

IN THE HIGH COURT OF AUSTRALIA

CANBERRA REGISTRY

NO C 12 OF 2018

On Appeal From the Administrative Appeals Tribunal

BETWEEN:

COMCARE

Appellant

AND:

MS MICHAELA BANERJI

Respondent

AND:

**ATTORNEY-GENERAL OF THE
COMMONWEALTH**

Intervener

APPELLANT'S CHRONOLOGY



Filed on behalf of Comcare by:

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PART I INTERNET PUBLICATION

1. This chronology is in a form suitable for publication on the internet.

PART II CHRONOLOGY

No.	Date	Event	Reference
10	10 April 2006	The Respondent was offered and accepted employment as an ongoing APS 6 employee with the Ombudsman and HREOC section of the (then) Commonwealth Department of Immigration and Border Protection.	CAB: p.7 [3(3)]
	29 May 2006	The Respondent commenced her ongoing role at the (then) Commonwealth Department of Immigration and Border Protection.	CAB: p.7 [3(4)]
20	25 January 2012	The Respondent commenced posting on Twitter the tweets which became the subject of action pursuant to the APS Code of Conduct. The tweets were published under the Twitter handle (pseudonym) <i>LaLegale</i> .	BFM: p.74
30	7 March 2012	The Workplace Relations and Conduct Section of the (then) Commonwealth Department of Immigration and Border Protection received a complaint from an employee of the Department, which alleged that the Respondent was inappropriately using social media in contravention of the APS Code of Conduct. After a review of the complaint, a decision was made not to proceed with a formal APS Code of Conduct investigation in relation to the Respondent's	CAB: p.8 [3(13)] CAB: p.8 [3(14)] CAB: p.8 [3(15)]

		alleged conduct on the basis that there was insufficient evidence.	
	9 May 2012	The Workplace Relations and Conduct Section of the (then) Commonwealth Department of Immigration and Border Protection received a second more detailed complaint, which alleged that the Respondent was inappropriately using social media in contravention of the APS Code of Conduct.	CAB: p.9 [3(16)]
10	15 May 2012 (on or about)	A decision was made by Geoffrey McKinnon, Director of the Workplace Relations and Conduct Section of the (then) Commonwealth Department of Immigration and Border Protection to initiate an investigation into whether the Respondent's alleged conduct gave rise to possible breaches of the APS Code of Conduct.	CAB: p.9 [3(16)]
20	23 July 2012	The Workplace Relations and Conduct Section of the (then) Commonwealth Department of Immigration and Border Protection informed the Respondent about the decision to initiate an investigation into whether her alleged conduct gave rise to possible breaches of the APS Code of Conduct.	CAB: p.9 [3(17)]
30	13 September 2012	The investigation into whether the Respondent's alleged conduct gave rise to possible breaches of the APS Code of Conduct, conducted by Lidija Harry, Assistant Director of the Workplace Relations and	CAB: p.9 [3(18)]

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		Conduct Section was completed, i.e. with the preparation of an investigation report.	
	20 September 2012	<p>Robyn White, Director of the Workforce Design and Strategy section of the (then) Commonwealth Department of Immigration and Border Protection, and an authorized delegate, sent a letter to the Respondent setting out a proposed determination of a breach of the APS Code of Conduct, and invited the Respondent to provide a response to the proposed determination of breach.</p> <p>The Respondent provided a response to the proposed determination of breach by way of email on the same date.</p>	<p>CAB: p.9 [3(19)]</p> <p>CAB: p.9 [3(20)]</p>
	15 October 2012	<p>Ms White determined that the Respondent had breached the APS Code of Conduct, and proposed a sanction, namely, the termination of the Respondent's employment. The Respondent was provided 7 days to provide a response to the proposed sanction of the termination of her employment.</p> <p>The Respondent requested and was granted a number of extensions of time to provide a response to the proposed determination of sanction.</p>	<p>CAB: p.9 [3(21)]</p> <p>CAB: p.9 [3(24)]</p>
	19 October 2012	<p>Ms White and Mr McKinnon held a meeting with the Respondent (and her union representative) at the Respondent's request. The Respondent admitted that she had tweeted under the name <i>LeLegale</i>, under which she</p>	<p>CAB: p.9 [3(22)]</p>

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		criticized government immigration policy and her supervisor.	
	19 October 2012	The Respondent sent an email to Sandy Logan, National Communications Manager at the (then) Department of Immigration and Citizenship offering an ‘unreserved’ apology.	CAB: p.9 [3(23)]
	1 November 2012	The Respondent sought an injunction in the (then) Federal Magistrates Court of Australia to prevent the Department from proceeding with the proposed sanction of the termination of her employment.	CAB: p.9 [3(25)]
	2-11 November 2012	The Respondent, and her representative, the Media, Entertainment and Arts Alliance, submitted various responses to the proposed sanction of the termination of the Respondent’s employment.	CAB: p.10 [3(26)- (29)]
	17 November 2012	The Respondent withdrew the confession and apology she gave on 19 October 2012.	CAB: p.10 [3(30)]
	9 August 2013	The Respondent’s injunction application was dismissed by the Federal Circuit Court of Australia: see <i>Banerji v Martin Bowles, Acting Secretary, Department of Immigration and Citizenship</i> [2013] FCCA 1052.	CAB: p.10 [3(31)]
	15 August 2013	Mr McKinnon wrote to the Respondent setting out the steps the Department proposed to take to finalise the process relating to the Respondent’s breaches of the APS Code of Conduct given the interim injunction	CAB: p.10 [3(32)]

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		application had been dismissed.	
	26 August 2013	Ms White provided the Respondent a further opportunity to respond to the proposed sanction of the termination of the Respondent's employment, in accordance with the process set out in the letter dated 15 August 2013.	CAB: p.10 [3(33)]
	30 August 2013	The Respondent provided a response to Ms White in relation to the proposed sanction of the termination of her employment.	CAB: p.10 [3(34)]
	12 September 2013	Ms White wrote to the Respondent setting out her final decision to impose a sanction of termination of employment under s 15(1)(a) of the <i>Public Service Act 1999</i> (Cth).	CAB: p.11 [3(35)]
	13 September 2013	Mr McKinnon wrote to the Respondent to provide her a notice of termination of employment under s 29(1) of the <i>Public Service Act 1999</i> (Cth). The correspondence notified the Respondent that the termination decision would take effect from close of business on 27 September 2013. The Respondent suffered, as a consequence of being informed that her employment was to be terminated, a 'disease', being an ailment – namely, an adjustment disorder characterized by depression and anxiety, being an aggravation of an underlying psychological condition – that was contributed to, to a significant degree, by her employment with the Commonwealth, within the meaning of	CAB: p.11 [3(36)] CAB: p. 8[3(7)]

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		s 5B(1) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).	
	27 September 2013	The Respondent's employment with the (then) Department of Immigration and Citizenship was terminated.	CAB: p. 6 [1] CAB: p. 8 [3(6)]
	18 October 2013	The Respondent lodged a claim for workers' compensation for post-traumatic stress disorder, under s 14 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).	CAB: p.7 [2]
	24 February 2014	A delegate of the Appellant refused the Respondent's claim for workers' compensation, i.e. the delegate decided that the Appellant was not liable to compensate the Respondent, for the claimed post-traumatic stress disorder, under s 14 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).	CAB: p. 7 [2]
	28 March 2014	The Respondent entered into a Deed of Agreement with the Commonwealth of Australia, represented by the Department, agreeing to settle proceeding in the Federal Court of Australia, i.e. proceeding number NSD 21 of 2014.	CAB: p. 11 [3(37)]
	12 May 2014	The Respondent requested a reconsideration of the Appellant's decision dated 24 February 2014, pursuant to s 62 of the <i>Safety, Rehabilitation and Compensation Act 1988</i>	CAB: p. 7 [2]

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		(Cth).	
	1 August 2014	Pursuant to s 62 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth), a delegate of the Appellant affirmed the decision to deny liability to compensate the Respondent, for the claimed post-traumatic stress disorder, under s 14 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).	CAB: p. 7 [2]
	30 September 2014	The Respondent applied to the Administrative Appeals Tribunal for merits review of the decision by the Appellant dated 1 August 2014.	CAB: p. 7 [2]
	13 November 2017	A hearing took place before the Administrative Appeals Tribunal, constituted by Deputy President Gary Humphries and Dr B Hughson, Member. Prior to the hearing the parties agreed that the Respondent was suffering from an adjustment disorder and that it was contributed to in a significant degree by the notification of the decision to terminate her employment. However, the Appellant asserted that the termination was the result of reasonable administrative action and therefore not compensable. The Respondent asserted that the termination fell outside the term reasonable administrative action. The parties agreed that the only issue to be determined by the Tribunal was whether or not the termination of the Appellant's employment did not constitute reasonable administrative action having regard to the implied freedom of	CAB: p. 4 CAB: p. 7[3(7)- (12)]

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		political communication.	
	16 April 2018	The Administrative Appeals Tribunal, constituted by Deputy President Gary Humphries and Dr B Hughson, Member, decided to set aside the reviewable decision dated 1 August 2014, and instead decided that, on 13 September 2013, the Respondent suffered an adjustment disorder characterized by depression and anxiety, being an injury pursuant to the <i>Safety, Rehabilitation and Compensation Act 1988</i> (Cth).	CAB: p. 4
	14 May 2018	The Appellant filed Notice of Appeal from a Tribunal in Federal Court of Australia, i.e. proceeding number ACD 28 of 2018.	CAB: pp 67-71
	1 August 2018	The Commonwealth Attorney-General applied for an order under s 40(1) of the <i>Judiciary Act 1903</i> (Cth) removing the whole of the cause in proceeding number ACD 28 of 2018 pending in the Federal Court of Australia into the High Court of Australia.	-
	12 September 2018	His Honour Keane J ordered, pursuant to s 40(1) of the <i>Judiciary Act 1903</i> (Cth), the whole of the cause in proceeding number ACD 28 of 2018 pending in the Federal Court of Australia be removed into the High Court of Australia.	CAB: p. 81[1]
	14 September 2018	The Appellant filed an Amended Notice of Appeal.	CAB: pp 83-87

	19 September 2018	The Respondent filed a Notice of Contention.	CAB: pp 88-90
	4 October 2018	The Commonwealth Attorney-General intervened, pursuant to s 78A of the <i>Judiciary Act 1903</i> (Cth), in support of the Appellant.	-

Dated: 7 November 2018

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