

STATEMENT OF DECISION

Respondent:	Ali Davut Sarikaya aka Dr David Kaye
Complainant:	Client A

The Commission has removed confidential information from this document under Section 41(B) of the *Health Care Complaints Act 1993*

1. Background

- 1.1. On 5 July 2011 whilst travelling to work, 64 year old Client A sustained a broken wrist, injuries to her shoulder, hand, elbow, neck and face (the 'First Injuries'). On 22 August 2011, a Worker's Compensation claim (WC claim) was lodged for her physical injuries.
- 1.2. On 5 September 2011, Client A returned to work on restricted hours and duties. During this time, Client A alleged that her supervisors had discriminated against her on the grounds of her disability resulting from the First Injuries.
- 1.3. On 2 March 2012, Client A suffered a shoulder injury whilst at work. On 23 March 2012, a WC claim was lodged in relation to this and in June/ July 2012 she instructed LawFirm1 to act for her in relation to these WC claims. Over 2012 and 2013, Client A had consulted several health practitioners for treatment, including two different psychologists, in relation to her WC claims.
- 1.4. On 12 January 2013, Client A made a complaint to the President of the Anti-Discrimination Board of NSW and engaged LawFirm2 in relation to the Anti-Discrimination Tribunal (ADT) matter.
- 1.5. In July 2013, LawFirm2 wrote to 'Dr David Kaye at Sydney Trauma Clinic' requesting a medico-legal report which included advice about whether Client A had suffered a psychological injury from her alleged workplace discrimination. Client A attended Mr Kaye for an assessment, for the purpose of this medico-legal report on 22 August 2013.
- 1.6. In September 2013, Mr Kaye provided a medico-legal report for Client A's Administrative Decisions Tribunal (ADT) matter. Rather than forwarding the report to Lawfirm2, Mr Kaye booked an appointment for Client A, for discussion of the report and its payment. During this consultation, Mr Kaye recommended to Client A that she engage the services of Lawfirm3 in relation to her WC claims. Client A paid the \$2600 invoice for the ADT report and associated costs on 2 September 2013.
- 1.7. Client A began receiving treatment from Mr Kaye which she understood to be, in relation to her WC claims of psychological injury. She believed Mr Kaye was a doctor of psychology and/or a counsellor with qualifications in psychology and that he was registered with WorkCover.
- 1.8. Client A claims she had four face to face treatment sessions with Mr Kaye, on 3 and 16 September 2013 and 10 and 14 October 2013, which she paid for herself. Then via text on

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16 October 2013, Mr Kaye advised her that (from that point onwards) his services would be of no cost to her and invoices would be sent to LawFirm3. By this time, LawFirm3 had taken over her WC claims and referred Client A back to Mr Kaye for treatment.

- 1.9. She continued her sessions with Mr Kaye, totalling 17 face to face treatment sessions between 3 September 2013 and 28 May 2014. Although these consultations were booked for the purpose of treatment of her psychological injuries Mr Kaye would frequently discuss her WC claims and ADT matter, provide advice on the management of her WC claims and ADT matter and offer to draft documents for her relating to her WC claims.
- 1.10. Up to 16 October 2013, Client A had paid for the ADT report and associated costs plus four sessions herself. She believed that the remaining fees for treatment would be paid at the settlement of her claims for three reasons.
 - Firstly, because Client A had been told in a text message from Mr Kaye on 16 October 2013 that services would be at no cost to her and invoices would be sent to LawFirm3.
 - Secondly, because, as Client A claims, on 14 November 2013 Mr Kaye had coerced her to sign an Irrevocable Authority which stated that he would be paid out of her the settlement of her claims.
- 1.11. On 28 May 2014, Mr Kaye sent an invoice to Client A and LawFirm3 for fees of \$13,700 for 50hrs of service over the previous 8 months (25 October 2013 to 28 May 2014). There was no itemisation on the bill for the services rendered.
- 1.12. The therapeutic relationship ceased at this time as Client A refused to pay the fees until she received an itemised invoice. However Mr Kaye had refused to provide one.
- 1.13. Mr Kaye filed a Notice of Motion with the Sydney Local Court for payment of the invoice for \$13 700. Client A also made a complaint to the Legal Services Commission (LSC) against LawFirm3 in relation to Mr Kaye's original invoice. It was soon thereafter that Client A was provided information which led her to believe Mr Kaye was not a doctor, not a psychologist and nor did he have any qualifications in psychology. She believed that he had mislead her about his qualifications and areas of expertise.
- 1.14. It was during the Sydney Local Court proceedings that Client A became aware of various versions of Mr Kaye's bills which had been sent to various parties, including Lawfirm2, Lawfirm3 and Allianz.
- 1.15. It was also during these proceedings that the Affidavit of Client A dated 28 August 2015 was created. This document sets out, in more detail, the sequence of events as recalled by Client A.

2 The Complaint

- 2.1. On 11 September 2014, Client A lodged a complaint with the Australian Health Practitioner Regulation Agency (AHPRA). This complaint was referred to the Commission and assessed for Investigation in June 2015. In her complaint, Client A alleged that Mr Kaye had

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misrepresented his qualifications and training such that Client A believed he was qualified to provide her care and treatment in relation to her psychological injuries

3 Issues

3.1 The Commission investigated the following issues in this case:

- a) Whether Mr David Kaye breached the Code of Conduct for unregistered health practitioners ('the Code of Conduct') during his provision of health services to Client A, between 2013 and 2014;
- b) Whether Mr Kaye poses a risk to the health or safety of members of the public.

4 Respondent

- 4.1. The respondent was born in Turkey on 20 January 1964 as Ali Davut Sarikaya, and came to Australia in 1980, at the age of 16.
- 4.2. In 1997, he was convicted of obtaining property by deception (fraud) in Victoria (Judgement date 1 August 1997). He then declared himself bankrupt. After that time and since about November 1997, he has used the name "Dr David Kaye" (Mr Kaye). However, NSW Police inquiries with Births Deaths and Marriages Registrar indicate that the register does not hold any trace of an official name change from Ali Davut Sarikaya to David Kaye.
- 4.3. In 1999, Mr Kaye opened Melbourne Trauma Clinic and Sydney Trauma Clinic and there are advertisements on several websites, including www.truelocal.com.au, which states he is '*a specialist clinic conducting assessment, treatment and management of psychological trauma and related disorders and has been operating since 1999. The staff consist of trauma counsellors, psychologists, psychiatrists and a number of other health professionals to provide a broad range of psychometric testing, assessment and management of psychological injuries, including work related injuries and injuries resulting from motor vehicle accidents.*'
- 4.4. In 2002 he published a book named 'Crossroads: Your Journey Within' under the name "David Kaye (Dr)".
- 4.5. In March 2007, after passing a written application and interview under the name of Dr David Kaye, he was appointed to the position of 'Official Visitor' for NSW Health. This position allowed him to visit psychiatric patients in hospitals for a period of two years. In 2009 he withdrew from the program, after concerns were raised about his credentials.
- 4.6. In 2007, Mr Kaye opened Parramatta Trauma Clinic. This business appears to be no longer operational.
- 4.7. In 2012, he successfully applied to the NSW Bar Association, under the name of Dr David Kaye, to become a member of the Professional Conduct Committee as a lay member of the community, to assist in disciplinary matters. Mr Kaye was asked to resign after approximately 2 years, when the Registrar became aware of issues relating to his identity and civil hearings in the state of Victoria involving the Psychologists Registration Board.

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- 4.8. In all versions of Mr Kaye's CV, including one provided directly by Mr Kaye to the Commission his title is 'Dr David Kaye BA (Hons)(Psych) PhD' and his qualifications are listed as:
- 1986** Bachelor of Arts. Major in Sociology and Politics (Hons) Monash
 - 1988** Graduate Diploma in Counselling Psychology. Inc RMIT (Royal Melbourne Institute of Technology). Completed
Fourth year Thesis: The link between irrational beliefs and anger.
Research Supervisor Associate Professor Peter Caputi
 - 1996** Bachelor of Arts. Major in Psychology. Swinburne
 - 2000** Completed PhD. ACMT Minnesota USA
 - 2014** Certified Sexual Health Specialist. American College of Sexologists International
 - 2014** Student – at Law UNE, Currently discontinued until 2015
- 4.9. Mr Kaye is currently a non-registered practitioner and there are advertisements on numerous websites that say he is a counsellor and psychotherapist.
- 4.10. There have been two previous complaints to the Commission concerning alleged conduct of Mr David Kaye:
1. The complainant alleged that he had consulted "Dr Kaye" as a doctor and forwarded the complaint to the NSW Medical Council. The complainant stated that Mr Kaye invited him to a location to sign a waiver form which stated that Mr Kaye had never introduced himself to the complainant as a doctor. In his response to the Commission, Mr Kaye alleged the complainant had coerced him to write favourable reports for his worker's compensation claim. Mr Kaye's response to the Commission is signed off as '*Dr David Kaye BA(Psych) PhD Director / Trauma & Injury Management Consultant*'. This complaint was discontinued.
 2. The complainant alleged there was a lack of disclosure from Mr Kaye regarding his fees and services. Of particular relevance is her statement "I initially made a complaint with The Australian Psychological Society as I believed him to be a psychologist, but have been informed otherwise." Mr Kaye's letters to the complainant were signed off as '*Dr David Kaye BA(Hons)(Psych)PhD Principal Consultant*'. This matter was discontinued.

5 Investigation

- 5.1 The Commission obtained evidence during this investigation from the following sources:
- Complaint of Client A dated 10 September 2014 & further submissions including:
 - Affidavit of Client A dated 28 August 2015 with annexures
 - Documents from the 2009 WorkCover Investigation of Mr Kaye (information obtained by Client A via subpoena)
 - Documents from the 2009 NSW Police Investigation of Mr Kaye (information obtained by Client A via subpoena), including
 - transcript of interview of NSW Police and Mr Kaye of 11 November 2009
 - Copies of Mr Kaye's business cards showing the appointments she attended
 - Email dated 20 July 2015 from GP of Client A
 - Email from Lawfirm2 dated 21 July 2015

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- Affidavit of solicitor of Law Firm 3 of 20 January 2015
- Correspondence from Macquarie Medico Legal services of 23 July 2015
- Documents from ACA (Australian Counselling Association)
 - ACA membership application form completed by Mr Kaye and received by ACA on 5 September 2005 and certificate of membership of 15 September 2005
 - Letters and academic transcripts from Monash University Swinburne University and RMIT for Mr Kaye
 - Certificate for PhD from ACMT
 - ACA Code of Ethics and Practice of April 2013
 - Articles re ethical representations of professional credentials
 - Letter from Mr Kaye of 2 January 2012 with CV
 - Mr Kaye's resignation of ACA membership of 7 November 2014 and 20 November 2014 letter of acceptance by ACA
 - Information from ACA re minimum qualifications for Counsellors
- Correspondence from Monash University of 18 September 2015
- Correspondence from RMIT of 15 September 2015
- Correspondence from Swinburne University of 9 September 2015
- Internet searches of ACMT
- Internet searches of 'Dr David Kaye'
- Transcript of the Supreme Court proceedings between Mr Kaye and State of NSW of 11, 12 and 13 May 2016

6 Summary of Evidence

Representation and information provided about Mr Kaye's qualifications and training

Evidence of Client A

- 5.1. In her affidavit of 28 August 2015 which was created and sworn in relation to Mr Kaye's local court proceedings against her for payment of his services, Client A stated that around 15 August 2013 she had a conversation with a solicitor from LawFirm2 who told her he would refer her to a psychologist for an independent medico-legal report, Dr David Kaye. The solicitor also told her that she would meet with Dr Kaye on 22 August 2013 at the Sydney Trauma Clinic and needed a referral from her general practitioner before attending the appointment.
- 5.2. Client A provided an email sent by Mr Kaye to LawFirm2, on 15 August 2013 which confirms this request for a referral from Mr Kaye. In this email Mr Kaye stated '*I have arranged an appointment to conduct an assessment with your client... Please also advise her to obtain a referral to Sydney Trauma Clinic from her GP and bring this to the appointment.*'
- 5.3. Client A advised that she obtained a referral from her GP prior to attending an assessment with Mr Kaye. This is confirmed by Client A's GP who advised the Commission that Client A had come to see her on 16 August 2013 with a request for a referral to Dr David Kaye. The GP advised that she did not know David Kaye nor was aware of his qualifications and assumed he was a psychologist because Client A had advised her of this.

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- 5.4. Client A submitted to the Commission a copy an email of 16 August 2013 with the attached copy of Mr Kaye's CV from LawFirm2 to her. The email advised her that Mr Kaye's expert report would cost \$1200 which was the standard price recommended by the ACA. The CV provided to Client A is the same CV as submitted by Mr Kaye to the Commission and it lists his qualifications as BA (Hons) from Monash; Graduate Diploma in Counselling from RMIT; BA, major in psychology Swinburne and PhD ACMT Minnesota USA.
- 5.5. Client A advised that the purpose of the referral to Mr Kaye was for him to assess any psychological injury she had as a result of the discrimination against her disability that she had suffered at her workplace. It was Client A's understanding that that Mr Kaye would be able to assess her and produce a medico-legal report regarding her psychological injuries that could be used in her claim against her employer in the ADT.
- 5.6. Client A stated that she had discussions with Mr Kaye at the ADT intake assessment on 22 August 2013 about his area of expertise. Client A stated that during this assessment Mr Kaye referred to himself as a doctor and advised her that he was a Rehabilitation Psychologist.
- 5.7. The ADT report for Client A of 22 August 2013 provided by Mr Kaye was titled '*Confidential Psychological Report*' and he signed it '*Dr David Kaye BA(Hons)(Psych)PhD, Principal Consultant*'. In that report Mr Kaye makes the following assessment of Client A "in my opinion, the present assessment based on a detailed history, clinical interview and psychometric tests indicates that...[Client A] is currently exhibiting symptoms consistent with the diagnosis of both Major Depressive Disorder and Post Traumatic Stress Disorder."
- 5.8. Client A stated that based on, the need for a referral, the qualifications listed in Mr Kaye's CV and her discussions with him at her assessment on 22 August 2013 she believed that he was a qualified psychologist and/or counsellor with the right to use the title of doctor and or doctor of philosophy. She also believed he was an approved WorkCover health practitioner based on her discussions with Mr Kaye about her WorkCover claim and the information in his CV which stated that he was trained in the assessment of permanent Impairment by WorkCover. This was also a contributing factor in her decision to seek assessment and treatment from Mr Kaye in relation to her WorkCover claims for psychological injuries obtained during the course of her employment from August 2013.
- 5.9. Following the ADT intake assessment in August 2013 Client A continued to see Mr Kaye. She had an additional 17 appointments between September 2013 and May 2014 and it was her understanding that these appointments were for counselling in relation to her worker's compensation claim for psychological injuries and psychological injury from her workplace discrimination. Client A advised that much of the 17 counselling sessions with Mr Kaye were devoted to providing her advice about and discussing the logistics of her worker's compensation and ADT claims. Client A stated that during these appointments Mr Kaye would also write letters for her and make phone calls on her behalf regarding her worker's compensation and ADT claims. Mr Kaye advised Client A that the purpose of working on her claims was that it would "solve her problems" and help her to feel better. Mr Kaye indicated that working on her claims was, in essence, part of the therapy he was providing.

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- 5.10. In addition to the work on her claims Client A advised that Mr Kaye had her complete questionnaires in about half of her 17 counselling appointments. These questionnaires are contained in Mr Kaye's treatment notes for Client A and are titled "Beck Depression Inventory" and "Beck Anxiety Inventory". The depression questionnaire lists 21 groups of 4 statements which relate to a particular feeling. Client A was advised to pick out the statement from each group that best describes the way she was feeling in the past week. An example of the groups of statements are as follows:
1. "0 I do not feel sad
1 I feel sad
2 I am sad all the time and can't snap out of it
3 I am so sad and unhappy that I Can't stand it"
- 5.11. The anxiety questionnaire states on it that it contains a list of common symptoms of anxiety and asks that the person completing the questionnaire to indicate how much they are bothered by that symptom during the past month on a scale between "not at all" and "severely".
- 5.12. Client A stated that in her dealing with Mr Kaye between September 2013 and May 2014 he referred to himself as '*Dr David Kaye*'. Client A provided samples of correspondence between herself, Mr Kaye, LawFirm2 and LawFirm3 in which Mr Kaye is referred to as '*Dr Kaye*'. Client A submitted copies of Mr Kaye's:
- business cards, which read '*Dr David Kaye BA(Psych)PhD ClinMAGA, Sydney Trauma Clinic*';
 - invoices for "counselling consultations" which are from "*Dr David Kaye BA(Hons)(Psych)PhD Consultant*", and
 - emails in which he refers to himself as '*Dr David Kaye PhD*'.
- 5.13. Client A's belief that Mr Kaye was a psychologist was boosted by the fact he charged \$274 an hour which she believed was indicative of his qualifications and level of experience.

Evidence of Mr Kaye

- 5.14. In his response to the Commission Mr Kaye stated that Client A was referred to him by a General Practitioner on 16 August 2013. He advised that he conducted a comprehensive intake assessment of Client A. This assessment involved a detailed history from Client A in relation to her health, family, relationships, profession, education, finances and self. He advises that he obtained symptomatic data in relation to her anxiety and depression and their onset and development.
- 5.15. Mr Kaye stated that Client A presented with severe underlying borderline personality disorder which had permeated all aspects of her functioning and life generally. It is noted that despite Mr Kaye's advice about her presentation he made no reference to a severe underlying borderline personality disorder in his report of 29 August 2013 on Client A but does refer to her having major depression and post-traumatic stress disorder.
- 5.16. Mr Kaye stated that before long term counselling and therapy could take place for her borderline personality disorder he had to address her allegations of workplace victimisation, bullying and harassment. He advised his involvement in Client A's care and treatment

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involved using CBT, psychodynamic psychotherapy and strategic outcome focussed therapy.

- 5.17. Mr Kaye provided his clinical records for Client A which he contends support that he provided the above care and treatment to Client A. As described above in paragraphs 5.10 and 5.11, these records contain Beck inventories on anxiety and depression which were completed by Client A during counselling appointments. The clinical records also contain dated notes which refer to consultations Client A had with Mr Kaye. In these notes Mr Kaye refers to Client A's depression and anxiety symptoms and attempts to control it by her. He also refers to her suffering from paranoia and anger, that she is agitated and possible "BPD" symptoms (Borderline Personality Disorder). The clinical records also references to psychometric testing tools such as BDI scores.
- 5.18. Mr Kaye provided information which he advised supports his belief that he possessed the appropriate training and qualifications for providing Client A the above care and treatment and he denies that he misled or misinformed Client A about his training and qualifications.
- 5.19. Specifically Mr Kaye provided the following evidence about his qualifications and training:
- In relation to his 1986 Bachelor of Arts. Major in Sociology and Politics (Hons) Monash, Mr Kaye submits an Academic Record from Monash University dated 3 February 1995. It indicates that he graduated on 4 June 1986 in a Bachelor old Arts. It is noted that this academic record does not record honours having been awarded to Mr Kaye.
 - Concerning the 1988 Graduate Diploma in Counselling Psychology at RMIT, Dr Kaye submits a certificate from RMIT dated 23 February 1990 which states: *'This is to certify that Ali Davut Sarikaya enrolled for course 143407 Graduate Diploma in counselling obtained the following final examination results...'* It is noted that this documentation show a that he was awarded a 'DNS' grade for two components which stands for 'Did not Sit for Assessment' and this is inconsistent with him being awarded the Graduate Diploma.
 - With regards to the 1996 Bachelor of Arts. Major in Psychology. Swinburne, Mr Kaye submits a letter from Associate Professor Ann Knowles of Swinburne University of Technology dated 2 May 1997 stating: *'Congratulations on completing your three year sequence of subjects in psychology...we would like to present you with a certificate confirming that you have satisfied the Australian Psychological Society requirements for an accredited sequence of subjects.'* In support of this, Mr Kaye also submitted two pages of academic transcript however one page has all grades blanked out and the other page is a singular subject grade for semester 1 in 1996.
 - Concerning his 2000 Completed PhD. ACMT Minnesota USA, Mr Kaye provided to the Commission a 76 page 'Doctoral Thesis by Research' which he states he submitted to the American College of Metaphysical Theology (ACMT) to obtain his doctorate of Metaphysics. In producing his thesis he states he was required to attend weekly supervision with Dr John Cone. He is not able to provide any further evidence of the study he undertook for his doctoral as he has moved several times and the email service provider 'Bizmail' has since gone out of business. He has not kept his study

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notes, paperwork, floppy disks etc. He also advises that he has no contact details for ACMT.

- With regards to Dr John Cone, Mr Kaye states that he spent nearly three years under the supervision of Dr John Cone and produced a substantial body of work in the form of a doctoral thesis and was awarded a doctorate on 8 February 2000.
- In relation to his ACA Membership, Mr Kaye has submitted that he has been a Clinical Member of Australian Counselling Association (ACA) since 15 September 2005.
- Mr Kaye's CV also states that he is accredited with GU Health (a health insurer) for provision of counselling and psychology services. Provider No. 00027821.
- Mr Kaye's CV makes claims regarding his WorkCover Accreditation as follows:
'Medico Legal Assessment Training 2/2014
Trained in Assessment of Permanent Impairment (MAA)
Trained in Assessment of Permanent Impairment (WorkCover)
Trained in Assessment of Permanent Impairment (AMA 4th & 5th Edition – Psychiatric and Psychological Disorders)

5.20. To support this, Mr Kaye submitted two certificates from the University of Sydney, dated February 2014 which certify that Dr David Kaye had completed training in the evaluation of permanent impairment from MAA and WorkCover.

5.21. In his response to the Commission dated 20 July 2015, Mr Kaye advises that he uses the title 'Dr' as he was awarded a Doctorate in Philosophy from the American College of Metaphysical Theology (ACMT) in February 2000. He also uses the post nominal 'PhD', which he states, is the appropriate and recognised abbreviation for Doctorate in Philosophy, and as such he submits that by stating 'PhD' after using the title 'Dr', it is sufficiently clear that his use of the title 'Dr' relates to the Doctorate in Philosophy. Mr Kaye also states that this issue arose during other legal proceedings and that he was legally advised that as long as he did not lead people to think he was a medical doctor there should be no issue with the use of the title. Mr Kaye asserts that he has never held himself out to be a medical doctor.

5.22. It is noted that in all email correspondence with the Commission, Mr Kaye signs off as '*Dr David Kaye BA(Hons) BA(Psych) PhD ACS. Trained in the Assessment of Permanent Impairment AMA 4&5 Ed, Psychiatric & Psychological Disorders – MAA, WorkCover & Comcare*'.

Independent evidence of Mr Kaye's qualifications and training

5.23. On 18 September 2015, **Monash University** confirmed with the Commission that Mr Kaye/Sarikaya qualified for Bachelor of Arts from Monash University on 31 December 1985, graduating on 4 June 1986. Monash University also advised that according to their academic records Mr Kaye did not attain an honours grade for his Bachelor of Arts qualification and these qualifications are not in counselling or psychology.

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- 5.24. On 15 September 2015, **RMIT** advised the Commission that the transcripts of results dated 23 February 1990 for Mr Ali Davut Sarikaya show that he was enrolled in the Graduate Diploma in Counselling from 1987 to 1990. RMIT also advised that their records showed Mr Kaye had not completed all academic requirements of the Graduate Diploma in Counselling and therefore never graduated from the RMIT Graduate Diploma in Counselling, or any other programs offered by RMIT University.
- 5.25. During the investigation the Commission also obtained a letter from RMIT to Mr Kaye (Sarikaya) of 3 October 2011 which advised him he had not met academic requirements for the Graduate Diploma Course in Counselling and that he never graduated from the course. It also advised Mr Kaye that they cannot accept a thesis more than 20 years after his enrolment and thus they would not be changing his assessment results based on the documents he provided.
- 5.26. On 9 September 2015, **Swinburne University of Technology** advised the Commission that David Ali Sarikaya was a student of Swinburne only in semester one of 1996 and was enrolled in 'Non Credit Division of Business, Humanities & Social Science. They provided a copy of his academic transcript for this semester which shows that he completed one subject and was granted an exemption for three other subjects. They also advised that Mr Kaye applied for graduation of a Bachelor of Arts in 2008 and he was deemed ineligible for graduation. Further they advised that Mr Kaye applied for the course Bachelor of Arts (Honors) Psychology in 2010 however this application was rejected. Swinburne provided a copy of the letter dated 22 December 2010 sent to Mr Kaye which advised him that his application for entry into the Bachelor of Arts (Honours) Psychology was rejected.
- 5.27. A letter from Swinburne University to Mr Kaye was also obtained (through ACA) of 16 December 2009. In the letter it stated that Mr Kaye has requested a certificate for his studies from Swinburne University. The letter explains to Mr Kaye he has not met the requirements of any accredited psychology award. The letter also refers to the correspondence, which Mr Kaye advised he had received from Associate Professor Knowles stating he had met the requirements for an APS accredited undergraduate major. The letter from Swinburne University of 16 December 2009 explains to Mr Kaye that this means that he could apply for a psychology 4th year program and receive an informal document but not an official certificate or award.
- 5.28. It is also noted that Mr Kaye was sent a letter dated 15 June 2011 from Swinburne University (also obtained through ACA) that states that they were unable to locate the letter from Associate Professor Knowles and the associated certificate.
- 5.29. **The American College of Metaphysical Theology (ACMT)** could not be contacted to verify the claims made by Mr Kaye that he obtained a Doctor of Philosophy and, if so the method by which it was obtained as they no longer exist in a physical location nor on-line.
- 5.30. However, prior to the decommission of the ACMT website, it contained the following warning about using the qualifications obtained from them: *'The America College of Metaphysical Theology is not accredited. It is an incorporated religious non-profit organisation and a non-secular school. Theology, like religion, is recognized and protected under the first amendment of the United States Constitution, which guarantees any citizen the right to practice and to teach it to others. This is the essence of our type of degree. Thus*

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accreditation is of minor importance.’ Furthermore they state ‘AMCT degree programs are not designed to meet any particular local, state or national licensing or credentialing laws, nor to meet any requirements established by any private independent associations. If you are seeking a degree for licensing purposes, the ACMT advises you to check with that association, state or specific school district to determine if it is acceptable.’

- 5.31. It is clear from the information on ACMT website that, if Mr Kaye was awarded a doctorate this doctorate is not related to counselling or psychology, but related to theology and that as a non-accredited organisation it does not have the academic credibility of a PhD obtained from an accredited organisation.
- 5.32. **GU Health** provided the following information to the Commission in relation to Mr Kaye’s claim on his CV that he is accredited with them: *‘Dr Kaye does not work for GU Health nor is he registered with GU Health. After further investigation, we do not have a Medicare registered provider number for Dr Kaye. As such, Dr Kaye is not a registered Psychologist with GU Health. We have updated our systems accordingly.’*
- 5.33. **WorkCover** advised that the training in the Assessment of Permanent Impairment may have been undertaken by Mr Kaye as this training is available to anyone who wished to complete the training. WorkCover advised that this training does not make Mr Kaye a WorkCover assessor as he does not meet the requirements to be an assessor.
- 5.34. WorkCover advised there are certain requirements that need to be met for an assessor to be able to conduct an assessment of permanent impairment in the NSW workers compensation system. These are detailed in paragraph 1.27 of the *WorkCover Guides for the evaluation of permanent impairment 3rd edition*. Specifically, “An assessor will be a medical specialist with qualifications, training and experience in a medical speciality relevant to the body system being assessed who has undertaken a requisite training in the use of the WorkCover Guides and who is listed as a trained assessor of permanent impairment on the WorkCover website (www.WorkCover.nsw.gov.au)”.
- 5.35. Further WorkCover advised that there is an application form medical practitioners use to request being listed as an assessor on the website. As Mr Kaye is not a registered medical practitioner, he does not have the relevant training in the field he assesses and he is not listed on the WorkCover website.
- 5.36. WorkCover advised that Mr Kaye continues to lodge invoices to Worker’s compensation insurers, even though he has been advised that he is not approved to provide treatment under the WorkCover scheme.

Evidence of Mr Kaye’s representations of his qualifications and training to Law firms engaged by Client A

- 5.37. **LawFirm2** advised the Commission that the firm became aware of David Kaye by way of a referral from a business associate who was assisting a friend, and it was that friend who was using David Kaye’s services. LawFirm2 was aware that David Kaye is not a psychologist or a psychiatrist, but rather a psychotherapist and was informed of same by David Kaye.

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LawFirm2 firm utilises David Kaye's reports as a preliminary report, to obtain an indication of their client's condition, illness or injury and to understand what kind of case they may be facing. If the matter is to proceed to a final hearing, they will often engage a further expert report from a psychologist or psychiatrist in support of, or in addition to, David Kaye's report. They utilise David Kaye in the first instance as his fees are cheaper than a Medico-Legal Report from a psychiatrist or psychologist.

- 5.38. **LawFirm3** advised they had first heard about Mr Kaye from a client who was using him, that they were aware Mr Kaye was not a psychologist and that they used him for non-orthopaedic / non-skeletal WPI (whole person impairment) which is related to worker's compensation claims.

Evidence of NSW Police about Mr Kaye's representation of his qualifications and training

- 5.39. During an investigation by NSW Police into the conduct of Mr Kaye in 2009 they found evidence that Mr Kaye had provided misleading information to various people and organisations about his qualifications and training. This evidence included information from the electoral role which found Mr Kaye had recorded his occupation as 'Psychologist' and 'PAX' Passenger Departure Cards at Sydney International Airport which showed Mr Kaye had recorded his occupation as 'Psychologist'.
- 5.40. During the investigation NSW Police interviewed Mr Kaye on 25 September 2009 at Mascot Police Station. The transcript of Mr Kaye's interview with NSW Police in 2009, shows that during the interview Mr Kaye stated that he had completed a Bachelor of Arts diploma at Monash University but admitted that he did not complete postgraduate studies.
- 5.41. In relation to the Graduate Diploma in Counselling Psychology, Inc (1988) from (RMIT), Mr Kaye admitted that he participated in the graduate diploma for 2 years but was not awarded the qualification.
- 5.42. In relation to Mr Kaye's PhD from ACMT, the NSW Police stated during the interview that they conducted a search warrant on Mr Kaye's home in relation to this investigation. They advised that they located a document which showed that Mr Kaye had purchased his PhD on the Internet for approximately \$249. Mr Kaye did not provide an explanation for this document but refused to comment and reiterated that he was entitled to refer to himself as a doctor as long as he was not claiming to be a medical doctor or that he has a PhD in psychology.
- 5.43. During the interview Mr Kaye advised NSW Police that he does not need to have qualifications to do what he does and he advised them that this was being a counsellor. Mr Kaye claimed that through his participation in various courses (even where he was not awarded the qualifications) he could provide counselling services and that *"I know depression when I see it, I know schizophrenia when I see it, I know someone who's anxious when I see it.... I make a call on the type of syndrome this person might be suffering from but that is subject to formal psychological evaluation at Sydney Trauma Clinic."*

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Evidence from transcript of Supreme Court proceedings between Mr Kaye and the State of NSW of 11-13 May 2016 about Mr Kaye's representations of his qualifications and experience

- 5.44. Mr Kaye brought proceedings against the State of NSW in the Supreme Court of NSW in relation to the 2009 police investigation into him. Mr Kaye alleged that he had suffered damage as a result of malicious prosecution, false arrest, wrongful imprisonment and misfeasance of public office.
- 5.45. During the proceedings Mr Kaye gave evidence under oath about his qualifications and experience. According to the transcript when Mr Kaye was asked if he holds a Bachelor of Arts in Psychology from Swinburne University he initially stated that he did. When pressed further on whether he had obtained this qualification Mr Kaye stated that he *"obtained three year sequence of psychology studies equivalent that would give me a Bachelor of Arts from Swinburne University."* Mr Kaye also stated that the reason he could not produce the certificate was that he didn't go to the ceremony.
- 5.46. On further questioning Mr Kaye admitted that he did not hold a Bachelor of Arts from Swinburne University but stated that he was entitled to represent that he did *"Because I enrolled at Swinburne University. I paid the course fees. I sat the exams and I completed a three year sequence of studies that would entitle (sic) to major in psychology from Swinburne."* Further, Mr Kaye stated that he has represented to people that he held a Bachelor of Arts degree with a major in psychology because he believed he was entitled to do so despite not actually holding this degree.
- 5.47. According to the transcript Mr Kaye also stated that he had a Bachelor of Arts with honours degree at Monash in politics. It was put to Mr Kaye that the documents relating to his degree from Monash did not record him as having an honours degree. Mr Kaye referred to his transcript of academic record and stated that he had done subjects at the honours level. Mr Kaye went on to say that he believed that obtaining a Bachelor of Arts with honours meant *"that someone obtained a level higher than a credit in various subjects."*
- 5.48. During cross examination Mr Kaye agreed that he had a Bachelor of Arts (Hons)(Psych) (PhD) listed on reports produced by him, his business cards, his letterhead and his electronically generated email signature.

Evidence from ACA about Mr Kaye's representation of his qualifications

- 5.49. ACA confirmed with the Commission that Mr Kaye has been a member of their organisation since September 2005. They provided a copy of his application form from September 2005 which shows that he listed his qualifications as BA, Grad dip Counselling and PhD. He also listed his area of counselling as symptomatic problems such as depression, anxiety, impulse control issues, relationship problems, trauma counselling, etc. When asked what qualifications support this experience in counselling he listed BA (psych), Grad Dip Counselling, PhD and 10 years of supervision. In this application he also stated that he had not been convicted of a criminal offence.
- 5.50. On 9 January 2012, in a letter to Mr Kaye, ACA requested he confirm his previous studies. ACA cited his completion of a relevant course of study being a three year degree in

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psychology at Swinburne University in 1997 and a Graduate Diploma in Counselling from RMIT in 1989 as meeting the ACA pre 2010 membership criteria for level 2 membership. They also noted he had submitted documents outlining supervision he had undertaken meeting the level 3 membership criteria.

- 5.51. Also in the letter of 9 January 2012 ACA referred to the documents Mr Kaye submitted that state he was awarded a PhD from ACMT and advised that:
- ACA did not recognise his PhD from the ACMT as they were not a training provider in the USA that met the Australian Council for Higher Education Accreditation (CHEA) criteria.
 - ACA does not recognise his Doctorate as being relevant for practice as a counsellor
 - Mr Kaye must refrain from using the term 'doctor' when referring to himself as a counsellor or in the context of his counselling services.
- 5.52. On 19 September 2014 ACA wrote to Mr Kaye stating that it had come to their attention that, despite their letter of 9 January 2012, Mr Kaye had continued to use the title doctor and that this was in breach of the ACA ethics unless he had completed an accredited PhD. They advised that it had also come to their attention that despite his assertion in his application for membership that he had no criminal convictions, he has a criminal conviction in Victoria under the name Davut Sarikaya.
- 5.53. In his response of 23 September 2014 to the ACA Mr Kaye maintained his position that, on legal advice, he was allowed to use the title doctor. He also denied he had a conviction for fraud and alluded to the above proceedings in the Supreme Court as being pertinent to the fraud matters in Victoria. However, the proceedings in NSW bore no relationship to his Victorian criminal convictions for fraud.
- 5.54. On 27 July 2015 the ACA advised the Commission that, due to Mr Kaye's insistence on using the title of doctor, although they chose not to pursue the matter legally, they instead allowed him to resign on the basis that he is not to be renewed with ACA. ACA also advised the Commission that although, to their knowledge, Mr Kaye had never written in his own hand that he is a psychologist, in their experience, he certainly made no attempt to correct or be transparent in that he is not a psychologist.
- 5.55. ACA provided the Commission with a copy of the ACA Journal Volume 8 Number 2, Winter 2008 which contains an article by the Chief Executive Officer of ACA and Counsellor Phillip Armstrong on Professional Credentials and Ethical Representation. In it Mr Armstrong sets out the ethical standard for representations of a practitioners counselling qualifications. He states in the article that it is unethical to use qualifications that are not related to counselling in the context of a counsellors professional work. He states that use of qualifications in the practice of counselling which are not related to counselling is a misrepresentation and it is easy for members of the public to become confused. Mr Armstrong gives a specific example of a misrepresentation of qualifications by a counsellor. He stated that if "*you hold a Master of Arts in Political Studies and a Diploma of Counselling and on your business card you put Jon Doe, M.A., Dip. Couns. The M.A. is irrelevant to your practice and qualifications as a counsellor as it is not a counselling qualification. A client could easily form the opinion that your M.A. is in counselling as your business card is profiling you and you are holding yourself out to be a counsellor, not a political analyst. From an ethical perspective this is misleading to the point of being intentional.*"

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Information from Internet searches of representations of Mr Kaye's qualifications and experience

- 5.56. The Commission conducted internet searches using the name Dr David Kaye to determine how Mr Kaye's qualifications and experience is represented to the general public.
- 5.57. www.Macquariemedicolegal.com.au is a company which organises appointments with an appropriate specialist medical practitioner and/or psychologists who can provide medico legal opinions. Their website listed Mr Kaye, until very recently, as 'Dr David Kaye' and stated that he specialised in Psychology and was able to assess Whole Person Impairment (WPI) for Worker's Compensation matters.
- 5.58. MML was asked by the Commission to confirm the information they had regarding Mr Kaye's qualification and training and where this information was obtained. MML advised the Commission that health professionals are contacted and asked if MML can list them and use their services. If this is agreed to, MML obtain a CV from the health professional. MML also stated that each time a health professional was utilised, they would routinely be called, asked whether they were available to do an assessment and asked to confirm their field of expertise. MML verbally advised that Mr Kaye had written many reports for MML.
- 5.59. The advice provided by MML is that they believed that during the confirmation calls with Mr Kaye, he had stated that he was a psychologist. However they were unable to produce specific evidence of a MML staff member who had been advised by Mr Kaye that he was a psychologist. MML provided copies of two reports of 23 May 2014 and 13 November 2014 which he had completed in relation to two people. Both reports are titled "Whole Person Psychiatric Impairment Assessment Report" and are signed of as Dr David Kaye BA (Hons)(Psych) PhD ACS; Director/Principal Consultant; Trained in the Assessment of Permanent Impairment – AMA 4th and 5th edition; Psychiatric and Psychological Disorders – MAA, WorkCover & Comcare Australia" and his CV is attached. This CV is identical to the one he provided to the Commission and which is described above.
- 5.60. www.Hotfrog.com.au is a website advertising various businesses. The website advertises Dr David Kaye PhD Psychotherapist and states "As a Professional Psychotherapist working in a clinical environment, David has over 25 years of experience helping thousands of individuals, couples and families deal with some of life's most intractable problems. He wrote Crossroads: Your Journey Within so those in need can easily access his knowledge and experience in a simple yet effective book. David is a member of a number of Professional Associations. David is trained in the assessment of permanent impairment of psychiatric and psychological disorders AMA 4th & 5th Edition. David works in private practice in the Sydney and Melbourne CBD. His interventions are based on psychodynamic, cognitive behavioural, solutions focused as well as Strategic Outcome Focused Therapy principles. His rates are reasonable. To make an appointment for an assessment or therapy call David on 0417 553 883."
- 5.61. www.healthshare.com.au is a website that provides information about various health services. This website lists Mr Kaye as a psychotherapists and list his qualifications as "David Kaye BA (Hons) Monash BA(Psych) Swinburne PhD ACMT".

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Minimum qualifications required to provide services to clients as a counsellor

- 5.62. ACA provided the Commission with information regarding the minimum education or training required to provide counselling services, regardless of whether the person was a member of ACA. ACA advised that for a person to be qualified to provide counselling services they must have completed and have been awarded level 5 qualifications in a counselling course from an institution that is accredited under the Australian Qualifications Framework (AQF).
- 5.63. The AQF is the national policy for regulated qualifications in the Australian education and training system. It incorporates the qualifications from each education and training sector into a single comprehensive national qualifications framework. AQF levels and the AQF levels criteria are an indication of the relative complexity and/or depth of achievement and the autonomy required to demonstrate that achievement. AQF level 1 has the lowest complexity and AQF level 10 has the highest complexity.
- 5.64. ACA advised that counsellors are required to have at least level 5 qualifications at a minimum. According to AQF level 5 qualifications are at the Diploma level (ie just above the certificate level and below the level of a Bachelor degree, which is level 7). The AQF advise on their website that the graduates of a level 5 course have specialised knowledge and skills for skilled / paraprofessional work and/or further learning. They advised that level 5 qualifications require graduates to have a broad range of cognitive, technical and communications skills. Graduates of this level are able to apply methods and technologies to analyse information, provide solutions to sometimes complex problems and transfer skills to others.
- 5.65. ACA stated that it is not sufficient for a person to have completed part of a counselling course from an accredited or non-accredited institution. They advised that if a person was providing counselling on the basis of completing part of a counselling course they would be providing services they are not qualified to provide. Further they advised that short courses are offered in treatment modalities such as CBT. However, the completion of a short course, in the absence of any counselling qualifications, would not qualify a person to offer CBT to a client. To offer a treatment modality a person would need to complete level 5 qualifications in counselling which included training in the treatment modality they were offering.

Section 40 submissions from Mr Kaye

- 5.66. The Commission wrote to Mr Kaye on 10 August 2016 proposing to take action under s 41A and 41B of the *Health Care Complaints Act 1993* ('the Act') and invited submissions under s 40 of the Act.
- 5.67. On 8 September 2016, in a letter on behalf of Mr Kaye, for the first time in submissions to the Commission, he accepted that he did not hold a Graduate Diploma in Counselling or a Bachelor of Arts from Swinburne University. He also accepted that he had not received a PhD from an accredited institution and would stop using the title Dr and the post nominal PhD. Mr Kaye undertook to no longer make claims for qualifications he had not been awarded and, if he was permitted to continue in any counselling role in the future, he would

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inform clients that he is not a psychologist or a medical doctor. Mr Kaye has also provided an amended CV which removes the qualifications he has not been awarded from his CV.

- 5.68. In his submissions Mr Kaye claimed that he had completed an accredited sequence in psychology equivalent to a major in psychology at Swinburne University. He further claimed that this sequence, in combination with his Bachelor degree from Monash University, was relevant to him working as a counsellor and that his position is supported by the Australian Psychology Accreditation Council and from Swinburne University. He further claimed that his qualifications were equivalent or better to a level 5 qualification relevant to the provision of counselling and he was qualified to provide counselling services.
- 5.69. Mr Kaye relies, in his submissions, on an unrelated Bachelor degree from Monash University. However, without additional qualifications being awarded in psychology or counselling, this degree does not assist his claim that he holds qualifications equivalent to (or higher than) AFQ level 5 qualifications.
- 5.70. In his supporting documentation Mr Kaye provided an undated letter from the Australian Psychology Accreditation Council which stated that “the Bachelor of Arts completed from Swinburne University in 1996 was an APAC accredited 3 year undergraduate psychology sequence.” However, it is clear from both Swinburne University and Mr Kaye’s own recent admissions that he did not ‘complete’ a Bachelor of Arts from Swinburne University. This supporting letter plainly relies on Mr Kaye holding qualifications that he does not hold and therefore cannot be relied on to support Mr Kaye’s position that he holds the requisite qualifications to provide counselling services.
- 5.71. Mr Kaye also asserts that the Commission should rely on the letter of 2 May 1997 purporting to be from Associate Professor Ann Knowles of Swinburne University which states that he has completed a three year sequence of subjects in psychology and this satisfies the Australian Psychological Society requirements. However, as previously stated, Swinburne University wrote to Mr Kaye on 16 December 2009 advising he has not met the requirements of any accredited psychology award and that the purported letter from Associate Professor Knowles (which they could not locate) means that he could apply for a psychology 4th year program and receive an informal document but not an official certificate or award. Further, additional advice provided by Swinburne University to the Commission on 28 September 2016 confirms the following:
- Mr Kaye did not ‘complete’ a Bachelor of Arts (Psychology) at Swinburne University.
 - Completing all third year subjects in a Bachelor of Arts does not in itself constitute the completion of a three year sequence of subjects.
 - Mr Kaye has not completed the three year sequence of subjects in psychology. As per his Swinburne transcript he did not complete, Psychology 100, Psychology 101, Cognition and Human Performance, Development Psychology, Social Psychology, or Design and Measurement 2A. These subjects would need to be completed before he could be deemed to hold a three year sequence of subjects in psychology.
 - The former Head of School (Ann Knowles) has no recollection of producing and/or signing the letter of 2 May 1997.

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6. Findings & Determinations

- 6.1. The Commission has considered all of the evidence obtained during its extensive investigation into this complaint, and makes the following findings:
- 6.2. The information provided by Mr Kaye, in his business cards, letterheads, electronic email signatures, "Whole Person Psychiatric Impairment Assessment Reports" he has produced and his CV indicate that he holds the qualifications of a Bachelor of Arts with honours, a Bachelor of Arts in Psychology and a Graduate Diploma in Counselling.
- 6.3. Based on Mr Kaye's CV, which was provided to Client A, and information provided directly to her by Mr Kaye I accept that it was reasonable for Client A to believe that Mr Kaye held university qualifications in psychology, university qualifications at an honours level and post-graduate qualifications in counselling.
- 6.4. There is evidence that Mr Kaye submitted, to at least two law firms, his CV, which states that he holds university qualifications in psychology, university qualifications at an honours level and post-graduate qualifications in counselling. These law firms subsequently referred clients, including Client A, to Mr Kaye for the assessment of psychological injuries and/or counselling services related to their WorkCover and other damages claims.
- 6.5. Mr Kaye provided evidence directly to NSW Police and under oath in the Supreme Court of NSW that makes it clear that Mr Kaye holds himself out to the world as a person with university qualifications in psychology, university qualifications at an honours level and post-graduate qualifications in counselling.
- 6.6. Evidence from ACA of Mr Kaye's application to them for membership shows that he represented to ACA that he holds these same university qualifications and that his membership to their organisation was granted with the understanding that he legitimately held these qualifications.
- 6.7. A search of various websites shows that there is advertising for Mr Kaye's services which represent Mr Kaye as holding the same qualifications as he has represented himself as having to the Commission, ACA, at least two law firms and Client A.
- 6.8. Mr Kaye has persistently over a considerable period of time misrepresented himself as holding a Bachelor of Arts with a major in psychology from Swinburne University in various documents provided to Client A, the Commission, ACA, law firms and others. Further, the evidence shows that Mr Kaye was fully aware he did not hold this degree since he had previously applied to Swinburne University for a Bachelor of Arts in 2008 and was advised that he was not eligible, and again in 2009 and 2010 Mr Kaye applied for a position on the course Bachelor of Arts (Honours) Psychology, and the application was rejected. Despite this Mr Kaye submitted to the Commission and under oath in the Supreme Court of NSW that he is entitled to a certification of a Bachelor of Arts with a major in Psychology.
- 6.9. I find that Mr Kaye has misrepresented himself in his CV and in submissions to the Commission as holding a Graduate Diploma in Counselling Psychology from RMIT. It is clear from the information provided by RMIT to the Commission that Mr Kaye did not

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complete this Graduate Diploma and is therefore not entitled to represent himself as holding this qualification.

- 6.10. I find that Mr Kaye holds a Bachelor of Arts in sociology and politics, but these are not qualifications in psychology or counselling. Further, I find that he misrepresented himself as holding a Bachelor of Arts with Honours and is therefore not entitled to use BA (Hons) after his signature as he has in various documents including emails, his CV and reports he has written for clients.
- 6.11. I can see no evidence that Mr Kaye has any qualifications in psychology or counselling from any university. Further there is no evidence that Mr Kaye holds any level 5 qualifications from any accredited institution that would qualify him to practise as a counsellor.
- 6.12. I find that Mr Kaye wilfully misrepresented himself as holding university qualifications in psychology and university qualifications at an honours level to Client A, the Commission, ACA and organisations who referred patients to him for psychological assessments and counselling.
- 6.13. I find that Mr Kaye's use of the title 'Dr' and post nominal 'PhD' misled client's into thinking that Mr Kaye held a legitimate Doctorate in Psychology and that his so called Doctor of Philosophy is related to qualifications in psychology and/or counselling. With the evidence before me, I am satisfied that Mr Kaye was aware that his use of the title 'Dr' and post nominal 'PhD' are misleading due to;
- The ACMT website contains a warning about using the qualifications obtained from ACMT and that they are not accredited and therefore any qualifications obtained are not recognised by professional organisations for counselling or psychology.
 - ACA clearly advised Mr Kaye that he should not use the title of 'Dr' in relation to the provision of treatment and that his PhD is not recognised as a formal qualification in Australia. As Mr Kaye did not desist, his membership was allowed to laps with no prospect of renewal
 - ACMT is an incorporated religious non-profit organisation and a non-secular school and the qualifications from this organisation are not in psychology or counselling and therefore it is misleading to use the title 'Dr' and the post-nominal 'PhD' when working in the area of counselling or psychology.
 - The Commission has received two previous complaints against Mr Kaye in relation his use of the term doctor led people to believe he held qualifications in psychology and or medicine. This is clear evidence that members of the public have been misled by Mr Kaye's use of the term doctor and he has been made aware of patients believing that his use of the term doctor relates to the provision of mental health services.
- 6.14. I find that Mr Kaye's claim that he holds a three year sequence of subjects in psychology from Swinburne University is not supported by evidence from Swinburne University. Further, the partially completed degree from Swinburne University in combination with his Bachelor of Arts from Monash University in politics and sociology does not amount to a minimum AFQ level 5 qualification in counselling. I therefore find Mr Kaye is not qualified to carry out counselling services.

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Breaches of the Code of Conduct for Unregistered Health Practitioners ('the Code of Conduct') NSW

- 6.15. Based on the above evidence I find that Mr Kaye provided a health service in an unsafe and unethical manner, and conclude that Mr Kaye breached a number of clauses of the Code of Conduct, as outlined below:

Clause 3(1): a health practitioner must provide health services in a safe and ethical manner

Clause 3(b)(1): a health practitioner must not provide services that he or she is not qualified to provide.

Clause 12(1): a health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations;

- 6.16. Mr David Kaye, in the course of providing treatment as an unregistered practitioner to Client A, has:

- Produced business cards, letterheads, electronic email signatures, "Whole Person Psychiatric Impairment Assessment Reports" and a CV which misinformed and misrepresented to Client A and other organisations he engages with in relation to the provision of counselling services that he holds the qualifications of a Bachelor of Arts with honours, a Bachelor of Arts in Psychology and a Doctor of Philosophy related to his work in mental health.
- Misrepresented himself in his CV, to Client A, third parties referring work to him in relation to psychological injury and the Commission as qualified with WorkCover to provide Client A treatment.
- Acted outside of his area of expertise in that he provided Client A counselling services that he is not qualified to deliver.

Risk to public health or safety

- 6.17. In finding that Mr Kaye poses a risk to the health and safety of the public, I have taken the following matters into account:

- I find that Client A was a vulnerable patient given that she:
 - had multiple worker's compensation claims for physical and psychological injuries;
 - had an anti-discrimination claim on going;
 - was suffering from anxiety and depression and was on medication to this effect.
- In misrepresenting his training, experience and qualifications and in providing treatment he is not qualified to provide, Mr Kaye poses a risk to public health and safety in that:
 - health consumers who are likely to utilise, rely on and pay for his services are particularly vulnerable in that they are seeking assessment of and treatment for mental health conditions;

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- misrepresenting qualifications and training engenders a false belief in those who seek assessment and treatment from him that he has the skills and ability to accurately and appropriately diagnose their symptoms, design a treatment regime specific to their needs and provide the most appropriate and effective treatment, when there has been no objective formal assessment of his competence to do so;
 - failure to complete the minimum requisite training means that he has not undergone a structured, supervised and formally assessed clinical component;
 - failure to have actually attained the qualifications he claims means that he is also not undergoing supervised practice or ongoing professional development;
 - in serious and enduring mental health conditions, early intervention is critically important, as is the use of treatment supported by evidence showing it to be effective. In misrepresenting his qualifications, he potentially deprives members of the public from their earliest access to the most appropriate care;
 - the relationship of health practitioner and client is one of trust such that members of the public must be able to believe and place their trust in what they are told by a healthcare professional, especially in the context of the consent process. This is critically undermined where there is dishonesty on the part of the practitioner;
 - incomplete training and the absence of minimum qualifications as a counsellor, combined with dishonesty, necessarily means that he does not have the ability to recognise and act on the red flag situations of needing to refer someone to another practitioner when the condition is serious, when it is beyond his scope or he is not getting results;
 - his decision to provide health services in the absence of minimum requisite training, experience and qualifications means that he is prepared to put his own needs before those of his clients.
- Mr Kaye has an astounding lack of insight into the manner in which he misrepresents his qualifications and this is a continuing risk to public health and safety. Despite being told by Swinburne University and RMIT that he has no university qualifications from their organisations he continued to misinform Client A, organisations referring psychological injury work and the public at large that he had such qualifications. He has been advised by ACA that as his PhD is not from an accredited institution he should discontinue using the title 'Dr' and post-nominal PhD but he ignored this advice. Further he has had two previous complaints which raise concerns about him misrepresenting himself as a psychologist and a medical practitioner resulting from his insistence in using the title 'Dr' and the post-nominal PhD and yet he continued to use these titles in his work in mental health.
 - I find that Mr Kaye does not possess the required minimum qualifications to provide counselling services to any clients. I find that, in providing counselling services to Client A, he has provided health services which he is not qualified to provide.

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7. Decision

- 7.1. Based on the available evidence set out above the Commission determines that Mr Kaye has breached the Code of Conduct and that his conduct poses a risk to the health and safety of members of the public. Accordingly, the Commission makes the following prohibition order under section 41A(2)(a) of the *Health Care Complaints Act 1993* ('the Act'):

Mr David Kaye is prohibited from providing any counselling of any description and any other mental health services in a paid or voluntary capacity to any clients for a period of six months. At the expiry of this six month period, Mr Kaye must not provide any counselling of any description and any other mental health services until he satisfies the Commission that he has successfully completed the following course:

Level 5 qualification in counselling (i.e. Diploma of Counselling) from an accredited institution, as a minimum, in line with the standards set by the Australian Qualifications Framework.

David Kaye is prohibited from representing to any person or organisation that he holds university qualifications in mental health, including psychology or counselling, until evidence is provided to the Commission that satisfies the Commission that he has attained such qualifications.

The Commission issues the following public statement under section 41A(2)(b) of the Act:

The NSW Health Care Complaints Commission conducted an investigation into the professional conduct of counsellor, Mr David Kaye (aka Ali Davut Sarikaya). Mr Kaye represented himself to Client A, the Commission and others as holding university qualifications in psychology and counselling. Specifically Mr Kaye represented himself as holding a Bachelor of Arts with honours, a Bachelor of Arts with a major in Psychology and a Graduate Diploma in Counselling Psychology. Mr Kaye also used the title doctor and the post-nominal PhD. Mr Kaye made these representations through his use of his CV, letters, reports, business cards, emails and through verbal advice to Client A and others.

Further, the evidence regarding Mr Kaye's PhD indicates that it is in theology and not related to his practice in counselling or psychology. The evidence also showed that it was obtained from an American, online, non-accredited institution called "The American College of Metaphysical Theology" (ACMT). The ACMT website has been decommissioned but prior to this the website stated that "ACMT programs are not designed to meet any particular local, state or national licensing or credentialing laws. Mr Kaye was warned against using the title doctor and post-nominal PhD in his work as a counsellor as it is unethical and likely to mislead clients into believing he held an accredited doctorate which related to his practise as a counsellor. Despite this advice Mr Kaye continued to use the title doctor and post-nominal 'PhD' in his practise as a counsellor.

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The Commission's investigation found that Mr Kaye has no formal qualifications in psychology or counselling. He does not have a Bachelor of Arts with a major in Psychology and he does not have a Graduate Diploma in Counselling Psychology. Mr Kaye has misled clients and others persistently over a number of years in to believing that he has the relevant credentials required to deliver counselling services when this was simply not the case. He has been deliberately deceptive in his conduct.

The Commission's investigation has found that Mr Kaye provided counselling services to Client A when he did not hold any qualifications in counselling.

On the basis of the above evidence the Commission found that Mr Kaye breached the following clauses the Code of Conduct for Unregistered Practitioners in that he:

- a) Failed to provide a health service in a safe and ethical manner
- b) Provided counselling services to a client in circumstances where he did not hold the appropriate qualifications
- c) Misrepresented himself as holding university qualifications in psychology and counselling

Through his actions, Mr Kaye has deprived both client A and countless other clients over the years the opportunity to receive the care and treatment that they required from an appropriately qualified practitioner. During the Commission's investigation Mr Kaye failed to acknowledge this, or the fact that he has no formal qualifications in Counselling. However, prior to the finalisation of the investigation Mr Kaye, in his final submissions, acknowledged that the claims he made about his qualifications were misleading to the client and the public generally.

- 7.2. The Commission will make a copy of this Statement of Decision publically available under s 41B(3)(c) of the Act.

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