Review of the Crime and Corruption Commission's activities

Submission No: 31

Submitted by: Name Withheld

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Attachments:

Submitter Comments:

9 March 2026

To: Parliamentary Crime & Corruption Committee

Email: pccc@parliament.qld.gov.au

To whom it may concern,

Confidential Submission Re: Recent discussion about the role of the CCC in relation to receiving complaints from Government Owned Corporations (GOC's).

I offer a late submission to the PCCC for their consideration of matters pertaining to the current review of the Crime and Corruption Commission (CCC's) and the interface with QLD Treasury's whistleblowing functions. I offer my personal insights as a result of my experiences in attempting to report major suspected corrupt conduct at a GOC.

There have been numerous repeated barriers to reporting, and delays for the progression of my matter which is still on foot some 2+ full years after reporting a critical matter which required immediate intervention at the time the report was made. Sadly, timely intervention was not forthcoming.

I refer to the recording of the Parliamentary Committee into the Crime and Corruption Commission, held on 3 November 2025, accessible on the website here: **https://www.parliament.qld.gov.au/Work-of-the-Assembly/Live-and-Archived-Broadcasts/video-on-demand/player/af16bffb9252430ea1296ace8c166c7b**

In this discussion, there was discussion about whether a widespread misunderstanding regarding the application of the Whistleblowing Act and the Government Owned Corporations (GOCs) Act existed regarding the ability of GOC employees to submit allegations of suspected corrupt conduct direct to the CCC. I submit that there are numerous barriers, not just to complainants, but in the whole construction of a number of QLD Acts which prevent whistleblowers from raising genuine concerns directly to the CCC.

The various omissions and barriers in the legislative construction designed to prevent matters of corruption, as well as concerns during reporting processes include:

1. **Many of the communications, processes and forms within reporting processes expressly prevent GOC employees from reporting directly to the CCC.** The CCC until recently, made it clear on it's website and forms that it could not accept complaints from GOC employees. I have email evidence that confirms that the CCC would not accept my PID complaint about maladministration, major governance and suspected corrupt conduct, despite the allegations involving a number of Executive level employees and contractors. I note that an amendment has now been made to confirm that GOC's can now submit concerns to the CCC according to website (on an landing page, however it is not the case here): Matters we deal with | CCC - Crime and Corruption Commission Queensland.

Queensland Treasury also have their own processes for GOC employees to report specifically. **See Attachment 1 The Treasury Complaint form.**

2. **The blockages preventing GOCs from reporting wrongdoing are contained in both the GOC Act and other legislative instruments and processes.** This is not a mere misunderstanding – as acknowledged in the hearing on 3 November 2025, there is widespread similar shared understanding that GOC's cannot legislatively report matters to the CCC – this is even acknowledged in the QLD Audit Office's own submission to the PCCC https://documents.parliament.qld.gov.au/com/PCCC-8AD2/RCCC-B68C/submissions/00000010.pdf . My experience, as well as other GOC employees known to me, demonstrates that the barriers exist in multiple QLD Government Acts, and in many reporting processes, where numerous agencies are prevented from raising governance concerns within GOCs.

3. **The Government Owned Corporations Act explicitly precludes GOCs from reporting matters directly to the CCC** – All GOC matters must be reported through the CEO of the GOC, who may be subject of the complaint. My matter was allegedly sent by my employing GOC direct to the CCC, but it had to first be sent by the GOC to QLD Treasury, who reviewed it, then seemingly sent it to the CCC for their review (each with significant timeframe delays, where in fact the referral could have been addressed to both entities simultaneously for review and action). Noting again, my understanding is that the CCC simply did not onforward the referral, submitted by the A/Company Secretary on behalf of the Board, for action. This is an anomalous situation which could be addressed in concert with other anomalies noted below. As noted in QLD Audit Office's submissions also, they too have been prohibited from directing suspected corrupt conduct direct to the CCC themselves by legislation, as GOC's are not defined to be UPAs (Units of Public Administration). https://documents.parliament.qld.gov.au/com/PCCC-8AD2/RCCC-B68C/submissions/00000010.pdf

4. **My experience submitting complaints to the CCC and having the matter rejected because it needed to go to Treasury first confirms what many other GOC employees have experienced.** For instance, I myself requested acceptance of the matter, and then had it rejected (after a delay of some approximate 4 weeks) merely because I was employed by a GOC. Over the past approximate 5 years, I am aware of at least 5 GOC employee complaints whose submission involved to-ing and fro-ing with the CCC that they should be accepting allegations about corruption directly from GOC employees. Some of those complaints were not progressed separately to QLD Treasury after being rejected by the CCC. This means that numerous corruption allegations are not being considered by relevant authorities, and corruption going unaddressed in GOCs.

5. **The CCC and QLD Treasury do not seemingly share information or act as one seamless unit responsible for achieving the overarching objective of focussing on reducing corruption in the public sector by effectively managing complaints.** The CCC did not on-forward my complaint to QLD Treasury following their non-acceptance of my complaint, I was instead obligated to repeat the process once more with QLD Treasury directly to submit further information, which added additional unnecessary delays for a time-sensitive matter. The requirement for a central clearing house for QLD Government on whistleblowing matters was previously raised in Professor Peter

Coaldrake's report: *Review of culture and accountability in the Queensland public sector* (commonly called the **Coaldrake Review**) submitted to QLD Government.

6. **There appears to be no clearly stated mechanism for GOC Boards to authorise and submit reports direct to the CCC where the allegations involve the CEO and other key GOC personnel (and where it is improper for the CEO to refer themselves to QLD Treasury/CCC):** There appears to be no clear mechanism in the legislative instruments for Boards of GOCs and other statutory entities to refer allegations of suspected corrupt conduct about CEOs and other Executive General Management level employees (where a CEO may also be implicated in corrupt conduct or alternatively a conflict of interest exists and the matter ought not involve the CEO) directly to the CCC.

   Indeed, some of the basis of delays in the progression of my own matter involved statements from GOC personnel (whether based in legislation, misunderstanding or otherwise) included:

   - The assertion that the Board were not authorised to submit complaints directly to the CCC and they needed to send the matter directly to QLD Treasury first, even though a preliminary investigation by an external specialist Whistleblower Service Provider found prima facie evidence that suspected corruption had occurred;
   - The assertion that the Chair of the Board was not vested with the authority to refer a complaint direct to the CCC without written CEO authorisation of the referral and having the matter sent back to the GOC to instead refer to QLD Treasury in this instance;
   - The Acting CEO not being vested with authority to refer a matter to CCC (or otherwise not being requested by the Chair and/or the PID Coordinator for some many weeks and or months), despite any A/CEO being vested with all relevant delegations associated with the position.

   This appears to be a major omission - the legislation seemingly does not contemplate any such occurrence where a Chair, or the Board, may be required to report alleged corruption to the CCC directly where allegations involve the CEO and/or other Executive level employees (either individually or in concert with the CEO). This seems to be an absurdity - there have been a number of occasions where CEOs and other senior and executive employees have in fact been referred to the CCC and who have ultimately exited the organisation as a result of the CCC's adverse findings about their wrongdoing. My GOC employing entity alone has had such a number of these situations.

   Notwithstanding the alleged reasons for Boards not being able to report, the matters were referred to QLD Treasury. It is noted that an innate conflict of interest exists in GOCs reporting such matters to QLD Treasury, as GOCs report to Shareholding Ministers who have oversight for GOC management.

   I would ask the Committee to consider redress for these omissions/anomalies in the current review. It seems inconceivable that a Board responsible for enacting governance within a GOC is not expressly permitted, and indeed obligated, within

respective legislative instruments to refer such corrupt conduct directly to the CCC, with or without Chief Executive Officer involvement.

7. **No express reference that employees may refer Board Members or Board Chair to the CCC directly within GOCs.** All matters raised by GOC employees must go through the CEO for GOC employees – even in a scenario where Board Members, the Chair and/or the CEO may be involved in alleged corrupt conduct (singularly or in concert). There appears to be no express provision for employees to make a complaint raising concerns about suspected corrupt conduct about either Board Chairs and or Board Members, who themselves may be actively facilitating alleged wrongdoing within a business, in concert with senior executive management. Such an omission should be expressly addressed as part of this Review to ensure such a scenario is expressly contemplated and addressed by reporting mechanisms.

8. **GOCs have not been actively involved in completing corruption surveys for the CCC itself, so that data is not considered by the CCC, or reported on.** For instance, GOCs were not included in the CCC's recently completed Corruption Perceptions Survey Corruption Perceptions Survey 2025 | CCC - Crime and Corruption Commission Queensland. GOC Boards are obligated to complete corruption surveys, however those results are rarely (if ever) seen by employees within the organization, and there may not be an obligation for mandatory reporting of findings to the CCC. There is therefore limited transparency about the levels of corruption within GOCs for the PCCCC, or parliament, or the Queensland People generally who ought to have some awareness of the trends or prevalence of corruption occurring within GOC's and other statutory bodies. The PCCC should have oversight of GOC and other entities not currently captured in reporting processes, by receiving data and reports conducted by Boards about corruption and reporting cultures within the agency.

   Additionally, the exclusion of GOCs from the CCC's reporting on their website, mean that the PCCCC are not actively seeing data breakdowns from all QLD Government entities about corruption (noting the major data aggregation currently encompasses 3 major employer categories:

   9.1 - QLD Police,
   9.2 - QLD Government Departments (unsure as to whether this is only so named Departments, and which Departments/Agencies are included in this data aggregation as it is unspecified), and
   9.3 QLD Local Government entities.

   This creates a significant blindspot for governance and data reporting for all QLD Government entities. What is not captured and counted cannot be monitored for progress, changes, trends and deteriorations in workplace corruption cultures.

9. **Unnecessarily lengthy delays, limited contact, no expected timeframes and no appropriate communication mechanisms when conveying outcomes to whistleblowers, contributing to significant mental distress.** As an employee with extensive investigative experience, the delays by Queensland Treasury in the management of my matter are wholly unacceptable.

   I have left on suspension for over 2 full years now, with minimal written communications from the very authority who are supposed to be managing the investigation (QLD Treasury). No investigation would reasonably take anywhere near the amount of time it has taken Treasury to investigate my matter. From the date of my submission to the initial investigation meeting, there were delays of approximately 14 months. From initial submission to the point of Treasury's referral back to the employing entity, approximately 22 months.

   During this time, there was minimal investigator contact, a truncated to the scope only they were privy to, as deemed by QLD Treasury. There has been zero support for me individually (other than standard reference to an Employee Assistance phone service number), despite my employing GOC and QLD Treasury being made expressly aware that I had previously suffered a psychological injury at work, as determined by WorkCover QLD. At best, I have had limited written communications direct with Queensland Treasury Officers, leaving me in the dark on any expected timeframes for follow up meetings, expected timeframes for outcomes or other.

   This is not only a breach of QLD Government's own Workplace Health and Safety legislation to ensure basic duty of care to employees, but also the Federal Government WH&S Guide for Psychosocial Risk Management. Indeed, the QLD WH&S Regulator imposed a PIN (a Provisional Improvement Notice) to my employing GOC for the entity's failure to progress my complaint in any meaningful way over a 6 month period, and not keeping me as an employee advised of expected timeframes for dealing with my complaint. If the Department of WH&S issued a PIN to a GOC for a breach in these circumstances, it would reasonably follow that the distinct lack of support and communication during Queensland Treasury/CCC processes would also be subject to the same obligations & duty of care obligations as the QLD Government entities it has oversight of.

10. **Investigation and outcome delays have serious implications under existing employment law precedents.** Most concerningly, the delays have been actively facilitated by the legal team in QLD Treasury who receive these whistleblowing complaints despite being made aware at the outset of matter that employees are on suspension. Such significant delays can be construed by the courts to constitute a frustration of employment – from the employer's side – in taking unreasonably long delays to deal with matters. Lengthy delays of 2+ years, frustrating the employment relationship, is generally understood to constitute constructive dismissal. It is therefore important that the QLD Government show commitment to those whistleblowers by ensuring that any investigatory body deals with matters in a much more expedient

manner, with improved emphasis on procedural steps, advice on expected timeframes, milestones, and support to employees.

11. **The QLD State Government is considered a model litigant by courts, and therefore need to show compliance with the laws they themselves have created.** As a model litigant, the QLD Government is expected by the courts to meet the standards, given the Government is the same entity who has enacted that legislation. Therefore, WH&S legislation, QLD IR Court and other key common law precedent decisions ought be reviewed for consideration as to whether the current arrangements are compliant with more recent decisions since the 2020 review.

12. **When QLD Treasury receive a complaint, they are not obligated to assess it and provide written correspondence that a complainant's matter is a PID.** Queensland Treasury do not advise complainants whether their matter is a PID, consistent with the legislative requirement to do so. There is no analysis of the complaint to determine PID status, or to communicate to the complainant whether their matter is in fact a PID under legislation. The standardised communication merely states that the complaint "will be treated as a Public Interest Disclosure". This leaves complainants without knowledge of their Whistleblower Protection Status, and whether they have made a protected disclosure, even if they know the complaint content meets the criteria to be assessed as a PID. Likewise, the QLD Audit Office are also only able to state that matters submitted to them for their investigation "will be treated as a PID", with no correspondence issued to complainants.

13. **There needs to be greater duty of care towards whistleblowers when communicating outcomes, since QLD Treasury do not communicate verbally with complainants.** In addition, QLD Treasury also deemed it appropriate to send me an outcome letter, concluding their investigation, at 4:25pm on the Friday the week before Christmas, when many people had already commenced their leave periods. The timing was a major breach of duty of care towards me, given my pre-existing psychological injury and the fact I had no union support available to me until well into the new year. This is exceptionally poor practice from a people management perspective, let alone a basic human care perspective.

14. **No appeal mechanism exists with QLD Treasury**. QLD Treasury have made significant investigation failings – no doubt due in part their truncated investigation scope. While I have outlined the failings separately, as an experienced investigator, Treasury's process failings and procedural deficiencies are abysmal. If I treated an employee the same way as I have been treated in this process, I would have had my employment terminated for professional incompetence. Yet the only mechanism available to me to raise these deficiencies is through the Parliamentary Committee for the CCC.

15. **Even requests to the CCC to take back carriage of my mismanaged and delayed matter from QLD Treasury was denied by the CCC.** When there were extensive delays from QLD Treasury, I sought to escalate the unnecessary delays with the CCC directly. Approximately 1 year into my matter, with them not having even commenced an investigation with me, I expressly requested that the CCC take back carriage of my

matter, as I had no confidence that QLD Treasury were progressing my matter at all. I requested the matter to be managed by the CCC, where it ought to have been managed from the outset and where my complaint was direct to first. The CCC declined my request.

16. **There ought be reporting on the numbers of complaints received, and how many of these are determined to be PIDS or rejected as not being PIDs.** To the best of my knowledge, the PCCC and the CCC have no oversight or data about the number of complaints submitted within QLD Government entities that request PID status, but which are rejected, and on what grounds they are rejected. Some entities are using loopholes to incorrectly reject employees from receiving whistleblower protections. The data around complaints, and the assessment statistics, ought be reviewed by the PCCC and CCC as part of ongoing regular reporting**.**

17. **There ought be mandatory PID assessment checklist requirements for auditing and record keeping purposes.** Queensland Treasury, CCC and GOCs (and all QLD Government entities) ought be required under their processes to complete the same checklist when assessing a complaint to determine its status as a PID or otherwise. Currently, it is only recommended that the form be completed, not mandated. These should be auditable by the Queensland Audit Office and the PCCC. GOCs are currently incorrectly assessing complaints to not be PIDS, when in reality, they actually are.

18. **Mandatory checklists for assessing PID complaints -** All QLD Government entities ought be required to mandatorily complete the checklist for every single complaint received, and outline any reasons for rejection. Where more than one element would meet PID criteria, the "interpersonal grievance" exemption cannot and should not be used to negate other elements that do meet criteria for PID acceptance, to reject a PID, as happened in my case. My employing GOC used a loophole that it was an "interpersonal grievance" to reject PID status. I did not receive PID status even though I made it clear in documentation there were a number of elements to my complaint, including misconduct, maladministration and allegations about unacceptable interpersonal interactions. Regardless, one element resulted in the whole complaint being rejected from the outset. Even when my allegations were substantiated by the Regulator (WorkCover QLD and inappropriate workplace behaviours had occurred), the employer still did not acknowledge a change to my PID status, nor even acknowledge WorkCover's finding.

Bullying and harassment complaints may result in disciplinary action up to and including termination of employment, and the inclusion of the interpersonal grievance exemption means that matters may be going unreported in the statistics.

This means the prevalence of WH&S risks associated with bullying & harassment, and toxic work environments is being underreported if PID exemptions are being used to negate whistleblower protection. As an experienced professional, I have received very few bullying and harassment reports in my 20+ year career, and the courage to come forward from employees happens only after numerous instances of unacceptable conduct. To not grant PID status using an exemption is not appropriate.

19. **No understanding of which allegations QLD Treasury investigated, what evidence was considered and what evidence was found. Investigation timeframes that do not reflect any normal investigation practices within most businesses.** QLD Treasury's actions throughout the whole process are a void of no information, no correspondence, and no ability to question their actions or omissions.

    Failure to report on all allegations made: QLD Treasury finalised their matter with a basic letter stating simply in one sentence that my "allegations were unsubstantiated". QLD Treasury did not clarify which of my allegations (there were a number) were unsubstantiated despite the fact there were a number I had raised. Treasury's finding is in conflict with a number of allegations I raised in my complaint to them of February 2024, where a number of my allegations have been substantiated by facts over the intervening 2 year time frame.

    Failure to consider organisational and independent QLD Government data sources: Some of my allegations have been substantiated extensively by organisational culture surveys, people returning to work, other employees raising complaints internally and externally with whistleblowing providers. New employees working for the GOC can substantiate the same concerns that I raised, even though they were not employees at the time I submitted my complaints. Even the QLD Audit Office raised major concerns about my particular employing GOC entity's lack of governance in their annual report, highlighting their own findings of deficiencies that reflected exactly the same matters I had raised in my complaints/PIDs. Even if QLD Treasury referred some of my allegations to the QLD Audit Office, the inability for the QAO, it would appear that the GOC were then required to rectify certain matters as part of QAOs audit processes. Yet, QLD Treasury stated my allegations were unsubstantiated, even though I brought the QAO's findings to the investigator to demonstrate commonality with my complaint allegations.

    Investigation scopes remain unknown and unquestionable for complainants - Treasury's finding arose, no doubt in part, because their legal investigator was clearly working to a truncated scope to the parameters set by QLD Treasury. My attempts to provide more evidence relevant to the case were rebuffed. Treasury's finding of "unsubstantiated" is therefore unacceptable when I couldn't provide Treasury's investigator with all the evidence I had, and where Treasury's findings didn't address my individual allegations submitted from the outset.
    Regardless, there is no ability to escalate a matter or question rationale or evidence with QLD Treasury once they have made their finding.

    There are no escalation mechanisms between QLD Treasury and CCC, even if the delays are extensive and there is no contact, there is no belief that the matter is being managed appropriately by QLD Treasury. The major negative impacts of the unnecessarily long timeframes for the failure to deal with matters in a timely manner cannot be understated – everyone in the process is significantly adversely impacted.

    Given my extensive 20+ year professional investigation experience, my complaint should not have taken long to investigate given there was plenty of evidence I have available in

writing. This evidence was not requested by Treasury at any time. Likewise, Treasury took 1 year to even commence interviewing me.
It took approximately 22 months to reach a one sentence conclusion of "unsubstantiated". Some 24+ months later, the matter is ongoing. Such lengthy timelines when my career is in jeopardy because of alleged wrongdoing, where evidence remains available but never obtained or considered by QLD Treasury, is both disappointing and distressing, particularly when I have repeatedly advocated to put additional evidence on the table for consideration.

Lengthy Queensland Treasury processes damage professional reputations significantly, especially for employees in smaller regional towns. As reflected to the PCCC in a number of submissions, non-expedient processes result in professional reputation damage, regardless of ill intent or otherwise. This is reflected in numerous legal decisions and employment law texts, and therefore should form a greater consideration factor during investigations.

Truncated scopes that don't address the crux of complaints, and failure to obtain critical evidence do not serve the public interest, or Queenslander taxpayers/constituents. Even now, key witnesses in my matter exist have never been interviewed – 24+ months later. Others have finished their employment with the GOC unexpectedly, leaving critical evidence unobtained, inaccessible and mostly unexamined. Justice delayed is justice denied – I don't believe justice has been achieved in this process. I would hope my case is idiosyncratic, however, from the submissions it would appear I am not alone in my experience. External HR and Employment Lawyers managing processes with such extended timeframes and incomplete investigations in other companies would surely face major questions about their (mis/management) of such serious matters. But, from a complainant's perspective, there remains no rigorous oversight and accountability for QLD Treasury's management of GOC matters; and whistleblowers are treated as an inconvenience in a depersonalised administrative process, rather than real people, many with many years of professional training and commitment to delivering in the entities they work in.

20. **Evidence furnished to QLD Treasury and CCC as part of preliminary GOC investigations, and/or QLD Treasury or CCC's investigations cannot be used to assist with WorkCover matters.** Despite my repeated requests that evidence be supplied as evidence direct from QLD Treasury direct to WorkCover (thus preserving the investigation integrity while balancing my need for evidence to substantiate my WorkCover claim), QLD Treasury declined my request.

    This is most concerning – evidence may exist and become known to investigators during an investigation, that substantiates wrongdoing against an employee. Employees still have other employment rights while Treasury matters proceed (noting the employment relationship doesn't get suspended while QLD Treasury work through their processes). However, complaining employees (and presumably also the employing GOC), cannot access that relevant information while Treasury's investigation is on foot, denying employees access to critical financial and medical support through WorkCover.

Employees under significant stress face a secondary battle to exercise other employment rights because QLD Treasury aren't authorised to accept a WorkCover claim on behalf of a GOC where wrongdoing is uncovered but where their processes may continuing.

Lengthy delays for outcomes to be determined by QLD Treasury mean that employees are prevented from accessing other employment mechanisms (such as WorkCover) that can help their mental health while matters progress, and where evidence of wrongdoing is found.

21. **Greater consideration on regularly reviewing employee's suspension status must form part of the CCC/QLD Treasury's obligations in the future.** Common law precedents state that suspensions must be reviewed on an ongoing basis, before and during an investigation – they are not a set and forget one-time action. The act of suspension is recognised within employment law as being an adverse action act towards an employee because it inherently alters the terms and conditions of the employee's employment. While it may be necessary in the short term e.g for safety reasons, to secure evidence etc, there is a need for ongoing risk management & deliberate consideration of ongoing need for suspension as circumstances evolve and progress. For instance, once evidence has been secured, it may be appropriate to appoint an employee to alternative duties. The obligation to have ongoing management/employer reviews of the circumstances of an employee's suspension has been outlined within Queensland IR Commission legal decision:

Legal Reference: Parker v Commissioner, Queensland Fire and Emergency Services (2020) 6 QR 361 Unreported Citation: [2020] QSC 370 Source: https://www.queenslandjudgments.com.au/case/id/512957

Highlighted Parker v Commissioner QID Fi

This QLD Government decision about QFES highlights the following points (summarised):

- It is generally the most prudent path for an employer to conduct prima facie investigations and discussions with an employee prior to making the decision to suspend an employee. It is acknowledged, that in some instances this may be impracticable or inappropriate.

- Where it is not appropriate, a suspension may be the best course of action. If suspension is enacted, there needs to be an ongoing review of the suspension and investigation circumstances to determine if ongoing suspension is warranted, or whether alternative working arrangements could be considered and implemented if an investigation might be ongoing for a lengthy period of time. Suspensions can & should be adjusted by the employer as evidence comes to hand (e.g particularly exonerating evidence) and once evidence has

been secured.

- It is acknowledged in the same case, that employees working in smaller, regional towns face greater social isolation, lack of access to support networks (who may be co-workers in small regional towns), reputational damage and psychological impacts from extended investigation periods and suspensions. Therefore employers must be more considerate of these factors when completing risk management activities for employees who work with QLD Government entities in this situation.

Also, In East Coast Pipeline Pty Ltd-v-Workers' Compensation Regulator [2016] QIRC 101, Industrial, Commissioner Black said it is a:

> *...simple exercise to speak to everyone before forming a prima facie view about the veracity and the severity of the complaint...these conversations would have informed [management] about the type of management response that should be most appropriately deployed...*

The failure of some employers to even engage in this step before a matter is referred to either QLD Treasury/CCC who may not be able to investigate for many weeks and months is a breach of a basic procedural and natural justice mechanism.

22. **The above legislative developments, including formal recommendations from external specialist reports such as Justice Alan Wilson's report, ought be the basis for a more comprehensive CCC overhaul within QLD.** Adverse action (suspension) taken against employees during the suspension & investigation processes, as well as the WH&S obligations to ensure greater psychological safety were not major considerations when QLD's processes were established decades ago. However, with recent legislative changes, and the evolution of common law decisions, the whistleblowing and reporting mechanisms need to be radically overhauled now to ensure compliance with modern legal standards, as well providing systems that position Queensland Government entities as a employer of choice. The current practices do not contribute to outcomes that support employee or community confidence in the processes.

23. **The Services Union Queensland recently wrote to the Minister for Integrity, Deb Frecklington, requesting the Queensland Government prioritise the implementation of recommendations made in the "Report on the Review of the Public Interest Disclosure Act 2010 (Qld)" submitted in 2023 to QLD Government" by Alan Wison KC.** Many of the recommendations remain outstanding. I too commend the PCCC to consider this report again as part of their current review, with a mind to implementing a greater review of all QLD whistleblowing legislation and functions. Part of the review should include engagement with complainants to understand their experiences of the process.

Alan Wilson 2023
public-interest-disclos

24. **In summary, GOC Employees deserve clear reporting channels and more timely processes when making whistleblowing allegations.**
In summary, I have experienced major deficiencies in the entire reporting, management, investigation and process from the outset of lodging my complaint initially with the CCC, and subsequently with QLD Treasury. These barriers have only served to make reporting corrupt conduct convoluted, difficult and ultimately inefficient. Courageous whistleblowers deserve better treatment when their longstanding professional careers are placed on the line to report corrupt conduct.

Whistleblowers take major risks to courageously raise concerns to improve outcomes for Queenslanders in the entities in which they work. QLD Government employees on the frontline of serving QLD Government entities deserve better processes and treatment to protect them from professional reputational damage when they put their careers on the line to do the right thing. Extending critical support is essential for employees who have taken the most serious step to raise a PID complaint to a specialist body when their careers, livelihoods and professional reputations are in jeopardy for doing so. Whistleblowing has enabled many serious deficiencies impacting the safety of the community and the agencies themselves to be uncovered, bringing about change for the better.

I also concur with other submissions, that after many years of operation in it's current format, it time fore a more comprehensive review of all of the arrangements and legislation around whistleblowing including the relevant Acts & Regulations, QLD Treasury's role noting their conflict of interest, and improvements to the impartiality and operation of the CCC.

Thank you for your consideration of my feedback on the important work of the Commission.

Yours faithfully,

Name Withheld.

Complaint form - Government Owned Corporation (GOC)

1 Information for complainants

Pursuant to section 156 of the Government Owned Corporations Act 1993 the Under Treasurer must notify the Crime and Corruption Commission (CCC) of a complaint if the Under Treasurer reasonably believes that the complaint relating to the GOC involves, or may involve, something that would be corrupt conduct and the Chief Executive Officer of the GOC has not notified the CCC.

2 Complainant's personal details (not required if lodging anonymously)

Title	◯ Mr	◯ Mrs	◯ Miss	◯ Ms	
Family name					
Given name					

3 Contact details of Complainant

Current residential address					
					Postcode
Mailing address (If different to residential address)					
					Postcode
Email address					
Telephone Number					
Mobile phone number					
Preferred contact method	◯ Telephone	◯ Mobile	◯ Letter	◯ Email	

4 Only complete this section if you are making a complaint for someone else

Does the person know you are making a complaint for them? We will confirm details of the complaint with them.	◯ Yes	◯ No			
What is your relationship to this person?					
Their current residential address					
					Postcode
Their mailing address (If different to residential address)					
					Postcode
Their email address					
Their telephone Number					
Preferred contact method	◯ Telephone	◯ Mobile	◯ Letter	◯ Email	

5 Complaint details

Has a Complaint been lodged about this issue before?	◯ Yes ◯ No	If yes, when?
Has this complaint been made with the GOC?	◯ Yes ◯ No	If yes, when?
Has the Complaint been lodged with any other agency	◯ Yes ◯ No	If yes, with whom?

6 Complaint summary

Which GOC does the complaint relate to?			
When did it happen?			
Where did it happen?			
Who was involved?			
What happened?			
Why do you think this is unfair or wrong?			
What would you like to happen with your complaint?			
Have you attached any documents in relation to your complaint?		◯ Yes	◯ No
Would you be concerned if your complaint was referred to the GOC to deal with?		◯ Yes	◯ No
If Yes, why?			

7 Acknowledgement

All the information provided is true and correct to the best of my knowledge.	
Full name	
Signature	

You can lodge your completed form and any attachments by:

- scanning and posting a hard copy to: Queensland Treasury, GPO Box 611, Brisbane, QLD, 4001
- scanning and emailing it to the Treasury Complaints mailbox: GOCcomplaints@treasury.qld.gov.au
- Calling us on 13 74 68 (13QGOV)

8 Privacy notice

Queensland Treasury (Treasury) is collecting your personal information for the purposes of investigating and dealing with your complaint under section 156 of the Government Owned Corporations Act 1993. For these purposes, your personal information may be disclosed to Treasury officers, the Crime and Corruption Commission (CCC), and others engaged by Treasury to assist it with your complaint (e.g. legal advisers). Your personal information will be used for the purposes of investigating and dealing with the issues raised in your complaint, and for administering, monitoring, auditing, evaluating and improving Treasury's handling of complaints about government owned corporations and its engagement with the CCC. Your personal information will not be disclosed to a third party, other than as referred to above, without your consent, unless required or authorised to do so by law. You may be contacted by Treasury officers to assist Treasury with investigating and dealing with your complaint. Your personal information will be handled in accordance with the Information Privacy Act 2009. More information about Treasury's privacy policy is available on our website at https://www.treasury.qld.gov.au/legal/privacy.

RESET FORM

Queensland Government

From: [redacted]
To: Parliamentary Crime and Corruption Committee
Subject: [redacted]
Date: Wednesday, 11 March 2026 2:23:24 PM
Attachments: [redacted]

The issue of ongoing, delayed suspensions while investigations occur:

It is acknowledged under Australian Employment Law, that the act of suspension, in and of itself, is adverse action because it changes the terms and conditions of an employment contract (an employee can no longer perform the duties they are hired to perform in the labour exchange contract), because of the employer's suspension direction.

Any raising of concerns about employment matters (such as PIDS), generally relate to the exercising of an employee's workplace rights (such as making a complaint about their employment/working conditions). Therefore, the exercise of such workplace rights, such as making a PID, whether to QLD Treasury/CCC also provides an employee with recourse under either the Fair Work Act Adverse Action provisions, or mirrored QIRC provisions.

There are multiple employment decisions, the *Parker v QFES Commissioner QLD IRC decision (Decision attached)* included a clear acknowledgement that ongoing suspension is a form of disciplinary action, in and of itself. This is a critical point to note, in addition to note, as a common misconception exists that the act of suspension does not amount to disciplinary action. This is incorrect, and may necessarily push employees to either the Fair Work Commission, or the QIRC to have their employment rights considered.

Therefore, employees who exercise:
1. their workplace rights to raise a workplace complaint for management action (by making a PID), and who
2. are also subject to ongoing suspensions pending investigation (pertaining to reprisal actions for raising complaint, or inappropriate management action) (noting the employees inability to perform work or maintain their skills currency, professional training or their professional/trade minimum work performance requirements to maintain registration currency).

Have two elements present they may wish to take for recourse with the relevant workplace Authorities.

It is incumbent then upon QLD Treasury & CCC to acknowledge employees have these employment rights, and have processes that allow for escalation or review where these employment rights are impinged by lengthy investigation delays.

QLD agency employees put trust in QLD Treasury or CCC processes, trusting information found will substantiate their allegations (assuming QLD Treasury meaningfully engage with them as complainants to find relevant evidence in the first instance). However, complainants are forced into having to take legal action with either the Fair Work Commission or the QIRC to have their employment rights recognised. It should not be incumbent upon employees to take legal action to have recognition by it's model litigant employer to have these rights recognised, considered and acted upon appropriately during investigation processes.

Additionally, the Parker v QFES Commissioner decision reflects that any period of suspension, having been acknowledged it is in fact of form of disciplinary action, and the period of suspension [disciplinary action] served; ought be considered by decision makers in determining the level of punishment (if any) should be applied to employees upon conclusion of the investigation. Any directions from CCC/Treasury to the employing agency about the finalisation of matters needs to consider this factor, particularly where any finding only amounts to misconduct, or no finding of wrongdoing.

Additionally, given the role the CCC & Treasury play in determining timeframes for investigation, it ought be incumbent upon the CCC/QLD Treasury provide the employing agencies with instructions that employees should not be deprived of required professional/ trade training while such lengthy investigations occur. The failure of employing entities to provide such training on any investigation longer than 6 months ought be considered as reprisal action in and of itself. My own GOC has repeatedly denied me training while I have been on long term suspension (as part of QLD Treasury's investigation processes), despite my repeated requests to have minimum training provided to maintain professional competency., despite my highlighting to them that their stated position ['we will not provide training to suspended employees'] was in fact a breach of their basic employment obligations while my employment contract was still on foot, and the relevant enterprise agreement provisions. The failure to provide training while lengthy investigations are on foot is a form of reprisal action in and of itself, which alters an employee's position to their prejudice (adverse action) when suspension is ongoing.

Kind regards,
Name withheld

PARKER v COMMISSIONER, QUEENSLAND FIRE AND EMERGENCY SERVICES

[2020] QSC 370

[2019 No SC 48]

Supreme Court, Cairns (Henry J)

3–5, 6 November 2020

Equity — General principles — Other matters — Confidential information — Secretly recorded telephone calls — Where one party to calls recorded the other party who was counselling her (at the behest of their mutual employer) without the counselling party's knowledge — Where recordings later used in workers' compensation claim and came to notice of employer — Where employer was a public sector entity (and public unit of administration) which later used them to suspend the counselling party and was making use of them in disciplinary process on basis of certain things recorded as being said by the counselling party — Whether the information had been imparted in circumstances importing an obligation of confidence — Whether even if otherwise within elements for protection in equity the contents came within inequity exception — Whether statutory reporting obligations of employer as public unit of administration overrode any protection or prevented any obligation of confidence from arising, or placed information within the inequity exception — Whether public interest disclosure statute overrode any protection or prevented any obligation of confidence from arising or placed information within the inequity exception — Crime and Corruption Act 2001 ss 15, 38, 39, 43, Sch 2 — Public Interest Disclosure Act 2010 ss 13, 17, 37. (A Dig 3rd [1132]).

Industrial Law — Queensland — Employees in employment of State — Queensland — Queensland Fire and Emergency Services — Fire service officers — Disciplinary action against fire service officer — Statutory obligation that dismissal or suspension "must be effected in accordance with" specific statute governing the Queensland Fire and Emergency Services and the "principles of natural justice" — Where fire service officer suspended immediately without warning or being afforded opportunity to be heard — Where Commissioner asserted immediate suspension necessitated for protection of integrity of disciplinary process — Whether statutory obligation that suspension must be effected in accordance with the principles of natural justice permitted suspension without first giving fire service officer an opportunity to be heard if necessity required otherwise — Whether Commissioner acted in accordance with the principles of natural justice — Content of obligation — Whether any failure to comply remedied by later opportunities given to respond to allegations of misconduct but not to decision to suspend or to continue to further suspend — Whether suspensions invalid — Whether failure to give access to material in possession of Commissioner after first promising to give access and later declining to do so, and preventing fire service officer from speaking to witnesses in employ of employer who had provided statements referred to in investigation report,

was procedurally unfair — Whether procedural fairness was still possible after lengthy delay — Whether injunctive relief should be granted to restrain continuation of disciplinary process on basis procedural fairness no longer possible — Fire and Emergency Services Act 1990 ss 30, 30A, 32, 33(1), 33(2). (A Dig 3rd [3124]).

The *Fire and Emergency Services Act* 1990 relevantly provides:

"**33 Mode of dismissal or suspension**

(1) Dismissal or suspension must be effected in accordance with this Act and the principles of natural justice.

(2) Dismissal or suspension is effected by giving the officer concerned a written notice signed by the commissioner."

The plaintiff was employed as area director of the far northern region of the Rural Fire Service, a branch of the Queensland Fire and Emergency Services ("QFES"). He was suspended without pay, by written notice, (starting with a letter dated 3 September 2018) pending the completion of disciplinary processes under the *Fire and Emergency Services Act* 1990. He was given no opportunity to make submissions on whether or not he should be suspended before the decision to suspend him was made. The letter ([48]–[49]), sent by the second defendant, as delegate of the first defendant Commissioner, stated in part:

"I have received information concerning allegations about your conduct including:-

(1) Between 28 April 2017 and 6 July 2017 you inappropriately disclosed confidential information to [XY] in relation to her return to the workplace after being on extended sick leave, and information about other staff members' WorkCover claims.

(2) Between 1 April 2017 and 30 July 2017, during telephone conversations with [XY], you made a number of inappropriate comments about Regional Manager [AB], including comments which were derogatory and undermining in nature.

(3) You, as chair of the selection panel for a Brigade Training and Support Officer role in Cairns, sought to ensure the panel comprised of persons who you believed would support you, in ensuring that [LM] was appointed to the position."

The letter explained limb two of s 32(1)(a) *Fire and Emergency Services Act* 1990 and said:

"On preliminary consideration of the material before me, I reasonably believe that you have been suspected of being involved in circumstances such that the proper and efficient discharge of the functions of QFES might be prejudiced if your services are continued.

Until this matter is resolved, I have decided that you should not remain in your current workplace, as I hold concerns in relation to the risk to QFES should you remain in your position. I have considered all possible alternative duties to which you could be temporarily assigned whilst these allegations are dealt with.

However, due to the nature of your position and its location in Cairns, I have formed a view that no alternative duties are possible at this time. Given the nature of the allegations, I have decided to suspend you from duty on normal remuneration, effective from the date you received this letter.

Your suspension will take effect immediately on receipt of this letter and will remain in place until 30 November 2018, unless otherwise determined."

The suspension was, at least in the first instance, for about three months, until 30 November 2018, subject to determination otherwise. There did not ever follow a decision to shorten that period. To the contrary, it was progressively extended by subsequent further written notices of suspension, and the plaintiff remained suspended awaiting finalisation of the process, nearly two years later.

Following the suspension, the plaintiff heard nothing further from anyone within QFES for the first 24 days after his suspension. Finally on 28 September 2018 he received a telephone call to discuss a suitable interview date, during which discussion it was agreed the interview would be conducted on 10 October 2018. The plaintiff wished to have access to his diaries in Microsoft Outlook on his computer at work, in order to properly prepare for the interview. He was told that would occur. However, it did not despite several attempts (more fully detailed at [64]–[70]) and the plaintiff eventually was interviewed without access having been provided. In particular, he did not have access to his extensive electronic and paper records, emails, calendars, documents and files, his 2017 or 2018 diaries, witnesses, or his mobile telephone records, all of which were, to some extent, of potential relevance in dealing with the allegations presented to him. The QFES later refused to provide any of the requested access. In addition, there was also a denial of the request to be allowed to talk to two employees to discuss the matter on the basis they were named in the investigation report produced after the interview, and therefore could be called as witnesses.

An investigation report was prepared and the plaintiff was issued with a letter, dated 28 November 2018, (which appears at [72]–[74]) inviting him to respond in writing why a disciplinary finding should not be made against him. The letter also purported to extend the suspension but on the basis that was pursuant to s 32(1)(a) *Fire and Emergency Services Act* 1990 which requires it to appear the officer "is liable" not "may be liable" to disciplinary action. The letter stated the plaintiff "may be liable".

The defendants contended, *inter alia*:

(a) while the circumstances were not especially urgent (the information being quite dated) necessity nonetheless required the protective step of suspending the plaintiff without forewarning him, lest he interfere with sources of relevant information in the workplace yet to be investigated;

(b) that this was a concern was said to be confirmed by directions given in the letter of 3 September 2018, that the plaintiff return all equipment and materials belonging to the QFES, that he not return to the workplace or any other QFES site without permission, and that he not discuss the matter with his work colleagues or any person likely to have information relevant to the allegations against him; and

(c) that s 33(1) *Fire and Emergency Services Act* 1990 did not prevent a suspension without consultation with the employee first, where the circumstances required protective steps which might be thwarted if the employee were first forewarned.

The plaintiff brought proceedings in the Supreme Court seeking to restrain the defendants from taking or progressing any further disciplinary action against him at all, or alternatively, to restrain them from taking or progressing further disciplinary action using or relying on a show cause notice of 31 January 2019 or on the allegedly confidential information which triggered the chain of events leading to his suspension.

The allegedly confidential information came into existence and was, in turn, revealed in the following circumstances:

(a) in mid-2015, the plaintiff was requested by his then-regional manager, to keep an eye on and check in on a fellow employee, XY, who was experiencing marked stress in connection with workplace and other issues. XY had, evidently, already had some recourse to the QFES's formal support network for stressed employees. However, with XY's issues apparently continuing, the regional manager was concerned about XY's welfare. He concluded the plaintiff, who was held in high regard by XY, was well-suited to supporting XY by reaching out to XY, eliciting and reinforcing XY's trust and confidence in him, relating to XY, reassuring XY and sympathising with XY as a support person, albeit not a formally appointed support person;

(b) the plaintiff proceeded to engage with XY from time to time from late 2015 until mid-July 2017. During much of this time, XY was absent from duties on extended

personal leave and the communications were by telephone. The plaintiff used his work-issued mobile telephone to contact XY on XY's personal mobile phone every one to three weeks. Unbeknown to Mr Parker, XY recorded at least some of the telephone conversations;

(c) XY made a WorkCover claim in 2017. It was refused and XY applied for a review of that decision to the regulator under the *Workers' Compensation and Rehabilitation Act* 2003. The information XY submitted to the regulator included XY's recordings of conversations with the plaintiff. XY evidently thought, misguidedly, that the recordings supported or corroborated XY's claims of disagreement with XY's manager, "AB";

(d) XY's recordings were necessarily disclosed to the QFES representative who provided a response in the review to the regulator. That representative in turn disclosed the recordings to the QFES's Ethical Standards Unit;

(e) the executive manager of the QFES's Ethical Standards Unit notified the Crime and Corruption Commission ("CCC") in a purported referral of allegations of corrupt conduct under the *Crime and Corruption Act* 2001, that, relevantly, the recordings submitted to the regulator showed the plaintiff had disclosed confidential information, denigrated his manager AB and stated that he was going to corrupt an employee selection process by loading the selection panel to select a person, LM;

(f) the meaning of "conduct" in s 15 *Crime and Corruption Act* 2001 is broad, going beyond conduct which, if proved, would be a criminal offence, to include conduct which, if proved, would be "a disciplinary breach providing reasonable grounds for terminating the person's services";

(g) the referral was made because of the duty to notify imposed upon public officials by the *Crime and Corruption Act* 2001, and not because it was seriously anticipated the matter required investigation by the CCC. The CCC was evidently of the same view, and in an email to the second defendant, advised the allegations were "suitable for QFES to deal with" and, moreover, the CCC did "not require any outcome advice as to how QFES deals with the matter (although they could review it in the yearly audit)"; and

(h) the plaintiff's explanation for his comments about these three topics in the course of his telephone conversations with XY was that he was "actively seeking to encourage and maintain rapport" with XY and, as part of that process, spoke of issues relevant to both of their professional and private lives in "relaxed, informal, and sometimes colourful" language. In short, his position was that what he said on those three topics did not involve nefarious intention or an intention that it would be broadcast to others and rather what he said was said in confidence in the context of trying to encourage and maintain rapport with a co-employee the QFES had asked him to support.

The plaintiff sought to prevent the use, and reliance on, the recorded telephone conversations on the basis that they comprised confidential information and sought injunctive relief.

Held, making declarations to the effect the plaintiff had not been afforded natural justice in relation to any of the notices of suspension, but declining to grant injunctive relief:

(1) That:

(a) even in the absence of a contract, equity will grant relief *in personam* not to disclose or use information other than for the purpose for which it was communicated if the nature of the information and the circumstances in which it was communicated call for that confidence to be respected by reference to notions of conscience; [26];

(b) the elements required in proof of the obligation of confidence are: first, the information itself must have the necessary quality of confidence about it; secondly, that information must have been imparted in circumstances importing an

obligation of confidence; and thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it; [27];

(c) whilst the first and third elements were made out the second element was not. It was XY who was the party being supported and thus XY, rather than the plaintiff, who had an expectation of confidentiality. To use a parallel example, where a psychologist counsels a client there is an expectation the psychologist will honour the client's confidences, but it is scarcely to be expected, by the psychologist, that the client is obliged to treat the means and content of the psychologist's contribution as confidential; [28];

(d) the circumstances in which the plaintiff made the remarks did not import an obligation of confidence. While there was a quality of confidence inherent in the remarks, the circumstances did not call for that confidence to be respected by reference to notions of conscience. Accordingly, the recorded remarks were not protected by the equitable obligation of confidence. [29].

Coco v AN Clark (Engineers) Ltd [1969] RPC 41, 47; *Armstrong Strategic Management and Marketing Pty Ltd v Expense Reduction Analysts Group Pty Ltd* (2012) 295 ALR 348; *Crown Resorts Ltd v Zantran Pty Ltd* (2020) 276 FCR 477 applied.

(2) That:

(a) even if the circumstances did attract the equitable obligation of confidence, it was overcome by an exception to that obligation, namely, the principle that there is no confidence in inequity; [30];

(b) the essential theme of the exception is that the equitable obligation of confidence ought not protect against disclosure of a criminal or civil wrong or a serious misdeed of public importance. The latter category obviously involves matters of degree, but it would apply to disclosure of conduct where, as here, once the disclosure fell into the hands of the QFES, there existed a reasonable suspicion of corrupt conduct which the QFES had a duty to disclose and a duty to deal with: ss 15, 38, 39 and 43 *Crime and Corruption Act* 2001; [30];

(c) it was not to the point that, in due course, it may be concluded there has not actually been official misconduct. The reasonable suspicion of official misconduct, amply demonstrated there existed a prospective serious misdeed of such public importance the legislature mandated that it be disclosed; [31];

(d) the practical effect of the application of the *Crime and Corruption Act* 2001 to the circumstances of this case was to remove the protection of the equitable obligation of confidence if ever it did arise, because the action it necessarily required to be taken conferred upon the disclosed information a quality which placed it within the category of an acknowledged exception to that protection; [32];

(e) further, whether as a separate pathway to that exception or as part of it, s 37 *Public Interest Disclosure Act* 2010 also grounds the operation of the exception in providing a person who makes a public interest disclosure does not breach an obligation by way of rule of law requiring the person to maintain confidentiality. Such a public interest disclosure is one made by a public officer about conduct which, if proved, could be corrupt conduct: ss 13 and 17 *Public Interest Disclosure Act* 2010. The disclosure here by the QFES representative in the WorkCover review to the QFES's Ethical Standards Unit and its disclosure, in turn, to the CCC was protected by this provision to the extent it was statutorily deemed not to be a breach of the equitable obligation of confidence. At the least, this gave the disclosure the exceptional character; [33];

(f) further, the operation of the provisions of the *Crime and Corruption Act* 2001 (ss 15, 38, 39 and 43) and the *Public Interest Disclosure Act* 2010 (ss 13, 17 and 37) dispensed with the notion the plaintiff's remarks could, in the first place, have imported an expectation that his confidence would be protected by reference to notions of conscience. That is to say, apart from supporting the exception, the provisions were powerful indicators that the equitable obligation of confidence did not arise in the first place. [34].

Crown Resorts Ltd v Zantran Pty Ltd (2020) 276 FCR 477, 484–487 [24]–[34] considered.

(3) That:

(a) s 33(1*) Fire and Emergency Services Act* 1990 mandates that suspension must be effected in accordance with the principles of natural justice; [53];

(b) the requirements of procedural fairness to the affected individual and the exercise of a statutory power, such as suspension, call for consideration not only by reference to the individual's interests, but also the interests and purposes which the statutory power serves to protect; [53];

(c) at common law, given that suspension at least initially serves the purpose of immediately protecting the QFES against an individual, given advance warning of potential suspension, interfering with information in the workplace yet to be gathered, natural justice will seldom demand there be an invitation to the individual to provide explanation or excuse before suspension is imposed. [53].

Kioa v West (1985) 159 CLR 550, 585; *Rucker v Stewart* [2014] QCA 32 considered.

(4) That s 33(1) *Fire and Emergency Services Act* 1990 required that if the circumstances meant it was not practicable in effecting the suspension for the plaintiff to be afforded the opportunity to be heard prior to it occurring (in order to secure documentary and digital information to guard against any theoretical risk of interference) as a matter of statutory implication the written notice effecting the suspension under s 33(2) (the letter of 3 September 2018) should have expressly offered the plaintiff the earliest practicable opportunity to be heard. [56]–[57].

Braun v Rushbrook [2020] QSC 268, [141]–[142] considered.

(5) That:

(a) given that the plaintiff was neither given an opportunity, in advance of suspension, to be heard, or by the written notice effecting the suspension given the opportunity to be heard soon thereafter, the suspension was not "effected" in accordance with the principles of natural justice and thus did not occur in compliance with s 33 *Fire and Emergency Services Act* 1990; [58];

(b) it was not the case that no "practical injustice" resulted from this failure to comply with s 33 *Fire and Emergency Services Act* 1990; [59]–[60];

(c) what occurred after the giving of the notice was, at best, the proffering of an opportunity to be heard in respect of the allegations attracting the disciplinary process, not an opportunity to be heard as to the suspension; [61];

(d) the opportunity which was given to be heard in respect of the allegations was arguably not a fair opportunity in that the plaintiff was deprived of access to materials reasonably sought by him, in order to respond in a properly informed way; [61];

(e) in failing to afford the plaintiff an opportunity to be heard in relation to his suspension after it was effected by written notice of 3 September 2018, the first defendant thereby failed to ensure the suspension was effected in accordance with the principles of natural justice as required by s 33, thus denying the suspension of legal force and effect. [62].

Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam (2003) 214 CLR 1, 14 [37]; *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123, 134–135 [30] considered.

(6) That:

(a) whilst there should not be an over-zealous scrutiny of a decision-maker's words, and an apparent error as to a source of power is of no moment if the requisite power existed, the purported further suspension of the plaintiff by the letter of 27 November 2018, was not effected in accordance with the principles of natural justice for the same reasons as the earlier notice; [71]–[77];

(b) the later letters dated 31 January 2019 and 6 February 2019 purporting to further suspend the plaintiff were similarly not effected in accordance with the principles of natural justice for the same reasons as the first one. [81]–[84], [92], [96].

Minister for Immigration and Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259; *Kitching v Queensland Commissioner of Police* [2010] QSC 303, [54] considered.

(7) That the denial of the request to be allowed to talk to two employees to discuss the matter on the basis they were named in the investigation report and therefore could be called as witnesses was mystifying. This was not a criminal prosecution involving protected or at-risk witnesses. It was a disciplinary process in which the investigation was concluded and so-called witnesses had presumably committed to an account. There was no material risk the process would be compromised by the plaintiff being permitted to discuss the matter with the two witnesses. [79].

(8) That the procedural fairness of having the opportunity to be heard necessarily requires the individual has a genuine opportunity to be heard. The opportunity to be heard may be rendered illusory if the individual is deprived of the ability to gather information in aid of the individual's response. There is an obvious risk that will occur where the decision-maker prevents the individual searching for information not easily recalled, by imposing the inherently unfair condition that the individual must first specify details pertaining to the information. That unfairness will be especially acute if the agency of the decision-maker has, as here, earlier agreed to allow the individual to engage in such a search without condition other than that the search be supervised. Expectations created by a decision-maker may affect the practical content of the requirements of fairness in a particular case. [90].

Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam (2003) 214 CLR 1, 12 [33]; *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152, 162 [32] considered.

(9) That:

(a) the lack of timely access to the requested material did not mean procedural fairness was no longer possible; [98]–[103];

(b) as the disciplinary process was incomplete, it was premature to conclude that procedural fairness was an impossibility, because only when the decision-making process has concluded is it possible to conclude whether, viewed in its entirety, it entailed procedural fairness; [104];

(c) it was accordingly not appropriate to grant blanket injunctive relief; [105];

(d) the appropriate relief was to make declarations in anticipation that it would result in appropriate action by the Service, while protecting the applicant's interests by conferring liberty to apply. [106].

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564, 578 applied.

Longman v The Queen (1989) 168 CLR 79; *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 551; *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 470, 474 [6] considered.

CASES CITED

The following cases are cited in the judgment:

Ainsworth v Criminal Justice Commission (1992) 175 CLR 564.

Armstrong Strategic Management and Marketing Pty Ltd v Expense Reduction Analysts Group Pty Ltd (2012) 295 ALR 348.

Braun v Rushbrook [2020] QSC 268.

Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541.

Coco v AN Clark (Engineers) Ltd [1969] RPC 41.

Crown Resorts Ltd v Zantran Pty Ltd (2020) 276 FCR 477.

Hamdan v Callanan [2016] 1 Qd R 128.

Hossain v Minister for Immigration and Border Protection (2018) 264 CLR 123.

Kioa v West (1985) 159 CLR 550.
Kitching v Commissioner of Police [2010] QSC 303.
Longman v The Queen (1989) 168 CLR 79.
Minister for Immigration and Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259.
Minister for Immigration and Multicultural and Indigenous Affairs, Re; Ex parte Lam (2003) 214 CLR 1.
NAIS v Minister for Immigration and Multicultural and Indigenous Affairs (2005) 228 CLR 470.
Rucker v Stewart [2014] QCA 32.
SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs (2006) 228 CLR 152.

TRIAL

M A Jonsson QC for the plaintiff, Neil Parker.

A D Scott for the first defendant, Commissioner, Queensland Fire and Emergency Services, and the second defendant, Mike Wassing.

EX TEMPORE

HENRY J:

[1] The plaintiff, Mr Parker, has been suspended on full pay for over two years from his duties as area director for the far northern region of the Rural Fire Service. That service is evidently a branch of the Queensland Fire and Emergency Services, which I will refer to hereafter as "QFES" or the "Service".

[2] Mr Parker claims injunctive relief against the QFES Commissioner and the Deputy Commissioner, Mike Wassing, who acted as the Commissioner's delegate in suspending Mr Parker. Mr Parker's claim was filed on 12 February 2019. A request for trial date was not filed until well over a year later on 8 June 2020 and on 10 June 2020, I listed the hearing, which, in turn, proceeded this week.

[3] Evidence in chief was by affidavit at trial. Some witnesses were cross-examined briefly, with no particular surprises emerging in respect of the largely documentary facts of the case. Most of the hearing time was consumed by the very helpful opening and closing addresses of both counsel, which have been of great assistance in allowing me to narrow and resolve what, in the end result, emerged as the obviously determinative issues. That assistance has also allowed me to decide the case forthwith, delivering these *ex tempore* reasons, an outcome plainly in the interest of all parties in light of the regrettably long period of Mr Parker's suspension without any resolution of the disciplinary process which had purportedly been initiated in respect of Mr Parker in conjunction with the suspension.

[4] To remove doubt, no interim orders were made staying the disciplinary process. On the date the claim was filed, Mr Parker's lawyers sought an undertaking from the defendants' lawyers to maintain Mr Parker's employment on suspension from duties on full pay until the finalisation of proceedings on the claim. In their response dated 14 February 2019, the defendants' lawyers declined to give such an undertaking. The letter referred to a disciplinary process involving three stages which had not yet advanced beyond the first stage, under which it was asserted Mr Parker had been asked to show cause why disciplinary findings should not be

made in respect of allegations against him. It was asserted no disciplinary findings had been made and:

> "The status quo will remain in place unless a decision is made, after the completion of the remaining steps in the process (i.e. steps 2 and 3), by the decision-maker for disciplinary action to be taken which involves altering the status quo."

[5] There was no change of the defendants' position regarding an undertaking until almost one year later, when on 7 February 2020, his lawyers, by letter to Mr Parker's lawyers, flagged the defendants were prepared to undertake that no further steps in the disciplinary process would be taken until the proceeding was finalised, conditioned on Mr Parker's lawyers agreeing to a consent order providing for the exchange of affidavit material. This was not the undertaking sought in respect of Mr Parker's suspension on full pay, although such a suspension has continued to the present.

[6] The defendants' counsel submitted it is reasonable to infer the defendants had not concluded the disciplinary process by the time of that letter because this proceeding bore upon the legitimacy of the defendants' actions in the disciplinary process thus far. Be that as it may, the upshot is that Mr Parker has been suspended for such a long time as to make the suspension itself a material form of de facto disciplinary action.

[7] The adverse impact of such a suspension may not be as great as if it had been suspension without pay, but for Mr Parker to be suspended for such a very long period from his calling carries other impacts, including the ongoing insult to a person's self-worth derived from work and loss of career and other opportunities within the workplace. Here it has also included the embarrassment and prolonged stress of being prevented not only from interacting with his work friends but in having to keep secret from them the inevitably gossip-engendering mystery of why he ceased work in connection with them. It is additionally likely that speculation as to the reason for his prolonged absence from work and eventually an inevitably widespread belief he had been suspended would damage his reputation. There is nothing I can do to cure such adverse consequences but I observe they can, at least, be taken into account in any decision the QFES may finally arrive at and – if it does, in the end, decide to take disciplinary action – in determining what disciplinary action should be taken.

[8] The relief claimed, in summary, sought to restrain the defendants from taking or progressing any further disciplinary action against the plaintiff at all, or alternatively, to restrain them from taking or progressing further disciplinary action using or relying on a show cause notice of 31 January 2019 or on the allegedly confidential information which triggered the chain of events leading to Mr Parker's suspension. In the end result, argument also focused upon whether there ought be a form of injunctive or declaratory relief in respect of the suspension, in the event I found it was not effected in accordance with the principles of natural justice as required by s 33(1) *Fire and Emergency Services Act* 1990.

[9] I am unpersuaded there ought be a blanket restraint or a restraint regarding the use of the allegedly confidential information. I am, however, persuaded that the suspension and related show cause process was, in ways I will discuss, potentially or actually in breach of the principles of natural justice. The appropriate relief which ought follow from the conclusions I will reach is a topic to which I will return at the conclusion of my reasons.

[10] The allegedly confidential information came into existence and was, in turn, revealed in the following circumstances. In mid-2015, Mr Parker was requested by his then-regional manager, Mr Hazell, to keep an eye on and check in on a fellow employee – whom I will, to preserve anonymity, refer to as "XY" – who was experiencing marked stress in connection with workplace and other issues. XY had, evidently, already had some recourse to the Service's formal support network for stressed employees. However, with XY's issues apparently continuing, Mr Hazell was concerned about XY's welfare. He concluded Mr Parker, who was held in high regard by XY, was well-suited to supporting XY by reaching out to XY, eliciting and reinforcing XY's trust and confidence in him, relating to XY, reassuring XY and sympathising with XY as a support person, albeit not a formally appointed support person.

[11] Mr Parker proceeded to engage with XY from time to time from late 2015 until mid-July 2017. During much of this time, XY was absent from duties on extended personal leave and the communications were by telephone. Mr Parker used his work-issued mobile telephone to contact XY on XY's personal mobile phone every one to three weeks.

[12] Unbeknown to Mr Parker, XY recorded at least some of the telephone conversations. The means by which XY did so, and whether those means constituted an interception and were thus in breach of s 7 *Telecommunications (Interception and Access) Act* 1979 (Cth), are unknown. XY was not a witness in this proceeding.

[13] XY made a WorkCover claim in 2017. It was refused and XY evidently applied for a review of that decision to the regulator under the *Workers' Compensation and Rehabilitation Act* 2003. The information XY submitted to the regulator included XY's recordings of conversations with Mr Parker. XY evidently thought, misguidedly, that the recordings supported or corroborated XY's claims of disagreement with XY's manager, whom I will, for the purpose of anonymity, refer to as "AB".

[14] XY's recordings were, I infer, necessarily disclosed to the QFES representative who provided a response in the review to the regulator. That representative in turn disclosed the recordings to the executive manager of the Service's Ethical Standards Unit, Mr Lenz, on 27 June 2018. He allocated the task of considering the recordings to Ms Chetham of the Ethical Standards Unit. Ms Chetham, in due course, further consulted with Mr Lenz.

[15] On 14 August 2018, Mr Lenz notified the Crime and Corruption Commission ("CCC") in a purported referral of allegations of corrupt conduct, that the recordings submitted to the regulator showed Mr Parker had disclosed

confidential information, denigrated his manager AB and stated that he was going to corrupt an employee selection process by loading the selection panel to select a person I will refer to as "LM". The referral contained some other allegations, but that sufficiently states the core three themes which sparked the Service's concern.

[16] I pause to acknowledge that Mr Parker's explanation for his comments about these three topics in the course of his telephone conversations with XY is that he was "actively seeking to encourage and maintain rapport" with XY and, as part of that process, spoke of issues relevant to both of their professional and private lives in "relaxed, informal, and sometimes colourful" language. In short, his position is that what he said on those three topics did not involve nefarious intention or an intention that it would be broadcast to others and rather what he said was said in confidence in the context of trying to encourage and maintain rapport with a co-employee the Service had asked him to support.

[17] I am not here involved in a merits review and it is no part of my role to determine the rights or wrongs of what Mr Parker was recorded saying to XY, although the context in which he said it is relevant to the issue of confidentiality to which I will come.

[18] Mr Lenz's referral to the CCC contended the identified aspects of the recorded calls supported allegations reasonably suspected as amounting to corrupt conduct. The meaning of "conduct" in s 15 *Crime and Corruption Act* 2001 is broad, going beyond conduct which, if proved, would be a criminal offence, to include conduct which, if proved, would be "a disciplinary breach providing reasonable grounds for terminating the person's services".

[19] Mr Lenz's referral concluded:

> "QFES considers that the above allegations require formal investigation and it has the capacity to deal with them. QFES is also considering taking administrative action in relation to Inspector Parker (suspension), however, will await the CCC's assessment before commencing such action. Accordingly, QFES requests verbal approval to commence dealing with the matter."

[20] It is tolerably clear the referral was made because of the duty to notify imposed upon public officials by the *Crime and Corruption Act* 2001, and not because it was seriously anticipated the matter required investigation by the CCC. The CCC was evidently of the same view, for according to an email of 23 August 2018 by Mr Lenz to the second defendant, Mr Wassing, the CCC had advised the allegations were "suitable for QFES to deal with" and, moreover, the CCC did "not require any outcome advice as to how QFES deals with the matter (although they could review it in the yearly audit)".

[21] If it was correct that what Mr Parker had been recorded saying constituted conduct which, if proved, constituted a disciplinary breach providing reasonable grounds for termination, then apart from QFES' view that the conduct warranted administrative action, QFES had a statutory responsibility pursuant to s 43 *Crime and Corruption Act* 2001 to "deal with" the information.

[22] The definition of "deal with" in Sch 2 *Crime and Corruption Act* 2001 includes:

> "[to] investigate the … information …; [to] start a disciplinary proceeding; and [to] take other action, including managerial action to address the complaint in an appropriate way."

[23] The recorded information was used by the QFES in the ensuing process undertaken in respect of Mr Parker. While other information was also relied on, it is clear the disciplinary process was triggered by the revealing of the recorded information and the information was of ongoing and foundational importance to the process undertaken.

[24] Before dealing with the process which followed and whether it was in breach of the principles of natural justice, it is convenient to now pause and consider the argument that the Service's use of the recorded information breached an equitable obligation of confidentiality said to attach to the information.

[25] The confidentiality argument is now a narrower one than was foreshadowed in the initial correspondence by Mr Parker's lawyers with the Service. That correspondence complained, *inter alia*, that the publication of the recorded private conversations by XY was in breach of s 45 *Invasion of Privacy Act* 1971 and that, for that reason, it should not have been further published to or used by the QFES. That argument was not pursued before me and the confidentiality argument was confined to the alleged breach of an equitable obligation of confidentiality.

[26] The equitable obligation of confidentiality was shortly stated by reference to substantial authority by Allsop CJ in *Crown Resorts Ltd v Zantran Pty Ltd* (2020) 276 FCR 477, 485 [25]:

> "Even in the absence of a contract, equity will grant relief in personam not to disclose or use information other than for the purpose for which it was communicated if the nature of the information and the circumstances in which it was communicated call for that confidence to be respected by reference to notions of conscience."

[27] The elements required in proof of the obligation were identified by Megarry J in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, 47 in a passage cited with approval in New South Wales Court of Appeal cases including *Armstrong Strategic Management and Marketing Pty Ltd v Expense Reduction Analysts Group Pty Ltd* (2012) 295 ALR 348. His Honour identified three elements:

> "First, the information itself … must 'have the necessary quality of confidence about it'. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it."

[28] In the present case, it is uncontroversial that the first and third elements are made out. Not so the second element. It must be recalled it was XY who was the party being supported and thus XY, rather than Mr Parker, who had an expectation of confidentiality. To use a parallel example, where a psychologist counsels a client there is an expectation the psychologist will honour the client's confidences but it

is scarcely to be expected by the psychologist that the client is obliged to treat the means and content of the psychologist's contribution as confidential.

[29] In the present case, moreover, Mr Parker went beyond what was necessary in carrying out the task he had been asked to perform. The remarks he made, which attract this controversy, even if he did think they might help build and maintain rapport, were obviously not essential to the process. The circumstances in which he made the remarks did not import an obligation of confidence. While there was a quality of confidence inherent in the remarks, the circumstances did not call for that confidence to be respected by reference to notions of conscience. It follows the recorded remarks were not protected by the equitable obligation of confidence. That finding is sufficient to dispense with the confidentiality issue.

[30] However, it is well to at least briefly record why, if I had found the circumstances did attract the equitable obligation of confidence, I would, in any event, have concluded it was overcome by an exception to that obligation, namely, the principle that there is no confidence in inequity. In the analysis of that principle by Allsop CJ in *Crown Resorts Ltd v Zantran Pty Ltd* (2020) 276 FCR 477, 484–487 [24]–[34], his Honour identified varying articulations of it, the essential theme of which is that the equitable obligation of confidence ought not protect against disclosure of a criminal or civil wrong or a serious misdeed of public importance. The latter category obviously involves matters of degree, but it would surely apply to disclosure of conduct where, as here, once the disclosure fell into the hands of the QFES, there existed a reasonable suspicion of corrupt conduct which the QFES had a duty to disclose and a duty to deal with: see ss 15, 38, 39 and 43 *Crime and Corruption Act* 2001.

[31] It is not to the point that, in due course, it may be concluded there has not actually been official misconduct. The aforementioned reasonable suspicion of official misconduct, in my conclusion, amply demonstrates there existed a prospective serious misdeed of such public importance the legislature mandated that it be disclosed. It is unnecessary to extend this analysis, as occurred in argument, to consideration of the principle of legality – as to which, see *Hamdan v Callanan* [2016] 1 Qd R 128, 140–141 [12]–[19].

[32] The practical effect of the application of the *Crime and Corruption Act* 2001 to the circumstances of this case was to remove the protection of the equitable obligation of confidence if ever it did arise, because the action it necessarily required to be taken conferred upon the disclosed information a quality which placed it within the category of an acknowledged exception to that protection.

[33] Further, whether as a separate pathway to that exception or as part of it, s 37 *Public Interest Disclosure Act* 2010 also grounds the operation of the exception in providing a person who makes a public interest disclosure does not breach an obligation by way of rule of law requiring the person to maintain confidentiality. Such a public interest disclosure is one made by a public officer about conduct which, if proved, could be corrupt conduct: see ss 13 and 17 *Public Interest Disclosure Act* 2010. The disclosure here by the QFES representative in the WorkCover review to the QFES' Ethical Standards Unit and its disclosure, in turn, to the CCC was protected by this provision to the extent it was statutorily deemed

not to be a breach of the equitable obligation of confidence. At the least, this gave the disclosure the exceptional character discussed above.

[34] Finally, having touched upon the relevant provision of those two Acts, I observe that by the operation of those provisions they further dispense with the notion Mr Parker's remarks could, in the first place, have imported an expectation that his confidence would be protected by reference to notions of conscience. That is to say, apart from supporting the exception, the provisions are powerful indicators that the equitable obligation of confidence did not arise in the first place. For all of these reasons, I reject the confidentiality argument and decline to restrain Mr Wassing from using the recorded information.

[35] Before next turning to the disciplinary process, to better understand that process, it is useful to first note some relevant provisions of the *Fire and Emergency Services Act* 1990 ("the Act"). Section 30(1) of the Act relevantly provides:

> "**30 Grounds for disciplinary action**
>
> (1) A fire service officer is liable to disciplinary action upon any of the following grounds shown to the satisfaction of the commissioner to exist—
>
> …
>
> (b) negligence, carelessness or indolence in the discharge of duty;
>
> (c) wilful failure to comply, without reasonable excuse, with … an obligation imposed on the officer under—
>
> …
>
> (ii) a code of conduct …
>
> (f) misconduct;
>
> …"

[36] Section 30(5) defines "misconduct" as meaning:

> "(a) inappropriate or improper conduct in an official capacity; or
>
> (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on QFES."

[37] It warrants emphasis that s 30(1) requires the relevant grounds are "shown to the satisfaction of the commissioner to exist". Moreover, it contemplates that, when such grounds are shown to that level of satisfaction, the officer "is liable" to disciplinary action. The section does not say "may be liable", nor is it referring to an earlier investigative or show cause process or stage undertaken prior to the commissioner reaching the point of satisfaction that the officer is liable to disciplinary action.

[38] I emphasise that feature of the plain meaning of the section because it appears that, in the course of the QFES's purported disciplinary process, it conflated an earlier stage of the process, when suspicion of potential liability to disciplinary action is under consideration, with the stage contemplated by s 30(1), when the grounds for

liability to disciplinary action have been shown to the commissioner's satisfaction to exist.

[39] If all that is occurring is an investigatory phase, during which an officer may be invited to be heard about whether or not the commissioner should be satisfied grounds for liability to disciplinary action have been shown to exist, then it cannot yet be said that the officer "is liable to disciplinary action" as s 30(1) contemplates.

[40] As to what disciplinary action is, s 30A(1) of the Act provides:

> "**30A Disciplinary action that may be taken against a fire service officer generally**
>
> (1) In disciplining a fire service officer, the commissioner may take the action, or order the action to be taken, (***disciplinary action***) that the commissioner considers reasonable in the circumstances.
>
> …"

[41] The section goes on to list examples of disciplinary action, including dismissal, reclassification, transfer, salary reduction, monetary penalty and reprimand. The examples listed do not include suspension, although it is conceivable that suspension may serve as a reasonable form of disciplinary action.

[42] It is clear from s 30A(1) and its examples that the term "disciplinary action" does not refer to a process such as the so-called "disciplinary process" earlier mentioned in the letter of the defendants' lawyers of 7 February 2020. Rather, it refers to a potential end result of such a process, namely, the actual form of discipline to be undertaken. That is, the form of discipline that the commissioner considers reasonable in the circumstances.

[43] The combined effect of ss 30 and 30A is that, if at least one of the grounds listed in s 30(1) is shown to the satisfaction of the commissioner to exist, the officer is liable to disciplinary action which the commissioner considers reasonable in the circumstances.

[44] The Act specifically provides for suspension as a device in its own right. Section 32 relevantly provides:

> "**32 Suspension**
>
> (1) Where—
>
> (a) it appears on reasonable grounds to the commissioner that a fire service officer is liable to disciplinary action or is suspected of involvement in circumstances such that the proper and efficient discharge of the functions of QFES might be prejudiced, if the officer's services are continued;
>
> …
>
> the officer may be suspended from duty by the commissioner.
>
> (2) A suspension may be lifted at any time by the commissioner.
>
> …"

[45] It is noteworthy that s 32(1)(a) contains two limbs. The first limb is that it appears on reasonable grounds to the commissioner that the officer is liable to disciplinary action. That is a reference to the same point in time to which s 30(1) refers, namely the point in time where it has been concluded the officer is liable, not merely may be liable, to disciplinary action. The second limb of s 32(1)(a) refers to an earlier stage, namely the stage where an officer is suspected of involvement in circumstances such that the proper and efficient discharge of the functions of the QFES might be prejudiced if the officer's services are continued.

[46] Regardless of which limb is utilised to suspend an officer, s 33 regulates the process by which suspension must be affected. Section 33 provides:

> "**33 Mode of dismissal or suspension**
>
> (1) Dismissal or suspension must be effected in accordance with this Act and the principles of natural justice.
>
> (2) Dismissal or suspension is effected by giving the officer concerned a written notice signed by the commissioner."

[47] In the present case there was an initial suspension to a given date communicated by a letter from Mr Wassing to Mr Parker. Pursuant to s 27A *Acts Interpretation Act* 1954, Mr Wassing's letter to Mr Parker, as the commissioner's delegate, met s 33(2)'s requirement that the written notice be signed by the commissioner. There were subsequent further such letters by him effecting further written notices of suspension, with the consequence each such effecting of suspension had to have been in accordance with the principles of natural justice. As will be seen, the suspensions were not effected in accordance with the principles of natural justice.

[48] I turn now to the disciplinary process undertaken by QFES after the CCC confirmed around 23 August 2018 that QFES could deal with the matter. Subsequent to that the decision was taken by Mr Wassing to suspend Mr Parker, advising him of the suspension by letter dated 3 September 2018. That letter said, *inter alia*:

> "I have received information concerning allegations about your conduct including:-
>
> (1) Between 28 April 2017 and 6 July 2017 you inappropriately disclosed confidential information to [XY] in relation to her return to the workplace after being on extended sick leave, and information about other staff members' WorkCover claims.
>
> (2) Between 1 April 2017 and 30 July 2017, during telephone conversations with [XY], you made a number of inappropriate comments about Regional Manager [AB], including comments which were derogatory and undermining in nature.
>
> (3) You, as chair of the selection panel for a Brigade Training and Support Officer role in Cairns, sought to ensure the panel comprised of persons who you believed would support you, in ensuring that [LM] was appointed to the position."

[49] The letter explained limb two of s 32(1)(a) *Fire and Emergency Services Act* 1990 and said:

> "On preliminary consideration of the material before me, I reasonably believe that you have been suspected of being involved in circumstances such that the proper and efficient discharge of the functions of QFES might be prejudiced if your services are continued.
>
> Until this matter is resolved, I have decided that you should not remain in your current workplace, as I hold concerns in relation to the risk to QFES should you remain in your position. I have considered all possible alternative duties to which you could be temporarily assigned whilst these allegations are dealt with.
>
> However, due to the nature of your position and its location in Cairns, I have formed a view that no alternative duties are possible at this time. Given the nature of the allegations, I have decided to suspend you from duty on normal remuneration, effective from the date you received this letter.
>
> Your suspension will take effect immediately on receipt of this letter and will remain in place until 30 November 2018, unless otherwise determined."

[50] It is therefore apparent the suspension was, at least in the first instance, for about three months, until 30 November 2018, subject to determination otherwise. There did not ever follow a decision to shorten that period. To the contrary, it was progressively extended.

[51] The suspension of 3 September 2018 was effected without first giving any warning to Mr Parker that it may occur, let alone giving him an opportunity to be heard before it was effected. It will be recalled s 33(1) obliged Mr Wassing to effect the suspension in accordance with the principles of natural justice. Those principles derive from the common law and are not rigidly prescribed. They oblige decision makers to afford procedural fairness to those whose rights or interests would be adversely affected by the decision under contemplation.

[52] A traditional rule of natural justice, the hearing rule, requires an adjudicator to hear a person before making a decision about that person's interests: see M Aronson and M Groves, *Judicial Review of Administrative Action* (5th ed, Thomson Reuters, 2013), 398–399 [7.20]. No such opportunity to be heard was afforded to Mr Parker before his suspension was effected. This bespeaks a *prima facie* denial of natural justice.

[53] The requirements of procedural fairness to the affected individual and the exercise of a statutory power, such as suspension, call for consideration not only by reference to the individual's interests, but also the interests and purposes which the statutory power serves to protect: see *Kioa v West* (1985) 159 CLR 550, 585. Given that suspension at least initially serves the purpose of immediately protecting the QFES against an individual given advance warning of potential suspension, interfering with information in the workplace yet to be gathered, it is hardly surprising there exists authority for the proposition that natural justice will seldom demand there be an invitation to the individual to provide explanation or excuse before suspension is imposed: see *Rucker v Stewart* [2014] QCA 32.

However there seems to be no such authority regarding suspension under s 33(1), which mandates suspension must be effected in accordance with the principles of natural justice.

[54] Where, then, does s 33(1) leave a decision-maker in cases where circumstances of urgency or necessity are pressing in warranting suspension without warning and trump the individual's interests in being heard prior to a suspension? The question is an important one here, for the defendants contend that while the circumstances were not especially urgent – the information being quite dated – necessity nonetheless required the protective step of suspending Mr Parker without forewarning him, lest he interfere with sources of relevant information in the workplace yet to be investigated. That this was a concern is said to be confirmed by directions given in the letter of 3 September 2018, that Mr Parker return all equipment and materials belonging to QFES, that he not return to the workplace or any other QFES site without permission, and that he not discuss the matter with his work colleagues or any person likely to have information relevant to the allegations against him.

[55] It was scarcely necessary to suspend Mr Parker in order to prevent him discussing the matter with work colleagues. Suspension may have removed one venue at which discussion with colleagues could occur, but it did not prevent contact outside the workplace or by telephone or digitally. It no more ensured such discussions could not occur than a bare direction could have. The return of work equipment of investigative relevance such as Mr Parker's work mobile phone could also be directed without the need for suspension. It may, however, be accepted that at least a brief insulation of Mr Parker from his workplace via suspension was prudent, to allow for the discovery and securing of relevant documents and emails to safeguard against the at least theoretical risk of them being interfered with.

[56] Plainly a suspension for at least three months, as has occurred here, was not remotely needed for that purpose. Accepting though that it was at least reasonable to suspend for the short period that the process of securing documentary and digital information would require, where did that leave Mr Wassing in how he could comply with s 33(1)? The answer, in my conclusion, is that if those circumstances meant it was not practicable in effecting the suspension for Mr Parker to be afforded the opportunity to be heard prior to it occurring then as a matter of statutory implication the written notice effecting the suspension order under s 33(2), in this instance the letter of 3 September 2018, should have expressly offered him the earliest practicable opportunity to be heard.

[57] In arriving at that conclusion I respectfully adopt the reasoning of Williams J in *Braun v Rushbrook* [2020] QSC 268, [141]–[142] where, in reference to a decision to suspend pending an investigation, her Honour observed:

> "Circumstances of urgency or necessity may justify an 'initial' decision without first affording natural justice provided that the decision is 'coupled with a notice' outlining the grounds of the decision and also provided with an opportunity to make representations in relation to the matter. The

> decision of *Heatley v Tasmanian Racing and Gaming Commission* [(1977) 137 CLR 487] is an example of this.
>
> In *Heatley v Tasmanian Racing and Gaming Commission* Aickin J, referred by way of analogy, to courts issuing ex parte injunctions that involve an order affecting the rights of defendants without giving them an opportunity to be heard. His Honour recognised '[t]he power is of course used sparingly and is always so exercised that the earliest practicable opportunity is given to the defendants to appear before the court to urge that the order be rescinded.'"

[58] The need, in this case for the s 33(2) written notice, in the form of a letter, to have expressly offered Mr Parker the opportunity to be heard properly after receiving the notice derives from s 33(1)'s requirement on the one hand, that the suspension be "effected" in accordance with the principles of natural justice, and s 33(2)'s requirement, on the other hand, that the suspension be "effected" by giving the written notice. Given that Mr Parker was neither given an opportunity, in advance of suspension, to be heard, or by the written notice effecting the suspension given the opportunity to be heard soon thereafter, the suspension was not "effected" in accordance with the principles of natural justice and thus did not occur in compliance with s 33.

[59] Counsel for the defendants acknowledged in effect that s 33 regulates suspension such that there was not some residual option of suspending other than in compliance with the section. However, he emphasised that non-compliance with an implied statutory condition will not necessarily be interpreted as denying legal force and effect to a decision made in breach thereof, a point made by the plurality in *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123, 134 [29]. The circumstance that it will not, appears to have there been identified by reference to a threshold of materiality. The plurality observed (134–135 [30]):

> "Whilst a statute on its proper construction might set a higher or lower threshold of materiality, the threshold of materiality would not ordinarily be met in the event of a failure to comply with a condition, if complying with the condition could have made no difference to the decision that was made in the circumstances in which that decision was made. The threshold would not ordinarily be met, for example, where a failure to afford procedural fairness did not deprive the person who was denied an opportunity to be heard of the 'possibility of a successful outcome', or where a decision-maker failed to take into account a mandatory consideration which in all the circumstances was 'so insignificant that the failure to take it into account could not have materially affected' the decision that was made." (citations omitted)

[60] The difficulty for the defendants here is the threshold of materiality appears to be low, given that the statutory requirement that the suspension be effected in accordance with the principles of natural justice is a condition of the very exercise of the power. To overcome that, it is effectively contended that the implied requirement here that the written notice should have expressly proffered an

opportunity to be heard soon after the notice, involved a threshold of materiality unlikely to be met. If, in any event, Mr Parker was, soon after the giving of the notice, offered an opportunity to be heard as to whether the suspension ought to continue, this would mean there was no practical injustice. As Gleeson CJ observed in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1, 14 [37] "the concern of [procedural fairness] is to avoid practical injustice".

[61] However, what occurred after the giving of the notice was, at best, the proffering of an opportunity to be heard in respect of the allegations attracting the disciplinary process, not an opportunity to be heard as to the suspension. Moreover, as will be seen, the opportunity which was given to be heard in respect of the allegations was arguably not a fair opportunity in that Mr Parker was deprived of access to materials reasonably sought by him, in order to respond in a properly informed way. For both of those reasons it cannot be said there was an absence of practical injustice resulting from the failure to comply with what s 33 required in the context of this case.

[62] In failing to afford Mr Parker an opportunity to be heard in relation to his suspension, after it was effected by written notice of 3 September 2018, Mr Wassing thereby failed to ensure the suspension was effected in accordance with the principles of natural justice as required by s 33, thus denying the suspension of legal force and effect. I will deal in due course with the consequence of that finding *vis-à-vis* what, if any, order should be made regarding it.

[63] Mr Parker heard nothing further from anyone within QFES for the first 24 days after his suspension. Finally on 28 September 2018 he received a telephone call from Ms Chetham to discuss a suitable interview date, during which discussion it was agreed the interview would be conducted on 10 October 2018.

[64] In that discussion Mr Parker requested access to his diaries in Microsoft Outlook on his computer at work, in order to properly prepare for the interview. He was told that would occur. He subsequently received an email confirming Ms Chetham was in the process of arranging access to his work laptop and diary. On 2 October 2018 he emailed Ms Chetham concerning the scheduled interview and requested access to his computer Outlook folders for 16 hours, and access to his diaries for 2017 and 2018. She responded, requesting the reason and purpose for the request. He in turn responded indicating he required access to his diaries and Outlook as he could not defend himself without access to those items. He asserted he wanted to be correct with respect to facts, dates, places and times, and provided assurances he would not access other non-related information on site, and indicated he was happy to be supervised during such an access.

[65] Also on 2 October 2018, Ms Chetham emailed Mr Parker a letter enclosing a fact sheet to him as a so-called subject officer which said, *inter alia*, that attendance at the investigator's interview was mandatory. It also enclosed a letter from Mr Lenz. That letter enclosed transcripts of the recorded conversations with XY. It repeated the three allegations I have earlier set out from the suspension notice of 3 September 2018 and indicated the forthcoming interview would afford Mr Parker an "opportunity to clarify the issues and respond to the allegations".

[66] On 3 October 2018, Mr Parker was contacted by Ethical Standards Unit Executive Manager Anthon Trubai and Ms Chetham. He was again questioned as to why he needed access to his computer, Mr Trubai saying, "you do not really need access to your emails at this stage, as the interview is only a preliminary fact-finding chance for you to answer the allegations, there will be plenty of time after the interview". Mr Parker insisted he did need access to protect his interests and to properly answer the allegations. Mr Trubai indicated he would try to arrange it prior to the scheduled interview.

[67] Ms Chetham subsequently provided a contact within the workplace for the arrangement of access to Mr Parker's computer and diaries. He made contact with that contact person, and arrangements were made for him to attend at a QFES office on 6 October 2018 in order to access his computer. Ms Chetham was alive to these arrangements, indeed on 4 October 2018 she confirmed the arrangement that the contact person would provide Mr Parker with access to both diaries he had requested and would also supervise access to his files so that he could print out documents required for the interview. He was informed arrangements had been made to have his work email activated to allow access to occur. In the upshot, the attendance for the aforesaid purpose occurred on 6 October 2018, but was thwarted by an inability to gain access to the computer, despite attempts to gain IT support. The attempts to do so occurred within close proximity to where a major incident was being managed by QFES workers, which was a matter of some embarrassment to Mr Parker. Ultimately he concluded it was not reasonable, after two hours, to prevail further upon the contact person to remain for what had become an apparently futile process, at least on that day. Plans were made to attempt to try again on the evening of Monday 8 October 2018 but evidently that did not occur either.

[68] On 8 October 2018 Ms Chetham advised Mr Parker he would get a chance to access his computer after the interview. She disclosed some concern that he might cancel the interview and that she would have to cancel flights and accommodation. Mr Parker felt, in the circumstances, pressured to agree to proceed with the interview and was concerned he may be seen as obstructing the process if he did not.

[69] He therefore agreed if he could not get access to his emails, which in the end result he could not, he would still be available for the interview. In doing so he was relying on the assurance earlier given that the interview was only a preliminary chance for him to answer the allegations and that there would be plenty of time after the interview to gain access to his emails and clarify responses. As to that Ms Chetham said words to the effect of, "we can sort that out at a later stage".

[70] He attended the scheduled interview with Ms Chetham on 10 October 2018. It took over four hours. He answered all questions to the extent he could without access to his records. In particular he did not have access to his extensive electronic and paper records, emails, calendars, documents and files, his 2017 or 2018 diaries, witnesses, or his mobile telephone records, all of which were, to some extent, of potential relevance in dealing with the allegations presented to him.

[71] Mr Parker heard nothing for some weeks thereafter and, on 31 October 2018, he emailed Ms Chetham for an update. She responded over a fortnight later indicating the investigation report had been sent to Mr Wassing on 14 November 2018. By letter dated 28 November 2018 to Mr Parker, Mr Wassing advised him the evidence collected in the investigation "if accepted by the decision maker on the balance of probabilities, is capable of substantiating" three allegations. The first two cited were the first two quoted earlier. The third was a variant on the third allegation quoted earlier. It no longer alleged Mr Parker had in fact sought to ensure the selection panel was comprised to achieve his aim and rather alleged it was inappropriate and unprofessional for him to have said to XY that he intended to corrupt the selection process to achieve his aim.

[72] The letter stated:

> "Section 30 of the *Fire and Emergency Services Act 1990* provides that the Commissioner may discipline an employee if they are reasonably satisfied that a discipline ground has been established."

[73] The letter continued:

> "You are invited to respond in writing why a disciplinary finding should not be made against you on the grounds indicated above. Your response should provide any explanation you believe is relevant. In providing natural justice to you, no final decision will be made about these allegations until you have had the opportunity to formally respond.
>
> You are required to provide your response marked 'Private and Confidential' to me within 14 days from the date of receipt of this letter."

[74] The letter went on to refer to the suspension of 28 August 2018 and stated:

> "[P]ursuant to Section 32(1)(a) of the *Fire and Emergency Services Act 1990*, I advise that as it now appears on reasonable grounds that you may be liable to disciplinary action, I have determined your suspension is to remain in place and be extended to 31 January 2019, unless otherwise determined. All other conditions of the suspension remain unchanged and as notified in letter dated 28 August 2018."

[75] This indicated a shift in the earlier reliance on the second limb of s 32(1)(a) to the first limb as a ground of suspension, yet that limb requires it to appear the officer "is liable" not "may be liable" to disciplinary action. The language of the notice of suspension reveals Mr Wassing had not found it appeared Mr Parker "is liable".

[76] It follows this notice of extension of suspension (in its own right another notice purporting to effect suspension pursuant to s 33) did not effect suspension in accordance with the *Fire and Emergency Services Act* 1990. The defendants' answer to this is that there should not be an over-zealous scrutiny of a decision-maker's words (see *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259) and an apparent error as to a source of power is of no moment, if the requisite power existed: see *Kitching v Commissioner of Police* [2010] QSC 303, [54]. The argument in short is that circumstances sufficient to

support the suspicion granting the second limb of s 32(1) were present and thus conferred the power to suspend.

[77] I accept that argument. But it only leads to this suspension notice having the same fatal flaw as the notice of 27 November 2018. It was not effected in accordance with the principles of natural justice for the same reasons already explained in respect of the earlier notice. The defendant's counsel properly concedes that reliance on necessity as an excuse for not first offering an opportunity to be heard, would not by this time be sustainable. Mr Parker could quite safely have been given the opportunity to be heard as to the prospect of the further extension before it occurred. No such opportunity was given.

[78] In the ensuing events there were further requests by Mr Parker to access his computer and mobile phone despite the previous consent for such access on a supervised basis, which regrettably failed to occur before the investigator's interview. This time there was a mystifying denial of the request.

[79] There was also a denial of the request to be allowed to talk to two employees to discuss the matter on the basis they were named in the investigation report and therefore could be called as witnesses. This refusal is similarly mystifying. This was not a criminal prosecution involving protected or at-risk witnesses. It was a disciplinary process in which the investigation was concluded and so-called witnesses had presumably committed to an account. There was no material risk the process would be compromised by Mr Parker being permitted to discuss the matter with the two witnesses who, what is more, had been identified in Mr Parker's request as office holders of the Rural Fire Service section of the Together Union.

[80] Against this background it is hardly surprising Mr Parker engaged an employment lawyer who then wrote to Mr Wassing on 6 December 2018 making various complaints, including a failure to properly particularise the allegations, only giving two weeks to respond to proposed findings, denying Mr Parker access to his emails and documents in order for him to respond properly and, despite earlier agreement to allowing such access, in turn denying Mr Parker access to witnesses to gather evidence despite earlier offering to facilitate such access.

[81] There was follow-up correspondence. Eventually, on 31 January 2019, Mr Wassing sent a letter to Mr Parker care of his lawyer. The letter revoked Mr Wassing's letter of 27 November 2018 and reframed the three allegations with much greater particularity. It went beyond the content of the recordings and referred to the content of certain emails. In each instance the letter again expressed Mr Wassing's view that Mr Parker, "may be liable for disciplinary findings pursuant to section 30 of the Act", alluding in particular to ss 30(1)(b), 30(1)(c) and 30(1)(f) and required him to show cause within 14 days why disciplinary findings should not be made against Mr Parker in relation to the allegations.

[82] The letter did assert Mr Wassing had formed no view as to the allegations but the ambiguity involving reliance on s 30 by using the phrase, "may be liable", was again present in the language used.

[83] Mr Wassing's letter went on to state:

> "**[I]t appears on reasonable grounds that you may be liable for disciplinary action. For this reason I have determined that your suspension from duty on normal remuneration will continue under s 32(1)(a) of the Act, until the disciplinary process is complete or until otherwise determined. Accordingly, you are hereby suspended from duty on normal remuneration pursuant to s 32(1)(a) of the Act until the disciplinary process is complete or until otherwise determined.**
>
> All other conditions of the suspension remain unchanged and as notified in my letter dated 3 September 2018." (emphasis in original)

[84] For the reasons explained in connection with the earlier notices of suspension, this suspension was not effected in accordance with the principles of natural justice as required by s 33. At no stage was Mr Parker offered the opportunity to be heard as to the prospect of the further suspension.

[85] Mr Parker's lawyer responded on 4 February 2019 complaining again of the short time given within which to show cause. The letter asked that Mr Parker be permitted to contact eight named witnesses for the purposes of preparing a response to the show cause letter. It also requested Mr Parker be permitted to have access to his emails in order to respond to the allegations, acknowledging Mr Parker was happy for such access to be supervised.

[86] Mr Wassing responded by a letter of 6 February 2019 reiterating a position taken in his earlier letter that any request for access of witnesses or documents be in effect justified with particularity.

[87] He wrote:

> "I consider that there is a risk to the integrity of the process if I were to allow Mr Parker (or yourself on his behalf) to approach and speak to any person you say is relevant, particularly in circumstances where you are requesting for Mr Parker to contact eight of his supervisors and/or colleagues. Further, I consider that there is a risk to the integrity of the process if I were to allow Mr Parker to have unlimited access (even if supervised) to his work email account, particularly in circumstances where he has been provided with copies of the emails that have been considered as part of the disciplinary process."

[88] It is difficult to fathom, based on what has been disclosed, what the risk to the integrity of the process was or what the difficulty was in providing access to work emails if, as Mr Parker has from the jump been happy to occur, the process is supervised.

[89] Mr Wassing continued:

> "In the circumstances to assist in my consideration of your request would you please identify:
>
> - Which of the allegations you say each of the above witnesses has information relevant to, together with a summary of why you

consider those witnesses would have information relevant to those allegations;

- In respect to the request for access to Mr Parker's emails:
  - the emails to which Mr Parker seeks access, including details such as the dates (or approximate date range) and to or from whom such emails were sent or received; and
  - which of the allegations you say the emails are relevant to, together with a summary of why you consider such emails would have information relevant to those allegations."

[90] The position taken by Mr Wassing exemplified by the above quoted passages is particularly unfortunate. The procedural fairness of having the opportunity to be heard necessarily requires the individual has a genuine opportunity to be heard. It is well established that requires that the individual is given the opportunity of ascertaining the relevant issues and they be informed of the nature and content of the adverse material: see *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* (2006) 228 CLR 152, 162 [32]. However, the opportunity to be heard may be rendered illusory if the individual is deprived of the ability to gather information in aid of the individual's response. There is an obvious risk that will occur where the decision-maker prevents the individual searching for information not easily recalled, by imposing the inherently unfair condition that the individual must first specify details pertaining to the information. That unfairness will be especially acute if the agency of the decision-maker has, as here, earlier agreed to allow the individual to engage in such a search without condition other than that the search be supervised. As Gleeson CJ observed in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1, 12 [33] expectations created by a decision-maker may affect the practical content of the requirements of fairness in a particular case.

[91] In the present context events have in one sense overtaken the issue. After that letter, Mr Parker's claim was filed on 12 February 2019 and on 21 February 2019 Mr Parker's lawyers endeavoured to protect his position by submitting a response to the show cause letter of 31 January 2019. It included qualifications relating to the difficulty in responding in light of the restricted access to "relevant contextual documents and witnesses". As earlier discussed, the progression of the process seems to hav7e then drifted to a standstill which persists to the present.

[92] It is finally necessary to mention another aspect of the letter of 6 February 2019. It again effected a suspension, stating:

> "As outlined in the Show Cause Notice, after consideration of the material before me, I am satisfied that is appears on reasonable grounds that Mr Parker is liable to disciplinary action and on that basis pursuant to s 32 of the Act I have determined that Mr Parker's suspension from duty on normal remuneration is to continue."

[93] This at least dispensed with the language, "may be liable", and actually said, "is liable". I understood Mr Parker's counsel to submit, apart from the natural justice issue, it was not open to Mr Wassing to have concluded Mr Parker was liable to

disciplinary action because of the innocuous context in which the recorded remarks were made. As jarring as some of the remarks at first blush appear, the argument is that an ordinary reasonable decision-maker would not be swayed by that potentially emotive quality and would inevitability conclude that as ill-judged as the comments were, in hindsight the purportedly rapport building context in which they were said, the absence of intent that they be broadcast, the implausibility of Mr Parker actually doing what he boasted of, and that the supposably confidential information was of a kind which would have been likely known to XY had XY been at work, all combined to make it impossible for a decision-maker to reach the state of satisfaction required by s 30(1).

[94] It is a bold argument. It may be exposed as unsustainable by accepting, for the sake of argument, the innocuous context urged. Even then, it would surely be open to a decision-maker to conclude Mr Parker had been careless in the exercise of his duties by making the ill-considered remarks in purportedly supporting a stressed workmate. It might not be a very serious ground of disciplinary action but then again it might only warrant a reprimand as a reasonable disciplinary action pursuant to s 30A.

[95] Once it is accepted such states of satisfaction are open, even on the favourable view urged, the argument that it was not open for a decision-maker to conclude Mr Parker is liable to disciplinary action is exposed as unsustainable.

[96] It remains a problem however, that the letter was yet another written notice effecting suspension contrary to s 33(1)'s natural justice requirement. Again, no opportunity to be heard as to the prospect of suspension was afforded to Mr Parker in breach of s 33(1).

[97] Counsel for Mr Parker contends the upshot of this chain of events is that I would impose a blanket restraint, restraining the defendants from taking or progressing disciplinary action against Mr Parker in connection with the allegations associated with this case.

[98] The argument, in summary, was that a reasonable opportunity to respond called for access not so much to the detail of the discussions in question but the material relevant to and bearing upon the context in which the discussions occurred. Contemporaneous documents such as emails and the like, it was argued, not only formed part of that context but had the potential to prompt and facilitate a more detailed, nuanced recollection of broad contemporaneous facts and circumstances. With the passage of time, an individual's recollection of the finer detail of such events will inevitably fade. A considerable period had already passed after the discussions under scrutiny before Mr Parker was actually called upon to explain himself. Given that passage of time, it was submitted the ability of an individual in Mr Parker's position to access and reference contemporaneous documentary records can be critical to the individual being afforded a fair and reasonable opportunity to be heard. It was submitted that it was thus entirely unreasonable to unilaterally condition the availability of access to contemporaneous documentary records by a requirement that the plaintiff first specifically identify the documents sought and the manner in which each was said to be relevant.

[99] It was argued the plaintiff has been denied timely access to information that might have permitted a more detailed and exculpatory response to the defendant's allegations. Timely access to the records, it was submitted, might have provided to the plaintiff a cue, prompt or explanation for particular statements made by the plaintiff during the course of the impugned discussions or corroboration for an explanation otherwise offered. Such documents, it was said, might also have better explained the context in which statements were made, including contextual facts or circumstances which might serve to lessen the meaning to be imputed to words spoken, the gravity of that meaning, or offered contextual matters which could serve to diminish the standard of apparent wrongdoing.

[100] It was contended that by denying timely access to contemporaneous communications and records the defendants have deprived Mr Parker of source material that might have served to alleviate the prejudicial impact of inevitably diminishing memory of events and of contextual facts and circumstances over time. The ultimate contention then was that, given the time that has now passed since the occurrence of the discussions under scrutiny and the diminution in recollection inevitably associated with the passage of time, there is a real likelihood that procedural fairness is now no longer available to the plaintiff, such that it cannot be said with any confidence that natural justice to the plaintiff remains achievable.

[101] I agree with those submissions save for the culminating argument, that natural justice is no longer achievable. That overstates the position in two senses. Firstly, it overstates the degree of disadvantage. I accept, of course, that it is difficult to identify the degree of disadvantage which the cases recognise must to some extent flow from delay (see for example, *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 551 and *NAIS v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 470, 474 [6]) just as I accept the ability to overcome the disadvantage is here aggravated by the restrictions on access to materials which may both aid memory and aid in proof of the innocuous context sought to be emphasised in relation to the recorded comments. But, notwithstanding the restrictions, it remains the case that the recordings themselves must inevitability be a helpful and reliable source to use in aid of the recollection of a person who was, after all, a participant in the recorded conversations, just as their content can itself be drawn on to assist in demonstrating the innocuous context allegedly in play.

[102] Secondly, it overlooks that the disadvantage is itself a factor which the decision-maker may yet take into account, in something of a parallel to the way in which in a criminal case a jury may take delay and implied consequential disadvantage into account in deciding the case: see *Longman v The Queen* (1989) 168 CLR 79.

[103] Mr Parker's lawyers did submit a response to the show cause notice. The response was substantive, raising important matters for the consideration of the decision-maker. The response also complained of the nature of the disadvantage occasioned by the restrictions imposed on access. That disadvantage would be a matter for the decision-maker to take into account as a matter of procedural fairness to Mr Parker.

[104] The process is incomplete. It would be premature to conclude procedural fairness is, as Mr Parker's counsel complains, an impossibility, when the disadvantage complained of is itself a matter the decision-maker may yet take into account in Mr Parker's favour when reaching a determination about disciplinary action. Only when that process has concluded will it be possible to conclude whether, to paraphrase *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578, the decision-making process viewed in its entirety has entailed procedural fairness.

[105] For these reasons I decline the blanket injunctive relief sought. As to whether more confined injunctive relief is appropriate, the remaining focus of concern is the unlawful suspension process.

[106] The argument that one ought wait for the end of the disciplinary process rather than interfere with the *status quo* rang hollow in respect of the suspension issue. The suspension relates to but is a separate decision-making process from the disciplinary process. The suspension involved decisions already made contrary to law on four separate occasions with the earlier discussed adverse consequences for Mr Parker now lasting over two years. The disadvantage in deploying an injunction and bringing the unlawful suspension to an end is that the logistical detail of effecting that result may be more practically tended to by the defendants than by the Court. For that reason, the preferable course is to make a declaration in anticipation it will result in appropriate action by the defendants. If it does not, Mr Parker's interests can be protected by conferring liberty to apply.

[107] In the end result then my orders are:

1. It is declared that in failing to afford the plaintiff an opportunity to be heard in relation to his suspension after his notification of it by the letter from the second defendant dated 3 September 2018, the second defendant failed to ensure that the plaintiff's suspension was effected in accordance with the principles of natural justice as required by s 33 *Fire and Emergency Services Act* 1990.
2. It is declared that in failing to afford the plaintiff an opportunity to be heard in relation to his suspension before his notification of suspension in each of the letters from the second defendant dated 27 November 2018, 31 January 2019 and 6 February 2019, the second defendant in each instance failed to ensure that each such suspension was effected in accordance with the principles of natural justice as required by s 33 *Fire and Emergency Services Act* 1990.
3. Liberty to apply on the giving of two business days' notice.
4. The parties will file and serve submissions in writing as to costs, not to exceed five pages, within five working days.

Declarations accordingly.

Solicitors: *Peters Bosel Lawyers* (plaintiff); *G R Cooper, Crown Solicitor* (defendants).

J K CARTER
Sub-Editor
Barrister

Editor's Note: The original judgment did not contain paragraph numbers. These have been added for ease of reference.

MDE

Corrigenda
• No Corrigenda