

Psychological injuries and Section 11A

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Contents

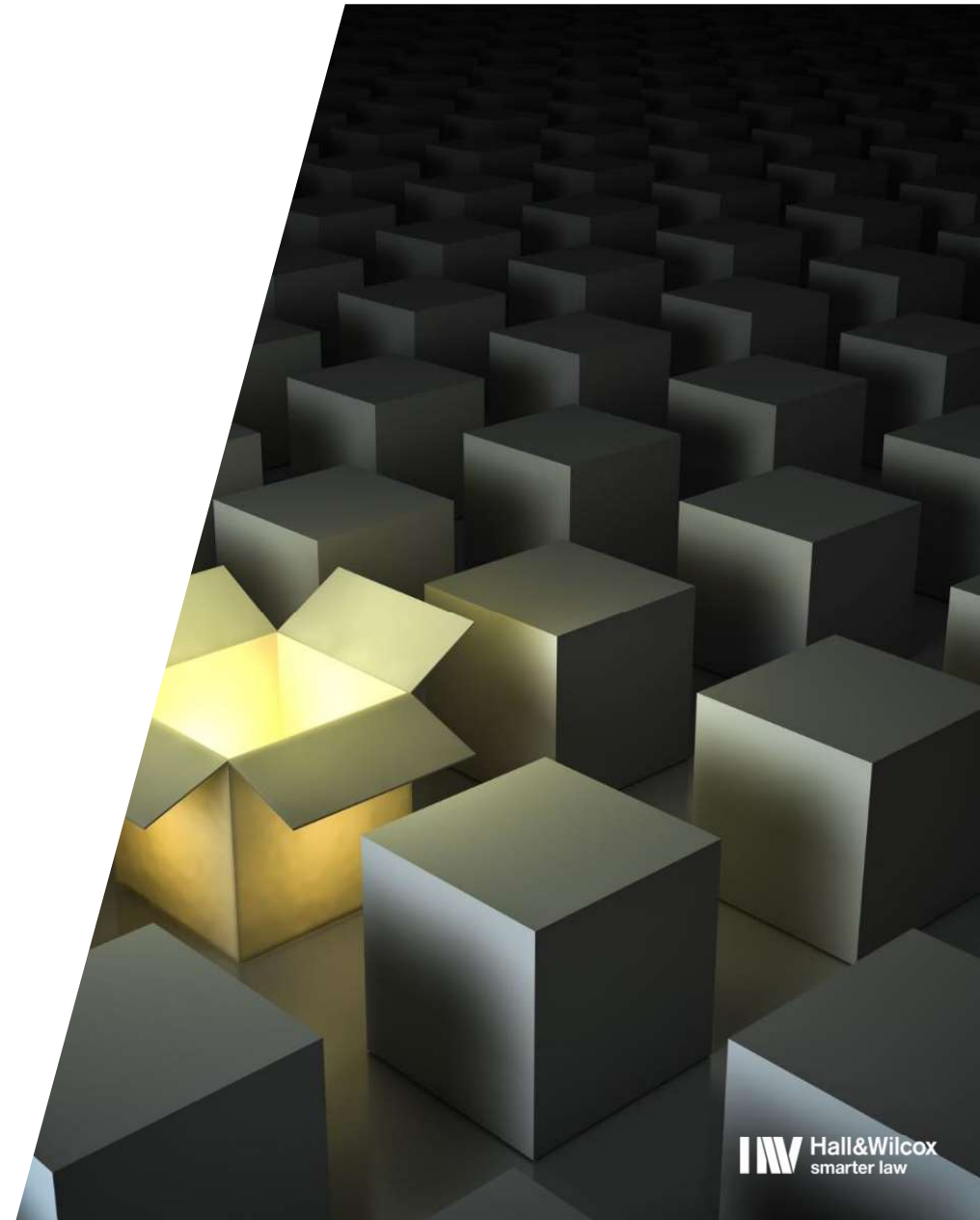
Elements of s11A(1)

Statistics

The vaccine cases

Recent decisions

Take away points



Elements of s11A(1)

Onus on employer to establish:

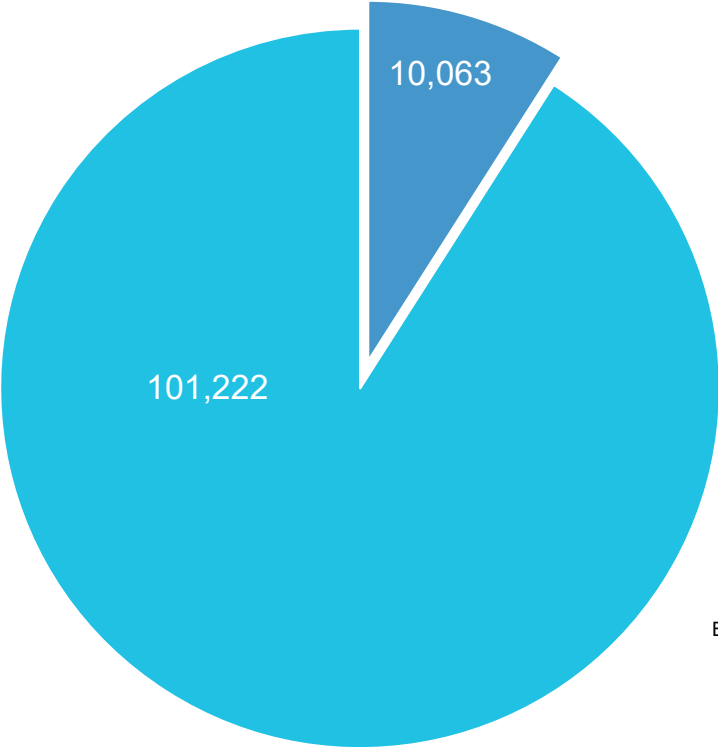
- cause of injury involved action with respect to

transfer	promotion	discipline	dismissal
demotion	performance appraisal	retrenchment	provision of employment benefits

- the action was the whole or predominant cause of the injury
- the action taken or proposed to be taken was reasonable

Statistics

Claims for the 2023 calendar year

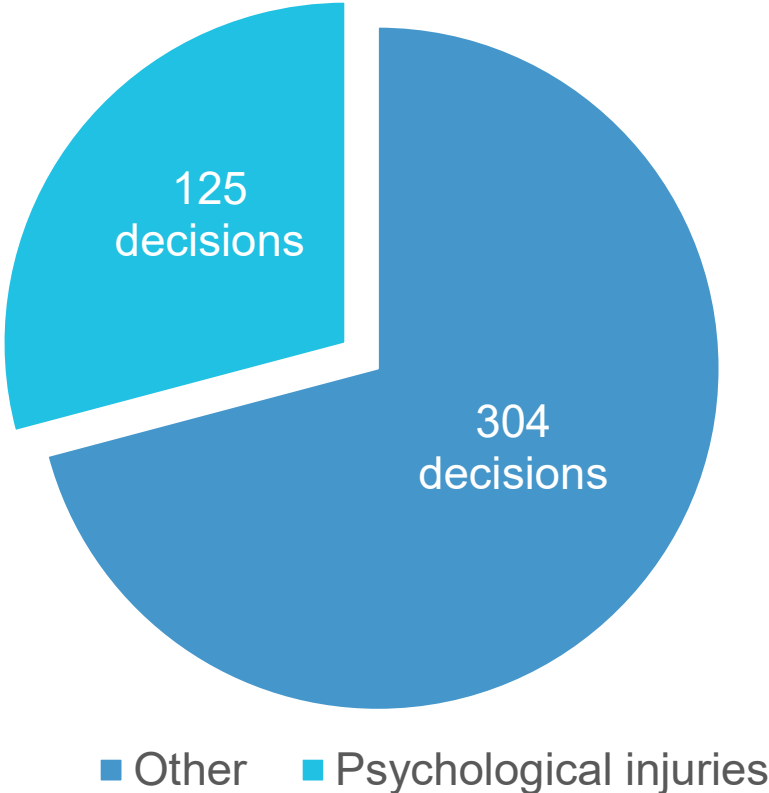


Based upon SIRA claims data

■ Mental stress claims ■ Other claims

Statistics

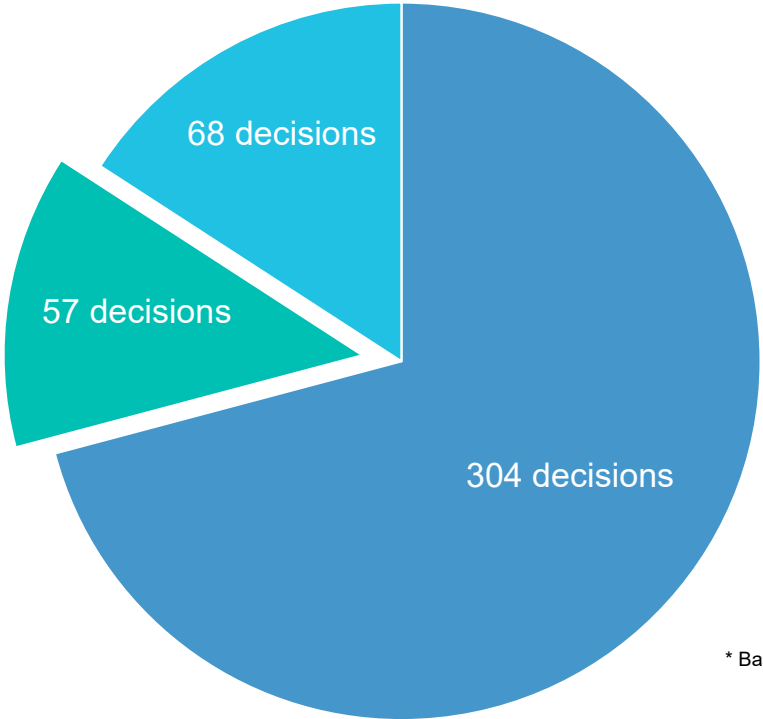
Workers compensation published decisions of the PIC in 2023 calendar year



* Based on decisions published on austlii

Statistics

Workers compensation published decisions of the PIC in 2023 calendar year

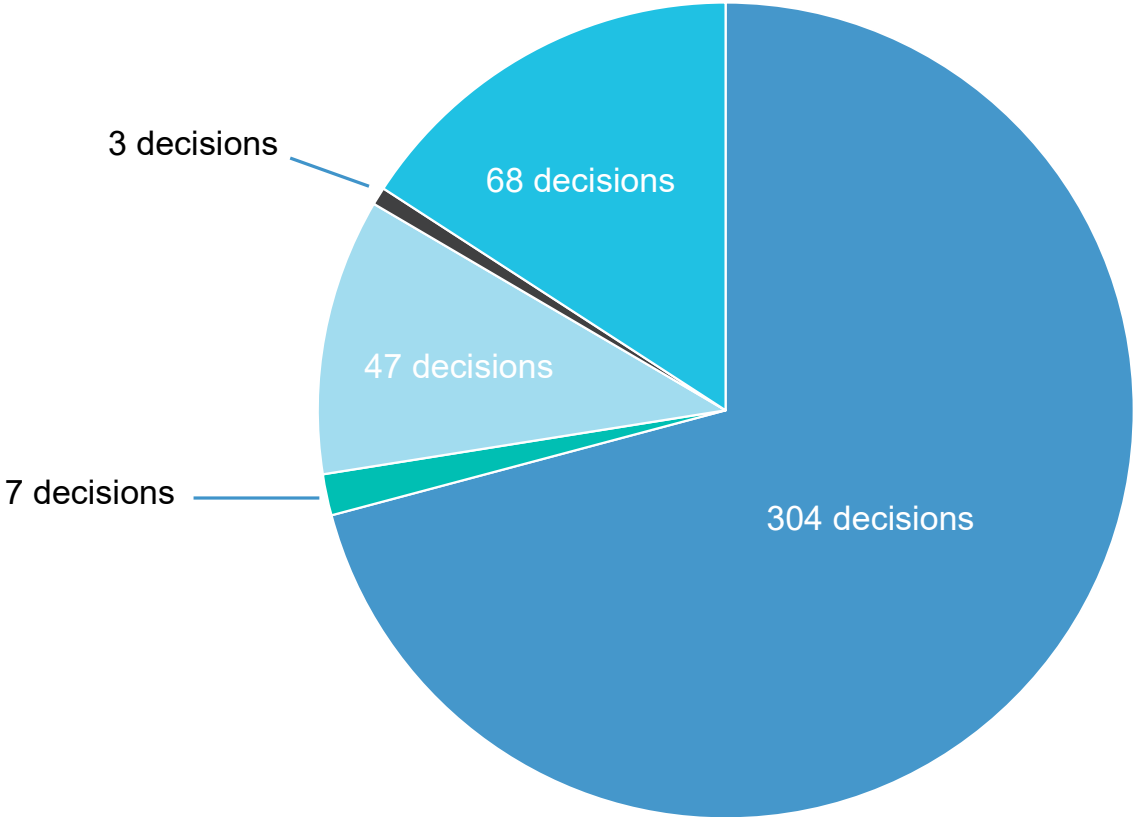


* Based upon decisions published on austlii

- Other
- Psychological injuries in which a s 11A defence was raised
- Psychological injuries

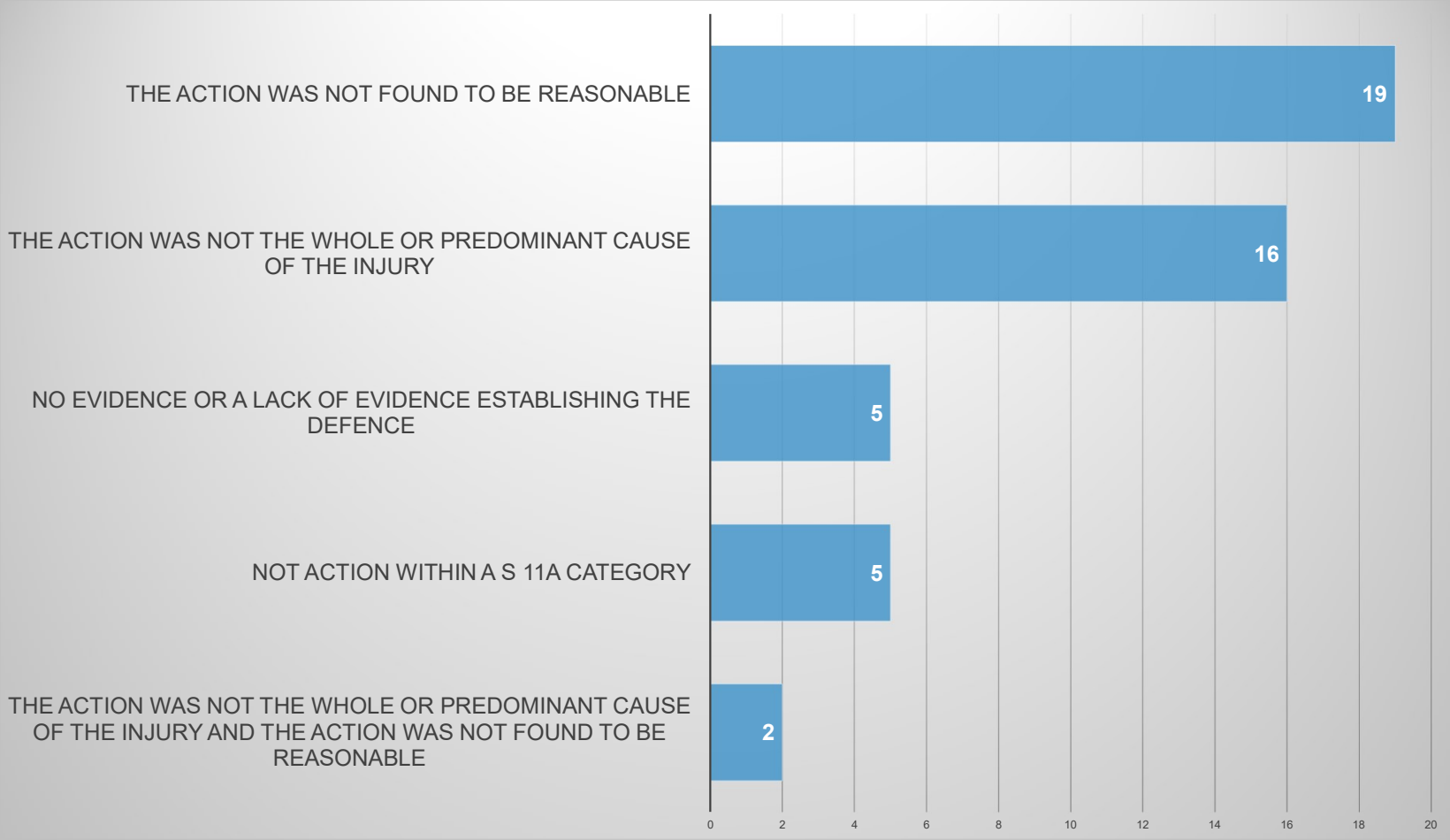
Statistics

Workers compensation published decisions of the PIC in 2023 calendar year



■ Other ■ S11A(1) applied ■ S11A(1) did not apply ■ Finding of no injury ■ Psychological injuries

Reasons why 11A(1) did not apply



The vaccine cases

- *Secretary, Department of Education v Dawking* [2024] NSWCA 4
 - *Secretary, Department of Education v Dawking* [2023] NSWPICPD 23
 - *Dawking v Secretary (Department of Education)* [2022] NSWPIC 611
- *Secretary, Department of Education v Davis* [2024] NSWPICPD
 - *Davis v Secretary, Department of Education* [2022] NSWPIC 715
- *Secretary, Department of Education v Uzunovska* [2024] NSWPICPD 19
 - *Uzunovska v Secretary, Department of Education* [2023] NSWPIC 64

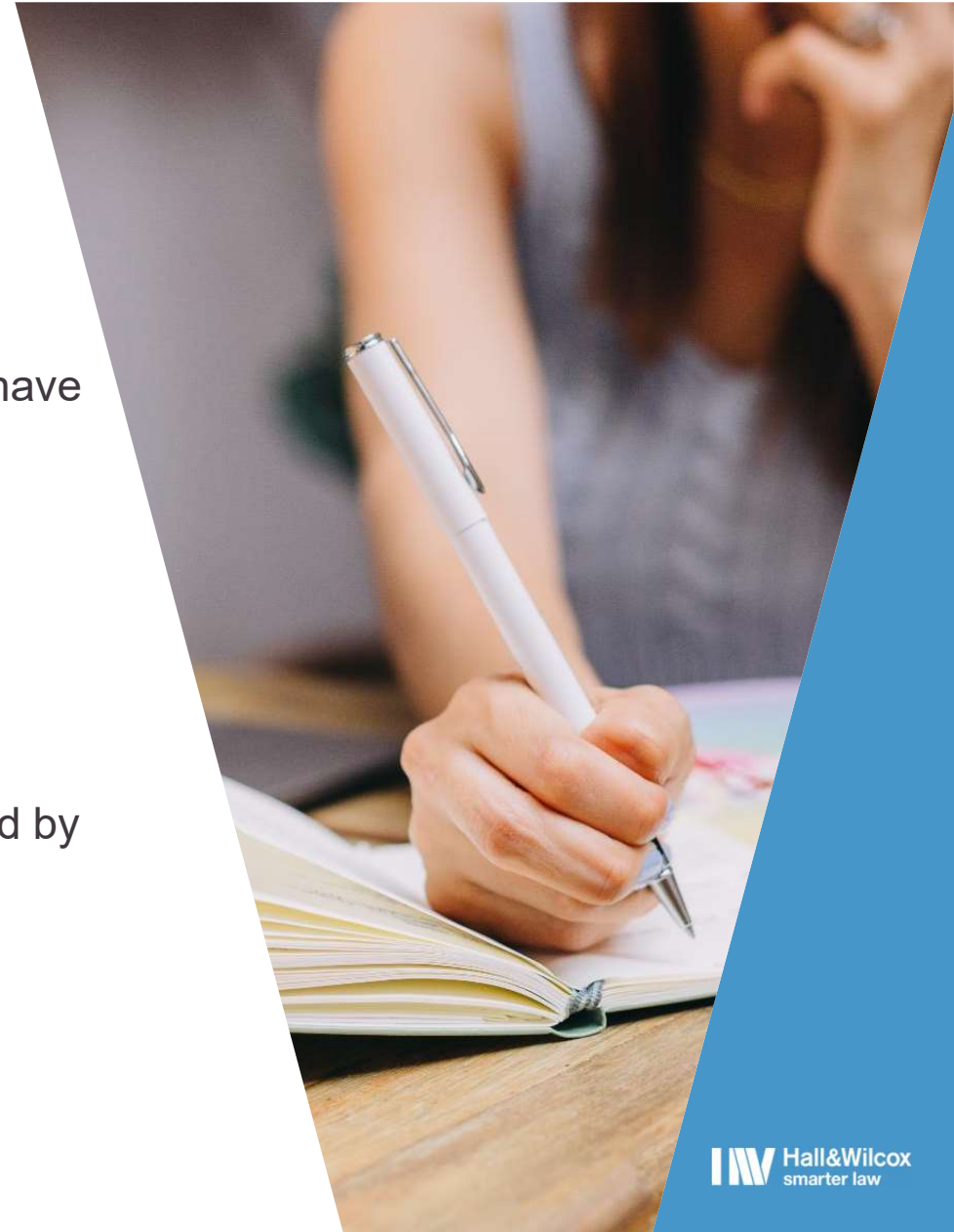


Recent decisions

- *Kanajenahalli v State of New South Wales (Western New South Wales Local Health District)* [2023] NSWCA 202
- *H J Heinz Company Australia Limited v Tagudin* [2023] NSWPICPD 82
- *BFN v Australian Unity Home Care Service Pty Limited* [2023] NSWPIC 156
- *State of New South Wales (NSW Police Force) v Plant* [2024] NSWPICPD 11
- *BHK v Secretary, Department of Education* [2024] NSWPICPD 10

Take away points

- Findings of fact rest with decision maker at first instance (Member) and unlikely to be disturbed on appeal if they have rational support in the evidence
- Requirement for evidence of the whole process (note incoming 500 page limit by PIC)
- Requirement for medical evidence if there are multiple factors giving rise to the injury
- Is it really the case that only 7 in some 10,000 claims for psychological injuries are wholly or predominantly caused by reasonable actions of an employer?



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Thank you!