

Government Roundup.

Queensland Edition

Colin Biggers & Paisley
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**Colin
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& Paisley**

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Introduction.

Welcome to the inaugural Queensland Edition of our Government Roundup publication.

In this issue, we're pleased to share insights from our Queensland teams on key developments affecting government stakeholders, including legislative updates and case law, emerging risks and regulatory shifts.

Included in this edition is a preview of our Government webinar series, commencing in October. Further details will be shared in the coming weeks.

We trust you will find this edition informative, and please contact our authors should you have any questions or wish to discuss any of the topics further.

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Government webinar series | Queensland

We are pleased to announce the upcoming launch of our Queensland Government webinar series.

This series will explore the evolving government landscape in Queensland, highlighting key challenges and emerging opportunities across the sector. Each session offers tailored guidance for government stakeholders, featuring expert insights drawn from recent case law, legislative updates, and our experience working across all levels of government.

Further details including session topics, speakers, and dates will be shared soon.

[Register your interest here.](#)

Join for future updates.

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Applying the Reasonable Administrative Action exclusion under the Safety, Rehabilitation and Compensation Act 1988

By Georgina Wong

In brief

Application of the Reasonable Administrative Action (RAA) exclusion under the *Safety, Rehabilitation, and Compensation Act 1988* (SRC Act) serves as a critical consideration for determining workers' compensation eligibility under the Comcare scheme. The exclusion applies to injuries that result from reasonable administrative action taken reasonably in relation to employment.

Section 5A(1) of the SRC Act provides that an injury is not compensable where it is a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

The words "as a result of", mean a causal connection between the injury and reasonable administrative action must be established. The High Court clarified this causal connection test in *Comcare v Martin*, guiding decision-makers on determining the causal requirements and factors needed to apply the exclusion appropriately.



Key considerations for decision-makers

1. Assessing the presence of an ailment or aggravation of an ailment

The RAA exclusion is frequently applied in cases involving psychological injuries, which generally fall under the SRC Act's definition of "disease". The SRC Act defines "disease" as an ailment or aggravation of an ailment substantially contributed to by employment, while "ailment" includes physical or mental disorders, defects, or morbid conditions. Decision-makers must evaluate medical evidence to confirm whether the claimed condition qualifies as an ailment or aggravation of an ailment.

2. Assessing the significant employment contribution requirement

For a condition to qualify as a “disease”, employment must contribute to it to a significant degree—defined as a contribution “substantially more than material.” To meet this threshold, decision-makers must consider:

- the employment-related causative factors impacting the disease;
- the presence of non-employment-related factors; and
- the relative impact of these employment and non-employment factors on the disease’s development.

Medical evidence will often be important in establishing causative factors and their significance in the disease’s development.

3. Evaluating whether employment actions qualify as reasonable administrative action

After determining that employment significantly contributed to the disease, decision-makers must assess whether the causative employment factors include reasonable administrative action. This involves verifying whether each action was:

- Administrative: Pertaining to the employee’s duties or instructions on how to perform them.
- Reasonable: Objectively assessed based on established practices and workplace norms.
- Taken in a reasonable manner: Evaluated by objective standards.
- Related to the employee’s employment (directed specifically to the employee).

Reasonableness is judged on a case-by-case basis, using an objective test. The test of reasonableness in section 5A is not prescriptive and there may be more than one way an administrative action may be undertaken. The test is whether the action was reasonable in the circumstances, not whether it could have been taken in a more reasonable way.

4. Determining if the injury or disease was “suffered as a result of” reasonable administrative action

The exclusion under section 5A(1) only applies if the disease or injury was genuinely suffered “as a result of” reasonable administrative action. To make this determination, decision-makers should consider whether:

- the injury or disease would have been suffered without the reasonable administrative action;
- the impact of non-administrative and non-employment factors on the injury or disease; and
- employment’s contribution to the injury or disease remains significant in the absence of reasonable administrative action.

Factors influencing this assessment include the proximity between the reasonable administrative action and the injury or disease onset, the impact of work-related and non-work-related factors, and whether employment would still significantly contribute to the injury or disease without the administrative action.

Practical application of the RAA exclusion

Buck v Comcare [2012] AATA 327

The employer encouraged the employee to sign a draft job plan that included duties the employee felt exceeded their abilities, leading the employee to make a claim for mixed anxiety and depression.

The Tribunal concluded that the employer's actions constituted reasonable administrative action, as they pertained to the employer-employee relationship.

Kennedy v Comcare [2013] AATA 696

Following a period of sick leave, the employer required the employee to provide medical certificates to process their sick leave entitlements. The employee sought support from the employer to prevent financial hardship. The employer agreed to send a representative to the employee's home to collect the medical certificates and discuss potential support options. The employee filed a claim for an adjustment disorder, alleging bullying and harassment at work.

The Tribunal determined that the employer's actions were reasonable administrative action, as the home visit was connected to the employer-employee relationship.

Conclusion

Applying the RAA exclusion under the SRC Act provides employers with protection for workplace injuries sustained as a result of reasonable administrative action which is fundamental to the management of employees and operations.

Decision-makers must carefully assess causation, reasonableness, and the presence of employment contribution to determine if an injury genuinely "suffered as a result of" reasonable administrative action falls outside the scheme.

Importantly, employers who document and justify their administrative decisions with clarity, consistency, and fairness are better positioned to successfully rely on the reasonable administrative action exclusion for claims made under Comcare.



Trauma exposure: 7 steps for managing psychosocial risks arising from traumatic events in the workplace

By Georgina Wong

In brief

Commonwealth workers in fields such as emergency services, law enforcement, and social support frequently face situations involving traumatic events. These exposures are now recognised as a psychosocial hazard under the Managing Psychosocial Hazards at Work Code of Practice, reinforcing the need for employers to manage the risks associated with trauma exposure effectively.

Traumatic events in the workplace can have significant psychological effects on workers, potentially leading to conditions like post-traumatic stress disorder (**PTSD**), anxiety or depression. These conditions can become the basis for workers' compensation claims, resulting in direct costs for employers and insurers, as well as indirect costs such as increased absenteeism and reduced productivity.

By proactively managing trauma-related risks, employers can reduce the likelihood of claims arising from traumatic exposures and demonstrate compliance with legal responsibilities to protect employee health and safety.



Steps for minimising workers' compensation claims for trauma exposure

To address the risks associated with exposure to traumatic events, we suggest employers consider implementing the following strategies:

1. Identify trauma-related risks

Conduct thorough risk assessments to identify roles and situations where workers may encounter traumatic events or materials. This identification process is essential for implementing targeted measures to support affected workers and reduce the risk of claims.

2. Implement processes to minimise exposure

Minimise workers' exposure to traumatic events or material. Employers should - where appropriate - implement controls such as instructing workers to work in pairs, rotating roles or activities and managing workload to reduce exposure to traumatic events or material.

3. Implement response and support systems

Develop clear policies that outline immediate response procedures following traumatic events. Providing timely access to support services-such as counselling, Employee Assistance Programs (EAPs), or mental health resources-can reduce the long-term psychological impact on workers and may prevent future claims.

4. Train managers and supervisors

Equip your leaders with the skills to recognise trauma-related symptoms and support workers in managing these issues. Supervisors trained in mental health awareness can play an important role in early intervention, helping workers access support before psychological injuries develop into workers' compensation claims.

5. Offer resilience and mental health training

Regularly provide resilience training to workers in high-risk roles. Equipping workers with coping strategies and techniques for managing stress can mitigate the impact of traumatic exposures and reduce the likelihood of workers requiring time off or commencing claims.

6. Establish a clear process for managing mental-health related concerns

Having a straightforward process for

reporting trauma-related issues and mental-health concerns can demonstrate to workers that their mental health is taken seriously. Prompt and supportive handling of claims can reduce the stress and stigma associated with the claims process, resulting in more positive outcomes for all parties involved. A well-defined process can also prevent workers from developing secondary trauma related to the handling of their concerns.

7. Regularly review and update policies

Trauma management policies should be dynamic and reflect evolving best practices to ensure a favourable outcome for both workers and employers should risks in the workplace arise. Regular policy reviews, based on worker feedback and incident reports, will ensure that any risk management approach remains effective and compliant with current work health and safety standards.

Benefits of a proactive approach

By actively managing the risk of exposure to traumatic events, employers not only fulfill obligations under the *Work Health and Safety Act* but also reduce the likelihood of workers' compensation claims for psychological injuries. Proactive trauma management promotes workforce resilience, improves morale, and demonstrates the employer's commitment to employee well-being.

Employers who have proactively followed these guidelines will be in a strong position to demonstrate their compliance with the *Work Health and Safety Act* and related regulations. By having comprehensive trauma management policies, providing support and resources to workers and maintaining documentation of these efforts, employers are well-positioned to demonstrate they took all reasonable steps to protect workers' mental health.

PIPA and idiosyncrasies of Queensland medical negligence claims

By Patrick Cavanagh and Zoe Jeffrey

In brief

The case of *Page v Gold Coast Hospital and Health Service [2025] NSWSC 315* (**Page**) examined an application to transfer a medical negligence claim from the New South Wales Supreme Court (**NSWSC**) to the Queensland Supreme Court (**QSC**). The key issues included the application of Queensland civil liability statute by a NSWSC and whether the pre-court procedures under the *Personal Injuries Proceedings Act 2002* (Qld) (**PIPA**) would assist in the resolution of the case. Ultimately, the court decided not to transfer the matter to Queensland, as the interests of justice did not favour this action.

Background

The Plaintiff, a 13-year-old boy, initiated proceedings through his parents against the Gold Coast Hospital and Health Service (**GCHHS**), which manages the Gold Coast University Hospital. He had been diagnosed with severe cognitive, physical, and developmental disabilities, including hypoxic brain injury and cerebral palsy, and alleged that the hospital failed to provide reasonable care and skill during his mother's pregnancy and his birth, leading to his condition.



GCHHS applied to the NSWSC to have the proceedings moved to the QSC, being the jurisdiction of the alleged events and location of the hospital.

The Plaintiff opposed this application as he and his parents reside in New South Wales.

The grounds to move the proceedings

Moving (or cross-vesting) proceedings is governed by section 5(2) of the *Jurisdiction of Courts (Cross-Vesting) Act 1987* (NSW), which identifies a key consideration in whether a matter should be cross-vested as the “interests of justice”. Chen J identified the key question for consideration as:

[14] ... whether “it appears” that it is otherwise in the interests of justice that the proceedings

- *be determined by the Queensland Supreme Court... If that conclusion is reached,*
- *then ... there is no discretion: the proceedings must be transferred to that Court.*

His Honour considered three factors relevant to the determination of the appropriate forum for the proceedings to be heard:

- the application of the law of Queensland and regime of damages under Queensland law by a NSWSC;
- the potential witnesses are likely to be based in Queensland; and
- the disruption to the Plaintiff can be minimised by speedy determination of the proceedings in Queensland.

His Honour also considered whether the case would benefit from the application of the procedural provisions contained in PIPA, which would apply if the matter was transferred to Queensland.

The decision of the New South Wales Supreme Court

Application of the law of Queensland

As the alleged events occurred in Queensland, the *Civil Liability Act 2003* (Qld) would be the relevant law to apply in deciding the case. GCHHS argued that it was in the interests of justice that the QSC hear and determine the matter because the Queensland civil liability statute is “*idiosyncratic to the Queensland jurisdiction*” [20].

Chen J did not assign any significant weight to this factor because:

- the Queensland statute and corresponding New South Wales statute have substantially similar terms and case law interpreting one has on many occasions been referenced when interpreting the other;
- although the Queensland statute and New South Wales statute have different approaches to assessing general damages, the Queensland statute is not so technical that the NSWSC could not apply it, and the assessment of the amount of general damages the Plaintiff may be entitled to is unlikely to be highly controversial;
- the regimes for assessing other types of damages across Queensland and New South Wales are not significantly different; and
- there is one common law of Australia so the Court hearing the matter makes no difference when applying the common law.

His Honour found that the NSWSC would have no issues in understanding and applying the Queensland law to this case.

Potential Witnesses based in Queensland

GCHHS made general statements that lay witnesses were likely to be based in Queensland and would be inconvenienced by the proceedings being in New South Wales. However, it did not identify any potential lay witnesses. All of the Plaintiff’s expert witnesses and treatment team were based in and around Sydney (with the exception of one who was based in South Australia). The Plaintiff and his parents were also based in Sydney.

Chen J particularly noted that the lack of evidence about the potential identity, number or location of any witnesses to be called by GCHHS, meant that he was unable to make any findings which would inform his assessment of whether the proceedings should be transferred to Queensland.

Disruption to the Plaintiff and speed of resolution in Queensland

Chen J accepted the evidence of the Plaintiff's parents that he is highly dependent on them and struggles with changes to his routine. His Honour considered this to be contextually important and noted that justice is not divorced from practical reality. His Honour concluded that disruption to the Plaintiff would be considerably less if the proceedings remained in New South Wales.

As to the idea that the proceedings would be resolved more quickly in Queensland, Chen J accepted evidence of the Plaintiff's solicitor who has practiced in both jurisdictions, that medical negligence claims take considerably longer to resolve in Queensland as a result of the procedures required by PIPA.

Procedural provisions under PIPA

PIPA requires that any relevant proceedings in the QSC undergo "pre-court" procedures, including notification, disclosure of information and a compulsory conference. GCHHS submitted that these procedures, particularly the compulsory conference, would be conducive to refining issues and determining the proceedings quickly.

Chen J noted that in this particular case, the pre-court procedures under PIPA were unlikely to provide any appreciable benefit given the specific issues in this case and the fact that the Plaintiff already had access to GCHHS's records.

When paired with the evidence of the Plaintiff's solicitor that pre-court procedures under PIPA have a tendency to draw out proceedings, Chen J was not persuaded that transferring the matter to Queensland to gain the benefit of PIPA requirements would be in the interests of justice in this case.

Conclusion

The stated main purpose of PIPA is "*to assist the ongoing affordability of insurance through appropriate and sustainable awards of damages for personal injury*". This is said to be achieved generally by, among other things, "*providing a procedure for the speedy resolution of claims for damages for personal injury to which this Act applies*".

Although Chen J noted that he "*can readily accept that many personal injury cases would benefit from [the PIPA] pre-court procedures – notably, the claims settlement procedures*", this case brings to light that PIPA procedures may not be a "one fits all" for the speedy resolution of medical negligence proceedings.

This case highlights that the jurisdiction in which a plaintiff's cause of action arose, may not necessarily be the same jurisdiction in which a claim for damages for personal injuries is commenced. In this instance, Chen J was unpersuaded that the interests of justice favoured transferring the matter to the QSC and dismissed GCHHS's application.



Prove it or lose it: The reverse onus of proof on employers in adverse action claims

By Megan Kavanagh

In brief

A Federal Circuit Court Judge has recently ruled that a Melbourne migrant and refugee centre took unlawful action when it dismissed an employee under the guise of a cost-cutting restructure. The judgment highlights a critical takeaway for employers: the threshold for proving that a dismissal was for a lawful reason is high, and the reverse onus under the *Fair Work Act 2009* (Cth) makes defending such claims particularly challenging.

Background

General protections, contained in the *Fair Work Act 2009* (Cth), safeguard employees from being subject to adverse action, coercion, undue influence, or misrepresentation.

Most cases heard by the Fair Work Commission relate to adverse action. A person, most often an employer, cannot take adverse action for a reason that is against the law (i.e. prohibited), including:

- because an individual has exercised or proposed to exercise a workplace right;
- because of an individual's age, sex,

disability, or another discriminatory reason; or

- because an individual is away from work due to sickness or injury.

An employer might be seen to take adverse action against an employee if the employer:

- dismisses the employee;
- injures the employee in his or her employment;
- alters the position of the employee to the employee's prejudice; or
- discriminates between the employee and other employees.



As such, when making an adverse action claim, an applicant must establish that:

- a) they meet the eligibility requirements to apply; and
- b) they have been the subject of adverse action for a prohibited reason.

Once the applicant has established the above, the reverse onus of proof is triggered. Under section 361 of the *Fair Work Act 2009* (Cth), it will be presumed that the dismissal was taken for the reason alleged unless the employer can prove otherwise.

Accordingly, the employer must show, on the balance of probabilities, that the reason for the adverse action did not include a prohibited reason. The prohibited reason does not need to be the sole reason for the action.

Thus, there is a high bar for employers in adverse action claims, as they must provide a lawful and well-documented explanation for the dismissal. For example, this may be done by providing direct evidence of the decision-maker's process and reasoning.

Shum v Southern Migrant and Refugee Centre Inc (No 3) [2025]

This case concerned a dispute between Southern Migrant and Refugee Centre (**SMRC**), a prominent non-profit organisation in Melbourne (**the respondent**), and a former employee (**the applicant**).

In 2017, SMRC dismissed its finance team leader, claiming it was part of a legitimate cost-cutting restructure. The employee challenged her dismissal in the Federal Circuit Court, alleging that she was dismissed due to her exercise of workplace rights, rather than for genuine operational reasons.

Initial Hearing

At the initial hearing, Judge Heather Riley ruled that SMRC, its chair and interim managing director had taken adverse action against the finance team leader in breach of the *Fair Work Act 2009* (Cth). Her Honour found that the redundancy was not genuine, but rather a result of the applicant's complaints, sick leave, and prospective or actual lodgement of proceedings with external bodies regarding alleged governance and financial irregularities. Her Honour concluded that the chair of the company conspired to remove the finance team leader and another employee to consolidate control of the organisation, and that the interim managing director was recruited specifically to carry out these dismissals.

Appeal

Justice John Snaden overturned Judge Heather Riley's decision on appeal, finding that Her Honour's assessment of the witness's credibility "contaminated" her reasoning and unfairly prejudiced SMRC's defence. His Honour ordered a retrial so that the former chair and the interim managing director's evidence could be properly considered.

Retrial

Following a retrial, Judge Jonathan Forbes ruled that SMRC had taken adverse action against the finance team leader and concluded that the former chair and interim managing director were accessorially liable. His Honour found that the applicant's dismissal was materially influenced by her history of complaints and exercise of workplace rights, both of which are prohibited reasons for dismissal under the Act.

Judge Jonathan Forbes placed emphasis on the involvement of an external law firm, purporting that it was "intuitively odd" to involve a specialist employment law

firm in what SMRC claimed was a routine restructuring. Contrary to SMRC's assertions, His Honour declared that "[t]he organisational restructure was developed knowing that [the applicant] was not suitable for or would refuse to express interest in any alternative position."

His Honour accepted that the employee was a "most difficult and challenging employee for even the most patient of employers," but despite this finding, reinforced that the law protects such employees from dismissal based on the exercise of their workplace rights.

Key takeaways for employers

The findings of this case serve as a critical reminder for employers that dismissal must be undertaken for a lawful reason and supported by credible evidence.

There are various steps employers can take to better demonstrate that actions around restructuring are lawful, including:

- **Keep detailed records of decision-making:** Clearly and comprehensively document the reasons for any dismissal, restructuring, or performance concerns. Identify and record who made the decision, what factors were considered, and why the action was taken. Without this, it will be difficult, if not impossible, to defend an adverse action claim.
- **Manage complaints and performance separately:** While poor performance may be a lawful reason for dismissal, it is unlawful to dismiss an employee for exercising their workplace rights. Where an employee is underperforming but has also raised complaints, undertake separate and well-documented processes. A failure to distinguish lawful concerns from protected activities

will significantly weaken an employer's defence.

- **Train decision-makers:** Provide training to board members, managers, and other decision-making staff on the relevant legal framework and compliance requirements. The training should educate staff on the general protections afforded to employees under the *Fair Work Act 2009* (Cth), with a specific focus on what constitutes adverse action and the prohibited reasons for taking such action.
- **Implement structured and transparent HR processes:** Have in place clear internal procedures for performance management, conducting investigations, and complaint handling. If an investigation is required, ensure that it is procedurally fair. The employee must be afforded a chance to respond, an impartial assessment, and adequate support.
- **Conduct independent review:** Before proceeding with high-risk dismissals, it might be necessary to conduct an independent review or risk assessment to identify potential exposure under the *Fair Work Act 2009* (Cth). Seeking advice is still a useful way to manage risk.

At Colin Biggers & Paisley, we advise employers across all industries on navigating complex workplace issues, including how to manage dismissals and staff complaints.

If your organisation is managing a high-risk dismissal or seeking to ensure that your employment practices, policies, and procedures are compliant with the *Fair Work Act 2009* (Cth), our Employment & Safety team can provide you with clear, strategic advice.



Employed for a ‘specific period or task’? What Queensland public sector employers need to know about reinstatement risks

By Megan Kavanagh and Tyrone Prisk

In brief

A Queensland local Council has successfully raised a jurisdictional objection to an Application for Reinstatement on the basis a Trainee was engaged for a “specific period or task” and therefore had no entitlement to seek reinstatement through the Queensland Industrial Relations Commission (**QIRC**).

In delivering her decision, Deputy President Hartigan has defined the terms of a “specific period or task” and “labour market program” in determining the Council’s interim application to dispose of the employee’s Application for Reinstatement on the basis the QIRC did not have jurisdiction to hear or determine the matter.

Her Honour had regard to a 2024 decision made by the Full Bench of the Federal Court of Australia in departing from previous decisions of the QIRC to determine that an engagement for a “specific period of time” includes an employment contract with a nominal expiry date, even where the contract has the ability to be terminated before the nominal term expires.



The Application for Reinstatement

The employee had been engaged by the Brisbane City Council (**Council**) as a Trainee Bus Operator in June 2023. The employment contract was specified as temporary employment for the purposes of a traineeship, with a nominal end date of June 2025, or earlier, if the traineeship requirements had been met.

However, in late 2023, the employee was suspended from her employment and became the subject of a workplace investigation and resulting disciplinary process. The Council terminated her employment on 16 July 2024, some 11 months prior to the end of the temporary employment period and before the completion of her traineeship.

The employee contended her dismissal was unfair and brought an Application for Reinstatement in the QIRC. The Council, in responding to the Application, raised a jurisdictional objection contending the employee was not a person protected from unfair dismissal because she was employed for a “specific period or task”.

History of prior decisions

It has been a longstanding position in the Queensland industrial relations jurisdiction that to be engaged for a “specific period” meant that the employee must have been engaged on a fixed-term contract where employment ends by agreement on a fixed date and not earlier by the employer’s initiative.

The QIRC had previously dismissed objections where the employment contract was not for a period of time that had certainty about the time of commencement and the time of completion. In making this application, the employee’s temporary employment contract with a nominal expiry date that could be terminated early clearly fell far outside of the exclusion enabling the employee to make an Application.

The position adopted by the Council in raising its objection reflected its longstanding view that trainee bus operators were engaged for either a “specific period or task”.

On this occasion, and in the context of new legislation, the Council contended that in light of more recent authorities, namely the decision of the Full Bench of the Federal Court in *Alouani-Roby v National Rugby League Ltd* (2024) 307 FCR 65 (***Alouani-Roby***), the historical position adopted by the QIRC should be departed from.

A new definition for “specific period or task”

The QIRC has now adopted a new position, that to be employed for a “specific period” includes employment under a contract with a nominal expiry date which provides for early termination.

In applying the Federal Court’s reasoning from *Alouani-Roby*, the Deputy President adopted the position that the statutory conception of “a contract of employment for a specified period of time” is apt to include fixed-term contracts that are terminable otherwise than by the expiry of their fixed terms. The position in Queensland now is that, at least in the context of a traineeship, a contract which has a nominal expiry date is for a “specified period” even where it provides for early termination.

The QIRC also sought to draw a distinction between the *Industrial Relations Act 2016* (Qld) (**IR Act**) and the *Fair Work Act 2009* (Cth) (**FWA**) in the manner in which unfair dismissals are dealt with. The Deputy President noted that the provisions excluding a person from unfair dismissal under the IR Act are not concerned with whether or not a person has in fact been dismissed, but rather they operate to identify classes of employees for whom the Application for Reinstatement jurisdiction does not apply.

The QIRC noted that an exception to the exclusion may apply where an employee is dismissed before the period ends or the task is completed, and they are participating in a “labour market program”. In this case, the employee sought to rely on their traineeship being within the meaning of a “labour market program”, however, did not lead sufficient evidence to prove that was the case. The

QIRC identified that the IR Act separately defines “labour market program” and “traineeship” as distinct, holding that a party to a training contract who is completing a traineeship cannot, without further information, be seen to be participating in a “labour market program”.

The QIRC also held that employment as a trainee was caught by a second exclusion - engagement for a “specific task”. The QIRC held that a term of the employment contract was for the employment to continue until the nominal expiry date to permit the employee to complete the traineeship. It was held that completion of the traineeship was employment for a “specific task”.

It is interesting to note the QIRC has adopted a new view of a “specific task” in the context of the IR Act. The Council had previously lost a 2008 appeal before a Full Bench of the Australian Industrial Relations Commission in the matter of the appeal by *Brisbane City Council* [2008] AIRC 358, which held that a bus operator traineeship, having characteristics similar to those of an apprenticeship, is not a “specific task” within the meaning of the (then) *Workplace Relations Act 1996* (Cth).

Lessons for Local and State Government in Queensland

Local and State Government employers within the Queensland industrial relations system now have access to a broader ability to raise a jurisdictional objection to Applications for Reinstatement on the basis of a “specific period or task”.

It is likely that more jurisdictional objections will now be upheld, particularly where a number of previous objections have been dismissed on the basis the temporary employment contracts provided for early

termination (see, for example, the decision of the Deputy President issued prior to *Alouani-Roby in Pardal De Souza Dias v State of Queensland (Department of Environment and Science)* [2024] QIRC 17).

The Deputy President noted that the exclusions from an Application for Reinstatement under the IR Act operate in a distinctly different manner to the FWA because, rather than making reference to a person who has or has not been dismissed, they instead identify classes of employees to whom the reinstatement jurisdiction does not apply.

In light of *Alistair*, local governments across Queensland and Queensland Government employers should ensure, when considering the risks associated with a termination of employment or in responding to an Application for Reinstatement, that they carefully review the terms of the employment contract. In particular, whether an employee is engaged for a “specific period or task” or by way of a “labour market program”.

Carefully considering an employee’s engagement and the exclusions to an Application for Reinstatement under the *Industrial Relations Act 2016* is critical for Queensland State and Local Governments in responding to unfair dismissal claims, and may assist to protect your Department or Council from costly litigation and reinstatement orders if the substantive reason for termination is held to be harsh, unjust or unreasonable.

Where employees have been engaged on outer limit contracts for a “specified period or task”, the decision in *Alistair* may cause a change in litigation strategy for applicants, seeking instead to bring alternative applications for contravention of the general protections regime or discrimination, depending on the individual circumstances.



Separating misconduct from psychiatric injury in dismissal: How Queensland councils can respond to applications for reinstatement

By Megan Kavanagh, Tyrone Prisk and Joel Beveridge

In brief

Managing misconduct in the context of psychiatric injury presents complexities for local government. When an employee has a history of psychiatric injury and workers' compensation claims but subsequently engages in misconduct, addressing and managing the misconduct can often be difficult and fraught with challenges. Councils need to carefully navigate the risks of discrimination, unfair dismissal, general protections, and contraventions arising under workers' compensation law.

In this case, the Queensland Industrial Relations Commission (**QIRC**) was required to assess the fairness of a local council's management of a disciplinary process and termination, and to consider whether the misconduct relied upon to warrant termination was, in fact, a manifestation of a psychiatric injury suffered by the employee.



Misconduct and psychiatric injury

At the heart of the dispute was the dismissal of the applicant from his role with Brisbane City Council (**Council**) due to six acts of alleged misconduct and an Application for Reinstatement to his role as a bus driver. A key feature of the case is the way Council's decision maker reached an outcome of termination by having regard to the allegations of misconduct alone, and not the employee's psychiatric injury.

The Council argued the employee's conduct in six separate instances, which included breaches of the Council's Code of Conduct, was serious enough to justify his termination. The employee contended that dismissal was

disproportionate to his conduct and that any conduct that could be established was specifically attributable to his mental illness injury, resulting in a discriminatory termination. In its analysis, the QIRC acknowledged the importance of distinguishing between misconduct that can be attributed to a person's actions and conduct that may be the result of psychiatric harm.

Where the employee had the opportunity through the "show cause" process to demonstrate to the decision maker that his conduct had, in any relevant way, a causal connection to his mental illness, and had failed to do so, the QIRC found the employee's misconduct was not a consequence of any psychiatric illness or condition from which he had suffered.

The QIRC came to this conclusion by stating that the employee's evidence did not support his claim, noting four reasons for this at [139]-[153]:

1. The uncontested evidence was that the employee was assessed as fit to resume bus driving duties from 1 February 2023 and the misconduct happened on and after 9 February 2023.
2. The employee attributed his conduct to stress from an earlier accident, but in cross-examination, described it as minor, saying he "clipped" the vehicle with "no damage". CCTV evidence showed him laughing while watching his phone and displaying no physical signs of anxiety from the collision. The employee gave no evidence his anxiety was high because of any pre-existing psychiatric illness. He also did not deal with his other impugned conduct on separate dates.
3. The medical evidence did not support the employee's claim. There was no

expert medical evidence from three separate medical experts who had seen the employee that supported the employee's contention that he was suffering from a psychiatric injury or illness, the manifestation of which caused his misconduct. One psychiatrist's report stated that it was the employee's personality that drove his behaviours, not a psychiatric illness.

4. There were other discrete reasons why the QIRC did not accept this particular claim by the employee, including:
 - His 2023 workers' compensation application claimed the February events caused his mental illness, not that they aggravated pre-existing conditions.
 - He never claimed to Council's Delegate during the disciplinary process that his misconduct was due to mental illness.
 - A work capacity certificate issued by a psychiatrist stated that his injury did not prevent return to duties and medication would not impede cognitive function, which did not support the claim that psychiatric illness caused the conduct.

The exclusion of section 232B of the *Workers' Compensation and Rehabilitation Act 2003*

Another important aspect of the case is the QIRC's exclusion of section 232B of the *Workers' Compensation and Rehabilitation Act 2003* (**WCRA**). This section of the WCRA prohibits the termination of an employee solely or mainly because a worker is not fit for employment due to an injury for a period of 12 months after the injury is sustained.

The employee's representative sought to rely on this prohibition as a matter of unfairness in the termination. The QIRC specifically pointed out that the proceedings were not brought under the framework of this section; therefore, it did not form part of the legal consideration in the case.

In paragraph [118], the QIRC clearly stated that the application before it was not an application under the WCRA for reinstatement, and that instead the Application for Reinstatement jurisdiction under the *Industrial Relations Act 2016* (Qld) (**IR Act**) had been enlivened; as such, there was no need to engage with the WCRA provision.

This distinction is crucial because it underscores the importance of an applicant's election in determining which jurisdiction to enliven to challenge their dismissal and the considerations employees must apply relevant to the type of application brought in supporting their application.

This point also means that consideration was not given to the WCRA in deciding whether the dismissal was "harsh, unjust, or unreasonable" so as to make it unfair, but was instead assessed in accordance with sections 316 and 320 of the IR Act.

No prior warnings for conduct permitted

Section 320(1)(c) of the IR Act provides that the QIRC must consider whether an employee was warned about their conduct, if their dismissal was because of conduct.

At paragraph [213], the QIRC identified that the employee had not been warned about his conduct prior to dismissal. However, in balancing the considerations under section

320, the Council was able to establish that the employee was otherwise familiar with the Code of Conduct and that, given the nature of his misconduct, the QIRC considered that a failure to warn the employee prior to dismissal did not render the dismissal unfair.

Other considerations

The case is rich with other considerations that speak to the complexities of assessing misconduct in the context of psychiatric injury. One of the key insights is the approach adopted by the Council's decision-maker and their evidence at trial.

Ultimately, the QIRC was satisfied that the Council's Delegate's own conclusions about the facts of the employee's conduct, and her conclusions that he had engaged in misconduct, were properly made. This was for the following reasons:

1. The Delegate's evidence was considered genuine. The Delegate's evidence was that the reasons for her decision to terminate the employment were her conclusion that he had engaged in six acts of misconduct, as alleged against him, and that his behaviour was inconsistent with the continuation of his employment by the Council.
2. There was no evidence the Delegate gave in cross-examination that caused the QIRC to doubt the veracity of her evidence about why she made the decision to terminate the employee's employment.
3. The Delegate did not waver in her evidence about why she made the decision to dismiss the employee, and her evidence about why she made that decision is consistent with the contemporaneous documentary evidence of the disciplinary process.

4. In the course of the disciplinary process, at no point did the employee make the case to the Delegate, supported by medical evidence, that the conduct in which he allegedly engaged were episodes which had a causal link or connection with any mental illness from which he suffered.

Recommendations for Councils and government employers

In light of Satterly, local governments across Queensland and Queensland Government employers should consider the following when dealing with employee misconduct through a 'Show Cause' process:

1. Delegates must give genuine consideration to disciplinary matters before them and turn their mind to the facts. While HR teams may largely oversee a process, delegated decision-makers will be required to give evidence if matters proceed to hearing, and must be able to demonstrate their own decision-making process.
2. Maintain clear, contemporaneous records throughout the disciplinary process. The Delegate's consistent documentation supported the validity of her decision-making process and demonstrated that misconduct, not a psychiatric injury, was the reason for the termination decision.
3. Focus disciplinary decisions on established misconduct. The case demonstrates that employers can validly terminate for misconduct even when psychiatric injury is present, provided the misconduct is not causally connected to the psychiatric injury.

4. Provide genuine opportunities for employees to explain their conduct through a show cause process and raise any mitigating factors with supporting evidence, including for mental health issues, during the disciplinary process.

While the jurisdiction is different for other government employers in other states, territories, and federally, the lessons provided by this case offer a useful guide.

Conclusion

Good record keeping, providing genuine opportunities for employees to respond, and a clear understanding of the elements of serious misconduct, and when that threshold is met, are essential considerations for any government employer when deciding whether an employee should face disciplinary action, including termination. This applies even to employees who have exercised workplace rights, have been on WorkCover, or possess a protected attribute.

Colin Biggers & Paisley acts for local governments across Queensland. For more insights on how this decision may affect your disciplinary process, or for advice on managing a specific issue, contact our Employment & Safety team.

On the road again: A condition imposing a levy for maintenance works is unlawful but a maintenance regime is reasonable

By Nadia Czachor and Krystal Cunningham-Foran



In brief

The case of ***Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors (No. 3) [2024] QPEC 52*** concerned an appeal to the Planning and Environment Court (**Court**) in respect of conditions to be imposed on a development approval to be given by the Sunshine Coast Regional Council (**Council**) relating to the maintenance of a haulage route which will primarily be used by heavy trucks in the transport of rock from a quarry in Yandina Creek, Queensland (**Quarry**) owned by Parklands Blue Metal Pty Ltd (**Applicant**).

The Quarry is accessible by a haulage route just under five kilometres long, largely unsealed, and subject to flooding in various places (**Haulage Route**). The Haulage Route is to be conditioned to undergo construction works by the Applicant, at no cost to the Council, with the sections affected by flooding to be concreted (at [18]). The minimum design life for the Haulage Route after construction works is 50 years for the concrete section and 20 years for the rest of the route (at [18]).

The Council contended that the Applicant, as the Quarry operator, should be responsible for a detailed maintenance regime for the Haulage Route imposed by way of conditions on the development approval (at [2]). The Applicant contended that the development approval should instead include a condition for the Applicant to pay a levy to the Council for the costs of the Council maintaining the Haulage Route (at [3]).

The Court decided that the levy of the type proposed by the Applicant is not lawful and agreed that a maintenance regime should be implemented through the amended conditions package proposed by the Council (see [123] and [124]).

The Court made orders to the effect that the Council is to make a conditions package consistent with the Court's reasons and for the Court to complete the hearing and decide the proceeding (at [132]).

Background

The parties have been involved in legal proceedings in respect of the proposed development since 2011.

In May 2014, the Court in the case of **Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors [2014] QPEC 24**; (2014) QPELR 479 allowed an appeal against the Council's refusal of the development application made under the repealed **Integrated Planning Act 1997 (Qld) (IPA)** for the development approval and adjourned the matter to enable conditions to be formulated in accordance with the Court's reasons. The Queensland Court of Appeal in the case of **Sunshine Coast Regional Council v Parklands Blue Metal Pty Ltd [2015] QCA 91**; (2015) 208 LGERA 199 refused the Council's application for leave to appeal against the Court's decision.

In June 2017, the Court in the case of **Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors [2017] QPEC 35**; [2017] QPELR 809 considered conditions that were in dispute between the parties and made orders that conditions be imposed as agreed between the parties during the proceedings.

The parties did not give effect to the conditions and in December 2022 the Court in the case of **Sunshine Coast Regional Council v Parklands Blue Metal & Ors [2024] QPEC 3** considered an application seeking declarations that the legislative planning regime applicable to the development application, any future infrastructure agreement, the June 2017 appeal, and any development approval was the IPA or the repealed **Sustainable Planning Act 2009 (Qld)** and not the **Planning Act 2016 (Qld) (Planning Act)**. The Court dismissed the application because there was no support for finding that a prospective development approval would

not be given or made under the Planning Act or that the Planning Act would not apply to any such approval.

The Court's decision in December 2022 was the subject of our **May 2024 article**.

In September 2024, the Court heard from the parties in respect of a dispute about the conditions relating to the maintenance of the Haulage Route.

Issues

The Court considered the following two questions and three sub-issues in respect of the conditions relating to the maintenance of the Haulage Route (see [5] and [7]):

1. Can the levy proposed by the Applicant be lawfully imposed?
2. What should be the Applicant's responsibility for the routine maintenance of the Haulage Route?
3. Is the Applicant prevented from arguing that a levy is the appropriate mechanism?
4. If a levy could be lawfully imposed, should it be?
5. Is the Council prevented from arguing that it should not be responsible for the routine maintenance of the Haulage Route?

Court determined that a levy cannot be lawfully imposed

The Court noted that if there was a power to impose a levy as a condition on the development approval, it would be found in the following provisions of the IPA (at [34]):

3.5.30 Conditions must be relevant or reasonable	
(1) A condition must:	<i>(a) be relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or</i>
	<i>(b) be reasonably required in respect of the development or use of premises as a consequence of the development.</i>

3.5.32 Conditions that can not be imposed	
(1) A condition must not:	<i>(a) for infrastructure to which chapter 5, part 1 applies, require (other than under chapter 5, part 1)—</i> <i>(i) a monetary payment for the establishment, operating and maintenance of costs infrastructure; or</i> <i>(ii) works to be carried out for the infrastructure; or</i>

5.1.2 Conditions local governments may impose for non-trunk infrastructure	
(1) If a local government imposes a condition about non-trunk infrastructure, the condition may only be for supplying infrastructure for 1 or more of the following—	<i>(a) networks internal to the premises;</i>
	<i>(b) connecting the premises to external infrastructure networks;</i>
	<i>(c) protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component.</i>
(2) The condition must state—	<i>(a) the infrastructure to be supplied; and</i>
	<i>(b) when the infrastructure must be supplied.</i>

Then determining whether a levy could be lawful, the Court noted that the context of the above IPA sections should be considered in “its widest context” with regard to be had to the “*apparent purpose of the legislation*” (at [34]).

The Court noted that it was common ground that the Haulage Route was not trunk infrastructure and therefore “non-trunk infrastructure” (at [35]).

The Court accepted the Council’s submission that section 5.1.2 of the IPA should be given its ordinary meaning, being that it permits a condition in relation to non-trunk infrastructure only where it is for “supplying infrastructure” (see [36] to [37]). The Court noted that section 5.1.2 of the IPA is “*unambiguous*” as it “*...envisaged an arrangement for the provision of the*

infrastructure itself, rather than a payment to defray the costs of the infrastructure” (at [38]).

The Court noted that there is a distinct difference between the treatment of trunk infrastructure and non-trunk infrastructure in Chapter 5, Part 1 of the IPA (at [39]). Further, the Court noted that it was “*no accident*” that there was no express power to require a monetary contribution in section 5.1.2 of the IPA (at [40]). As a condition of the type proposed by the Applicant is not contemplated in section 5.1.2 of the IPA, it would be a prohibited condition under the section 3.5.32(1)(b) of the IPA (at [40]).

The Court concluded that the provisions of the IPA set out above “*...cannot be read as providing a power for a local government to impose a monetary contribution for non-trunk infrastructure merely because it would be convenient*” (at [43]).

Court determined that the Applicant is responsible for the maintenance of the Haulage Route

Section 3.5.32 of the IPA does not permit a condition requiring works to be carried out for infrastructure, other than as permitted by Chapter 5, Part 1 of the IPA. Section 5.1.2 of the IPA permits a condition about non-trunk infrastructure for “*...protecting or maintaining the safety or efficiency of the infrastructure network of which the non-trunk infrastructure is a component*”. As the conditions proposed by the Council were for works for the purpose of maintaining the safety and efficiency of the Haulage Route network, the Court noted that such conditions can be lawfully imposed (see [48] to [49]).

The Court considered the nature and extent of the Applicant’s responsibility for

maintaining the Haulage Route, noting that section 3.5.30 of the IPA required a condition to be relevant to, and not unreasonable imposition on, the development (at [51]). The Court considered the principles to be “*kept in mind*” when applying section 3.5.30 of the IPA summarised in the case of **Waverley Road Developments Pty Ltd v Gold Coast City Council [2011] QPEC 59**; [2011] QPELR 649 (at [51]).

The Court noted that the power to impose conditions is subject to a “*broad residual discretion*” which must be “*exercised for a proper planning purpose*” (at [52]). The Court determined that the Applicant’s responsibility for the maintenance of the Haulage Route is to follow the Council’s maintenance regime, which is generally relevant to, and not an unreasonable imposition on, the development (at [126]).

Even if a levy could lawfully be imposed, the Court would not impose the levy proposed

In a joint expert report prepared in 2018 (**2018 JER**), experts for the Council and Applicant agreed that a levy for the Haulage Route could be calculated (at [55]). The Court held concern about the appropriateness of relying on the 2018 JER citing the age of the report, index method, Council’s assumptions, and errors in the 2018 JER (at [59]). Whilst it was proposed that the 2018 JER could be updated, the Court had “*...little confidence that a levy could be calculated to properly reflect the actual costs to the Council for maintaining the [H]aulage [R]oute...*” (at [68]).

The Court noted that the Applicant proposed options for a levy, which the Court found to be “*not conducive*” to the goal of litigation which is to finally determine disputes between parties (at [66]). Even if the Court

concluded that it was lawful to impose a levy condition, it would not have adopted the Applicant's proposal (at [68]).

Court determined that the Council's proposed maintenance regime should be imposed

The Council proposed a comprehensive suite of conditions for the maintenance regime of the Haulage Route (at [69]). The Court noted that it was "*unsurprising*" that the experts agreed that a bespoke maintenance regime was appropriate, given that the Haulage Route was subject to flooding and used to transport heavy trucks (at [72]). The Court considered that conditions were appropriate and "*...there are good planning reasons for ensuring the road is not rendered inoperable by damage caused by quarry trucks*" (at [73]).

The Council argued that the Applicant would be the "*real and almost sole beneficiary*" of the Haulage Route when the Quarry is operating, estimating that almost all of the traffic on the Haulage Route will be quarry trucks (at [76]).

The Applicant argued that under **section 60 of the Local Government Act 2009 (Qld) (LGA)**, the Council has control of roads in its local government area (at [80]). The Court noted that section 60 of the LGA is "*...arguably facilitative, rather than mandatory*" and does not contradict the Court's conclusion about the power to impose a condition requiring the maintenance of non-trunk infrastructure under the IPA, as "*put plainly*" an ability conferred by one statute, does not imply a condition in another statute invalid (at [80]).

Section 265 of the LGA provides that material from which a road is constructed is the property of a local government, even if the road is constructed by a developer by way of condition. The Court noted that section 265 of the LGA "*...makes it clear that a developer cannot assert property over the construction*

materials..." and "*[i]t does not mean that a local government must be solely responsible for the maintenance of the road*" (at [81]).

The Applicant argued that "*complexities and complications*" would arise in the event of a claim in negligence arising from some defect in the pavement of the Haulage Route due to the liability of the Council and Applicant (at [82]). The Court noted that "*[a] claim against two defendants may be more complex...*" but the solution is found in the ordinary application of the law, being that the liability would be determined and apportioned, where appropriate, between defendants and cited that this is not a reasoned basis for concluding that the Council's maintenance regime is an unreasonable imposition (see [83] and [85]).

The Court determined that the Applicant should be responsible for maintaining the Haulage Route for the life of the Quarry (at [87]).

Court determined that the Council is not responsible for "routine maintenance"

The Court considered this issue in the context of the Council's proposed conditions (at [89]).

Proposed conditions 38 and 59 read together require the Applicant to maintain the Haulage Route free of potholes and pavement defects, with routine maintenance every six months and set timeframes to address potholes and drain issues (see [90] and [91]). The Court agreed with the experts that "*timely repair*" is important to maintain the Haulage Route in good condition, finding that the conditions are "reasonable and relevant" as required by section 3.5.30 of the IPA (see [96] to [97]). The Court noted that there was potential difficulty with the proposed conditions if a development permit for operational work was required each time the Applicant were to carry out the routine maintenance works (at [98]).

In February 2025 in the case of **Parklands Blue Metal Pty Ltd v Sunshine Coast Regional Council & Ors (No. 4) [2025] QPEC 2** the Court determined that there was a remote possibility that the routine maintenance works could be categorised as “*operational work*” requiring a development approval. The Court concluded that this remote possibility was not an unreasonable burden on the development.

Proposed condition 60 includes a program for the resurfacing, rehabilitation, or reconstruction of the pavement which includes reporting requirements (at [100]). The Applicant contended that this condition was confusing and unnecessary, while the Court noted that it “...*is perhaps not a model of lucid drafting*” the condition is not unnecessary (at [102]). The Court held reservations about the use of the word “*investigate*” in the condition and suggested the word be removed as it is “*superfluous*” in the context of the other conditions (at [104]).

The Court determined condition 60(c) to be unnecessary as it requires the Applicant to install a “weight in motion” monitoring device, which would be in addition to the requirement for a weighbridge imposed by a separate condition (at [105]).

Proposed conditions 60 to 67 are about monitoring, and where necessary, resurfacing, rehabilitating, or reconstructing the pavement with a requirement for advice from a geotechnical engineer to be obtained (at [107]). There was concern that the drafting of these conditions could trigger the requirement for advice from a geotechnical engineer even for routine maintenance, but the Court determined that it is only appropriate where a significant defect has been detected (at [107]). The Court accepted the Applicant’s proposal to insert words to the effect that a geotechnical engineer is required if considered necessary by the inspecting engineer or pavement designer (at [108]).

Proposed condition 61, which relates to a proposed timeframe for rectification works, was considered by the Court to be “*too rigid*” and required amending to clarify the Council’s position (at [111]).

Proposed condition 65 requires any repair, resurfacing, rehabilitation or replacement, or construction work to be designed, supervised, and certified by a registered engineer (at [113]). The Court determined that given the nature of the Haulage Route, this is not an irrelevant or unreasonable imposition on the development (at [114]).

Proposed condition 51 sets out the requirements to upgrade a section of the Haulage Route (at [115]). Condition 51(b) set out the minimum design life of the Haulage Route, which requires “*consideration of the scope of geotechnical testing...*” (at [115]). The Court noted that this wording “*may be a little imprecise*” but it is still sufficient to convey the effect of the condition and is not an unreasonable imposition on the development (at [119]).

Conclusion

A levy for the maintenance of the Haulage Route as proposed by the Applicant cannot lawfully be imposed. The Court ordered the Council to prepare a conditions package consistent with the reasons provided by the Court.

Key points

In this case a condition under the repealed IPA cannot include a condition requiring the payment of a levy for the maintenance of non-trunk infrastructure.

Amendments matter: Queensland Planning and Environment Court upholds refusal of development application, giving decisive weight to amended planning scheme.

By Nadia Czachor



In brief

The case of **427 Beckett Rd Pty Ltd v Brisbane City Council (No. 2) [2024] QPEC 24** concerned an appeal to the Planning and Environment Court of Queensland (**Court**) against the decision of the Brisbane City Council (**Council**) to refuse a development application for a development permit for a material change of use and reconfiguring a lot (**Development Application**) in respect of land situated at Bridgeman Downs, Brisbane (**Land**) described as Lot 1 on SP227437 (**Lot 1**) and Lot 2 on SP227438 (**Lot 2**).

The Court considered whether the proposal represents a change other than a minor

change, whether the proposal results in unacceptable ecological impacts, issues pertaining to traffic and visual amenity, whether the proposed uses are consistent with the planning intent and what is expected for the land and locality, and whether amendments to the relevant planning scheme ought to be afforded weight in the proceedings (at [10]).

The Court dismissed the appeal for the reason that the amendments to the relevant planning scheme were directly relevant to the issues at hand, in particular the ecological issues, and should be afforded decisive weight (at [79]).

Background

The Development Application originally sought a material change of use for a service station and a food and drink outlet (Stage 1), a food and drink outlet and a childcare centre (Stage 2), 10 townhouses (Stage 3), and 29 townhouses (Stage 4), as well as a reconfiguration of a lot including provision for new internal roads (**Originally Proposed Development**) (see [3] and [4]).

The Court allowed two applications for a minor change in respect of the Originally Proposed Development in September 2021 and December 2022, but refused a minor change application in February 2024 (**2024 Minor Change Application**) which was the subject of our [April 2024 article](#) (at [5]). The Development Application at the time of the appeal included “...the service station; two food and drink outlets; a child care centre; 10 multiple occupancy dwellings; and a conservation zone with a proposed fauna overpass to allow fauna (including koalas) to cross Beckett Road to an area of remnant vegetation on the western side of the road” (**Proposed Development**) (at [7]).

The Land, comprised of Lot 1 and Lot 2 which have a combined area of 2.8 hectares, is densely inhabited by bushland that supports an endangered vegetation community and is an essential habitat for threatened species, including koalas (see [2] and [11]). The Land shares substantial frontage with, and is on the eastern side of, Beckett Road (at [12]).

At the time at which the Development Application was properly made (**Properly Made Date**), the Land was designated as being within the Emerging Community Zone and the McDowall-Bridgeman Downs Neighbourhood Plan of **version 15 of the Brisbane City Plan 2014 (City Plan)** (at [2]). Since the Properly Made Date, the City Plan

has been significantly amended and the Land has been rezoned and designated as being within the Environmental Management Zone and a new Bridgeman Downs Neighbourhood Plan (**Neighbourhood Plan**), which includes the Land in the Beckett Road precinct and Environmental living sub-precinct, under **version 29 of the Brisbane City Plan 2014 (Amended City Plan)** (at [8]).

Court finds that the Proposed Development is not precluded by representing a non-minor change

Pursuant to **section 46(3)** of the ***Planning and Environment Court Act 2016 (Qld)***, the Court cannot consider a change to a development application that is not a “minor change”. The definition of “minor change” is in **schedule 2** of the ***Planning Act 2016 (Qld) (Planning Act)***, which relevantly states that a “*minor change*” to a development application, among other things, does not result in “*substantially different development*” (at [22]).

The Council argued that the Proposed Development should be refused on the basis that it is significantly changed from the Originally Proposed Development and does not represent a “*minor change*” (at [20]). The Applicant argued in response that the Proposed Development represents a subset of the Originally Proposed Development, is not qualitatively different, and can be achieved by the imposition of conditions (at [20]).

The Court considered whether the changes to the Originally Proposed Development, specifically, the previously accepted minor changes of 2021 and 2022 (**Changes**), cumulatively exceed the threshold of a “*minor change*” (see [23] to [25]). The Court observed that the Originally Proposed Development was significantly different from the Proposed

Development which, among other things, reinstates staged development. The Court recognised that the deletion of staged development from the Originally Proposed Development was held to be material to the rejection of the 2024 Minor Change Application (at [26]).

The Court accepted the Applicant's argument that *"...in distinction from the [2024 Minor Change Application], the present proposal retains rather than changes features from the proposal resulting from the December 2022 orders..."* (see [29] to [31]). The Court held that the Changes which were minor and intended to be ameliorative can be seen as a part approval of the Proposed Development as opposed to a change (see [31] and [75]).

Court finds that the Proposed Development does not completely resolve ecological issues

The Court observed that the Land has *"significant ecological value"* by virtue of it being an endangered regional ecosystem, an essential habitat for several species, and its functioning as a linkage between Cabbage Tree Creek and Albany Creek (at [32]). The Court recognised that the Proposed Development plainly entails environmental impacts, including the removal of more than 30% of the remnant endangered vegetation and a more substantial percentage of the non-endangered vegetation (at [34]).

The Court accepted that the Proposed Development, in conjunction with the proposed conditions, would maintain *"...a reasonable degree of connectivity"* between the habitats in Cabbage Tree Creek and Albany Creek in light of *"...the adequacy of the 21-metre fauna corridor at the north-western corner of the site (which connects with the*

proposed fauna overpass, which in turn enhances connectivity to the area to the west including Albany Creek)" (at [35]).

The Court also observed that the Proposed Development's inclusion of *"...a conservation zone representing the fauna corridor connecting with the proposed fauna overpass and preservation of existing vegetation"*, in conjunction with the proposed conditions pertaining to rehabilitation, fencing, and protection, elevated the Proposed Development to become *"...more acceptable from an ecological basis..."* as compared to the Originally Proposed Development (see [36] and [37]).

Whilst the Court was satisfied that these improvements went some way to resolving the ecology issues (at [37]), it also accepted evidence from the Council's ecological expert that not all reasonable onsite mitigations for the Proposed Development had been taken by the Applicant before resorting to the provision of the koala overpass as an environmental offset, particularly in light of the Neighbourhood Plan under the Amended City Plan (see [38] and [77]).

Court finds that the Amended City Plan, which ought to be afforded decisive weight, does not support approval of the Proposed Development

The Court considered *"...whether the combination of uses planned for the site would have a scale not consistent with the expected land use within the locality and what weight, if any, should be given to any inconsistency with the Amended [City Plan]"* (at [39]).

The Court recognised that the Proposed Development is largely incompatible with the Amended City Plan, which adversely

places the Land within the Environmental Management Zone and the Environmental living Sub-precinct under the Neighbourhood Plan (at [46]).

In determining the weight to be given to the Amended City Plan, the Court observed that because the Amended City Plan has come into effect - in contrast to, for example, a draft amendment - and is locally focussed, it is more likely to be given weight in the consideration of the Proposed Development, citing the case of ***Tricare (Bayview) Pty Ltd v Gold Coast City Council [2022] QPEC 31; [2023] QPLR 1073*** (at [49]).

Despite contrasting the circumstances of the appeal with those in the case of ***Roseingrave v Brisbane City Council (No. 2) [2022] QPEC 43***, wherein the Court gave decisive weight to new planning scheme mapping that was adopted after the development application but before the Council's refusal decision, the Court found that there was “*...no reason not to conclude that [the amendments to the City Plan] better [reflect] the actual ecological value of the site in a way that the previous mapping did not*” (at [52]). Accordingly, the Court found that the Amended City Plan should be taken into account in assessing the Proposed Development (at [52]).

The Court had regard to “*...the fairness of taking the amendments into account in circumstances where they were not in force at the time of the application*” (at [54]) but ultimately did not hold that the circumstances gave rise to such concerns as to preclude, or detract from, consideration of the Amended City Plan (at [58]).

The Court concluded that the Proposed Development conflicts with the Amended City Plan for the following reasons, which warranted refusal of the Proposed Development:

- The Land is mapped as General Ecological Significance Strategic under the Amended City Plan. The Proposed Development compromises the values emphasised by the Strategic Framework, namely “*...the importance of the Greenspace System, including ecological functions and ecosystem services and linking waterways, biodiversity areas and ecological corridors*” (at [60]).
- The Land is designated within the Environmental Management Zone under the Amended City Plan “*...the purpose of which is to identify environmentally sensitive areas and protect them from urban activities other than dwellings*”. The proposed service station is non-compliant with this purpose (at [60]).
- The Proposed Development is not compliant with Purpose (1)(a)(ii) of the Biodiversity Area Overlay Code, which requires protection or enhancement of environmental values (at [61]).
- The Proposed Development is not compliant with Overall Outcomes 3(g), 3(h), 6(a), and 6(c) of the Neighbourhood Plan, which provide for the protection from inappropriate development, the protection and enhancement of ecological features and corridors, the continued function of the ecological corridor between Cabbage Tree Creek and Albany Creek, and the maintenance of dwelling houses on large acreage lots at a very low density to minimise impacts (at [62]).

Court finds that traffic impacts do not warrant refusal of the Proposed Development

The two traffic issues in the appeal concerned the proposed left-in turn to the service station from Beckett Road and whether it undermines the road hierarchy which ought to preserve the movement function of Beckett Road as a higher order road, and that the required auxiliary turn lane may generate the risk of rear end collisions (at [65]).

The Court acknowledged the existence of these traffic issues but found that they were “*not major*” and did not call for refusal of the Proposed Development (at [66]). The Court accepted the Applicant’s argument that the relevant assessment benchmarks do not require there to be no impacts on traffic, only that there be no significant impact on the safety, efficiency, function, and convenience of use or capacity of the road network (at [67]).

Court finds that visual amenity impacts do not warrant refusal of the Proposed Development

The Applicant asserted that any non-compliance with the relevant assessment benchmarks pertaining to visual amenity was insufficient to warrant refusal of the Proposed Development, and that as agreed upon by the visual amenity experts any unacceptable visual amenity impacts could be resolved by the imposition of the proposed conditions (see [69] and [70]). The Council conceded that visual amenity impacts are alone insufficient to warrant refusal and did not contest the resolution by way of the imposition of conditions (at [68]).

The Court observed that the retaining walls and acoustic barriers along the southern boundary of Lot 2, in respect of which visual amenity impacts arise, are capable of being “... *partially concealed by planting of appropriate species in the area*” (at [68]). The Court found that visual amenity impacts did not call for refusal of the Proposed Development (at [70]).

Court finds that other relevant matters put forward by the Applicant do not warrant approval of the Proposed Development

The Applicant contended that several relevant matters favoured approval of the Proposed Development in the event of non-compliance with the relevant assessment benchmarks, including its ecological benefits, the convenience of its location, need, and increased convenience, choice, and competition in the proposed commercial outlets therein (see [71] and [72]).

The Court considered these matters pursuant to **section 45(5)(b)** of the Planning Act and acknowledged their relevance but did not find that they were determinative of the appeal (at [74]).

Conclusion

The Court found that the Proposed Development does not comply with the ecological requirements of the Amended City Plan and dismissed the appeal (at [79]).



Game-changer: No guarantee later stages will proceed results in a finding that a change is not a minor change

By Nadia Czachor and Krystal Cunningham-Foran

In brief

The case of **Ausco Modular Pty Ltd v Western Downs Regional Council [2025]** QPEC 1 concerned an application by Ausco Modular Pty Ltd (**Applicant**) to the Planning and Environment Court of Queensland (**Court**) to change (**Change Application**) a development permit for a material change of use for an undefined use (non-resident workforce accommodation) (**Development Approval**) to introduce staging. The Development Approval attaches to land at 184 Zeller Street, Chinchilla (**Subject Site**).

The Western Downs Regional Council (**Council**) did not oppose the Change Application (at [2]). However, the Court determined that the introduction of staging to the Development Approval does not constitute a minor change in this case because there was no assurance that the proposed later stages will proceed and if a later stage did not proceed the use of the Subject Site would not operate as intended thereby resulting in substantially different development (see [47] and [48]).

The Court dismissed the Change Application on the basis that the change sought is not a minor change (at [56]).



Background

The Applicant operates Stayover Chinchilla on the Subject Site. The Development Approval authorises development comprising 1,000 rooms, six laundry units, and 11 combined laundry and storeroom units to be delivered in one stage (see [1] and [3]).

The Applicant sought the following changes to the Development Approval:

- The introduction of the following stages (at [4]):

“(a) Stage One: 1,000 rooms, six laundry units and 11 combined laundry and storeroom units (reflecting what presently exists on the [Subject Site]);

(b) Stage Two: 856 rooms, three laundry units and 11 combined laundry and storeroom units (which involves the removal

of 144 rooms – but not the infrastructure supporting them – on a temporary basis); and

(c) *Stage Three: 1,000 rooms, six laundry units and 11 combined laundry and storeroom units (thereby, returning the full complement of 1,000 rooms as approved).*”

- The insertion of a condition which makes it clear that the conditions apply to each stage of the development unless otherwise specified.
- The insertion of conditions that apply to Stage 2 and Stage 3 only which require evidence of plumbing and building approvals and inspections associated with the removal and re-introduction of rooms.

In this case, whether the proposed changes to the Development Approval constitute a “minor change” as defined in **schedule 2** (Dictionary) of the **Planning Act 2016 (Qld) (Planning Act)** depends on whether the proposed changes would result in substantially different development (see [9] to [13]). The **Development Assessment Rules (DA Rules)** referred to in **section 68** of the Planning Act provide guidance in respect of what may result in substantially different development, but the question is one of fact and degree to be considered broadly and fairly in the circumstances of each case (see [14] and [15]). Whilst there is no legislative requirement to consider the DA Rules, the Court taking a purposive approach considered it appropriate to have regard to them (at [15]).

Court finds that the Change Application would result in substantially different development

The Court referred to the case of **Thomco**

(No. 2087) Pty Ltd v Noosa Shire Council

[2020] QPEC 8; [2020] QPELR 1113 and agreed, in particular, with the following observations of His Honour Judge Rackemann at 116-7 (at [21]):

“[16] A comparison between pre and post change development scenarios often involves considering the whole of the development authorised by the existing approval and proposed to be authorised by the changed approval. That is because approvals will often be for a particular form of development to occur as a whole at the one time and will not authorise development of parts of a proposal at different times, in a piecemeal way. Where however, approvals permit development to occur in stages, the comparison becomes more complex, because such approvals may generally be acted upon to carry out:

(i) the whole of the development at the one time;

(ii) different parts of the development in different stages at different times, or

(iii) one or some stages of development irrespective of whether the approval is acted upon to develop any subsequent stages.

[17] Unsurprisingly, given the third of those possibilities, approvals which permit development to occur in stages often require important components, works or other matters to be incorporated into, or provided prior to, or in conjunction with, the first stage. That ensures that those things are provided if the approval is acted upon...”

The Court also identified that in the case of **Ausco Modular Pty Ltd v Western Downs Regional Council & Anor [2017] QPEC 58**; [2018] QPELR 80 the need for 1,000 rooms to avoid adverse effects on the community

from unanswered demand was an important consideration in favour of approval. Thus, the reinstatement of the rooms to 1,000 as part of proposed stage 3 is critical to the accommodation operating as intended (at [46]).

The Court held that the evidence relied upon by the Applicant neither addressed the valid concerns in respect of introducing staging to the Development Approval nor considered the operational consequences should stage 3 not proceed (see [22] and [47]).

The Court therefore found that the Applicant had not demonstrated that the proposed changes do not result in substantially different development (at [53]).

Conclusion

The Court dismissed the Change Application on the basis that the change sought did not constitute a minor change (at [56]).

Key points

The Court's decision highlights that the operational consequences of a change to a development approval are relevant to whether a change is minor or not. Here, the operational consequence was that the final stage may not be delivered meaning that the development may not operate as intended, being as a 1,000 room non-resident workforce accommodation facility.



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