CSIRO failed to address, or adequately address, Dr Glencross’ behaviours towards Dr Morton in a timely manner after her complaints were made *because* she had exercised her workplace rights to make the complaints set out in paragraph 5. If paragraph 6A(a) is read generously, it may also cover the complaints set out in paragraphs 3 and 4.
9. Dr Morton’s written submissions are inadequate. They make a bare allegation that it is open to find that Ms Carroll, Dr Barron and Mr Brewer were aware of Dr Morton’s complaints. Dr Morton’s oral submissions seem to frame the allegation as a failure to treat her complaints about Dr Glencross’ behaviour as complaints under the Grievance Procedures of the Enterprise Agreement. In the absence of submissions of any real substance, the case that Dr Morton seeks to make out is uncertain.
10. As best as I can understand it, Dr Morton’s allegations seem to be that she complained to Dr Cook, Dr Worby, Ms Carroll, Dr Barron and Mr Brewer about aspects of Dr Glencross’ conduct not involving allegations of sexual harassment and sex discrimination, but they took adverse action against her by failing to comply with the Grievance Procedures and failing to comply with those procedures in a timely manner. The further allegation seems to be that they failed to so comply because she had made such complaints against Dr Glencross. Although paragraph 4(b) of the further amended statement of claim refers to Mr Bourne, as far as I can tell, no allegation is made against him.
11. Dr Morton gave evidence that she spoke to Ms Carroll from about April or May to December 2012 about Dr Glencross’ behaviour. She would tell Ms Carroll generally about events that were occurring within the group concerning his behaviour. One of the matters that Dr Morton had complained to Ms Carroll about was an email dated 8 August 2012 sent to Mr Irvin by Dr Glencross, which had upset Mr Irvin greatly. Ms Carroll gave evidence that, from time to time, she provided informal feedback to Dr Glencross on his management style.
12. Dr Morton gave evidence that she complained to Dr Barron in 2013 about the working relationship between Dr Glencross and the staff at Bribie Island, and, generally, about the way Dr Glencross operated. She also complained more specifically about how she had been treated by Dr Glencross. Dr Barron was not called to give evidence, as she could not be located. There is in evidence an email from Dr Morton of 3 December 2013 to Dr Cook, saying Dr Barron had told her that Dr Worby was mentoring or coaching Dr Glencross and helping him with his managerial skills, and that Dr Worby was seeking feedback from members of the group as to the problems they felt needed addressing.
13. Dr Morton gave evidence that she made complaints to Mr Brewer in 2012 about Dr Glencross’ behaviour. These were made in the context of Dr Glencross’ treatment of the group as a whole and communication and other issues between Bribie Island site and the ESP site in Brisbane. She said she also complained more specifically about how Dr Glencross treated her and comments he had made.
14. Mr Brewer gave evidence that Dr Morton would discuss with him issues concerning Dr Glencross, including that she was unhappy with Dr Glencross’ treatment of her and the way he interacted with her. Her complaints included that Dr Glencross was not treating her well in relation to science and day-to-day issues, that Dr Glencross was very rude to her and was difficult to work with and many staff did not like his working style. Mr Brewer gave evidence that he had meetings with Dr Glencross with the intention of trying to alter some of his behaviours and the way he treated staff.
15. Dr Morton gave evidence that she made complaints to Dr Worby in 2013 about Dr Glencross’ behaviour. She raised concerns with Dr Worby about the way her group was treated within CSIRO, and about it being more than just Dr Glencross’ group. She said Dr Glencross did not have a good reputation within the CSIRO and she did not want any of the staff in the group to be tarred with the brush of working for Dr Glencross. Dr Morton made complaints about how Dr Glencross treated the group as a whole and things that he specifically did to her, including changing timetables and yelling at staff. She said she felt that Dr Glencross had unreasonable expectations of staff.
16. Dr Worby gave evidence that on 19 April 2013, he had a meeting with Dr Morton and Mr Bourne. Dr Morton said that she felt she had a difficult relationship with Dr Glencross. She said that when they would go to Bribie Island to run experiments, he would often change things around without much regard for the efforts of the people who were already out there. Apart from that meeting, Dr Worby said that he would occasionally meet with Dr Morton, who expressed a level of frustration with Dr Glencross’ style.
17. Dr Worby gave evidence that he had a number of meetings with Dr Glencross in 2012 and 2013. Dr Worby had discussions with Dr Glencross about whether they could improve his management style to the point where he might be able to take over from Dr Preston, as well as improve his interactions with staff. Dr Worby acknowledged that Dr Glencross had a management style that could be difficult, and that was behaviour he spoke to him about a number of times. Dr Worby said he discussed some professional development and coaching with Dr Glencross (by which, taken with Dr Morton’s email of 2 December 2013, I understand him to say he provided some mentoring or coaching to Dr Glencross). Dr Worby thought that some of Dr Glencross’ interactions with other staff could have been better, but that dealing with it informally was the most appropriate vehicle.
18. A part of the difficulty with accepting Dr Morton’s submission that Ms Carroll, Dr Barron, Mr Brewer and Dr Worby failed to comply with their obligations under the Grievance Procedures, is the vagueness of her evidence about the terms of her complaints about Dr Glencross and the outcomes she was seeking. As I have explained, under Step 1 of the Informal Grievance Procedure, the officer should explain to the manager specifically what their complaint is and the preferred outcome or result that they seek. While the manager’s responsibility includes taking steps to swiftly address the officer’s concerns and resolve any issues as they arise, the steps the manager is required to take very much depend on the circumstances, including the specificity of the complaint and the outcome the office is seeking.
19. The lack of particularity in Dr Morton’s evidence about the terms of her complaints to Ms Carroll, Dr Barron, Mr Brewer and Dr Worby, and what she wanted to be done about them, makes it difficult to conclude that they were required to take additional steps to comply with their obligations under the Grievance Procedures. Ms Carroll provided informal feedback to Dr Glencross on his management style. Mr Brewer had meetings with Dr Glencross with the intention of trying to alter some of his behaviours and the way he treated staff. It was not suggested in cross-examination or in submissions what more they ought to have done under the Grievance Policy, or that they ought to have acted more quickly.
20. Dr Barron evidently discussed Dr Morton’s complaints with Dr Worby and reported back to Dr Morton about those discussions, including what Dr Worby was doing and proposed to do. Again, there were no submissions about what more the Grievance Policy required Dr Barron to do, and what she failed to do.
21. It is clear that Dr Worby took steps to deal with Dr Morton’s complaints about Dr Glencross’ behaviour. These steps included meeting with Dr Morton and other staff, having a number of discussions with Dr Glencross in 2012 and 2013 about his behaviour, and providing him with mentoring or coaching. Again, it was not suggested in cross-examination or in submissions what more he ought to have done under the Grievance Policy, or that he ought to have acted more quickly.
22. Further, it may be noted that Dr Morton’s evidence was, in part, concerned with complaints about Dr Glencross’ treatment of other staff. However, Dr Morton’s allegation in paragraph 6A(a) of the further amended statement of claim is that CSIRO failed to take timely action about Dr Glencross’ behaviour *towards her*, not towards other staff.
23. Dr Morton carries the onus of proving that CSIRO took adverse action against her by failing to address, or adequately address, Dr Glencross’ behaviours towards her in a timely manner after her complaints were made. I am not satisfied that she has demonstrated that Ms Carroll, Dr Barron, Mr Brewer, or Dr Worby failed to do so.
24. Paragraph 4(a) of the further amended statement of claim alleges that Dr Morton made verbal complaints to Dr Cook at about the time that the events in paragraph 3 occurred. The relevant events in paragraph 3 appear to be telling Ms Carroll, Dr Barron, Mr Brewer and Dr Worby that Dr Glencross was very rude and was excluding her and her attempts to work as part of the team. However, this allegation similarly suffers from a lack of particularity about the terms of the complaints made by Dr Morton to Dr Cook and what outcome she wanted. It was not suggested in cross-examination what it was that Dr Cook ought to have done to comply with the Grievance Procedures and what he failed to do. Neither were those issues elucidated in Dr Morton’s submissions. It may be noted that Dr Worby, in particular, was already dealing with these matters. I do not accept that Dr Morton has demonstrated that Dr Cook failed to comply with the Grievance Procedures, the Code of Conduct, the Equal Opportunity Policy or the Conduct and Ethics—Misconduct Policy in respect of any verbal complaints she made about Dr Glencross’ behaviour towards her.
25. Dr Morton’s written submissions concerning the complaints about Dr Glencross’ behaviour other than sexual harassment and sex discrimination, refer to the email from Dr Morton to Dr Cook of 3 December 2013, the text message to Dr Cook on 22 June 2015 and to complaints made at meetings in 2014 and in the formal grievance process.
26. Dr Morton’s email to Dr Cook on 3 December 2013 said that Dr Barron had told her that Dr Worby was mentoring or coaching Dr Glencross and helping him with his managerial skills and saying that Dr Cook may want to have some input into the feedback to Dr Worby. The written submissions do not address the relevance of the email to any allegation of adverse action, and it was not mentioned in oral submissions. I cannot see how Dr Morton’s email can be regarded as a raising a complaint with Dr Cook about Dr Glencross’ behaviour. Even if it could, the issues raised were already being dealt with by Dr Worby. There was nothing else for Dr Cook to do but participate in any feedback process. There is no evidence that he failed to do so. I do not accept that the email demonstrates that Dr Cook failed to comply with his obligations under the Grievance Procedures.
27. The text message from Dr Morton to Dr Cook on 22 June 2015 said that she would not return to Bribie Island as she refused, “to be potentially exposed to my attacker”. It may be that Dr Morton is alleging that this was a complaint that Dr Cook failed to deal with in accordance with the Grievance Procedures. It has not been explained what Dr Cook ought to have done to resolve Dr Morton’s complaint. It may be that she is alleging that he should have taken steps to prevent Dr Glencross from attending the Bribie Island site on days when Dr Morton was there. However, Dr Morton never returned to work after 22 June 2015. She indicated in her text message that she was arranging to see a doctor the next day, and she subsequently received the three-month certificate from Dr Rees on 6 July 2015. Dr Glencross gave evidence that he attended the Bribie Island site about once every three months in his new employment. There was nothing for Dr Cook to do to resolve the situation in these circumstances, because it effectively resolved itself. I do not accept that he failed to comply with the Grievance Procedures in this respect.
28. In February 2014, Dr Morton asked for a “role clarification meeting” with Dr Glencross, because she had been receiving mixed messages and signals about her role. On 6 March 2014, Dr Morton sent a detailed email to Dr Glencross, copied to Dr Cook and Dr Coman, in which she set out her concerns. The role clarification meeting occurred on 7 May 2014, attended by Dr Morton, Dr Glencross, Dr Cook and Dr Coman. Following the role clarification meeting, Dr Morton wrote an email on 10 May 2014 to Dr Glencross, Dr Cook and Dr Coman, setting out the key discussion points from the meeting. Dr Morton told Dr Cook that she did not think that she would ever get any acknowledgement, or be able to get any type of “area” working with Dr Glencross and expressed her frustration that the meeting did not achieve what she had hoped it would. Dr Cook said that Dr Morton and Dr Glencross needed to sever their working relationship, and the final solution was that Dr Morton should not work with Dr Glencross. On 25 May 2014, Dr Morton sent an email to Dr Cook and Dr Coman saying that Dr Preston had suggested that she think about where her career was going and where she wanted it to head. On 22 October 2014, Dr Cook participated in a meeting where Dr Morton flagged her interest in doing an MBA, although Dr Cook and Dr Preston said that CSIRO could not support that proposal.
29. Dr Cook was copied into a series of emails between Dr Morton and Dr Glencross on 27 October 2014 concerning Dr Glencross’ editing of an incorrect version of a manuscript. As a result, Dr Cook organised a meeting with Dr Morton and Dr Glencross for 29 October 2014. At the meeting, Dr Cook said that it was time to sever the relationship. It was Dr Cook’s view that Dr Morton and Dr Glencross could no longer work together in a cordial manner. Dr Cook suggested that it was time to find a new path for both of them. His opinion was that it would be advantageous for Dr Morton to move onto the Huon Project, and away from working with Dr Glencross, to move onto something that she could make her own. On 4 November 2014, Dr Morton sent an email to Dr Preston saying that she had decided to pursue her grievance through HR. The formal grievance process ensued from 28 November 2014, and was dealt with by Dr Manners, not Dr Cook.
30. I do not accept that Dr Morton has demonstrated that Dr Cook failed to address, or adequately address, Dr Glencross’ behaviours towards her in a timely manner after her complaints were made. Dr Cook acknowledged that he told an investigator that, in retrospect, as Dr Morton’s line manager, he should have gone into bat for her more. However, wishing he had done more is a quite different thing to admitting that he did not do enough. It does not mean that he failed to comply with his obligations under the Grievance Policy. To the contrary, Dr Cook took steps to address Dr Morton’s concerns when they were raised with him, and it has not been shown that these were inadequate to comply with his obligations under the Grievance Policy.
31. I reject the allegation that CSIRO, through Ms Carroll, Dr Barron, Mr Brewer, Dr Worby, or Dr Cook, took adverse action against Dr Morton in contravention of s 340(1) of the FW Act, by failing to address, or adequately address, Dr Glencross’ behaviours towards her in a timely manner after her complaints were made.
32. Even if it were accepted that Ms Carroll, Dr Barron, Mr Brewer, Dr Worby or Dr Cook failed to address, or adequately address, Dr Glencross’ behaviours towards Dr Morton in a timely manner after her complaints were made, I would not accept that this occurred *because* she had exercised her workplace rights to make the complaints. I accept the evidence of Ms Carroll, Dr Barron, Mr Brewer, Dr Worby and Dr Cook and that their actions were not motivated by any complaints that Dr Morton made. Dr Barron could not be located to give evidence, but it is improbable that any such failure on her part was motivated by such complaints.

## The allegation that CSIRO removed Dr Morton as a team leader

1. Paragraph 6A(b) of Dr Morton’s further amended statement of claim alleges that CSIRO took adverse action against her by removing her as a team leader on about 15 July 2015, thereby making her employment more vulnerable. She alleges that Dr Cook, or another decision-maker, removed that allocation because she had exercised her workplace right to make complaints about Dr Glencross and Dr Preston.
2. CSIRO had a system of notionally allocating its scientists’ work hours to particular projects they were working on, and particular leadership roles they occupied. The relevance of allocations was, in part, that scientists who were under-allocated were more vulnerable to redundancy.
3. On 24 November 2014, Dr Morton was appointed as team leader of the Aquaculture Genetics and Biochemistry Team, within Agriculture. Dr Morton’s team leader role had 10% allocation attached to it. That meant that 10 % of her work hours was notionally allocated to the duties she performed in that position.
4. On 6 July 2015, Dr Morton obtained a medical certificate saying she was unfit to work for three months.
5. CSIRO has an internal electronic information system, known as “SAP”. It is used to record and manage the allocations of CSIRO staff and their various leave entitlements.
6. Dr Morton gave evidence that in July 2015, she noticed that on the SAP system, her 10% team leader allocation had been removed. She said she discovered her removal as team leader through the CSIRO People Page, which no longer showed her listed as a team leader. Instead, Dr Wade was listed as the team leader. She thought that this was the beginning of the end for her job, because people who are less than 50% allocated in the CSIRO system are classified as “vulnerable to redundancy”.
7. There is in evidence a screenshot of the SAP system as at 22 July 2015 which describes Dr Wade as “Team Leader, Agriculture”. There is also a screenshot showing Dr Morton described as “Senior Research Scientist”.
8. Under cross-examination, Dr Morton agreed that if someone who normally performs a team leader role is away, there might be a need for someone else to temporarily cover the role.
9. Dr Cook gave evidence that on 8 July 2015, he received an email from Dr Morton saying that a doctor had written her off work for three months. On the same day, he contacted HR and asked if they could appoint an acting or interim leader, so that the team was not disrupted during performance appraisals for staff. Dr Cook said that on 14 July 2015, Dr Wade was appointed as temporary team leader. This evidence is supported by an email he sent on 11 July 2015 to Dr Preston, saying:

With Katherine’s absence from work until at least October I have spoken to Alysha re the TL role and we have decided to offer an interim role to Nick Wade. This will initially be for three months with review in October.

1. Dr Cook’s evidence is also supported by a letter written by Dr Preston to Dr Wade dated 14 July 2015, confirming his appointment as team leader and saying, “Your appointment is for a 3 month period from 14 July 2015 until 9 October 2015”. It is also supported by an email sent by Dr Cook to a number of CSIRO staff on 14 July 2015, saying that Dr Morton was on extended leave and, “In her absence Nick Wade has agreed to take on the interim Team Leader role.”.
2. Dr Cook gave evidence that Dr Wade did not become the permanent team leader until 1 July 2016. In his view, if Dr Morton had returned to the workplace any time before that, she would have received her 10% allocation back. He said he was not aware that Dr Morton was removed from the SAP system, and had not made any decision that she be so removed. Dr Cook gave evidence that the SAP system is the responsibility of CSIRO Finance and HR. His evidence was that he did not ask for Dr Morton to be removed as team leader, and it was never his intention to remove her as a team leader. I accept that evidence.
3. Ms Walsh, the HR manager for Agriculture, gave evidence that if a person in a leadership role is going to be absent for an extended period of time, CSIRO puts an alternative person into the position so that somebody else can undertake duties and delegations, such as approving leave, undertaking approval of annual performance agreements and tasks of that nature. She said that when somebody temporarily takes over a team leader role, a new position is created in the SAP system for the person who had the role originally. On the SAP system, the absent person is moved into an alternative position, while the acting person is moved into the team leader position. If the temporarily-replaced person looked at the SAP system, it would indicate that the person was not in the team leader position. Ms Walsh said that HR staff manage the changes on the SAP system. I accept Ms Walsh’s evidence.
4. I am not satisfied that Dr Morton was removed as a team leader. Dr Morton’s case conflates the removal of her designation as a team leader from the SAP system with the proposition that she was, in fact, removed as a team leader. Ms Walsh explained that on the SAP system, an acting team leader would be designated as the team leader, while the designation of the person temporarily replaced as the team leader would be removed. Her evidence is consistent with how the SAP system worked in this case, with the exception that it is not clear that a new position was created in the SAP system for Dr Morton. However, the removal of her designation as a team leader from the SAP system does not mean that she was, in fact, removed as a team leader at CSIRO.
5. The evidence is clear that on 14 July 2015, Dr Morton was temporarily replaced as team leader by Dr Wade. That was done for valid operational reasons, including allowing performance reviews of staff to proceed while Dr Morton was absent from work.
6. In her oral submissions, Dr Morton’s counsel made an alternative submission that the removal of Dr Morton’s designation as team leader on the SAP system was itself adverse action. However, that was not pleaded. The pleaded allegation was that CSIRO took adverse action by, “removing her as Team Leader”. Further, it was not explained how the removal of the designation on the SAP system amounted to adverse action within s 342(1) of the FW Act.
7. Since I do not accept that Dr Morton was removed as a team leader, she has not demonstrated that the action she alleges was taken against her. It follows that I do not accept that there was adverse action taken against her in that respect. Further, even if she were so removed, I would find that it was done for the operational reasons indicated by Dr Cook and Ms Walsh, not because she had made complaints against Dr Glencross and Dr Preston.

## The allegation that CSIRO decreased Dr Morton’s allocation to the Huon project

1. Paragraph 6A(c) of the further amended statement of claim alleges that on 30 September 2015, CSIRO decreased Dr Morton’s allocation to the Huon project, making her under-allocated and more vulnerable in her employment.
2. Dr Morton gave evidence that in April 2015, she had been given a 60% allocation on a project known as the Huon Project, led by Dr Cook (although she later accepted that she had, in fact, been given a 50% allocation). Her evidence was that in July 2015, her allocation to the Huon project had been decreased on the SAP system to 50%. By September 2015, her allocation to the Huon project had been reduced on the SAP system to 20%. She was not given any reason for this. Dr Morton said she was shocked and confused because there had been no communication about replanning the Huon project.
3. There is in evidence an email dated 22 January 2015 for the Huon Project that appeared on the SAP system. The email was based on a project plan prepared by Dr Cook. It recorded a 50% allocation for Dr Morton on that project. A further email was sent on 30 September 2015 indicating that Dr Morton’s allocation was 20%.
4. There was evidence that it is important for CSIRO’s scientists to attract external funding for projects, since their work is not fully funded by government. Dr Morton had been unsuccessful in obtaining any external funding. Dr Cook gave evidence that on 22 October 2014, he and Dr Preston discussed with Dr Morton how she might increase her allocations to externally funded projects. Dr Cook suggested that he had a project with Huon Aquaculture that she could work on. His evidence was that he told Dr Morton that it would involve Level 4 bench work in the initial phase, but that over time, she could move into more of a leadership role as he pulled back.
5. The first phase of the Huon project was a testing phase, which started in about November 2014. Dr Cook was the project leader. His evidence was that it was intended that Dr Morton would do the bench work for the testing phase and, over time, she would take over the relationship with Huon Aquaculture. She was initially given a 50% allocation.
6. Dr Cook’s evidence was that the pilot phase finished in early June 2015, and moved to the larger phase commencing on 1 July 2015. Dr Cook said that the project had expanded in scale to not just test, but formulate and do animal trials, requiring different staff to be moved in. He said that Dr Morton’s anticipated role going forward was to lead the project, which meant bringing together a multi-disciplinary team, having contact with the client and generally overseeing the science that was done. He said that it was not unusual for a scientist to move away from the bench to more of a leadership role on a project. At that time, Dr Morton’s allocation was changed from 50% to 20%.
7. Dr Cook gave evidence that he prepared a replanning document dated 30 September 2015, reducing Dr Morton’s allocation in the SAP system to 20%. That document also showed that allocations had been added for four additional staff.
8. Under cross-examination, Dr Cook accepted that he did not send Dr Morton an email advising of the change and did not speak to her about it. He denied that the reason he reduced her role was because she had made complaints to CSIRO, and was becoming difficult to handle.
9. In Claim 6, Dr Morton also alleges that CSIRO took adverse action against her by transferring her allocation on the Huon project to another staff member. It is convenient to address that allegation at this stage.
10. Dr Cook’s evidence was that after Dr Morton ceased work on 6 July 2015, he decided to take over her duties on the Huon project. In October 2015, Dr Cook was appointed as acting research director for Aquaculture and had to step away from his science work. He arranged for Ms Botwright, who was under-allocated, to take over both his and Dr Morton’s roles on the Huon project, although he maintained an administrative role.
11. Dr Cook prepared a replanning document for the Huon project. The start date was noted as 1 November 2015, reflecting the time when Ms Botwright was brought onto the project. Her allocation was given at 35%. Dr Cook said that Dr Morton was not listed as having an allocation in that document because she was not in the workplace, so the work had to be allocated to other people to make sure that the project was delivered. He said he made the decision about allocations. On 30 September 2015, Dr Morton had been certified as unfit to work until 30 March 2016. Under cross-examination, Dr Cook said that if Dr Morton had returned to the workplace, her allocations would have been reinstated.
12. Ms Walsh gave evidence that if someone was on long-term sick leave, they would not be listed in a planning document on the SAP system. That is because where there is an externally funded project, the salaries of people allocated to the project are paid from the project funding. If they were working, their time would be charged to the project; but if they were not working, then their time would not be charged to the project.
13. Dr Morton submits that Dr Cook’s evidence that her allocation was reduced from 50% to 20% because she was to be removed to a leadership role is unsupported by any documents. She submits that if that was the real reason, it is unlikely that there would be no paper trail, such as emails to those in charge of the SAP, or a letter of appointment such as that provided to Dr Wade when he was appointed as temporary team leader. However, I do not accept that moving into a leadership role within a particular project is attended with the same formality as being appointed a temporary leader of a team, which confers formal responsibilities and delegations. Dr Cook had told Dr Morton on 22 October 2014 what his plan was, and it is unsurprising that there was no formality involved with the implementation of what had been discussed. The fact of decreasing Dr Morton’s allocation in the SAP system is consistent with the plan of moving her to a leadership position. It is consistent with allocations being given to four additional staff in the replanning document.
14. Dr Morton relied upon evidence of the “fireside chat” concerning possible redundancies on 11 February 2016, where her position was discussed. Dr Manners decided that it would not be appropriate to make her redundant when she was off work on workers’ compensation. A note was made saying, “Leave Katherine but we don’t have any work/$ if she returns to work”. Dr Morton submits that this is inconsistent with Dr Cook’s evidence that if she returned to the workplace, her allocations would have been reinstated.
15. It is apparent that work on the Huon project was continuing without Dr Morton. However, the fact that no specific work or funding was available for her does not mean that, had she been able to return to work, she would not have been reinstated to the Huon project in place of Ms Botwright, or that she would not have resumed her role as team leader. I do not accept that Dr Morton was more vulnerable to redundancy because her allocation had been removed from the Huon project. Dr Manners was specifically decided on 11 February 2016 that her position would not be made redundant while she was off work on workers’ compensation.
16. I accept the evidence of Dr Cook and Ms Walsh. I do not accept that the reduction of Dr Morton’s allocation to the Huon project from 50% to 20% in July 2015 was adverse action within the meaning of ss 340(1) and 342(1) of the FW Act. That is because it was done in order to allow Dr Morton to move away from less skilled bench work into a leadership role for the project. It was part of a deliberate strategy for Dr Morton’s benefit, developed at the meeting on 22 October 2014. The reduction in allocation did not discriminate between Dr Morton and other employees because it did not involve less favourable treatment of her—it was a part of the favourable treatment involved in moving her into a leadership role in an externally funded project that would be beneficial for her career. There was no injurious or adverse impact on advantages she enjoyed. The aim was to assist Dr Morton by giving her leadership over an externally funded project.
17. I do not accept that the removal of the allocation altogether injured Dr Morton in her employment, or altered her position, to her prejudice, by making her more vulnerable to redundancy. The removal of the allocation had no effect on her while she was off work. I accept Dr Cook’s evidence that if Dr Morton had returned to the workplace, her allocations would have been reinstated.
18. Dr Morton’s further amended statement of claim alleges that CSIRO took adverse action against her *because* she had exercised, or proposed to exercise workplace rights to make complaints against Dr Glencross and Dr Preston, or enquiries in relation to the terms and conditions of her employment. Having regard to the evidence of Dr Cook and Ms Walsh, I find that Dr Morton’s allocation to the Huon project was not reduced or removed because she had exercised, or proposed to exercise, the workplace rights, as she alleges. Rather, there were valid operational reasons for the reduction of Dr Morton’s allocation on the Huon project, namely, that other staff were to be brought in for the testing work and Dr Morton was to be moved to a leadership role. There were also valid operational reasons for the later removal of Dr Morton’s allocation from the Huon project, namely that the work had to go on in her absence, so her allocation was moved to Ms Botwright. Further, Dr Morton was, by that time, on long-term sick leave, so it was not appropriate to allocate her time to an externally funded project that she was not participating in.
19. I do not accept that the reduction or removal of Dr Morton’s allocation to the Huon project was adverse action within the meaning of ss 340(1) and 342(1) of the FW Act. Further, even if it was adverse action, I would find that it was done for the operational reasons indicated by Dr Cook and Ms Walsh, not because Dr Morton had made complaints against Dr Glencross and Dr Preston or made enquiries as to the terms and conditions of her employment.

## The allegation that CSIRO dismissed Dr Morton from her employment by making her position redundant in circumstances where there was no genuine redundancy

1. Paragraph 6A(d) of the further amended statement of claim alleges that Dr Morton was dismissed her from her employment by making her position redundant in circumstances where there was no genuine redundancy.
2. It is difficult to understand precisely what is alleged. Dr Morton’s written outline of submissions states:

Dr Morton also claims that she was made redundant in circumstances where there was no genuine redundancy. Principally, the argument in this case is that Dr Morton, having been told that she reluctant volunteer for a VRS. In her emails and testimony she said she had no choice.

Evidence of Ms Walsh suggested that she knew about the difficulties Dr Morton was having returning to work, however apart from the advice of Ms Somerville, this was not raised again with Dr Morton.

In this sense, the applicant contends that the employer’s conduct intended, or have the probable effect or result of, bringing the employment of the relevant employee to an end.

(Errors in original.)

1. In her oral closing address, Dr Morton’s counsel submitted that CSIRO had not acted in accordance with the Enterprise Bargaining Agreement. She submitted that there was no documentary support for the assertion that anyone within CSIRO did anything to look for redeployment opportunities for Dr Morton. She submitted that the fact that Dr Morton had asked for a VRS did not negate the organisation’s responsibilities to offer her redeployment. That argument was consistent with a submission in her written outline that CSIRO had not complied with cl 7 of the Enterprise Bargaining Agreement.
2. Clause 7 of the Enterprise Bargaining Agreement stated:

7. Redeployment

(a) CSIRO will carry out an organisation-wide survey of existing and foreseeable vacancies which are at, or one level below, the officer’s substantive CSOF level and in the same functional area. The minimum period over which this survey will be conducted will be 2 months or a shorter period that may be agreed between CSIRO and the officer.

(b) A position will be considered to be a suitable opportunity if that officer meets all the essential selection criteria for the position either immediately, or could reasonably be expected to do so after a reasonable period of training (up to six months in the case of vacancies with indefinite tenure).

1. A further part of Dr Morton’s case concerning redundancy seems to be that she should have been offered redeployment to a position that became available in Hobart in September 2016.
2. The case that was put by Dr Morton’s counsel to Dr Cook, Dr Manners and Ms Walsh in cross-examination was to the effect that the “redundancy” of Dr Morton was engineered between them because she had made complaints and had lodged a Comcare claim. That was also mentioned in counsel’s closing address. The allegation that CSIRO wanted to get rid of Dr Morton because she had lodged a Comcare claim is not pleaded in relation to Claim 1. However, I will consider it, since no objection was taken to the line of cross-examination.
3. Ms Walsh, Dr Manners, and Dr Cook each gave evidence that, at a “fireside chat” on 11 February 2016, the possibility of Dr Morton’s position being made redundant was discussed, but that Dr Manners decided that it was not appropriate to make her position redundant while she was off work on workers’ compensation.
4. On 26 April 2016, Dr Manners sent an email to CSIRO staff notifying them of their entitlement to register for a VRS. A VRS is a mechanism by which an employee who wants a redundancy can volunteer to take the place of an employee whose position is being made redundant, but who does not want a redundancy. On 17 May 2016, Dr Morton sent an email to Ms Walsh saying:

With great disappointment in CSIRO and the appalling handling of my grievance and injury, I am asking that you place me on the Voluntary Redundancy Substitution list.

1. Dr Morton’s evidence was that she had asked to be placed on the VRS list because she was very upset about the way her grievance and the enquiry, had been handled, and a redundancy was the only way forward for her health.
2. The effect of Dr Morton’s request that she be placed on the VRS list was that she would receive a redundancy if a suitable employee, whose position was being made redundant, wanted to stay.
3. On 23 May 2016, Ms Walsh sent an email to Dr Morton advising that her name had been added to the VRS register, and that her request would receive careful consideration. Ms Walsh gave evidence that she did a search to see if there was a swap available for Dr Morton, but was unable to find any suitable swap. She then contacted Dr Cook and asked him if there was any potential case that could be made for redundancy of Dr Morton’s position. She said she did this to ensure that Dr Morton’ VRS request thorough consideration, not just had been given through the mechanism of a swap, but also by examining whether it could be accommodated through redundancy of her position.
4. On 10 June 2006, Ms Walsh forwarded a draft redundancy case for Dr Cook to work on. There was then a chain of emails concerning the first part of the redundancy case, described as “Case 1”. The process required the reasons why a particular position could be made redundant to be outlined.
5. On 24 June 2016, Ms Walsh wrote an email to Dr Morton saying:

I can confirm that CSIRO is able to accommodate your request for a Voluntary Redundancy Substitution (VRS). While we were unable to find a suitable swap via VRS, we made the case that as you had been on extended leave and your position had not been replaced, that reducing the staffing in the science area (Aquaculture nutrition) was appropriate. This case has now been approved.

1. Ms Walsh confirmed in her evidence that the rationale for the redundancy case was that Dr Morton’s position had not been replaced while she was absent from work and, therefore, there was no longer a reason to maintain the position. She said that a redundancy case would not have been organised for Dr Morton if she had not requested a VRS.
2. On 30 June 2016, Dr Morton sent an email to Ms Walsh, thanking her for the detailed information she had provided and saying that she would wait to hear about the next steps. She made no protest about her position being made redundant, even though it was clear from Ms Walsh’s email that her redundancy would not be proceeding through a VRS.
3. On 15 July 2016, Ms Walsh wrote to Dr Morton saying that her name would be added to the redeployment register and requesting a copy of her CV to use in the event that any redeployment opportunities were identified. Dr Morton was also asked to confirm the locations she wished CSIRO to consider for relocation and whether she would be prepared to consider any positions at a lower level.
4. On 19 July 2016, Dr Morton responded saying:

There are no locations within the organisation that would be suitable for me to be relocated to. Also, I would not consider a position at a lower level given my education and professional experience…

1. Dr Morton did not provide her CV. She did not apply for any positions during the redeployment period. She was not redeployed.
2. After the redeployment period, a further case (Case 2) for redundancy of Dr Morton’s position had to be prepared. The Case 2 approval had to be provided by the Business Unit Leader, the head of HR and a senior member of CSIRO. The redundancy was approved by Dr Manners, Mr Heldt and Mr Roy.
3. A position became available in Hobart in September 2016 for a specialist in aquatic animal health. Dr Morton did not apply for that position. Ms Walsh said she did not look at whether she should ask Dr Morton to apply for that position because Dr Morton had indicated that she was not prepared to take up positions at any other locations.
4. Ms Walsh sent Dr Morton an email on 28 October 2016 setting out her options. The letter indicated, inter alia, that if she did not contest her redundancy, she would get an extra eight weeks pay, and would leave CSIRO on 11 November 2016. On 6 November 2016, Dr Morton responded by email opting for the fast track option.
5. Dr Manners gave evidence that, at the “fire-side chat” on 11 February 2016, he was not prepared to entertain a forced redundancy for Dr Morton because he did not think that was appropriate while Dr Morton was on sick/stress leave. He later approved the redundancy case for Dr Morton because she had made a request for a VRS, and CSIRO could satisfy that request by making her position redundant. He considered that if a staff member requests a VRS, they are indicating quite clearly that they are happy to leave and free up resources for keeping another staff member. He said that if Dr Morton had not asked for a VRS, he would not have supported a redundancy case while she was still in rehabilitation.
6. Dr Cook gave evidence that in May 2016, it came to his attention that Dr Morton had applied for a VRS. Ms Walsh told him that it appeared that Dr Morton wanted to leave the organisation, and that they could possibly put in a case for a further redundancy of her position. After Ms Walsh prepared a preliminary case for redundancy, Dr Cook prepared the redundancy case.
7. Dr Cook gave evidence that Dr Morton’s skill set was not suitable for the position that became available in Hobart in September 2016, since it required a specialist in aquatic animal health who had both a PhD and demonstrated experience in that area. Dr Wade gave similar evidence. In Dr Cook’s opinion, Dr Morton could not acquire the necessary skills for that position within six months.
8. Dr Morton’s redundancy was initiated by her request for a VRS. It is apparent that by lodging that request, she was indicating that she no longer wished to continue her employment at CSIRO, and that she wanted to leave with a redundancy payout. I accept Ms Walsh’s evidence that she searched for, but was unable to find, a suitable swap. I accept her evidence that she sought to accommodate Dr Morton’s desire not to continue her employment with CSIRO by examining whether a redundancy case for her position could be made. I accept Dr Cook’s evidence that a genuine case of redundancy of Dr Morton’s positon was able to be made. I accept Dr Manners’ evidence that he sought to accommodate Dr Morton’s request for a redundancy. I accept the evidence of Dr Manners, Dr Cook, and Ms Walsh that Dr Morton’s position would not have been made redundant had she not requested a VRS. I consider that they sought to accommodate Dr Morton’s wish to leave her employment at CSIRO with a redundancy payout.
9. Other evidence makes it clear that Dr Morton was happy to have her position made redundant.
10. In her Facebook post of 25 June 2016, Dr Morton said:

Nothing like multiple coffees to aid in recovery after celebrating until 3 am. Note to self: possibly getting a little old for that.

Then again, it is not every week you finish the 11th MBA subject (of 12), receive a redundancy & have a four month break until subject number 12! So, another coffee it is :D

In that post, Dr Morton clearly indicated that she had been celebrating her redundancy, amongst other things.

1. In her Facebook post of 10 October 2016, Dr Morton said:

Second week of Nov equals MBA finished + US election + being made redundant + my birthday.

And they say good things come in threes!

I reject Dr Morton’s evidence that this was a sarcastic remark. She was saying that four good things were happening, including being made redundant.

1. In her email to Ms Walsh of 30 June 2016, Dr Morton made no suggestion that she was unhappy about her position being made redundant.
2. It is clear that Dr Morton was happy about being made redundant from CSIRO and leaving with a redundancy payment.
3. Dr Morton submits that the fact that she applied for a VRS and had said that she did not want to be considered for any jobs at any locations did not obviate the need for CSIRO to comply with cl 7 of the Enterprise Bargaining Agreement. She submits that an inference should be drawn that redeployment options were not searched for because the respondent wanted to terminate her employment. She submits that this was adverse action because it placed her at a disadvantage compared to others, as she was not provided with any redeployment options at all.
4. Dr Morton submits that in the redundancy Case 2 document, under the heading “Details or all avenues explored to forestall redundancy action”, there was no reference to any specific redeployment efforts. However, the notation under that heading indicates that CSIRO had been, “looking to provide opportunities to existing staff”. That is consistent with CSIRO looking for redeployment opportunities. That details of particular redeployment searches were not included does not mean they were not made.
5. Dr Morton submits that there are no emails, memos or file notes to indicate that any redeployment survey was conducted. However, looking to see if any suitable jobs were available for Dr Morton does not seem the type of activity that would necessarily be recorded in writing. As Dr Morton had indicated that there were no suitable locations for her to be relocated to, the searches were likely to be brief.
6. Ms Walsh’s evidence was that CSIRO staff looked for redeployment opportunities for Dr Morton, but were unable to identify any suitable positions. Ms Davis gave evidence that she was responsible for looking for redeployment options for Dr Morton, and kept an eye out to see if there were any appropriate redeployment options. She did not identify any. I accept their evidence. The requirement in cl 7 of the Enterprise Bargaining Agreement to conduct a “survey of existing and foreseeable vacancies” does not require that the survey be conducted with any particular level of formality.
7. I reject Dr Morton’s submission that CSIRO did not comply with cl 7 of the Enterprise Bargaining Agreement. Accordingly, Dr Morton has failed to demonstrate that CSIRO took adverse action against her in that respect.
8. Dr Morton appears to contend that Dr Manners, Dr Cook and Ms Walsh manufactured the redundancy of her position because she exercised her rights to make complaints or enquiries and to receive workers’ compensation benefits. She also alleges that Mr Roy and Mr Heldt were aware of the fact that she had a Comcare claim when they signed off on her redundancy. Dr Morton’s submission seems to be that this is an indication that a reason for her redundancy was that she had a Comcare claim.
9. When Dr Morton’s position was made redundant, her employment was terminated by CSIRO. This falls within the description of “dismisses the employee” within the definition of “adverse action” in s 342(1) of the FW Act. While in *Maritime Union Authority v Geraldton Port Authority* it was held that a voluntary redundancy is not a dismissal, this was not a voluntary redundancy. Dr Morton’s request for a VRS was rejected and her position was made redundant. This was adverse action.
10. However, for there to be a contravention of s 340(1), the adverse action must be taken *because* the employee, relevantly, exercised a workplace right. In this case, Dr Morton alleges that the workplace rights she exercised were to make complaints or enquiries and receive workers’ compensation benefits.
11. I find that the reason why Dr Cook and Ms Walsh made a case for the redundancy of Dr Morton’s position was that she had requested a VRS, and they sought to accommodate her desire to leave CSIRO with a redundancy payment. I find that the reason why Dr Manners, Mr Heldt and Mr Roy approved the redundancy was because they were satisfied of the merits of the redundancy case that had been made, and, in Dr Manner’s case, he sought to accommodate Dr Morton’s request for a redundancy. I find that Dr Morton’s complaints, and the fact that she applied for and received workers’ compensation benefits, played no part in her redundancy. CSIRO has discharged its onus of demonstrating that Dr Morton was not dismissed from her employment because she exercised workplace rights.
12. Further, since CSIRO merely assisted Dr Morton to achieve the outcome she set out to achieve, namely leaving CSIRO with a redundancy payment, she was not injured in her employment, her position was not altered to her prejudice, and there was no discrimination between her and other employees. She was happy with the outcome. In these respects, there was no adverse action within s 342(1) of the FW Act.
13. Further, even if Dr Morton’s redundancy involved adverse action, I would find that it was done to accommodate her desire to leave CSIRO with redundancy payout, rather than because she had exercised her workplace rights to make complaints against Dr Glencross and Dr Preston.
14. I find that CSIRO did not contravene s 340(1) of the FW Act as alleged in Claim 1 of the further amended statement of claim.

# CONSIDERATION OF CLAIM 2

1. Claim 2 is described in paragraphs 7 to 10A of the further amended statement of claim. Dr Morton’s counsel did not address Claim 2 in written or oral submissions. However, as that claim was not expressly abandoned, it is necessary to consider it.
2. Paragraph 10A alleges that CSIRO took adverse action against Dr Morton by permitting Dr Manners to manipulate the terms of reference for the investigation into Dr Preston’s conduct to reduce the time frame for review to between 9 September and 22 October 2014, rather than commencing from the start of the alleged conduct in 2012.
3. Paragraph 10A also alleges that Dr Manners was permitted to manipulate the terms of reference to omit investigation of allegations that Dr Preston had made inappropriate and inaccurate comments about Dr Morton to the effect that: she did not have the science to be a leader; that she had a lack of original ideas; that she was vulnerable to redundancy; that Dr Morton needed to assure Dr Preston that her health was up to it; and that pursuing an MBA would be a distraction.
4. Paragraph 10A further alleges that CSIRO took adverse action against Dr Morton by removing her as a team leader and decreasing her allocation to the Huon project. I have already rejected Dr Morton’s allegations that CSIRO took adverse action against her by removing her as a team leader and decreasing her allocation to the Huon project. It is unnecessary to consider those allegations further in the context of Claim 2.
5. On 10 March 2015, Dr Manners wrote to Dr Morton saying that due to Dr Glencross’ recent cessation at CSIRO, he was required by the misconduct policy to discontinue the inquiry into Dr Glencross’ conduct. Dr Manners also said that Dr Morton’s allegations against Dr Preston were the subject of a continuing inquiry.
6. Under a letter dated 24 March 2015, Dr Manners engaged Mr Van Dam to investigate allegations against Dr Preston. The terms of the letter and the attached Investigation Referral Form were said to constitute the terms of reference for the inquiry. The attached form described the terms of reference as follows:

**4. Terms of Reference**

You are briefed to make findings of fact in relation to the alleged misconduct including:

1. Between the 9 September 2014 and 22 October 2014 Dr Preston failed to comply with the Terms and Conditions of Service 19B.(d) (Improper conduct) engages in improper conduct as an officer, by making discriminatory remarks about Dr Morton's health.

2. Between the 9 September 2014 and 22 October 2014 Dr Preston failed to comply with the Terms and Conditions of Service 19B.(f) (Contravention of Act or T&C) contravenes or fails to comply with a provision of the FW Act, these Terms and Conditions; or the CSIRO Code of Conduct by making statements to the effect that Dr Morton was vulnerable to redundancy

3. Subsequent to Dr Morton's email of the 25 October 2014 Dr Preston failed to comply with the Terms and Conditions of Service 19B.(f) (Contravention of Act or T&C) contravenes or fails to comply with a provision of the FW Act, these Terms and Conditions; or the CSIRO Code of Conduct; by failing to act on information provided to him containing allegations of inappropriate behaviour.

1. In Dr Morton’s Grievance Document of 16 January 2015, she complained about Dr Preston’s comments made at two meetings. The dates of the meetings were 9 September and 22 October 2014. She made no complaint concerning Dr Preston’s conduct before 9 September 2014. That was the obvious reason for Dr Manners specifying that date in the terms of reference. It may also be noted that the date range given in the third item was not confined to 9 September to 22 October 2014, but extended beyond 25 October 2014.
2. Although Dr Morton’s Grievance Document had made allegations concerning Dr Glencross’ conduct since 2012, Dr Glencross’ conduct was not the subject of the inquiry. What Dr Manner’s did, or failed to do in respect of the complaint against Dr Glencross is not the subject of Claim 2.
3. Dr Morton alleges that CSIRO took adverse action against her by permitting Dr Manners to manipulate the terms of reference to reduce the time frame for the review to 9 September to 22 October 2014, rather than from the start of the alleged conduct in 2012. However, it can be seen that she made no allegations against Dr Preston dating back to 2012. There was no such manipulation of the terms of reference by Dr Manners.
4. Dr Morton further alleges that the terms of reference omitted five of her complaints about Dr Preston. Two of these complaints were that Dr Preston said that she was vulnerable to redundancy and that she needed to assure him that her health was up to it. However, the terms of reference specifically state that the suspected misconduct included Dr Preston making discriminatory statements regarding Dr Morton’s health and making statements to the effect that she was vulnerable to redundancy.
5. It is true that the terms of reference did not expressly include allegations that Dr Preston stated that Dr Morton did not have the science to be a leader, that she had a lack of original ideas, and that pursuing an MBA would be a distraction. However, it cannot be accepted that the absence of reference to these statements in the terms of reference was the result of a “manipulation” by Dr Manners. In the Grievance Document, Dr Morton’s focus was on Dr Preston’s comments about her health and vulnerability to redundancy, these matters being mentioned at the beginning and end of the document. In between, Dr Morton quoted from her email to Dr Preston of 25 October 2014, which referred to those comments, as well as the comments about lacking the science to be a leader, lack of original ideas, and an MBA being a distraction. However, the Grievance Document is ambiguous and leaves it uncertain as to whether she was raising the latter three comments as part of her formal grievance. It is unsurprising that they were omitted.
6. In circumstances where Dr Manners did direct that an investigation be conducted into the complaints concerning Dr Preston’s comments about Dr Morton’s health and vulnerability to redundancy, it is improbable that he would have deliberately left out other complaints, if he had understood them to have been made.
7. Dr Morton has the onus of proving that CSIRO took the adverse action she alleges. It was not put to Dr Manners in cross-examination that these omissions were the result of any “manipulation”. It was not put to Dr Manners that he had deliberately left these statements out of the terms of reference. I do not accept that Dr Manners engaged in any manipulation of the terms of reference.
8. It follows that Dr Morton has not shown that CSIRO took adverse action against her by permitting Dr Manners to manipulate the terms of reference to omit investigation of allegations she had made against Dr Preston.
9. Even assuming that the reduction in the time-frame, or the omission of allegations, was adverse action taken by Dr Manners, I would not accept that it occurred because she exercised her workplace rights to make complaints against Dr Glencross and Dr Preston. In circumstances where Dr Manners did direct an investigation be conducted into the allegations against Dr Preston, it is most improbable that he would have deliberately left out some of the allegations made by Dr Morton from the terms of reference *because* she had made complaints about Dr Glencross and Dr Preston.
10. Dr Morton’s pleading also refers to her notifying CSIRO that she wished to lodge a claim for workers’ compensation with Comcare in March 2015, although that is not pleaded as a relevant workplace right in respect of Claim 2. However, in case I am wrong in my understanding, I will indicate that I do not accept that Dr Manners reduced the time frame, or left out three of the allegations made by Dr Morton from the terms of reference, because Dr Morton proposed to make a Comcare claim. Again, it seems most improbable that he would have done that deliberately, when he had in fact directed an investigation into other aspects of Dr Preston’s conduct.
11. I therefore reject Claim 2.

# CONSIDERATION OF CLAIM 3

## The pleaded allegations

1. Claim 3 is pleaded in paragraphs 11 to 13A of the further amended statement of claim. Paragraph 12 alleges that CSIRO contravened s 343 of the FW Act by engaging in certain conduct with the intent to coerce Dr Morton not to exercise certain workplace rights. Paragraph 13 alleges that the same conduct was adverse action taken against her because she exercised such workplace rights in contravention of s 340(1) of the FW Act.
2. Paragraph 12 alleges that the relevant workplace rights were: Dr Morton’s right to make complaints or enquiries; her entitlement to seek Comcare benefits; and her entitlement to initiate or participate in a proceeding under the SRC Act.
3. Paragraph 13A(a) alleges that, upon notifying CSIRO of her intention to lodge a workers’ compensation claim, Dr Morton was met with intimidating and coercive behaviour from Mr Drury, an injury management coordinator. The pleading alleges that on 8 July 2015:
4. Mr Drury telephoned her and said, “Three months off would not do your career any good”;
5. Mr Drury claimed that he was qualified to advise her of this as he was, “a clinician”; and
6. despite medical advice provided by her treating medical practitioner, Mr Drury said he was going to begin to plan her return to work “within the next couple of weeks”.
7. Dr Morton’s pleading goes on to allege in paragraph 13A(b), that Mr Drury first made contact with her in early March 2015, but that she was not notified of the appointment of an investigator into her grievance until 27 March 2017, and that she found this behaviour to be intimidating.
8. Dr Morton’s pleading also alleges in paragraph 13A(c) that Mr Drury, after being informed by Dr Morton that the grievance had yet to be investigated, told her that if she did not file a claim with Comcare, he would ensure that CSIRO would cover the treatment she needed, and that she found that behaviour to be coercive.
9. Paragraphs 13A(d), (e) and (f) respectively allege that CSIRO removed Dr Morton as a team leader, that it decreased her allocation to the Huon project and dismissed her from her employment.

## Dr Morton’s evidence

1. Dr Morton gave evidence that in late March 2015, she applied for Comcare benefits with the assistance of Mr Casson, a claims manager at CSIRO. In April 2015, she received a telephone call from Mr Drury, saying that he was going to take over as her claims manager. Dr Morton’s evidence was that Mr Drury asked if she really needed to file the workers’ compensation claim. She alleged that he said that there were some very senior people within Agriculture that he could speak with and ensure that she would get all of the help that she needed, provided that she did not file the Comcare claim. She said that Mr Drury said that the only reason she was filing a claim with Comcare was because she was unhappy with the way the independent investigation had happened, to which she responded that that could not possibly be the case because she had not even been interviewed yet.
2. Mr Croft said that when Dr Morton got off the phone, she told him that Mr Drury said that if she did not file a Comcare claim, CSIRO would cover her costs.
3. Dr Morton’s workers’ compensation claim was accepted by Comcare on 5 June 2015. Dr Morton consulted Dr Rees on 6 July 2015, and he provided her with a medical certificate stating that she was unfit for work until 6 October 2015. Dr Morton gave evidence that Mr Drury telephoned her on 8 July 2015, having received her email attaching the medical certificate. Dr Morton’s evidence was that Mr Drury proceeded to tell her that “Three months off would not do her career any good”, and that she needed to make herself available for return to work plans within the next week or two. Dr Morton said she explained to him that she did not understand why, because her treating psychiatrist had written her off for three months. Mr Drury kept telling her that she had obligations under the SRC Act, and that the time off would not do her any good. Dr Morton said she interpreted this to mean that if she took three months off, then she would not have a career at CSIRO. She asked Mr Drury about that, and asked why he was insisting that she breach the medical direction not to attend the site. She alleges that Mr Drury then said that he was a clinician, that she had obligations under the SRC Act, that she had to make herself available and that the time off would do her no good. She understood a “clinician” to be someone who is a medically trained doctor.
4. Mr Drury sent an email to Dr Morton on 8 July 2015, referring to employees’ obligations under the SRC Act, and saying that the aim was to provide a combined approach between her doctors, rehabilitation providers, Comcare and CSIRO (through him) to return her to work as quickly as practically possible, based on medical evidence. He said he would be organising an assessment by an independent doctor and a case conference in the following weeks.
5. Mr Drury sent Dr Morton a further email on 23 July 2015, asking if she was available to discuss return to work obligations on 4 or 5 August 2015. Dr Morton responded on the same day, amongst other things, requesting that he no longer telephone her and that he only deal with her in writing. On 24 July 2015, Mr Drury sent Dr Morton an email indicating that he had booked an appointment for her with a psychiatrist for 7 August 2018, and saying he would wait for the report before pursuing any further return to work activities.
6. On 29 July 2015, Dr Morton made a complaint about Mr Drury addressed to Ms Pickering, saying:

Gavin’s first contact with me regarding this claim was to accuse me of only putting in a ComCare claim because I hadn’t obtained a good outcome from the grievance I lodged. It was obvious that Gavin does not believe that I am genuinely injured and I found his remark highly offensive. Reducing sexual assault and harassment, with longer term bullying and harassment by the same perpetrator, to an upset over a grievance outcome couldn’t have been a worse thing for Gavin to have stated to me. It was also factually inaccurate as the grievance procedure had only just started so no outcome had been reached. In fact, I still have not received any advice on the outcome of that grievance. I have no faith that he has any idea for what is best for my recovery and rehabilitation.

As an HSE officer, Gavin’s position comes with responsibilities which he can not meet for me or the organisation unless he recognises what caused my injury, how that has injured me, and ultimately for him to take steps to ensure it can’t happen again to me or to another staff member. I was injured by sexual assault and harassment in conjunction with other bullying and harassment by another (now former) CSIRO employee, all of the information surrounding that was lodged with CSIRO in my grievance. The person who perpetrated those actions upon me may no longer be an employee of CSIRO but as I have pointed out to CSIRO he is still currently present onsite at CSIRO. When is Gavin going to recognise the obvious HSE issues that surround that situation and look into doing something to rectify that situation? I don't think that it is unreasonable that something HSE should action that prior to attempting to get me back on a CSIRO site?

I am not satisfied that Gavin is able to deal with psychological injury effectively, I have voiced that concern elsewhere and requested that he be replaced on my claim with someone that is. But that request seems to have disappeared into a black hole, so it would appear that I have to continue to deal with Gavin. I have yet to receive a reply to the email I sent on Friday. Nor have I received a reply to many of the questions that I have asked Gavin directly, I have attached the email history with the questions that he is avoiding. Can you advise when Gavin will be updating the form for Dr Timmins with the correct information (as identified in Friday’s email)? Can you also please direct Gavin to meet his obligations under the CSIRO Code of Conduct and reply to the questions that I have asked of him? And if he continues to be unwilling to explain his actions and claims regarding my injury, then I would ask that you refer him to the Misconduct procedure for breaching the CSIRO code of conduct.

Lastly, there can not be any doubt that this upcoming assessment with Dr Timmins will force me to have to relive the trauma of the experiences again. I will need to be accompanied by my partner to the assessment with Dr Timmins. My partner will be available to accompany me for an appointment on Tuesday, 11th August. Please have Gavin reschedule the assessment with Dr Timmins for that date or later.

## Mr Drury’s evidence

1. Mr Drury gave evidence that in March 2015, he received documents concerning Dr Morton’s Comcare claim. He telephoned Dr Morton and discussed the Comcare procedures for lodging a claim, and the early intervention process for employees who were ill or injured. Mr Drury said he told her that there were a range of options, and that early intervention could be applied when a Comcare claim was being submitted and would continue up to the point that Comcare made a decision regarding the claim. He said that, depending on what the illness was, allied health professionals could be engaged. In Dr Morton’s case, a psychologist could be appointed, a discussion could occur with a GP, or referral to a specialist could be implemented to assist with her recovery and return to work. Mr Drury denied Dr Morton’s allegation that he accused her of only filing a Comcare claim because she was unhappy with the grievance investigation outcome.
2. Mr Drury said he was aware that Dr Rees had written Dr Morton off from work for three months. He said he told Dr Morton he was concerned that a large amount of time off work would reduce her chances of returning to the workforce successfully. He wanted to ask whether the certificate could be revised, such that they could implement an effective return to work plan. Mr Drury denied that he told Dr Morton, “Three months off would not do your career any good”.
3. Mr Drury said that, in his experience, the longer an employee takes off work, the less successful the outcome of returning to work in a meaningful manner. He was concerned that a lengthy certificate would impede CSIRO’s ability to facilitate a return to work. Mr Drury said that his motive for discussing with Dr Morton the possibility of options to come back to work earlier was to facilitate her good return to work.
4. Under cross-examination, Mr Drury was asked whether, as a case manager, one criterion for assessing how well he was doing was the extent of the reduction of claims. He responded that it was more about facilitating a return to work, and getting people to return to work would reduce CSIRO’s premiums. He denied that he had a vested interest in getting people back to work, saying that his interest was to try and facilitate a wholesome return to work.
5. Mr Drury agreed that he had mentioned to Dr Morton that he was a clinician. He said that he is a clinically trained exercise scientist.
6. Mr Drury denied that he told Dr Morton that he was going to bring her back to work in the next couple of weeks. He denied that he wanted to get Dr Morton back to the workplace as quickly as possible, regardless of the medical certificate she had provided. He denied that he said to Dr Morton, “If you don’t make a claim, CSIRO will pay for all the expenses”. He also denied that he told Dr Morton that her job would be in jeopardy if she made a workers’ compensation claim, and denied that he talked to her in a way that would give her that impression.
7. Mr Drury rejected the suggestion that his motive in dealing with Dr Morton was simply to reduce CSIRO’s workers’ compensation premiums. He said that he tried to look after the injured parties, and any reduction of the premiums would be a by-product of the good work that he did to facilitate a return to work.

## Consideration of the evidence

1. The evidence indicates that, once Dr Morton had the medical certificate from Dr Rees for three months off work on 6 July 2015, she was resistant to any attempt to be independently examined or to consider any measures that might assist her to return to work. That can be seen, for example, in her reluctance to attend the appointment arranged for her by Mr Drury with an independent psychiatrist, Dr Timmins. It can be seen in her resistance to Mr Drury’s suggestion that she might discuss or consider proposals to facilitate her early return to work. Under cross-examination, Dr Morton accepted that when she got the three months’ certificate from Dr Rees, her view was that he was writing her off for three months. Her reluctance to take measures that might assist her to return to work was consistent with her resistance to take Dr Shaw’s later advice that she enrol in a rehabilitation programme. I consider that the terms of Dr Morton’s emails to Mr Drury, and the terms of her complaint about him are consistent with her reluctance to consider any possibility other than remaining off work on Comcare benefits.
2. Mr Drury made it clear in his email of 8 July 2015 that his objective, as an injury management coordinator, was for Dr Morton to return to work as quickly as practically possible, based on medical evidence. That was consistent with his oral evidence. He considered that facilitation of an early return to work would be beneficial for both for Dr Morton and CSIRO.
3. Mr Drury’s aim of facilitating Dr Morton’s return to work was directly opposed to her resistance to a return to work. It was in that context that Dr Morton wrote emails to Mr Drury and Ms Pickering criticising his approach and complaining about his conduct. It is through that lens that Dr Morton’s evidence concerning Mr Drury’s conduct must be viewed. I prefer Mr Drury’s evidence concerning the content of his discussions with Dr Morton. In reaching this conclusion, I also take into account my earlier findings concerning the general lack of reliability of Dr Morton’s evidence.

## Consideration of coercion allegations

### The requirements of s 343(1) of the FW Act

1. Section 343(1) of the FW Act provides, relevantly, that a person must not take or threaten to take any action against another person with intent to coerce the other person to not exercise a workplace right.
2. As I have discussed earlier, coercion under s 343(1) of the FW Act involves two elements, namely an intention to negate choice and the use of unlawful, illegitimate, or unconscionable means in relation to the exercise, non-exercise or proposed exercise of a workplace right. What is required is intent to negate choice, and not merely intent to influence, persuade, or induce.
3. Conduct is illegitimate if it strikes the reasonable observer as seriously contrary to generally held notions of morality. If there is an unconscientious taking advantage of some disabling condition or circumstance that seriously affects the person’s ability to make a rational judgment as to their best interests, there will be unconscionable conduct.
4. In *Australian Building and Construction Commissioner v Hall*, the Full Court held at [40] that if there is a failure to plead the material facts necessary to establish either the first or second element of coercion in s 343, the presumption under s 361 will not operate with respect to the alleged contraventions. The burden will then remain on the applicant to prove that the action was taken with the requisite intent. The Full Court concluded at [41] that the expression “intent to coerce” in the pleading in that case, without more, was so ambiguous that it did not convey the necessary particular intent required for the presumption to operate.
5. Paragraph 12 of the further amended statement of claim alleges that CSIRO contravened s 343 of the FW Act, “by engaging in the conduct alleged in the paragraphs below…with the *intent to coerce* the Applicant to not exercise the following workplace rights…”. In paragraph 13A, the conduct complained of is alleged to be “intimidating” or “coercive”. Having regard to *Hall* at [41], the pleading is inadequate to engage s 361 of the FW Act. The onus remains upon Dr Morton to prove that the actions she alleges were taken with intent to negate her choice to exercise the relevant workplace rights.
6. I will add that even if s 361 of the FW Act were engaged, the outcome would not be different. That is because I accept Mr Drury’s evidence concerning his intentions in his dealings with Dr Morton.

### The allegation that Mr Drury said, “Three months off would not do your career any good”

1. The first allegation of coercive action made against Mr Drury is that on 8 July 2015, he told Dr Morton, “Three months off would not do your career any good”. I do not accept Dr Morton’s evidence that Mr Drury said those words, or words to that effect, but that Dr Morton misinterpreted what was said. I accept that Mr Drury expressed concern, based upon his experience as an injury management coordinator, that a long period of time off work would reduce her chances of successfully returning to the workforce. I accept that his motivation in doing so was to persuade Dr Morton of the benefits of an early return to work. I do not accept that Mr Drury said anything with the intention of negating Dr Morton’s choice to exercise her rights to make complaints or enquiries, seek Comcare benefits, or initiate or participate in a proceeding under the SRC Act. It may also be observed that Dr Morton had, in any event, already made a Comcare claim by 8 July 2015.
2. Further, I do not accept that Mr Drury’s conduct involved the use of any unlawful, illegitimate or unconscionable means in relation to the exercise, non-exercise or proposed exercise of the pleaded workplace rights. It might be suggested that Mr Drury engaged in unconscionable conduct on the basis that Dr Morton had a psychiatric condition. While she may have had some psychiatric symptoms at that time, I consider that she considerably exaggerated them in her reporting to Dr Rees. I do not accept that Dr Morton had any disabling psychiatric condition that seriously affected her ability to make a rational judgment as to her best interests.

### The allegation that Mr Drury represented that he was a clinician

1. The next allegation of coercive action is that Mr Drury represented to Dr Morton that he was a clinician. I accept that Mr Drury said he was a clinician, in the context of the advice he was providing, about the benefits of an early return to work. His purpose was to demonstrate that he was qualified to provide Dr Morton with the advice. I accept that it is true that he was a clinician, in the sense that he was a clinically trained exercise scientist. Contrary to Dr Morton’s suggestion, he did not make any representation that he was a medically trained doctor. I do not accept that Mr Drury said he was a clinician with the intention of negating Dr Morton’s choice to exercise her relevant workplace rights, nor that his conduct was unlawful, illegitimate or unconscionable.

### The allegation that, despite medical advice, Mr Drury said he was going to begin to plan her return to work “within the next couple of weeks”

1. The next allegation of coercive action is that, despite medical advice, Mr Drury said he was going to begin to plan Dr Morton’s return to work within the next couple of weeks. The allegation is ambiguous. It may be an allegation that Mr Drury said that, within the next couple of weeks, he was going to begin to plan her return to work. Alternatively, it may be an allegation that Mr Drury said he was going to begin to plan for her to actually return to work within the next couple of weeks.
2. It is probable that Mr Drury did say words to the effect that, within the next couple of weeks, he was going to begin to planforDr Morton’s return to work. That would be consistent with his email of 8 July 2015, saying that he would be organising an assessment by an independent doctor and a case conference in the following week. Further, it would be consistent with his email of 23 July 2015, asking if Dr Morton was available to discuss return to work obligations on 4 or 5 August 2015.
3. I consider that by telling Dr Morton that, within the next couple of weeks, he was going to begin to plan her return to work, Mr Drury was saying that, over the next couple of weeks, he was going to develop a strategy to attempt to facilitate her return to work, having regard to his concerns about the effect of a long-term absence from work. Such planning was part of his role as an injury management coordinator with CSIRO. I consider that his intention was merely to facilitate her return to work.
4. I do not accept that Mr Drury told Dr Morton that he was going to begin to plan for her return to work within the next couple of weeks with the intention of negating her choice to exercise, or not exercise, her relevant workplace rights, nor that his conduct was unlawful, illegitimate, or unconscionable.
5. The alternative is that Dr Morton is alleging that Mr Drury told her words to the effect that he was going to bring her back to work in the next couple of weeks, in the sense of performing work, or engaging in a rehabilitation program, within a couple of weeks. Mr Drury denied that he said he was going to bring her back to work within a couple of weeks. It is quite improbable that Mr Drury would make any demand that she return to work or participate in a rehabilitation program when she had a psychiatrist’s certificate saying that she was unfit to work. That is especially so when he was organising an independent examination, at which such matters are likely to have been considered. I accept that Mr Drury made no representation that he would require Dr Morton to do anything that conflicted with medical advice. If this is the allegation that Dr Morton is making, I do not accept that Mr Drury told her that he was going to bring her back to work in the next couple of weeks.

### The allegation that Mr Drury contacted Dr Morton in early March 2015 before an investigator had been appointed

1. Another pleaded allegation of coercive action is that Mr Drury first contacted Dr Morton in early March 2015, and that she found this to be intimidating because she was not notified of the appointment of an investigator into her grievance until several weeks later, on 27 March 2015. However, Dr Morton did not give evidence that Mr Drury first contacted her in early March 2015. Her evidence was that she received a telephone call from Mr Drury in April 2015 saying that he was going to take over as her claims manager. Therefore, the conduct alleged has not been proven.

### The allegation that Mr Drury told Dr Morton that if she did not file a Comcare claim, he would ensure that CSIRO would cover the treatment she needed

1. A further allegation of coercive action is that Mr Drury told Dr Morton that if she did not file a claim with Comcare, he would ensure that CSIRO would cover the treatment she needed. I accept Mr Drury’s evidence that he told Dr Morton that there was an early intervention process for employees who were ill or injured, which could continue until Comcare made a decision regarding the claim. I accept that he said that allied health professionals could be engaged to assist with her recovery and return to work. I do not accept that Mr Drury told Dr Morton that if she did not file a claim with Comcare, he would ensure that CSIRO would cover the treatment she needed.
2. Even if I accepted that Mr Drury had said the words attributed to him, I would not accept that he had done so with the intention of negating Dr Morton’s choice to exercise her relevant workplace rights. That would be a mere inducement, rather than an action that would negate choice. Further, Dr Morton has not explained why such conduct would be unlawful, illegitimate or unconscionable.

### The allegations that CSIRO engaged in coercive conduct by removing Dr Morton as team leader, decreasing her allocation to the Huon project, and dismissing her from her employment by making her position redundant

1. Dr Morton’s pleading further alleges that Mr Drury’s coercive conduct included removing her as team leader, decreasing her allocation to the Huon project, and dismissing her from her employment by making her position redundant in circumstances where there was no genuine redundancy. I have already found that Dr Morton was not removed as a team leader, that there were genuine operational reasons for decreasing her allocation to the Huon project, and have considered the circumstances in which her redundancy came about. Mr Drury’s conduct had no connection with these events.
2. I find that CSIRO did not contravene s 343(1) of the FW Act as alleged in Claim 3.

## Consideration of adverse action allegations

### The allegation that Mr Drury said “Three months off would not do your career any good”

1. I have found that Mr Drury did not tell Dr Morton that, “Three months off would not do your career any good”. I have accepted that Mr Drury was concerned that a lengthy period of time off work would reduce Dr Morton’s chances of returning to the workforce successfully, and that he told her of his concerns. There was a benefit for both Dr Morton and CSIRO in her recovery and return to work. In these circumstances, Mr Drury was giving Dr Morton genuine advice, based upon his experience as an injury management coordinator, and that was to her benefit. It did not injure Dr Morton in her employment, alter her position to her prejudice or discriminate between her and other employees. Accordingly, Mr Drury’s comments were not adverse action within the meaning of s 342(1) of the FW Act.

### The allegation that Mr Drury represented that he was a clinician

1. I have found that Mr Drury’s purpose in representing to Dr Morton that he was a clinician was to demonstrate that he was qualified to provide her with the advice he was providing. His representation was true. Making the representation could not injure her in her employment, alter her position to her prejudice, or discriminate between her and other employees. It did not amount to adverse action within the meaning of s 342(1) of the FW Act.

### The allegation that, despite medical advice, Mr Drury said he was going to begin to plan her return to work “within the next couple of weeks”

1. I have explained the context in which I have accepted that Mr Drury said he was going to begin to plan Dr Morton’s return to work within the next couple of weeks. Mr Drury’s planning did not require Dr Morton to do anything. In particular, it did not require her to do anything contrary to medical advice. I accept that he did not say anything indicating that he was going to plan for her return to work in a couple of weeks.
2. Mr Drury saying that he was going to start, within a couple of weeks, to plan her return to work, did not injure Dr Morton in her employment, did not alter her position to her prejudice, and did not discriminate between her and other employees. It was not adverse action within the meaning of s 342(1) of the FW Act.

### The allegation that Mr Drury contacted Dr Morton in early March 2015 before an investigator had been appointed

1. I have already found that this allegation has not been proven.

### The allegation that Mr Drury told Dr Morton that if she did not file a Comcare claim, he would ensure that CSIRO would cover the treatment she needed

1. I have rejected the allegation that Mr Drury told Dr Morton that if she did not file a claim with Comcare, he would ensure that CSIRO would cover the treatment she needed. The advice he gave about the availability of an early intervention process was for her benefit. Mr Drury’s comments did not constitute adverse action within the meaning of s 342(1) of the FW Act.

### The allegations that CSIRO engaged in adverse action by removing Dr Morton as team leader, decreasing her allocation to the Huon project and dismissing her from her employment by making her position redundant

1. Mr Drury’s conduct had nothing to do with removing Dr Morton as team leader, decreasing her allocation to the Huon project, and her redundancy. There was no adverse action taken against her in these respects.
2. I find that CSIRO did not contravene s 340(1) of the FW Act as alleged in Claim 3.

# CONSIDERATION OF CLAIM 4

## The pleaded allegations

1. Claim 4 is contained within paragraphs 14 to 15A of the further amended statement of claim. These paragraphs allege that CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act.
2. Paragraph 15A alleges, inter alia, that Ms Campbell, CSIRO’s General Manager for Health, Safety and Environment, chose not to apply correct policy and procedure to Dr Morton’s complaint against Mr Drury and had no authority to dismiss the complaint.
3. In Dr Morton’s written submissions, she summarises her allegations against Ms Campbell as follows:

Failing to initiate a grievance process as required by the CSIRO Enterprise Agreement 2011–2014 but instead taking action to dismiss Dr Morton’s concerns without following proper procedure thereby altering Dr Morton’s position to her prejudice whereby the conduct complained of would not be investigated leading to an adverse effect or deterioration in the advantages enjoyed by Dr Morton in her ongoing employment.

## The evidence

1. I have already described the series of emails between Mr Drury and Dr Morton, including emails dated 8, 23 and 24 July 2015, and have set out the contents of Dr Morton’s email of 29 July 2015, in which she complained to Ms Pickering about Mr Drury. Ms Pickering responded by email on 29 July 2015, saying that she was no longer supervising Mr Drury and would forward the email to his current supervisor.
2. Mr Drury, Ms Pickering, or both, forwarded Dr Morton’s email to Ms Campbell. Ms Campbell responded to Dr Morton’s email on 3 August 2015 as follows:

Thank you for recent email correspondence and the concerns that you have raised regarding the way your rehabilitation case is being managed by Mr Gavin Drury. I have spoken to Gavin and read the email exchange that has occurred over the past few days. I can clarify the following points.

* Gavin has been appointed as CSIRO’s complex injury management advisor and is the most appropriate CSIRO person to correspond with regarding your Comcare case.
* Gavin was genuine in his concerns for your wellbeing and has been trying to organise a medical assessment to establish your ability to be engaged in a rehabilitation program. He has provided a link to the rehabilitation obligations in an earlier email.
* All staff members are bound by the CSIRO Code of Conduct. Gavin has been working in a professional manner for 18 months as part of the Injury Management Team and his communication with you has been appropriate and informative.
* Gavin regularly communicates with Comcare in relation to your claim and was advised to organise a medical assessment commonly called a S36 Assessment. The notes on file are consistent with the advice Comcare has given.
* Your SAP leave Sick Leave will be reinstated between 30-60 days after CFTOW forms have been signed.
* Although your doctor has given advice that you are not fit to return to work for several months, secondary assessments are normal practice for accepted compensation claims, therefore the correct procedure is being followed by arranging a S36 Assessment.
* The diagnosis from your GP certificate was cut and pasted into the Section 36 referral, this meets Comcare’s requirements and has been clarified with Comcare and does not need to be changed.
* Unfortunately CSIRO does not have control over the times and appointments given out by Medical Providers.
1. Dr Morton did not respond to Ms Campbell’s email. Ms Campbell gave evidence that she investigated Dr Morton’s allegations and concluded that Mr Drury had acted appropriately in his role. She believed she had applied the correct policy and procedure concerning Dr Morton’s complaint. She said she did not document her investigation.
2. In cross-examination, Ms Campbell was taken to the email chain between Dr Morton and Mr Drury. Ms Campbell said that those emails had not come to her attention, and she had not asked to see the correspondence between Dr Morton and Mr Drury. She said she had a general understanding of the case, but not the specifics. Ms Campbell said that in investigating the complaint, she asked Ms Lyons and Mr Beaumont, the internal legal support and workers’ compensation people respectively, about how Mr Drury had managed the case, but did not ask any specific questions related to Dr Morton. She did not give evidence that she spoke to Mr Drury about the complaint against him.
3. Mr Drury prepared a draft response to Dr Morton’s email for Ms Campbell. On 31 July 2015, he sent an email to Ms Campbell saying, “If you can scan down my draft can be cut and pasted into the relevant format that you believe is most appropriate.” Under cross-examination, Ms Campbell acknowledged that Mr Drury, “prepared some draft points for me”. Ms Campbell cut and pasted almost the whole of Mr Drury’s draft into the email she sent to Dr Morton on 3 August 2015. There was no part of the email to Dr Morton that Ms Campbell composed herself.
4. Dr Morton had attached her email exchanges with Mr Drury to her email of 29 July 2015 to demonstrate, “the questions he is avoiding”. In Ms Campbell’s email of 3 August 2015, drafted by Mr Drury, she said, “I have spoken to Gavin and read the email exchange that has occurred over the past few days”. Ms Campbell’s representation that she had read the emails was false, in light of her admission under cross-examination that she had not read the emails between Dr Morton and Mr Drury.
5. In addition, I am not satisfied that Ms Campbell spoke to Mr Drury. Ms Campbell was obviously in the best position to give evidence about what she did to investigate Dr Morton’s complaint. Neither Ms Campbell nor Mr Drury gave evidence that they spoke about Dr Morton’s complaint. There are no emails in evidence suggesting that they spoke. I infer that they did not speak about Dr Morton’s complaint.
6. Further, I do not accept that Ms Campbell specifically sought advice about Dr Morton’s complaint. Her evidence was merely that she sought advice from Ms Lyons and Mr Beaumont about how Mr Drury had managed the case, but that she did not ask any specific questions related to Dr Morton. She did not give evidence about how or what Ms Lyons and Mr Beaumont knew about Mr Drury’s conduct of the case, or how their advice was relevant to Dr Morton’s complaint. Ms Campbell did not give evidence that she took any other steps to investigate or address Dr Morton’s complaint. In addition, if Ms Campbell had conducted any more than the most cursory investigation of Dr Morton’s complaints, it is likely that there would have been some documentary trail.
7. I find that the only action Ms Campbell took to investigate or address the complaints Dr Morton made in her email of 29 July 2015 was to have a discussion with Ms Lyons and Mr Beaumont and copy, paste and send Mr Drury’s draft email to Dr Morton. The issue that arises is whether Ms Campbell was required to do anything more.

## Whether Ms Campbell complied with the Grievance Procedures

1. I have already described the Grievance Procedures under the Enterprise Agreement.
2. Dr Morton’s email of 29 July 2015 can be characterised as raising concerns about decisions or actions connected with her employment. They were not merely concerns about workers’ compensation, but extended more broadly to Mr Drury’s conduct in the context of CSIRO’S management of her rehabilitation and return to work. Accordingly, the concerns raised in Dr Morton’s email were covered by the Grievance Procedures in Sch 4.
3. Step 1 of the Informal Resolution process requires the officer to discuss the matter with “their manager” in an effort to reach a resolution and to explain, inter alia, the action or decision that is the cause of the complaint, and the preferred outcome or result they are seeking. Although the complaint was not made to her manager, Dr Cook, Dr Morton made the complaint to the person she thought was Mr Drury’s manager. Ms Campbell gave evidence that she investigated the allegations and concluded that Mr Drury had genuine concerns and acted appropriately.
4. Dr Morton’s complaint must be regarded as engaging Stage 1 of the Informal Resolution process (the terms of the complaint do not suggest that the Formal Resolution process was engaged). CSIRO has not submitted that the Grievance Procedures were not engaged.
5. Dr Morton’s email raised complaints that: Mr Drury had accused her of only putting in a Comcare claim because she had not obtained a good outcome from the grievance she lodged; that he did not believe that she was genuinely injured; that she had no faith that he had any idea what was best for her recovery and rehabilitation; that he was not able to deal with her psychological injury effectively; and that he had not responded to questions she had asked.
6. Step 1 of the Informal Resolution process does not expressly impose an obligation on the manager to do any particular thing. However, when read with the Manager’s Responsibilities, it is apparent that managers are required to take steps to address the concerns raised by staff and attempt to resolve any issues. Logically, to be able to address and resolve the concerns and issues, managers must at least ascertain what they are. When complying with the requirements of Step 1, managers are required to comply with the CSIRO Code of Conduct and Values.
7. Ms Campbell spoke to Ms Lyons and Mr Beaumont about Mr Drury’s handling of the case. However, she did not ask any specific questions about Dr Morton. There is no evidence about terms of the discussions, and what, if anything, Ms Lyons and Mr Beaumont knew about Mr Drury’s handling of the case. The only other step Ms Campbell took was to cut and paste Mr Drury’s draft and email it to Dr Morton.
8. Ms Campbell did not speak to Mr Drury, or read the emails between Dr Morton and Mr Drury. That contrasts with her statement in her email to Dr Morton that, “I have spoken to Gavin and read the email exchange that has occurred over the past few days”. Ms Campbell did not give any explanation for why she had not read or request the emails, even though they were specifically mentioned in Dr Morton’s complaint. She simply accepted Mr Drury’s response to the complaint against him without questioning him about its accuracy.
9. It is consistent with Ms Campbell failing to properly investigate Dr Morton’s complaint, that she failed to address all the issues raised in Dr Morton’s email. The issues not addressed were the accusation allegedly made by Mr Drury and his failure to respond in a timely way to Dr Morton’s questions. Further, it may be noted that Ms Campbell gave no indication that the email had been drafted by Mr Drury and that she had merely cut and pasted it.
10. In these circumstances, Ms Campbell failed to comply with her obligations under the Grievance Procedures to take steps to address Dr Morton’s concerns and attempt resolve those concerns in accordance with the requirements of the CSIRO Code of Conduct, which required her to act ethically and in good faith, and perform her duties competently with professionalism, honesty and integrity. She was required to do more than merely speak to Ms Lyons and Mr Beaumont, and more than merely cut and paste Mr Drury’s draft and send it to Dr Morton. Compliance with her obligations would have required Ms Campbell to at least read the email exchange to ascertain exactly what Dr Morton’s complaint was. It would have required that she not merely cut and paste Mr Drury’s response to the complaint made against him. Further, her obligations required that she not mislead Dr Morton by saying that she had read the emails and spoken with Mr Drury about the complaints when she had not done so. I am satisfied that Ms Campbell dismissed Dr Morton’s complaint without complying with at least her obligation under the Grievance Procedures of the Enterprise Agreement to perform her duties with professionalism.

## Whether there was a contravention of s 340(1) of the FW Act

1. Dr Morton had an entitlement under the Enterprise Agreement to have her complaints dealt with in accordance with the Grievance Procedures. Ms Campbell’s actions deprived Dr Morton of that entitlement, and accordingly altered her position to her prejudice.
2. Dr Morton exercised her entitlement to make a complaint about Mr Drury’s conduct under the Grievance Procedures in the Enterprise Agreement. Despite Dr Morton’s reluctance to engage in any consideration of measures to facilitate an early return to work, I am satisfied that her complaint was genuine and made for a proper purpose. I consider that she misinterpreted much of what Mr Drury said and failed to understand that it was ultimately in her own interests to achieve a return to work, but that she genuinely believed that Mr Drury was acting unprofessionally and contrary to her interests. She made the complaint for a proper purpose, namely having the allegedly improper behaviour addressed. Dr Morton was “able to make a complaint” in relation to her employment pursuant to the Enterprise Agreement. That was a “workplace right” under s 341(1)(c) of the FW Act.
3. Pursuant to s 360(1) of the FW Act, the onus is upon CSIRO to prove that the adverse action was not taken *because* Dr Morton exercised her workplace right. In her evidence, Ms Campbell maintained that she had applied the correct policy and procedure concerning Dr Morton’s complaint. In response to a broad question from CSIRO’s counsel asking whether she made any decision relating to Dr Morton because she made complaints about CSIRO staff, Ms Campbell said, “Your Honour, I did not make any decisions based on that.”. Having regard to the obvious inconsistency between the statement in Ms Campbell’s email that she had read the emails between Dr Morton and Mr Drury, and her admission under cross-examination that she had not done so, I am not prepared to accept evidence of such generality. Ms Campbell gave no evidence specifically addressing the allegation that she dismissed the complaint without complying with her obligations under the Grievance Procedures because Dr Morton had exercised her workplace right to make a complaint about Mr Drury. I am not satisfied that CSIRO has discharged its onus of proof.

## Vicarious liability

1. Section 793(1) of the FW Act provides, relevantly, that any conduct engaged in on behalf of a body corporate by an employee of the body within the scope of his or her actual or apparent authority is taken, for the purposes of the FW Act, to have been engaged in by the body.
2. Ms Campbell gave evidence that she had authority to deal with Dr Morton’s complaint against Mr Drury under the Grievance Procedures. She investigated the complaint on behalf of CSIRO.
3. I find that CSIRO is taken to have engaged in the conduct engaged in by Ms Campbell. Accordingly, the effect of s 793(1) is CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act.

## Other matters

1. Dr Morton also alleges in Claim 4 that CSIRO took adverse action against her by Mr Drury ignoring her request to provide her with the name of his supervisor so that she could exercise a workplace right to make a complaint about his behaviours. Mr Drury’s evidence was he did not provide Dr Morton with the name of his supervisor because he did not have a supervisor at that time, but he did forward her concerns to Ms Campbell. I accept Mr Drury’s evidence. Mr Drury did not ignore Dr Morton’s request. Therefore, Dr Morton has not demonstrated that the adverse action she pleads was taken against her. Further, even if there was adverse action, I would not accept that Mr Drury took it because Dr Morton proposed to exercise a workplace right to make a complaint against him. That is because he did forward the email to Ms Campbell.
2. Dr Morton alleges that Dr Cook also took adverse action against her by failing to respond to the request that she made to Mr Drury for the name of his supervisor, despite being copied into the email. This may be an allegation that Dr Cook failed to comply with the Grievance Procedures in the Enterprise Agreement. However, merely asking Mr Drury for the name of his supervisor so that Dr Morton could make a complaint to that supervisor was not a complaint made to Dr Cook. There was nothing that Dr Cook was required to do under the Grievance Procedures, as they had no application to Dr Morton’s request. There was no adverse action in that respect.
3. Dr Morton pleads as part of Claim 4 that Ms Pickering responded to her complaint of 29 July 2015 by saying that she was no longer Mr Drury’s line manager, and copying Ms Campbell into the response. It has not been demonstrated that Ms Pickering’s response was false. It is impossible to see how her response could be adverse action.

# CONSIDERATION OF CLAIM 5

1. Claim 5 is found within paragraphs 16 to 18A of the further amended statement of claim. Paragraph 17 alleges that CSIRO contravened s 343 of the FW Act by engaging in conduct with intent to coerce Dr Morton to not exercise her workplace rights to entitlement to benefits under the SRC Act and not to initiate or participate in proceedings under the SRC Act.
2. The coercive actions relied upon are Mr Drury telling the applicant, “Three months off would not do your career any good”, claiming he was a clinician, and a third allegation that:

Mr Drury went on to stress the obligations the Applicant had under the SRC Act to begin to plan her return to work, “within the next couple of weeks”.

1. The only discernible difference between Dr Morton’s pleading of contravention of s 343 of the FW Act in Claim 3 and in Claim 5 is that in the former, the third allegation was that:

Despite the medical advice, Mr Drury was going to begin to plan her return to work, “within the next couple of weeks”.

1. Dr Morton gave evidence that Mr Drury told her she had obligations under the SRC Act and she “needed to make [herself] available for return to work plans within the next week or two”. I accept that something to that effect may have been said. That would be consistent with Mr Drury saying that he was going to organise an assessment by an independent doctor and a case conference in his email of 8 July 2015, and consistent with his email of 23 July 2015, asking if Dr Morton was available to discuss return to work obligations on 4 or 5 August 2015. An independent examination, a case conference, and a discussion can be considered a part of return to work plans. However, Dr Morton gave no evidence that Mr Drury told her that she had, “obligations…under the SRC Act to begin to plan her return to work within the next couple of weeks”.
2. In any event, I would not accept that telling Dr Morton that she had obligations under the SRC Act make herself available for return to work plans within the next week or two is indicative of an intention to negate her choice to exercise her workplace rights to benefits under the SRC Act, or initiate or participate in proceedings under the SRC Act. That statement does not indicate that Mr Drury sought to compel her to return to work or to act contrary to the medical advice. I consider that Mr Drury’s intention was to facilitate Dr Morton’s return to work for her own benefit and the benefit of CSIRO. Further, there was nothing about his conduct that was such unlawful, illegitimate, or unconscionable.
3. I have otherwise dealt with the allegations in Claim 5 in my consideration of Claim 3. I find that CSIRO did not contravene s 343(1) of the FW Act as alleged in Claim 5.

# CONSIDERATION OF CLAIM 6

1. Claim 6 is contained in paragraphs 19 to 20A of the further amended statement of claim. Paragraph 20A alleges that CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act by: placing her on SWO2 (Sick Without Pay Type 2) leave instead of SWO1 (Sick Without Pay Type 1) leave; logging Dr Morton’s unpaid sick leave beyond the date of her medical certificates; decreasing her allocation to the Huon project; transferring her allocation on the Huon project to another staff member; and dismissing her from her employment by making her position redundant in circumstances where there was no genuine redundancy.
2. Claim 6 has not been addressed in Dr Morton’s written or oral submissions. However, as the claim has not been expressly abandoned, it remains necessary to consider it.
3. I will deal first with the allegation that CSIRO took adverse action against Dr Morton by placing her on SWO2 leave instead of SWO1 leave.
4. Mr Miller is CSIRO’s payroll manager. He gave evidence that he generally does not make entries concerning employee’s leave into the CSIRO system. That task is usually done by Ms Gaal or Ms Gaspari. Following a decision by Comcare to revoke its decision to accept Dr Morton’s claim, Mr Miller received an email from Mr Frank O’Donnell on 15 October 2015, asking him to, “revert Katherine to sick leave without pay from your cut-off next week.”. Mr Miller decided to “action” the request in the email himself, because neither Ms Gaal nor Ms Gaspari were at work at the time. His evidence was that, “I processed it to ensure we didn’t have an overpayment.” Mr Miller gave evidence that, when processing the request, he entered the wrong leave type. He chose “SW02”, when it should have been “SW01”. Mr Miller said he became confused because he does not put these entries in very often.
5. The error was adverse action within s 342(1) of the FW Act. The error had no permanent effect. It was rectified by Mr Gaspari on 21 July 2016 with retrospective effect. However, until it was rectified, Dr Morton did not accrue recreational leave and superannuation. Even though the effect was temporary, it altered Dr Morton’s position to her prejudice until it was rectified. The definition of adverse action in s 342(1) is not limited to permanent injury, alteration of employment or discrimination.
6. However, I do not accept that Mr Miller took the adverse action *because* Dr Morton had or exercised any workplace right to make a complaint or inquiry. I accept Mr Miller’s evidence. It was an innocent mistake.
7. Dr Morton alleges that CSIRO took adverse action against her by logging her unpaid sick leave beyond the date of her medical certificates. Ms Gaspari gave evidence about the allegation about that issue. She said that the circumstance related to Dr Morton being on sick leave without pay after Comcare had revoked its decision to accept her claim. Dr Morton had sought review of Comcare’s decision. Ms Gaspari understood that the application for review could take some time to resolve. In the meantime, the Salary and Entitlements team would have to enquire each fortnight whether the situation had changed. To avoid this, it was decided to log Dr Morton as being on sick leave without pay for six months, on the basis that Ms Gaspari would inform the Salary and Entitlements Team as soon as there was a determination.
8. Therefore, logging Dr Morton on sick leave for six months, even though that period extended beyond the length of her medical certificate, was simply a matter of administrative convenience. It did not have the sinister connotation that Dr Morton seems to allege.
9. The administrative recording of Dr Morton as being on sick leave without pay for six months had no adverse effect upon Dr Morton or her entitlements. It did not injure her in her employment, alter her position to her prejudice, or discriminate between her and other employees. It was not adverse action within s 342(1) of the FW Act.
10. Even if it was adverse action, I would not accept that it was taken *because* Dr Morton had or exercised any workplace right to make a complaint or inquiry. I accept Mr Gaspari’s evidence that it was done as a matter of administrative convenience.
11. In considering Claim 1, I have already dealt with the reasons for decreasing Dr Morton’s allocation to the Huon project, transferring her allocation to that project to another staff member and making her position redundant. That had no connection with Dr Morton being recorded as being on sick leave without pay for six months, or having or exercising any workplace right to make a complaint or inquiry.
12. I find that CSIRO did not contravene s 340(1) of the FW Act as alleged in Claim 6.

# CONSIDERATION OF CLAIM 7

1. Claim 7 has been expressly abandoned.

# CONSIDERATION OF CLAIM 8

1. Claim 8 is contained within paragraphs 27 to 28A of the further amended statement of claim. Those paragraphs allege that CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act.
2. Paragraph 28A alleges that the adverse action includes not making Dr Morton aware of, or offering her, the position in Hobart as a Senior Research Scientist advertised on 22 September 2016, and failing to undertake the mandatory redeployment process. The paragraph also alleges that the adverse action includes Ms Walsh advising Dr Morton that she had been made redundant under the policy for voluntary redundancy, telling her that Mr Roy had given approval for the redundancy to proceed but that further approval was required from Dr Manners and writing to her saying that she had become redundant.
3. Dr Morton’s written and oral submissions have not expressly addressed Claim 8. However, it is necessary to deal with it, as it has not been expressly abandoned.
4. I have already held that there was no failure by CSIRO to comply with the redeployment process under the Enterprise Bargaining Agreement. Dr Morton had indicated in writing that there were no locations within CSIRO that were suitable for her. Further, the evidence of Dr Cook and Dr Wade, which I accept, is that Dr Morton was not qualified for the Senior Research Scientist position. Further, Dr Cook considered that Dr Morton could not acquire the level of expertise necessary for that position within a period of six months. In these circumstances, CSIRO was not required to notify Dr Morton of, or appoint her to the position as part of redeployment process.
5. It may also be noted that Dr Morton was aware of the vacancy, but did not apply for it. She failed to provide her CV to Ms Walsh as requested. Dr Morton clearly did not want the position—she wanted a redundancy. I cannot see how the failure to notify her of the vacant position, or appoint her to the position, could cause her injury in her employment, or alter her position to her prejudice in these circumstances. There is no suggestion that, in this respect, CSIRO discriminated between Dr Morton and other employees. There was no adverse action.
6. I do not accept that Ms Walsh’s emails to Dr Morton concerning her redundancy amounted to adverse action. Even if it did, I would not accept that it was adverse action taken against Dr Morton *because* she had or exercised the workplace rights she pleads. I have already considered the circumstances in which her position came to be made redundant.
7. I reject the allegation in Claim 8 that CSIRO contravened s 340(1) of the FW Act.

# CONSIDERATION OF CLAIM 9

1. Claim 9 is described in paragraphs 29 to 30A of the further amended statement of claim. Those paragraphs allege that CSIRO took adverse action against Dr Morton in contravention of s 340(1) of the FW Act.
2. Paragraph 29 pleads that Dr Morton had a workplace right to make a complaint or inquiry in relation to her employment, and exercised that right by emailing Ms Gaal on 20 September 2016 regarding being logged on SWO2 unpaid leave until 8 February 2017 despite Comcare having accepted liability for her injury more than a month prior.
3. Paragraph 30 pleads that CSIRO took adverse action against Dr Morton because she exercised that workplace right. The adverse action is said to consist of injuring Dr Morton in her employment (particularised as psychiatric injury, including Major Depressive Disorder), altering her position to her prejudice, and discriminating between her and other employees. Paragraph 30A(a) alleges that the adverse action involved manually reducing Dr Morton’s recreational leave balance downwards by 73.5 hours in response to an email on 23 September 2016.
4. Unfortunately, Claim 9 has not been referred to in Dr Morton’s written or oral submissions, so the difficulty of understanding her pleaded allegations has not been alleviated.
5. Dr Morton’s application for workers’ compensation benefits had initially been accepted by Comcare on 5 June 2015, but was revoked on 19 August 2015 after CSIRO sought review of the decision.
6. Dr Morton gave evidence that when the decision to accept her workers’ compensation claim was revoked, CSIRO placed her on sick leave, and when the sick leave ran out, she was placed on recreational leave. She had some recreational leave that had been booked for 3 November to 20 November 2015, but CSIRO changed that leave to a period in October 2015. Dr Morton did not authorise that change. Then the recreational leave was stopped and she was placed on unpaid leave on 7 October 2015. After Dr Morton was placed on unpaid leave, she had no income. It took until 6 October 2016 for CSIRO to sort out her entitlements. She said she has not received all of her entitlements even now, and considered that she was entitled to some 75 hours of recreational leave.
7. Ms Gaal dealt with issues concerning Dr Morton’s leave. She was aware that on 19 August 2015, Dr Morton’s workers’ compensation claim had been denied. On 20 August 2015. She ceased the compensation leave and returned it to sick leave in the system and, at some point, she changed it to recreational leave. She did that because Dr Morton’s paid sick leave was exhausted, and recreational leave was the next form of leave to be used.
8. Dr Manners wrote an email to Dr Morton dated 28 August 2015 requesting clarification as to whether she wanted to access recreational leave following the deletion of personal leave, or whether she wanted to access leave without pay. Ms Gaspari said that enquiry was necessary because when an employee exhausts their available sick leave, their status normally defaults to sick leave without pay. To prevent financial hardship, CSIRO offers the ability to use available paid entitlements such as recreational leave. Dr Morton did not respond to Dr Manners’ email.
9. Ms Davis wrote to Dr Morton on 1 September 2015 saying that, in the absence of a response to Dr Manners’ email, it had been decided that recreational leave would be entered instead of unpaid leave, so as not to have an impact upon her next pay. The email said that if this was not Dr Morton’s wish, she should let Ms Davis know immediately so she could correct it. Sick leave had been entered on her behalf from 27 August to 3 September and recreational leave from 4 September to 2 October. Ms Davis noted that Dr Morton had entered recreational leave from 3 to 20 November and asked whether she wanted to withdraw that entry and make use of that leave following 2 October 2015. Dr Morton did not respond to that email.
10. On 1 September 2015, Ms Davis sent an email to the HR Service Centre saying, “Katherine’s claim’s been denied, we need to order a new leave type before payroll cut off”. Ms Davis gave evidence that she did this because otherwise Dr Morton would not receive any income, given that her Comcare claim had been denied. Ms Davis said she made the change to the leave type so that Dr Morton would not be disadvantaged by a lack of pay.
11. Ms Gaspari referred to an email exchange with Dr Morton ending on 21 September 2015. Ms Gaspari explained that there was future recreational leave recorded for Dr Morton in the system, and as they knew she was about to be on leave without pay, the question was asked whether she wanted the leave to be utilised earlier so that she would continue to be paid. She said that they tried to avoid financial impact if possible.
12. Mr Croft sent an email to Ms Davis using Dr Morton’s CSIRO email address on 25 September 2015, complaining about CSIRO logging Dr Morton’s leave as it saw fit. The email also said that Dr Morton was requesting that the recreational leave be reinstated.
13. Ms Davis forwarded Mr Croft’s email to Ms van Schieveen on 28 September 2015. Ms van Schieveen replied to Ms Davis on 14 October 2015 stating that there should be an entry of sick leave without pay.
14. On 20 September 2016, Dr Morton wrote to Lynne Gaal, a service advisor in HR Services, enquiring about replacement of her leave with compensation leave. She complained, amongst other things, about CSIRO having ceased contributing to her superannuation fund, and the length of time it was taking for her entitlements to be sorted out, despite Comcare having accepted her claim again over four weeks earlier.
15. On 23 September 2016, Ms Gaal responded to the issues raised by Dr Morton on 20 September 2016, and set out the arrangements that had been, or would be, put in place.
16. On 25 September 2016, Dr Morton wrote to Ms Gaal pointing out a discrepancy between Comcare’s and CSIRO’s end date for the first 45 weeks of compensation and asking how that would affect her superannuation. On 29 September 2016, Ms Gaal responded clarifying the end date and the position in respect of superannuation contributions.
17. Dr Morton received back pay from CSIRO in about October 2016. She was paid $105,091.58.
18. In her evidence, Ms Gaspari referred to Dr Morton’s final payslip. It indicated the hours and values of leave paid to her on her cessation. Ms Gaspari gave evidence that she checked whether Dr Morton was paid the correct amount for her accrued annual leave. She confirmed that the amount was accurate.
19. I am satisfied that the relevant CSIRO employees, Ms Davis and Ms Gaal, arranged for Dr Morton’s recreational leave entitlements to be brought forward and used when her workers’ compensation benefits were cut-off. They did this because otherwise Dr Morton’s income would have been suddenly cut off and they did not want her to be disadvantaged by this. When Dr Morton, through Mr Croft, indicated that she wanted the entries reversed, that was done. I am satisfied that she received the whole of her recreational leave entitlements, and that, contrary to her assertion, there is no missing 73.5 hours of leave entitlements she was not paid.
20. I cannot see that any of the events described above amounted to adverse action taken against Dr Morton. There was no injury, alteration of her position to her prejudice, or discrimination against her, by having her recreational leave entitlements brought forward so that she would not be left without income. She has not demonstrated that she suffered any loss or disadvantage.
21. Further, I am not satisfied that there was any reduction of Dr Morton’s recreational leave balance by 73.5 hours in response to the email to Dr Morton on 23 September 2016, as is pleaded in paragraph 30A(a) of the further amended statement of claim.
22. Even if there was adverse action, I would not be satisfied that it was taken because Dr Morton exercised the workplace right alleged. Rather, the CSIRO staff acted genuinely in what they thought was Dr Morton’s best interests. I would not accept that they took any adverse action because she exercised her right to make a complaint or inquiry by her email of 20 September 2016.
23. Paragraph 30A(b) alleges that CSIRO failed to properly consider, investigate, or act on, the complaints as alleged in Dr Morton’s pleading. That appears to refer to the allegation pleaded in paragraph 29, that on 20 September 2016, Dr Morton emailed Ms Gaal regarding being logged on SWO2 unpaid sick leave. However, Ms Gaal provided a detailed response on 23 September 2016 indicating what had been done, and what would be done to regularise the position. When Dr Morton then raised further queries on 25 September 2016, Ms Gaal investigated and responded on 29 September 2016. I am satisfied that Ms Gaal properly considered, investigated and acted upon Dr Morton’s complaints.
24. The allegation in paragraph 30(b) may alternatively be understood a sweeping allegation that CSIRO failed to properly consider, investigate, or act on, any of the complaints referred to in the pleading. If so, it simply seems to repeat allegations made under Claims 1A, 1 and 5. I have already dealt with those allegations.
25. I reject Claim 9.

# CONSIDERATION OF COMPENSATION

1. In respect of Claim 4, I have found that CSIRO contravened s 340(1) of the FW Act by taking adverse action against Dr Morton because she exercised her workplace right to make a complaint about Mr Drury. The adverse action consisted of Ms Campbell failing to comply with the Grievance Procedures under the Enterprise Agreement when dismissing Dr Morton’s complaint. Ms Campbell’s actions deprived Dr Morton of an entitlement CSIRO had agreed to provide her with under the Enterprise Agreement. This, was an alteration of Dr Morton’s position to her prejudice.
2. Paragraph 30B of the further amended statement of claim alleges that as a result of CSIRO’s contraventions of the FW Act, Dr Morton has suffered, and continues to suffer, hurt, humiliation, and loss. The loss is alleged to be a psychiatric injury, including Major Depressive Disorder which prevents her from participating in any form of employment.
3. Section 545 of the FW Act provides, relevantly:

*Federal Court and Federal Circuit Court*

1. The Federal Court or the Federal Circuit Court may make any order the court considers appropriate if the court is satisfied that a person has contravened, or proposes to contravene, a civil remedy provision.

…

 (2) Without limiting subsection (1), orders the Federal Court or Federal Circuit Court may make include the following:

…

(b) an order awarding compensation for loss that a person has suffered because of the contravention;

…

1. In *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* (2018) 350 ALR 190; [2018] HCA 3 at 103, the plurality held at 103:

[T]he first and most immediate point of significance is the breadth of the terms in which s 545(1) empowers the court to make *any order the court considers appropriate*. What is "appropriate" for the purpose of s 545(1) falls to be determined in light of the purpose of the section and is not to be artificially limited. As the ABCC submitted, such broad terms of empowerment are constrained only by limitations that are strictly required by the language and purpose of the section.

(Citations omitted.)

1. In *Australian Licensed Aircraft Engineers Association v International Aviation Services Pty Ltd* (2011) 193 FCR 526, Barker J held at [447] that the Court has the power under s 545(2) to order compensation in respect of non-economic loss for distress, hurt, or humiliation: see also *Transport Workers Union of Australia v No Fuss Liquid Waste Pty Ltd* (2011) FCA 982; *Whelan v Cigarette & Gift Warehouse Pty Ltd* (2017) 275 IR 285; [2017] FCA 1534 at [303]; *Dafallah v Fair Work Commission* (2014) 225 FCR 559 at 179.
2. In *Maritime Union of Australia v Fair Work Ombudsman* [2015] FCAFC 120, the Full Court held at [28] that it is necessary for there to be a causal connection between the contravention and the loss claimed: see also *Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (The Hutchinson Ports Appeal)* [2019] FCAFC 69 at [132].
3. I have concluded that Dr Morton substantially exaggerated her psychiatric symptoms to Dr Rees and Dr Mathew. While I cannot exclude the possibility that Dr Morton has, or has had, some form of psychiatric condition, I am satisfied that it is not Major Depressive Disorder or Agoraphobia. Further, I am not satisfied that any psychiatric condition that Dr Morton has, or has had, is causally related to any of the claims made in her further amended statement of claim. In addition, I am not satisfied that she is unable to participate in any form of employment. To the contrary, my observation of her in the witness box is that she is a very capable and mentally sharp person who could find employment if she chose to do so. Further, Dr Morton’s ability to complete a MBA with exceptional grades, together with her ability to undertake the variety of activities referenced in her Facebook posts, indicates that she has substantial capacity for employment.
4. In relation to Claim 4, I do not accept that the adverse action taken by CSIRO caused, contributed to, or exacerbated, any psychiatric condition that Dr Morton has or had. The adverse action took place between 29 July and 3 August 2015. That was after Dr Morton had ceased work on 6 July 2016, with a certificate from Dr Rees stating that she had a psychiatric condition that made her unable to work. Dr Morton has not given or provided any evidence that any psychiatric symptoms she was experiencing were exacerbated by Ms Campbell’s failure to properly deal with her complaint against Mr Drury.
5. Dr Morton gave evidence that Ms Campbell’s email of 3 August 2015 had stated rather generically that Mr Drury was acting in her best interests. Dr Morton said she did not believe that Ms Campbell engaged with anything she had alleged in her emails. She said she felt like her complaint had been swept aside.
6. If Dr Morton’s complaint had been dealt with by Ms Campbell in compliance with the Grievance Procedures, I am satisfied that the outcome would not have been materially different.
7. I accept that, in circumstances where Dr Morton was deprived of her right to have her complaint properly dealt with under the Enterprise Agreement, she felt disappointed and dissatisfied. Although Dr Morton’s disappointment does not rise as high as hurt, humiliation or distress, I consider that it is a form of compensable non-economic loss. I find that $1,000 is an appropriate amount of compensation.
8. I will make a declaration reflecting my findings in relation to Claim 4.

# CONCLUSION

1. I have rejected Claims 1A–3 and Claims 5–9 as pleaded in the further amended statement of claim.
2. However, I have upheld Claim 4, which alleges that CSIRO contravened s 340(1) of the FW Act by reason of Ms Campbell dealing with Dr Morton’s complaint against Mr Drury contrary to the requirements of the Grievance Procedures under the Enterprise Agreement.
3. On 19 April 2018, I ordered that the questions of whether the respondent contravened the FW Act, and any compensation arising from any such contraventions be heard separately from, and prior to, the questions of any penalties and other relief.
4. Accordingly, it will be necessary to hear the parties as to penalty and any other relief in respect of Claim 4. I will also hear the parties as to costs.

|  |
| --- |
| I certify that the preceding six hundred and sixty-six (666) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Rangiah. |

Associate:

Dated: 29 October 2019

**APPENDIX TO REASONS FOR JUDGMENT**

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## Evidence of Dr Morton

### Evidence-in-chief

1. Dr Morton commenced employment at CSIRO on 12 March 2012 as a Level 6 scientist. After a few months, Dr Cook was appointed as the team leader for Dr Morton’s group and he became her line manager.
2. Dr Preston was the “theme” leader, overseeing three “streams”. Dr Morton was a member of one of the streams, namely, Aquaculture. Dr Glencross was the leader of that stream and was her direct supervisor.
3. About six weeks after Dr Morton commenced at CSIRO, she was invited by Dr Glencross on a work trip to Cairns and Townsville. Her evidence is that, at the James Cook University campus in Townsville, Dr Glencross noticed a young female Asian student, and commented that he was not attracted to Asians, but that he found Eurasians particularly sexually attractive. Dr Glencross then asked Dr Morton what her sexual preference was. She did not respond to his question. She said it made her feel extremely uncomfortable and shocked. At the time she did not have a specific line manager, but she may have mentioned the incident at a later date to Dr Cook.
4. Dr Morton attended the Aquaculture Australia Conference in Melbourne, which commenced on 2 May 2012. One evening Dr Glencross, Mr Marty Phillips and Dr Morton were having a conversation about barramundi and the aquaculture industry. Dr Morton said that, when she smiled at something Mr Phillips had said, Dr Glencross remarked, “You know you have crows-feet when you smile”. Dr Morton tried to ignore the comment and continued with the conversation. She felt stunned, and shocked and then quite humiliated and confused.
5. Dr Morton gave evidence that, on the first day of the Aquaculture Australia Conference, she commented to Dr Glencross that people in Melbourne were better dressed than people in Brisbane, and she should probably have worn some smarter clothes, rather than jeans, to the opening drinks and reception. She said that she had a nice Prada cocktail dress which would probably have been more suitable, to which Dr Glencross responded, “What, were you a prostitute?” Dr Morton replied, “No, I bought it with my own money in Dubai”. She told Dr Glencross that the dress cost around $5,000, or $6,000. Dr Morton said she felt humiliated, shocked, and upset. She did not hear Dr Glencross speaking to any males at the conference in the same way.
6. Dr Morton gave evidence that, when she returned to Brisbane, she told Dr Cook about the incidents at the conference at a meeting over coffee. Dr Cook brushed off these events and made statements like, “That’s the sort of thing Brett does”. Dr Morton said she used totell Dr Cook that this was not a reasonable way to behave in the workplace. They had a lot of discussions about Dr Glencross’ behaviour, and it largely seemed to be swept aside.
7. On 13 August 2012, CSIRO staff received a newsletter containing a photograph of Dr Morton. Dr Cook sent an email to Dr Morton saying, “Is that crows-feet!” Dr Morton said she felt upset and disappointed, as she had complained to Dr Cook about the way Dr Glencross had behaved, but he had brushed it aside and merely made a joke of it.
8. On 21 August 2012, Dr Morton sent an email to Dr Cook discussing a colleague whom Dr Cook had said looked ten years old. Dr Morton’s response included the comment, “Maybe I need to give him my crows-feet?” She said she felt that if things that she had complained about were going to be made fun of, she would start making some sarcastic and pointed references, as she did not know what else to do.
9. On the evening of 15 October 2012, Dr Morton had dinner at the Norman Hotel in Woolloongabba with Dr Glencross, Dr Paul Wade and Ms Lauren Trenkner, a PhD student. Dr Morton assumed that the purpose of the dinner would be to discuss organisational issues regarding an experiment for a sample collection the following day. Dr Morton’s evidence was that Dr Glencross brought up the subject of “dominatrixes”, and how they had sexual relations with their clients. Dr Morton corrected Dr Glencross about a commenthe made concerning that subject.
10. The next day, on 16 October 2012, Dr Morton travelled to the Bribie Island aquaculture facility for a sample collection. She arrived at the site at about 7.30 am, or 8 am. There were about five or six people present when she arrived. Her task was to set up the sample collection rooms so that they could start the collection. Fish would be collected in one room, euthanized for dissection, and then transported to the sample collection room. The staff were very busy setting up. It was a very large experiment, which had double the usual number of samples, compared to their usual experiments.
11. Dr Morton’s evidence was that, when she was setting up the blood collection station, she was slapped on the buttocks with a riding crop. She was in the sample room alone with Dr Glencross at the time. It was Dr Glencross who slapped her with the riding crop. He struck her on the right buttock cheek, hard enough for her to have felt it through the trousers that she was wearing. Dr Glencross did not say anything when he hit her.
12. Dr Morton said she was very shocked and quite humiliated. She just stood there for a second or two trying to compose herself. She then continued arranging the tubes for the blood sample collection.
13. Dr Morton said that at a later date, when she had time to think about it, she linked the incident to the previous night’s conversation about dominatrixes. Dr Morton said she did not tell anyone about the riding crop incident on the day it occurred, but told Dr Cook about it the next day, 17 October 2012.
14. On the night of 17 October 2012, there was a dinner involving a number of members of the Brisbane stream and the corresponding stream from Hobart at the Norman Hotel. Dr Morton stated that she was seated across from Dr Glencross when he made a comment about women only wearing pendants to draw attention to their cleavage, and followed this with a statement that, “I don’t know why you bother, Katherine, you don’t have any”. Dr Morton was the only person in her vicinity wearing a pendant. She felt quite horrified, embarrassed and humiliated.
15. After the dinner, Dr Cook and Dr Morton were walking towards her apartment. Dr Cook had explained that he had never worked closely with Dr Glencross and wanted to gain some insight as to what it was like to deal with him as a person. Dr Morton said she explained the event at Bribie Island, as well as events that had occurred at the dinner earlier that night. Dr Cook did not seem overly shocked, and seemed more focussed on a meeting he had scheduled with Dr Glencross. She expected Dr Cook to follow up these incidents with Dr Glencross and Dr Glencross’ manager. However, that never happened.
16. Dr Morton attended an Aquaculture Conference in May 2012. At a dinner, Dr Morton was approached by Dr Preston. Dr She said that Dr Preston made the comment to her, “You are just a hussy”. She said that Mr Dallas Donovan was present when the comment was made. Dr Preston’s tone of voice was fairly light hearted and dismissive. The comment made her feel upset, as she had been invited to drinks with what she understood to be a major client of CSIRO. She did not feel that it was appropriate to be referred to in such a way.
17. On 30 October 2012, Dr Cook sent an email to Dr Morton with the subject, “Katherine the Catfish Lady!” The email said:

Pres nominated you to run WAR Catfish. I quickly chimed in with “She doesn’t know shit about fish!”.

 “Pres” was a reference to Dr Preston.

1. Dr Morton replied:

Nice work…Keeping science away from my office! Ta…

But I do know Rob, and he has milking buffalo and I am all over sexing their sperm…Plus I like Mozzarella.

Oh, and the Pres said Ian is a gazzillionairre right before he called me a hussy.

1. Rob and Ian were clients from WA Resources. Dr Morton gave evidence that during the dinner, Dr Preston had whispered to Dr her that Ian was a “gazillionaire” right before he called her a hussy. She believed that Dr Preston was suggesting that she be overtly friendly towards clients in an attempt to secure research funding.
2. In December 2014, Dr Morton and Dr Cook flew to Hobart. Dr Morton discussed advances that had been made in amoeba culture with the chief vet for the client (Huon Aquaculture). The chief vet seemed impressed and offered to increase the cash component of the research funding. Dr Morton’s evidence was that after the meeting, Dr Cook said, “Take a blonde to Tasmania, dress her up and double your money”. Dr Morton felt quite disgusted and humiliated. She had been making complaints for quite some time about that type of behaviour and had recently filed a formal grievance about behaviours from senior managers of that type, and it was still continuing.
3. Dr Morton gave evidence that on 26 July 2012, there was an exchange of emails between Dr Morton and Dr Cook about working from home and an employee who had a CSIRO iPad. Dr Cook sent an email saying:

Nah, fixed. I think you gave me a dodgy charger!

Time to surf porn under my desk!

1. Dr Morton replied:

Ha ha ha ha ha.

I thought the iPad wasn’t wi-fi enabled?

1. Dr Morton said the reference in Dr Cook’s email came out of the blue. Dr She said she responded as she did because she did not know how else to respond. She was trying to ignore the comment.
2. On 10 September 2012, Dr Cook sent an email to Dr Morton, two other males and one female. The subject was, “Love it”. The email attached a document entitled, “How people in science see each other”. The document contained a number of photographs in a grid pattern demonstrating (in a humorous way) how various people in science perceive one another. One photograph shows how an undergraduate is perceived by a “PL/Professor”. That photograph is of an attractive woman bending over what may be the bonnet of a car.
3. One of the recipients of Dr Cook’s email responded, “Can I meet your undergraduate please Professor Cook?”. Dr Cook replied, “Nah, she is all mine!”.
4. On 12 September 2012, Dr Cook sent an email to Dr Morton with the subject, “Is this what they mean by learing (sic)?”. The email contained a photograph of a woman with a short skirt sitting with her legs crossed. The focus of the photograph is on her legs and thighs.
5. On 16 October 2012 (the evening of the riding crop incident), Dr Cook sent an email to Dr Morton saying, “Imagine Nick and Brett in Mankini’s singing!”. The email attached a document called “Bunny Lovin…x”. Dr Glencross had been given the nickname “Bunny”, apparently because his capacity for work was like that of the Energiser Bunny. The attachment was a parody of the song “Summer Nights” from the musical, *Grease*, and was entitled “Bunny Lovin”. The parody made fun of Dr Glencross and Dr Wade (another scientist in the Aquaculture area), and included the following lines:

He got friendly fumbling my prawn

Well, he got friendly and we fawn(icated)

He was sweet, ready for Level 5

Well, I bent over and let him Drive

Summer heat, leader and brown nose meet

But, uh ooh those summer nights

1. Dr Morton was with Dr Glencross and others at the Bribie Island Surf Club when she received that email. She said she thought the content of the email was quite cleverly put together, but was also inappropriate, and not what she was expecting to receive from Dr Cook. Dr Morton responded saying, “I owe you a coffee for that one”. She said she responded in that way because she admired Dr Cook’s skill.
2. There was an exchange of emails between Dr Morton and Dr Cook on 7 November 2012. An email from Dr Cook had the subject, “Guess who is here…”. It attached photographs of a muscular man with no shirt on and a woman whose shirt barely concealed her breasts. Dr Cook’s email said, “Here are the top two candidates, I have my preference”.
3. Dr Morton replied:

Hmmm…well clearly both need CSIRO merchandise…

If I have correctly assumed your preference, then you could be on-to something—we could use her to distract the powers that be whilst we run up crazy ass expenses on work trips to say Hawaii do science.

PS

Where is my CSIRO shirt? Natalie has one! The giving of a CSIRO shirt to one employee and not all could be considered bullying! :)

1. Dr Cook responded:

I like the shirt being worn in the picture. Again, probably biased. Sorry, better get back to science (no sign of Natalie, Julie or anyone for that matter)!

1. Dr Morton responded:

That is because they are all at the surf club having a meeting with their new theme leader and her PA! Geez…you really are out of the loop!

Hmmm…as long as it was CSIRO branded it would be okay. Not suitable for those with no cleavage, so the CSIRO needs to fund my boob job…

I should get back to science, but I have about 500 pages of lipid metabolism in fish to read :(

1. Dr Morton said that the emails were exchanged in the context of a previous discussion between Dr Cook and Dr Morton about a replacement for Dr Preston. One potential candidate was named “Natalie”. The discussion was about the fact that Natalie, as part of her employment conditions, had received CSIRO merchandise that staff members did not receive, leaving Dr Morton and Dr Cook to feel that they were left out. Dr Morton said her reference to a “boob job” was a sarcastic reference to comments that had been made about her lack of cleavage.
2. There was an exchange of emails between Dr Morton and Dr Cook on 8 November 2012. Dr Cook nominated Dr Morton as his “base contact” for his up-coming visit to Europe. Dr Morton responded saying, “plus ill (sic) only do it if you buy me presents & send photos of your food :)”. Dr Cook responded saying, “Not sure if you want pics of Richard and I eating out (mainly titty bars I think!).”
3. The exchange occurred in the context of a safety procedure at CSIRO requiring that, when staff members travelled overseas, they had to have a “base contact” to check-in with every day. It was a running joke that proof of life was a photograph of the staff member eating their dinner. Dr Morton said she regarded the reference to eating out in “titty bars” as inappropriate.
4. On 11 February 2013, Dr Cook sent Dr Morton an email complaining in crude terms about a paper written by a colleague. It contained the line “Well bend me over and slap me with a cold barramundi!”. Dr Morton said she understood Dr Cook to be referencing the riding crop incident.
5. There was an exchange of emails between Dr Morton, Dr Cook and Dr Richard Taylor on 19 March 2014. They comprised the selection panel for a post-doctoral position. One of Dr Cook’s emails said:

Richard can’t move past [name deleted].

I believe he has pinned her picture up in his office!

That was a reference to a candidate who had applied for the position and had included a photograph with her application.

1. Dr Morton replied:

So we’re appointing three applicants to look cute, plainly [*sic*, planning] experiments, manage hamsters & brewing…

Can I amend the duties to include making my coffee…

1. Dr Morton said her comment was sarcastic, as it was well known around the office that she drank quite a lot of coffee.
2. Dr Morton gave evidence that, when she spoke to Dr Cook about the riding crop and pendant incidents, she told him that the events were inappropriate and felt that, as a woman, she should not be subject to such behaviour. She said that Dr Glencross was not doing it to male members of staff and conveyed that she was upset. She did not explain the full extent of how emotionally upset she was because she was ashamed at how much the events bothered her and felt that she should have been stronger and able to withstand more. It was not an easy thing to admit how things bothered her, on a personal level, in the professional sphere.
3. Dr Morton said she spoke to Ms Carroll throughout 2012 about Dr Glencross’ behaviour. She would tell Ms Carroll generally about events that were occurring within the group concerning Dr Glencross’ behaviour. She would have started her discussions with Ms Carroll in about April/May 2012 and continued through to December 2012.
4. Dr Morton complained to Dr Wendy Barron about Dr Glencross in 2013. She complained about the working relationship between Dr Glencross and the staff at Bribie Island, and, in general, about the way he operated. She also complained more specifically about how she had been treated by Dr Glencross. She said she told Dr Barron about the cleavage comment and some of the comments that Dr Glencross had made throughout her employment. She does not recall whether she told Dr Barron about the riding crop incident.
5. Dr Morton made complaints to Mr David Brewer in 2012 about Dr Glencross’ behaviour. These were made in the context of Dr Glencross’ treatment of the group as a whole and communication and other issues between Bribie Island and the Brisbane (ESP) site. She also complained more specifically about how Dr Glencross treated her and the comments he had made towards her. Dr Morton says she told Mr Brewer about the cleavage comment and the incident in Townsville.
6. Dr Morton made complaints to Shane Casson in 2013 generally regarding the Bribie Island site, safety concerns, and more generally, about Dr Glencross’ behaviour with staff . She also complained specifically about Dr Glencross’ behaviour with her. Mr Casson was a health, safety and environment officer at CSIRO and was in charge of the Bribie Island and ESP sites. Mr Casson assisted Dr Morton with the filing of her workers’ compensation claim.
7. Dr Morton made complaints to Dr Tony Worby in 2013 about Dr Glencross’ behaviour. She wanted to raise concerns with Dr Worby about the way her group was treated within CSIRO, saying her group was more than just Dr Glencross’ group. She said Dr Glencross did not have a good reputation within CSIRO, and she did not want any of the staff in the group going for promotions, applying for “Capex funding”, or pursuing other sorts of internal promotion and development opportunities, to be tarred with the brush of working for him. Dr Morton made complaints about how Dr Glencross treated the group as a whole, which included things that he specifically did to her, such as changing timetables, yelling at staff, having unrealistic expectations and that sort of thing.
8. One of the matters that Dr Morton had complained to Ms Carroll about was an email that Dr Glencross had sent to Simon Irvin, which had upset him greatly. The email was dated 8 August 2012. In that email, Dr Glencross accused Mr Irvin of going behind his back to initiate trials in his project without consulting him beforehand. The email can be described as a lengthy, aggressive diatribe.
9. Dr Morton gave evidence concerning David Bligh, an aquarist and a food technologist based at Bribie Island. Dr She denied that there was any sexual banter between herself and Mr Bligh, saying that they had a close working relationship, but no other relationship.
10. In February 2014, Dr Morton asked for a “role clarification meeting” with Dr Glencross. She asked for the meeting because she had been receiving mixed messages and signals about her role from Dr Glencross. It had gotten to a stage where she felt she could not continue to move forward and build her career. She was frustrated at being told to progress certain things, getting half-way through them, and then being instructed to stop.
11. On 6 March 2014, Dr Morton sent an email to Dr Glencross, copied to Dr Cook and Dr Greg Coman. She stated that her core role had never been clearly communicated to her, and that the purpose of her email was to clarify what her core role was. She said that, from her discussions during her application and interview process, she believed that she was hired for her strengths, particularly for her considerable project and experiment management skills, and that was where she had focussed her attention. She gave an example of her “experimental management” of experiments described as BAR-12-4; BAR-12-6; BAR-12-8; BAR-13-7; and BAR-14-7.
12. Dr Morton’s email also listed a number of other aspects of experimental design, data analysis, reporting and management preparation and other tasks she had done. She said that she presumed that these were some of the key aspects of her role, and that if there was a disparity between her presumptions, and their expectations of her role, she would like to have that clarified.
13. Dr Morton’s email continued:

I also get quite confused when I receive directions that conflict with CSIROs CSOF 6 role l description. I have been told; I am the second most expensive person to employ yet I bring in no externals; before being directed to spend more time in the lab; and then networking is one of the jobs I was employed to do. Any of these roles are time consuming and not all of these roles can be my priority. If I am focusing on attracting external income through networking and preparing project proposals, then it is difficult to focus my time in the laboratory.

There is the further issue of project allocation percentages not reflecting actual workload required, including considerable time spent initiating and working up projects and undertaking business development with industry. In conjunction with this, it is worrisome that comments have been made that undermine my position and value within the group, and my personal work ethic. These comments include me; having the luxury of working on few projects and delivering on none; and the lightest workload of the group.

(Footnote omitted.)

1. Dr Morton’s email went onto say that she considered Dr Glencross’ comments inappropriate, particularly as they did not reflect the effort and work that she had put in during her time at CSIRO. She was concerned about the volume of work she had and the time limits involved. She concluded by saying that she would like to set a time to discuss her concerns with him in more detail.
2. Dr Morton explained that the three experiments she referred to involved investigating the potential effects and interactions between temperature, photoperiod, and salinity, to understand slower growth in barramundi approaching 1.8 kg to 2 kg. She explained that her role in experimental design involved doing background research, formulating a hypothesis, designing the experiment, drafting the protocols and stating the plans for the experiments in terms of their practicalities. She denied that Dr Glencross designed those experiments. More specifically, she denied that Dr Glencross prepared the design, or wrote the protocol, for the three experiments. One of the big issues that led to her request for the role clarification meeting was that initially, Dr Glencross approved the draft for BAR-12-8 that Dr Morton had sent him, but, after she had spent several months implementing the protocol, Dr Glencross decided that it completely missed the point, and needed a major overhaul.
3. The role clarification meeting occurred on 7 May 2014. It was attended by Dr Morton, Dr Glencross, Dr Coman and Dr Cook. Dr Glencross took out his laptop and started to read the position description for the role she had applied for. Dr Morton did not think that this was particularly productive. Dr Cook tried to explain to Dr Glencross that the roles varied frequently from those advertised, to what they evolved into. Dr Morton tried to engage Dr Glencross in a discussion, but that was not productive.
4. Following this role clarification meeting, Dr Morton wrote an email on 10 May 2014 to Dr Glencross, Dr Cook and Dr Coman setting out the key discussion points from the meeting as she saw them, as follows:
* Working more closely with Nicholas B and Sue C to improve the timeframe for the processing of the analytical samples, specifically:
* Developing methods with Nicholas and Sue to prioritise the processing of samples based on project deadlines
* Ensuring that information regarding sample processing flows to Sue to ensure that her work output is more efficient with meeting deadlines rather than having to await instructions
* Agreement regarding a strategic project/area for me to run
* I have a few ideas for this so I will sit down and have a think about them
* Continue with new project development (Poultry CRC project)
* Where my work fits in the group/future direction area
* Again I have a few potential directions but I will sit down and think about these
1. The Poultry CRC project involved using poultry products as a feed ingredient for barramundi. Dr Morton left a project proposal with Dr Glencross to approve. Eventually, Dr Glencross approved the proposal being sent out externally. But, by that time, the proponent had lost interest.
2. After the role clarification meeting, Dr Morton told Dr Cook that she did not think that she would ever get any acknowledgement or be able to get any type of “area” working with Dr Glencross. She expressed her frustration that the meeting did not achieve what she had hoped it would. Dr Cook said that she and Dr Glencross needed to sever their working relationship. Dr Morton said that she wanted to complete the ACR projects.
3. After the role clarification meeting, Dr Preston came to see Dr Morton. He made a comment about understanding how difficult it was working in a group of middle-aged men.
4. On 25 May 2014, Dr Morton sent an email to Dr Cook and Dr Coman. In the email, she said that Dr Preston had suggested that she think about where her career was going and where she wanted it to head. She continued:

In consideration of past and recent events, I have come to the conclusion that I am unable to progress the scientific side of my career within the aquaculture nutrition sphere. Brett contributed to this conclusion when he stated in our meeting that he designed the ACIAR experiments. The work and outcomes from those experiments are a step above the work that had been occurring in previous experiments, particularly when the scope and size of these experiments are considered. The three ACAIR experiment I have been in charge of go way beyond the scope of the usual experiments the group conducts and I have had a leading role in the design and the implementation of these. These experiments are a multi-factorial cross-over design aimed to investigate the effects of several environmental variables on the growth, health and gene expression of large fish, all of which can be tracked at an individual fish level (rather than the standard tank level). However, as it stands, Brett unequivocally states that he designed the experiments, as you witnessed during the role clarification meeting.

I do not see that going forward I will ever receive acknowledgement of my scientific contributions in any area related to Brett’s expertise. To solidify this conclusion further, all of the Industry/external contacts recognise that Brett is the ‘go to person’ for nutrition work (a point we also discussed during the role clarification meeting). Nutrition is Brett’s area of expertise and any scientific work that I perform within that sphere is unlikely to be seen to be my work. The real result of these circumstances is that I can not establish a ‘point of difference’ between the work that Brett does and my work, and it leaves me entirely unable to establish myself as a scientist in the aquaculture nutrition sphere.

I can think of only two options that would enable the current circumstances to change to allow me to progress my career:

1. Brett ‘carves off an area for me to work in and make ‘mine’, or;

2. Focusing more on developing my management skills (whilst still delivering on Brett’s/my projects)

In relation to option 1, Brett’s unwillingness to delegate an area within his field will result in essentially the same issues of the last couple of years and the situation will not improve. As I have tried in the past and it has only resulted in stress and frustration, I no longer feel it is advantageous to pursue this option any further.

For the second option, I feel that my management of experiments is one of the few areas I do receive some credit for, and I also enjoy this aspect of my work. This option is my preference, and I believe developing the management skills I already have would be more advantageous for the group and our productivity. The group dynamics, including the split between Bribie and ESP, requires different management skills to many other groups and I believe that continuing to improve my management skills would greatly assist in improving group function and scientific output.

I will have look through the learning and development courses offered by CSIRO and draw up a list which we can discuss for my 2014-15 APA.

1. Dr Morton spoke to Dr Cook after sending the email. She said that she did not think that it was possible to continue working with Dr Glencross. She reiterated that she could not establish a point of difference between the work they did, and she was not going to be able to establish herself as a scientist within that sphere. She raised the questions of, if she did move spheres, where she would go, and how she would start again.
2. In September 2014, Dr Morton had meeting with Dr Preston. He explained that there was another project available. He did not go into specifics about the project, but said that they needed a Level 3 Lab Tech, that most of the lab work was to be done at Bribie Island, and she needed to assure him that her health was up to it. Dr Morton said that Dr Preston did not particularly care that she was a Level 6 scientist.
3. On 25 October 2014, Dr Morton wrote to Dr Preston and Dr Cook referring to a meeting they had on 22 October 2014. The email was lengthy. It asserted that Dr Preston had made statements such as:

You don’t have the science to be taken seriously as a leader;

Lack of original ideas;

Lack of publications;

You are vulnerable to redundancy;

You need to assure us that your health is up to it;

Pursuing an MBA would be distraction.

1. In her email, Dr Morton went on to address each of these statements. Under the heading, “You don’t have the science to be taken seriously as a leader”, Dr Morton asserted that, when she arrived at CSIRO, she brought with her a wealth of scientific world firsts, numerous published and highly cited articles, and experience in leadership and management. She said that she had been left with the impression that CSIRO had damaged her reputation and that, behind her back, there was a negative perception of her within her group that she felt was unjustified. She said she could only conclude that this had resulted from working under Dr Glencross. She said that when they spoke in September, Dr Preston had dismissed these issues as, “an unhappy marriage”. She said that this was a gross underestimation of the effects that the issues had had on her progression at CSIRO.
2. The email claimed Dr Preston had recently said that, being a woman, Dr Morton was vulnerable when working in a group of egotistical middle-aged men. She said she believed that he understood the gravity of her working situation and that he would support her, but was now left feeling that he did not understand her working experience within CSIRO and that she had to justify her position to him.
3. Dr Morton went on to address the allegation that she had a lack of original ideas, saying that someone else must be obtaining credit for the ideas that she had at CSIRO. She talked about several ideas that she had, and referred to a “travel ban” that Dr Glencross had placed her under in September 2013, meaning that she had been unable to leave the office to attend conferences or engage with potential clients.
4. In relation to the allegation that she had a lack of publications, she maintained that her work within the group had resulted in one first author paper, and two first author conference abstracts, as well as co-authorship on a book chapter and a client report. She also said that she was producing three first-author manuscripts which would be submitted for publication in late December or early January.
5. The email went on to say:

In my time at CSIRO I have also been subjected to behaviours which are unacceptable, such as being slapped on the bottom with a riding crop, and the focus of comments such as “Women only wear pendants to draw attention to their cleavage, I don’t know why you bother Katherine, you don’t have any”. While these behaviours are clearly unacceptable I chose not to pursue them any further at that time. I made this decision as I was new to the organisation (circa six months) and concerned about the impression of me that it might create. However, despite how personally upsetting and humiliating those situations were, trying to ignore these behaviours by focussing on my scientific work was clearly in-effective.

In summary, in relation to the questions about my science, my ideas and my publications, the meeting on Wednesday has left me with the impression that I am not receiving credit for the work that I am carrying out, but the fact remains that despite the significant hurdles that I have faced in performing my work at CSIRO, I have carried out good work as is identified in my APAs.

1. Dr Morton’s email went on to say that Wednesday was the second time that Dr Preston said she was vulnerable to redundancy in relation to her project allocation, and had suggested that, if she did not turn things around, she would be looking at a redundancy within 18 months. That statement had left her even more confused about where she stood within the program and her allocations. She said that Dr Cook had identified that her allocation to his Huon salmon project would occupy 60% of her time for five years. She noted that Dr Preston had provided her with a verbal assurance that she would be given a team leader role associated with 10% allocation. She asked Dr Preston to explain what had happened to have changed those allocations in the past few weeks.
2. Dr Morton wrote that Wednesday was the second time that Dr Preston had asked her to “assure us that your health is up to it”. She said that she was taking this opportunity to point out that this request was, in and of itself, wholly discriminatory, particularly in combination with the second mention of being, “vulnerable to redundancy”. She sought formal assurance that her health, and any issues in relation to her health, would not be broached again, nor factored into any decisions regarding her allocations for work.
3. The email addressed Dr Preston’s comment at the meeting that pursuing an MBA would be a distraction and that no assistance in that regard would be forthcoming. She referred to the role clarification meeting and said that two major areas identified for her to focus on for a career progression within the CSIRO were developing her management skills and developing a strategic project/area for her to run. Dr Morton said that she had put considerable effort into developing a plan to develop her management skills, and, on that basis, approached Dr Preston for assistance to pursue an MBA. She was left with the impression that, even with her background in science and leadership, CSIRO would not support any aspirations that she may have in the management area.
4. Dr Morton exchanged emails with Dr Glencross on 27 October 2014. She had asked him to edit a manuscript for experiment BAR-12-8, and he had mistakenly edited an early version. She pointed out that Dr Glencross had edited the wrong version. He responded telling her to make the changes and that it was important to put the manuscript to bed and move on. Dr Glencross said that, “We are missing an opportunity here to do a good job”. Dr Morton responded by again pointing out that Dr Glencross had edited the wrong version of the manuscript. She said that:

When you are not across the current version of the manuscript and its contents, it is an insult to the work that I have put in to suggest that we are now missing and “opportunity to do a good job”.

1. Dr Morton said that insulting the work she had done was not helpful, warranted or motivating. The email went onto say, amongst other things that:

I can no longer accommodate any changes that you may think of to incorporate, without jeopardising my future employment.

She also said:

Please ensure all your future comments are constructive, and by that I mean related to the most current version of the manuscript and the already agreed upon contents.

1. Dr Glencross’ response started with:

Gee K—drop the attitude, especially on emails…

His reply email went onto say, “Sorry if that was the wrong version but that was what I had…”. He explained why he thought that they were missing an opportunity to do a good job. Dr Glencross defended the level of support and the opportunities he had provided to Dr Morton, and offered to discuss the manuscript with her.

1. Dr Morton responded by email, saying:

Your opening on that email is highly offensive. Do you believe it is an appropriate way in which to address me after I have brought to you my concerns about my employment? This is not some idea that I have in my head, I have been told straight out that I am vulnerable to redundancy. You changing the data inclusion requirements, expands upon the work and time that I need to carry out my work in relation to these manuscripts. Why you have chosen to be dismissive, when all I have done is ask you to be inclusive of the workload I have to manage that increases when you change requirements? Your reference to my attitude and dismissive comments about my concerns are exceptionally disrespectful…

1. On 28 October 2014, Dr Morton sent a text message to Dr Lehnert saying that Dr Cook had suggested that she contact her, as she was outside the group and familiar with the people involved. She said that the issues she wanted to discuss pertained to discrimination, harassment and bullying behaviours. She had a discussion with Dr Lehnert and told her that Dr Glencross had made inappropriate comments about her cleavage and that she had concerns about Dr his behaviour towards the group. She also told Dr Lehnert about the comments Dr Preston had made about her health and vulnerabilities surrounding redundancy.
2. On 4 November 2014, Dr Morton sent an email to Dr Preston saying:

Dear Nigel,

I appreciate that you would like to meet and discuss the issues I raised in my previous email. However, the general work issues that have never been dealt with adequately continued in your absence as Brett:

1. mistakenly edited a very incomplete document that was out of date by more than 1 month, instead of the correct first draft manuscript he was provided with (via email and hard copy)

2. proceeded to negatively criticise the contents (still in reference to the incomplete document), after I pointed out he had edited the incomplete document

3. became openly hostile and escalated the issues to my next line manager, after I pointed out his comments were still against the incomplete document

4. dismissed my concerns about my employment, after I had pointed out he was changing the data inclusion requirements at such a late stage and I needed to be able to finalise this work and move on with future work

5. criticised my workload again, referring again to having only performed 3 experiments (when the experiments were of such a magnitude that they would easily compare to 3 standard experiments per experiment with substantially more management and setup involved)

6. completely ignored my concern about his inappropriate behaviour, offensive remarks and insults when we had a meeting prompted by this discourse

There was nothing appropriate about the way in which Brett reacted to the situation, having made the mistake in the first place. I am not always the bravest person, and I do find it difficult to stand up for myself at times. However, I am entitled to feel safe when I go to work, and to have a safe working environment provided for me-free from discrimination or bullying and harassment behaviours.

I have decided to pursue a grievance through HR relating to all of the issues as I wish to formally identify this for what my situation actually is: my employment at CSIRO and the highly inappropriate treatment I have received is affecting my health.

I believe it is in my best interest and health going forward that everything is: placed on record so that issues can be owned by the people creating them; dealt with and adjudicated appropriately by HR, where everyone can have a fair and equal say; and resolved with clear outcomes managed into the future, so that I can feel safe again at work.

I’m meeting with Alysha later this week to discuss the issues.

1. Dr Preston responded by email on the same day, saying that he respected Dr Morton’s decision to pursue a grievance, but would still like to have a discussion about some matters that she had raised in her email.
2. On 6 November 2014, Dr Morton had a meeting with Alysha Davis (Johansen) and Sally Sturton, who were HR staff. She discussed various complaints, and said that she would put them in writing.
3. On 28 November 2014, Dr Morton sent an email to Ms Davis and Ms Sturton as follows:

Additionally, you have requested that I put forward the outcomes and resolutions that I wish to achieve by raising these matters as a grievance.

In attempting to determine what outcomes are available to me, I have reviewed the CSIRO Grievance Procedure. There appears to be a discrepancy in the way in which this situation is being dealt with because the matters that I have brought to your attention are discrimination, bullying and harassment. The CSIRO Grievance Procedure states that matters of this nature are required to also be dealt with under the Misconduct Procedure, not just the CSIRO Grievance Procedure. Therefore, I am respectfully requesting that these matters are recognised as misconduct by Dr Preston and Dr Glencross, and as such, investigated under the Misconduct Procedure.

Dr Preston’s discriminatory statements in relation to my health and redundancy were not a once off. Both statements were repeated several times at meetings held several weeks apart (the latter meeting witnessed by Dr Cook). I do not believe that there is room for this to be a mere misunderstanding of the statement in regards to what he said, nor in it being a case of ‘having a bad day’ and Dr Preston misspeaking. In that, I believe that his tone and the specific phrases that he uttered were true in the meaning that they conveyed and in doing so he has committed discrimination and misconduct against me. In partial rectification of this, his behaviour needs to be acknowledged and an unqualified apology presented to me, including an assurance that my entitlements to leave (particularly regarding my health) will not be questioned again. Full rectification can only come once he has been counselled through the appropriate channels that his actions were inappropriate and discriminatory, and must never be repeated again.

Dr Glencross’ most recent behaviour was identified directly to him by myself as highly offensive, inappropriate and disrespectful. He has made no efforts to rectify or apologise for those behaviours. These behaviours are also not a once off. During my time at CSI RO, I have been the subject of a number of inappropriate behaviours by Dr Glencross, some of the more disturbing examples I have outlined in discussions and my email to Dr Preston dated 25th October, 2014.

…

As I have also stated these issues have affected my health and prolonged my recovery from my operation in June. I have required the use of the EAP service in dealing with these issues. I am now under the care of my GP and a psychologist in an attempt to manage the depression and stress related anxiety these issues have caused. I will lodge an incident report with HSE for this injury in order to pursue the care that I require for this.

Due to the prolonged nature of the issues, and that Dr Glencross’ conduct has been known to CSIRO management for some time, and that I feel my reputation and career at CSIRO has been damaged, and that these issues have caused me injury, I am now requesting that these matters are acknowledged as something more than informal and dealt with as a formal grievance, in addition to having them dealt with under the Misconduct Procedure.

1. Dr Morton said that she made the formal complaint because of her concern for her career. She considered making complaints in 2012, but was relatively new to the organisation and on probation for six months. At that stage, she was primarily concerned about the damage a complaint would do to her career. The reason she chose to make a complaint in 2014 was that her two meetings with Dr Preston made her concerned that he was saying words that he could only have got from Dr Glencross.
2. On 12 November 2014, Dr Morton sent an email to Ms Sturton about catching up. Dr She said:

I have been trying to sit down and make lists for various things so I don’t forget them—my memory is terrible at the moment but going okay…

1. Dr Morton said that she was feeling anxious and stressed and had been having a lot of trouble with her memory, which persisted.
2. In December 2014, Dr Morton met with Ms Davis, with Mr Croft, present. Dr Morton said she spoke quite candidly about her issues with Dr Glencross, including her trip to Cairns and Townsville, the comments made at the Aquaculture Australia Conference, the riding crop incident and the cleavage comments. She also went into detail about some of his other behaviours over the years, including changing goals and his behaviour towards other staff. Dr Morton expressed her concerns, not only about the way Dr Glencross had behaved towards her, but also towards other staff within the group. She raised her concerns about Dr Preston’s comments about her health, and her vulnerability to a redundancy.
3. On 16 January 2015, Dr Morton submitted a formal grievance against Dr Glencross and Dr Preston. The Grievance Document being 26 pages long is too lengthy to set out in full. Some of the relevant parts read as follows:

Grievance: Dr Brett Glencross

The following is a short list of the bullying and harassment behaviours by Dr Glencross that were directed at me that I wish to identify:

* Unwarranted criticism via inappropriate and inaccurate feedback of my work product. Undermining work ethic and scientific reputation (as sole work output manager).
* Sexual harassment: slapping me on the buttocks with a riding crop, and comments made to me about having no cleavage.
* Deliberately withholding information and resources necessary for my core role.
* Use of language designed to humiliate, belittle or degrade.
* Setting timelines that are difficult to achieve and constantly changing deadlines.
* Changing of work direction without communication or communicating in a timely fashion. Lack of acknowledgement or recognition of my work or contributions to work performed.

In attempting to prove those behaviours identified above, on the following pages, I will detail a number of the relevant experiences: ***BAR-12-8 Experimental Design, Barramundi Health Project (also known as Feed x Health Project), Riding Crop, Cleavage comment, MLA-Meat Meal Replacement Project, Poultry Rendered Product Project, CAPEX Electronic Fish Weighing System, Travel Ban, BAR-12-8 Manuscript,*** *and* ***Role Clarification Meeting***.

After detailing the experiences listed above, I list the ***Effects That These Experiences And Behaviours Have Had Upon Me*** to explain why I am pursuing this grievance, and then relate the ***Previous Attempts I Have Made To Rectify Dr Glencross’ Behaviours*** to demonstrate that I have tried to have these issues rectified informally in the past without any success.

(Emphasis in original.)

1. The Grievance Document then sets out complaints about Dr Glencross having initially approved the BAR-12-8 experimental design, and later changing his mind after Dr Morton had done a substantial amount of work. She complained about Dr Glencross suggesting that a project proposal be submitted as a Tactical Research Fund proposal, but later changing his mind. Dr Glencross had directed her not to contact “Skretting” to enquire about funding. She felt hamstrung in being unable to progress this project without Dr Glencross’ action. She followed it up on a number of occasions, but received no further direction. Later, he said, in the role clarification meeting, that the project “never did get up, did it?”. She complained that Dr Glencross’ feedback did nothing to acknowledge the time, effort, and work that was put into pursuing the project proposal, and instead blamed and denigrated her.
2. The Grievance Document went on to discuss the riding crop incident. Dr Morton said:

Ms Trenkner is a keen equestrienne and carries such equipment in her vehicle. During the unloading of the CSIRO supplies from Ms Trenkner’s vehicle one of her riding crops had made its way into the sample collection room During the unpacking and setting up of the sample collection equipment the riding crop was noticed, and several staff made jokes about its use speeding up the sample collections.

While I was unpacking and setting up equipment, Dr Glencross slapped me on the buttocks with the riding crop. This day represented the end of a very important experiment for an externally funded project and I felt it would reflect badly upon me if I caused any issues to delay it. Although I was quite shocked and humiliated by this behaviour, as I was still quite new to the organisation I felt enormous pressure that I had to ignore what had happened.

I feel that Dr Glencross’ behaviour in this instance was sexual harassment and entirely inappropriate within the workplace.

1. Dr Morton then went onto discuss the cleavage comment. She said:

At one point during the dinner conversation I heard Dr Glencross state “women only wear pendants to draw attention to their cleavage”. I thought it an odd comment and then I looked over at Dr Glencross he continued with “I don’t know why you bother Katherine, you don’t have any” Again I was quite shocked and humiliated by this behaviour, but being in a situation where I was new to the organisation and surrounded by senior members of the organisation, that did not react to Dr Glencross’ comment, I felt enormous pressure that I had to ignore what had happened and remain on task instead.

As with the ***Riding Crop***incident, I feel that Dr Glencross’ behaviour in this instance was sexual harassment and entirely inappropriate in the context it was delivered.

(Emphasis in original.)

1. The Grievance Document went onto discuss Dr Morton’s attempts to develop a project described as the “RLA-Meat Meal Replacement Project”. Dr Glencross had suggested that “Ridley’s” had said that they could put in a little bit of cash. Dr Glencross was to obtain a written agreement, but Dr Morton heard nothing further from him, despite reminding him on several occasions. Dr Morton’s complaint was that, at the role clarification meeting, Dr Glencross informed her that her project had been moved under the Ridley’s umbrella agreement for “political reasons”. This was the most promising of the projects she had conceived and she had been left with nothing for her time and effort.
2. The Grievance Document also complained about Dr Preston’s conduct:

**Grievance: Dr Nigel Preston**

In meeting on two separate occasions (9th September & 22nd October), Dr Preston made discriminatory statements regarding my health. During both meetings, the latter meeting attended by Dr Mat Cook (my line manager), Dr Preston requested that I “assure them that my health was up to it”. In the meeting of the 22nd October this discrimination as to the state of my health was repeated, and though he received an affirmative answer from me, Dr Preston questioned me further about my health asking me more specific health questions. I found these questions to be very intrusive and on both occasions this request of my health was made in the context of being allocated to a project and the wider context of being “vulnerable to redundancy” (A topic covered by Dr Preston in both meetings).

I felt incredibly uncomfortable the first time Dr Preston mentioned my health in September. This produced fear and anxiety relating to my job security going in to the meeting on the 22nd October. During this hour-long meeting I felt incredibly uncomfortable and very insecure about my job security based on the experience in the meeting on 9th September. Dr Preston only amplified these feelings in the meeting on the 22nd October.

By the time I returned home to my partner on 22nd October I was quite distraught about these encounters with Dr Preston. I was so upset by the statements made by Dr Preston in these meetings that I did not want to go in to work for the remainder of the week. However, I had no choice given the powerlessness that his statements had instilled in me, and that I felt any absence from the office would further reflect badly upon me.

On the 25th October, I emailed Dr Preston (and cc’d in Mat Cook), as I wanted to redress the statements that he made during those meetings.

…

As I outlined in my email to Alysha Johansen and Sally Sturton {both HR in the Agriculture Flagship) dated 28th November “Dr Preston’s discriminatory statements in relation to my health and redundancy were not a once off. Both statements were repeated several times at meetings held several weeks apart (the lotter meeting witnessed by Dr Cook). I do not believe that there is room for this to be a mere misunderstanding of the statement in regards to what he said, nor in it being a case of ‘having a bad day’ and Dr Preston misspeaking”.

I continued to explain that “I believe that his tone and the specific phrases that he uttered were true in the meaning that they conveyed and in doing so he has committed discrimination and misconduct against me.”

Alysha Johansen recorded further details surrounding the specifics of the grievance against Dr Preston in a meeting with me on the 5th December. It is my wish that those details are appended to this section.

1. On 10 March 2015, Dr Manners wrote to Dr Morton in relation to her complaint. The letter said:

Your allegations against Dr Glencross relate to behaviours which, if found to be true would represent unreasonable behaviour. You have described more than one instance of such behaviour and should the repeated aspects of this be found to be true, the conduct involved is potentially bullying and/or harassment. In accordance with CSIRO Procedures I have actioned your complaint under the Misconduct Procedure. However, due to Dr Glencross’ recent cessation I am required by the Misconduct Procedure to discontinue this course of Inquiry. CSIRO can take no further action towards Dr Glencross in regards to your complaint.

Your allegations against Dr Preston are the subject of an ongoing inquiry, the results of which, where appropriate, will be made known to you in due course. I will ensure the appropriate action and preventative measures are utilised in relation to any admissions or findings of inappropriate behaviour or conduct.

1. An investigator, Mr Trevor Van Dam, was appointed to investigate Dr Morton’s complaint against Dr Preston. She was interviewed by Mr Van Dam, but had received no further communication from him by June 2015. Dr Morton requested the opportunity to put further evidence before the independent investigator based upon concerns that Dr Cook may not have been truthful, but was told that it was not usual for that to happen. She was not told of the outcome of the investigation.
2. Dr Morton said that between February and July 2015, she took sick leave because of surgery and her psychiatric state. She also took holidays. In March 2015, Dr Morton applied to Comcare for workers’ compensation benefits.
3. In April 2015, Dr Morton received a telephone call from Mr Gavin Drury. He told her that he was going to take over as her claims manager at CSIRO. Mr Drury asked if she really needed to file the workers’ compensation claim. He said that there were some very senior people within the Agriculture flagship that he could speak with to ensure that she would get all of the help that she needed, provided that she did not file the claim with Comcare. Mr Drury went onto say that the only reason she was filing a claim with Comcare was because she was unhappy with the way the independent investigation had happened. She said that could not possibly be the case, because she had not even been interviewed yet.
4. Dr Morton consulted Dr Geoffrey Rees, a psychiatrist, on 6 July 2015. Dr Rees provided her with a medical certificate stating that she was unfit for work from 6 July to 6 October 2015, due to for a condition sustained on 15 October 2012. She did not return to work after 6 July 2015.
5. On 7 or 8 July 2015, Mr Drury called Dr Morton. He had received Dr Morton’s email attaching her medical certificate. Dr Morton’s evidence is that Mr Drury proceeded to tell her that three months off would not do her career any good, and that she needed to make herself available for return to work plans within the next week or two. Dr Morton explained that she did not understand why, when her treating psychiatrist had written her off for three months, she should be planning her return to work within this time. Mr Drury kept expressing that she had obligations under the SRC Act and kept telling her that the time off would not do her any good. Dr Morton interpreted this to mean that, if she took three months off, then she would not have a career at CSIRO. She asked Mr Drury about that and why he was insisting that she breach her doctor’s medical direction not to attend the site. Mr Drury said that he was a clinician, that she had obligations under the SRC Act, that she had to make herself available and that the time off would do her no good. She understood a “clinician” could be someone who is a medically trained doctor. She said she felt terrified. She said she was already feeling vulnerable and to have someone openly state that taking time off would not be in her interests was terrifying. She did not know where to turn, as this was the person who was supposed to be managing her Comcare claim and her return to work in three months.
6. Dr Morton later sent an email to Mr Drury in which she requested that he no longer telephone her, and that he instead just deal with her in writing. After that, she asked Mr Drury to identify his line manager, because she was not satisfied with his response. He did not do so. She then found an indication on the CSIRO intranet that his line manager was Ms Pickering. Dr She sent an email to Ms Pickering complaining of Mr Drury’s tone and attitude and stressing of obligations without any explanation as to how the return to work process was to occur. Ms Pickering responded that she was no longer Mr Drury’s line manager and forwarded a copy of the email to Ms Heather Campell, who was then his line manager.
7. Ms Campbell replied by email, stating that Mr Drury was acting in her best interests. Dr Morton felt that the email was rather generic and that her complaints had been swept aside.
8. In April 2014, Dr Morton had been given a 60% allocation on the Huon project, led by Dr Cook. Dr Morton also had a 10% team leader allocation, as leader of the Aquaculture Genetics and Biochemistry Team. By July 2015, her allocation on the Huon project had been decreased to 50% and her 10% team leader allocation had also been removed. She was not given any reason for this.
9. By September 2015, Dr Morton’s allocation to the Huon project had been reduced to 20%. She was not given any reason. Dr Morton was shocked and confused, because there had been no communication about replanning the Huon project, or about her team leader position. She discovered she had been removed as the team leader through the CSIRO People page. She thought that this was the beginning of the end for her job, because people who are less than 50% allocated in the CSIRO system are classified as “vulnerable to redundancy”.
10. On 20 September 2015, Dr Rees certified Dr Morton unfit for work from 30 September 2015 to 30 March 2016.
11. On 2 February 2016, Ms Amanda Somerville, an injury management advisor for CSIRO, wrote asking Dr Morton for additional medical information concerning her progress. She attached a letter addressed to Dr Rees with questions that CSIRO sought answers to. Dr Morton took the letter to Dr Rees, and he wrote to Ms Somerville.
12. On 11 February 2016, Dr Rees certified Dr Morton unfit for work from 11 February 2016 to 11 February 2017.
13. On 25 February 2016, Ms Somerville sent Dr Morton a letter seeking further information from Dr Rees. She also said:

After considering the report from Dr Rees, CSIRO are confident that we can provide a safe work environment for you to return to and look forward to working with yourself and Dr Rees to facilitate this in the near future. To clarify, the two individuals named in your complaint no longer work at CSIRO and no longer reside in Australia.

1. Dr Morton was confused by Ms Somerville’s assertion that the two individuals named in her complaint, Dr Glencross and Dr Preston no longer worked at CSIRO and no longer resided in Australia. Dr Morton’s understanding, based on an email sent by another CSIRO staff member, was that this was not the case. She was also concerned that the case manager who was supposed to be managing her case and would be the person overseeing her return to work, did not understand, or care to gather, the relevant information.
2. Dr Morton referred to the CSIRO Enterprise Agreement 2011–2014. Her understanding of a VRS was that, when a staff member was identified as being potentially redundant, if he or she could find another staff member with a similar skill set who would prefer to be redundant, they could swap.
3. On 17 May 2016, Dr Morton sent an email to Ms Dominica Walsh, a HR manager with CSIRO, saying:

After much consultation with my medical practitioners, my psychiatrist, Dr Geoffrey Rees, remains persistent in his belief that I cannot return to work at CSIRO now or in the foreseeable future. Furthermore, Dr Rees has discussed with me a belief that severance from the organisation would be more beneficial in the shorter term for my recovery than not.

I can no longer see any path back to a career at CSIRO, nor a safe working environment within the organisation.

With great disappointment in CSIRO and the appalling handling of my grievance and injury, I am asking that you place me on the Voluntary Redundancy Substitution list.

1. Ms Walsh replied on 23 May 2016, saying:

I have arranged for your name to be added to the Voluntary Redundancy Substitution register. As we are currently having discussion with a number of impacted staff in CSIRO, I will ensure that your request is given careful consideration.

1. Dr Morton states that she felt CSIRO could not provide a safe working environment. She had been told there was nothing CSIRO could do about Dr Glencross’ presence on the Bribie Island site. She explained that it was not her responsibility to avoid Dr Glencross and the onus was on CSIRO to provide a safe working environment, not on her to create one for herself. She was told that she did not have to go to Bribie Island, but she explained that was the location of the fish that were experimented upon. That was met with no reply. Dr Morton felt that whenever she raised these issues, nobody was willing, or able, to engage with them. They would just ignore them, and she could not return to CSIRO in that type of environment. Dr Morton had asked to be placed on the VRS list because she was very upset about the way her grievance and the inquiry had been handled. A redundancy was the only way that she could see forward for her health.
2. Dr Morton received a letter from Dr Manners dated 14 July 2016, saying:

This letter is to confirm that CSIRO no longer requires the job that you are doing to be performed due to our changed operational requirements.

The reasons for your potential redundancy are as follows:

You requested voluntary redundancy substitution and we made an assessment to determine whether we could do a swap with any impacted staff in the Livestock Program. When we determined that a swap would not possible, we then considered whether we could accommodate your request through making your position redundant. We assessed the skills requirement of the current and future projects and found that there are currently no projects that require these skills and none planned. It was decided that as your skills in nutrition physiology have not been replaced while you have been on leave we could reduce the staffing in this capability area through a redundancy.

1. Dr Manners’ letter went on to say that CSIRO would seek redeployment opportunities for Dr Morton, and that she should provide her updated CV to Ms Walsh, who would monitor and review any opportunities for her. It said that she should indicate any locations, other than her current location, that she would consider, and whether she would be prepared to consider positions at a lower classification level. Dr Manners went on to attach written estimates of financial termination benefits which would apply in the event that the redundancy was confirmed.
2. Dr Morton’s application for workers’ compensation benefits had initially been accepted by Comcare on 5 June 2015. CSIRO sought review of that decision. On 19 August 2015, Comcare revoked its decision to accept Dr Morton’s claim. Dr Morton then applied to the Administrative Appeals Tribunal for review. That application was eventually settled, with Comcare accepting liability for the claim from 31 March 2013.
3. When the Comcare claim was revoked, Dr Morton was placed on sick leave. When her sick leave ran out, she was placed on recreational leave. She had some recreational leave that had been booked for 3 November to 20 November 2015, but CSIRO changed that leave to a period in October 2015. Dr Morton did not authorise the changing of her recreational leave. Then, the recreational leave was stopped and she was placed on unpaid leave. She did not ever take the recreational leave.
4. There is, in evidence, a screenshot from the CSIRO SAP system dated 12 January 2015. It shows two periods of SWO2 leave. The first entry is from 8 October to 31 December 2015. The second is from 1 January to 29 June 2016. The screenshot also shows that her recreational leave from 4 September to 7 October 2015 was cancelled and that she was placed on unpaid leave.
5. As at 7 October 2015, Dr Morton still had a balance of paid recreational leave, which was, she believes, 20 or 30 days. She had been blocked from accessing those days. Dr Morton had been locked out of the SAP system, and the buttons were “greyed out”. She was unable to make any type of entry into the SAP system.
6. SWO1 leave is long-term sick leave available when a staff member runs out of paid sick leave. It was to be logged for the first 26 weeks of leave. It counted for service, in terms of long service leave, recreational leave and other service benefits. On the other hand, SWO2 leave did not count for service. Dr Morton did not know why she was placed on SWO2 leave.
7. Dr Morton said she believed that CSIRO did not have any intention of allowing her to return to work. That is because she had been logged onto leave until 29 June 2016. This extended far beyond the length of her medical certificate, which expired in March 2016.
8. After Dr Morton was placed on unpaid leave on 7 October 2015, she had no income. It took until 6 October 2016 for CSIRO to sort out her entitlements. She said she had not received all of her entitlements, even as at the hearing, and considered that she remains entitled to some 75 hours of recreational leave.
9. In September 2016, Dr Morton wrote to Lynne Gaal, a service advisor in HR Services, enquiring about sorting out the “mess” with her 2015 leave entitlements. She complained, amongst other things, about CSIRO having ceased contributing to her superannuation fund, and the length of time it was taking for her entitlements to be sorted out.
10. On 29 September 2016, Ms Gaal responded, acknowledging that superannuation contributions should have been made and indicating that they would now be paid. She also invited Dr Morton to contact Comcare to sort out a discrepancy that she had alleged in respect of her Comcare records.
11. Dr Morton eventually received back pay from CSIRO in about October 2016. She was paid $105,091.58.
12. In 2016, an article was published in a journal called “Aquaculture”. Dr Glencross was noted as the lead author. There were six co-authors listed, but Dr Morton was not listed amongst them. The article concerned an experiment known as BAR-12-06. Dr Morton said she had worked on BAR-12-06, beginning shortly after she joined CSIRO. She had commented upon a draft protocol, having been involved in managing the day to day aspects of the experiment while Dr Glencross was overseas this included coordinating the collection plan, organising the equipment, labelling tubes, , attending the sample collection day, coordinating the sending of blood samples and other things to external laboratories, coordinating blood sample collation and statistical analysis, sending the analysis to Dr Glencross, processing samples, and commenting upon the draft manuscript that had largely been drafted by him. On 6 March 2017, Dr Glencross sent the draft manuscript to five of the persons named as authors of the article, as well as Dr Morton. The email asked them to peruse the manuscript and comment. On 10 October 2012, Dr Morton sent an email to various persons setting out a plan for the collection of samples for BAR-12-6. Dr Glencross responded saying, “Good Stuff! I like ya work!”. There is, in evidence, a table of the haematology and plasma chemistry perimeters for the samples from the BAR-12-6 experiment that Dr Morton had collated and tabulated. This was provided to Dr Glencross.
13. After Dr Morton found out that her name was not listed in the article as an author, she made a complaint to CSIRO. Eventually a corrigendum was added, including her name. Dr Morton said it was published in a later volume of the journal, and was, “largely a footnote in a journal and is glossed over”. It was not a due acknowledgement of her real contributions.
14. A report entitled “Improving Feed Sustainability for Marine Aquaculture in Vietnam and Australia” was published on an unstated date. That report stated that it was prepared by Dr Glencross, and listed six persons as co-authors/contributors/collaborators. Dr Morton was not listed amongst them. However, she was referred to under the heading “Acknowledgements” as one of a number of persons who made a contribution to the project. The paper listed seven objectives. The seventh objective contained a table listing activities numbered 7.1, 7.2, 7.5 and 7.6. The list of activities did not include 7.3 and 7.4. Dr Morton was in charge of the experiments relevant to 7.2, 7.3, and 7.4. All three experiments were run and completed and the growth and physiological data for all three experiments were completed. The manuscript pertaining to 7.2 was in its draft stage and those for the other two experiments were being drafted. Dr Morton did not know why 7.3 and 7.4 were not listed.
15. Exhibit 2 in the proceeding is a list of out of pocket expenses incurred by Dr Morton. She verified all the expenses and the accuracy of the dates and receipts.
16. There were a number of other projects that Dr Morton worked on with Dr Glencross. She had been acknowledged in papers published in respect of those projects.
17. Dr Morton attended an appointment with Dr Kipling Walker, a consultant psychiatrist, at the request of CSIRO. Mr Croft attended the consultation as Dr Morton’s support person. He recorded the conversation on a mobile telephone. Dr Morton said she had the interview recorded for “accountability”. She had been warned that sometimes wording can be misconstrued.
18. In 2017, Dr Morton and Mr Croft bought an investment property in Launceston.
19. Mr Croft is a director of, and Dr Morton is the secretary of, a company. In 2017, the company bought some pregnant sheep, which had 30 to 40 lambs in August 2017. Dr Morton said these were too much work for them. They advertised 25 wether lambs for sale at $110 each and two ram lambs at $220 each, in “Tassie Rural and Livestock Classifieds” and “Dorset Tasmania Buy.Sell.Swap”.
20. Dr Morton said she first started to experience a lot of symptoms relating to stress in about mid-2012. Her symptoms relating to anxiety and what was later diagnosed as depression started in late 2012. In October 2012, she started to experience some gastrointestinal symptoms. Many of the symptoms were not present prior to her employment, but, as her employment progressed, they presented, and worsened. She was largely able to manage her stress during 2012. In 2013, she spoke with a general practitioner about seeing a psychologist for stress, anxiety, and other symptoms and he gave her a referral to a psychologist, Angela Pavlov.
21. Dr Morton was quite stressed, very anxious and was not coping particularly well. She was not coping as well as she used to. She had always considered herself to be coping with managing her job and her career well. She had always had a busy, fairly full workload in any of her jobs and he had always been able to manage that. Now, for the first, time she felt that she could not do so.
22. Dr Morton’s gastrointestinal issues resulted in her gaining weight. This triggered a lot of anxiety around regaining weight that she had previously lost. She had no logical explanation for the sudden weight gain that she could explain to herself and that was quite distressing. There was some stress and friction associated with that in her relationship with Mr Croft.
23. Dr Morton started seeing Mr Croft about five or six months before she consulted Ms Pavlov. Mr Croft could not understand her mindset in relation to the terror and anxiety that her weight gain triggered in her. He would try to reassure her that it was temporary and told her not to worry about it. That caused some friction between them.

### Cross-examination

1. Under cross-examination, Dr Morton was taken to an exchange of text messages she had with Dr Cook on 22 June 2015. Dr Cook said, “Hi. Have a car booked for tomorrow. Leaving ESP at 8 am”. Dr Morton’s response was:

Hi Matt,

I am not going to Bribie again until CSIRO resolve the fact that they are allowing someone who sexually assaulted me on that site. I refuse to be potentially exposed to my attacker, particularly at the site where I was attacked.

Additionally, I won’t be at work tomorrow as I have an appointment with the Dr over the continuing psychologically damaging situation at work where I feel I am getting no real support.

1. Dr Morton’s evidence was that when she referred to her “attacker”, she was referring to Dr Glencross. She denied that she had never previously used the expression “sexually assaulted”, but accepted that she might not have used the phrase “attacker” prior to that text message.
2. It was put to Dr Morton that it was not her idea to use the expression “sexually assaulted” in the text, and that it was not her idea to call Dr Glencross her “attacker”. Her answer to both questions was “Yes. It was.” It was suggested to Dr Morton that her partner, Mr Croft, had suggested that she use the language of “sexually assaulted” and “attacker”. She denied that.
3. Dr Morton accepted that initially, her relationship with Dr Cook was very good, but denied that it remained good up until she sent that text message. She was taken to a text message exchange on 18 June 2015. Dr Cook had sent Dr Morton a photograph from “Jack Greene”, a restaurant or pub in Hobart, with the message “Guess where I am?”. Dr Morton accepted they had had several “work dinners” there in the past. Dr Morton responded saying, “Ha. Down the road. We’re in St Helens, where I have sheep’s milk, blue cheese and Shiraz”.
4. Dr Morton accepted she knew that Dr Glencross had left CSIRO. She said that Dr Cook had suggested that one of the issues was that he would turn up unannounced at the Bribie Island site and not sign the visitor’s book.
5. Dr Morton said that Dr Glencross had damaged her career at CSIRO and she blamed him for not securing any external funding for one of her projects. She agreed that she had published one article, a book chapter and some abstracts presented at scientific conferences in her time at CSIRO.
6. Dr Morton said that she first used the expression “sexually assaulted” in a discussion she had with Mr Casson in March 2015.
7. Dr Morton was taken to a series of text messages between her and Mr Croft. The messages were as follows:

**Dr Morton**

Thank you xxx

Mat sent me a text saying the car to Bribie leaves at 8 am. Do i just say ill be at the Dr as I dont feel well?

**Will Croft**

I’d say that you refusing to go to Bribie until CSIRO resolves the fact that they are allowing someone who sexually assaulted you on the site, AND that you have an appointment with the Dr tomorrow morning.

**Will Croft**

I understand you don’t want to be blunt, but until you stop skirting the issue, they’ll keep ignoring it. Because they are spineless cowards.

**Dr Morton**

Checked in & through security .. Still have to text Mat :(

**Will Croft**

Yeah, well, I’m sorry, but unless you shove it in their face they aren’t going to take you seriously. Have a talk to Shane when you can and tell him that you want HSE to Intervene in the stupidity of the current situation--that it is entirely unreasonable of CSIRO that you be subjected to any potential contact with your attacker.

**Dr Morton**

I know .. I’ll text Mat & tell him I don! feel confortable going to Br,b1e & I have adrs appt tomorrow ..

**Will Croft**

You know how uncomfortable you feel when I say sexual assault?

If you don’t make them feel that discomfort they will maintain their cowardly comfortable status quo.

I’m sorry that it is upsetting, but “don’t feel comfortable” is a let off for them.

Until you stop padding the comfort zone for them they won’t do a damn thing and it won’t stop being your discomfort and nothing will change. Slap them in the face with what they are doing to you. Take your power over the situation back.

**Dr Morton**

So how do I word it? xxx

**Will Croft**

I’m sorry about this, but I am not going to let you keep conceding your power. You are too Important for that. I’ll send you a message you can copy and paste.

**Will Croft**

Hi Mat. I’m not going to go back to Bribie again until CSIRO resolves the fact that they are allowing someone who sexually assaulted me on that site. I refuse to be potentially exposed to my attacker particularly at the site where I was attacked.

Additionally, I won’t be at work tomorrow as I have an appointment with the Dr over the continuing psychologically damaging situation at work where I feel I am getting no real support.

**Dr Morton**

Thank you for the message- I still don’t feel comfortable but i do know what you are saying xxx

**Will Croft**

I know you don’t and it tears me apart to be firm with you about this, but the sooner the better. It is important for you to tell the people who should be shouldering this that they have to take their burden and that you are going to accept having it dumped on you again.

You can’t carry this burden, CSIRO has to own it and act appropriately.

**Dr Morton**

I know ... Just c&p it before I board :)

(Errors in the original.)

1. Dr Morton accepted that Mr Croft drafted the text message she sent to Dr Cook. She agreed that she copied and pasted the message drafted by Mr Croft, but said that the allegation remained true.
2. Dr Morton was asked if she had seen the riding crop before she was slapped with it. She said that she had noticed it momentarily in the room while she was setting up tubes. She agreed that she had not mentioned that in her evidence-in-chief. She said that she never saw the riding crop again after the incident.
3. Dr Morton agreed that the sampling day on 16 October 2012 was extremely busy, with double the usual number of tanks. She accepted that there were probably about eight people on deck to do the work.
4. It was suggested that it was virtually impossible that she and Dr Glencross could have been alone in the room. She said that they were alone. It was suggested that people would have been coming and going the whole morning and setting up. She agreed that people were coming and going and setting up, but said that she and Dr Glencross were alone for maybe only a minute or two.
5. Dr Morton said she did not see riding equipment in the back of Lauren Trenkner’s car. She denied that she asked to have a look at Ms Trenkner’s equipment. She denied that Ms Trenkner showed her the riding equipment.
6. Dr Morton denied that she brought the riding crop from the car into the sampling room. She denied that she started waving the riding crop around like she was riding a horse. She denied that Ms Trenkner started waving the riding crop around in the sampling room, pretending she was riding a horse. She did not recall any type of joking around in relation to the riding crop.
7. It was suggested that Dr Morton took hold of the riding crop and started going around the sampling room hitting people on the buttocks and thigh, with it. She denied this. She denied that she hit Ms Trenkner, Mr Blyth, and a number of other people in the sampling room.
8. Dr Morton maintained that the sample collection day was extremely busy, and a serious day, and there was no light-hearted joking around. It was suggested that Dr Glencross took the riding crop from her and gave her a bit of a slap. She denied that. It was suggested that Dr Glencross said, “That’s enough of that. It’s time to get back to work”. Dr Morton denied that.
9. Dr Morton denied that Dr Glencross then put the riding crop on top of a shelf, saying that he would not be tall enough to reach the top of a cupboard or shelf in the room.
10. Dr Morton said that Dr Glencross had said nothing either before hitting her, or afterwards. She indicated that she also said nothing because she was rather dumbfounded and shocked by the event, and was speechless.
11. Dr Morton was taken to the written Grievance Document she provided to CSIRO on 16 January 2015. She accepted that she had foreshadowed with Ms Davis on 6 November 2014 that she would be preparing that document, and that it was prepared over a period of two months. Dr Morton accepted that Ms Davis asked her to include as much detail as she could. She accepted that her intent was to put down on paper, in as much detail as possible, all the claims she had in relation to her experiences at CSIRO. She accepted that Mr Croft assisted her with the preparation of the Grievance Document and attachments and helped with the proof-reading of the document.
12. Dr Morton confirmed that she felt she had been hit with a riding crop because Dr Glencross was upset with her, as she had corrected him in a comment he made about dominatrixes. Dr Morton said that she was of the view that they were linked, but could not be certain that they were. She acknowledged that she made no mention of any dominatrix discussion in her Grievance Document.
13. Dr Morton was asked about her comment in the Grievance Document that, “Ms Trenkner is a keen equestrienne and carries such equipment in her vehicle”. She says she knew that from previous conversations with Ms Trenkner and did not know that from seeing the equipment in her vehicle on that day. She said she assumed that the riding crop that made its way into the sample collection room was Ms Trenkner’s, and assumed that it had come from her vehicle.
14. It was pointed out to Dr Morton that she had said in the Grievance Document that “several staff made jokes about its use, but that her evidence suggested that there were no jokes that morning”. She said she did not recall any jokes. Dr Morton later said that several staff may have made jokes about its use to help speed up sample collections. Dr Morton did not agree that there was a significant difference between her evidence, and what she said in her Grievance Document about staff making jokes about the riding crop.
15. Dr Morton agreed that she had made no suggestion in the Grievance Document that she was alone with Dr Glencross when he slapped her on the buttocks with the riding crop.
16. Dr Morton maintained that she had not been hitting people, and that she was shocked by Dr Glencross’ behaviour.
17. She said that she was not participating in the joking because she took the sample collection days extremely seriously. She said some of the technical staff did make jokes on occasions, but that she did not participate in those jokes.
18. Dr Morton was asked whether her objective in the Grievance Document was to give as much detail as possible. She agreed, but said that it was a task that she found very overwhelming, so she may have forgotten some specifics. She agreed that she had told Mr Croft about the events, and that he had vetted the Grievance Document as well.
19. It was put to Dr Morton that she did not bother to put the discussion about a dominatrix in her Grievance Document. She said that, at the time she made the Grievance Document, she had not made that link. It took some time. One of the consequences of her psychological injury was that her brain did not work in the same way it used to, and sometimes it took time for those links to form, and that was one that occurred later. She said it just dawned on her one day, and she felt stupid for not realising it earlier.
20. Dr Morton said that she had told Mr Croft about the dominatrix discussion at the time she filed the Grievance Document.
21. Dr Morton agreed that she had not included Dr Glencross’ question about her sexual preference, the prostitute comment, or the crows-feet comment in her Grievance Document. She said that she had told Mr Croft about each of those events. In relation to the prostitute comment, she said, “No. I apparently forgot that one, as well”.
22. Dr Morton accepted that she made no reference to Dr Preston’s reference to her as a “hussy” or a “dizzy blonde”. She said that, at the time she was drafting the Grievance Document, she was not in the best of psychological conditions. She believed she had told Mr Croft about the “hussy” comment and the “dizzy blonde” comment.
23. She accepted that she made no complaint at all about Dr Cook in the Grievance Document. She said that, at that stage, she was trying to cope with just filing the grievance against Dr Glencross and Dr Preston. She believed that she had told Mr Croft that she was upset about three emails that Dr Cook had sent her.
24. Dr Morton was questioned about her dealings with Dr Glencross after 16 October 2012, the date she alleges he hit her with the riding crop. She was taken to a series of text messages with Dr Cook on the afternoon of 16 October 2012. They included the following:

Dr Morton: Ha ha…Just finished sample collection!! Not too shabby for 48 tanks :)

Dr Cook: That’s because the bunny was there. It would have taken days otherwise!

Dr Morton: …Oh & the guys at Bribie are the laziest that the bunny has ever with…but the best part is that bunnikins said I can use my relocation money to fly myself to the uk :)

1. Dr Morton agreed that, the afternoon she was sexually assaulted by her attacker, she was referring to him as “bunnikins”. Dr Morton had earlier said that “Bunny” was not necessarily an affectionate name, and was not always meant as a compliment.
2. She agreed that, if Dr Glencross had been angry with her about correcting him about his dominatrix comment, he must have calmed down by the time he agreed that she could use her relocation money to fly to the UK.
3. It was put to Dr Morton that she attended the dinner at the Norman Hotel on 16 October 2012 because she had not been sexually assaulted by Dr Glencross that day. She maintained she had been assaulted, and said she did not have a choice as to whether or not to attend the dinner.
4. It was suggested that Dr Morton decided to raise the alleged dominatrix comment in her outline of oral evidence given on 28 June 2018 because she wanted to give the riding crop incident a sexual flavour. She denied this.
5. Dr Morton agreed that during the dinner on 15 October 2012, she exchanged numerous text messages with Dr Cook between 7.40 pm and 9.27 pm. The exchanges included Dr Morton relaying parts of the conversation at the dinner. It was suggested that if a saucy topic like dominatrixes was discussed, she would have told Dr Cook. Dr Morton responded that would have depended if her phone had any battery, if it had been within her reach, and a number of other factors. She said she may have told Dr Cook in a phone conversation if she called him later. She said she did not know whether she called him, or if her phone had run out of battery.
6. Later, Dr Morton agreed that March 2015 was two months after she had filed her Grievance Document. She said that she did not use the “sexual assault” expression with Mr Casson, but that Mr Casson had used it with her.
7. Dr Morton said that it was expected that the entire senior staff attend the dinner on 16 October 2012. She said that Dr Preston had to leave the dinner early, and he requested that she put her credit card behind the bar and pay for the dinner.
8. It was put to Dr Morton that at the dinner, there was a discussion about a television show, “The Office”. She did not agree. She said she had been talking to somebody who was seated to her left. She heard her name. She looked across and said “Sorry?”. She said that Dr Glencross then repeated the statement regarding her cleavage and included her name. She said she was shocked, and she had not even been speaking to Dr Glencross prior to that. She said that he singled her out of the blue and made that comment. She did not hear any conversations regarding “The Office”.
9. Dr Morton agreed that earlier in her evidence, she said that she did not believe that any other woman at the dinner was wearing a pendant. Under cross-examination, she said she did not specifically recall what any of the other women were wearing that day.
10. Dr Morton had said she went to the bar and bought a bottle of wine. She was asked why she returned to the table if she had just been denigrated. She said that it was her credit card behind the bar that was paying for the dinner, and she did not have the choice to leave early. She said that according to CSIRO policy, the most senior person present had to pay for the dinner and she was the most senior person there. She said that, at that stage, she outranked Dr Cook. When it was put to her, she agreed that Dr Glencross was senior to her.
11. It was put to Dr Morton that she had stayed until 1 am the next morning at the Norman Hotel drinking with Dr Cook and Dr Glencross. She said that Dr Cook was present at the conclusion of the dinner as he walked her home, but she did not recall what time Dr Glencross left, or who was drinking after dinner. She said she highly doubted that Dr Glencross would have been with her until 1 am in the morning, as she knew Dr Glencross had an early morning meeting and assumed that he would have left to prepare for that.
12. Dr Morton denied that at the dinner, she had offered to drive Dr Glencross to the airport the following day. She was taken to a text message exchange with Dr Cook on the morning of 18 October 2012 in which she said, “Meanwhile, bunny refused my lift to the airport & told me to go write my review!”. Dr Morton was asked whether, at some point prior to sending that text message on 18 October 2012, she had offered Dr Glencross a lift to the airport. Dr Morton said that on that day, she had informed Dr Glencross that there was a car booked and someone would be available to drive him to the airport, and that he informed Dr her that he would be getting the train. She denied that she was offering to personally drive Dr Glencross to the airport, saying the reference to “my lift” was largely because she did the car bookings and had organised the booking. She said she had organised the lift, so she thought of it as being “mine” in terms of a product she had produced. She said she would have organised one of the other staff members to take him. She denied that Dr Glencross was telling her not to spend time driving him to the airport and that he wanted her to write up her review. She said that she believed that he was telling her not to be labelling samples to send to the laboratory and to write the review.
13. Dr Morton was taken to a chain of text messages she had with Mr David Blyth on 18 September 2012. They included, a text sent by Dr Morton at 8.33 am which read, “Meanwhile I’m at work (will be driving bunny to the airport!) & was up to 1 am drinking with him & Cook! Where is my social, financial & emotional support!!!”. Dr Morton was asked whether she was, at that stage, anticipating that she would be personally driving Dr Glencross to the airport. She responded, “No. I can only assume that that’s an issue with autocorrect because at 8.33 in the morning I would not have been driving. I would have been attending a meeting”. Dr Morton agreed that “him” was a reference to Dr Glencross. She was asked whether, in fact, she, Dr Cook and Dr Glencross were drinking until 1 am. She answered, “There may have been other staff members there as well. I don’t know what time the group from Hobart left to go back to their hotel”. It was put to Dr Morton that she was quite happy to be drinking until 1 am with Dr Glencross because she knew that she had never been attacked and that he had never denigrated her that night. She denied this.
14. Dr Cook walked Dr Morton home following the dinner. It was put to her that she did not tell Dr Cook that she felt, as a woman, that she should not be subjected to such things. It was also put that she never raised with Dr Cook that she had been sexually assaulted the day before. She maintained that she had.
15. Dr Morton agreed that, in November 2012, she probably spoke to Dr Cook about the riding crop incident. She rejected the suggestion that she described the incident in a light-hearted and joking manner. She agreed that Dr Cook asked if she wanted something done about it and that she indicated that she did not. She did not accept that she told Dr Cook that she had found the riding crop in the boot of Ms Trenkner’s car. She agreed that she did not tell Dr Cook there had been a discussion about dominatrixes the night before.
16. Dr Morton agreed that, on 25 November 2012, she sent an email to Dr Glencross, saying:

Dear Prof B

Hope the holidays are going well. We are taking the reduction in the number of emails as a sign you are backing away and are (gasp) relaxing and not working!!

…Enjoy your holidays. The trip for Tassie made me home sick for the UK, so very jealous.

1. Dr Morton agreed that she had shared something personal with Dr Glencross in that email.
2. She agreed that on 9 December 2012, she sent a text message to Mr Blyth, where she said:

Boogie hey. I would take a picture of our booze, but we are all too pissed. Now I am being teased about my slutty Santa bowl!!!…

I think the quote of the night is, ‘Fancy a handful of my nuts’.

1. Mr Blyth responded, “I expect to hear a full report of what slutty Santa got up to by Monday”. Dr Morton responded:

Bloody annoying, isn’t it!!! Hmm...well I think Santa’s antics could be construed as sexual harassment. Oh, according to Shaun there may be Elves and a very large present involved.

1. Dr Morton was asked whether she agreed that, within two months of being sexually assaulted and harassed, she was making a joke about sexual harassment. She responded that she was relaying to Mr Blyth what a mutual friend, Shaun, had said about the Santa Bowl. It was pointed out that she had written, “I think Santa’s antics could be construed as sexual harassment”, expressing her own view. After some prevarication, Dr Morton agreed that she was making a joke that involved sexual harassment, or the concept of sexual harassment, in that text.
2. Dr Morton agreed that on 13 December 2012, she sent a text to Dr Glencross saying “Prof B will be leaving ESP in about 5 minutes. Should be with you about 6.35”. He responded, “No worries. Good to go now”. She then sent an email saying, “Am here”. Dr Morton explained that, when they were taking cars to Bribie Island, they would text him on the way to collect him so he could be out at the front of his house so as not to disturb his family.
3. Dr Morton agreed that, on 21 February 2013, she sent a text message to Dr Glencross saying “Out the front”. She agreed that it was another reference to her going with Dr Glencross to Bribie Island.
4. On 18 April 2013, Dr Glencross sent a text to Dr Morton saying, “Train is delayed. Will be 10 minutes late”. Dr Morton replied, “No worries. I will get the car and meet you out the front”. He responded, “I will be needing my coffee and B&E muffin first”. She responded, “Atkins says no to muffin ☺“. He said, “But Glencross says yes to muffin”. Dr Morton agreed that, on that day, and on the other days where she referred in text messages to picking Dr Glencross up, she would have been driving in a CSIRO car and picking him up to drive to Bribie Island.
5. Dr Morton was asked whether she would have been alone with Dr Glencross in the car on each occasion. Dr Morton responded, “Not necessarily”. She was asked whether, on occasions, Dr Morton picked up Dr Glencross and drove the two of them to Bribie Island. She answered, “There may have been occasions, yes”. She continued “I don’t know specifically which dates”.
6. Dr Morton was taken to a work diary entry for 13 December 2012, where she had written, “6.30 am pick up Brett”. That entry was followed by an address. She agreed that it was a prompt for her to pick up Dr Glencross and drive him to Bribie Island that morning. She was asked whether that involved her being alone in the car with Dr Glencross. She answered “Possibly”, but went onto say that it would be unusual that only two people from the eco-sciences precinct attended Bribie Island, and she did not know whether other people might have come with her. She agreed that if she was picking up other people she probably have noted it in her diary, but said it would depend on how frequently she picked them up and whether she knew where they lived. She said that if she picked up somebody like Dr Wade, she would not necessarily have noted his address, and if Dr Wade, or other people, had met her at the eco-sciences precinct at a particular time, she may not have noted that. It was suggested to Dr Morton that, if she was going to pick up Dr Wade, she would make a note that she needed to pick him up, and a note of the time. She said that would depend largely on what had been organised. She did not agree that it is more likely than not that she travelled to Bribie Island alone with Dr Glencross on 13 December 2012.
7. It was suggested to Dr Morton that on at least one occasion some months after 16 October 2012, she got the riding crop again and started flicking people in the sampling room, including Mr Blyth. It was suggested that she was doing it in a playful manner and she said something like, “Hurry up. Let’s have a coffee”. She denied this.
8. Dr Morton was asked again whether there were a number of times in late 2012 and early 2013 when she would have driven Dr Glencross alone to Bribie Island. She responded, “There may have been times that we were alone. I can’t specifically recall who was in the CSIRO vehicle occasion that I drove to Bribie Island”.
9. Dr Morton agreed that on 14 January 2013, she sent a text message to Mr Croft saying, “Had a chat with Brett. Got a bit more of an idea about the year and tasks, so that was awesome”. She agreed that Mr Croft responded saying:

I am happy you were able to have a good chat with Brett about the future plans. It must be a good feeling, relief, to have more clarity. That’s very good news. ☺

1. Dr Morton agreed that in her work diary for 20 January 2013, she had noted, “Brett re lift to Bribie”. She agreed that was another notation to pick up Dr Glencross.
2. Dr Morton was taken to her, “Position Details Document”. She agreed that the document referred to attracting external funding and generating research papers for publication in quality journals. She agreed that these were important parts of her role.
3. Dr Morton agreed that she had referred, in her outline of evidence, to an email from Dr Glencross saying, “It’s a girl this time, Sime”, that she said was inappropriate in terms of its sexual content. She agreed that she had instructed her solicitors to put the email into the court book. She was taken to a chain of previous emails where Dr Glencross had mistaken a man called “Maxime” for a female. She was asked if she could understand why Dr Glencross had said, “It’s a girl this time”. Dr Morton responded that, “I am not really sure why several months later they would still be discussing the gender of an intern. I thought they would be more concerned with their CV”.
4. Dr Morton agreed that she had spoken to Dr Glencross at a very early stage about the fact that she had a partner in Oxfordshire. When asked whether Dr Glencross knew that Dr Morton was heterosexual prior to 26 April 2012, she responded that she did not believe that Dr Glencross knew the gender of her partner. She said she did not generally refer to her partners by gender. When asked whether she never dropped into using a “he” or “his” when discussing her partner with Dr Glencross, she said, “I may have. I may have also used ‘our’ and ‘we’”, depending on the situation”. She agreed that she may have talked about her partner by using, for example, his first name.
5. When asked whether Dr Glencross had ever indicated any sexual interest in Dr Morton, she responded, “I don’t know how to answer that, because I was not looking for any, nor would I have been receptive or focussed on any, and I am not in is mind”. She was asked whether she had noticed anything, and she responded, “I didn’t notice anything, nor was I looking for anything”.
6. Dr Morton was asked about her allegation concerning the discussion about an Asian student at James Cook University. It was put to her that she had asked Dr Glencross about what type of woman he liked. She denied this. She said that she had told Mr Croft about the incident, but that was not included in her Grievance Document. She agreed that the first time she raised this as allegation against Dr Glencross was when she filed her amended statement of claim, six years later.
7. Dr Morton maintained that she did mention the incident at James Cook University to Dr Cook. She said that she wanted Dr Cook to do something about that complaint. She said that, by January 2016, when she lodged her Grievance Document, nothing had been done about anything that she complained about. She agreed that she could have had a grievance against Dr Cook at that point in time. When it was put to her that she had put nothing in her Grievance Document about Dr Cook’s conduct, she said, “In that grievance, no”. She then agreed that there was only one grievance she filed. She accepted that she intended to cover everything to the best of her memory within that Grievance Document.
8. Dr Morton said that the crows-feet comment was made in the presence of Marty Philips, and the prostitute comment was made when Dr Glencross and Dr Morton were alone. Dr Morton was taken to the allegation in paragraph 1(A)(I)(b) of the amended statement of claim that, on 2 May 2012, Dr Glencross referred to the Dr Morton as a prostitute, referring to her dress and appearance. She was asked whether the comment was made in relation to the dress she was wearing at the time. She responded that she did not believe it was, and that she was wearing jeans at the conference. She accepted that the paragraph did not talk about a dress that she owned, but what she was wearing at the time. She agreed that it was pleaded that the comment was made in the presence of Mr Phillips, even though she said in Court that it was not made in his presence. She said she could only assume that it was an error that had slipped through the cracks. She denied that she was saying this now because she knew that Mr Phillips would give evidence in the case disputing a version of the facts. She said that she had no idea what Mr Phillips would say, but then accepted that she had looked at the outlines of evidence filed by CSIRO.
9. Dr Morton agreed that, in her Grievance Document of 16 January 2016, she did not mention the prostitute allegation. She agreed that the first time she raised the allegation was when she filed her amended statement of claim on 10 October 2018. She said she told Dr Cook about the comment at the time.
10. Dr Morton said that she told Mr Croft about the crows-feet comment that Dr Glencross made, but had not included that allegation in the Grievance Document. She agreed that it was first raised in her amended statement of claim. She said that she had told Dr Cook about the comment, and that she made references about crows-feet, in emails in reference to the comment.
11. Dr Morton was taken to an email she sent to Dr Wade, and copied to Louisa Valparto and Dr Glencross, in which she referred to a photograph of herself saying, “Naturally I look shocking in all of them, but he said he would Photoshop out my crows-feet”. She said that the people in the email were all well aware of the crows-feet comment and that this was a pointed reference to it. It was put to Dr Morton that she was comfortable with, and frequently commented about her crows-feet. She responded that it was a pointed comment. She agreed that she had never met Ms Valparto, and had only spoken to her via email.
12. Dr Morton was also taken to a text message to Dr Cook on 13 February 2012, where she said, “crows-feet must have been the give-away”. She was taken to an email from Dr Cook to her, on 13 February 2012 where he said, “Is that crows-feet?”. She was also taken to another email from Dr Cook, where he said, “Ryan looks all of 10 years old”. Dr Morton responded, “Maybe I need to give him my crows-feet”. She denied that this was part of her playful banter and the way that she would talk about herself.
13. Dr Morton was asked about “hussy” comment, which she alleged Dr Preston had made. She agreed that there was no reference to that allegation in her Grievance Document. She said Mr Croft did not compile her Grievance Document, but assisted her with its preparation. She agreed that she would have mentioned it to Mr Croft before the date of the document.
14. Dr Morton was taken to her email to Dr Cook sent on 30 October 2012, where she said, “Oh, and the Pres said Ian is a gazillionaire right before he called me a hussy”. Dr Morton said she had already informed Dr Cook of what had happened. She agreed that there was nothing in the email that suggested that the allegation was something they had discussed earlier. She denied that her intention in the email was to give the impression that Dr Preston calling her a hussy was related to his dealings with Ian, the gazillionaire. She said that Dr Preston’s comment had been very left field.
15. It was pointed out to Dr Morton that her outline of evidence said, “Dr Preston said to the applicant in the presence of Dallas Donovan, you’re just a hussy”, referring to Dr Morton interacting with Mr Donovan. She agreed that the hussy comment had nothing to do with the way that she related to Mr Donovan.
16. Dr Morton denied that she had been trying to paint a picture of CSIRO trying to use her as some sort of honey-trap to get funds. When she was asked, “The idea that everyone egging you on to use your charms to get funding is complete nonsense, isn’t it”. She answered, “No, it’s not”.
17. Dr Morton agreed that she had not secured any external funding in the time that she was with CSIRO. She said that there were a number of reasons for this.
18. She agreed that she could not point to any email communication with Dr Preston that was inappropriate at a sexual level. She agreed that she had looked at the email chains between herself and Dr Preston and provided those emails to her solicitors.
19. Dr Morton was asked whether she had a relationship with Dr Cook where they would share confidences. She accepted that was the case for some of the time. She denied that they would share jokes of a sexual nature.
20. It was put to Dr Morton that she had never complained about any of the emails Dr Cook sent to her. She said that she did speak to him verbally about the emails. When asked why she did not respond with a return email saying that the emails were inappropriate, she said that there was a lot of pressure in CSIRO to fit in with the existing culture, and she tried to deflect as many inappropriate comments as she could, and get on with the job. When asked why that meant she was able to speak to him face to face, but not via email, she said that it was far more casual to be able to say to somebody, “I don’t think that when you are hiring candidates that certain things should be sent around in email chains”, rather than sending a formal email to everybody in the chain.
21. It was suggested to Dr Morton that on 7 May 2012, she had mentioned, in an informal way, to Dr Cook, that Dr Glencross had made a comment about her being a prostitute in the context of what she was wearing. She said that the comment was not about what she was wearing, but about what she said she could have worn.
22. Dr Morton was asked about the “surf porn under desk email” from Dr Cook on 26 July 2012. She denied that she had discussed with Dr Cook suspicions that an employee had been surfing porn on the internet. She agreed that they had discussed that the employee had been rorting ordering systems in order to gain freebies from the client and had been erroneously filling out his time sheets on weekends. She denied that her response to the comment from Dr Cook, “Ha, ha, ha, ha, ha”, was her participating in the joke. She agreed she made no complaint about this email in her Grievance Document.
23. Dr Morton was questioned about the “dizzy blonde” allegation. She agreed it dated back to 9 August 2012, but that the first time it was raised was in the amended statement of claim, six years later. She agreed that she had sent an email to Dr Cook on 9 August 2012, saying, “PS Has Nigel told you what my nickname is? First rule of nicknaming, you have to tell the person!” She agreed that she had never heard Dr Preston address her by a nickname. She agreed Dr Cook’s response was, “I think it’s dizzy blonde????”. It was put to Dr Morton that Dr Cook was telling her, “I am not even sure”. She said she did not know if that was the intent of the question marks, but it could have been. Dr Morton agreed that her response was, “It wouldn’t surprise me, the blonde bit”.
24. Dr Morton was asked about the email from Dr Cook of 10 September 2012, attaching the table showing how people in science perceived each other. She agreed that this was not raised in her grievance, and was first raised in her amended statement of claim, nearly six years later. She agreed that her response in the email chain was:

Can I have an undergraduate too, please? Except I would like to request mine from the 2013 fireman’s calendar. Ta.

1. She denied that she was participating in a joke. She said she was making a pointed comment.
2. Dr Morton was asked about Dr Cook’s email of 12 September 2012, which said, “Is this what you mean by learing?”, and attached a photograph of a woman with crossed legs. It was suggested that she and Dr Cook were, around this time, discussing the topic of where the line is drawn between people watching and people leering. When it was suggested that the email was sent as a joke, she answered, “No”. She agreed that the first time she complained about this email was in her outline of evidence on 28 June 2018. It was put to Dr Morton that her evidence, that she was “upset and confused” about this email was a lie. She denied this. She said that there was no context to the email arriving and that it was never discussed again.
3. Dr Morton was taken to the email from Dr Cook of 16 October 2012, saying, “Imagine Nick and Brett in mankinis singing”. The “Bunny Lovin’” lyrics were attached to that email. Dr Morton said that she found the email to be inappropriate and that it was unexpected. She accepted that she responded, “I owe you a coffee for that one!!! At dinner with the Bunny et al 3 Hendricks in and counting”.
4. Dr Morton was taken to text messages between her and Dr Cook exchanged on 21 October 2012, five days after the mankini email. Dr Morton sent photographs of gingerbread men, which she described as “ninjabreads”, to Dr Cook. She said that she and some friends had baked ninjabreads and that they had been decorated. One of the ninjabreads in the photograph was decorated as if it was wearing a mankini. The caption accompanying the photo she sent to Dr Cook was, “Recognise this one?”.
5. Dr Morton accepted that, the following week, she brought the leftover ninjabreads into the office. She agreed she gave one to Dr Wade. She agreed that Dr Cook’s previous email had talked about the idea of Dr Wade being in a mankini. It was put to her that she said she had found this highly inappropriate, but, within a couple of weeks, she was handing Dr Wade a ninjabread man in a mankini. Dr Morton’s answer was, “The sexual nature of the song was inappropriate. I don’t believe that a mankini as a piece of clothing is inappropriate”.
6. Dr Morton was asked whether she handed Dr Wade a ninja gingerbread man in a mankini. She said:

I handed Dr Wade a ninjabread. What it was wearing, I do not know. I believe there will be a picture of it though.

1. Dr Morton was asked what she meant by her comment, “Recognise this one”. Her answer was, “It appeared to be dressed in a gold mankini”. Dr Morton agreed that she sent an email to Dr Cook on 22 October 2012 attaching a photograph of Dr Wade holding up a ninjabread. She agreed that the ninjabread had a mankini on.
2. It was put to Dr Morton that she had made no complaints concerning Dr Glencross of a sexual nature to Mr Brewer. Dr Morton responded that she recounted many of Dr Glencross’ behaviours to Mr Brewer.
3. Dr Morton was taken to Dr Cook’s email of 7 November 2012, where he attached a photograph of his “top two candidates”. It was put to Dr Morton that she was participating in a joke. She denied that she was and said that she was trying to change the subject. She indicated that her comments, including, “Not suitable for those with no cleavage, so clearly CSIRO needs to fund my boob job”, were sarcastic and pointed comments. She said that the reference to “no cleavage” was a reference to the comment Dr Glencross had previously made about pendants.
4. It was put to Dr Morton that Dr Cook’s email of 8 November 2012 where he said, “mainly titty bars!”, was understood by her to be a joke. She denied this.
5. Dr Morton was asked about Dr Cook’s email when he referred to his system of classifying people’s personalities and referred to someone as a “bitch”. It was put to Dr Morton that she told Dr Cook that she liked this characterisation of the person as a “bitch”. She denied this.
6. Dr Morton agreed that, in a text message to Dr Cook on 20 November 2012, she referred to Dr Glencross being unhappy and “jumping up and down about my barra health project and external money or more correctly lack of external money”. She accepted that it was an ongoing issue that she was not getting any external money for the barramundi health project.
7. Dr Morton accepted that she had approximately 32 trips to Bribie Island in 2013.
8. Dr Morton was asked about the email from Dr Cook which ended with, “bend me over and slap me with a cold barramundi!”. It was put to her that she had made up her evidence that she considered this to be a reference to the riding crop incident. She denied that she had made it up. She was taken to an email exchange two days later with Dr Cook, where they were exchanging light-hearted banter about drinking gin. She accepted that they had a friendly exchange, even though she said she was upset by his email.
9. Dr Morton was taken to a text message from Mr Croft of 15 May 2003, where he said “your thoughts when you are coming home to me are about the scales”, and “the one thing I know stresses you out the most”. She accepted that he was saying that the most stressful thing in her life was worrying about her weight. She was asked whether that was the truth of the situation, and denied that it was.
10. Dr Morton accepted that on 1 July 2013, she sent a text message to Mr Nicholas Bourne indicating that Dr Glencross was going to Bribie Island, “in the car with me”.
11. Dr Morton agreed that she commenced consulting a general practitioner, Dr Tucker, on 30 March 2013, about issues she was having with anxiety. It was suggested that she told him the principle reason for her anxiety was that she was worried about her weight. She said she did not believe it was the principal reason, but believed it was one of the reasons. She also told him that she was finding work stressful. When it was put that she had never raised with Dr Tucker that she had been sexually assaulted, she answered “Not specifically. No.”.
12. Dr Morton agreed that she had asked Dr Tucker for a referral to a psychologist, Angela Pavlov. She agreed that she had significant food issues at that time. In mid-October 2012, she started having significant gastrointestinal issues with food, bloating, constipation and other issues. She agreed that she had told Dr Tucker that she had been morbidly obese and was 160 kg some years ago. She had undergone a lap banding procedure in 2007 and plastic surgery some years later.
13. Dr Tucker issued a medical certificate indicating that he had seen her on three occasions and that she had voiced some anxiety about work stressors contributing to her anxiety. She accepted that she had previously received a low dose anti-anxiety medication in the lead up to moving to Dubai for a two to three month period.
14. Dr Morton agreed that on 19 April 2013, she had a meeting with Mr Bourne and Dr Tony Worby. At the meeting, she said she felt that Dr Glencross had unreasonable expectations of staff. She said there were a number of discussions that she and Mr Bourne had with Dr Worby about Dr Glencross. She said that she raised complaints of a sexual nature with Dr Worby at a later meeting.
15. Dr Morton agreed that, between 30 April 2013 and 7 September 2013, she consulted Ms Pavlov. She agreed that she spoke to Ms Pavlov about anxiety she was having regarding her weight. She spoke to Ms Pavlov about some general and some specific work issues. She said that she spoke to Ms Pavlov about issues with Dr Glencross changing goals on projects and the stress that was causing and other similar issues. She agreed that she had ten consultations with Ms Pavlov. When asked whether she raised any matters with Ms Pavlov regarding Dr Glencross of a sexual nature, she said that without seeing notes, she did not specifically recall whether she had mentioned the cleavage comments or the riding crop incident, or if she said that he was just generally sexist.
16. Dr Morton accepted that she told Ms Pavlov that she had been judged negatively in the past because of her weight. She accepted that she told her that she had been bullied as a child because of her weight. She told Ms Pavlov that she was angry that her gastric band was not working, and that she had difficulty controlling her worry and ruminations regarding her weight and body image.
17. Dr Morton told Ms Pavlov that she was experiencing stress because her partner was drinking every night, she had been made redundant, and had brought a grievance regarding bullying allegations. Dr Morton accepted that she did not make any allegation against Dr Glencross of a sexual nature during the ten sessions that she had with Ms Pavlov.
18. Dr Morton was asked whether she had invited Dr Glencross to a party in September 2003, to celebrate Mr Croft’s redundancy from CSIRO. Dr Morton said that she believed she would have invited the entire group, but did not recall exactly who was invited. When taken to her email of 6 September 2013, she agreed that an invitation had been sent to Dr Glencross. She agreed that she would have consulted with Mr Croft as to who should be invited. She said she normally sent invitations to most of the people in the group, although there were a few people she had forgotten. When asked whether she agreed that she did not need to invite Dr Glencross unless she wanted to, she answered that she used to invite most of the group and it was set up as an email list on her computer. She agreed that, within a year of her sexual assault, she and her partner had invited her attacker into their home.
19. Dr Morton was taken to a text message exchange with Dr Glencross on 12 September 2013. He had slept through his alarm and asked Dr Morton to swing passed his home to pick him up. Later, she said, “Out the front with coffee :)”.
20. Dr Morton accepted that, on 21 November 2013, she sent a text message to Mr Croft saying, “Just dropping Brett off. Home soon.” She later sent another message to Mr Croft about a restaurant saying, “Poppolo is good, according to Brett”.
21. Dr Morton agreed that she had a Christmas party at end of 2013, and that she had invited Dr Glencross to the home that she and Mr Croft shared. Dr Morton agreed that she sent an email to a number of persons, including Dr Glencross, on 25 November 2013, advising of a change of date for her Christmas party. Then she referred to having a “mega-blonde moment” by double-booking.
22. Dr Morton stated that, in 2013, she was downsizing her wardrobe and the way she did that included through consignment stores and selling clothes on eBay.
23. Dr Morton maintained that in late 2013, she complained about matters of a sexual nature to Dr Wendy Barron. She agreed that she sent an email to Dr Cook on 3 December 2013 referring to an interesting conversation with Dr Barron. She agreed that the email referred to a discussion about Dr Worby mentoring and coaching Dr Glencross and other matters, but made no reference to any conduct of a sexual nature by Dr Glencross. Dr Morton said that this was not an email discussing the entirety of what she had spoken to Dr Barron about. It was put to Dr Morton that if she was intending to raise matters of a sexual nature with Dr Barron, she would have told Dr Cook that. She said that was not necessarily so, as the discussion she had with Dr Barron covered a number of aspects of Dr Glencross’ behaviour, not all of which were discussed with Dr Cook in that email.
24. Dr Morton said that the reason she stayed at the dinner on 17 October 2012 until the end was that Dr Preston had specifically asked her to pay for that dinner on her work credit card.
25. Dr Morton accepted that in 2013, she made some 25 trips to Bribie Island. She agreed that on 7 February 2014, she had sent an email to Dr Glencross about various items of work. Dr Glencross responded on 25 February 2014 saying, inter alia:

Profile needs some work. Need to focus on what YOU do, not what the group around you does. Most of those claims are actually my work, not yours?

…

Student projects isn’t this your core role here though? So if we farm these bits out to students then what do we need Katherine Morton for?

1. Dr Morton accepted that she went with Dr Glencross to Bribie Island on 27 February 2014.
2. She agreed that she was off work between 31 March 2014 and 15 April 2014 with surgery for a twisted and perforated bowel.
3. She was taken to Dr Cook’s email of 19 March 2014, saying, “Richard can’t move past [an applicant]” and that Richard had pinned her picture up in the office. It was put that all the exchanges, including her own, were simply attempts at humour. Dr Morton said, “There is humour in these exchanges. Yes. You will also note that none of the humour of mine has anything to do with a sexual reference”.
4. Dr Morton was taken to a chain of emails between her and Dr Cook on 4 April 2014. In an email, Dr Morton said:

I have discovered that cyclists have a phrase, bonking. Which seems quite different to the reproductive biologists’ usage. This made me giggle uncontrollably, drug induced, and now my abdo hurts.

1. Dr Morton said that “bonking” was a term used in cycling. She agreed that she was also raising the word which otherwise referred to having sex. Dr Morton said that the reason she brought this up with Dr Cook was that he was an avid cyclist and she thought it was quite amusing that cyclists had adopted a word that clearly had other connotations.
2. Dr Morton was taken to an email she sent to Dr Cook and Dr Coman following the role clarification meeting where she said that Dr Preston had called her in and suggested that she think about where her career was heading and where she wanted it to head. Amongst other things, she said that she was unable to progress the scientific side of her career within the aquaculture nutrition sphere. She said that the only two options that would allow her to progress her career would be for Dr Glencross to carve off an area, for her to work in and make her own or focussing more on developing her management skills”. She said that the second option was her preference.
3. Dr Morton was taken to her annual performance agreement for 2013/2014, where she explained that she had developed three project proposals, but that the economic climate had meant that no funding body had been able to meet the costs of the projects and they remained unfunded.
4. Dr Morton wrote an email to Dr Glencross, Dr Cook and others on 25 July 2014, referring to surgery and issues she had with infections, wound healing, and mobility. She indicated that she would work from home and return to the office around 11 August 2014.
5. On 26 August 2014, Dr Glencross sent Dr Morton an email telling her not to get too distracted on operational things, and saying that they needed to have her focussed on getting some tangibles and outputs. She agreed that he referred to external funding and publications and reports.
6. Dr Morton agreed that, by September 2014, she was experiencing anxiety. She denied that the biggest issue for her, in terms of her anxiety, was her fear of putting on weight. She accepted that she feared going back to being morbidly obese. She said that when she started having gastrointestinal issues, she suddenly started to gain large amounts of weight—three to five kilograms overnight.
7. Dr Morton agreed that she sent text messages to Mr Croft on 1 September 2014 where she referred to being in a bad place with the bloating and her weight.
8. She was asked about her meeting with Dr Preston on 9 September 2014. She maintained that Dr Preston said there was a project that required a Level 3 Lab Technician, that they did not have one, that she was available, so she had to do that work. She said that in her Grievance Document, she had raised this allegation in the context that Dr Preston had said that the lab work was at Bribie Island and that she needed to assure him that her health was up to it, in reference to travelling there. She agreed that there was no reference to this allegation in her further amended statement of claim, or her outline of evidence. She agreed that, at the meeting, she was told that the project was the Huon project.
9. In an email to Dr Cook, Dr Morton said, “Any chance you could fill me in about the project tomorrow at Bribie? Nigel has already asked me if I had made a decision about it”. It was put that the way she described it was not as a “take it or leave it” type of proposition. Dr Morton said that, at that stage, she had received no details about the project, and the choice she had essentially had been given from Dr Preston was to take the project, or become vulnerable to redundancy.
10. Dr Morton was taken to an email she sent on 19 October 2014 to Dr Preston and Dr Cook. In that email, she said that she still considered management to be the direction in which to pursue her long-term career and that the best course for developing her career was an MBA.
11. A meeting was organised with Dr Preston and Dr Cook for 22 October 2014. Dr Morton agreed that Dr Preston may have said, “There is no precedent for CSIRO for such a request to be approved”. She agreed that Dr Preston said that an MBA would be a distraction to her science. She denied that he said that an MBA would not be appropriate for the role that she was currently performing, that CSIRO needed her to continue concentrating on the job she had been hired for, and that she needed to be focussing on scientific research. Dr Morton accepted that Dr Preston said that she had not achieved the science outputs in agriculture and nutrition, and that she had a low level of publications. She maintained that Dr Preston said that she did not have any scientific ideas. She accepted that Dr Cook said that what they needed to do, as managers, was to help her move to externally funded projects. She agreed that Dr Preston was concerned that she was under-allocated, and said that they would look for further ways to use her skills. She denied that Dr Preston said that, if they could not assist her to realise her potential, they would be having a different conversation in 18 months’ time. She denied that Dr Cook said, “Is there anything more we can do to assist you health-wise?”.
12. Following that meeting, Dr Morton sent an email to Dr Preston, copied to Dr Cook, on 25 October 2014. In that email, she said that, in her time at CSIRO, she had been subjected to behaviours that were unacceptable, referring, as examples, to the riding crop incident and the cleavage comment. Dr Morton agreed that she referred only to those two events. She was asked whether she agreed that she had not pursued those two allegations. Dr Morton’s response was, “No. Beyond telling Dr Cook of those, I had not formally pursued them”. It was put to Dr Morton that she had not described the riding crop incident as a sexual assault, did not say that Dr Glencross was involved, and did not mention that the night before there was a discussion about dominatrixes.
13. Dr Morton denied that after the meeting on 22 October 2014, Dr Cook told her that she would initially be doing work at less than a Level 6 level, but would eventually be running the project. She said that Dr Cook said that initially, she would be doing work at a Level 3 or Level 4 level, and that until the Huon project had been officially signed off, the exact path of the project was unknown. She said that at no time did Dr Cook mention leaving the project to her.
14. On 28 October 2014, there was an exchange of text messages with Mr Croft where there was a reference to her dispute with Dr Glencross about the editing of the manuscript. She agreed that Mr Croft had said:

Go to HR with the emails and inform them of everything. Then when they tell you to bring the topic up with him send the whole thing through to Nigel. Let him know you have been to HR, and ask him what he is going to in relation to Brett’s appalling treatment of you.

1. Dr Morton agreed that nowhere in the exchange did she or Mr Croft talk about her being the victim of a sexual assault by Dr Glencross.
2. Dr Morton agreed that there was a meeting on 29 October 2014 involving her, Dr Cook and Dr Glencross after the manuscript dispute had come to a head. She said that Dr Cook said that she and Dr Glencross would not be attending meetings without a third person present and that they would not be working together in the future. She accepted that Dr Cook saw her privately at the end of the meeting and reassured her of her value and importance to CSIRO. She accepted that was the end of her direct dealings with Dr Glencross.
3. Dr Morton was asked about her meeting on 30 October 2014 with Ms Sturton. It was put to Dr Morton that she made no complaint of inappropriate sexual conduct about Dr Glencross. She said that she believed she told Ms Sturton that he was both rude and sexist. She agreed that she made no complaint about Dr Preston or Dr Cook at that point.
4. Dr Morton agreed that, at her meeting on 6 November 2014 with Ms Sturton and Ms Davis, she did not raise any allegations of a sexual nature. Dr Morton agreed she did not feel that would have been appropriate to raise in a coffee shop where there were a lot of CSIRO staff.
5. Dr Morton said that, at her meeting with Dr Lehnert on 26 October 2014, she mentioned the cleavage comment made by Dr Glencross. She accepted that she may not have mentioned anything else of a sexual nature.
6. Dr Morton agreed that, on 24 November 2014, she was successful in securing a team leader role for the Agriculture flagship, with a 10% allocation. Dr Cook and Dr Elliot were on the panel that appointed her.
7. Dr Morton agreed that the Huon project commenced its first phase on 25 November 2014 and that her initial allocation was 50%. She maintained that in December 2014, Dr Cook made the comment about taking a blonde to Tasmania. She agreed that she made no allegations at all in the Grievance Document concerning Dr Cook. She said that she had told Mr Croft, prior to lodging the Grievance Document, that the comment had been made. She agreed that this allegation was not in her original claim in the Federal Circuit Court, and that it was raised for the first time in her amended statement of claim filed on 6 March 2018.
8. Dr Morton agreed that on 3 December 2014, she had an exchange of text messages with Dr Cook, where he said, “Do you want to meet at 7.45 and head to the Jam Bar for breakfast”, to which she responded, “Sounds good :)”. She agreed that there was no hint from her exchanges with Dr Cook the day after she felt quite disgusted and humiliated, that she was upset with him. She said, “Not in the text messages, no”.
9. Dr Morton was asked about her allegation that just prior to the trip to Huon Agriculture, Dr Preston told her to make friends anyway she could. She agreed the allegation was not made in her amended statement of claim, or in her outlines of evidence.
10. Dr Morton was asked about her meeting with Ms Davis on 5 December 2014, which Mr Croft attended. She said:

We discussed the need to put everything in writing, and the documentation. I explained I had a lot on as team leader, and with the Huon work, which is why it would not be done until January. We then - we discussed a number of issues. The upshot of that meeting was that I would put the documentation in writing which is what led to the documentation that was submitted in January.

1. Dr Morton was taken to some of her Facebook posts for 2014. On 5 January 2014, she posted:

Seriously productive day today. Meal prep organised, washing done—well two loads to go, new sheets on the bed, eBay listings done, took advantage of 100 free listings, eBay parcels posted and hair washed. Now to put my feet up and have a well-deserved coffee before packing 10 kgs of plates that just sold on eBay.

1. Another post, made on 8 January 2014, stated:

Had a wonderful shopping trip this morning. Got the most amazing haul including a few designer treats and a book I have been after. Some days you are really in the right place at the right time.

1. On 12 January 2014, Dr Morton posted:

Another super productive day. Washing done, eBay, other parcels packed, boxes gone through, charity shop donations organised, cake for the sick in the oven, and about to start on home-made pate. Still to do ironing, sorting out three more boxes, picking a new hairstyle.

1. On 9 February 2014, Dr Morton posted:

Lazy Sunday morning. Coffees consumed and antique furniture being polished while listening to ABC Radio. Life doesn’t get any better.

1. Dr Morton agreed that, in early 2015, she started an MBA at the University of Queensland. Dr Morton was asked whether she had tried to give Dr Rees the impression that the MBA was a pretty easy course. Dr Morton denied that she tried to give the impression that it was an easy course, but said that, in comparison to her PhD studies, she found it easier.
2. Dr Morton said that there were a number of students in the MBA course she spoke to who did not have university degrees. She denied that she told Dr Rees that the course was largely attended by people who did not have undergraduate degrees. She said she did not know why Dr Rees used the words “largely attended by”. Dr Morton agreed that the University of Queensland had represented its MBA program as ranked No. 1 in Australia and the Asia Pacific, and that it was ranked 16th worldwide by *The Economist* in 2017.
3. Dr Morton denied that, by telling Dr Rees that, “exams were open book and there was use of a calculator allowed”, she was trying to create an impression that the course was easy. Earlier, she had been asked whether she could understand that, if the MBA was quite demanding, it could say something about her work capacity. She said, “Yes, and with respect, one of my MBA subjects, the final exam was a 30 multiple-choice question exam”. She continued, “well you are trying to claim that an MBA course is demanding and I don’t consider that a 30 multiple-choice question exam is particularly demanding”. She was asked whether that was the entire mark for the course, and responded that it was the final exam for the course.
4. Dr Morton was taken to the Course Information for the 12 subjects comprising the MBA course and asked whether those descriptions were consistent with her experience. She said that all the courses but two, Financial Management and Integrated Strategic Analysis, were inconsistent with her experience.
5. The assessment for the subject Financial Management was described in the Course Information as consisting of a team assignment, a mid-semester exam, and a final exam. The subject required attendance at a series of seminars and tutorials, and required various readings to be done. Each of the exams was 120 minutes long. The assessment for the subject Integrated Strategic Analysis consisted of a case study, a presentation, and peer assessment. The subject required reading of various articles and book chapters.
6. For each subject in the MBA course, a grade of 5 (a credit) required, “Demonstrates substantial understanding of fundamental concepts of the field of study and ability to apply these concepts in a variety of contexts; develops or adapts convincing arguments and provides coherent justification; communicates information and ideas clearly and fluently in terms of the conventions of the discipline”. A grade of 6 (a distinction) required, additionally, “Frequent evidence of originality and defining and analysing issues or problems and in creating solutions; uses a level, style or means of communication appropriate to the discipline and the audience”. A grade of 7 (high distinction) required, additionally, “Consistent evidence of substantial originality and insight in identifying, generating and communicating competing arguments, perspectives or problem solving approaches; critically evaluates problems, their solutions and implications”.
7. Dr Morton agreed that, in a Facebook post on 31 March 2015, she said:

So, I have been selected to attend to the “Emerging Leaders Forum” to be held in Adelaide later in April.

Naturally, its squeezed a Management Group assignment (presentation) on the Tuesday night (when I should be flying out), the Strategic HR in-class presentations and exam, as well as Anzac day…

On the upside, it’s in Adelaide :D

1. Dr Morton agreed that she posted on 11 April 2015:

Another week survived!

Now to the weekend: two-full days of ‘Strategic HR Management’, a night in the lab with my amoebae & a lot of thinking about work…

1. Dr Morton was asked whether she was effectively working and studying seven days a week. She agreed that was the case for some weeks, but said the university subjects were not on every weekend. She explained that on the particular weekend referred to in her post, she would go into the lab, check on the amoebae, walk to the university, attend classes from 9 or 10 to about 4, walk back, go to the lab, check on the amoebae and then walk home.
2. Dr Morton was taken to Facebook posts for 13 April 2015, where she referred to “12+ hr days at uni and work over the weekend”, and to “Early as in to finish work after 12 hours instead of the 15+ you were anticipating”. She was taken to her Facebook post of 14 November 2015. She was in Hawaii and said, inter alia, “We are having an awesome time!”
3. Dr Morton accepted that, during the six months when she consulted a psychologist, Dr Van Vuuren, she did not raise any issue of a sexual nature as being a source of stress or anxiety. She said she was seeing Dr Van Vuuren for food issues. She was seeing Dr Hand, another psychologist, primarily for the work issues. She mentioned and specifically raised, the sexual issues with Dr Hand, rather than Dr Van Vuuren, in the period from 27 November 2014 to 14 May 2015. She said that she mentioned to Dr Van Vuuren that there were stressors at work, but did not go into great details about those stressors because they were being dealt with by Dr Hand.
4. It was suggest the Dr Morton had not begun seeing Dr Hand until 3 March 2015, so that there were four sessions she had with Dr Van Vuuren prior to seeing Dr Hand. She accepted that. She agreed that on 14 May 2015 she told Dr Van Vuuren that her work stress had reduced and her coping was improving.
5. Dr Morton agreed that on about 12 May 2015, she told Dr Hand that she was now back at work and feeling in more of control of her situation.
6. She agreed that her Facebook post of 30 May 2015 showed that she had been for a “Lazy 10.5 km walk”, and that she was “getting back to her uni assignments”. On the next day, she recorded that she had, “A relaxing 7 km stroll to a festival and then went home to her assignment”. She described it as “An absolutely perfect day!”.
7. Dr Morton agreed that she and Mr Croft went on a holiday to Tasmania on 6 June 2015. She agreed that in her evidence-in-chief, she had said that, as at June 2015, she was feeling stressed and depressed.
8. She confirmed that one of her complaints was that Dr Manners had never provided her with the finalised outcome of the investigation of her grievance. She was taken to an email from Dr Manners of 12 June 2015, where he said:

In addition, I would like to meet with you when I am in Brisbane at the ESP next week to discuss the outcome of the recent investigation with you and to provide you with a letter confirming the outcome. We can discuss your concerns then. Would you be available on Friday, 19 June 2015? If so, I can arrange for Dominica to meet with you at a suitable time.

1. Dr Morton agreed that there was an autoreply from her email saying that she was on leave and out of the office, returning on 23 June 2015. She agreed that Dr Manners wrote back on 12 June 2015, asking if she was free on 25 June, when he was next in Brisbane. Dr Morton agreed that she forwarded an email to Ms Bev Rose, Dr Manners’ EA, declining a meeting request and commenting that she would not be available for work activities until after 6 July 2015. She agreed that no meeting was eventually sorted out.
2. Dr Morton was asked whether she was somewhat dishevelled in her grooming when she spoke to Dr Mathew via Skype on 3 July 2018. She said that she did not know if she was dishevelled, but she was as she normally is every day. She was asked whether she appeared clean and appropriately dressed when she was seeing Dr Shaw, her general practitioner. Dr Morton said that she did not know what Dr Shaw’s definition of clean and appropriately dressed was, and she would have been wearing what she normally wears.
3. It was put to Dr Morton that when she spoke to Dr Mathew, the only allegations she made of a sexual nature were against Dr Glencross. She said she did not recall exactly what she and Dr Mathew had discussed.
4. It was put to Dr Morton that she did not make any allegations at all, sexual or non-sexual, in nature, against Dr Preston, when she spoke to Dr Mathew. She agreed that she may not have. She said that she would have spoken to Dr Mathew about the Comcare case, and, as there were no allegations about Dr Preston of a sexual nature in the Comcare case, she did not think they would have spoken about it.
5. It was put that Dr Morton did not make any complaints at all about Dr Preston, of any kind, when she spoke to Dr Mathew. She said she did not believe so. She said that she believed the majority of the conversation would have been about the Comcare claim, which was centred around Dr Glencross’ behaviours.
6. She was asked whether she told Dr Mathew that Dr Glencross had told her to wear a short skirt. Dr Morton said she believed there was one instance where Dr Glencross had mentioned wearing a short skirt in a meeting to attract funding and that she may have mentioned that to Dr Mathew. She agreed that she had never, prior to speaking to Dr Mathew, revealed, in any document, that Dr Glencross said anything of that sort. She agreed that this allegation was not pleaded, was not in her Grievance Document, and was not in her outline of evidence. She denied that she was making it up.
7. Dr Morton was taken to a text message exchange with Mr Croft on 23 June 2015, when she was attending her general practitioner. She agreed that Mr Croft said:

Apart from the other stuff, make sure you tell him part of the reason for needing more time off is about the Comcare psychiatrist stuff and that CSIRO aren’t doing anything to remove you from these people. Particularly they have tried to make you go to Bribie today (where you were assaulted and your attacker is still allowed to have free range).

1. Dr Morton said the primary purpose of the visit to the general practitioner was to secure a referral to a psychiatrist. She denied that the text message represented part of her and Mr Croft’s strategy for setting up the Comcare claim.
2. Dr Morton was taken to her Facebook entry for 25 June 2015 where she said:

So today I receive an email from the MBA social club. It seems our next networking event will be sponsored by UQ, known colloquially as an open bar. Just another plus to the MBA really…”.

She agreed that this was posted less than two weeks after she saw Dr Rees on 6 July 2015.

1. Dr Morton was taken to text messages sent to Mr Croft on 29 June 2015 where she said:

Yes…except I have a 1000 word case study due at 9 am on Thursday and I signed up to go to workshop for career planning tomorrow night eeekkk…And the printer is being annoying (but it is working now)…(sigh)…

…

I think that Marketing Management will be the downfall of my GPA!

…

Thanks…I know I will do okay, well I am pretty sure I will—these week long courses are INTENSE! So I will be having a HUGE glass of wine on Friday night.

1. It was put to Dr Morton that the MBA she was doing was very demanding. She said:

Week long courses, yes. They could be quite intense. There were a number of different course offerings in the MBA. Some were offered as semester-long courses that were done on weeknights. Some were offered as weekend options and some were offered as a week-long intense course. And not having a background in marketing, a lot of the terms were unfamiliar. And I did find it a challenge, I have to admit.

1. Dr Morton accepted that, on 2 July 2015, four days before she saw Dr Rees, she sent a text message to Mr Croft saying:

So I may have accidentally pitched a research proposal to my marketing lecturer…talk to you about it tonight but it may be quite advantageous to my career transition :) I think we need a SWOT analysis on my career plan over happy hour at Apple Tango?

1. Dr Morton agreed that she saw Dr Rees on 6 July 2015, and that he had issued her with a certificate declaring that she was unfit for work for three months. She was asked whether she told Dr Rees that she could not concentrate. Dr Morton replied, “I told Dr Rees about the issues I was having in the workplace, yes”. She agreed that she told him she lacked confidence. She said she did not know whether she used the phrase “no initiative”. She was asked whether she gave Dr Rees the impression that she was incapable of working from home on a computer using the internet. She answered, “I explained the symptoms and what was happening to Dr Rees. I don’t know if he formed that opinion”.
2. Dr Morton accepted that, when she spoke to Mr Blyth at work, she did not mention to him that anything of a sexual nature had occurred during her employment. She agreed that she did not complain to Mr Blyth about Dr Preston or Dr Cook.
3. Dr Morton agreed that she sent a text message to Mr Croft on 1 August 2015, saying:

Dinner with Sam was lovely and then I walked home. Today I have been pottering around the house—submitted my marketing assignment, organised my eBay parcels and now getting my uni notes organised. Basically relaxing and getting a few things done. Just about to have another coffee, watch a movie and do some knitting.

1. Dr Morton was asked about her telephone call with Mr Drury in March 2015. She denied that he discussed with her that CSIRO had an early intervention policy. She maintained that Mr Drury was quite clear that he had very senior contacts within Agriculture and that if she did not lodge a Comcare claim, he would ensure that she received the treatment she needed. She agreed that there was no reference in her pleading or in her outlines of evidence, to Mr Drury knowing very senior people.
2. Dr Morton was asked about another telephone call from Mr Drury on 8 July 2015. She said Mr Drury told her she had to make herself available to begin a return to work process within the next couple of weeks and that involved returning to the CSIRO site to have meetings. She said she asked Mr Drury why she had to make herself available to return to work within a few weeks, when her doctor had written her off for three months. She said that Mr Drury then stated three months off would not do her career any good. She asked what authority he had to say that, and he said he was a clinician.
3. Dr Morton was taken to an email to Mr Drury sent to her on 8 July 2015, where he encouraged her to go to the Comcare website. Dr Morton said he was emphasising the employee obligations under the SRC Act. She agreed that Mr Drury had said that he would be arranging for an assessment in the coming weeks by an independent doctor and would organise a case conference to discuss her return to work plan.
4. Dr Morton was taken to her email to Mr Drury of 23 July 2015, attaching a number of medical certificates where she referred to a sexual assault. It was put that she was now using the expression “sexual assault”, rather than the expression she had used in the past, of “slapped on the buttocks”. She agreed that she was, in the context of being under medical treatment for a psychological injury caused by bullying, harassment, sexual assault and sexual harassment.
5. Dr Morton received an email from Mr Drury on 24 July 2015, advising that he had arranged an appointment, pursuant to s 36 of the SRC Act, with a Dr Evelyn Timmins. The examination was said to be, “to establish Dr Morton’s capacity to be engaged in a rehabilitation program and establish a robust RTW plan in-line with medical advice”.
6. On 29 July 2015, Dr Morton made a complaint to Ms Pickering, whom Dr Morton understood to be Mr Drury’s line manager, about his conduct. In the email, Dr Morton referred to him, “reducing sexual assault and harassment with longer term bullying and harassment by the same perpetrator…”. She agreed that she was now referring to the person who she used to call “Bunny” as the “perpetrator”.
7. Dr Morton was sent an email by Ms Campbell on 3 August 2015. In that email, Ms Campbell said that she had spoken to Mr Drury and read their email exchange and clarified a number of points. Dr Morton was asked whether she had discussed the certificate that Dr Rees had issued for three months off work as if it were a direction to her that she could not work. Dr Morton disagreed, saying that there was a direction from Dr Rees not to begin the return to work processes until she had been cleared to do so, and that the correct process was to get a s 36 assessment done by an Independent Medical Examiner, who would then make a determination as to whether she was fit to begin return to work process. She said that the appointment had only just been booked, so for Mr Drury to state, in early July, that she needed to make herself available at the CSIRO site to begin planning a return to work within the next few weeks was jumping the gun quite considerably.
8. Dr Morton agreed that when she got the three months’ certificate from Dr Rees, her view was that the certificate was writing her off for three months.
9. She agreed that, on 10 July 2015, she sent a text message to Mr Croft saying, “It’s cold & raining so don’t think I’ll go to the MBA meetup. it’s on a rooftop bar!”
10. Dr Morton was cross-examined about her allegation that, while she was away under sick leave certificates, her team leader role was taken away from her. She agreed that if someone who normally performs a team leader role is away, there might be a need for someone else to temporarily cover the role. She maintained that her team leader role was improperly taken away from her.
11. Dr Morton agreed she had received a letter from Dr Manners dated 28 August 2015, saying that Comcare had advised that, on 19 July 2015, a decision had been made to revoke the previously accepted liability for her claim and that she was no longer eligible to receive compensation. The letter noted that she had provided medical advice stating that she was unfit for work until 9 October 2015 and her absence would be entered as sick leave from 20 August 2015 until that leave was exhausted. She was advised that, as her sick leave balance was not enough to cover her absence, she had the option to access recreation leave, or access leave without pay. She was asked to advise Dr Cook about this matter.
12. Dr Morton agreed that she did not respond to Dr Manners’ letter at all. She said that it would have depended upon when she checked her email. She was not checking her CSIRO email on a daily basis, as she was on medical leave. She had earlier said that she would log on periodically onto the SAP system, but not daily.
13. Dr Morton was taken to an email sent to her by Ms Davis on 1 September 2015. In that email, Ms Davis said that, in the absence of a response to Dr Manners’ email, it was decided that recreation leave would be entered instead of unpaid leave, so as not to have an impact upon Dr Morrison’s next pay. The email said that if that was not her wish, she should let Ms Davis know immediately so she could correct it. An email said that sick leave had been entered on her behalf from 27 August to 3 September and recreational leave from 4 September to 2 October. She noted that Dr Morton had entered recreational leave from 3 to 20 November and asked whether she wanted to withdraw that entry and make use of that leave following 2 October 2015. When asked whether she responded to Ms Davis’ email, Dr Morton said “I don’t recall. I don’t think so”.
14. Dr Morton was asked whether she agreed that there were a lot of people chasing her for clarification about how to manage her leave. She replied, “With respect, I was on medical leave and Dr Rees told me to minimise my contact with the organisation”.
15. When Dr Morton was asked about wanting to go to an MBA social function, except for the weather, but not being able to send an email back to Dr Manners or Ms Davis to clarify the situation about her leave, she answered:

There is a great deal of difference between dealing with an organisation where you feel extremely vulnerable and stressed, and a group where it is a learning environment. The atmosphere is far more positive and encouraging.

1. Dr Morton was taken to her email of 19 September 2015 sent to the HR Service Centre, in which she asked that attached forms be completed by CSIRO in relation to loan protection and income protection insurance. Ms Lynne Gaal responded by an email dated 21 September 2015, in which she asked whether Dr Morton wanted her recreation leave from 3 to 20 November brought forward to 5 October to cover her continued absence. When asked whether she responded to Ms Gaal’s request, she said, “I don’t recall. Possibly not”. She said, “I didn’t wish the leave to be moved so I wouldn’t have told her to move it”.
2. Dr Morton was taken to an email sent by Mr Croft to Ms Davis, using Dr Morton’s CSIRO email address on 25 September 2015. The email said that Dr Morton’s psychiatrist had advised her not to engage with anyone from CSIRO. It went on to complain about CSIRO logging Dr Morton’s leave as it saw fit. It said, inter alia, that she had made her wishes regarding other people entering her leave clear by requesting a reversal of the sick leave that was logged without her knowledge during the accepted claim period. The lengthy email went on to make various complaints about management of her leave, the investigation of Dr Morton’s grievance, and Mr Drury’s conduct, amongst other things.
3. Dr Morton accepted that, on 23 September 2015, Ms Davis had asked for a response to her query about her leave balance, and the best method of communication with her. She said that she believed Mr Croft responded clarifying the situation regarding leave. She said that Mr Croft had made it clear that Dr Morton did not want anyone logging leave on her behalf, that the November leave had already been booked, and that, in the absence of any instructions, the default position would have been to leave it as it was.
4. Dr Morton acknowledged that, on 1 October 2015, Ms Davis responded to an email from Mr Croft providing updated medical information for Dr Morton. Ms Davis had said that she was uncomfortable engaging in communications with Mr Croft on matters pertaining to Dr Morton’s employment with CSIRO, and asked that, if Mr Croft was acting on Dr Morton’s behalf, Dr Morton provide signed consent authorising him to do so.
5. Dr Morton agreed that sometimes she would sit next to Mr Croft while he was on the computer typing up his emails, and sometimes she would log him into the system. She said she did not provide the written authority requested, as she did not need to. That was because she had already provided the authority in a number of ways: she had said that Mr Croft was her support person as part of the grievance; he was her emergency contact; and she had logged him into the system. She asked if Mr Croft did not have authority to discuss matters of her employment with CSIRO, then why was Ms Davis sending emails to Dr Manners, who was to provide Ms Croft with a response in due course.
6. Dr Morton agreed that Dr Manners wrote an email to Mr Croft and to her on 27 October 2015. In that email, Dr Manners said, inter alia:

As previously advised by Ms Davis, CSIRO requires consent from Katherine for us to communicate with you in matters relating to her employment. The consent can take the form of a signed letter or statement by Katherine to me.

…

CSIRO’s Information Security Procedure…states that the use of a CSIRO employee’s users account or password without appropriate management authority is an unacceptable use of CSIRO’s information technology and communication’s systems. Given this, if Katherine wishes for you to communicate with CSIRO on her behalf you will need to do so using your personal email address. Can you please provide this to me?

1. Dr Morton agreed that Dr Manners also addressed her, saying:

Please pass the message below on to William, and hopefully we can get the requisite approval from you as required by our policies…

1. Dr Morton agreed that Mr Croft sent an email to Dr Manners, on 8 November 2015, from his personal account. She agreed that she would probably have seen the email before it was sent. She agreed that Mr Croft said, inter alia:

As already stated Katherine has advice from her psychiatrist to have no contact with anyone from CSIRO, she will be following her treating practitioner’s advice. Katherine will not be responding to you and she certainly won’t be jumping through anymore of your hoops either.

…

Frankly, your only option is to communicate with Katherine through me, because I am her emergency contact…so John, deal with the legal requirement that you have that even if you refuse to communicate with me, you must still act upon the information you received from me…

1. Dr Morton agreed that the subject matter of her leave was not an emergency issue. She agreed that, in the email, Dr Glencross was again referred to as the “perpetrator”. She agreed that the email was alleging that the assault was a criminal matter, and agreed that no signed authority was ever provided by her.
2. Dr Morton disagreed that she was paid out all her recreational leave when she left CSIRO.
3. She agreed that, on 23 September 2015, she sent a text message to Dr Croft, saying:

I’ve been drafting an email to the lawyers listing everyone to issue a summons to—I’ll send that through to you sometime today…I paid the electricity bill (on the dining table). Feel like BBQing the rump steak with some more onions tonight? And I can whip up some mash potatoes (unless you want BBQ ones) and beans? with some wine :)

1. Dr Morton agreed that, around the end of September 2015, Dr Rees issued another certificate writing her off for a further six months.
2. On 22 October 2015, Dr Morton made a Facebook post, saying:

Another subject done—Innovation, with a final mark of 90%!

Now officially 1/3 of the way through the MBA with an average mark of 87.15 but an average grade of 6.75 (grrrrrr)…

1. Dr Morton accepted that, on 26 June 2016, she had made a post indicating that she had received the Dean’s commendation for academic excellence for Semester 2, 2015.
2. She agreed that, on 2 November 2015, she posted that Mr Croft and her were heading off to Hawaii the following week, where they would be for Veterans’ Day, her birthday, their anniversary and Pearl Harbour Remembrance Day. When asked whether there were a number of activities planned, she said that those were all events that occurred, rather than events. She said she was not particularly planning to engage in celebrations for all those activities. She said that Veterans’ Day and Pearl Harbour Remembrance Day were not things to be celebrated, but to be remembered. She accepted that they did go out for dinner for her birthday and would have gone out for dinner on their anniversary, but she would have to check. She went to Hawaii for a holiday from about 11 November until 8 December 2015.
3. Dr Morton agreed that, on 2 December 2015, she posted on Facebook that her Semester 2 MBA results were three high distinctions and two distinctions. She said, “Some celebrating in order when we return to Oahu :)”.
4. Dr Morton agreed that she posted on 14 November 2015, saying, inter alia, “We are having an awesome time!”.
5. Dr Morton agreed that, on 11 February 2016, Dr Rees wrote her off for a further 12 months. On 11 February 2016, she posted, “Today I’ve learnt that doctors can write medical certificates spanning a year”. She denied that she felt that she could get Dr Rees to do pretty much whatever she wanted.
6. Dr Morton was taken to the email from Ms Somerville to her dated 26 February 2016, in which Ms Somerville said:

CSIRO are confident we can provide a safe work environment for you to return to and look forward to working with yourself and Dr Rees to facilitate this in the near future. To clarify the two individuals named in your complaint no longer work at CSIRO and no longer reside in Australia.

1. Dr Morton denied that she knew that Dr Glencross had moved to Scotland in January 2016, and denied that she knew that Dr Preston had moved to Penang in October 2015.
2. She agreed that she had shown Dr Rees an email from Andrew Chalmers of CSIRO dated 3 February 2016, saying that Dr Preston had been diagnosed with prostate cancer and was about to commence chemotherapy treatment over the next five months, to be followed by surgery. The email continued:

He will be continuing his role with WorldFish until the end of March and may have an Australian based role with WorldFish, but this is yet to be determined.

1. It was put that Dr Morton showed the email to Dr Rees to justify her position that she could not return to work at CSIRO. She denied this and said that she explained to Dr Rees that she was shocked that someone who was supposed to be in charge of her returned to work and her case, would not know such a simple thing.
2. In respect of Mr Chalmers’ email, Dr Morton was asked about her evidence that she would have a panic attack if she saw communication from CSIRO, and whether that was why she wanted her partner to deal with leave issues. She said:

I didn’t have a panic attack every single time. On occasion I would, yes…I still have to deal with a lot of the other issues like Ms Somerville’s emails. Regardless of whether or not I had a panic attack, those emails still had to be printed and the letters taken to Dr Rees and dealt with.

1. It was put to Dr Morton that she was telling Dr Rees that one of the reasons she could not go back to CSIRO was that Dr Preston had come back from Penang to get cancer treatment. She responded, “That was my understanding of the situation”. She agreed that it was on the basis of Mr Chalmers’ email that she accused Ms Somerville of being deliberately false when she wrote the letter to her.
2. Dr Morton accepted that, on 1 March 2016, she posted that, “Financial Management mid-term results: Highest mark was 92% (awarded to me)”.
3. Dr Morton maintained she had a conversation with Ms Katie Wise, where it was said that they would have difficulty ensuring that she did not bump into Dr Glencross. She said that, basically, there was nothing they could do to stop Dr Glencross attending the site without notice. She said the conversation may have taken place in April or May of 2016.

In a report addressed to Ms Somerville dated 11 February 2016, Dr Rees said that it appeared the barriers preventing Dr Morton from returning to work were associated with the elements within her workplace and that, “Specifically, Dr Morton tells me that the personnel involved in the alleged sexual assault remain working within her work environment”. Dr Morton agreed that was what she told Dr Rees. When asked what she was referring to there, she said:

I was referring, when we had been discussing the fact that I had started seeing Dr Rees, that Dr Glencross was still there, and there were also a number of other issues in the workplace. It was not the only barrier returning to work.

1. Dr Morton agreed that she now knew that Dr Glencross had left for Scotland in 2016, but said she had been away from the workforce for quite some time, and when she had left the workplace, Dr Glencross still had free rein at the Bribie Island site.
2. Dr Morton agreed that, on 19 April 2016, she posted on Facebook that, “I figured a 4–hour walk today would keep me out of trouble”. She accepted that on 20 April 2016, she posted that she was “headed for eight hours of economics”.
3. Dr Morton was taken to an email sent from Dr Manners to all staff at Agriculture, dated 26 April 2016, in which he asked any staff member who thought that a VRS may fit with their personal plans to speak with the HR team, to help to reduce the number of involuntary job losses. Dr Morton sent an email to Ms Walsh dated 17 May 2016, saying, inter alia:

With great disappointment in CSIRO and the appalling handling of my grievance and injury, I am asking that you place me on the voluntary redundancy substitution list.

1. Dr Morton disagreed with the suggestion that she asked for a VRS because she knew that her own position was not going to be made redundant. She said the reason was that Dr Rees remained persistent in his belief that she could not return to CSIRO and had discussed his belief that severance would be more beneficial for her recovery in the short term. She also said it was about lacking a safe working environment.
2. When asked whether there was no point in applying for a VRS, if she thought her position was going to be made redundant, Dr Morton answered:

At this stage, when I applied for it, I could not see a path back to a career at CSIRO because of the way anything had been handled. I had already been deallocated from my roles. My grievance had been appalling handled, as I started, and for a number of medical reasons, Dr Rees and I had discussed severance from the organisation being beneficial in the shorter term for my recovery.

1. Asked the question again, she answered:

In other circumstances, yes. In these circumstances, I don’t think that would be considered normal.

1. Dr Morton received an email from Ms Walsh on 24 June 2016, saying that CSIRO was able to accommodate her request for a VRS and that, while they were unable to find a suitable swap for redundancy of her position had been approved.
2. Dr Morton agreed that she made a Facebook post on 25 June 2016, saying:

Nothing like multiple coffees to aid in recovery after celebrating until 3 am. Note to self: possibly getting a little old for that.

Then again, it is not every week you finish the 11th MBA subject (of 12), receive a redundancy & have a four month break until subject number 12! So, another coffee it is :D

1. Dr Morton said that it was a very big week. She said she had done the Operation Design exam and that was a subject she found particularly challenging. She was looking forward to a four month break. She referred to a Facebook post she had made on 23 June 2016, where she said:

Ops Design exam done!

Celebrated with kebab meat pizza & Shiraz. Kebab meat pizza is awesome, thanks gorgeous man for suggesting it…

1. Dr Morton was taken to a post she had made on 21 June 2016, where she referred to making pizza dough, and having carrot cake muffins in the oven. When asked whether she was baking—doing one of the things she loved to do—she answered, “Well, with respect, I was actually procrastinating for studying for the Ops Design exam because I found that a bit stressful”.
2. Dr Morton agreed that she sent an email to Ms Walsh on 30 June 2016 thanking her for her email and information and saying she would like to hear about the next steps.
3. Dr Morton was taken to her Facebook post on 6 July 2016, saying:

Today marks a year off work (work injury) & the release of Uni Results (all high distinctions this semester).

Me thinks the Uni marks need celebrating—get that champagne in the fridge… :)

1. Dr Morton agreed that she and Mr Croft would have shared a bottle of champagne that night.
2. She agreed that Ms Walsh sent her an email on 15 July 2016 saying that she had added Dr Morton’s name to the redeployment register and asking for a copy of her CV to use, in the event that any redeployment opportunities were identified. Ms Walsh also asked her to confirm the locations that she wished CSIRO to consider for relocations and asked whether she would be prepared to consider any positions at a lower level.
3. Dr Morton accepted that she did not provide Ms Walsh with a copy of her CV. She agreed that the purpose of the CV was to assist Ms Walsh in identifying redeployment opportunities. She said that she was aware that when positions came up at CSIRO, they were advertised on the intranet. Dr Morton said that she did not check the CSIRO intranet for suitable roles for redeployment.
4. Dr Morton sent an email to Ms Walsh on 19 July 2016. The email dealt, inter alia, with inaccuracies in the cessation estimates prepared by HR. Dr Morton went on to say:

As you would be aware, I am medically unfit to work at CSIRO and my psychiatrist has already elucidated the inability of the organisation to provide a safe working environment for me. As such, there are no locations within the organisation that would be suitable for me to be relocated to. Also, I would not consider a position at a lower level given my education and professional experience…

1. Dr Morton agreed that, around 30 July 2016, she was on a panel of speakers at a women’s conference. She agreed that, on 30 July 2016, she made a post on Facebook, saying:

Conference today was \*amazing\*—so wonderful to see so many people & hear their ideas & thoughts…a snap shot of \*why\* diversity is so crucial in \*all\* aspects of life…

Great discussions were had in ‘women in STEM’ panel revolving around why/how we chose to work in STEM fields & our experiences as women in those fields.

1. Dr Morton accepted that, during the entire deployment phase, she did not apply for any positions. She agreed that part of her case was that she should have been given, as part of the redeployment process a position as a Senior Research Scientist in Hobart. She agreed that she did not apply for that position.
2. Dr Morton received an email from Ms Walsh advising that the redeployment period had ended on 14 September 2016. Dr Morton was taken to her Facebook post on 10 October 2016 saying:

Second week of Nov equals MBA finished + US election + being made redundant + my birthday.

And they say good things come in threes!

1. Dr Morton said that was a sarcastic remark because there were four things listed there. She said that there were a number of mixed emotions. She said her point was that there were four things mentioned there, not all of which were good. She said she had a lot of mixed feelings about redundancy. There had been a lot of discussions with Dr Rees about possible improvement after separating from the organisation, and she had some hope that her mental health would improve. She was upset and distressed about the loss of her career. It was a mixed and hard time.
2. Dr Morton received an emailed letter from Ms Walsh on 28 October, giving a choice of a fast track or slow track cessation of her employment. She agreed to take the option involving receiving an early cessation payment of eight weeks pay if she did not contest the redundancy. She sent an email on 6 November 2016 to Ms Walsh saying:

I agree to cease employment with CSIRO on 11 November. I will be taking the lump sum benefit option.

1. Dr Morton agreed that on 8 December 2016, she received her MBA and a 2016 Academic Excellence Award. She posted that she was going to the MBA awards dinner at the Sofitel Hotel.
2. Dr Morton said that she did not know how the ranking system for the MBA worked. She said that there were a number of the printed pieces of paper awards, but the top ranked students got carved glass awards. She said that she was not at the top of the class. She agreed that she was probably in the top 10% of students. Dr Morton posted a picture of herself at the graduation ceremony on 23 December 2016.
3. Dr Rees had given evidence that he had diagnosed Dr Morton with Agoraphobia, apparently from 24 November 2016, a month prior to her graduation. Dr Morton was taken to her Facebook post of 17 January 2017. She agreed that the post showed a photograph of the cruise ship she was just about to go on. Her post also said, “It seems the cruise bar doesn’t open for another 15 mins…”. Dr Morton said that the Cruise Bar was a very small bar next to the boat and was relatively empty at the time. On 27 January 2017, Dr Morton posted saying, “Back in the real world, after 10 days cruising the south pacific sans internet…”. She agreed that she had in fact gone on a cruise for 10 days to the South Pacific.
4. Dr Morton agreed that she had told Dr Rees that she was experiencing a great deal of anxiety going out in public. It was put that she knew that this was not true, but she said that it was. She was asked whether the boat could have 4,000 or 5,000 people crushed into a small space. She answered, “Presumably. Yes.” She said that she went on the cruise with her mother and various other family members. She said that one of the ways she managed her anxiety getting onto the cruise ship was to take Valium and that she and her mother had a couple of bottles of Prosecco before boarding. She said she spent the majority of the cruise in the cabin, and did not spend a lot of the time socialising on the boat.
5. Dr Morton agreed that, on about 6 February 2017, she and Mr Croft bought a new Land Rover.
6. She was asked about an entry on her Facebook post on 27 January 2017, which said, “Sydney CBD sales equals disappointment…”. She was asked whether she went to the CBD sales. She said she had got off the boat at 5.37 am and had gone from there, through the CBD to the airport. She said that, though she had seen the window displays, and nothing was open at that time of the morning, that her post was a humorous reference to the fact that nothing was open She agreed that the time of the post was 12.19 pm, and that would have been the time when she arrived at the airport. She agreed that, if she was worried about being in public, the last thing she would have wanted to do was fight her way through crowds going for the sales. She agreed that a post at 5.02 pm showed a picture of a drink she had at the airport. It was suggested that she was at the airport at around 5 pm. She said she was at the airport for a long time that day.
7. Dr Morton accepted that on 16 March 2017, she flew from Tasmania to Brisbane for a wedding. She said she was accompanied by Mr Croft. She said she had a number of discussions with Dr Rees about her anxiety and about attending the wedding of one of her closest friends. She agreed that at the time, she was telling Dr Rees that she was basically only leaving the house for medicine, groceries, and doctors’ appointments. Dr Morton said that she sat at the end of the bridal table in the corner. It was put to her that, as maid of honour, she had a central role in the wedding. She denied that.
8. Dr Morton was cross-examined about the injury to her right wrist in 2017. She said that on 17 April 2017, she was pulled over by her dog and had a sore wrist afterwards. She agreed that she went to the rural health facility in Tasmania on 17 April 2017 and she told the person she spoke to that she had fallen two weeks ago on her wrist, tripped by her dog. She accepted that she told the person that her dog had pulled her over, and that she had used her hand to break the fall.
9. Dr Morton agreed that Dr Shaw had given her a referral, on 31 August 2017, to a Dr Peter Van Winden regarding ongoing wrist pain three months after the initial injury. She was asked whether she had told Dr Shaw that she had punched a wall. Her response was, “If that was part of the injury, yes”. It was put to Dr Morton that she told Dr Shaw that because she wanted to make out that she had anger problems. Dr Morton said that the injury was related to punching the wall and she did have anger issues. She said the dog lurched forward and pulled her over, but it was not a substantial fall. It was sore, but not a similar level of pain in the wrist she had experienced after punching the wall. Several months later, when she was still experiencing substantial levels of pain, she asked for a referral to a specialist.
10. Dr Morton agreed that the referral to the specialist made no reference to early injuries associated with tripping over her dog, and only referenced one incident of punching a wall. She said she did not know if Dr Shaw thought that the incident with the dog was significant.
11. Dr Morton agreed that when she saw a psychiatrist, Dr Walker, in July 2017, she told him that she had damaged her wrist out of anger, by banging it on a wall. She denied that she thought it would look better for her case if she could attribute the injury to her anger about CSIRO, rather than tripping over her dog.
12. Dr Morton was taken to an entry on 9 May 2017 in Dr Shaw’s records which read: “Punched wall x 2. Sore right arm since two weeks ago”. She was asked whether “two weeks ago” took her very close to 17 April 2017, when she went to the Rural Health Facility. Dr Morton’s response was, “Does it?”. She was asked whether she was fibbing to Dr Shaw about punching the wall twice. She denied that she was fibbing.
13. Dr Morton was asked whether on 28 September 2017, she went to Dr Shaw and said that she could not fly. She said she believed she had just had wrist surgery, and had tried to contact a specialist who was on leave. She said she did not know if she could fly, having had the surgery. She agreed that Dr Shaw refused to issue the certificate. She agreed that she was asking for the certificate to show that she couldn’t attend a mediation with CSIRO in person.
14. Dr Morton was asked whether, on 10 October 2017, she had started threatening Dr Shaw’s staff. She denied this. She said that, after an issue where Comcare had failed to fax a medical report to Dr Shaw for her to collect, she made the comment “Fucking Comcare”. She said Dr Shaw then raised his voice and started yelling at her, indicating that they did not tolerate abusive and threatening behaviour, and that she would have to find medical treatment elsewhere. She said she did not believe that her statement threatened staff.
15. Dr Morton was asked whether she always made an effort to present herself in a clean manner when seeing Dr Shaw. She responded that she did not recall every single appointment she had with Dr Shaw, or what she had been wearing to them.
16. Dr Morton agreed that Dr Shaw had urged her to transfer her treatment from Dr Rees, to a local psychiatrist and psychologist. She agreed that she had refused to see a Launceston based psychiatrist. She said she subsequently located, and was in the process of beginning to see, a Tasmanian based psychologist. She said she did not want to change practitioners because she had been seeing Dr Rees for some time and they had an established patient and practitioner relationship. She felt comfortable with him. It was suggested that she did not want to change from Dr Rees because she knew he was writing her favourable reports. She denied this.
17. Dr Morton agreed that Dr Shaw told her that she should engage in a return-to-work rehabilitation program. She said Dr Shaw had discussed several generic programs at the Calvary Hospital in Launceston and she had asked how the general program would help her specifically. She said she asked him to define and specify what a work rehabilitation program was, asking for some details. It was put that she was resisting every suggestion she participate in a return-to-work rehabilitation programme. She denied this, saying she wanted some details. Dr Morton disagreed with Dr Shaw’s opinion that she was not actively engaged in her own rehabilitation and seemed resistant to taking management steps he considered necessary for her recovery.
18. Dr Morton was asked some further questions about the cause of the injury to her right wrist. She said that on two occasions she had been pulled over when her dog moved forward and injured her wrist. She also said that on two occasions she punched a wall. She agreed that, on her version of events, in April 2017, she injured her right wrist four times. She denied that there were only two times when she injured her right wrist, both of those involving her dog.
19. Dr Morton was taken to her Facebook post on 7 April 2017 showing a photograph of her injured right wrist. She was also taken to a post on 17 April 2017, saying:

Monty lurched and pulled me over. I landed on my wrist and that was two weeks ago. Been saw as hell since.

Monty lurched again today and the pain was unbearable, hence the trip to the hospital.

1. Dr Morton agreed that she told Dr Rees that she hit a wall repeatedly at Easter. She agreed that Easter would have been April 2017. It was put to Dr Morton that she misled Dr Rees by making out that she had anger issues and was self-harming, when in fact she had simply tripped over her dog a couple of times. She responded:

No. I explained the situation to Dr Rees. I can’t be in his head when he has written his notes.

1. When Dr Morton was asked whether she had told Dr Rees she had tripped over her dog twice, she responded:

Yes. Dr Rees knew that we had a dog and that we had to return the dog, and that was a hard decision for us. I don’t know if that has been recorded in his notes.

1. It was suggested that Dr Morton had never mentioned anything about a dog. She responded, “Yes, we did”.
2. It was suggested to Dr Morton that she never mentioned to Dr Shaw that her injury had anything to do with events associated with her dog. Dr Morton’s response was:

I would have mentioned that the wrist had been sore. It was sore initially. It wasn’t until after I had hit the wall that I had a great deal of problem with the rotation aspect of the wrist.

1. When Dr Morton was asked about her Facebook entry for 17 April 2017 again, and the extreme pain she said she was in, she said, “It was quite bruised and swollen”.
2. Dr Morton said that she and Mr Croft have a rural property in Tasmania. They have animals on the farm. They had sold some lambs. She was taken to a Facebook post of 15 April 2017, where she was discussing the price of alpacas. She also posted photographs of her alpacas and their pet chicken. She posted photos of sheep, which she said were on agistment.
3. Dr Morton said that, on 16 July 2017, she was examined by Dr Walker, a psychiatrist, at the request of CSIRO. Mr Croft came with her to the appointment. She agreed that she and Mr Croft had secretly recorded the consultation. She was asked whether she knew that she was deceiving Dr Walker. She answered, “Yes”.
4. Dr Morton was asked about a second consultation with Dr Walker. She was asked, “Did you secretly record that as well?”. She answered “Yes”.
5. Dr Morton was asked whether there was any reason she had disclosed, to CSIRO, the transcript of the first consultation, but not the second. She confirmed that she had never provided the tape of the second consultation with Dr Walker to her lawyers.
6. Dr Morton was asked whether, at the second consultation, Dr Walker specifically asked her to sign a document containing a term that the consultation was not to be recorded. Dr Morton agreed that she signed the document. She was asked, “And despite that, you proceeded, with Mr Croft, to secretly record that second consultation?”. She answered “Yes”.
7. Dr Morton also agreed that, prior to the second consultation with Dr Walker, she had asked, through her lawyers, whether Dr Walker would consent to the consultation being taped. She agreed that CSIRO’s lawyers advised that Dr Walker would not consent.
8. Dr Morton was asked, “So you had committed, you would agree, a serious deception on Dr Walker in relation to that second consultation”. Dr Morton answered, “Correct. No, I do not believe that Dr Walker stating he did not give his permission trumps my right for self-protection”.
9. Dr Morton was taken to her Facebook post on 17 July 2017. She agreed that a company called “Wilkat Morecroft Pty Ltd” had been established on 1 July 2017, and was used primarily to agist livestock, to create a negatively geared situation for her property. Dr Morton was asked whether she had the organisational skills to establish a company. She responded that the company was established by her financial advisor and that she was not involved in its registration. She said that the financial advisor registered for GST and an ABN and sent the documents to her in the mail.
10. Dr Morton agreed that, around 23 December 2017, she purchased an investment property with Mr Croft. The house had eight bedrooms. She was taken to her Facebook post, where she was contemplating repairs that needed to be undertaken over the next 10–12 weeks. She said they engaged a project manager to look after those repairs.
11. Dr Morton was taken to her Facebook post on 24 December 2015, which referred to spraying thistles on her property. She said it was on the list of things to be done on the property.
12. Dr Morton agreed that, before she started at CSIRO, one of the things she liked doing was baking. She was asked whether she had continued that. She said she still did some baking, although nowhere near as frequently as she used to. She said she had been encouraged by her medical practitioners to try and keep in touch with various aspects of her pre-injury life.
13. Dr Morton’s Facebook post on 1 September 2017 referred to, “A spot of light weekend reading”. This was a caption to a photograph of three books, entitled “Animal Nutrition”, “Barefoot Investor”, and “The Veterinary Book for Sheep Farmers”. She was asked whether they were books that she was reading at that time. She denied that.
14. When asked whether she was involved in making investment decisions, Dr Morton said she had discussions with her financial planner who urged herself and Mr Croft to look at sources of passive income, such as rental properties.
15. Dr Morton was asked if she was dealing with sheep at that time. She said there were sheep on the property and she had found some of her old university textbooks while she was unpacking, including an animal nutrition textbook. She said the 1 September 2017 Facebook post was a sarcastic one about reading two rather dry bio-chemistry based books over the weekend. Dr Morton said she had flipped through, and skim read, the “Barefoot Investor” over several months in 2017, but said it was largely “sort-of cartoon based”. She said she was not reading it cover-to-cover.
16. Dr Morton accepted that, in her Facebook post on 25 April 2015 about lambs, she said, “The more I read, the more I am leaning towards a farming injury”. She said she picked a book about injuries because she had found a particular sheep on her farm was unable to move.
17. Dr Morton was taken to her Facebook post of 26 September 2017, where she said, “And I read a review of the SRC Act by a QC (Hardy). Interesting, naturally shelved by Govt…”. She was asked whether she had, in fact, read a review. She said that she had read a section of it. When it was put to her that the review was in fact by Peter Hanks QC, she said, “It may have been. I often get confused”. When Dr Morton was asked whether she agreed that, in her post, she said that she read “a review”, not part of a review, she gave a lengthy answer which included that she and the person to whom the post was directed, had been discussing the specific part of the SRC Act that referred to superannuation and the docking of incapacity payments. It was put to Dr Morton that, in September 2017, she was functioning at a very high level. She denied that and said she had been trying to find a specific section in the review, by searching if for specific words, like “superannuation”.
18. Dr Morton was taken to her Facebook post on 3 February 2017. It said:

Busy week. I have survived the FWC conciliation conference, organised the move, bought a container, packed 70 boxes, made a gazillion appointments, various things, did the washing, caught up with amazing friends, bought a car and cooked spicy lamb patties. Maybe I really am a super woman.

She said that had been an exceedingly busy week.

1. Dr Morton agreed that, in her Facebook post on 7 February 2017, she said she had packed and stacked 91 boxes and said, “I am the Tetris queen”. Dr Morton said she did think it was quite impressive to stack that many boxes in the spare room.
2. Dr Morton agreed that on 14 October 2017, she posted on Facebook that she had budgeted $300 per week for property management fees. When asked whether she was dealing with property management issues, she said she was attempting to put together a budget, and had epically failed. She was asked whether she was also looking through www.realestate.com. She agreed and said her mother had sent her several links for properties she thought would make good investments.
3. Dr Morton denied telling Dr Rees that she only went to town if she had to buy medicine. She said that she and Mr Croft went to the shops to buy groceries, attend doctor’s appointments, to pick up prescriptions and to go to the vet.
4. Dr Morton agreed she told Dr Rees that, from time to time, she had suicidal thoughts. She agreed that, despite this, she and Mr Croft applied for firearms licences in early 2017. She said that she wanted a firearm to kill vermin and euthanize stock if required.
5. Dr Morton agreed that she posted on Facebook on 21 December 2017 about two rams and 25 wether lambs that she had for sale.
6. In respect of Dr Morton’s allegation that she ought to have been named as a co-author of the article in the *Aquaculture* journal, Dr Morton agreed there was an exchange of emails with Dr Glencross on 25 November 2012. He said:

Don’t worry about BAR-12-6. It is my burden to bear. I don’t even think you have an allocation for the project. Focus on BAR-12-4 and BAR 12-8 and getting your own externally funded project off the ground. Any progress on the latter?

1. Dr Morton responded, saying:

Okay. Will do. I’ve got a 15% allocator on the Invovo Project. Wasn’t that the one for BAR-12-6? Plus BAR-12-6 was on my to do list and my name was all over the protocol so I should be doing something.

1. Dr Glencross responded:

No, not really. I put you there more or less to tag along and learn how this stuff is done.

1. Dr Morton was taken to her email to Dr Glencross, Dr Cook, and others, dated 6 March 2014. She set out examples of the projects she had worked on. Under the heading “Experimental Management”, she listed a number of projects, including BAR-12-6. However, she did not list that experiment under “Experimental Design”. Dr Morton explained that under “Experimental Design”, she had listed the experiments she was solely responsible for, not just those she had input into. When asked whether she had not made that clear in her email, she said she was merely highlighting some examples, and was not providing an exhaustive list of everything she had done since starting at CSIRO. She agreed under the “Data Analysis” and “Reporting and Manuscript Preparation” sections, she did not refer to BAR-12-6. She said that was because she was not the primary scientist doing the analysis and drafting. She said the email only referred to experiments she had a primary involvement in.
2. Dr Morton was taken to her Facebook post of 11 February 2018, which she agreed was an example of some of the baking she had done. She said it was a disaster.
3. She was taken to her Facebook post of 28 February 2018, where she said:

But I have been pondering the job scene in and around Launceston for professionals. I don’t see many jobs advertised, so wondering if it is who you know especially when it comes to business consulting, etc. I did notice that KPMG office in Launceston, and oddly enough DOD Research Base in Scotsdale, apparently in nutrition.

1. Dr Morton was asked whether she was surveying the potential job market for herself. She said she was musing about what professionals did in Launceston, as the north-east of Tasmania is one of the lowest socio-economic areas in the state. She agreed part of her skill set was research and she had specifically referred to the Department of Defence Research base. She was asked whether, by mentioning “apparently in nutrition”, she was talking about a potential role in research in the nutrition space. Dr Morton answered, “Are you suggesting that I would be deployed in packing meal replacements for soldiers?”.
2. Dr Morton was taken to her Facebook post on 1 May 2018. It referred to:

Scanning almost 200 pages of legal docs, retrieving an egg from 10 cm under the roof of the hay shed, discussion about menopause and human follicle populations in relation to age, genetic and environmental factors, tracking down two missing parcels for the peacock coop, syringing electrolytes into lambs mouths several times, spotted another cat on our walk.

1. Dr Morton was asked if that was an example of a busy day in 2018. She gave a lengthy answer explaining what she did. She said that day was an extraordinarily busy day.
2. Dr Morton was asked whether the scanning of 200 pages of legal documents was the tip of the iceberg in terms of preparing her case. She answered:

I’ve had to scan a lot of documents, yes. We have a—I think they called a multifunction device, and then you put them in the auto-feeder, and then I hit the scan button. And then I email them to my legal representatives.

1. Dr Morton was asked about a report where Dr Glencross acknowledged her contribution. She agreed that there was often no clear line between when someone is an author and when someone gets an acknowledgement.
2. Dr Morton agreed that on 12 March 2018, she launched a Facebook page styling herself as “The Sexually Assaulted Scientist”. Dr Morton responded, “I have been receiving contact from journalists on my personal page, so, yes, I separate it out”. Dr Morton said that she had not used Facebook since 15 May 2018.
3. Dr Morton agreed she asked her lawyers to ask if her consultation with Dr Walker on 9 July 2018 could be taped. She agreed that, on 27 June 2018, CSIRO’s solicitors said:

Dr Walker does not agree to record the assessment, and we do not consider Dr Morton’s participation should be conditional upon the assessment being recorded and a transcript provided. Can you please confirm by midday tomorrow that Dr Morton agrees to attend the assessment on 9 July without having it recorded.

1. Dr Morton agreed her solicitor responded by email on 28 June 2018, saying:

We confirm our client is prepared to attend the further assessment of Dr Walker on 9 July 2018.

…

Given the above, our client is left with little choice but to attend the assessment with Dr Walker at the date, time and place and otherwise in the terms required by him.

1. Dr Morton accepted she agreed, through her lawyers, to be assessed by Dr Walker on his terms, and that she would therefore not record the assessment. She was asked whether she did not disclose the tape she made on 9 July 2018 to her lawyers because she knew that they, on her behalf, had agreed she would not record the assessment. Dr Morton answered:

With respect, it was actually Mr Croft that recorded the assessment and I found out afterwards, and, no, at no time had I disclosed the recording to my lawyers, no.

1. It was put to Dr Morton that it was not true Mr Croft recorded the assessment without her knowledge. Dr Morton said, “Mr Croft recorded the assessment, and I found out about it afterwards. Yes.”
2. Dr Morton was asked about a photograph taken by Mr Croft before she attended her consultation with Dr Walker on 9 July 2018. She agreed the photograph was tendered to show the way she normally looked. She denied she knew Mr Croft was going to take the photograph and denied she was directly posing for it. She denied she deliberately dressed down for the appointment. Dr Morton was asked whether, as at July 2018, she was quite capable of grooming her hair properly. She answered:

With respect, there is a difference between capability and motivation to do so. I haven’t lost the physical capability to use a hairbrush. I have largely lost a lot of motivation and care and feelings of self-worth.

She was asked the question again, and answered, “Physically capable, yes, mentally capable no”.

1. Dr Morton said she presented to Dr Mathew in her normal attire and normal state. It was put to Dr Morton that she did not tell Dr Mathew that, in 2015 and 2016, she had successfully completed an MBA. She responded:

I don’t recall if Dr Mathew asked. He had access—or to my knowledge he had access to all of the documents from my treating medical practitioners which included Dr Rees, and Dr Rees certainly knew of the MBA because it was a topic we had discussed on a number of occasions.

1. Dr Morton continued:

If he had not asked me specifically about it, then I don’t think it would have come up. I was answering questions that he specifically asked.

1. Dr Morton agreed that when she started at CSIRO, there was stress involved because she was working outside her usual domain. There was a lot of work to get her head around, and existing projects to catch up on. She found Dr Glencross’ inappropriate behaviours extremely stressful. She found it stressful that her career was not advancing at CSIRO. She found the reasons for not getting external funding very stressful and concerning. She experienced some small pockets of stress in respect of her relationship with Mr Croft. She also experienced small pockets of stress in dealing with her body image. She said dealing with Mr Croft’s own health issues had been stressful. She accepted there had been stressors associated with her weight, related to gastrointestinal issues.
2. Dr Morton agreed she had not tried to find another job since leaving CSIRO. She was asked whether it had been purely her choice as to whether she sought other employment. She answered, “No. I have been written off work with medical certificates that state I am unfit for work”.

### Re-examination

1. Dr Morton was asked why she had not taken any steps to find another job. She explained that Dr Rees still wished her to rest, and she may or may not recover after this length of time.
2. Dr Morton said she started “The Sexually Assaulted Scientist” Facebook page because she was getting a lot messages on her personal page from journalists, and wanted to quarantine her personal life by making a separate page.
3. Dr Morton was, with respect to Dr Walker, asked, “Why did you tape that consultation?”. She answered, in part, “Mr Croft taped that consultation as well”.
4. Dr Morton said that she knew about the available senior scientist position in Tasmania. When asked why she did not apply for that position, she said:

As part of the CSIRO policy and procedures during the redeployment phase, I was not required. People who are in the redeployment phase are automatically considered and have, I believe, first preference as internal applicants.

1. Dr Morton said she did not know Dr Glencross was in Scotland in January 2016. She said the first time she found that information out was in cross-examination. She said she did not know Dr Preston was in Penang with WorldFish. She said she knew Dr Preston was returning to Australia and that WorldFish had significant ties with CSIRO. She said she knew, from previous conversations with staff at CSIRO, that there had been previous collaborations. She knew that there were plans for future collaborations between WorldFish and CSIRO. She said, to her, this meant Dr Preston would still be within the area she was working in.
2. Dr Morton maintained her team leader role was improperly taken away from her. Although the documentation she was shown intimated that Dr Wade was given an interim role, her team leader allocation and delegations within the SAP system had been removed. She had been removed on the internal CSIRO People system as a team leader, and downgraded to a senior research scientist, while Dr Wade was shown as the team leader. She said if this had been an interim change, those amendments would not have been necessary. She said that, when someone was moving into an interim position, they could be given interim delegations without removing the person who had the official and permanent role.
3. Dr Morton said she did not make any complaint to Mr Blyth about events of a sexual nature. She said that was because Mr Blyth was a junior staff member, and would not have been in a position to have done anything about it.
4. Dr Morton said she invited Dr Glencross to a redundancy and farewell party she was having for Mr Croft, because she invited most of the group. She said for most of the time, she deliberately tried, if there was an event that required inviting people, to schedule it when Dr Glencross was overseas.
5. Dr Morton said that a note made by Ms Pavlov about her “Anxiety in work situations…and social situations”, that referred to her having to deal with Dr Glencross. He would frequently change his mind, and make statements that were contradictory to previous statements. She was anxious about seeking clarification. At times she had tried to seek clarification and been yelled at, causing anxiety. She also referred to a note by Ms Pavlov that she said related to issues with Dr Glencross changing things.
6. In relation to the posts on Facebook and selected SMS messages, she was asked whether it was an accurate picture of her that she was a highly social, very busy and happy person. Dr Morton described herself as a hermit, saying she and Mr Croft rarely left their home. She said she would not describe either of them as happy. They survive. She does not sleep well and requires medication to sleep. She spends her days with her cats, which gives her some comfort. She said she and Mr Croft are withdrawn and isolated.

## Evidence of Mr William Croft

### Evidence in chief

1. Mr Croft is Dr Morton’s partner. He was previously employed by CSIRO. They met when they were both employed by CSIRO.
2. Mr Croft admitted he surreptitiously recorded an appointment on 16 July 2017 between Dr Morton and Dr Walker, the psychiatrist. That was because, having dealt with a number of independent medical examinations in the past, the reports, “weren’t necessarily unbiased”. The examination was recorded for Dr Morton’s legal protection.
3. Mr Croft gave evidence that he exchanged text messages with Dr Morton on 22 June 2015.
4. Mr Croft accepts he put together the message beginning, “Hi Mat…” for Dr Morton to send to Dr Cook. He used the words “sexually assaulted” because he had previously been a security officer and had been taught the difference between trespass to a person, assault and sexual assault; and Dr Morton had been sexually assaulted.
5. Mr Croft said that, about a week after meeting Dr Morton, she told him about a number of things that were causing her issues at work, including the riding crop incident and the cleavage comment. She also told Mr Croft that there were a lot of issues with Dr Glencross, and that the group was not really happy with the way he treated them.
6. In relation to the riding crop incident, Dr Morton told Mr Croft that, while she was setting up her station for the sample collection day at Bribie Island, she felt something hit her on the backside. She said she turned around and saw that Dr Glencross had a riding crop in his hand—he had come up behind her and hit her on the backside.
7. Dr Morton told Mr Croft that she heard Dr Glencross say something about women wearing necklaces to draw attention to their cleavage, and he didn’t know why Dr Morton did, because she didn’t have any.
8. Dr Morton told Mr Croft that Dr Cook had sent her photos of half-naked people and that there was a bunch of sexual innuendo being sent around in regards to the hiring of someone.
9. Dr Morton also told Mr Croft that she became aware Dr Preston had a nickname for her of “dizzy blonde” or “ditzy blonde”, and had called her a “hussy”.
10. Dr Morton told Mr Croft that Dr Glencross was exceptionally difficult. He would change his mind. She had written up a set of protocols for an experiment which he said he had loved while he was in Scotland, but a couple of months later, she received a message from him that said that she had missed the point entirely. On quite number of occasions, he just kept changing his mind.
11. Mr Croft said Dr Morton discussed the role clarification meeting with him. She was in tears when she got home. It was extremely upsetting for her, because it basically meant all the work she had put into the previous years at CSIRO had come to naught. Around the same time, Dr Glencross took the project that she was trying to get off the ground away from her.
12. Mr Croft was present when Dr Morton had a telephone call with Mr Drury. When she got off the phone, she told him that Mr Drury had said that if she did not file the Comcare claim, CSIRO would cover her costs. Dr Morton said she felt that was coercion and that she was being forced into dropping the claim.
13. On 25 September 2015, Mr Croft sent an email to Ms Davis. The email included the following:

This is William, Katherine’s partner. For Katherine’s welfare, her psychiatrist has advised her not to engage with anyone from CSIRO after the HSE officer, Gavin Drury’s treatment of her with regards to her ComCare claim. Because she wants to give herself the best chance to recover from the injury, Katherine is following her treating practitioner’s advice.

…

1. Mr Croft said Dr Morton authorised him to deal with CSIRO on her behalf. On 8 November 2015, Mr Croft wrote a lengthy email to Dr Manners, Ms Walsh and Ms Davis. The email included the following:

As already stated Katherine has advice from her psychiatrist to have no contact with anyone from CSIRO, she will be following her treating practitioners advice. Katherine will not be responding to you and she certainly won’t be jumping through any more of your hoops either…

Frankly, your only option to communicate with Katherine is through me, because I am her emergency contact. Your choice to not communicate with me conflicts with your responsibility to your employee…

You have pointed out, at your discretion (since presumably, as a Senior Manager of CSIRO you count as a having the authority of a manager), I could use Katherine’s email account to have this discussion with you. However, your response tells me that you would prefer to threaten Katherine with CSIRO policies rather than apply your manager discretion to enable that…

Regarding Dr Cook’s denial of knowing anything was wrong prior to the grievance, speak to Sigrid as to why Dr Cook went and spoke to her about the issues that Katherine was facing, so he could effectively dump all of his responsibilities as Katherine’s line manager in her lap. Ask her why he wasn’t conducting himself appropriately as Katherine’s line manager (with the responsibilities that entails) so you can find out it was because Dr Preston was his manager. Add to the list of his inappropriate actions his complete impotency in dealing with any of the issues between Dr Glencross and the majority of the group that Dr Cook has long been aware that Katherine had also been suffering from. Besides I haven’t even got started that Dr Cook knew Dr Preston had called Katherine a “hussy” previously, nor have I started on Dr Cook’s general inappropriate workplace behaviours of inappropriate sexual comments regarding people he was interviewing for a position, or his comments of a sexual nature to me about the undergraduate girls at UQ (in front of Katherine) when he found out I was going over to UQ…

1. Mr Croft said he sent the email because, in his opinion, CSIRO was not treating Dr Morton very well.
2. On 10 March 2016, Mr Croft sent a lengthy email to Amanda Somerville, Dr Morton’s injury manager. The email included the following:

I am William Croft. I am Katherine Morton’s partner, emergency contact, support person for her grievance, etc…. Dr John Manners (delegate for Katherine’s grievance) and CSIRO know who I am. It suffices here to introduce myself by advising you that I have only Katherine’s best interests to hand, and will continue to be playing a very active part in Katherine’s recovery. Attempts have already been made by CSIRO to reduce my capacity in Katherine’s recovery and dealing with the issues she is facing—those were not accepted by myself or Katherine and future attempts at this will be met in kind.

Currently, Katherine is under medical direction not to have contact with any stressors at CSIRO…

…

If you come to find my attitude and tone confronting, it is an unfortunate side effect of the treatment that CSIRO has conducted towards Katherine and me. It is not my intention to put you offside, but also I will not suffer even a hint of anything from CSIRO that is not in Katherine’s best interests.

1. Mr Croft said that, in the period between November 2015 and March 2016, Dr Morton was highly anxious. Mr Croft took a photograph of Dr Morton driving a car in Hawaii, which he said shows a bald spot behind her right ear from where she was pulling out her hair, or incessantly playing with it. Mr Croft believed she was suicidal at that point, because she had told him so.
2. Mr Croft also took a photograph of Dr Morton on the sidewalk, prior to attending her last appointment with Dr Walker. He said he took the photograph because, in a report, Dr Walker had said something about Katherine’s hair being wet, was greasy and unwashed. He wanted to have proper evidence concerning Dr Walker’s description of her appearance. Dr Morton was unaware he was going to take the photograph.
3. Mr Croft stated that Dr Morton was lucky if she bothered to wash herself once a month. She just did not see the point. She wore pyjamas and, on some days, she did not get dressed. She wore track suit pants and jeans. She sold all her good clothes on e-Bay.
4. There was an incident in the surgery of Dr Shaw, a general practitioner in Launceston. They drove an hour to Launceston to get a report that Dr Walker had prepared. Dr Shaw said that there was no report there. A receptionist said she would call Comcare or CSIRO to get the report and have it sent through. Dr Shaw said he had no more vacancies for the rest of the day and they would have to come back the next day. Dr Morton exclaimed “Fuck”. Dr Shaw immediately raised his voice and started having a go at Dr Morton about abusing the staff in the practice. Dr Shaw said she was going to have to find some other GP to treat her.
5. In 2017, Dr Morton injured her right arm. Their dog tried to lunge at a kitten and pulled her over. They got x-rays, but could not identify any problems. Within a week or two of that, Dr Morton smacked the wall in anger. At that point in time, her injury got worse. She had surgery on her right wrist to have the tendon repaired.
6. Mr Croft attended a meeting with Dr Morton and Ms Davis. He rejected any allegation his behaviour during the meeting was intimidating or threatening. He barely spoke during it.
7. Mr Croft said that, between 2012 and the present, Dr Morton progressively got more depressed and anxious. The worst of the depression would have been through 2015. There were things that kept happening at work that made her worse. The thing that hurt her the most was the destruction of her career.

### Cross-examination

1. Mr Croft was taken to Dr Morton’s Grievance Document. He said he had read through it before Dr Morton sent it. He agreed he had proof-read it. When asked whether he had edited it, he said, “not so much, no”. When asked whether he would have ensured that she put down all her grievances on paper, he said he didn’t think he needed to, because she came up with it all by herself. He said his role in proof-reading the document concerned only grammar and spelling.
2. When asked why he did not ask Dr Morton whether she was going to mention the prostitute comment, Mr Croft responded, “I didn’t write this for Dr Morton”.
3. Mr Croft was asked why he would not have asked Dr Morton why she had not included in the Grievance Document all the allegations against Dr Glencross. Mr Croft responded:

I am not sure that you are listening to my answers. Effectively, what I said to you was that I proof-read it for spelling and grammar, that is it. I did not put words into her mouth. I did not put words onto those pages for her.

1. Mr Croft denied that at that, point in time, the only comment of a sexual nature that Dr Morton had mentioned Dr Glencross made was the cleavage comment.
2. Mr Croft denied that at that point in time, Dr Morton had never complained of any matter of a sexual nature against Dr Preston. He said she had already mentioned the hussy comment. He was asked why, if it had been mentioned to him, he would not have asked why she did not mention it in the Grievance Document. He responded, “Because, again I didn’t write this. This is Katherine’s grievance”.
3. It was suggested to Mr Croft that he did not want Dr Morton to submit a half-baked grievance. He responded, “Well, of course not”. When asked again why he did not say to Dr Morton that she should mention the hussy comment, he answered, “Because this was Katherine’s grievance and I wasn’t guiding her in doing it”.
4. It was suggested that, up to that point, Dr Morton had made no complaints about Dr Cook. Mr Croft said she had made plenty of complaints to him about Dr Cook. When asked why he didn’t tell Dr Morton to put those complaints into the Grievance Document, Mr Croft answered, “The same as before, I didn’t write this grievance for her”.
5. When asked why he didn’t ask Dr Morton if she realised that there were a lot of things that she left out, Mr Croft responded, “Frankly, there is more than enough in there that anyone should get sacked over doing this stuff, so why would you need to put more?”.
6. Dr Croft was asked about his email of 8 November 2015 to Dr Manners, in which he said Dr Manners’ only option was to communicate with Dr Morton through him, because he was her emergency contact. In his evidence, Mr Croft said he was also the support person for her grievance, which allowed him to enquire into her grievance. He said she had also logged him into her email, and let him send emails from there on her behalf. It was put to Mr Croft that all CSIRO were asking for was a written document to allow CSIRO to deal directly with Mr Croft regarding Dr Morton’s issues. He denied this, and said they were asking for more than a simple document.
7. Dr Croft accepted he had “put the words together” for Dr Morton in respect to the text message she sent to Dr Cook about why she could not go to Bribie Island.
8. When Mr Croft was asked whether he knew Dr Morton would sometimes pick Dr Glencross up, he answered:

I know that she didn’t much of a choice because they had to car share. That doesn’t mean that she was in the car alone either. The one time I was in the car with Dr Glencross going to Bribie there was Nick Wade as well.

1. Mr Croft was taken to a series of text messages between himself and Dr Morton on 14 May 2014 where he referred to, “the one thing I know stresses you out the most”. He was asked whether he was saying the thing that stressed her out the most was the prospect of putting on weight. Mr Croft said, “I believe that is true at the time, yes”.
2. When asked about Dr Morton inviting Dr Glencross to her home in September 2013 when Mr Croft was made redundant, Mr Croft said, “Anything that was organised in our house was always when he was not available”. He denied making that up. He agreed that if he considered Dr Glencross had sexually assaulted his partner, he would not want him in their home. He said, “Absolutely, but it would be bullying for her not to invite him when she invited the whole group.”
3. Mr Croft was asked whether he thought that Dr Morton had decided not to put the prostitute allegation into the Grievance Document. He responded, “No. I would suggest that since she was depressed at the time she probably just forgot about it”. Mr Croft was then asked whether he thought he should be assisting her if she had forgotten something, to ensure that an important matter went into her grievance. He responded:

Not specifically. A grievance wasn’t the injury document. It also wasn’t the pleadings for this Court.

1. Mr Croft was asked whether he had not thought to, at least, ask Dr Morton whether she had forgotten to include the prostitute comment. Mr Croft responded, “Don’t see why I would ask that”.
2. Mr Croft was asked whether he would have checked her claim when she filed it in the Federal Circuit Court on 21 February 2017. He answered:

No. We put all that information together and the solicitor at the time, Leon, put the pleadings together.

1. Mr Croft was taken to his text message of 28 October 2014, where he gave advice to Dr Morton about putting in an expression of interest for the team leader position. Mr Croft said:

I was telling Katherine what she should do in regards to the issues that was going on at work, but your previous question was asking me what my involvement with CSIRO directly was, which is not this. This is telling Katherine what to do.

1. Mr Croft was asked whether he said that, despite this level of involvement, when the Grievance Document was first prepared, his only role was to proof-read it. His answer was:

My advice and guidance to what Katherine should do in relation to conversations we had is what I tell you about, and that’s what you see here.

1. Mr Croft denied he was very aggressive at the meeting with Ms Davis on 5 December 2014. He said he barely said a word.
2. Mr Croft was asked whether he and Dr Morton discussed selecting a date for the redundancy event, to ensure that Dr Glencross did not attend. He answered, “No”.
3. Mr Croft was taken again to the text message Dr Morton sent to Dr Cook on 22 June 2015. When asked whether he entirely composed the text to be forwarded to Dr Cook, Mr Croft said, “Yes, in Katherine’s presence”. He was asked, “Weren’t you texting each other?” He replied, “Yes, but she needed it in text on her phone so she could copy it to send to him”.
4. When asked whether this reflected his level of control as to how Dr Morton dealt with CSIRO, Mr Croft said, “If I had control I would have typed into her phone and sent it from her phone”. When Mr Croft was asked whether he advised her to use the expression, “my attacker”, Mr Croft responded, “As I already said, we put that text together and she was fully aware of the content as I was typing it for her”.
5. Mr Croft was taken to other text messages between himself and Dr Morton on 22 June 2015. He agreed that, at 5 pm, he sent a message saying, “I hope you have a safe trip home beautiful girl”. At 6.02 pm, Dr Morton had sent him a text saying Dr Cook had sent her a message saying the car for Bribie left at 8 am the following day. He agreed that, at 6.24 pm, he sent to Dr Morton the text message for Dr Cook that he drafted. He agreed that, at 7.57 pm, Dr Morton said, “Checked in and through security”. Mr Croft was asked whether he now accepted the discussion about what was to be put in the text message occurred when Dr Morton was not with him. Mr Croft responded, “Well, she clearly wasn’t in my presence, yes”.
6. Mr Croft was taken to Dr Morton’s text message to him on 21 November 2013, where she said, “Just dropping Brett off. Home soon. Poppolo is good according to Brett”. Mr Croft was asked whether he was concerned that the person who had sexually assaulted his partner was in a car with her. Mr Croft said that, if she was at Bribie Island, the time when he was in the car with Brett, Dr Wade was likely also there. Mr Croft was asked whether he assumed Dr Morton would never allow herself to be alone with Dr Glencross. Mr Croft responded, “Probably, yes. Because, you know, I trust her”.
7. Mr Croft accepted that on 23 June 2015, he sent a text message to Dr Morton asking whether she had been to the doctor yet and saying:

Make sure you tell him part of the reason for needing more time off is about the Comcare psychiatrist stuff up and that CSIRO aren’t doing anything to remove you from those people, particularly that they have tried to make you go to Bribie today where you were assaulted and your attacker is allowed to have free range.

1. Mr Croft was asked whether he was instructing Dr Morton what to tell her doctors to assist in setting up her claims against CSIRO. Mr Croft disagreed and said he was giving her some guidance on the issues she was having. The Comcare psychiatrist had told her she needed to get a psychiatrist because she was an extremely depressed woman. He denied he and Dr Morton would regularly discuss the best thing to tell her doctor in order to bolster her case against CSIRO.
2. Mr Croft was taken to Dr Morton’s Facebook post of 25 June 2016, where she said she and Mr Croft had celebrated until 3 am in relation to receiving a redundancy, her 11th MBA subject being completed, and having four months off until the next subject. Mr Croft disagreed with the phrasing of it as a “celebration”. He said they were drinking until 3 am, which he did not “think was a celebration, frankly, for depressed people”.
3. Mr Croft said he attended the second interview with Dr Walker on 9 July 2018. He said Dr Morton was unaware that the photograph was going to be taken. He said he did not want her to be accused of staging it. He agreed she was looking directly at the camera. When asked, “And she has put her bag down, hasn’t she, to have her photograph taken?”. Mr Croft responded, “Yes”. It was suggested she well knew he was going to take the photograph for the purposes of this case. Mr Croft responded, “No, she didn’t know”.
4. Mr Croft was asked whether Dr Morton was involved in planning to secretly record her consultation with Dr Walker. He responded, “I don’t know if she was involved in a plan, but certainly we spoke about it, and I told her that I was going to record it”. When Mr Croft was asked whether Dr Morton ever told him that, through her lawyers, she had promised not to tape the consultation, Mr Croft answered, “She didn’t promise not to tape the meeting ever”.
5. Mr Croft said he would not be able to count the number of times Dr Morton said, over the years, that she was suicidal. He said there were quite a number of times, and that this would have been more frequent around 2015. She still, on occasions, speaks of it to this day. Mr Croft was asked whether he agreed the last thing he would want in the home of anyone who is suicidal is a gun. He answered, “It depends”. He agreed in 2017 that he applied to acquire a gun for his property.
6. Mr Croft was asked about the injury to Dr Morton’s right wrist in 2017. He agreed there were two events, one involving a dog and one involving smashing a wall within one to two weeks of each other. He agreed he was not talking about four events that involved an injury to her right wrist.

## Evidence of Dr Geoffrey Rees

1. Dr Geoffrey Rees is Dr Morton’s treating psychiatrist.
2. On about 6 July 2015, Dr Rees provided Dr Morton with “Medical Certificate for Compensation”, in which he diagnosed her with Major Depressive Disorder sustained on 15  October 2012, caused by “work related stress”. She was certified as unfit to work until 6 October 2015, a period of three months.
3. Dr Rees provided Dr Morton with a further certificate on 30 September 2015. He certified her as unfit to work until 30 March 2016, a period of six months.
4. Dr Rees provided Dr Morton with a third certificate on 11 February 2016, certifying that she was unfit for work until 11 February 2017, a period of one year.
5. On 11 February 2016, Dr Rees wrote to CSIRO. In his letter, Dr Rees said:

In my medical opinion, Dr Morton will not be fit to return to work from 31 March 2016. It appears that the barriers preventing Dr Morton returning to work are associated with the elements within her workplace at CSIRO. Specifically, Dr Morton tells me that the personnel involved in the alleged sexual assault remain working within her work environment. · My treatment plan for this woman’s Major Depressive Disorder, whilst showing significant gain improvement in her mood, can in no way overcome these barriers. Clearly this is in CSIRO’s province and I would expect that suitable action be taken to make Katherine Morton’s workplace safe. Without amelioration of these factors, the prognosis for Dr Morton’s return to work at CSIRO is bleak.

1. On 10 March 2016, Dr Rees again wrote to CSIRO, saying:

I am happy to respond to your letter dated 25 February 2016 regards your new information that the two individuals named in Dr Morton’s complaint no longer work at CSIRO and no longer reside in Australia.

Your suggestion that I did not provide details of any other reasonable adjustments required and that this was therefore the predominant obstruction to Dr Morton’s return to work is a misrepresentation of my reports.

What I stated was ‘clearly this is in CSIRO’s province and I would expect that suitable action be taken to make Katherine Morton’s workplace safe’. Suitable action goes beyond simply the fortuitous disappearance of the people whom have been alleged to have assaulted Dr Morton. Dr Morton’s concerns, as discussed frequently in therapy with me, go beyond the alleged sexual assault and instead, include the institutional response by CSIRO to these allegations. Dr Morton’s claims may or may not be eventually substantiated but her agitation also surrounds CSIRO’s alleged mismanagement of her allegations, her status as a whistleblower who presented inconvenient truths about an unsafe workplace and the institutional response to these allegations.

Dr Morton’s ongoing agitation includes such things as her name being removed from authorship of a paper in which she was involved. It also includes the de-allocation from research projects where she was the team leader. This also includes her demotion to level three research work (rather than her usual level six).

Dr Katherine Morton alleges a sexual assault from Dr Brett Glencross in mid-October 2012 whilst doing research on Bribie Island. She further alleges ongoing harassment after this time. Additionally, she alleges that her name was (ironically but pointedly) removed from authorship of the paper flowing from this research on Bribie Island.

In general, Katherine Morton makes the allegation that the organisation has failed in a timely fashion to address her concerns and instead has blamed her as the troublesome whistleblower who had the temerity to be grieved at an alleged sexual assault.

Given all of this new information, I would ask that you might re-consider whether CSIRO is as you state ‘confident a safe work environment can be provided for Dr Morton’.

Obviously, the allegation of Dr Morton is not simply of alleged sexual assault but of an institutional tardiness and disinclination to pursue answers to inconvenient questions.

Dr Morton remains extremely agitated and this agitation was recently exacerbated by a chance meeting with a former work colleague. This underscores the concerns she has about returning to a workplace that she believes is treating her unfairly on a number of levels.

I appreciate that much of this will come under the category of a management dispute and also that this will have a chance to be tested at the Fair Work Commission and the Administrative Appeal Tribunal.

Whilst I detail all of these concerns and allegations, I am sure that you are aware of these various, elements. I am not sure that I see it as my role to provide root and branch step by step suggestions for how CSIRO might clean up its act institutionally. Indeed I’m sure that you would consider it impertinent and inappropriate if I did.

In the meantime, I can only do my work as a psychiatrist, improving my patient’s mental state. I persist in the view that Katherine Morton is not fit to return to CSIRO and am not persuaded by your recent correspondence that CSIRO have indeed made an appropriate adjustment to the work environment such that Katherine Morton might be able to return there safely.

1. On 16 May 2017, Dr Rees wrote a report about Dr Morton, answering a series of questions asked by Comcare. The report states:

1. Using the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-V) Dr Morton’s condition is Major Depressive Disorder. In view of the ongoing nature of Katherine Morton’s symptoms, it is now correct to identify this Major Depressive Disorder as chronic.

2. The prognosis for Dr Morton’s condition is guarded. She has significant ongoing symptoms including depressed mood, irritability and anger. She has reduced suicidal ideation but continues to have sleep difficulties. I would also note that the injury and its surrounding complications remain as untested legal matters before the Federal Court. Given all of her symptom profile and the ongoing legal matters afoot, I would suggest that her prognosis remains guarded.

3. I believe that the current symptoms and diagnosis remain related to incidents within the workplace in CSIRO. I do not believe that they represent a sequelae of any underlying or pre-existing condition.

4. Psychiatric treatment so far has been of significant benefit.

This woman’s mood has been extremely depressed and she has been in a parlous situation with daily suicidal ideation and tearful outbursts commonplace. Her disturbed sleep with interval insomnia and early morning wakening, was also leading to a parlous condition. Her poor concentration, reduced motivation and anergia were clearly a barrier to any return to normal life and especially normal work. Her reduced libido and anhedonia also impinged on her quality of life.

Treatment with complex combination of antidepressants (now a combination of Lovan 40mg mane and Brintellix 20mg nocte) has seen a reduction in suicidal ideation, and generally an improvement in her mood. Despite this, she remains depressed and angry, and continues to have nightmares about the events surrounding the CSIRO workplace. Panic attacks have emerged and these are associated with agoraphobia. She is unable to leave the 200 acre property unless she is in the company of her partner Will. Precipitants for panic attacks include any cues relating to legal matters, CSIRO emails and having to discuss these matters with medical attendants including for medico-legal reasons. Despite significant improvements she remains depressed and angry.

Her sleep has improved significantly with the intervention of zopiclone in a dose of 7.5mg nocte.

5. The further psychiatric treatment that is required is ongoing antidepressant medication and ongoing supportive psychotherapy. The antidepressant medication will obviously require ongoing titration and we are yet to achieve the most benefit that I believe we can from antidepressant medications. Despite that hope, it must be said that this is proving to be a treatment-resistant depressive illness which has required multiple antidepressant medications in good to high dose. Despite these combinations, her symptom burden remains high. 1 believe it is important to speak with Katherine Morton on a fortnightly basis. Additionally, now that the panic disorder is proving significantly incapacitating it would be necessary to implement a behavioural program which helps her breakdown her agoraphobia and thus leave the rural property. Her panic attacks are being actively treated at the moment with breathing techniques and relaxation strategies. These CBT interventions are also ongoing.

6. Given all of the above and that Katherine Morton’s illness is proving chronic and treatment-resistant (please note this is the illness that is treatment-resistant, not the patient), I do not believe that Katherine Morton is capable of undertaking a rehabilitation program. This is because her depressed mood, reduced concentration, ongoing panic attacks and agoraphobia, and her irritability and anger render her unsuitable for such a rehabilitation program.

I trust that this addresses all of the issues in your letter and I am happy to provide any clarification or further detail upon written request.

1. On 13 July 2018, Dr Rees wrote a report addressed to Dr Morton’s solicitors in which he said:

This report should be read in conjunction with my previous reports dated 11 February 2016, 10 March 2016 and 16 May 2017.

I am happy to provide answers to the specific questions that you pose in your letter dated 06 June 2018.

1. I have been treating Dr Katherine Morton since her initial referral by her treating General Practitioner and first saw her on 06 July 2015 when a diagnosis of Major Depressive Disorder was made. I have treated her in my capacity as a private psychiatrist with particular skills and interest in Post-Traumatic Stress Disorder and Major Depressive Disorder.

2. I believe that Dr Morton suffers from the following psychiatric diagnoses:

* Major Depressive Disorder.
* Panic Disorder with Agoraphobia.

3. Dr Morton continues to suffer with serious depressed mood with marked anger and irritability. She has low motivation, reduced concentration and memory, difficulties organising herself and it seems profound deficit in motivation. She describes herself as remaining in her pyjamas for most of the day and having disturbed sleep punctuated by nightmares of “the usual people “(CSIRO staff). Her disturbed sleep is despite the presence of the hypnotic Imovane in a dose of 7 .5 mg and the addition of topiramate in a dose of 50 mg nocte.

Although she has certainly been suicidal on multiple occasions over the course of treatment, she is not currently suicidal.

Over the past 12 to 24 months, she has developed panic attacks and marked agoraphobia. This has seen her and her partner, Will, buy a 200 acre property in a relatively remote area of rural Tasmania. Even with this buffer, she reports that she seldom leaves the property. Her days are spent caring for multiple cats and some other farm animals. Panic attacks tend to be related to apprehension regards any activity that might take her outside of the property. Also, she tends to get panic attacks in relation to contact from lawyers regards any legal matters to do with the pending case with CSIRO.

4. I continue to hold the view that her ongoing symptoms are related to Dr Morton’s treatment at CSIRO. Specifically, the content of her nightmares and much of her ruminative thinking relates to specific events and personnel from her past at CSIRO.

5. I believe that Dr Morton suffers with Major Depressive Disorder and Panic Disorder with Agoraphobia as a result of workplace related events dating from October 2012. I believe that the extent of this disability is such that she is unable to work even eight hours for any remunerative work for which she would be qualified by education, training or experience.

6. I believe that Dr Morton has suffered a permanent impairment and that her symptoms of mental distress are pervasive and tend to dominate her thinking. She has significant difficulties with performing activities of daily living and has poor sleep almost every night. By her reports, she eats infrequently and erratically with some fluctuations in her weight. She has frequent panic attacks, and this has led on to Agoraphobia meaning that she is virtually bound to her home and certainly within her property in Tasmania. She does not go out shopping or for anything other than medical necessity.

In considering her level of psychiatric impairment, I refer to Table 5.1 of the description of level of impairment of the guide. I would agree with Dr Chow that she suffers with a 10% permanent psychiatric impairment with regard to her activities of daily living. She is able to undertake activities of daily living independently although she does require some supervision and support from her partner, Will. He prompts her to get out of bed, change out of her pyjamas and to eat meals.

7. The prognosis for Dr Morton is guarded. I do not expect a full recovery from her current state. Any partial recovery from her current state is likely to be small in its scope. I note that she has suffered with symptoms consistent with a diagnosis of Major Depressive Disorder since 2012 and certainly was suffering with symptoms of Major Depressive Disorder when I first saw her in 2015. In the light of this with six years of symptoms of her illness and the ongoing environmental stressors of litigation and increasing social isolation, I believe that the likelihood of any significant improvement is very small. Further treatment options include titration of medication and ongoing psychiatric support. I believe however that this is likely to maintain current improvements (she is no longer suicidal) but is very unlikely to provide sufficient improvement such that she may be able to return to any remunerative work.

8. As noted in various other doctors’ reports and in my previous reports regards Dr Morton, she remains depressed, angry and irritable and has evidence of difficulties with organisation of her thinking and a deterioration in her executive functioning. These include impaired concentration and memory. Although she is a highly intelligent woman, her poor motivation, lethargy and impaired memory would impact severely on any rehabilitation efforts. Likewise, her anger and sense of injustice at the hands of her former employer would impede rehabilitation efforts, and any thought of her working at CSIRO in the future would be impossible in my opinion.

9. I believe that Dr Morton will have significant difficulties in obtaining or sustaining future employment generally. Certainly, she would be unable to resume her function as a senior scientist either within the organisation of CSIRO or in the broader scientific community. I believe that the reputational damage to Dr Morton as a result of the allegations and subsequent court actions with CSIRO would make her essentially unemployable in the small scientific community in Australia. Perhaps more importantly, Katherine Morton does not have the executive function, memory or organisational abilities to return to any similar work. Beyond this, her ongoing depression and Agoraphobia mean that she is essentially unable to currently leave her home to engage in any remunerative work. Any home based employment relying on internet access would likewise require concentration, organisation and confidence and initiative that this woman does not possess and has not possessed in my opinion since I saw her first in 2015.

In short, she is unsuitable for any future employment in any context as a result of her Major Depressive Disorder and Panic Disorder with Agoraphobia.

10. I believe that future treatment for Dr Morton must include ongoing psychiatric support and perseverance with various antidepressant medications and augmenting strategies. Her anxiety disorder requires ongoing CBT with relaxation training and anti-panic strategies. It is likely that this woman will require changes in medication and titration of current medications in the future.

She should see a psychiatrist on a fortnightly basis. These consultations would be between 45 minutes and 1 hour and the AMA suggested rate of remuneration for this is $355.00.

This woman is currently on two antidepressant medications, two hypnotic medications and one anxiolytic. These tally to approximately $200.00 per month. I believe that this woman will require ongoing treatment for at least the next three years and probably the next five years.

I have reviewed my reports, dated 11 February 2016, 10 March 2016 and 16 May 2017 and wish to advise you that I maintain my opinions held within those reports.

…

(Underlining in original.)

1. Dr Rees prepared a further report addressed to Dr Morton’s solicitors, on 1 August 2018. In the report, Dr Rees said:

I interviewed Dr Katherine Morton on 01 August 2018 for some two hours (with breaks) in order to provide an up to date mental state examination.

This interview was via facetime. Dr Morton was not expecting this interview. It took place on the evening of 01 August 2018. Dr Morton appeared unkempt and was wearing pyjamas. She sat at a table which was covered in books and papers which were in clear disarray. In order to clear space for the facetime interview, Dr Morton had to shift a cat that was lying on the desk.

This most recent interview was consistent with previous interviews with Dr Morton. Her eye contact was poor and she looked away from my image on the phone for the majority of the interview. Her partner, Will, was moving around in the background. Her speech was slow and halting and her affect flat. Her mood was depressed. Her speech was rambling and circumstantial. It was difficult to keep her to the subject at hand. She tended to either over elaborate or go off on a tangent.

In general, she was able to address my questions with appropriate answers but on many occasions, she continued to answer previous questions or provide remembered fragments of answers to previous questions. This is consistent with her obsessional personality traits and lends a rigidity and “stickiness” to her answers. By this, I mean that her answers are sometimes off topic and may relate to previous discussions. It represents a *“sticky”* adherence to topic and an unwillingness to move onto materials. This is commonly seen in obsessional and anxious people. It is also seen in people with organic brain injury although there is no suggestion of that here.

Dr Morton’s thought content showed an anxious preoccupation with the current legal proceedings. She also described a general sense of hopelessness regarding her situation.

There was no evidence of any psychotic thought content and although her replies were rambling and at times difficult to follow, there was no formal thought disorder. She denied any hallucinations and there was no evidence of delusions.

She described ongoing memory difficulties and these were apparent when asking her to recall previous content of our discussions. As noted, her intelligence is high and her insight regarding her situation appeared within normal limits.

Dr Rees then went on to answer a number of specific questions he had been asked concerning, in particular, a report prepared by Dr Kipling Walker, a psychiatrist engaged by the respondents to examine Dr Morton. Dr Rees’ report is lengthy, but the relevant passages include the following:

Dr Walker did note that she was difficult to interview and made little eye contact and spoke slowly. He noted that she looked at Mr Croft many times when answering questions. She volunteered little in the way of symptoms to Dr Walker and seemed to have difficulty expressing herself in explanations to direct questions in his interview.

In fact, Dr Walker’s description of his interview with her is reasonably consistent with my own interviews with her. I have to say that Dr Walker’s description of her interview suggests inattention. Certainly, I have difficulty keeping Dr Morton on topic or gleaning answers to relatively simple questions during interview because of her tendency to veer off topic. I share Dr Walker’s difficulty in eliciting information from Dr Morton but find this is generally due to her inability to express her feelings about situations or symptoms. I must say that Dr Walker’s description is consistent with an inattentive patient rather than somebody who is able to retain attention for a 2.5 hour interview. Certainly, inattention is a frequent problem in my consultations with Dr Katherine Morton and leads to them being longer and less productive than would be the case for an ordinary person of Dr Morton’s intelligence.

Whilst maintaining good attention during an interview for 2.5 hours would be unusual in a diagnosis of depression and Anxiety Disorder, my general commentary would be that I find Dr Morton’s attention, or rather its lack, to be completely consistent with a diagnosis of Depression and Anxiety Disorder in my interviews with her.

…

Additionally, her personality type is markedly obsessional and tends to mean that she will become quite unwilling to move onto a new question or new content if she has not given what she would consider an adequate elaboration of previous answers. What this inevitably means is that interviews are painstaking and difficult as Dr Walker describes. It also means that Dr Morton has difficulty focusing on the next question in any given interview. Dr Morton tends to be over inclusive when she eventually latches on to a topic and her answers are over elaborated and then tend to veer off to irrelevant or unnecessary content involving other areas.

All of this makes for a difficult interview as described by Dr Walker. In my opinion, the difficulties of interviewing Dr Morton are largely because of her inattention as a result of her personality style, memory difficulties and anxiety.

…

Dr Katherine Morton certainly suffered with morbid obesity. Dr Walker notes that she has had a weight range since puberty of 58 kg (BMI = 19.3 = normal) and 156 kg (BMI = 52 = morbidly obese). Her current weight is 73 kg (BMI – 24.3 = normal). As noted by Dr Walker, Dr Morton attempted weight loss by gastric lap band which was eventually unsuccessful and followed up by a gastric bypass. This was after strenuous attempts by Dr Morton with diet and exercise.

Certainly her morbid obesity deserved surgical intervention and it appears that the gastric bypass, although beset by the usual problems of *“dumping”* and hypoglycaemia, has seen her maintain a healthy BMI of 24.3. Dr Morton’s concern and preoccupation with her weight is shared by 80% of the female population. Dr Morton’s dramatic weight loss from 156 kg down to her current weight of around 70 kg led to much excess skin requiring necessary cosmetic surgery to remove it. Removal of excess skin is not an indulgence in these cases but represents an appropriate response to Dr Morton’s concerns re self image and the wish to achieve a relationship with a member of the opposite sex.

Whilst Dr Morton remains vigilant regards weight gain and is understandably more focussed on body image than many of us, there appears to be no consistent or significant link between her weight loss and the development of the psychiatric condition in 2012. Certainly Dr Morton’s self esteem will have been affected by her morbid obesity but her significant weight loss has actually been a source of pride and allowed her to form and maintain a relationship with her partner, Will.

I do not believe that there is any significant causative link between this woman’s morbid obesity and consequent weight loss on the development of her Major Depressive Disorder and Panic Disorder with Agoraphobia.

…

**Opinion regarding the above**

As noted, I have had the opportunity to question Katherine Morton specifically about these events. The detail of these events does not change my opinion regarding causation, diagnosis and treatment requirements. If anything, it reinforces my opinion (and that of all of the independent medical experts) that this patient suffers with Major Depressive Disorder and an Anxiety Disorder. Furthermore, I believe that the detail of these events suggests that there is no inconsistency between these diagnoses and her Facebook posts. My opinion regards diagnosis is unchanged. My opinion regarding the causation of the Major Depressive Disorder and subsequent Anxiety Disorder is likely unchanged. It relies on the temporal relationship with the events described at her employment with CSIRO.

Treatment requirements certainly need to focus more on control of her alcohol and substance abuse. This will be an area of ongoing treatment that receives emphasis in the future.

…

6 Dr Morton is on any measure unable to take part in rehabilitation. I believe that this has been the finding of all of the Independent Medical Examiners with the exception of Dr Walker. Her willingness or otherwise to participate in such rehabilitation is irrelevant if she is incapable of actual participation.

7 Early on, the barriers to Dr Morton participating in rehabilitation included her belief that one or more of the perpetrators of her sexual harassment remained within CSIRO. In the broader sense, she believed that the CSIRO culture was so flawed that it would be injurious for her to return. In any case, by this point she had formed the opinion that CSIRO were persecuting her as a whistle blower who had identified sexual harassment in the workplace.

Other barriers are essentially those of her illness. Her reduced concentration, poor judgment, impaired memory, lethargy, reduced organisational ability, sleep disturbance, depressed mood and sense of hopelessness for the future also are barriers. Her marked anxiety with intermittent and unpredictable panic attacks leading to Agoraphobia and its attendant anticipatory anxiety which currently precludes her from moving from the farm without a high level of support, also presents itself as an obvious barrier to participation in rehabilitation.

..

**Summary**

In summary, I believe that Dr Katherine Morton suffers with Major Depressive Disorder and Panic Disorder with Agoraphobia which has as its causation incidents of sexual harassment at CSIRO. There is a temporal and causative relationship which I believe is hard to overlook.

I do not find the consistency between my clinical interviews of Dr Katherine Morton and these diagnoses. Indeed, on reading Dr Walker’s report of her history and mental state examination, I found it difficult to see why he found inconsistencies. I note that in his follow up report he noted Facebook posts as an area of potential inconsistency. My belief is, as a doctor and Facebook user, that Facebook is a completely inadequate way of deducing a person’s psychiatric state. This can only be deduced from psychiatric examination over a number of occasions.

I believe that Dr Morton is incapable of participating in rehabilitation and that the barriers are largely those of her illness.

…

1. A significant part of the report is taken up with the description of Dr Morton’s account of her appointment with Dr Walker, and her responses to matters reported on by Dr Walker.
2. Dr Rees’ oral evidence principally consisted of cross-examination. Under cross-examination, Dr Rees accepted that, to make an accurate diagnosis, it is important to get a detailed and accurate history of the patient. He said that “90% of diagnosis is history”.
3. Dr Rees agreed that throughout the time he dealt with Dr Morton, he assessed her as having “zero work capacity”.
4. Dr Rees said his diagnosis of Dr Morton with Major Depressive Disorder was made in accordance with the *Diagnostic and Statistical Manual of Mental Disorders V*. The diagnostic criteria for Major Depressive Disorder are five or more of the following symptoms that have been present during the same two week period and represent a change from previous functioning:

1. Depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful). (**Note:** In children and adolescents, can be irritable mood.)

2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).

3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decreased or increase in appetite nearly every day. (**Note:** In children, consider failure to make expected weight gain.)

4. Insomnia or hypersomnia nearly every day.

5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).

6. Fatigue or loss of energy nearly every day.

7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).

8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).

9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.

1. Dr Rees said the symptoms Dr Morton reported included the first, second, sixth and eighth of those items.
2. Dr Rees accepted that on 6 July 2015, when he first saw Dr Morton, he made a retrospective diagnosis of Major Depressive Disorder for the period commencing in October 2012. He agreed that when making a retrospective diagnosis, the accuracy of the history is even more important. He was asked whether that was “really getting into the guesswork territory”. Dr Rees said, “It’s an extrapolation, yes”.
3. It was pointed out to Dr Rees that in 2013, Dr Morton had held down a senior full-time job as a scientist at CSIRO, socialised, held down a relationship, organised social functions and sold things on eBay. It was put to Dr Rees that this history was inconsistent with having Major Depressive Disorder. Dr Rees did not agree that was inconsistent.
4. It was then pointed out to Dr Rees that, in 2014, Dr Morton held down a full-time senior position as a scientist at CSIRO, was maintaining a relationship, applied for two Research Group Leader roles, said she wanted to start an MBA that year, applied for a team leader role, kept up social activities and sold items on eBay. Dr Rees did not accept that these activities were inconsistent with Major Depressive Disorder.
5. Dr Rees was taken to Dr Morton’s Facebook post of 5 January 2014. Dr Rees initially said, “Facebook is fiction”. Dr Rees was then shown Dr Morton’s Facebook posts for 8 and 12 January and 9 and 24 February, 2014. He agreed the activities described in the Facebook posts were not what would be expected of someone with Major Depressive Disorder and were inconsistent with that condition.
6. It was put to Dr Rees that, in the first half of 2015, Dr Morton was still holding down a position at CSIRO, was performing a team leader role, was holding down a relationship, socialising, had started studying an MBA, was continuing to sell items on eBay, was going for long walks and had gone on holiday to Tasmania. Dr Rees disagreed that these were inconsistent with a person having a Major Depressive Disorder. However, he agreed that successfully completing an MBA demonstrated an ability to concentrate and be organised. He would not expect a person with a Major Depressive Disorder to successfully complete an MBA. Later, Dr Rees said that submitting university assignments, organising papers and exercising, were not activities that were completely inconsistent with Major Depressive Disorder.
7. When asked about issuing a medical certificate in respect of Dr Morton for a 12 month period, Dr Rees said:

It was my way of saying to—I think it was Comcare at the time, I am not sure—that formal assessment of this woman by a third party would basically be harassment that she was—you know, she was in a fragile state and it wasn’t something that I thought was benefiting anybody.

1. Dr Rees later said:

I considered that her having independent medical examinations on a frequent basis would be injurious to her mental state. As a doctor I wanted to reduce injury to her, and I think that’s, quite frankly, in everybody’s best interest.

1. Dr Rees accepted Dr Morton had given him a history that she suffered fatigue and loss of energy nearly every day. In response to a question about whether he would ordinarily expect a person with Major Depressive Disorder to go on a four-hour walk, Dr Rees answered, “I think you are nit-picking, quite frankly”. He then disagreed with that proposition.
2. Dr Rees agreed that Dr Morton speaking at a conference on 30 July 2016 would require some level of confidence, concentration, initiative and organisation. He agreed it was unusual that she would be able to speak at a conference, but said he guessed that, as a one-off, people were able to lift themselves up and present something.
3. It was suggested to Dr Rees that, in 2017, Dr Morton went on an overseas cruise, bought a new car, obtained an academic excellence award for her MBA, bought animals for her farm, had incorporated a company, packed 70 boxes of items to move to Tasmania, purchased a new house as an investment and sold 25 lambs over the internet. Dr Rees said he did not consider these matters were inconsistent with a Major Depressive Disorder.
4. Dr Rees accepted that Dr Morton told him that she had a profound fear of putting on weight, partly because she had previously been morbidly obese.
5. Dr Rees described symptoms of Agoraphobia as involving people often having difficulties leaving their home and going into places where they fear they will have panic attacks. They have a lot of difficulty leaving their home unless they are in the company of somebody else. They will reduce their social outings away from the home to the absolute necessities and, if they can avoid that, they will. When asked whether going on a cruise was consistent with Dr Morton having Agoraphobia, Dr Rees said he thought the cruise may have preceded the onset of Agoraphobia. He said that in his notes, the first mention of panic attacks was 24 November 2016.

## Evidence of Dr Joseph Mathew

1. Dr Joseph Mathew is a psychiatrist who prepared a report dated 3 July 2018. The report stated, relevantly:

Dr Morton reported that the difficulties started about one month after she commenced work. The difficulties were in relation to her manager, Dr Brett Glencross. Dr Morton said that Dr Glencross would make comments about being heterosexual and Dr Morton being heterosexual. He made comments about her cleavage. In the presence of co-workers, Dr Glencross was reported to say, “Women only wear pendants to draw attention to their cleavage. I don’t know why you bother. You don’t have any.” Dr Glencross was reported to have made comments about Dr Morton’s appearance in front of clients. At a conference in Melbourne, Dr Glencross made reference to Dr Morton as a “prostitute”. On a different occasion Ms Morton was told to wear a short skirt to a funding meeting. Dr Morton reported that on an experiment site, she was struck on the buttocks by Dr Glencross with a riding crop. This episode was not accompanied by verbal abuse.

Dr Morton alleged that she was undermined and given conflicting instructions. Sometimes Dr Glencross would change his mind about things and then criticise Dr Morton for having started work on the previous project. Dr Morton was told in front of junior staff that she had a light workload. She was told that her work output was of the quality of a PhD student. Dr Morton was not permitted to have a PhD student, when her co-workers did. On one occasion, Dr Glencross edited the wrong version of a manuscript prepared by Dr Morton. He was angry with Dr Morton.

1. Dr Mathew recorded Dr Morton’s symptoms as including that she had previously enjoyed baking, shopping, walking, Pilates and catching up with friends and that she had stopped most of those activities due to her state of mind. She said, “We don’t go out unless it’s a doctor’s appointment or groceries, and then it’s once a week”. Her energy was poor and she required medication to sleep. Dr Morton reported that her self-care was poor and she sometimes failed to shower for several weeks at a time. She was not attending to her hair and grooming. She said, “My memory is not very good. I forget things if I don’t write things done or get Will to remind me”. She also reported difficulties with her concentration and said she was not reading books because of this. She said she would not focus through a movie. She watched television series with her partner, but had some difficulty following them. She said she was unable to seek work due to the state of her mind.
2. Dr Mathew reported his observations as follows:

Dr Morton was a somewhat dishevelled woman. She had not paid attention to hair or makeup. Her thinking and movement were slowed down as a result of her state of mind (psychomotor retardation). She engaged in the interview but had trouble with focus, sometimes losing her thoughts. Her answers were slow and there was sometimes a delay (latency). Dr Morton had difficulty remembering details and dates. Her pervasive mood state was markedly depressed. Her affect was restricted. Dr Morton appeared tired. There was no evidence of psychosis. Dr Morton’s insight was fair. Her judgement was reduced, with ongoing suicidal thinking.

1. Dr Mathew summarised his opinion as follows:

Dr Morton started work at CSIRO in 2012, where she had been a senior research scientist and team leader. Dr Morton alleged that her manager, Dr Brett Glencross, made sexualised, demeaning comments, and on one occasion struck her buttock with a strap, Dr Glencross was reported to be inconsistent and then criticise Dr Morton. Dr Morton alleged that she was undermined in front of junior staff and that the quality of her work was criticised. Eventually, Dr Morton placed a grievance against him. Dr Morton was unable to continue and told me that she stopped work there in mid-2015.

In the context of this, Dr Morton developed a serious depressive illness (Major Depressive Disorder). She also suffered anxiety. Dr Morton’s state of mind deteriorated. She tried to remain at work as her career was very important to her, but eventually she had to leave. Dr Morton’s depressive symptoms had continued over the years. She was tired, had withdrawn from people and activities and her self-care was poor. Dr Morton had thoughts of life not being worth living and was nihilistic with regard to the future. She required medication to sleep and suffered nightmares relating to her work. Dr Morton had moved State to be away from her previous work. She had been very distressed when she encountered colleagues. Dr Morton reported difficulties with her focus and memory, in keeping with her mood state. At interview, Dr Morton was profoundly depressed with psychomotor retardation, depressive cognitions (including thoughts of suicide) and problems with her thinking that were in keeping with her mood state. This was consistent with the history provided. Dr Morton remained very unwell despite exhaustive treatment by her psychiatrist and psychologist and the ongoing use of four psychotropic medications.

There was no previous history of psychiatric illness and no underlying vulnerabilities were identified.

The psychiatric illness was due to the workplace experiences.

1. Dr Mathew then addressed a number of specific questions he was asked. He gave his diagnosis of Dr Morton as Major Depressive Disorder and Adjustment Disorder with Anxious Mood. Dr Morton expressed the opinion that she sustained the injury the course of her employment with CSIRO. He said that her psychiatric conditions were caused by her employment with CSIRO, and that she was unfit for any work, now, or in the future. He said she was markedly depressed with psychomotor retardation, depressive cognitions, very poor self-care, difficulties with her thinking, suicidal thoughts, withdrawal and fatigue.
2. Under cross-examination, Dr Mathew agreed that he had seen Dr Morton once, on 3 July 2018, and that was via Skype. He said that Dr Morton continued to suffer severe and disabling symptoms of depression since about 2013. Her prognosis was guarded.
3. Dr Mathew accepted that he had not only given a diagnosis based upon how Dr Morton presented at the interview, but retrospectively, over five-and-a-half years. He considered that Dr Morton not reading books had not been a problem dating back to 2013.
4. Dr Mathew said that there were three things that he considered the history provided to him; Dr Morton’s appearance at the interview; whether the history was consistent with the way she came across; and any other information.
5. Dr Mathew agreed that Dr Morton had told him that she had ongoing suicidal thinking. She did not tell him that she had applied for gun licence in November 2017. He agreed that if someone was having suicidal thoughts, the last thing he would want was for them to obtain a gun licence.
6. Dr Mathew agreed that he would not expect someone who had difficulty reading books, had poor energy and was not able to groom herself to do post-graduate study. He would not recommend to such a person that they do an MBA. He agreed that, to do an MBA, a person would need to have a capacity to concentrate, read books, and, preferably, have good energy.
7. Dr Mathew agreed that Dr Morton had not told him that she had done an MBA at the University of Queensland in 2015 and 2016. He agreed that, if she won special awards given by the Dean because of her high performance that would be important to his diagnosis.
8. When asked whether he would need to re-evaluate his diagnosis, Dr Mathew said he would not, but he would need to re-evaluate his assessment of Dr Morton’s functioning. He said that when he saw Dr Morton he felt her functioning was poor, and the information he had been provided did not really sit with that. Dr Mathew accepted that, if someone had successfully done post-graduate study, it could inform the question as to whether they had a capacity to work.
9. Dr Mathew agreed that the taking of an accurate history is important as a psychiatrist. He said that he had attempted to elicit an accurate detailed history from Dr Morton. He was very surprised that he did not elicit the fact that Dr Morton had done an MBA.
10. Dr Mathew agreed that the allegations of inappropriate sexual behaviour Dr Morton raised with him were directed against one person, namely, Dr Glencross. She made no allegations to him of a sexual nature against anybody else.
11. Dr Mathew agreed that if it were found by the Court that Dr Morton was never sexually harassed in any way by Dr Glencross, she would have given him an inaccurate history. He agreed that, if that was so, he would be concerned about the reliability of the rest of the history he had been provided with.
12. Dr Mathew said that Dr Morton told him that she was being undermined by Dr Glencross in a number of ways at work. He did not recall her saying anything about getting external funding for projects or the publishing of articles.
13. When asked whether Dr Morton had told him that she had previously been morbidly obese, Dr Mathew said he did not think that she had used those words, but she had told him that she had struggled with her weight, requiring various interventions. He thought that if a person had morbid obesity to the point of having an operation, it would always be a part of who they are. It would not necessarily mean that they had a deep-seated fear of regaining weight, but the problem with eating would remain part of them. He agreed that putting on weight could cause anxiety, but it would be fairer to use the word “stress”. It was possible that putting on weight could cause depression.
14. Dr Mathew accepted that Dr Morton had complained about difficulties at work with conflicting instructions from Dr Glencross, changing his mind and editing the wrong manuscript. He agreed that it was possible that these stressors could lead to depression, depending on the person.
15. Dr Mathew agreed that problems arising within a domestic relationship could cause stress and depression.
16. Dr Mathew said he would not expect a person with severe disabling symptoms of depression to apply for a team leader role. He added that he had seen many people who he did not think were fit to do something, but who would tenaciously cling to the idea that they might be able to. He said that people in that situation would invariably be either unable to get through an interview or write the appropriate letter, or, if they obtained such a position, would be unlikely to be able to function in that role.
17. Dr Mathew agreed that, at this level of depression, people tend not to organise social functions. He said he had obtained no history of Dr Morton saying she socialised regularly. She did not mention that she organised social functions such as a Christmas party and a party for her partner’s redundancy. He said that if a person had severe depression, they would try to avoid something like that, but did not think that they necessarily would not do it. He said that, as for organising a function for her partner’s redundancy, sometimes people would put themselves to some trouble even if difficult. He was not sure.
18. Dr Mathew said that Dr Morton had not told him that in 2014, she applied for two research group leader roles. He agreed that the applications showed some level of motivation. She did not tell him that she applied for a team leader role and got it.
19. Dr Mathew was asked whether he would tend not to see a person with severe and disabling symptoms of depression going on walks as long as 10.5 kms. He said that the typical pattern for a depressed person is to withdraw from activities like that, but that some people deal with depression with activity. He agreed that Dr Morton going for long walks was inconsistent with her telling him that she suffered with low energy.
20. Dr Mathew said he would not typically see someone with severe depression going on holiday. He said it would be unusual for someone to get excited about the social aspect of a MBA. He agreed that he would not tend to see the type of confidence and motivation required to pitch a research proposal to her marketing lecturer in a person with severe depression.
21. Dr Mathew said that Dr Morton did not tell him that she and her partner went to Hawaii at the end of 2015. He said that was unusual for someone with severe depression, but certainly possible. Dr Mathew said that a high distinction average in her MBA would surprise him given her diagnosis. He agreed that she had not told him that, in July 2016, she was a speaker at a women’s conference. He agreed that would involve a level of concentration, confidence, initiative and organisation. He said that was not consistent with the Dr Morton that he saw. Dr Mathew said that she had not told him that in 2017, she went on a 10 day cruise.
22. Dr Mathew said that Dr Morton’s activities in 2017, including buying a new Land Rover, registering a company, selling lambs on the internet, and buying an investment house, weighed against what he would expect of someone with severe depression. Dr Mathew was taken to Dr Shaw’s comment that Dr Morton had always been clean and appropriately dressed at appointments with him. He agreed that it would be a significant matter if Dr Morton could groom herself appropriately for the appointment with him, but chose not to.
23. Dr Mathew agreed that it would be improper for a psychiatrist to issue lengthy certificates in an attempt to stop Comcare from arranging an independent medical examination for that a patient.
24. In re-examination, Dr Mathew said that the response in people to depression presents in people in a variety of ways. He said that people’s responses to adverse effects in their lives are very diverse. In psychiatry, it is very difficult to apply one patient’s experiences cleanly to everyone.
25. Dr Mathew was asked whether, where a person is required to obtain external funding and they failed to do so, that could cause depression. He said that it would not. He said that failure to publish papers, given what he knows now, would be a small contributing factor to a person’s state of mind.

## Evidence of Dr Brett Glencross

1. Dr Glencross commenced working at CSIRO in 2009, as a scientist in agricultural nutrition. He specialised in aquaculture.
2. In May 2012, Dr Glencross went to Scotland on sabbatical for six months. He returned to his position in Australia for three days in October 2012.
3. Dr Glencross left CSIRO on 27 February 2015 to take a position at a company called Ridleys. He had applied for that position in September 2014.
4. In 2012, Dr Glencross was the Principal Research Scientist for agricultural nutrition, and also the stream leader. He co-ordinated all of the research projects at CSIRO pertaining to feed matters for the Aquaculture stream. A stream leader’s responsibility was to focus on science, whereas a line manager’s responsibility involved principally, looking after human resource requirements.
5. In 2011, Dr Glencross co-ordinated the process of recruiting a new scientist to bring into his group.DrMorton commenced at CSIRO in 2012 as a Senior Research Scientist for agricultural nutrition. She was a reproductive physiologist in mammals. Nutritional physiology is a different field, although it is related.
6. Dr Glencross said that Dr Morton’s “position details” document talked about nutritional physiology. In the position description, the duties included, “Lead a range of existing nutritional physiology, in terms of new research and attracting external funding”.
7. Dr Glencross said the attraction of additional funding was critical, because, at that time, he was the only person bringing in any appreciable income. That was a threat to the group, because if he left or something happened, there was no line of income. The generation of publications was also important, but not as important for CSIRO as the generation of income.
8. Dr Glencross said that, to try to bring Dr Morton into the domain, he introduced her to people in the industry, and allocated her some existing experiments and projects. She was taken to conferences so she could meet and network with people in the industry.
9. When Dr Glencross went on sabbatical in May 2012, he left Dr Morton with a range of instructions. They were mostly to consolidate and develop relationships they had implemented by talking to people in the feed industry and fish farming industry. He also asked her to focus on some of the experiments that they were about to do, or which they were in the process of doing at the time.
10. Dr Glencross denied that, on about 26 April 2006, he asked Dr Morton what her sexual preference was. He said he already knew her sexual preference, because Dr Morton had talked at length about her boyfriend in Oxfordshire. He recalls that they were at James Cook University when he saw a woman of Asian appearance. He made the comment, “She’s cute”. In response, Dr Morton asked, “Do you like Asian woman?”. Dr Glencross said, “They are not really my type. I prefer Eurasian, Latino or, sort of, Mediterranean woman in appearance”. He said that was the end of the conversation.
11. On 2 May 2012, Dr Glencross attended an Agriculture Australia conference with Dr Morton. He denied that he referred to her as a prostitute. He said that she was wearing a ball gown and he said to her, “That’s a bit OTT”. He recalls Dr Morton saying that people spend a lot more money on clothing in Dubai, and that she spent a lot more money there on clothing because she earnt a lot more.
12. Dr Glencross denied that on 2 May 2012, he said to her, “You know you have crows-feet when you smile”.
13. Dr Glencross gave evidence that one of the main reasons he wanted to chaperone her at the conference was to introduce her to influential players in the research sector and the industry, so she could start making her own networks and developing her own projects.
14. Dr Glencross returned to Australia on 15 October 2012. On 16 October 2012, he went to Bribie Island to finish off the BAR-12-6 experiment. There were three rooms being used. There were between 6 and 12 people working on the experiment that day. He said it was a very busy day, because the experiment involved 48 tanks, double the usual number. The work was time-critical.
15. Dr Glencross denied that he came up behind Dr Morton with a riding crop and hit her on the buttocks. He said that it was virtually impossible that he would find himself alone in a room with Dr Morton that day. He does not have any memory of seeing a riding crop that day.
16. Dr Glencross denied that, on the evening of 15 October 2012, he had initiated a conversation about dominatrixes.
17. He said that, after 16 October 2012, he went out to Bribie Island with Dr Morton many times. Dr Morton would often pick up a CSIRO vehicle and drive past his house to pick him up on the way. They would go to Bribie Island at least a couple of times most months.
18. On 17 October 2012, Dr Glencross attended a dinner at the Norman Hotel. During the dinner, there was a discussion about a comedy television show. The discussion was about the positioning of a pendant. It was discussed that, when a woman wears one, it is to draw a man’s attention to that part of the body. Dr Glencross participated in the discussion. He could not remember if Dr Morton was involved in it. He denied that he said to Dr Morton, “I don’t know why you bother, Katherine. You don’t have any”.
19. A video clip from the television comedy *The Office* was played in Court. In that clip, there is an awkward conversation where a man tells a woman that women wear necklaces to draw attention to their breasts, while she denies she is doing any such thing.
20. Dr Glencross described his relationship with Dr Morton between March 2012 and March 2014 as amicable. She had a pet name for him, “Professor Bunny”. He was invited to a housewarming party at her house at the end of 2012, which he did not attend. In September 2013, he was invited to her home to celebrate Dr Morton’s partner’s redundancy. He was also invited, on 19 November 2013, to Dr Morton’s Christmas party.
21. In July 2014, Dr Glencross applied for a position of Research Group Leader at Agriculture. He was unsuccessful. Dr Preston told Dr Glencross that his management or leadership style needed refinement. He was too direct in his management style and needed to become a bit more persuasive with people.
22. Dr Glencross said that when returned from his sabbatical in December 2012, there were quite a few things he had asked Dr Morton to attend to which had not really progressed well. He had the impression that Dr Morton was more interested in processes than outputs and outcomes. The main experiment for the “ACIAR” project had not really progressed. There were some discussions while he was away about the direction the research needed to go in. He said that it took a bit of time to get Dr Morton to see the direction and questions they were asking so that the design of the trial would fit the question.
23. Dr Glencross said he told Dr Morton quite regularly that she needed to focus on delivering science needs and bringing in income. He said that scientists in CSIRO lived and died by their achievements and not necessarily the process they went through.
24. By March 2014, Dr Glencross had concerns that Dr Morton had not attracted any projects to the CSIRO in the two years since she had been recruited. Dr Glencross was also concerned about her publication output. She had only written one piece of work in the two year period, and that was something they had done substantial work on before he went to Scotland. She took a long time to write it up.
25. Dr Glencross was taken to an email from Dr Morton of 6 March 2014. A meeting to discuss the clarification of her role was held on 7 May 2014. Dr Glencross said that, at the meeting, he reminded Dr Morton of her core roles, of the fact that they needed to do science, and that it was necessary to bring in the resources to do it and to report that. Some key areas were identified for Dr Morton to focus on, moving forward, that could give her some direction in terms of progressing her career. Dr Glencross did not remember the specifics of what was said in the meeting.
26. In October 2014, Dr Morton asked Dr Glencross to review a draft manuscript she had prepared. Dr Glencross emailed Dr Morton on 23 October 2014 advising that it needed a fair bit of work. She responded on 27 October indicating that he had edited the wrong version. Dr Glencross sent an email back saying, “We are missing an opportunity here to do a good job”. Dr Morton wrote back saying that he should ensure that his future comments were constructive and reiterating that he had not edited the most current version of the manuscript. Dr Glencross responded saying, “Gee K drop the attitude, especially on emails”. Dr Morton then responded, saying that his comment was highly offensive.
27. On 29 October 2014, there was a meeting involving Dr Glencross, Dr Morton and Dr Cook. One of the outcomes was that Dr Morton would report through Dr Wade, and would have no further contact with Dr Glencross. He does not know where Dr Morton got the idea that she was vulnerable to redundancy, because no-one had discussed it with him at that time. Dr Morton broke down and cried at the meeting. That was the last time he had any direct dealings with her.
28. Dr Glencross commenced his new employment at the beginning of March 2015. His new employer was one of the major collaborators with CSIRO. In his new employment, he was required to go to the Bribie Island facility about once every three months. When he went to Bribie Island, he would call Simon Irvin first, and would have to sign in at a visitor’s book each time. He did not recall seeing Dr Morton again.
29. In 2011, Dr Glencross had secured some funding for a project in Vietnam. It was called the BAR-12-16 Project. A series of experiments were run, and a report compiled in 2002. The report was finalised while Dr Glencross was away on sabbatical. He said that Dr Morton had limited involvement in writing the paper, but he put her name on the report. He said he did that because he needed to try to help her generate some industry credibility by being seen.
30. After Dr Glencross left CSIRO, he converted the work into an article for a scientific journal, *Aquaculture*. He submitted the article for publication in June 2015. Dr Morton was not listed as an author. Dr Glencross did not think that she did enough work to justify a full scientific paper authorship. An acknowledgement may have been justified. Dr Glencross denied her claim that she was involved in the design of the protocol, because the protocol was largely designed by himself and two others. He also denied that Dr Morton planned the trial. He said she was involved in the collection of samples, but not the analysis of them. She did not play any role in drafting the manuscript, only reviewed a complete final draft.
31. On 10 February 2017, Dr Glencross received an email from the publisher of *Aquaculture* saying they had received a complaint from Dr Morton about not being named as an author of the manuscript. Dr Glencross subsequently received advice from CSIRO that they wanted Dr Morton to be added as co-author. He arranged for that to be done. A corrigendum adding Dr Morton’s name was issued on 20 June 2017.
32. Dr Glencross would expect from Dr Morton, as Level 6 Scientist, as a rule of thumb, about three first author publications a year. She did one first author publication in the whole of her time with CSIRO. That was an experiment that Dr Glencross implemented for her before she arrived to allow her to get “on the board”.
33. In about May 2013, Dr Glencross discussed that they could not afford to get all the blood samples for one of the experiments in the ACIAR project analysed. Dr Glencross’ evidence was that he told Dr Morton she needed to pick some. However, Dr Morton sent off all the samples. The bill was $5,000, which was basically the entire analytical budget for that series of work. Dr Glencross was angry that she had overspent the budget. They had to find the money elsewhere. Dr Glencross told her that they might have to pull some money out of the travel budget, which may mean that she might have to miss out on going on a conference. In an email, Dr Glencross said, “The upshot of that is that the rest of your financial year, you won’t get any support for non-project linked travel either I’m afraid”.
34. Dr Glencross referred to an email exchange involving Simon Irvin on 26 May 2012 asking whether anyone was interested in taking on any French interns. There he said, “I’m sure at least one is a girl this time”. Dr Glencross said that was a reference to an error he made about a previous candidate for internship named “Maxime”, whom Dr Glencross had incorrectly understood to be female.

### Cross-examination

1. Under cross-examination, Dr Glencross agreed that he had referred to Dr Morton as “she who must not be named”. He was taken to an email he sent to Dr Wade on 20 March 2018, where he said, “There is nothing in this report that can be attributed to she-who-must-not-be-named.” Dr Glencross denied that he used that expression in relation to who would be the author named in the publication of the ACIAR report. He said that he had started to use that expression at the time he resigned from CSIRO in February 2015, and was a consequence of getting frustrated with Dr Morton. He said that by the time he sent the email, Dr Morton’s name did appear in the publication, as the corrigendum had been added.
2. Dr Glencross acknowledged that he made the decision that Dr Morton’s name was not going to appear in the 2015 publication. He did not consider she had made a sufficient scientific contribution to the publication at that time. He acknowledged that the decision to leave her name off the article was made after his relationship with Dr Morton had broken down and after he had decided not to mention her by name.
3. Dr Glencross accepted that he disliked Dr Morton. He said that was because she had been very difficult to work with. He denied that he disliked her because she had made complaints.
4. Dr Glencross agreed that, in the final ACIAR Report, there were objectives of the experiment listed from 7.1 to 7.6, but there was no reference to 7.3 or 7.4. He was asked whether that was because he did not want to include Dr Morton’s research in the Report. He said that it seemed to be a bit of an oversight, but it would have been the case that the work was never completed by Dr Morton. He had not seen any manuscripts for that work, and denied that the work involved in those experiments could have been independently published. He was asked whether the reason he did not ask to see the manuscripts was because he was no longer talking to Dr Morton. He agreed that would have been one of the reasons, as he had been asked not to talk to her anymore. He said he did not ask Dr Wade to get the manuscripts because, by that time, he had left CSIRO.
5. Dr Glencross agreed that he had included Dr Morton’s name on an early draft of the ACIAR Report in 2012 or 2013. He said he had not included her name in a revised version of the paper in 2015.
6. It was put to Dr Glencross that Dr Morton had prepared the data for experiment BAR-12-6. Dr Glencross said that he was unaware of her involvement in that. He agreed that he may have used that data in the final report. He denied that Dr Morton had any involvement in the design protocol for the experiment, and said he had no recollection of having received any feedback from Dr Morton on the protocol. He denied that Dr Morton planned the trial, or that she was integral in conducting it. He agreed that she participated in the final sampling day, in that she had sent off blood samples to a laboratory for analysis, and had been the point of contact in that respect. He denied that she had assisted in analysing the data. He denied that she had assisted in drafting the manuscript, but accepted that she had provided editorial comment on a final version of the report.
7. Dr Glencross was asked about the travel ban he had placed on Dr Morton. He said that the reason for the travel ban was that they had collected a lot of blood samples, but instead of sending off a reduced number of samples, Dr Morton sent off the whole lot, against his instructions, exhausting the whole of the sampling budget. It was put to him that he never instructed Dr Morton not to send off all the blood samples. He maintained that he did. He said that they had to make up the shortfall from other funds and that, given that it is Dr Morton’s mistake, it would be wrong to penalise the entire group. He decided he would not support any funding being used for Dr Morton’s conference travel up to the end of June 2014.
8. Dr Glencross acknowledged that he tended to be short and abrupt in his communication. He was taken to an email he had sent to Mr Irvin. He admitted that he was very angry when he wrote the email, because it had appeared that Mr Irvin had betrayed his trust. In hindsight, he wished he had not sent the email.
9. Dr Glencross was taken to Dr Morton’s Probation Report of 2012. He said that at the time, he commented to Dr Cook about concerns regarding her lack of motivation to do science work and the fact that she was more interested in focussing on administrative tasks. He agreed, however, that there was no comment about that in the Probation Report itself.
10. Dr Glencross was taken to an email that Dr Morton had sent him on 6 March 2014. He agreed that he had told her she was the second most expensive person to employ, and yet she had brought in no external funding. He agreed that he told her that she should spend more time in the lab, and that he told her that she had the luxury of working on a few projects and that she had the lightest workload of the group.
11. Dr Glencross was asked about the role clarification meeting. He agreed that Dr Morton’s email then appropriately listed the key discussion points.
12. Dr Glencross was taken to the chain of emails concerning his editing of the incorrect version of the manuscript. He acknowledged that he had made a mistake, editing the wrong manuscript. He agreed that, in hindsight, his email was not appropriate. He said that he subsequently spoke to Dr Cook, who asked him to liaise with Dr Morton through Dr Wade.
13. Dr Glencross was taken to other papers where Dr Morton’s work had been acknowledged. This included a manuscript concerning an experiment called BAR-12-4.
14. Dr Glencross was asked about the circumstances in which he left CSIRO. He said that he had applied for another job in about September 2014. He was offered that role on Christmas Eve, 2014, and accepted it early in the New Year. He acknowledged that he had received an email on 2 February 2015 from Ms Walsh concerning Dr Morton’s complaint against him. He said that he did not know that the complaint was coming.
15. Dr Glencross said that he found Dr Morton to be a bit of a difficult character to manage. He had concerns early on that she was not interested in, or focussing on, science work. He also had concerns about her ability to obtain external funding and that her scientific outlook was not progressing as well as he had hoped. When asked whether he did not like Dr Morton, he said that she was not his favourite person to work with and that she made his life difficult.
16. Dr Glencross tendered his resignation on 30 January 2015. He denied that he resigned because he knew that Dr Morton’s complaint was coming.
17. Dr Glencross was asked how he could publish a document on behalf of CSIRO when he did not work there. He said that this was quite common practice when changing employers in the scientific field. He said that he is still writing up bits of work from his time at CSIRO.
18. He said that, when he finished the ACIAR project, he obtained clearance from CSIRO before submitting the report.
19. Dr Glencross was cross-examined about the incident at James Cook University. He acknowledged that he saw a young female Asian student and said, “She’s cute”. He said that Dr Morton asked him whether he liked Asians. He said that he preferred Eurasians, Mediterranean and Latino types. When asked whether he had asked Dr Morton what her sexual preference was, he said that he had no interest in Dr Morton’s sexual preference.
20. Dr Glencross agreed that, at the Aquaculture Australia Conference in Melbourne, Dr Morton told him that people were better dressed and spent more money on their clothes in Melbourne. He agreed that she told him that people spent a lot of money on clothes in the Middle East and that she told him about owning a Prada dress. He thought she said that the dress was worth about $30,000.00. He denied that he asked her, “What, are you a prostitute?”. He denied having made that comment because there would be no other way she would have been able to pay for the dress. He said he knew that Dr Morton had been working as a scientist with a camel institute in Dubai, where they paid very, very handsomely.
21. It was put to Dr Glencross that there was a conversation involving him, Dr Morton and Mr Marty Phillips, where he said, “When you smile, you can see your crows-feet?” He said that he did not believe he ever said that.
22. Dr Glencross was asked about the sampling day on 16 October 2012. He said that he did not remember seeing a riding crop and that is why he would never have hit Dr Morton with one. He was asked about paragraph 2A(c)(iv) of the amended defence, where CSIRO admitted that, “Dr Glencross picked up the riding crop, tapped Morton on the buttocks…”. Dr Glencross said:

That’s my nearest recollection of that work, that it was in response to, basically, her playing around, to the best of my recollection. But I still cannot remember, actually, a riding crop.

1. Dr Glencross said he remembered castigating Dr Morton, saying, “You need to get back to work”. He said he assumed that he must have taken the riding crop off her to get her back to work. He said the riding crop was not the sort of thing that would often be in a lab, and maintained that he had no recollection of it. He said he did not recall tapping Dr Morton on the buttocks with the riding crop. He denied that he was saying he could not recall it because he was embarrassed. He said that it was difficult to be embarrassed about something which he knew he had not done.
2. Dr Glencross said that it had been suggested to him that there was a riding crop present that day. He said that suggestion came from a conversation he had with Ms Trenkner in Scotland in 2016.
3. He denied that, on 16 October 2012, there was any time when he and Dr Morton were in the lab alone. He denied that he came up behind her and hit her hard on the buttocks with a riding crop.
4. He denied that, at dinner the night before, he was involved in a conversation with Dr Morton about dominatrixes.
5. Dr Glencross accepted that, at the Norman Hotel on 17 October 2012, the subject of pendants came up. He agreed that he was talking about a skit from a television show with a group of people. He thought Dr Cook and Dr Wade were at the table and thought that Dr Morton may have been present, but he could not be certain. He agreed that, of all the people at the table with him, it was most likely that Dr Morton had a pendant on. He denied looking at Dr Morton’s chest area after discussing the pendant skit, and denied saying, “I don’t know why you bother, Katherine. You don’t have any”.
6. Dr Glencross did not accept that there were no other women at the table. He said that there may have been other females there, but that he could not recall.
7. He said that he had never heard about any of Dr Morton’s allegations prior to the grievance being lodged in early 2015.
8. He agreed that he applied for, but did not get, the Research Group Leader position in 2014. He agreed that Dr Preston and Ms Walsh said that his leadership skills needed some development and that he was a bit too direct in his communications. He agreed that Dr Worby also raised the issue of him being too direct.
9. Dr Glencross said that he had attended a Code of Conduct, anti-bullying, and Equal Opportunity courses. He also said that he attended training courses in 2013.
10. In re-examination, Dr Glencross was asked why he moved from CSIRO to Ridleys. He said that it was because he was getting an increase in wages, and an opportunity to start doing a lot of research directly on farms, and implementing science he had been working on.

## Evidence of Dr Timothy Shaw

1. Dr Shaw is a general medical practitioner in Invermay in Tasmania. He was Dr Morton’s treating general practitioner between 6 March and 10 October 2017.
2. Dr Shaw provided a report to Comcare dated 11 October 2017. He said, inter alia:

5. I agree with Dr Walker’s comments that Dr Morton becomes agitated and upset when discussing her workers compensation claim against CSIRO and when describing her interactions with COM CARE. Dr Morton has always been clean and appropriately dressed at all appointments with myself.

6. I further agree that Dr Morton does have the mental functioning to be able to commence a return to work rehabilitation program. This is supported by the interactions I have had with her during our consultations; further she displayed rational questioning and a good appreciation of the stages of investigation and then surgical management of her recent wrist injury. The treating surgeon did not report any concerns about her mental capacity to provide proper informed consent.

7. I have been strongly recommending, since August 2017, that Dr Morton to accept referral to a Launceston Psychiatrist and Psychologist and to transfer her care from Brisbane. Whilst Dr Morton reports ongoing telemedicine appointments with Brisbane Psychiatrist (Dr Rees) and a Brisbane psychologist I have not received ongoing clinical letters detailing their management of Dr Morton as would normally be expected. Further I believe Dr Morton would benefit greatly to having face to face appointments with her treating mental health team, as often skype appointments are less than ideal as they do not allow the normal full interaction that would occur. Dr Morton has refused to consider such a change.

8. I have recommended to Dr Morton that she engage in a return to work rehabilitation program and that this step is essential to Improve her mental health and allow recovery to her reported pre-injury level of functioning. Dr Morton has refused to consider this stating “nothing has worked in the past”.

9. Given Dr Morton’s refusal to consider my treatment recommendations outlined in points 7 and 8 above, specifically referral to a Launceston psychiatrist and psychologist together with engagement in a rehabilitation program, it is my opinion that Dr Morton is not actively engaged in her own rehabilitation and is indeed seems resistant to taking the next steps of management that are in my opinion necessary for her recovery.

1. Dr Shaw’s oral evidence was that Dr Morton was appropriately dressed at all appointments, as any other patient would be. He believed that she would have been washing herself, and certainly did not present as someone who had not taken substantial care of herself. Dr Morton was, at all times, able to interact appropriately in consultations, able to understand any points of discussion that they had, and always turned up to each appointment with a list of what she wanted to achieve in that appointment.
2. Dr Shaw’s opinion was that Dr Morton should transfer her care from Dr Rees, in Brisbane, to a Launceston based psychiatrist and psychologist. He did not receive regular communication from Dr Rees, nor had he received any communication from her treating psychologist. He said that a lot of human communication occurs through body language, and assessment is sometimes not optimal through the use of telecommunication and videoconferencing. In his experience, it was unusual to have only received one letter from Dr Rees over a period of seven months.
3. On 12 September 2017, Dr Shaw told Dr Morton that rehabilitation “would be good”, and recommended a local psychologist, a local psychiatrist and enrolment in a mental health programme. Dr Morton was very resistant to this, stating that she felt like nothing had worked in the past.
4. On 9 May 2017, Dr Shaw recorded in his notes:

separate issue—punched wall X2 sore right forearm [since] 2 weeks ago.

1. Dr Morton had reported that she had punched a wall twice and that she had a sore right forearm since that incident, two weeks prior. Dr Shaw’s clinical examination showed that she had pain on axial loading. Dr Shaw did not document anything about an incident with a dog.
2. On 31 August 2017, Dr Shaw referred Dr Morton to Dr Van Windem, a surgeon, writing:

Thank you for seeing Katherine who has ongoing right wrist pain 3 months after initial injury (punching a wall).

1. Dr Shaw agreed that, if the injury involved falling over because of a dog that is something he would have told the specialist. He advised the specialist regarding the mechanism of the injury to give him the history that he would require, so his reference to punching a wall was a salient point. If there was a fall as well, he would have documented that.
2. On 28 September 2017, Dr Shaw recorded in his notes:

needing medical certificate stating can’t travel

skyped into mediation yesterday CSIRO unhappy

mediation was occurring in brisbane

[explained] can’t issue medical certificate supporting this as is fit to fly—has back slab POP only—appreciate practical difficulties but that is not the standard

1. On 10 October 2017, Dr Shaw’s notes recorded the following:

Jonahton from Comcare phoned and advised pt to make appt to pick up copy of a revised repor from COMCARE

explained I have not recived any revised report -last was 29/8 -and have alreays disucssed this with pt and provided a copy.

called comcare agent -Jonothan -no answer -left message

pt angry report not here -explained we have not recived -unhappy that will have to travel 100-+ km -not doign it -wanting us to try other numbers to get the report -happy to do but will need to read the report then discuss with her

advised to make appt tomorrow am -we will chase up report today -if not able to get will phone **pt became very aggitated that could not have rport now -pt advised if continues with threatening / abusive language to me or my staff we have to request her to find another General Practice as we have a zero tolerance of abuse towards our staff**.

pt requested if recived copy today could we please fax through to her treating psyychiatrlst in Brisbane -

agreed we will do this

appt scheduled for 0840 tomorrow am

(Errors and emphasis in the original.)

1. Dr Shaw explained that Dr Morton had made an appointment for 10 October 2017. She had stated that the Comcare case manager had contacted her by phone and advised her to pick up a copy of a report from Dr Shaw. However, he had not received any such report. He attempted to contact the Comcare agent, but there was no answer, and he left a message. He said that Dr Morton became quite angry and agitated that the report was not there. She was unhappy that she had travelled 100 kms, and was not prepared to do it again.
2. Dr Shaw advised her to make an appointment for the following morning; that his office would chase up the report, and, if unable to source that report, they would telephone Dr Morton so she did not have to travel again. He said that she became very agitated that she could not have the report then. He advised her that if she continued to be threatening or abusive towards himself or his staff, he would request her to find another general practice, as they had a zero tolerance policy towards abuse of staff. That was the last occasion on which Dr Shaw saw Dr Morton.
3. In respect of the entry on 28 September 2017, Dr Shaw explained that he could not issue a medical certificate supporting Dr Morton as being unfit to fly. Her plaster-of-paris cast would not result in any swelling.
4. Under cross-examination, Dr Shaw denied that he did not want to give Dr Morton a certificate because she told him that CSIRO was unhappy. He agreed that, on 10 October 2017, she appeared to be frustrated and very angry. He considered that her outburst was directed at his staff and himself for something that was not within their control. His staff were upset by the incident. He denied that he became angry about the situation.
5. Dr Shaw maintained that Dr Morton’s grooming was within the normal realms of his patients.
6. He acknowledged that the best person to assess Dr Morton’s ability to engage in rehabilitation would be her own psychiatrist. He also accepted that decisions regarding medical therapy were most appropriately made by her treating psychiatrist.

## Evidence of Ms Lauren Trenkner

1. Ms Trenkner began a PhD in 2012, in the area of molecular biology she carried out some of her laboratory work at CSIRO.
2. On 16 October 2012, Ms Trenkner attended the Bribie Island facility. She parked her vehicle approximately three metres from the doors that accessed the sampling room.
3. Two rooms were being used that day: a sampling room; and a room where the fish were housed and weighed.
4. Ms Trenkner was involved in setting up the sampling room with Dr Morton and Dr Glencross. Dr Glencross, Dr Wade, Dr Morton, Ms Trenkner and a couple of other people, were in and out of the sampling room during the day.
5. Ms Trenkner had some horse riding gear in the back seat of her vehicle, including a couple of riding crops. Ms Trenkner had a discussion with Dr Morton about her riding gear during the first or second batch of fish processing and maybe in the first lull period between batches of fish as well. They discussed the type of gear and horses Ms Trenkner had and compared their riding experiences.
6. Dr Morton asked to look at some of Ms Trenkner’s gear. They went to Ms Trenkner’s car to look at it. Ms Trenkner saw her riding crop that day in the sampling room. That was at the time of approximately the second or third batch of fish. Dr Morton and Ms Trenkner were holding the riding crop and discussing the missing counter-balance in the end of the handle. After that, Dr Morton mucked around with the riding crop. She tapped Ms Trenkner and a couple of others around the buttocks and thigh regions, mimicking how you would tap a horse on the shoulder with it, just mucking around. There were three or four others in the room at that time. It was quite a light atmosphere and the people there were being jovial in the downtime during batches of fish.
7. While she was working, she heard Dr Glencross say, “That’s enough of that. It is time to get back to work”. She saw him putting the crop on the top shelf of the sampling room.
8. Ms Trenkner did not see whether Dr Glencross hit Dr Morton and did not hear any contact with the riding crop. If a riding crop was used in a vigorous way, there would have been a loud cracking sound. If it moved through the air softly, there would have been very little sound, if anything. Ms Trenkner did not get the riding crop back again.
9. During the initial set up of the sampling room, Ms Trenkner’s gear was still inside her car, which was locked. During the setup of the sampling room, she would expect to see three of four people in the room. Based on her observations that morning, she said it was extremely unlikely that there would only be two people present during the setup.
10. Under cross-examination, Ms Trenkner accepted that some of the technical staff could have been playing with the riding crop as well. She maintained that Dr Morton had the riding crop. She rejected a proposition that when she, Dr Glencross and Dr Morton were setting up, there were times when she had to leave the sampling room. At one point, the whole group of people went outside to discuss how to move dry ice from her vehicle.
11. Ms Trenkner denied that she had made up a story about Dr Morton having the riding crop. She denied that she and Dr Glencross decided together that she would make up the story. She accepted that she was in the courtroom during part of the opening given by counsel for CSIRO.

## Evidence of Ms Natalie Habilay

1. Natalie Habilay commenced employment as an aquarist at CSIRO in August 2012. She is now employed at CSIRO as an aquaculture biologist.
2. Ms Habilay was involved in the experiment sampling day at Bribie Island on 16 October 2012. She first saw a riding crop when Dr Morton and Ms Trenkner walked into the room she was in. She saw Dr Morton holding the riding crop and pretending to whip a horse. Ms Trenkner was standing next to her laughing. She did not see anybody else touch the riding crop that day and does not know what happened to it.
3. Under cross-examination, Ms Habilay rejected the proposition that she does not have any independent recollection of the events of 16 October 2012. She denied the suggestion that she might be confused and that it might have been the technical staff who were playing with the riding crop. She said that Dr Morton and Ms Trenkner walked into the room with the riding crop at about 11.30 am, after morning tea.

## Evidence of Mr Dallas Donovan

1. Dallas Donovan was employed as managing director of an aquaculture business based in Saudi Arabia in 2012. In May 2012, he attended the Aquaculture Australia conference in Melbourne. He attended a dinner with a group of people, including Dr Preston. He believes that the dinner was also attended by a Mr Bell, Dr Glencross and “a lady” with blonde hair, whose name he does not know.
2. Mr Donovan’s business had dealings with CSIRO. Their main contact at CSIRO was Dr Preston. Mr Donovan had known Dr Preston for about 25 years.
3. Mr Donovan did not recall Dr Preston saying to the woman, “You’re just a hussy”. He said he would remember something like that if it was said.
4. Under cross-examination, Mr Donovan said that he would consider Dr Preston a friend, in a professional capacity. He denied the suggestion that he did not remember being at the dinner. He accepted that he could not remember what he did after the dinner.

## Evidence of Mr David Blyth

1. David Blyth is a feed technologist in the aquaculture team at CSIRO, and has been in that role for some six years. He worked closely with Dr Morton. He said they were close friends during that time. They used to socialise outside work and would often engage in flirtatious, sexual banter.
2. Mr Blyth recalled attending an experiment sampling day at Bribie Island in October 2012. He was in one of the fish labs. Mr Blyth saw a riding crop that day. He was in the feed lab when Dr Morton flicked him playfully with the riding crop. He did not see anybody else using the riding crop that day. The riding crop stayed around the lab until about 18 months ago.
3. After October 2012, Dr Morton had the riding crop several times. She would use it to “normally get me to hurry up playfully or go and grab coffee”. He did not see Dr Morton flick anyone else. She did not speak to him about her having been hit with the riding crop.
4. Mr Blyth would speak with Dr Morton about issues she raised regarding Dr Glencross’ management of her. These issues concerned her freedom to pursue scientific projects, particularly with some of CSIRO’s existing clients. She had the nickname, “Professor Bunny”, for Dr Glencross. Dr Morton never complained to Mr Blyth about Dr Preston, or Dr Cook.
5. Under cross-examination, Mr Blyth denied the suggestion that he and Dr Morton did not socialise together outside work. He denied the suggestion that there was no sexual banter between himself and Dr Morton.
6. It was pointed out that an outline of his evidence stated that Mr Blyth recalled Dr Morton flicking “people” with a riding crop in a playful manner. He denied that this was inconsistent with his evidence that he was the only who was flicked, because the statement in the outline was based on information that other people had given him.
7. Dr Blyth acknowledged that he referred to Dr Glencross as the “Rabid Rabbit”, because he was angry and rude.

## Evidence of Dr Nicholas Wade

1. Dr Wade commenced employment with CSIRO in 2009 as a research project officer. He is now a research scientist within the Aquaculture Group. Dr Wade reported to Dr Glencross.
2. Dr Wade said that Dr Glencross was quite demanding at times, a bit pushy and very driven. He expected results, but had a strong sense of obligation to the people who worked beneath him.
3. Dr Wade was at a dinner at the Norman Hotel on 15 October 2012. He did not specifically recall the topic of dominatrixes coming up. He believed that, if there was an uncomfortable comment made, he would remember it.
4. Dr Wade was part of the team involved in doing sampling work at Bribie Island on 16 October 2012. He did not recall seeing a riding crop that day.
5. Dr Wade attended another dinner at the Norman Hotel on 17 October 2012. He did not recall whether he was sitting near Dr Morton, or Dr Glencross, that evening. He did not recall Dr Glencross making any comment directed at Dr Morton about her lack of cleavage.
6. Dr Wade was involved in an experiment known as BAR-12-6. Dr Morton was involved in that experiment by taking samples from fish, and doing some editing of the final report and the manuscript involved.
7. Dr Wade was aware of a position being available in Hobart in September 2016. He did not believe that Dr Morton would be well qualified for it. The position required a specialist in aquatic animal health, and Dr Morton did not have a PhD in that field.
8. Under cross-examination, Dr Wade denied that Dr Glencross was very possessive about the project he was working on. He said there were a number of opportunities for him to run his own projects under Dr Glencross’ leadership.
9. Dr Wade disagreed that Dr Glencross was rude in the way he spoke to other people when he was upset. He described Dr Glencross as forthright and fairly plain speaking, so he could understand how he could be perceived as rude.
10. Dr Wade said that he was present in the courtroom when CSIRO’s case was opened. He listened to part of that opening.

## Evidence of Ms Caroline Cook

1. The affidavit of Caroline Cook was admitted into evidence, and she was not required for cross-examination. Ms Cook worked at CSIRO between 1997 and 2018.
2. Her evidence relates to being asked to clean out Mr Drury’s office at the CSIRO’s Kintore site in Adelaide in mid 2016. Ms Cook deposed that she took everything with her to another location. She did not take any inventory and did not recall packing any handwritten notebooks. She was later asked to search for Mr Drury’s handwritten notebooks but did not find them.

## Evidence of Dr Mathew Cook

1. Dr Mathew Cook was appointed as Research Group Leader in April 2012 with CSIRO. He was a Level 6 Scientist. Dr Cook reported to Dr Preston.
2. Dr Cook was Dr Morton’s direct administrative line manager from April 2012 until 13 August 2013. He resumed as her administrative line manager from 1 July 2014, until her redundancy.
3. Dr Cook described his relationship with Dr Morton as a very close working relationship. They were friendly. They often shared jokes via text and email. They would often have coffee together and have meals on work occasions.
4. Dr Cook states that Dr Morton never objected to any of his jokes. On occasions, she would mention things like being flat-chested.
5. Dr Cook states that Dr Glencross was very driven and expected a lot of himself and his staff. He had quite a dictatorial methodology in relation to his staff and would drive them hard.
6. Dr Morton raised Dr Glencross’ management style with Dr Cook on occasions. In particular, she talked about Dr Glencross’ mixed messages and changing of goalposts in relation to work. She did not ever tell Dr Cook that Dr Glencross was bullying her.
7. Dr Cook states that it is extremely important for research scientists to secure external funding. They bring in the projects and provide opportunities for other staff. Publications are also important for research scientists. It is how scientists are measured; a key metric for all scientists is publications and publication rate. Dr Cook considered that a senior scientist should have at least about two first author publications per annum, and a number of other author publications that they have worked on with colleagues.
8. Dr Cook attended a role clarification meeting for Dr Morton, also attended by Dr Glencross and Dr Coman, on 7 May 2014. Dr Glencross walked into the meeting with his laptop open and started by saying, “Here is your position description. I am not sure what the problem is”. Dr Coman and Dr Cook took some time to “unpack” what was going on between Dr Morton and Dr Glencross with regard to clarification of her role and what was expected of her.
9. In September 2014, Dr Cook was appointed as the Northern Agriculture Group Leader. That followed an application process, in which Dr Morton was one of the unsuccessful candidates.
10. Dr Cook gave evidence that he and Dr Preston had a meeting with Dr Morton on 22 October 2014 about her interest in doing an MBA. Dr Morton began by saying that the feedback she had been given during the Research Group Leader process was that she lacked some managerial capability, and she thought that pursuing a MBA would be a way of gaining that experience. Both Dr Preston and Dr Cook disagreed that an MBA would be the right choice for Dr Morton at that time. They believed that she would be better served by concentrating on her science leadership. Dr Preston brought up a number of areas where Dr Morton could work on improving her science. He told her that, at that time, she had a zero allocation for any external projects and internal projects, and that she would be better served looking at ways to improve her allocation.
11. At the meeting, Dr Cook made a suggestion that there was an upcoming project with a client, called Huon Aquaculture that Dr Morton could work on. He indicated that there would be a 50% to 60% allocation of her time on that project. He made it clear that the initial phase of the project was at Level 4, or Post-Doctoral Scientist—someone at the bench level. He also indicated that she could move into more of a leadership role within the project, as he pulled back.
12. At the meeting, the topic of Dr Morton’s health came up. Dr Cook told her that some of the duties required for the Huon role, such as sitting at the bench for long periods looking down a microscope, would be physically demanding. He said this in light of the fact that she had just had surgery and was using a sit/stand desk for her duties. Dr Morton said that she believed that there would not be any problems with her health. Dr Preston told her that, “We need to make sure your health is up to it, that we are not putting you in any worse position than what you currently are”.
13. When talking about the lack of allocation, Dr Preston mentioned that recently at CSIRO, 300–500 scientists were let go, and that maintaining very little allocation over the long term would mean that, “One would also be vulnerable to redundancy”. Dr Cook believed that it was a correct observation. Dr Morton did not say anything in response to that.
14. At the meeting, Dr Preston, when discussing the science leadership aspects, mentioned that a key component was having the science credentials, or leadership credentials, for an area of science. It was Dr Preston’s view that Dr Morton should increase her publication rate.
15. Dr Cook’s evidence was that Dr Morton had a lack of external funding. However, it wasn’t for a lack of trying.
16. Dr Cook stated that, on the day after the meeting, he had coffee with Dr Morton. He reiterated to her the value of working on the Huon project—that it was something she could run with and make her own. They discussed some of the language used by Dr Preston. Although he was in agreement with Dr Preston had said, Dr Cook thought that some of the language he had used could have come across as a bit harsh.
17. Dr Cook was copied into the email from Dr Morton to Dr Preston of 25 October 2014. Dr Cook was a bit taken aback, as the language used in the email seemed quite strong. He thought maybe they had gone too far, or maybe Dr Morton had read too much into what was being said.
18. Dr Preston sent Dr Cook an email highlighting some of her concerns about what was said in Dr Morton’s email.
19. Dr Cook was copied into a series of emails between Dr Morton and Dr Glencross dated 27 October 2014, about the editing of an incorrect version of a manuscript. As a result, Dr Cook organised a meeting with Dr Morton and Dr Glencross for 29 October 2014. He also forwarded that email chain to Dr Preston. Dr Preston asked Dr Cook to reassure Dr Morton that she had their full support.
20. When Dr Cook had coffee with Dr Morton following the meeting of 22 October 2014, he suggested Dr Sigrid Lehnert would be a person whom she could talk to, being a successful senior female leader in CSIRO and someone who had worked closely with Dr Preston and Dr Glencross in the past.
21. Dr Cook’s view was that it would be advantageous for Dr Morton to move onto the Huon project, and away from working with Dr Glencross and onto something that she could make her own.
22. At the meeting with Dr Morton and Dr Glencross on 29 October 2014, Dr Cook said that it was time to sever the relationship between them. The tone of the emails between Dr Glencross and Dr Morton had degenerated. It was Dr Cook’s view that they could no longer work together in a cordial manner. He suggested that it was time to find a new path for both of them. He suggested the Dr Morton work closely with Dr Wade and him to finish off some work she had been doing with Dr Glencross and that, moving forward, she was to work with him on the Huon project. Dr Cook suggested that both he and Dr Wade be included in any correspondence between Dr Glencross and Dr Morton from that time forward.
23. Following that meeting, Dr Morton was upset. Dr Cook said he reassured her of her value to CSIRO and said that it was his belief that it was time to move forward and for her to make something her own.
24. Dr Cook sent an email on 29 October 2014 to Dr Preston, summarising the outcome of the meeting. In the email, he said that they “really need to bed down the Huon project and get her focussed”. Dr Cook believed that Dr Morton focussing on the Huon was a way of moving forward.
25. In November 2014, four team leader positions became available within the Aquaculture programme. Dr Morton applied for one of those positions. Dr Cook was on the selection panel, together with Dr Preston, Dr Nick Elliot and Ms Davis. Dr Morton was the successful candidate. Both Dr Cook and Dr Preston supported the appointment.
26. The pilot phase of the Huon project started in about November 2014. Dr Cook was the project leader. The pilot phase of the project was a testing phase. Dr Cook said intention was to assist Dr Morton to get onto that project by doing the work for the testing phase, with the intention that, over time, She would take over the relationship with Huon Aquaculture.
27. Dr Morton was given a 50% allocation on the Huon Aquaculture project. The expression “allocation” refers to a portion of a scientist’s time that they are required to work in a particular role or on a particular project. The 50% allocation to the Huon project meant that she was expected to devote 50% of her weekly working hours to that project.
28. Dr Morton commenced on the Huon project doing bench work. Her work was exemplary. Dr Cook’s view was that the level of work she brought to the project was above Level 4.
29. The pilot phase for the Huon project finished in early June 2015. The larger phase of the project was due to start on 1 July 2015. Dr Morton’s allocation to the project then changed from 50% to 20%. Dr Cook said that was because her anticipated role going forward was to lead the project. That meant bringing together a multi-disciplinary team, having contact with the client and generally overseeing the science that was done. Moving forward, Dr Morton would have a 20% allocation. That is confirmed by documents.
30. Dr Cook stated that it was not unusual for scientists to do bench work and then move into a team leader role in a project. As the scientist takes on more than a leadership responsibility, the role involves coordination of other staff and bringing together teams of people to work on various aspects of the projects.
31. On 22 June 2015, Dr Cook received a text message from Dr Morton. He was really taken aback by the message. He had never before heard Dr Morton use the term “sexually assaulted”. He was concerned about her well-being and what may have been going on. She had never previously suggested that she had a problem going to Bribie Island.
32. On 8 July 2015, Dr Cook received an email from Dr Morton saying that a doctor had written her off work for three months. He decided to take over her duties on the Huon project.
33. In October 2015, Dr Cook was appointed as acting research director for Aquaculture. He had to step away from the science. He spoke to a staff member, Ms Natasha Botwright, who was under-allocated, about taking over both his and Dr Morton’s, roles on the Huon project. Ms Botwright was essentially doing the laboratory components, as well as scheduling trials for animals. She was travelling to Bribie Island to do some of the animal experimentation. Dr Cook maintained an administrative role, making sure that the project was on track and maintaining communication with the client.
34. Dr Cook prepared a replanning document for the Huon project. The start date was noted as 1 November 2015, reflecting the time when Ms Botwright was brought onto the project. Her allocation was given at 35%. Dr Cook said that Dr Morton was not listed as having an allocation because she was not in the workplace, so the work had to be allocated to other people, to make sure that the project was delivered. The decision about allocations was made by Dr Cook.
35. On 8 July 2015, Dr Cook contacted HR and asked if they could put in an acting or interim leader role so that the team was not disrupted during performance appraisals. On 14 July 2015, Dr Wade was appointed as temporary team leader. Dr Cook said he did not ask for Dr Morton to be removed as team leader and it was never his intention to remove her as a team leader.
36. As at April 2015, the Huon project was under negotiation with the client, so people’s times were not locked in. In early 2015, Ms Botwright had two proposals that she put into the system. Initially, Dr Morton had a nominal 20% allocation to one of those projects. That allocation was later reduced so that cheaper staff could be used to meet the budget. That project did not go ahead.
37. Dr Morton had proposed a project called, “Amoeba Imaging”. When she said that she was written off work for three months, Dr Preston decided to put that project on hold, even though they had supported it proceeding, because Dr Morton was not in the workplace to run it.
38. Dr Cook said that, in mid-2016, a leader position was created in the nutrition team. Dr Morton did not apply for that role, and Dr Cedric Simon was appointed.
39. Dr Cook gave evidence that, by early 2016, there were budgetary pressures within CSIRO. The Agriculture Flagship was facing a $25 million deficit. Dr Manners, the business unit director, had decided to implement some austerity measures. All of the research directors were informed, in December 2015, that they would have to prepare a “fireside chat” document, setting out proposals for cost reductions. The “fireside chat” was an informal chat between research directors, and the business unit leader.
40. On 5 February 2016, Dr Cook submitted his proposals. In that document, he talked about matters like leadership, succession planning, culture change and how wide and shallow the program was, in its science capability.
41. He said that, as part of the “fireside chat” in early 2016, he raised with Dr Manners that the area of nutritional physiology was weak, that there was no external funding in the space, and that it was a potential soft area for the program. Dr Manners’ view was that they should not be looking at doing anything in that area, because Dr Morton was in the relevant position, and she was off work at that stage.
42. In May 2016, it came to Dr Cook’s attention that Dr Morton had applied for a VRS. Ms Walsh told him that it appeared that she wanted to leave the organisation, and they could possibly put in their case for a further redundancy. Ms Walsh prepared a preliminary case for redundancy and forwarded that to Dr Cook to have specific input around the assessment of the skill set requirement. Dr Cook prepared a redundancy case. In that document, he indicated that no potential swap was found, that a staff member had nutritional physiology skills but these were not required for the foreseeable future, but that the skills of a specialist nutritionist were required.
43. In July 2016, Dr Elliot advised that he was retiring, freeing up some salary space. It was decided that a position for an aquatic animal health specialist would be created, to be located in Hobart. The position became available in September 2016 and was advertised internally. Dr Morton did not apply for the position. Her skill set was not suitable for that position, since it required a specialist in aquatic animal health, requiring both a PhD, and demonstrated experience in the area of aquatic animal health. Dr Cook said he did not believe that Dr Morton could have met the requirements for that position with six months training.
44. Dr Cook became aware of an issue concerning an article that had been published in a journal where Dr Morton claimed that she had been left off the author list. He investigated the situation, and saw that her name was originally included on an internal manuscript, as an author. On 21 March 2016, he sent an email to Ms Walsh saying that on face value, it appeared that Dr Morton may warrant authorship. He observed that she was an author listed in the client report, but not in the paper.
45. Dr Cook became involved in a chain of emails with Dr Glencross concerning the issue of authorship. Eventually, Dr Wade wrote on 11 February 2017, saying, “In the absence of evidence to indicate that Katherine has not made a significant contribution, we are of the view that it is best to include her”. That also reflected Dr Cook’s view. Eventually a corrigendum was organised for the journal article.
46. Dr Cook was involved in an email exchange with Dr Morton on 9 August 2012. In her email, Dr Morton asked, “Has Nigel told you what my nickname is? First rule of nicknaming; you have to tell the person.”. Dr Cook responded, saying “I think its Dizzy Blonde ????”. She replied, “Wouldn’t surprise me the blonde bit. Yours is just. Darth”.
47. Dr Cook had not actually heard Dr Preston use the name “Dizzy Blonde” in respect of Dr Morton. At that time, Dr Morton was reasonably new to the organisation and she had not had much to do with him. Dr Preston had asked Dr Cook about his perception of Dr Morton. In return, Dr Cook asked Dr Preston about his impression. Dr Preston said, “She comes across as a bit of a dizzy blonde”.
48. Dr Morton had various nicknames for people she worked with. Her nickname for Dr Cook was “Darth”. Her nickname for Dr Glencross was “Bunny”. Her nickname for Dr Preston was “Fearless Leader”.
49. On 10 September 2012, Dr Cook sent an email to Dr Morton, Dr Maynard, Dr Taylor and Ms Carr. It contained 10 an attachment entitled, “How people in science see each other”. That attachment was a type of grid containing words and pictures, showing, for example, how a professor views an undergraduate, a PHD student, a postdoc, a professor and a technician. In the grid, the professor’s view of an undergraduate intersects upon a picture of an attractive woman bending over what may be the bonnet of a car.
50. Dr Taylor responded, and then Dr Cook responded “No, she’s mine”. Dr Morton also responded, “Can I have an undergraduate too, please, except I would like to request mine from the 2013 fireman’s calendar”.
51. Dr Cook said his intention in circulating the email was to highlight some funny memes or jokes associated with science. Dr Morton did not subsequently complain to him that he had sent the email.
52. By 7 November 2012, Dr Preston was talking about retiring from CSIRO. There was a chain of emails between Dr Morton and Dr Cook gossiping about who would replace him. Dr Cook sent an email saying, “Here are the top two candidates. I have my preference”. The email attached two pictures, one showing a muscular man with no shirt on and the other showing a woman wearing a garment that leaves her breasts partially exposed. Dr Morton responded saying:

Hmm….well both clearly need CSIRO merchandise. If I have correctly assessed your preference, then you may be on-to something – we could distract the powers that be whilst we run up crazy ass expenses on work trips to Hawaii to do science.

PS Where is my CSIRO t-shirt?”. Natalie has one. The giving of a CSIRO shirt to one employee and not all could be considered bullying! :)

Dr Cook responded, “I like the shirt being worn in the picture. Again, probably biased.” Dr Morton responded:

Hmmm… as long as it was CSIRO branded it would be ok. Not suitable for those with no cleavage, so clearly CSIRO need to fund my boob job…

1. Dr Cook stated that his intention was to make a joke that he and Dr Morton would be on the selection panel for Dr Preston’s replacement and it would be a hard choice between the two candidates he had sent through. He said that Dr Morton did not complain about that email.
2. On 19 March 2014, Dr Cook sent an email to Dr Morton and Dr Taylor, referring to a statement made by a candidate for a position at CSIRO. Dr Taylor responded with a joke and Dr Morton responded by referring to an expression, “Planification of Experiments”. That had been used by one of the applicants in their application.
3. Dr Cook wrote, “Richard can’t move past [name removed]”. Dr Morton responded, “So we are appointing three applicants to look cute, plainly experiments, manage hamsters & brewing…”. Later, she said, “Looks like I better start planifying then….;)”.
4. Those comments were made in the context of discussing potential applicants for a position and looking at some of the things that were written down in the applications. Dr Cook said that this was some light-hearted banter between the three of them about the applicants. Dr Morton did not complain to him about the email.
5. Dr Cook denied that, on 2 December 2004, after a meeting with Huon Aquaculture, he said to Dr Morton, “Take a blonde to Tasmania, dress her up, and double your money”.
6. He said that Dr Morton did not tell him that Dr Glencross had asked about her sexual preference.
7. Dr Cook said that Dr Morton had told him, in about May 2012, that Dr Glencross had made a comment using the word “prostitute” in a reference to the attire that she had been wearing. She did not indicate that she was upset about the comment. It was said almost in passing, when she described how the conference went. She did not ask Dr Cook to do anything about it. Dr Cook had never heard Dr Glencross saying anything derogatory about the way someone looked or the clothes they were wearing.
8. Dr Morton did not tell Dr Cook that Dr Glencross thought she had crows-feet. She had included Dr Cook in an email where she mentioned something about her crows-feet.
9. Dr Cook accepted that Dr Morton had mentioned that Dr Glencross had commented about her cleavage. He believed that was on the evening of 17 October 2012, when they were walking home towards Dr Morton’s house following dinner. They were talking about the events of the evening and she mentioned that Dr Glencross was talking about how woman wear pendants to draw attention to their cleavage and had said, “I don’t know why you bother, Katherine you don’t have any”. Dr Morton described this incident almost as an anecdote about how the evening went. She did not say that she was upset by this and did not ask Dr Cook to do anything about it.
10. Dr Morton mentioned an incident involving a riding crop on about 19 October 2012, when they were having coffee together. She said in passing “And by the way, Brett hit me with a riding crop”. She mentioned the incident as if just a recollection of the events of the day. Dr Cook asked her about the incident, and she had said that the riding crop had fallen out of someone’s car and onto the ground, when they were receiving eskies and sampling equipment. Dr Morton said she had picked up the riding crop, taken it into the room, and put it down, together with the equipment. Dr Cook noted that Dr Glencross’ conduct had sounded a bit odd and made the comment that “Perhaps it was so everyone would hurry up”. Dr Cook asked if there was anything that needed to be done, and Dr Morton said “No, no. That is fine”.
11. Dr Morton did not tell him whether there had been a discussion about dominatrixes the night before.
12. In an email of 13 August 2012, Dr Cook made the comment in an email, “Is that crows-feet?”. Dr Cook had forwarded the CSIRO newsletter, in which there was a photograph of Dr Morton. She talked about the CSIRO photographer taking photos of her and had commented, “I hope he photo-shops out my crows-feet”. Dr Cook’s comment was made in reference to that conversation.
13. On 11 July 2012, Dr Morton sent an email to Dr Cook saying, “Actually I look shocking in all of them, but he said he would photo-shop out my crows-feet”.
14. On 21 August 2012, Dr Morton said to Dr Cook, “Maybe I need to give him my crows-feet”.
15. On 30 October 2012, Dr Morton sent an email to Dr Cook, saying, “Oh, and the pres said Ian was a gazillionaire right before he called me a hussy”. She did not raise that comment with Dr Cook again and did not ask him to escalate the matter.
16. On 26 July 2012, Dr Cook sent Dr Morton an email, saying, “Time to surf porn under my desk”. The context was that Dr Morton had made Dr Cook aware of a staff member at Bribie Island who had allegedly engaged in misconduct involving the acquisition of two iPADs through an agreement with a supplier. Dr Cook had spoken to the head of HR about the matter, who told Dr Cook stories about other staff, including a staff member who had been caught surfing porn. This had become a bit of joke between Dr Morton and Dr Cook. His email was a reference to that joke. On 26 July 2012, Dr Morton responded, indicating that she was laughing. Dr Cook said his intention was just to crack a joke.
17. On 12 September 2012, Dr Cook received an email from Dr Morton, in which she commented on her crows-feet. On 5 September 2012, he sent an email to Dr Morton making comments about various people at CSIRO. The context of the email was that Dr Morton had sent Dr Cook an email talking about doing Myers Briggs testing on various members of staff saying and that she was keen to find out what people’s personality types were. Dr Cook responded by saying that, rather than using that system, they should use another system using one word answers.
18. On 12 September 2012, Dr Cook sent Dr Morton email saying, “We will be mainly at titty bars I think?”. This was meant to be a joke. Dr Cook and Mr Taylor were overseas for work; and it was a bit of a joke about two guys being away from home.
19. On 7 December 2012, Dr Cook sent an email saying, “You are all stupid; there is no bullying”. Later, there was an email where Dr Cook said, “Woops. A quick call and sweet talking. Hopefully all good”.
20. Dr Morton had enrolled in a CSIRO course about recognising and preventing workplace bullying, harassment and discrimination. They had a bit of a joke within their group that it was not bullying if you do it to everyone. Dr Cook meant to send the email to Dr Morton, but inadvertently hit the “Reply All” button.
21. On 12 September 2012, Dr Cook sent Dr Morton an email, attaching a picture of a woman in a short dress with her legs crossed. The context was that Dr Cook and Dr Morton spoke from time to time, about leering in the workplace, both in the context of someone watching over their work, as well as the more sexualised context. Dr Cook googled “leering”, and sent the first picture that came up into an email to Dr Morton, saying, “Is this what you mean by leering?”. His intention was to continue on the joke.
22. On 16 October 2012, Dr Cook sent Dr Morton an email, saying, “Imagine Nick and Brett in Mankinis singing”. Dr Morton responded saying, “I owe you a coffee for that one”. Dr Cook gave evidence that he and Dr Morton would talk about how close the relationship between Dr Glencross and Dr Wade was, and that it seemed something more than a “bromance”. The email was sent to Dr Morton as a joke.
23. Dr Cook said that Dr Morton was fond of baking, and after she received the email, she baked a batch of gingerbread cookies. On one of those gingerbread cookies, she used icing to draw a mankini. She texted Dr Cook on 21 October 2012 with a photo of a gingerbread man in a mankini, saying, “Recognise this one?”. Then, on 22 October 2012, she sent him a photo of the gingerbread biscuit in the Mankini, together with Dr Wade.
24. On 11 February 2007, Dr Cook sent Dr Morton an email including the words, “Well, bend me over and slap me with a cold barramundi”. His intention was to turn a phrase about being startled or surprised. It was not intended to reference Dr Morton being hit by a riding crop.
25. Dr Cook said that Dr Morton never made any complaint about any of the emails she had sent to him.

### Cross-examination

1. Under cross-examination, Dr Cook accepted that in an email, he said that some conduct of Dr Glencross could be construed as bullying. Dr Glencross would scold people if things didn’t run the way he wanted them to run. Dr Morton had complained to Dr Cook about Dr Glencross changing the goalposts constantly. She complained that Dr Glencross was rude to her and disrespectful.
2. Dr Cook denied that, when Dr Morton told him about Dr Glencross’ comment about her cleavage, she said she was shocked, offended and humiliated. He agreed that Dr Glencross’ behaviour was inappropriate.
3. Dr Cook said that he did not remember Dr Morton telling him that Dr Glencross had said to her, “You know you have crows-feet when you do that?”. He did not accept that was said, because he would have remembered it.
4. Dr Cook said that Dr Morton had told him that she had been hit with a riding crop, but not that she had been hit on the buttocks. He did not accept that he should have intervened in respect of the comments and conduct of Dr Glencross reported to him.
5. Dr Cook accepted that Dr Morton had told him that Dr Preston called her a “hussy”, and that the word has a sexual connotation usually used only with females. Dr Cook did not follow that up with Dr Preston.
6. Dr Cook did not accept that the words “dizzy blonde” would be used only in relation to a female.
7. Dr Cook denied that Dr Morton had told him not to send her emails which she was finding a bit offensive and inappropriate.
8. Dr Cook denied that his email which said, “Well, bend me over and slap me with a cold barramundi”, was a reference to Dr Morton having been hit on the backside.
9. Dr Cook accepted that he wrote the “Bunny Lovin’” song. He accepted that the words of the song contained sexual references.
10. Dr Cook accepted that the email referring to “leering”, had the text, “That is definitely leering”. He denied that he considered the email funny because Dr Morton was a woman as well.
11. Dr Cook accepted that his reference to “titty bars” was a reference to topless waitresses. He denied that he had sent it to Dr Morton because she also has breasts.
12. It was suggested to Dr Cook that Dr Morton had raised references to “crows-feet” in emails to him as a “pointed note”, because of Dr Glencross’ comment that she had crows-feet. Dr Cook said he did not believe that was the case.
13. Dr Cook agreed that, in the email about a potential post-doctoral candidate, there was a sexualised photograph of a woman attached. He agreed that it was disrespectful towards women. He denied that Dr Morton’s response that, “Not suitable for those with no cleavage so clearly CSIRO needs to fund my boob job”, was made in reference to what Dr Glencross had said to her about her lack of cleavage.
14. Dr Cook was taken to his email in which he sent a meme and to which Mr Taylor had responded, “Can I meet your undergraduate please, Professor Cook”. He agreed a professor’s perception of an undergraduate in the meme was as a revealingly dressed woman. However, he disagreed that it was a sexualised picture, or that the woman was looking provocatively into the camera, on the basis that it was too hard to tell, because the picture was grainy. He denied that the reason he responded “She’s all mine”, was because she was a scantily dressed woman who was attractive. He denied that he was saying that he would pick an attractive undergraduate female graduate over a male graduate.
15. Dr Cook accepted that he was in the courtroom when counsel for the respondents opened their case.
16. He did not agree that his relationship with Dr Morton deteriorated, and that by the end of 2014, they were not very friendly with each other. He agreed that they did not socialise outside of work functions or work hours.
17. In respect of his email saying, “Time to surf porn under my desk”, Dr Cook said he did not accept that it was an inappropriate email, in the context it being a joke.
18. In respect of his email concerning his version of Myers Briggs scoring, he accepted that he had referred to Dr Glencross as “Bunny prick”. He said that was a reference to his prickly personality. He accepted that he had said that, “Basically everyone in the world but us were c….”. He accepted that was not an appropriate term to be using with his co-workers.
19. Dr Cook denied that, on 2 December 2014, he had said to Dr Morton, “Take a blonde to Tasmania, dress her up and double her money”.
20. He denied that Dr Morton had told him about an incident where Dr Glencross asked her what her sexual preference was.
21. He accepted that the role clarification meeting of 7 May 2014 was not very productive. That was because Dr Glencross came with his computer and started reading out Dr Morton’s job description. Dr Morton was quite upset. She said she did not think she would get any acknowledgement in the area working with Dr Glencross and was frustrated. Dr Cook accepted that he had told Dr Morton that he and Dr Coman had been rolling their eyes at each other during the meeting when Dr Glencross started talking about Dr Elliott and other issues at CSIRO. By the end of the meeting, he formed the view that it was time to stop Dr Morton working with Dr Glencross. There was no real formal plan or procedure that followed that decision. Dr Cook was aware that Dr Morton was becoming stressed about dealing with Dr Glencross. He was aware that if Dr Morton did not work with Dr Glencross, she would no longer have allocations involving him. Dr Cook did not recall Dr Glencross telling Dr Morton, during the meeting, that she had been removed from the “Ridley CRA” projects for political reasons.
22. As to the meeting between Dr Morton, Dr Preston and Dr Cook on 22 October 2014, Dr Cook denied that Dr Preston said that Dr Morton did not have the science to be taken seriously as a leader. He denied that Dr Preston said that there was a lack of ideas coming from Dr Morton. He agreed that there was vulnerability due to redundancy. He agreed that if a person has less than 50% allocated, they become vulnerable to redundancy. He agreed that Dr Morton’s lack of publications were not entirely her fault. He agreed that she had been working hard but there were a number of factors outside her control that meant that her external funding was low.
23. In relation to the email sent by Dr Morton on 25 October 2014, following the meeting with Dr Preston, Dr Cook became aware that Dr Morton was alleging that she had been slapped on the bottom with a riding crop by Dr Glencross.
24. Dr Cook said that she had not spoken to him about psychological stress before he received her medical certificate of 7 or 8 July 2015. He was aware that she was struggling to cope with what was going on at work.
25. Dr Cook denied that, after Dr Morton was off work on sick leave, he asked for her delegations to be removed. He did not know whether or not they were removed. Dr Wade did not become the permanent team leader until 1 July 2016, and, in his view, if Dr Morton had returned to the workplace any time before that, she would have received her 10% allocation back. He was not aware that Dr Morton was removed from the SAP system and did not make any decision that she be so removed.
26. On 30 September 2015, Dr Cook provided a SAP report indicating that the Huon project had been replanned. The documents showed that Dr Morton’s allocation had been reduced, from 50% to 20%. Dr Cook did not send Dr Morton an email advising of that change and did not speak to her about it. He denied that the reason he reduced her role was because she had made complaints to CSIRO and was becoming difficult to handle.
27. Dr Cook accepted that in the meeting, Dr Preston said to Dr Morton, “You don’t have the science to be taken seriously as a leader”.
28. Dr Cook accepted that Dr Morton was very good in relation to work that he did directly with her.
29. He acknowledged that there were some things that went on that could have been handled better, particularly in relation to Dr Glencross.
30. He had thought that some of the comments made by Dr Preston at the meeting of 22 October 2014 may have originated with Dr Glencross, because Dr Preston did not know personally Dr Morton that well.
31. Dr Cook acknowledged that he told an investigator that, in retrospect, as Dr Morton’s line manager, he should have gone into bat for her more. He acknowledged that he said that people were worried about their ability to be allocated if they rocked the boat. He denied that Dr Morton’s allocations had been removed because she got on other people’s bad sides. He accepted that, in the past, if a person rocked the boat, their allocations would change.
32. Dr Cook was taken to handwritten notes dated 11 February 2016, the date of the fireside chat. He said he did not make those notes. The fireside chat was a teleconference. Dr Cook denies that he said that he told Dr Manners that:

So far as her position is concerned leave Katherine, but we don’t have any work or money if she returns to work.

He accepted that he said that CSIRO had no projects for a nutritional physiologist.

1. Dr Cook accepted that, at the fireside chat, he said that CSIRO needed a senior health leader in Hobart. Dr Manners said, “Well why don’t we park the senior health leader in Hobart role until we deal with this other matter you’ve got here, the nutritional physiologist”. Dr Morton’s role was as a nutritional physiologist. Dr Cook presumed that Dr Manners wanted to “park” the nutritional physiologist role because Dr Morton was off on Comcare leave at the time. He agreed that he said there was no role for a nutritional physiologist at CSIRO. It was put to Dr Cook that this was not a coincidence. Dr Cook said it was. They did not have any projects for a nutritional physiologist, and had no future projects planned for a nutritional physiologist at that time.
2. Dr Cook agreed that he had completed some of the material in Dr Morton’s request for approval for a redundancy. He denied that the removal of her allocation and the removal of her as a team leader, was a convenient way to remove her from the organisation.
3. It was put to Dr Cook, in cross-examination, that Dr Morton had experience regarding testing of Atlantic salmon. He said that he had not heard of that.
4. In re-examination, Dr Cook was taken to Dr Morton’s CV, which made no reference to Atlantic salmon.

## Evidence of Dr Preston

1. Dr Nigel Preston is a marine biologist who was employed for some 30 years in various roles at CSIRO. He retired from CSIRO in July 2015 to take up a project as Director of WorldFish in Penang. He co-wrote a proposal with one of the CSIRO staff after that, but that did not require him to physically attend CSIRO in Brisbane.
2. Dr Preston was diagnosed with cancer, and returned to Australia for treatment in January 2016. He did not attend the CSIRO premises when he returned to Australia.
3. Dr Preston says that he did not work very closely with Dr Morton. He had no direct science interaction with her. The only interactions he had with her were at occasional meetings in the laboratory, and at some social occasions.
4. In 2014, there were approximately 300 retrenchments across CSIRO. Between March and May 2014, Dr Preston looked across his area to see if there were any scientists who were not fully allocated. Dr Preston said that, as part of that review, he observed that Dr Morton had a significant under-allocation of her hours. He also observed that, for a Level 6 scientist, the output of publications and grants awarded to her were unexpectedly low.
5. Dr Preston recalls that, in about May 2014, he made a remark to Dr Morton about the difficulty of working with middle-aged men, and went onto say that the senior management team was seriously looking to improve the gender and diversity balance at CSIRO via a strategic plan for future employment.
6. On about 9 September 2014, Dr Preston had a meeting with Dr Morton. He mentioned a project that was emerging as a potential area for her expertise, but did not say that it needed a Level 3 Lab Technician. He denied that she was required to assure him of her health, that he implied that she needed to find another area of work and could not work in nutrition. He denied Dr Morton’s allegation that he told her that, if she did not take a Level 3 role she would not be offered any other work.
7. Dr Preston referred to the meeting with Dr Morton and Dr Cook on 22 October 2014. Dr Morton had asked whether it was possible for CSIRO to support her in her ambition to undertake an MBA. He said that was not something he could support, there was no precedent for it and the job she had been employed to do as a nutrition scientist was not one that required an MBA. Her science outputs were low for a scientist at her level. He said that an MBA would be a distraction from the role she was appointed to.
8. Dr Preston said that he and Dr Cook told Dr Morton that they were seeking ways to enable her to reach her full potential. He was aware that her allocations were low. He said that the organisation was going through a difficult time, and that 300 scientists had been asked to leave. In that context, he went on to point out the seriousness of having an under-allocation. He said that if he, Dr Cook, and others were unable to find a level of allocation that was appropriate for her, they would be having another conversation in about 18 months’ time. In other words, it was time to move beyond the current situation. By “another conversation”, he meant that she would be vulnerable to redundancy in 18 months’ time if there was no further output, no further allocation, and no further achievement of grants.
9. Dr Preston said that they discussed the Huon project. Dr Preston and Dr Cook said that the project had not yet been finalised, but that it had aspects that could very well be aligned with Dr Morton’s skills across veterinary health. Dr Morton commented about the project and made an observation about how getting prophylactics across the fish gut membrane could be achieved. Dr Preston and Dr Cook both remarked that it was a good suggestion. Dr Preston thought that the Huon project would be an extremely bright prospect for Dr Morton’s career.
10. Dr Preston said that he and Dr Cook both expressed the concern that one of the reasons for the lower than expected publications might have been that she had spent time off sick and they asked whether there was anything more that they, in their capacity as leaders, could do to assist her.
11. Dr Preston agreed that he said, “You don’t have the science to be taken as a leader”. He said the comment was made in the context that she had not yet managed to produce science outputs in aquaculture nutrition. He denies that he said that she had a lack of original ideas and, on the contrary, she acknowledged that she had suggested an innovative way to get prophylactics across the gut membrane in discussion about the Huon project. His evidence was that he did not say “You need to assure us your health is up to it”.
12. After the meeting, Dr Preston went to a workshop in Zanzibar. He received the email of 25 October 2014 from Dr Morton to him, copied to Dr Cook. He replied asking that they have a discussion when he returned from Africa. They did not have such a meeting. He requested the meeting, but Dr Morton said that she did not want to.
13. Dr Preston drafted a response to Dr Morton’s email, but did not send it. That was because, by then, the grievance had been lodged, and HR advised him not to send the email.
14. About four or five people applied for the team leader role. Dr Morton was one of the applicants. Dr Preston and Dr Cook both supported her application for the position. She was offered the position and was appointed on 24 November 2014.
15. Around July 2015, when Dr Morton was off on sick leave, a decision was made to have someone else acting in the role. Dr Wade was appointed. Dr Preston was not entirely sure whether the appointment was permanent or temporary.
16. Dr Preston received a letter of 10 March 2015 from Dr Manners outlining the allegations that had been pursued in the grievance lodged by Dr Morton. He subsequently received a letter of 18 June 2015, advising that he had been cleared of any misconduct.
17. Dr Preston thought the last time he had any dealings with Dr Morton was in relation to the announcement of the team leadership in November 2014.
18. In May 2015, Dr Morton proposed an internally funded strategic investment project in relation to salmon amoeba. The project was reviewed by a small team. Dr Preston believed that it was decided that the project was not the best fit, compared to other applications in the same round. That project did not proceed.
19. Dr Preston’s experience of Dr Glencross was that he was a hardworking and extremely productive scientist.
20. Dr Preston recalls a dinner at the Norman Hotel on 17 October 2012. He attended to have a drink with the team, and then went home for dinner. In relation to Dr Morton’s evidence that Dr Preston arranged for her to pay for the dinner at the end of the night, Dr Preston said he did not recall the details of that. It would be up to the senior staff member to make the payment, or any junior members to make the payment and submit it for refunding. The most senior person at the dinner was likely to be Dr Glencross. He would not normally ask anyone to pay for the dinner, because everybody would have known that the most senior person would pay for it.
21. Dr Preston denied that, when going to Tasmania to visit a client, he said, “Make friends with Steve in any way you can”. He said he would never make such a statement to any staff member. He had only met Steve once and had no idea whether he was difficult or not difficult.
22. Dr Preston denies that in May 2012, at the Aquaculture Australia Conference in Melbourne, he made a comment to Dr Morton using the word “hussy”. He denied that it was a word he would normally use.
23. Dr Preston denied that he had a nickname for Dr Morton as “Dizzy Blonde”, and said that he had no nicknames for any staff members at all.

### Cross-examination

1. Under cross-examination, Dr Preston denied that he told Dr Cook that he thought Dr Morton was a bit of a dizzy blonde.
2. Dr Preston recalled that, at the Aquaculture Australia Conference, there was a dinner. He accepted it was likely that, after the dinner, he had drinks with Dallas Donovan and Dr Morton. He denied that he leaned over to Dr Morton and whispered, “You’re just a hussy”. Dr Preston denied that he had spoken to Mr Donovan about this incident.
3. Dr Preston denied that he was aware, from what other people had said that “Steve” was a difficult person, and repeated his denial that he told Dr Morton to make friends with him any way she could.
4. Dr Preston said he did not recall saying to Dr Morton, “Can you make sure the bill gets paid”, and denied having any need to do that. He denied that that was something he could have said to her.
5. Dr Preston denied that it was Dr Glencross who told him that he was unhappy with Dr Morton’s external funding levels, and the number of publications she had made. Dr Preston did not accept that Dr Morton was performing well, based on the evidence he had about the number of her publications, and grants awarded to her. He accepted that, in the email following the meeting of 22 October 2012, Dr Morton stated some reasons why the lack of publications and external funding were no fault of her own. Dr Preston was aware that she had some publications in the pipeline and was waiting for experiments to finish. He denied that was a justifiable reason for not having significant publications, because they were talking about two years of employment with CSIRO prior to that. The fact that there were some pending publications was an improvement. But, it was still a long period to have such a low level of publications.
6. Dr Preston said that a number of statements Dr Morton made about him in her email of 25 October 2014 were disingenuous, at the least.
7. He denied that he made contact with Dr Cook about Dr Morton’s allegations.
8. He denied that he did not believe Dr Morton in respect of her allegation that Dr Glencross had said, “Women only wear pendants to draw attention to their cleavage…”. He also said he had no knowledge, either way, of whether that was true or not.
9. Dr Preston said it had been brought to his attention that the relationship between Dr Morton and Dr Glencross was less than ideal. He agreed with Dr Cook’s suggestion that the relationship between them should be severed.
10. Dr Preston agreed that he was concerned about Dr Morton making a complaint about him. He did not discuss his concerns with Dr Cook.
11. Dr Preston said that he was concerned that a complaint had been made about Dr Glencross by Dr Morton. He did not discuss the complaint with him. He was informed by HR that there was to be no such discussion.
12. Dr Preston agreed that on, 7 April 2015, he sent a memorandum to Dr Cook relating to events that occurred on 22 October 2014. It was put to Dr Preston that he sent the memorandum to Dr Cook because he was about to go into an interview with the investigator, Mr Van Dam. Dr Preston denied this and said that he sent the memorandum to Dr Cook because he was at the meeting with Dr Morton. That was despite Dr Preston having been told by HR that he should not discuss the issue with other witnesses. Dr Preston agreed that he wanted to be sure that his recollection of the meeting was consistent with Dr Cook’s.
13. Dr Preston denied the suggestion that he shelved Dr Morton’s project, saying that he believed the decision of the review committee was that it was not the most competitive of the proposals submitted.
14. Dr Preston denied that he was not sure whether he would have to come back to Australia on behalf of WorldFish. He said that it was very unlikely that he would have to come back and visit CSIRO. He was not contacted by CSIRO to ask whether or not he would be coming back, with his involvement in WorldFish.
15. Dr Preston said that, if he had heard comments being made about Dr Morton’s cleavage, he would have severely reprimanded the staff member making the comment, as he would have if he found out that Dr Morton was hit on the buttocks with a riding crop at work. He agreed that it is totally inappropriate for people to send rude and explicitly worded emails, and pictures, to their co-workers at CSIRO.
16. In re-examination, Dr Preston said that there was a requirement across the portfolio to reach a certain level of externally funded projects so that, on balance, they were aiming to reach above 50% in external funding. Externally funded projects were extremely important, because that enabled funding of the entire portfolio. Whether the allocation was to be externally or internally funded projects was relevant to the risk of redundancy. There was only a finite amount of funding for internally funded projects at the time Dr Morton’s project was rejected.
17. Dr Preston said that the staff, at team dinners, would know that the dinners would be funded by the team budget, and that any member of the team could take that responsibility, but that it fell almost invariably to the senior member.

## Evidence of Ms Dominica Walsh

1. Ms Dominica Walsh is employed as a HR manager for CSIRO, based in Canberra. Ms Walsh has been the HR manager for the Agriculture business unit since 2014.
2. Ms Walsh was advised on, 16 January 2015, that Dr Morton had lodged a formal grievance against Dr Preston and Dr Glencross. It came to her attention that Dr Glencross subsequently resigned from CSIRO. Ms Walsh said that, if the person is no longer employed by CSIRO, then there is no action that can be taken, so there is no investigation undertaken into matters raised against such a person. Dr Morton was advised of that.
3. Ms Walsh was aware that, on 24 March 2015, an external investigator, Mr Van Dam, was appointed. Mr Van Dam delivered his final report on 14 May 2015. Dr Morton requested a copy of the report. Ms Walsh advised Dr Manners that the standard process was to provide a redacted version, and that an offer should be made to meet with Dr Morton when providing the letter and redacted report. On 12 June 2015, Dr Manners advised Ms Walsh that he was getting an “out of office” message from Dr Morton’s email and that he had decided to delay contacting her until she returned to work. However, she did not return to work and the meeting did not proceed.
4. On 24 November 2015, a meeting known as a “Deep Dive” was conducted within the agriculture business unit. That involves senior managers of CSIRO meeting with the leadership of a business unit and looking at how the business unit is performing and whether any particular changes are required. Ms Walsh wrote an email on 16 December 2015, advising various staff about the “Deep Dive” meeting.
5. Ms Walsh was shown her speaking notes for a discussion with the Staff Association at CSIRO in April or May 2016. That note referred to 26 planned redundancies within Agriculture. The preference of the Staff Association was that staff who seek a VRS should be accommodated wherever possible when undertaking redundancies. The document indicated that CSIRO would consider staff who had registered for VRS.
6. On 11 February 2016, Ms Walsh attended a “fireside chat”. She made notes, which recorded, “No requirement for health nutritionist, but need a health leader in Hobart”. She said that referred to the health nutritionist position currently not being actively used on projects within the Aquaculture programme, and the need for a health leader in Hobart, following a recent resignation. She also recorded, “Leave Katherine, but we don’t have any work/dollars if she returns to work”. Ms Walsh said that related to the fact that they were not going to add Dr Morton’s position to the potential list of positions for redundancy. The note also referred to CSIRO not having projects she was currently planned for, given her absence, but that they would need to look for projects when she returned.
7. On 20 June 2016, Dr Manners and Ms Walsh attended a meeting with the Staff Association. Ms Walsh’s notes said:

We have had several requests from staff who are registered for VRS to be made redundant. In one case, we have identified that due to the fact that the individual has been on extended leave and we have not needed to replace them, we could accommodate their wishes. We are in the process of getting approval for that redundancy in place of one and we are able to mitigate early in the process.

Ms Walsh said that was a reference to Dr Morton.

1. On 26 April 2016, Dr Manners sent an email to staff asking if anyone wanted to make a VRS request. On 17 May 2016, Ms Walsh received an email from Dr Morton asking that she be placed on the VRS list. On 23 May 2016, Ms Walsh advised Dr Morton that she had arranged to add her name to the VRS register, and that her request would receive careful consideration. Dr Morton then responded, thanking Ms Walsh for putting her on the register and saying that if she was made redundant, she could contacted directly, but solely for that purpose.
2. Ms Walsh did a search to see if there was a swap available for Dr Morton, but was unable to find any suitable swap. She then contacted Dr Cook and asked him if there was any potential case that could be made for a redundancy of Dr Morton’s position. She said she did that to ensure that CSIRO had given Dr Morton’s VRS request thorough consideration, not just from the perspective of a swap, but also in respect of whether it could be accommodated through a redundancy of her position. Dr Cook indicated that he felt there was a case that could be made for redundancy of Dr Morton’s position.
3. On 10 June 2016, Ms Walsh forwarded to, Dr Cook, a draft redundancy case that Dr Cook could work on.
4. The process required that the reason why a particular position could be made redundant be outlined and approval sought through the business unit leader, the head of HR and a senior member of CSIRO. Ms Walsh discussed Dr Morton’s case with Dr Manners. Dr Manners wanted to know whether they could proceed with the redundancy given that Dr Morton had a workers’ compensation claim. Ms Walsh told Dr Manners that it was possible to make someone who had a compensation claim redundant.
5. On 24 June 2016, Ms Walsh wrote to Dr Morton, asking for permission to communicate with her regarding her VRS request. She advised Dr Morton that CSIRO was able to accommodate her request for a voluntary redundancy and, although a swap could not be found, Ms Walsh would make a case, for her redundancy as Dr Morton was on extended leave, her position was not being replaced, and using the staff in her science area was appropriate. Ms Walsh’s rationale for the redundancy case was that the position that Dr Morton had previously undertaken had not been replaced while she was absent from work, and, therefore, there was no longer a reason to maintain the position. She stated that a redundancy case would not have been organised for Dr Morton if she had not requested a VRS.
6. On 30 June 2016, Ms Walsh received an email from Dr Morton after she was advised on 30 June of her redundancy. The email thanked Ms Walsh for the emailed information and said that Dr Morton would wait to hear about the next steps.
7. On 15 July 2016, Ms Walsh placed Dr Morton’s name on the redeployment register. Ms Walsh sent an email to her concerning the redundancy process.
8. In an email dated 15 July 2016, Ms Walsh asked for Dr Morton’s CV and asked what location she was prepared to work at. On 19 July 2016, Dr Morton responded saying, “There are no locations within the organisation that would be suitable for me to be relocated to”.
9. Ms Walsh stated that CSIRO has a recruitment site where positions are advertised. It is accessible by CSIRO staff. Dr Morton was not redeployed during the redeployment period. She did not apply for any positions during the redeployment period.
10. After the redeployment period, a further case had to be prepared. Ms Walsh sent Dr Morton a letter setting out her options on 28 October 2016. The letter indicated, inter alia, that if she did not contest the redundancy, she would get an extra eight weeks pay, but would leave earlier, on 11 November 2016 (known as the “fast track option”).
11. Dr Morton responded in an email of 6 November 2016, opting for the fast track option. She requested a change to the wording of the initial letter to make it clear that it was redundancy, not a VRS. She again confirmed the cessation at 11 November 2016.
12. A position became available in September 2016, in Hobart. Dr Morton did not apply for that position. Ms Walsh did not look at whether she should ask her to apply for that position, because Dr Morton had indicated that she was not prepared to take up positions at any other locations. Ms Walsh did not make any enquiries about whether Dr Morton would have been able to perform the position.
13. Ms Walsh was advised of an email from Mr Croft raising various complaints regarding leave records. CSIRO did not receive any approval from Dr Morton to communicate with Mr Croft regarding her leave issues.
14. Ms Walsh became aware in March 2016, of an issue regarding authorship of an article. She contacted Dr Cook, and asked him to conduct a check. Dr Cook eventually indicated that he would contact the journal and ask for Dr Morton to be listed as an author. On 17 March 2016, Mr Croft sent an email to a number of persons, including Ms Walsh.
15. Ms Walsh was involved in the preparation of a letter from Ms Somerville to Dr Morton, dated 25 February 2016. That was the letter saying, inter alia, that CSIRO was confident it could provide Dr Morton a safe environment and “to clarify, the two individuals named in your complaint no longer work at CSIRO and no longer reside in Australia”. That letter reflected Ms Walsh’s belief at the time. She was not aware that Dr Preston may be returning to Australia for cancer treatment.
16. Ms Walsh stated that, if a person in a leadership role was going to be absent for an extended period of time, CSIRO would put an alternative person into the position so that somebody else could undertake the duties and delegations, such as approving leave, undertaking approval of annual performance agreements, and things of that nature. When somebody temporarily took over someone else’s team leader role, a new position would be created in the SAP system for the person who had the role originally. On the system, the person would be moved into an alternative position, while the acting person would be moved into the team leader position. If someone who was on leave was temporarily replaced, and looked at the SAP system, it would indicate that they were not the team leader. The HR staff manage changes on the SAP system. Changes to allocations on the SAP system are made by finance people and project leaders.
17. Ms Walsh was taken to a document from the SAP system. She indicated that if someone was on long-term sick leave, they would not be listed on the SAP system in this type of document. If they were working, their time would be charged to the project, but if they were not working, their time would not be charged to the project. Where there is an externally funded project, the salaries of people allocated to the project were paid from the project funding. It was effectively like charging the project, in this case, Huon Agriculture, for their salaries. Accounts were sent by CSIRO to the customer to pay.

### Cross-examination

1. Under cross-examination, Ms Walsh said she was advised by people in workplace relations that it was a policy that, when a person was no longer employed, they would not be investigated for misconduct. She was not shown the policy document. Ms Walsh discussed with Dr Manners the scope of the investigation that should be undertaken. She made a recommendation that it should be restricted to Dr Preston.
2. In Ms Walsh’s experience, staff prefer to have a discussion rather than just receive an investigative report. To her knowledge, Dr Morton did not receive the redacted report. She accepted that, if Dr Manners had wanted to send the report to Dr Morton, he could have made that decision. She accepted she could have recommended that it be sent to her.
3. Ms Walsh accepted that in 2016, CSIRO was trying to return Dr Morton to the workplace, but denied the reason for this was so that she could then be made redundant. She was taken to her note saying, “Leave Katherine, but we don’t have any work or dollars if she returns to work”. It was suggested that this reflected the basis for why CSIRO would make somebody redundant. Ms Walsh indicated that the Agriculture program had a number of projects that were anticipated to be coming in, so that while there was no work at that time, they would have to review the work available when Dr Morton returned to work. She accepted that there was no planned work for Dr Morton at the time of the note.
4. It was put to Ms Walsh that she, and others in CSIRO, were attempting to get Dr Morton back to the workplace so that she could be made redundant, so that the cost to Comcare would be low. It was also put to her that CSIRO wanted to do this because Dr Morton made complaint after complaint since she had commenced worked there. Ms Walsh denied both of these assertions.
5. Ms Walsh was taken to the Enterprise Bargaining Agreement in place at the time of Dr Morton’s redundancy. It was pointed out that the Enterprise Bargaining Agreement states that, “Substitution will only proceed when no suitable redeployment opportunities are identified”. Ms Walsh said that there were no redeployment opportunities identified that met the conditions that Dr Morton had given. The process was that, if HR staff identified any position that was at the same level and site, and within the same functional area, where a staff member had indicated they would consider a redeployment, then they were assessed as to their suitability for the position. She said the individual employee identifies the parameters of the redeployment search. She said that Ms Davis would have been responsible for checking for redeployment opportunities.
6. Ms Walsh denied that she did not turn her mind to the Hobart job when considering redeployment for Dr Morton. She said that there were no positions available at Dr Morton’s SAP level in Brisbane, in her functional area.
7. When asked about what enquiries Ms Walsh had made about the location of Dr Glencross and Dr Preston, she said that she was aware that both had left CSIRO, and taken up positions outside Australia. She was aware of the collaboration between WorldFish and CSIRO. She was aware that it was a possibility that Dr Preston may visit Australia in relation to that collaboration. She did not make contact with Dr Preston to confirm whether that was going to be an issue, but did speak to Dr Cook. She asked him if he had knowledge of any interactions where Dr Preston was expected to come to Australia or expected to be at a CSIRO site.
8. Ms Walsh was aware that Dr Morton had said that she was putting her name on the VRS register because she was not satisfied that CSIRO was a safe place of work.
9. Ms Walsh denied that she determined that Dr Morton’s position was redundant because she had made a number of complaints. She said that Dr Morton was not even considered for a redundancy until she requested a VRS. She denied that the VRS request was “a green light to get rid of her”, and said that it gave the opportunity to accommodate a request from a staff member. She considered that steps taken were in compliance with the Enterprise Bargaining Agreement. Ms Walsh denied that she, “wanted her out of CSIRO”.
10. In re-examination, Ms Walsh said that when she spoke to Dr Cook, he said he had no knowledge of any expected visits or planned visits where Dr Preston would be coming to Australia to meet the CSIRO staff. She acknowledged that she did not speak to Dr Morton after she received a 17 May 2016 email where she advised that she wanted to go on the VRS list, but said that she did not have permission to speak with Dr Morton at that time.

## Evidence of Ms Julie Carroll

1. Ms Carroll is employed as an HR Manager at CSIRO in Brisbane. She worked in that capacity with Dr Morton until February 2014.
2. In October 2014, Dr Morton came to Ms Carroll’s office, even though she was no longer providing HR support to Dr Morton’s area. Dr Morton said that she was feeling a sense of frustration that her career was stalled and that she was finding it difficult to progress projects. They had a conversation around how she could improve her working relationship with Dr Glencross.
3. Dr Morton did not say anything to suggest that comments of a sexual or derogatory nature had been made towards her, or that she had been sexually assaulted, or that she had been the subject of sex discrimination or sexual harassment. She did not make any complaints to Ms Carroll about Dr Preston or Dr Cook.
4. Ms Carroll advised Dr Morton that she should seek HR support from the people who were now supporting her group. She referred her to Alysha Davis.
5. Under cross-examination, Ms Carroll said that, from time to time, she provided informal feedback to Dr Glencross on his management style. She denied that she meant that he bullied people at CSIRO. She accepted that she had a conversation with Dr Morton about the email from Dr Glencross to Simon Irvin. She accepted that Dr Morton told her that she and Dr Glencross had a difficult relationship, and that is why she referred to HR.
6. It was put to Ms Carroll that Dr Morton had told Ms Carroll about the cleavage comment, that Dr Glencross had hit her with a riding crop and that she was thinking about making a complaint about that. Ms Carroll denied that.

## Evidence of Ms Amanda Somerville

1. Ms Amanda Somerville is an injury management advisor employed by CSIRO. Her role involves helping injured CSIRO staff members to return to work.
2. Ms Somerville was taken to her email to Dr Morton dated 2 February 2016 attaching a letter concerning obtaining of medical information in order to prepare for her return to work. She said the purpose of obtaining medical information was because Dr Morton had an extended absence from work. She said that when staff have been away for a period of time and are potentially returning to work, she would look for more information to be able to understand if they were fit to return, and whether there were any reasonable adjustments that might need to be made.
3. Ms Somerville received a letter from Dr Rees dated 11 February 2016, saying, inter alia, that, “Dr Morton tells me that the personnel involved in the alleged sexual assault remain working within her working environment”. She understood that to be a reason advanced by Dr Rees for why there would not be a return to work.
4. Ms Somerville was taken to her letter of 25 February 2016 In that email, she said, inter alia, “The two individuals named in your complaint no longer work at CSIRO and no longer reside in Australia”. She said that that was her belief at the time she sent the letter. At that time, she did not know that Dr Preston may be returning to Australia for cancer treatment.
5. Ms Somerville said that she forwarded an email of 31 March 2016 to Mr Croft, advising him that she would need Dr Morton’s consent to correspond with him concerning matters involving her, and enclosing a consent form for Dr Morton to sign. She did not receive the consent form back from Dr Morton.
6. Ms Somerville said she received an email from Mr Croft of 1 April 2016, with the subject “Consent”. She sent Mr Croft an email on 20 April 2016, explaining her role and saying that she would need to correspond with Dr Morton, in the absence of her approval to correspond with Mr Croft.
7. Ms Somerville received a response from Mr Croft of 29 April 2016, which concluded with Mr Croft saying that he would not provide any further communication with her and she would receive none from Dr Morton.
8. Ms Somerville had no further contact in relation to the matter until 5 October 2016, when she received a query from Dr Morton. She responded on 10 October 2016.
9. Under cross-examination, Ms Somerville said that before she wrote to Dr Morton on 25 February 2016, a complex case management team, which she was part of, had discussed Dr Morton’s case and made a decision to contact her and seek medical information. When she wrote the letter, she had not made any enquiries about the location of Dr Preston or Dr Glencross.
10. In re-examination, Ms Somerville was asked about enquiries made before the 25 February 2016 letter was sent. She said she worked with people, including Ms Walsh, who would have knowledge of other information and assisted in preparing the letter.

## Evidence of Mr Simon Irvin

1. Mr Simon Irvin is a team leader and site leader at CSIRO’s Bribie Island Research Centre. He has been the site leader since early 2011. His main role is to co-ordinate between the research scientists and the technical staff based on Bribie Island.
2. Mr Irvin found that Dr Morton was fun, and a bit cheeky. She used to stir people up a little bit and call people by nicknames. She referred to Dr Glencross as “Professor Bunny” or, “The Energiser Bunny”.
3. Mr Irvin was involved in the sampling day on Bribie Island on 16 October 2012. There were two labs: a wet lab where the fish were held, and a dry lab where samples were taken. Mr Irvin considered it unlikely that there would be two people alone in the dry lab that morning. He did not see a riding crop that day.
4. Mr Irvin was taken to the email of 26 March 2012, where Dr Glencross said, “Yes. I am sure at least one is a girl this time, Sime”. He said that this was self-deprecating humour from Dr Glencross. He said Dr Glencross was referring to an email sent six months earlier when he said that there was a “French lass” who was an intern, and Mr Irvin corrected him pointing out that the intern was a male.
5. Under cross-examination, Mr Irvin explained that a French student was named “Maxime”, and Dr Glencross had presumed that the student was a girl. It was put that Dr Glencross’ message suggested that it was going to be a good thing for Mr Irvin that it was a French girl. Mr Irvin said he did not recall that. He said that it was self-deprecating humour from his boss, admitting that he had made mistake.
6. Mr Irvin said that he did not have any real collection of the sampling day on 16 October 2012.

## Evidence of Ms Sally Sturton

1. Ms Sally Sturton is an HR advisor in the Agriculture and Food group at CSIRO. She has worked in that capacity for about 11 years in Brisbane. She reports to Ms Walsh.
2. Ms Sturton’s evidence is that, on 30 October 2014, she had a meeting with Dr Morton, who raised a number of concerns about her workplace. These concerns were mainly about her supervisor: that he was a poor supervisor; they did not have a good relationship; he was a poor communicator; and he did not provide good direction.
3. Ms Sturton could not recall Dr Morton raising any concerns regarding Dr Preston. She said she was not familiar with the program at the time, so Dr Morton may have and she might have missed it. Ms Sturton could not recall Dr Morton raising any concerns about Dr Cook, but concedes she may have.
4. Ms Sturton could not recall Dr Morton raising any allegations that she had been spoken to inappropriately regarding matters of a sexual nature, but she could not be certain. She could not remember whether Dr Morton raised anything to suggest that she had been spoken to in derogatory terms. She could not recall Dr Morton saying that she had been assaulted in any way. She could not remember Dr Morton saying anything to suggest that she had been sexually harassed, or that she had been the subject of sex discrimination.
5. On 6 November 2014, Ms Sturton was at another meeting involving Dr Morton and Ms Davis. The purpose of the meeting was to introduce Ms Davis to Dr Morton and hand the matter over to Ms Davis. Ms Sturton could not recall call Dr Morton raising anything of a sexual nature at that meeting.
6. Under cross-examination, Ms Sturton accepted that, at the meeting on 30 October 2014, Dr Morton complained that Dr Glencross: constantly moved the goalposts at work; would tell her he expected something then he change his mind; was tardy in responding to communication with her; would respond to old versions of papers that she was writing despite having sent updated versions; did not take much notice of her; he did not give clear directions; and did not communicate very well in relation to work matters.
7. Ms Sturton said she did not recall Dr Morton saying that Dr Glencross: was very rude to her in the work place; hit her with a riding crop; had called her, or referred to her as, a prostitute; that there had been comments made about her cleavage; or that Dr Glencross treated her differently because she was female.
8. Ms Sturton said that she had received an email from Dr Morton after 30 October 2014 in which she referred to an incident involving a riding crop, the cleavage issue.

## Evidence of Mr David Brewer

1. Mr David Brewer was employed as a Consultant Scientist by CSIRO. He was the research program manager of the Oceans and Atmosphere area of CSIRO. The Aquaculture group fell into his program area.
2. Mr Brewer would speak to Dr Glencross about a range of things, including his treatment of staff. He did not consider that anything regarding Dr Glencross needed to be escalated.
3. Dr Morton would discuss issues concerning Dr Glencross with Mr Brewer. She was unhappy with Dr Glencross’ treatment of her, and the way he interacted with her. His memory of what was said was relatively poor, but he said her complaints related to the fact that Dr Glencross was not treating her well, both in relation the science and day-to-day issues.
4. Mr Brewer could not remember Dr Morton ever suggesting that matters occurred of an inappropriate sexual nature involving Dr Glencross. That is something he would expect to remember.
5. Mr Brewer did not remember specifically whether Dr Morton made any complaint, or raised any matters of concern, about Dr Preston, or Dr Cook.
6. Under cross-examination, Mr Brewer accepted that Dr Morton complained to him that Dr Glencross was very rude to her in the workplace. He did not recall Dr Morton saying that she felt bullied.
7. It was put to Mr Brewer that Dr Morton had told him Dr Glencross had made a comment regarding pendants and that she had been hit with a riding crop. Mr Brewer said he did not remember that.
8. Mr Brewer said that Dr Morton complained that Dr Glencross was difficult to work with and many staff did not like his working style. He recalled having meetings with Dr Glencross with the intention of trying to alter some of his behaviours and the way he treated staff.
9. Mr Brewer got the impression from talking to Dr Morton that she looked and felt stressed.

## Evidence of Ms Heather Campbell

1. Ms Heather Campbell is the director of Health, Safety and Environment for CSIRO. She has held that position since 2014. One of her responsibilities is dealing with injury management issues. She is based in Melbourne and has never met or spoken to Dr Morton.
2. As part of Ms Campbell’s delegations, she has the power to investigate misconduct matters. Mr Gavin Drury was employed as an injury management co-ordinator between 2014 and 2016. His role involved managing complex injury cases.
3. Mr Drury reported to Ms Pickering for a period of time, but then she ceased to be his line manager. An email from Dr Morton addressed to Ms Pickering of 29 July 2015 came to Ms Campbell’s attention. In that email, Dr Morton made complaints against Mr Drury. She said:

Gavin’s first contact with me regarding this claim was to accuse me of only putting in a ComCare claim because I hadn’t obtained a good outcome from the grievance I lodged. It was obvious that Gavin does not believe that I am genuinely injured and I found his remark highly offensive. Reducing sexual assault and harassment, with longer term bullying and harassment by the same perpetrator, to an upset over a grievance outcome couldn’t have been a worse thing for Gavin to have stated to me. It was also factually inaccurate as the grievance procedure had only just started so no outcome had been reached. In fact, I still have not received any advice on the outcome of that grievance. I have no faith that he has any idea for what is best for my recovery and rehabilitation.

As an HSE officer, Gavin’s position comes with responsibilities which he can not meet for me or the organisation unless he recognises what caused my injury, how that has injured me, and ultimately for him to take steps to ensure it can’t happen again to me or to another staff member…

I am not satisfied that Gavin is able to deal with psychological injury effectively, I have voiced that concern elsewhere and requested that he be replaced on my claim with someone that is. But that request seems to have disappeared into a black hole, so it would appear that I have to continue to deal with Gavin. I have yet to receive a reply to the email I sent on Friday. Nor have I received a reply to many of the questions that I have asked Gavin directly, I have attached the email history with the questions that he is avoiding. Can you advise when Gavin will be updating the form for Dr Timmins with the correct information (as identified in Friday’s email)? Can you also please direct Gavin to meet his obligations under the CSIRO Code of Conduct and reply to the questions that I have asked of him? And if he continues to be unwilling to explain his actions and claims regarding my injury, then I would ask that you refer him to the Misconduct procedure for breaching the CSIRO code of conduct.

1. Ms Campbell stated that she investigated Dr Morton’s allegations. She concluded that Mr Drury had genuine concern and had acted appropriately in his role as an injury management officer.
2. On 3 August 2015, Ms Campbell sent an email to Dr Morton with the conclusions of her investigation. That email stated:

Dear Katherine,

Thank you for recent email correspondence and the concerns that you have raised regarding the way your rehabilitation case is being managed by Mr Gavin Drury. I have spoken to Gavin and read the email exchange that has occurred over the past few days. I can clarify the following points.

* Gavin has been appointed as CSIRO’s complex injury management advisor and is the most appropriate CSIRO person to correspond with regarding your Comcare case.
* Gavin was genuine in his concerns for your wellbeing and has been trying to organise a medical assessment to establish your ability to be engaged in a rehabilitation program. He has provided a link to the rehabilitation obligations in an earlier email.
* All staff members are bound by the CSIRO Code of Conduct. Gavin has been working in a professional manner for 18 months as part of the Injury Management Team and his communication with you has been appropriate and informative.
* Gavin regularly communicates with Comcare in relation to your claim and was advised to organise a medical assessment commonly called a S36 Assessment. The notes on file are consistent with the advice Comcare has given.
* Your SAP leave Sick Leave will be reinstated between 30-60days after CFTOW forms have been signed.
* Although your doctor has given advice that you are not fit to return to work for several months, secondary assessments are normal practice for accepted compensation claims, therefore the correct procedure is being followed by arranging a S36 Assessment.
* The diagnosis from your GP certificate was cut and pasted into the Section 36 referral, this meets Comcare’s requirements and has been clarified with Comcare and does not need to be changed.
* Unfortunately CSIRO does not have control over the times and appointments given out by Medical Providers.
1. Ms Campbell did not receive a response from Dr Morton. She believed that she applied the correct policy and procedure regarding Dr Morton’s complaint. She said she had the authority to deal with the complaint made against Mr Drury.
2. Ms Campbell received an email from Dr Morton of 28 March 2017. Dr Morton requested that she refer Ms Somerville for misconduct, due to breaches of the CSIRO Code of Conduct. Ms Campbell said that she investigated the allegations and determined that Ms Somerville had not breached the Code of Conduct. Ms Campbell said she followed CSIRO’s procedures in dealing with that complaint and decided to make arrangements for another person to deal with Dr Morton’s case.
3. Under cross-examination, Ms Campbell was taken to a number of emails between Dr Morton and Mr Drury. Ms Campbell said that those emails had not come to her attention. She said that when she did the investigation, she did not ask to see the correspondence between Dr Morton and Mr Drury. She did not document the investigation.
4. Ms Campbell was taken to an email sent by Mr Drury to Ms Jacquie Lyons on 30 July 2015 saying, “As discussed, I will draft an email for you to send in relation to Katherine’s questions”. Ms Campbell was taken to an email from Mr Drury in which he had written a number of dot points. There was an email from Mr Drury to Ms Campbell sent on 31 July 2015 which said, “If you can scan down my draft can be cut and pasted into the relevant format that you believe is the most appropriate”. Ms Campbell acknowledged that Mr Drury, “prepared some draft points for me”.
5. Ms Campbell was taken to Mr Drury’s notation that “I have already had two debrief sessions with clinical peers about Dr Morton’s behaviour and attitude and the best way to manage her claim”. She said she could not remember whether she had a direct conversation with Mr Drury about Dr Morton’s attitude. She said she had a general understanding of the case, but not the specifics.
6. In investigating the complaint, Ms Campbell asked Ms Lyons and the internal legal support and workers’ compensation person, Mr Beaumont, as to how Mr Drury had managed the case, but did not ask any specific questions related to Dr Morton as such. It was put to Ms Campbell that she did not give the complaint any attention at all, but said that she did give it attention and sought advice. She indicated that there were no documents relating to her investigation outside the email trails.
7. It was put to Ms Campbell that she “just bounced this complaint because it was Katherine Morton that making the complaint”. Ms Campbell disagreed. She said she sought advice from people who were closer to the matter and had experience in injury management and legal management of workers’ compensation cases.
8. Ms Campbell denied that she did not investigate the complaint about Ms Somerville. She acknowledged that there were no written records of that investigation beyond email trails. She said she made enquiries with one of more senior case managers, Ms Rankin. She said she did address the complaint and that is why she changed Dr Morton’s case manager to give her the most experienced manager in the team.

## Evidence of Ms Alysha Davis

1. Ms Alysha Davis was a senior HR advisor at CSIRO. She provided HR support in the Agriculture and Food division. Her line manager was Ms Walsh.
2. Ms Davis had a meeting on 6 November 2014 with Dr Morton and Ms Sturton. Dr Morton raised a number of issues about Dr Glencross and also said that she was not supported by Dr Preston. Dr Morton felt that Dr Glencross was disrupting her career and making it difficult for her to progress and causing her frustrations in her work. She commented that she did not feel supported by Dr Preston, and that related to his denial of a request for CSIRO to support her in undertaking an MBA.
3. At the meeting, Dr Morton made some comments about Dr Glencross in relation to a riding crop and in relation to a comment about her cleavage and a pendant. Ms Davis described what she said about the riding crop as a “relatively flippant remark”.
4. Ms Davis recalled another meeting with Dr Morton on 5 December 2014. Mr Croft was present. Dr Morton said that she had been harassed by Dr Glencross. She mentioned a number of incidents in relation to a paper she was writing and that he had incorrectly edited a version of it. She mentioned the riding crop incident, she mentioned the cleavage comment. She generally felt frustrated about the lack of progress she felt she could make in her career.
5. Ms Davis recalls that Mr Croft spoke more than Dr Morton did at the meeting. He was quite agitated. He was very aggressive, incensed as he was speaking and used a lot of emotive language.
6. Ms Davis received an email from Mr Croft on 25 September 2015. She subsequently asked Dr Morton to provide consent, so that she could correspond with Mr Croft regarding Dr Morton’s leave issues. She never received any consent to engage with Mr Croft.
7. Mr Croft provided a response on 8 November 2015, into which Ms Davis was copied.
8. Ms Davis was aware that Dr Manners had forwarded a letter to Dr Morton concerning clarification of issues regarding leave.
9. Ms Davis followed that letter up with an email to Dr Morton on 1 September 2015, asking for clarification of her preferred method of communication and to respond to Dr Manners’ request for clarification on leave.
10. On 1 September 2015, Ms Davis forwarded an email to the HR Service Centre advising of the need to enter recreation leave. Otherwise, given that her Comcare claim had been denied, Dr Morton’s payroll would be cut off. HR advised Ms Davis that the recreation leave had been entered. Ms Davis changed the leave type, so that Dr Morton would not be disadvantaged from a lack of pay.
11. Ms Davis was part of what was known as the Complex Management Team. The minutes of a meeting she prepared of 12 October 2015 indicated, “Need to amend ‘recreational leave’ to change to ‘leave without pay’”.
12. In response to her email to HR regarding adjustment of leave, Ms Davis received a response from Lisa van Schieveen, advising that:

Katherine has a medical certificate to cover this period. It should be entered as “sick leave without pay”.

1. One of Ms Davis’ responsibilities was to deal with the redeployment phase where someone’s position had been identified as redundant. She was responsible for looking for redeployment options for Dr Morton. She did not identify any redeployment options for her. She kept an eye out to see if there were any appropriate options.
2. Under cross-examination, Ms Davis accepted that when Dr Morton told her about the riding crop incident and the cleavage comment in November 2014, she said she was humiliated, upset and worried about her career at CSIRO.
3. It was put to Ms Davis that she already had a consent from Dr Morton, so she did not need her consent to deal with Mr Croft. She disagreed.
4. Ms Davis accepted that she was not asked by Dr Morton, and she was not given Dr Morton’s permission, to move a block of recreational leave in the system to cover a period of time when Dr Morton would have been on leave without pay. Ms Davis was not aware of whether that recreational leave was given back to her.
5. It was suggested, by reference to Ms Davis’ notes of the meeting with Dr Morton and Ms Croft that Mr Croft said very little in that meeting. She said that was incorrect. She maintained that Mr Croft was quite aggressive in the meeting.
6. In re-examination, Ms Davis said that being an emergency contact for a staff member does not give CSIRO permission to deal with them in relation to matters such as leave. She said that, if she had not changed Dr Morton’s leave to recreational leave, Dr Morton would not have been paid for that period of time.

## Evidence of Ms Louise Gaspari

1. Ms Louise Gaspari is a HR advisor with CSIRO, based in Canberra. Her line manager is Derek Miller. Ms Gaspari is considered to be the expert in relation to workers’ compensation leave at CSIRO.
2. Ms Gaspari had never met Dr Morton, or spoken to her. She has had some communications with her via email. Ms Lynne Gaal was initially involved in the managing of Dr Morton’s leave, but Ms Gaspari became progressively more involved.
3. CSIRO’s leave system is a manual system. The employee is required to enter leave when they take leave from the workplace. When an employee has gone beyond 45 weeks of “liability”, then a coding is entered into the system which stops the employee from being able to access the self-service portal. When a person is beyond 45 weeks, they are on “COM#2”. Once a person is in COM#2, they are paid based on a Comcare sliding scale. Because there is a financial impact, CSIRO does not like employees being able to enter other forms of leave, because it can impact the percentage rate that is applied to their payments.
4. Ms Gaspari’s reference to 45 weeks of liability is that, when an employee has a workers’ compensation claim, they are entitled to full pay for up to 45 weeks. Once they are absent for longer than 45 weeks, they are on a percentage scale based upon the time they are working. So, if they are in a gradual return to work programme, they will have a higher percentage of their normal weekly earnings paid to them by Comcare.
5. Ms Gaspari explained that CSIRO’s cut off for pay is fortnightly, on a Wednesday. CSIRO receives advice of any Comcare payment regarding accepted liability fortnightly, on a Thursday. When that happens, payments could not be processed until the following pay cycle.
6. Ms Gaspari explained various codes seen in documents. The notation “REC” stands for recreational leave. The annotation “SWMC” means sick leave with medical certificate. The annotation “SW01” means sick pay without leave for the first 26 weeks to count as service. “SWO2” is simply without pay post 26 weeks not as service. “COM1” means compensation leave pre-45 weeks. “COM2” means compensation leave post 45 weeks.
7. Ms Gaspari said that she aware that Dr Morton made a Comcare claim on 15 March 2015 and that on 5 June 2015, she began receiving compensation payments. On 19 August 2015, her Comcare claim was revoked. Ms Gaal explained that Dr Morton was no longer able to have compensation leave in the system and it then went into the system as sick leave.
8. Ms Gaspari had undertaken an audit of what occurred regarding Dr Morton’s leave. Ms Gaal referred to an email from Ms Davis advising of the determination that Comcare made regarding her claim no longer being payable, making sure that appropriate leave was entered in the system.
9. Ms Gaspari referred to a document dated 28 August 2015, which was a request for clarification from Dr Manners to Dr Morton as to whether she wanted to access recreational leave following the deletion of personal leave or whether she would rather access leave without pay. Ms Gaspari said that enquiry was necessary because it would normally just default to sick leave without pay, when somebody exhausts their available sick leave, but to prevent financial hardship, CSIRO offers the ability to use available paid entitlements such as recreational leave. Ms Gaspari referred to an email from Ms Davis saying “Katherine’s claims being denied, we need to order a new leave type before payroll cut off”.
10. Ms Gaspari explained that HR was being instructed to use all available paid leave entitlements of sick leave and recreational leave by Ms Davis.
11. Ms Gaspari referred to an email exchange ending on 21 September 2015. In that exchange it was said:

Recreational leave entry from 3 to 20 November. We would like to bring this forward, to 5 October, to cover your continued absence. Your unpaid leave would then commence from 23 October 2015.

1. Ms Gaspari said that there was future leave recorded for Dr Morton in the system, and as they knew the employee was about to be on leave without pay, the question was asked as to whether they wanted the leave to be utilised earlier, so that they could continue to be paid. She said that they tried to avoid financial impact if possible.
2. Ms Gaspari went to Dr Morton’s final payslip. It indicated the hours and values of leave that would have been paid to Dr Morton on her cessation. Ms Gaspari indicated that she had checked whether Dr Morton was paid the correct amount of money in terms of paying out of her accrued annual leave and confirmed that the amount was accurate for her entitlement.
3. Ms Gaspari referred to a document she created when undertaking the audit as to whether Dr Morton was correctly paid her accrued annual leave entitlements.
4. Ms Gaspari was taken to an email of 19 July 2016, in which Dr Morton raised issues concerning her recreational leave being lodged without her approval. She required that her leave records be corrected. Ms Gaspari said that they could not restore any recreation leave that had already been paid without creating an overpayment in the system. They were unable to restore the leave immediately, because it would recreate an overpaid situation that could affect Comcare payments. She said that the leave was restored once the Comcare claim was approved.
5. Ms Gaspari referred to the complaint about logging leave beyond the length of Dr Morton’s medical certificate. She said that the circumstance related to Dr Morton being on sick leave without pay. It meant that she was appearing on a fortnightly report for the salary and entitlements team, who would need to contact Dr Morton each fortnight to find out if the situation had changed. She said that, rather than having that workload, when they knew that there would be no immediate answer pending a determination by the Administrative Appeals Tribunal, a decision was made to put in an extended period of six months.
6. On 14 September 2016, Dr Morton’s Comcare claim was accepted again. She then shifted back to compensation leave.
7. If a person has been on Comcare for over 45 weeks, they move from “COM1” in the system to “COM2” leave.
8. Ms Gaal referred to an email from Dr Morton to Ms Walsh asking her to explain why 363.26 hours was included in the cessation calculation when her recreation leave balance was 58.10 hours. That enquiry was sent to Ms Gaal to examine. Her analysis was that the balance referred to was one that had been obtained prior to all the necessary changes and restorations being done in the system. The balance was out of date.

## Evidence of Mr Derek Miller

1. Mr Derek Miller is employed as the payroll manager within the HR services team at CSIRO. He has been in that position since 2007.
2. Mr Miller gave evidence that he generally does not make entries concerning employee’s leave into the CSIRO system. That task is usually done by Ms Gaal or Ms Gaspari.
3. Mr Miller received an email from Mr Frank O’Donnell on 15 October 2015. It said:

Would appreciate if you could revert Katherine to sick leave without pay from your cut-off next week. Lisa intends to draft a letter to John Manners to sign it. Will advise Katherine the implications of recovering her recreation leave resulting in overpayment costs involved, recovery cost options et cetera.

1. Mr O’Donnell worked in the Workplace Relations team at that time. Mr Miller said he decided to “action” the request in the email himself. He did so because neither Ms Gaal nor Ms Gaspari were there at the time. His evidence was that, “I processed it to ensure we didn’t have an overpayment.”
2. Mr Miller stated that, when processing the request, he entered the wrong leave type. He chose “SW02”, when he should have selected “SW01”. Mr Miller said he got confused between what counted for superannuation and what counted for service. He said he was confused because he did not put these entries in very often.
3. Under cross-examination, Mr Miller accepted that, as the payroll manager, he should have known what the codes were. He said he was not sure whether Dr Morton had been making complaints about her leave entitlements, but was aware that there was a leave process going on. He was aware that she had made enquiries about her leave and that she was asking for things to be reviewed and changed. He was not aware that she said she was unhappy with the delays in making the changes.
4. Mr Miller denied that he was aware that Dr Morton’s superannuation contributions were stopped. He denied that he was asked to stop those superannuation contributions.
5. Mr Miller denied that he picked the “SW02” code because Dr Morton had been making complaints.
6. When asked why he did not ask somebody what the correct leave type was, if he was unsure and confused, he noted that the email from Mr O’Donnell was received at 6.01 pm. He said he processed it himself to ensure that no overpayment would happen. He said that was the only reason he did it at that time.

## Evidence of Ms Lisa van Schieveen

1. Ms Lisa van Schieveen is a Workplace Relations manager for CSIRO. She works within a team called the Recruitment, Workplace Relations and Policy team.
2. Ms van Schieveen received an email from Ms Davis on 28 September 2015, forwarding an email from Mr Croft of 25 September 2015. Ms van Schieveen had noted that one element of the email was about leave being entered by CSIRO, on behalf of Dr Morton. She looked into that and, having done so, requested that the period of recreational leave that had been entered for Dr Morton be reinstated and that sick leave without pay be entered in place of the recreational leave.
3. Ms van Schieveen sent an email to Ms Davis stating that there should be an entry of sick leave without pay.
4. Ms van Schieveen was copied into the correspondence from Mr O’Donnell of 15 October 2015, regarding the adjustment to sick leave without pay.
5. Under cross-examination, Ms van Schieveen said that once the recreational leave had been removed and replaced with sick leave without pay, the recreational leave would have been restored to Dr Morton. She did not check to make sure that happened. She does not know whether the recreational leave was returned.
6. I accept the evidence of Ms van Schieveen to be credible and reliable.

## Evidence of Mr Craig Roy

1. Mr Craig Roy was employed as Deputy Chief Executive of the CSIRO Executive team between 2010 and 2018. He was the line manager for Dr Manners and Mr Heldt.
2. Mr Roy had a role regarding redundancy procedures. He described it as a role of “assurance”. He made sure that CSIRO followed the appropriate procedures and had an approach to make sure the steps taken in respect of redundancy were consistent with the organisational strategy and policies. He was required to approve redundancies in his area.
3. The first stage (Stage 1) of the redundancy process is for the business unit to create a business case around changing the workforce profile. The business case required Mr Roy’s approval. After approval, the business case would go to a Stage 2 review where the leader of the business unit and HR would identify individuals that fell within the scope of the potential change in the workforce and identify appropriate people for redundancy.
4. The VRS process provided an opportunity for individuals to identify themselves as voluntarily wanting to be redundant. Their names would be added to a list and, if an opportunity arose where that person’s desire could be satisfied, then CSIRO would work with them to do so. CSIRO far preferred an individual to be voluntarily made redundant, rather than involuntarily. CSIRO preferred to have people who wanted to stay with the organisation, rather than those who did not.
5. At the end of 2015, there was a process known as a “Deep Dive” that applied to all parts of CSIRO. In March 2016, the Chief Executive of CSIRO announced the need for redundancies at the start of 2016. The number of redundancies required was initially announced as 350.
6. The issue of external funding is an important consideration when deciding whether a position is made redundant.
7. Mr Roy was provided with a business case in relation to Dr Morton’s position. He also saw the Stage 2 business case. Mr Roy approved the business case. He did so because he had been assured by the leader of HR that due process had been followed and he considered that there was no longer a need for Dr Morton’s role in Agriculture. It was also noteworthy that the individual who had been made redundant had volunteered for redundancy, meaning that someone who did not want to leave the organisation would not have to.
8. In the 2016/2017 financial year, in excess of 250 people were made redundant at CSIRO. In 2015/2016 financial year, there were more than 80 redundancies. In 2014/2015, there were over 460 redundancies.
9. Under cross-examination, Mr Roy said the assurance he had been given that due process had been carried out was contained in an email. The assurance that the redeployment options had been exhausted was contained in the business case. He did not ask for any specific details about what redeployment steps had been taken.
10. Mr Roy said that he did not know that it was Dr Morton he was dealing with, when he looked at the Stage 1 business case. He was aware that there was a Comcare claim and an AAT appeal involving one of the staff members affected. Mr Roy confirmed that, later, he was aware that Dr Morton had been identified as excess to the needs of the organisation, that she had been making complaints within the organisation, that she had made a Comcare claim, and that she had made complaints about Dr Glencross and Dr Preston. He was not sure whether he was aware if she had made complaints about Mr Drury, or about her leave entitlements.
11. On re-examination, Mr Roy said that, at Stage 2, the identity of the person has to be known for the process to work. He said that in an email of 21 June 2016 from Mr Heldt, he had been advised that the procedural requirements had been met.
12. Mr Roy explained the relevance of a Comcare claim or an AAT appeal being drawn to his attention as going to organisational risk and to making sure they managed the individual appropriately, from a health and safety perspective. He said that he was concerned to make sure that the organisation did not discriminate against people in the process by making people redundant because they had particular matters outstanding.

## Evidence of Dr John Manners

1. Dr John Manners is the director of the CSIRO Agriculture and Food Business Unit. He commenced in that role in 2014. He met Dr Morton on one occasion.
2. Dr Manners said that Agriculture has a strong commercial focus. About 80% of its funding comes from outside CSIRO. The Agriculture program specifically targets investment from private enterprise rather than public funding agencies. At present, it is necessary for Agriculture to bring in around $120 million of external revenue per annum to meet the budget target. The budget target is effectively what is needed to pay the staff. CSIRO relies upon its research directors and senior scientists to bring in external revenue.
3. In January 2015, it came to Dr Manners’ attention that Dr Morton had lodged a grievance against Dr Glencross and Dr Preston. On 22 January 2015, Dr Manners sent an email to Dr Morton explaining his role as a delegate regarding the grievance.
4. A preliminary information gathering process was undertaken. On 10 March 2015, Dr Manners sent Dr Morton an email advising how the grievance process would proceed. In the email, Dr Manners said that, given Dr Glencross was leaving the organisation, he was required by the misconduct procedure to discontinue the enquiry regarding him. Dr Manners’ evidence was that he was not permitted to commit a misconduct enquiry regarding a person that was no longer with CSIRO.
5. Dr Manners then engaged an independent investigator, Mr Trevor Van Dam, to investigate the grievance against Dr Preston. He provided Mr Van Dam with a letter of 24 March 2015, giving him instructions to investigate the allegations against Dr Preston.
6. On about 14 May 2015, Mr Van Dam provided his final report. He concluded that there was insufficient evidence to find that Dr Preston had breached the CSIRO Code of Conduct. Dr Manners said that, upon reading his report, he agreed with the finding.
7. On 1 June 2015, Dr Morton sent an email requesting a copy of Mr Van Dam’s report. Dr Manners then sent an email to Ms Walsh on 1 June 2015, asking for advice as to whether Dr Morton should be given a copy. Ms Walsh advised that a redacted version should be provided, to keep the identity of the witnesses confidential.
8. Dr Manners sent an email to Dr Morton asking her to attend a face to face meeting. He received an out of office response. Dr Manners then wrote back to Dr Morton, asking if she was free on 25 June 2015, when he would next be in Brisbane. Dr Morton responded advising that she had been written off work, and asked to reschedule the meeting after 6 July 2015.
9. No meeting was eventually organised, because Dr Morton did not return to work.
10. In late 2015, the Agriculture area was under budgetary pressure and it was anticipated that there would be a shortfall of about $5 million in that financial year. It was necessary to undertake staff redundancies. There was a meeting known as a “fireside chat” held on 11 February 2016. Dr Manners said that he was not prepared to entertain a forced redundancy for Dr Morton, because he did not think that was appropriate. Dr Morton was at that stage on sick/stress leave and felt that it would make matters worse for Dr Morton if they were to go down the track of a forced redundancy. Dr Cook had suggested at the meeting that a redundancy for Dr Morton would be a possibility. Dr Manners’ response was that they should not take that path, because it was not appropriate that they should act while somebody was in rehabilitation and not at work and, in addition, the Aquaculture area was not an area that they were heavily targeting for staff reductions at that stage. It was also discussed that the area Dr Morton was working in was not an area where they were receiving substantial investment and that if she did return to work, then there would not be substantial external funding to support the role.
11. Dr Manners was taken to the request for approval to act on a potential redundancy in the Aquaculture program. He approved the case because they had a request for a VRS from Dr Morton and they could fulfil that request by making Dr Morton redundant. It would also allow another staff member to be kept on who would otherwise have had a forced redundancy. Dr Manners considered that, if a staff member requests a VRS, they are indicating quite clearly to the organisation that they are happy to leave and free up resources for keeping another staff member.
12. Dr Manners had been looking for an opportunity to save the position of a manager of their field station in North Queensland. The redundancy would have involved a sale of the field station, but he was reluctant for CSIRO to divest itself of that asset. In addition, the employee lived at the station with his family. He was looking for a way that would save that position.
13. Dr Manners said that, if Dr Morton had not asked for a VRS, he would not have supported a redundancy case. That was because she was still in rehabilitation. Taking that action against her could have led to lead to litigation and, in addition, he did not think that it was ethical to do so. He thought that CSIRO owed it to its staff to do the right thing by them.
14. Dr Manners said it was not unusual to have an employee making formal complaints and lodging a Comcare claim.
15. Under cross-examination, Dr Manners said that his understanding was that Dr Glencross was leaving the organisation about two weeks after his email to Dr Glencross, which would have left insufficient time to conduct an investigation and undertake any action.
16. Dr Manners’ view was that instigating preliminary information gathering was, in fact, a proactive step of investigating the claims. The next step would have been further investigation, which seemed pointless as Dr Glencross was leaving the organisation.
17. Dr Manners denied that it was his view that the allegations against Dr Glencross just were not serious enough to warrant any investigation. He maintained that investigating Dr Glencross was futile, because he was leaving the organisation. He agreed that there may have been some benefit to the organisation in investigating the allegations.
18. Dr Manners was not aware of Dr Preston’s action in sending his view of the meeting of 22 October 2014 to Dr Cook. Dr Manners indicated that he would have liked that information to have been provided to the investigator. Dr Manners said that he did not know why Dr Morton was not sent the redacted report, although reports are usually provided in a face to face meeting to explain the findings and discuss them with the complainant.
19. Dr Manners was taken to CSIRO’s Grievance Procedures. He said he did not recall Dr Cook saying “We don’t have any work or dollars if she returns to the workplace”, but agreed that was indicated in the notes of the meeting. He said he was not aware that if somebody who was on Comcare is made redundant, it could cost the organisation a lot of money in incapacity payments. He denied that he saw the redundancy as a “litigation risk”, but said it was a risk of complicating what was already a difficult situation.
20. Dr Manners was taken to the email from Dr Morton of 17 May 2016. Dr Manners said he had not seen that email before these proceedings. He said that he did not know that Dr Morton was not happy to be leaving CSIRO. He was aware that it was very difficult for Dr Morton to return to work and there were, in her mind, many obstacles to that.
21. Dr Manners said that Ms Walsh had talked to him about concerns that Dr Morton had raised in returning to work. He did not know that Dr Morton said she could no longer see any path back to a career at CSIRO, nor a safe working environment within the organisation. However, he would have surmised that her motivation for the VRS request was that she no longer saw CSIRO as a place where she wanted to build her career.
22. Dr Manners said that if Dr Morton wished to visit Bribie Island, then Dr Glencross would be contacted and told not to be present. He did not know whether that process was implemented.
23. Dr Manners was taken to an email he sent to Mr Roy. He had taken Dr Cook aside, with Ms Walsh present, and spoken to him about being careful with his language and professional conduct. He was told that when he was in a social situation with a work colleague it was still necessary to maintain a professional demeanour. He did not enquire as to the nature of the emails between Dr Morton and Dr Cook.
24. Dr Manners denied that, when Dr Morton indicated she would accept a VRS, he thought that was a green light to get her out of the organisation. He denied that because she had asked for it, he did not need to comply with the Enterprise Bargaining Agreement.
25. Dr Manners said that he thought that the redundancy was an avenue to resolve the situation for both Dr Morton and CSIRO. She could move on and had made a decision to move on.

## Evidence of Ms Rayleen Gaal

1. Ms Rayleen Gaal was employed as a HR Service Advisor with CSIRO. She has held that role since 2011. She reports to Mr Miller.
2. Ms Gaal was involved with dealing with issues concerning Dr Morton’s leave. She was aware that on 19 August 2015, Dr Morton’s Comcare claim was denied and that she would not receive compensation payments. On 20 August 2015, she changed Dr Morton’s leave in the system from paid sick leave to recreational leave. She did that because her paid sick leave was exhausted, and recreational leave was the next form of leave to be used.
3. Ms Gaal said that, in normal circumstances, an employee can access the SAP system to enter leave requests. However, if a person has a compensation claim, and has reached their 45 weeks of incapacity, a new information type is entered into the system and from that point on the staff self-service portal could not be used to enter leave. She could not recall whether she or someone else made that transaction entry in relation to Dr Morton. She said that if it was her, it was not done for any improper purpose.
4. Under cross-examination, Ms Gaal recalled that, in September 2015, Dr Morton contacted her about her leave on the system. Dr Morton had an enquiry about what her leave balances were.
5. Ms Gaal agreed that the code for stopping a person’s access to the SAP system was a code that was manually entered. The code was “9NW2”. She agreed that it was possible to undertake a forensic examination of the system to see when that code was entered.

## Evidence of Mr Trevor Heldt

1. Mr Trevor Heldt is the HR Director at CSIRO. He commenced that position in about 2006.
2. Mr Heldt deals with redundancies at CSIRO. The number of redundancies varies between about 80 and 450 per year. CSIRO is partly funded by government, but approximately 40% of funding comes from industry and other work. That means that CSIRO needs to change, from time to time when particular skills or the work they are undertaking are no longer required.
3. CSIRO takes a business case approach to redundancy that involves two stages. Case 1 deals with the reasons, compliance with the Enterprise Agreement and other procedures. Case 2 deals with an individual officer, so that CSIRO can account and align the regional business case and how the individual has been through that process. Mr Heldt has an administrative role in dealing with Case 1 and 2. He conducts a procedural review of the business case for compliance with the Enterprise Agreement, and the required procedures. Mr Heldt cleared the Case 1 and 2 in respect of Dr Morton’s redundancy. CSIRO’s general position is to make its best efforts to accommodate VRS requests.
4. Mr Heldt was aware that Dr Morton had lodged a grievance against two staff members and that she had lodged a workers’ compensation claim. He denied that his actions were related to those complaints.
5. Under cross-examination, Mr Heldt agreed that it was only in the second stage that he would look at the individual who was attached to the position. He acknowledged that the Case 1 documents referred to the staff member currently having a Comcare claim and the location of the potential impact as Brisbane and Bribie Island. It was put to him that he knew it was Dr Morton’s redundancy that was the subject of the business case. Mr Heldt denied that. He said there were 5,500 employees in CSIRO and he was not aware of the location of every officer and their name and situation.
6. Mr Heldt was taken to an email he sent to Mr Roy. In that email, he said that Dr Morton had been identified as excess to the needs of the organisation. He confirmed that the requirements of the People Policy and Enterprise Agreement had been met. He was satisfied that redeployment efforts had been met, and relied upon the business case for that information.

## Evidence of Mr Marty Phillips

1. Mr Lewis Martin Phillips operates a fish farm at Mourilyan, near Innisfail, in Far North Queensland.
2. Prior to May 2012, Mr Phillips had met Dr Glencross several times. He used to speak to Mr Glencross on a semi-regular basis about barramundi work. Mr Phillips had not seen or communicated with Dr Glencross since he left Australia.
3. On one visit, Dr Glencross brought Dr Morton to Mr Phillips’ farm. In May 2012, Mr Phillips attended the Agriculture Australia conference in Melbourne. Mr Phillips was president of the Australian Barramundi Farmers’ Association, and Dr Glencross had requested that they meet to discuss industry issues. Mr Phillips met Dr Glencross and Dr Morton at a hotel bar, prior to the conference dinner.
4. Mr Phillips had no recollection of Dr Glencross referring to Dr Morton as a prostitute. When asked whether he would recall that statement being made by Dr Glencross, if it were made, Mr Phillips answered, “Quite possibly”. He said he found Dr Glencross to be a very professional, kind and courteous person. It would have been rather out of character for him to make that comment and he did not recall that happening.
5. Mr Phillips also said that he had no recollection of Dr Glencross commenting that Dr Morton had crows-feet. When asked if he would recall such a comment if it were made, he again said “Quite possibly”. He said that he had not heard Dr Glencross speak that way about anyone and it would have been very out of character.

## Evidence of Mr Trevor Van Dam

1. Mr Trevor Van Dam is a principal reviewer of a business that specialises in conducting workplace investigations. In an affidavit, Mr Van Dam said:

**Engagement by CSIRO**

7 On 24 March 2015, Dr John Manners wrote to me and requested that I conduct an inquiry under CSI RO’s Misconduct Procedure into suspected misconduct on the part of Dr Nigel Preston (**CB 416:9, COM.001.008.0917**).

**Terms of reference for the investigation**

8 The letter of 24 March 2015 engaged me to conduct an inquiry into suspected misconduct against Dr Preston pursuant to the CSIRO Terms and Conditions of Service and the Misconduct Procedure.

9 I was not engaged to investigate the conduct of Dr Brett Glencross, although his alleged behaviour was discussed as part of the investigation into Dr Preston.

10 I was engaged as an independent investigator. In so doing, I did not act on behalf of CSIRO but on my own behalf. I also reported back to CSIRO in that independent capacity.

**General approach to the investigation process**

11 When conducting an investigation, I typically review the written complaint and interview the complainant before interviewing any witnesses. After that, I interview any witnesses identified and the respondent.

12 I only speak to the complainant again if there is a need to seek clarification about something or if allegations were made against the complainant.

13 I do not usually give a complainant an opportunity to review or respond to the respondent’s evidence, before I finalise the report.

**Conducting the investigation**

14 I conducted the investigation into Dr Morton’s complaint in accordance with the terms of reference provided to me.

15 I interviewed Dr Morton, Dr Mathew Cook and Dr Preston in the course of the investigation. These interviews were recorded and transcribed.

16 I did not consider that there was a need to speak to Dr Morton again after I spoke to Drs Preston and Cook.

**Outcome of the investigation**

17 On 14 May 2014, I provided my findings and recommendations to Dr Manners that the complaint of misconduct against Dr Preston was not sustained. I had no further involvement in the matter after this point. (**CB 457:10; COM.001.001.4576**).

(Emphasis in the original.)

1. Under cross-examination, Mr Van Dam was taken to the email from Dr Preston to Dr Cook outlining what happened at the meeting. He was asked whether he would have had to consider what Dr Preston said more carefully if he had known that Dr Preston had sent Dr Cook that email. Mr Van Dam answered, “Quite possibly”. When asked whether it detracted from his reliability as a witness, his answer was, “It may detract, your Honour, yes”.

## Evidence of Dr Anthony Worby

1. Dr Anthony Worby commenced at CSIRO in November 2001. From that time, until June 2014, he had responsibility for staff based on Bribie Island. He then left CSIRO in July 2014, until he took up a new position with CSIRO in August 2017.
2. Dr Worby was the line manager for Mr Brewer in his initial period with CSIRO. He knew Dr Morton and Dr Glencross.
3. Mr Worby stated that Dr Glencross was an outstanding scientist. He said that Dr Glencross could be described as “brisk”. He was a very driven scientist and on a number of occasions, Dr Worby discussed with him that he might soften his management style towards other people.
4. On 19 April 2013, Dr Worby had a meeting with Dr Morton. Mr Nicholas Bourne was also there. Dr Morton said that she felt she had a difficult relationship with Dr Glencross. She said that when they would go to Bribie Island to run experiments, he would often change things around without much regard for the efforts of the people who were already out there. Dr Worby said that Dr Morton did not allege that there was any misconduct by Dr Glencross of a sexual nature. She did not allege that Dr Glencross made derogatory comments about her.
5. Apart from that meeting, Dr Worby would occasionally meet Dr Morton. They did talk about Dr Glencross during those meetings. Dr Morton expressed a level of frustration with Dr Glencross’ style. In those discussions, Dr Morton did not raise allegations against Dr Glencross of a sexual nature, or suggest that he made comments of a derogatory nature.
6. Dr Worby had a number of meetings with Dr Glencross in 2012 and 2013 to discuss how he might grow, professionally, into his role. Part of the context around this was the imminent retirement of Dr Preston and the fact that CSIRO would be looking for another senior person to step into Dr Preston’s shoes. Dr Glencross had the skills to do that from a scientific perspective, but did not have the people skills or management skills. Dr Worby was having discussions with Dr Glencross about whether they could improve his management style to the point where he might be able to take over from Dr Preston. They also discussed how to improve his interactions with staff at his level.
7. Dr Worby’s evidence was that it was essential for CSIRO to bring in external funding from clients in order to deliver on the strategic objectives of the organisation and deliver on projects.
8. Under cross-examination, it was suggested that Dr Morton told Dr Worby that Dr Glencross had hit her on the backside with a riding crop. Dr Worby said that was not true. It was also put to Dr Worby that Dr Morton told him that Dr Glencross had made derogatory comments about her cleavage, had made comments in relation to her crows-feet, had referred to her as a prostitute and had asked her what her sexual preference was. Dr Worby denied that Dr Morton told him those things.
9. Dr Worby acknowledged that in respect of an application by Dr Glencross for promotion, he had said, “Brett’s behaviour does, at times, push the limits of what is acceptable in the workplace”. He said that Dr Glencross had a style in the workplace that could be difficult, but it was not at a scale which he thought should hold him back from promotion, but it was behaviour that he spoke to Dr Glencross about a number of times. He had a discussion with Dr Glencross and Dr Preston about some professional development and some coaching.
10. It was put to Dr Worby that, because Dr Glencross was so good at bringing in external funding, he was able to turn a blind eye to Dr Glencross’ behaviour. Dr Worby said that was not a correct characterisation. He said that Dr Glencross was an excellent scientist who had a challenging manner at times. Some of his interactions with other staff could have been better, but Dr Worby thought that dealing with it informally was the most appropriate vehicle.
11. Under re-examination, Dr Worby was asked to explain what he meant by Dr Glencross pushing the limits of what was acceptable in the workforce. Dr Worby said that Dr Glencross’ behaviour was only ever intended to get the best possible outcome for the science. He thought that if there was something that might not have been set up in a particular way when he arrived at Bribie Island, he would just go about changing it and that frustrated and upset some people. However, Dr Worby said there was never anything malicious in that that he was aware of. He said that often the best scientists are the most difficult to manage, and this was another case of an excellent scientist who did not have the desirable level of personal skills.

## Evidence of Mr Gavin Drury

1. Mr Gavin Drury is an exercise scientist. Between January 2014 and 2015, he was employed at CSIRO as an injury management coordinator. Between March 2015 and August 2015, he was the case manager assigned to Dr Morton.
2. Mr Drury’s primary role as a case manager was to facilitate an effective return to work and provide a pathway for ill or injured employees to get back to the workplace. CSIRO had an early intervention policy.
3. In March 2015, Mr Drury received some documents concerning Dr Morton’s claim. He telephoned her. He said he discussed the Comcare procedures for lodging a claim and the early intervention process for employees who were ill or injured. He said he told her that there were a range of options and that early intervention could be applied to a Comcare claim being submitted, and that would continue up to the point that Comcare made a decision regarding the claim. He said that, depending on what the illness was, allied health professionals could be engaged. In Dr Morton’s case, a psychologist could be appointed or discussion could occur with a GP or referral to a specialist could be implemented to assist with her recovery and return to work.
4. When asked about Dr Morton’s allegation that he accused her of only filing a Comcare claim because she was unhappy with the grievance investigation outcome, he said that was incorrect.
5. Mr Drury said he was aware that Dr Rees had written Dr Morton off from work for three months. He says he told Dr Morton that he was concerned, based on his previous Comcare experience, that a large amount of time off work would reduce her chances of returning to the workforce successfully. He wanted to ask whether the certificate could be revised such that they could implement an effective return to work plan. He could not remember Dr Morton’s exact response. Mr Drury denied that he told Dr Morton, “Three months off would not do your career any good”.
6. Mr Drury said that, in his experience, the longer the time an employee takes off work, the less successful the outcome of returning to work in a meaningful manner. He was concerned that a lengthy certificate would impede CSIRO’s ability to facilitate a return to work. Mr Drury’s view was that if someone was off work for 90 days, the chance of returning to work would be quite poor. While he could not remember the exact figure, the chances would be reduced quite heavily.
7. Mr Drury said that his motive in discussing with Dr Morton the possibility of looking for options to come back to work earlier was just to facilitate a good return to work. He was concerned that three months off would impair her ability to be employed in her area of expertise, so he was trying to explore the possibility of finding alternative work. He was concerned the Dr Morton might not be able to find reasonable employment if she was off work for an extended time.
8. When asked whether he mentioned to Dr Morton that he was a clinician during the telephone call, he agreed that he had.
9. Dr Morton had some exchanges of emails with Mr Drury. On 30 July 2015, he forwarded the exchange of emails to Ms Lyons. Around that time, Dr Morton asked for the name of his line manager. Mr Drury said he did not provide Dr Morton with the name of his supervisor because he did not have a supervisor at that time, but he did forward her concerns to Ms Heather Campbell, who was the general manager of HSC.
10. Mr Drury was taken to a response to Dr Morton’s complaint from Ms Campbell that he was copied into. He confirmed that the matters in the email were correct. When asked whether Ms Campbell consulted with him regarding the contents of the email, he said, “I can’t remember, your Honour”.
11. Under cross-examination, it was put to Mr Drury that when he had worked at the Department of Human Services, one of his major achievements was reducing their workers’ compensation provisions. He agreed that it was and that it was a skill.
12. Mr Drury was asked whether, as a case manager, one criterion for assessing how well he was doing was the extent of the reduction of claims. He responded that it was more about facilitating a return to work. Getting people to return to work would reduce the premium. He denied that he had a vested interest in getting people back to work, saying that his interest was to try and facilitate a wholesome return to work. As someone with a clinical background, the rewards for him came from actually finding meaningful work for injured employees.
13. Mr Drury denied that he knew that Dr Morton had made formal complaint about Dr Glencross and Dr Preston in March 2015. He denied that he asked Dr Morton if she was making a Comcare claim because she was not happy with the outcome of the grievance.
14. It was put to Mr Drury that he was not happy with the fact that a psychiatrist had given Dr Morton three months away from work. His response was that his emotions did not come into the role. His job was to facilitate a return to work. It was part of his role to challenge some of the medical certificates that he thought were quite lengthy, based on the statistics and evidence about a lengthy time off work. As part of the Comcare and CSIRO policy, one would automatically send for an independent assessment to ensure that CSIRO was getting the best medical advice to make sure someone was getting back to work in a timely manner and was being treated appropriately. Mr Drury denied that he was challenging Dr Rees’ medical certificate. He said an independent assessor would make that determination.
15. Mr Drury was challenged upon calling himself a clinician. He maintained that he is a clinician. It was put that he was not a mental health clinician, but he said he did not tell Dr Morton that he was a mental health clinician. He is a clinically trained exercise scientist.
16. Mr Drury agreed that Dr Morton may have asked about his background and he may have said “Yes, I am a clinician”. He denied that he wanted to give Dr Morton the impression that he was a doctor or a nurse. He said he wanted to give her the confidence that he had been in this area for 15 + years, that he was familiar with the Comcare scheme, that he had dealt with many difficult long and complex cases and that he could assist her to return to work. He accepted that he did not say those exact words, but said that is what he was thinking.
17. It was put that Mr Drury did not have any formal training in the area of mental health or psychological injury. Mr Drury said that he would have attended quite a few courses working for Comcare and the Department of Health about dealing with mental health issues. He said that when working within CSIRO, he was not making clinical decisions, but by having a clinical background, he could understand the process and pathway between early intervention and return to work. Therefore he was in a good position to help facilitate that process.
18. Mr Drury did not accept that he told Dr Morton that he was going to bring her back to work in the next couple of weeks. He denied that his motive was to get Dr Morton back to the workplace as quickly as possible regardless of the medical certificate she had provided. He denied that he said to Dr Morton, “If you don’t make a claim, CSIRO will pay for all the expenses”.
19. It was put to Mr Drury that he told Dr Morton that he was worried about the fact that she may not get reasonable employment if she was off for three months. He said he did not remember the exact conversation. He denied that he told Dr Morton that her job would be at jeopardy if she made a workers’ compensation claim, and denied that he talked to her in a way that would give her that impression.
20. Mr Drury accepted that, in his email to Dr Morton of 8 July 2015, he asked to meet her on 4 or 5 August 2015. He said that he wanted to have the meeting in his capacity as an injury management coordinator, as it was usual to meet injured or ill employees and try to facilitate their return to work.
21. It was put to Mr Drury, that by describing himself as a clinician, he wanted her to think that he was a mental health professional. Mr Drury denied that.
22. Mr Drury accepted that Dr Morton made a complaint to Ms Pickering and copied him into the complaint. In an email to Ms Lyons, Mr Drury said, “Presumably, as discussed, I will draft an email for you to send in relation to Katherine’s questions”. Mr Drury said that the questions would have been discussed primarily between Ms Campbell and Ms Lyons. He accepted that he may also have spoken to Ms Lyons.
23. Mr Drury accepted that he wrote an email dated 29 July 2015. In the email, he said, “Katherine will need to be directed accordingly”. He denied that this was his way of saying that it was necessary to take a tough stance with Dr Morton’s claim. He said that comment was about taking appropriate action to facilitate her return to work. He said that:

Often as a case manager, you get sticky situations where there is a bit of sort of rebuttal from injured employees or claimants, and sometimes you need some other professionals to take the reins and put a distance and see it from a—you know an overarching prospective.

1. Mr Drury said that he was asking his senior manager for her input to help move this case in the right direction. He said his fear was, based upon the initial certification of three months, that he would lack engagement from Dr Morton. He thought he should get some other eyes to look at this.
2. When asked what Dr Morton was going to be directed to do, Mr Drury said that she wouldn’t be directed to do anything particularly. It was just to engage in the return to work–process under s 36 of the SRC Act, which would involve engaging in any medical assessments relevant to her condition and working with himself, or another return to work coordinator.
3. Mr Drury said, in his email, that he had documented, in detail, his conversation with Dr Morton. He said he had written some notes which were part of the initial file. He did not know what had happened to them.
4. It was pointed out that Mr Drury had said, “There is a pattern of behaviour here which is quite alarming. I will need the full support of HSC and HR to manage this case”. Mr Drury said he was referring to, perhaps, complaints made against him. He was concerned about not getting engagement from Dr Morton. It was an unusual claim. He copied a number of other persons, to help facilitate the return to work and to seek advice from his peers.
5. Mr Drury was asked why he found Dr Morton’s comments about his dealings with her be alarming. He answered, “I don’t know your Honour”. He was asked whether it was because the pattern of behaviour was not necessarily about the complaints Dr Morton had been making about him, but the complaints she had been making about other people at CSIRO that he was aware of. Mr Drury said that he did not know. When he was asked again what was so alarming, his response was that it was probably the lack of engagement from Dr Morton in the return to work process.
6. Mr Drury was asked about his comment that “I have had two debrief sessions for clinical peers about Mrs Morton’s behaviour and attitude and the best way to manage her claim”. He said that he was seeking clarity on how to engage Dr Morton in the return to work process so that they could provide some form of early intervention. He denied that the comment was about her behaviour and attitude towards him and the fact that she made a complaint about him. He also denied that it was about the fact that she made complaints about others. He denied that “the best way to manage her claim” was really a reference to getting her off Comcare. He said the best way to manage her claim was to facilitate a robust return to work.
7. Mr Drury acknowledged that he was aware Dr Morton had made a grievance about Dr Preston and Dr Glencross. The formal grievance was attached to the Comcare claim that he received in March 2015.
8. Mr Drury had organised an appointment for Dr Morton to see a Dr Eveline Timmins. On 19 August 2015, Mr Drury sent an email to Dr Morton saying that she did not need to attend the assessment of Dr Timmins and he had cancelled the appointment. He did not agree that the reason he cancelled the appointment was that the decision to accept her Comcare claim had been revoked. He later accepted that the appointment could have been cancelled for a number of reasons, including that the Comcare decision had been revoked. Mr Drury was asked whether it bothered him that Dr Morton was not being assessed. He said that it would have bothered him, but perhaps another appointment was being set up or another doctor had been arranged. He then said he did not recall the exact reason the appointment was cancelled.
9. Mr Drury was asked whether he remembered receiving an email from Maria Avgeropoulos dated 3 August 2015. The email concerned a request Dr Morton made regarding wanting documentation that was going to be used in her s 36 assessment. It was put to Mr Drury that he did not want to provide that documentation to Dr Morton, because he had a personal grudge against her. He denied that. He denied that he was upset with her perceived attitude and repeated behaviour towards him. He denied that he was upset because she had called him out as not being a clinician. He denied that he was upset because she would not meet with him because she had a medical certificate and was suffering psychological injury.
10. Upon re-examination, Mr Drury said that he wanted to meet with Dr Morton to try to get a better understanding of her case. Further, he thought that meeting in person may facilitate a better outcome. Sometimes meeting the injured person could assist and build a bit of a bridge. Mr Drury said that, in his experience, it was unusual that a person he was case managing would refuse to meet him.
11. Mr Drury rejected the suggestion that his motive in dealing with Dr Morton was simply to reduce CSIRO’s Comcare premiums. He said that he tried to look after the injured parties, and any reduction of the premium would be a by-product of the good work that he did to facilitate a return to work. He denied that he ever held a grudge against Dr Morton.