

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Gibson v State of Queensland (Queensland Health)*  
[2024] QIRC 090

PARTIES: **Gibson, Jason**  
(Appellant)

v

**State of Queensland (Queensland Health)**  
(Respondent)

CASE NO: PSA/2024/30

PROCEEDING: Public Sector Appeal – Appeal against a disciplinary decision

DELIVERED ON: 23 April 2024

MEMBER: Pidgeon IC

HEARD AT: On the papers

ORDER: **1. The Appellant's application to allow their appeal to be started within a longer period is allowed.**

CATCHWORDS: PUBLIC SECTOR – EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY – appeal against a disciplinary decision – appeal lodged out of time – whether extension of time should be granted – extension of time allowed

LEGISLATION AND OTHER INSTRUMENTS: *Industrial Relations Act 2016 (Qld)* s 564

CASES: *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541

*Brodie-Hanns v MTV Publishing Limited* (1995) 67 IR 298

*Bruce Anthony Piggott v State of Queensland* [2010] ICQ 35

*Cullen v State of Queensland (Queensland Health)* [2021] QIRC 258

*Hunter Valley Developments Pty Ltd v Cohen* (1994) 3

## **Reasons for Decision**

### **Background**

- [1] Mr Gibson ('the Appellant') is permanently employed by the State of Queensland (Queensland Health) ('the Respondent') as a Clinical Measurement Scientist Consultant Director at the Sunshine Coast University Hospital ('SCUH').
- [2] Mr Gibson received an alternative duties decision ('the decision') from the Respondent on 2 February 2024.
- [3] Mr Gibson did not file his Appeal Notice until 28 February 2024. The Appeal Notice does not make an application for an extension of time to file the Appeal Notice and therefore included no explanation for the delay.
- [4] At a mention of the matter on 13 March 2024, I invited Mr Gibson to make an oral application that an extension of time be granted for the filing of his appeal. I issued directions seeking written submissions from the parties directly addressing whether time should be extended for the filing of the appeal. "

### **The Legal Framework**

#### ***Jurisdiction***

- [5] A member of the Queensland Industrial Relations Commission ('the Commission') may allow an appeal to be started within a longer period.<sup>1</sup>
- [6] In exercising discretion to extend time to lodge an application or appeal, there are principles that have been used for guidance. Those principles are commonly:
  - special circumstances need not be shown, but an applicant for extension must show an acceptable explanation for the delay and that it is fair and equitable in the circumstances to extend time;
  - action taken by the applicant, other than by making an application under the relevant Act, is relevant to the consideration of the question of whether an acceptable explanation for the delay has been furnished;

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<sup>1</sup> *Industrial Relations Act 2016* (Qld) s 564(2) ('the IR Act').

- any prejudice to the respondent, including any prejudice in defending the proceedings occasioned by the delay, is a material factor militating against the grant of extension;
- the merits of the substantive application are taken into account when considering whether an extension of time should be granted; and
- consideration of fairness as between the applicant and other persons in a like position are relevant to the exercise of discretion.<sup>2</sup>

[7] The application of statutory time limits was addressed by his Honour Justice McHugh in *Brisbane South Regional Health Authority v Taylor*:<sup>3</sup>

A limitation period should not be seen therefore as an arbitrary cut off point unrelated to the demands of justice or the general welfare of society. It represents the legislature's judgment that the welfare of society is best served by causes of action being litigated within the limitation period, notwithstanding that the enactment of that period may often result in a good cause of action being defeated. Against this background, I do not see any warrant for treating provisions that provide for an extension of time for commencing an action as having a standing equal or greater than those provisions that enact limitation periods. A limitation provision is the general rule; an extension provision is the exception to it.<sup>4</sup>

[8] The Appellant bears the onus of convincing the Commission to depart from the ordinary time limitations and hear the appeal out of time.<sup>5</sup>

### **Mr Gibson's submissions**

#### ***Explanation for delay and any action taken by Mr Gibson***

[9] On 27 March 2024, Mr Gibson filed submissions in support of his application for an extension of time to file his appeal.

[10] Mr Gibson's submissions are set out below from [11] – [27]. In summary, Mr Gibson argues that the delay is relatively short and that he has provided a reasonable explanation. Mr Gibson says that he will be prejudiced if an extension is not granted and that, given it was aware that an appeal was being filed, there is no prejudice to the Respondent arising from an extension of time. Mr Gibson says the substantive appeal does not obviously lack merit and has reasonable prospects. Further, Mr Gibson says that the Respondent's delay in responding to his request for further information

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<sup>2</sup> *Hunter Valley Developments Pty Ltd v Cohen* (1994) 3 FCR 344, 348 (Wilcox J); *Brodie-Hanns v MTV Publishing Limited* (1995) 67 IR 298, 299-300 (Marshall J) ('*Brodie-Hanns*').

<sup>3</sup> (1996) 186 CLR 541 ('*Brisbane South Regional Health Authority v Taylor*').

<sup>4</sup> *Ibid* 553.

<sup>5</sup> *Ibid* 554; *Cullen v State of Queensland (Queensland Health)* [2021] QIRC 258, [35].

contributed to the delay. For these reasons, Mr Gibson argues that this is a matter where the Commission's discretion to extend time ought to be exercised favourably to him.

### *Background*

- [11] By way of background, Mr Gibson states that following receipt of the disciplinary decision letter on 2 February 2024, his solicitor wrote to the Respondent on 14 February 2024 seeking clarification about the disciplinary decision by 16 February 2024. Mr Gibson says that the letter from his lawyers identified to the Respondent that the purpose of the clarification was related to Mr Gibson's intention to appeal the disciplinary decision. I have reviewed the decision letter and the correspondence from Mr Gibson's lawyer and it is clear that Mr Gibson was seeking further particulars to support his understanding of what the decision maker meant when he informed Mr Gibson that the disciplinary action to be implemented was 'a reduction in classification level and consequential change of duties'.
- [12] On Friday 16 February 2024, the Respondent wrote to Mr Gibson and advised that due to other commitments, the clarification would be provided by no later than Monday 19 February 2024.
- [13] Mr Gibson says that it was not until 3.51pm on Tuesday 20 February 2024 that the Respondent wrote to clarify the decision regarding disciplinary action.
- [14] On Friday 23 February 2024, Mr Gibson's Appeal Notice was emailed to the Registry and that email was copied to the Respondent.
- [15] On Monday 26 February 2024, the Industrial Registry requested that a hard copy of the Appeal Notice be provided that so that it could be filed in accordance with *Practice Direction 3 of 2021 – Electronic and hardcopies of documents* ('the Practice Direction').

### *Length of Delay*

- [16] The hard copy Appeal Notice was filed on Wednesday 28 February 2024, five days out of time.

### *Explanation for Delay*

- [17] Mr Gibson explains the delay in filing the Appeal Notice on two bases: firstly, the delay in receiving clarification from the Respondent as to the full effect of the disciplinary decision; and secondly, a misapprehension as to the effect of the Practice Direction.
- [18] Mr Gibson says that he could not finalise his Appeal Notice and supporting documents until after the Respondent had provided clarification on the afternoon of

20 February 2024. Mr Gibson says that he had requested a response by 16 February 2024 and that by the time the clarification was received on 20 February 2024, there were three days remaining before the expiry of the appeal period.

- [19] Mr Gibson says that he (or his representatives)<sup>6</sup> misapprehended the Practice Direction. A lengthy affidavit was attached to the Appeal Notice and pursuant to paragraph 8 of the Practice Direction, Mr Gibson was required to file hard copies of the Appeal Notice and supporting affidavit, which were to be considered in combination, as the electronic copy would be rejected for filing.
- [20] Mr Gibson says that this is not a case where he was ignorant of the appeal period despite the Respondent having informed him of it or where he was otherwise careless as to his compliance with the time period.

#### *Prejudice to the Appellant*

- [21] Mr Gibson submits that if an extension is not granted, he will not have any other avenue available to him to challenge the decision.
- [22] Mr Gibson says that the matter has a lengthy history which began before he was placed on alternative duties over eight months ago, notwithstanding that the decision was only made on 2 February 2024.
- [23] Mr Gibson says that over that time he has invested 'significant time, personal anguish, and money in dealing with this matter'. Mr Gibson says he has forged a lengthy career in the public sector, and in his view, his reputation and standing would be irreparably damaged if the disciplinary decision stands. Mr Gibson says that if an extension is not granted, that investment would be rendered futile which would be prejudicial to him.

#### *Prejudice to the Respondent*

- [24] Mr Gibson says that although delay is assumed to prejudice the Respondent,<sup>7</sup> minimal delay, without more, is an insufficient basis upon which to refuse an extension of time.<sup>8</sup>
- [25] Mr Gibson says that the Respondent knew, within the appeal period, on the afternoon of 23 February 2024, that Mr Gibson intended to file an appeal. Mr Gibson says this is evidenced by the fact that the Respondent received an emailed copy of the Appeal Notice and supporting affidavit.

#### *Respondent's conduct*

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<sup>6</sup> Mr Gibson engaged legal representatives for this matter before being informed that there are no lawyers allowed for Public Sector Appeals.

<sup>7</sup> *Brisbane South Regional Health Authority v Taylor* (n 3) 556.

<sup>8</sup> *Brodie-Hanns* (n 2) 300.

- [26] Mr Gibson says that the Respondent's delay in providing the requested clarification contributed to the delay in filing the Appeal Notice. While it is conceded that the Appeal Notice could have been filed within the appeal period notwithstanding the delay in receiving that clarification, a hard copy of Appeal Notice could have been filed but for the delay in receiving the clarification from the Respondent between 16 and 20 February 2024.

*Prospects of success*

- [27] Mr Gibson says that this is not a matter where he faces some insurmountable obstacle to succeed on the substantive appeal and relies on the dicta of President Hall in *Bruce Anthony Piggott v State of Queensland* (citations removed).<sup>9</sup>

...the occasions for rejecting an application for an extension of time on the ground that the applicant has poor prospects of success will be few, and generally, the merits of an application are part of the general consideration of all relevant factors. In assessing the prospects of the substantive application succeeding, ..., the merits or lack therefor of the substantive application must be clear cut, and will usually flow from formation of a view that there is an obstacle that no amount of evidence can overcome. Cases where a view may be formed so adverse to the applicant as to justify the refusal to extend time on that ground, will be rare.

***Respondent's submissions***

- [28] The Respondent's submissions confirm that the decision was provided to Mr Gibson on 1 February 2024. The Respondent confirms that Mr Gibson's lawyers wrote to the Respondent on 14 February 2024 to seek clarification about the disciplinary decision. The Respondent also confirms that a response was provided on 20 February 2024 and that in addition to providing the requested information, the letter contained a reminder that any appeal must be lodged within 21 days of receipt of the decision on 1 February 2024.
- [29] The Respondent also confirms that the Appeal Notice was lodged electronically on 23 February 2024 (the 21<sup>st</sup> day of the appeal timeframe) and that on 26 February 2024, the Registry sent an email informing Mr Gibson (through his representative) that for filings over 30 pages, a hard copy must be provided, and that filing is not complete until the hard copy is received. The Appeal Notice was eventually accepted for filing on 28 February 2024.

*Length of delay*

- [30] The Respondent submits that a delay of 5 days is significant.

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<sup>9</sup> [2010] ICQ 35, [6].

*Lack of reasonable explanation for delay*

- [31] The Respondent maintains that Mr Gibson failed to comply with the requirements for filing the appeal, despite the Respondent and Industrial Registrar providing guidance and references to support him. Specifically, the Respondent points to:
- the notification of appeal rights provided in the decision letter dated 1 February 2024 and clarification letter dated 20 February 2024;
  - the Form 89 Appeal notice form which explicitly states, '*any documents longer than 30 pages must be provided to the Industrial Registry in hard copy before the Appeal will be accepted for filing*'; and
  - further emails dated 26 February 2024 and 28 February 2024 providing instruction to Mr Gibson on how to appropriately lodge the Appeal outside the jurisdictional timeframe.
- [32] The Respondent considers Mr Gibson's failure to follow the established procedural requirements as a deliberate deviation from upholding the integrity of the industrial relations processes. Further, the Respondent says that Mr Gibson's actions undermine the Commission's role and authority and the proper procedures which must be followed.
- [33] The Respondent maintains that Mr Gibson had sufficient time to file the Appeal, even after receiving the requested clarification on 20 February 2024 which left him with three days within the 21-day timeframe available. The Respondent says that this was an adequate amount of time for Mr Gibson to comply with the 21-day timeframe. Having already drafted his response and upon receipt of the Respondent's response, Mr Gibson would have had sufficient time to submit the Appeal and deliver the required hard copy documents prior to the expiration of the Appeal timeframe on 23 February 2024.
- [34] The Respondent refutes Mr Gibson's claim that the clarification letter was crucial to filing the Appeal. The Respondent points out that the disciplinary decision was issued on 2 February 2024, however Mr Gibson did not request clarification as to the implementation of the disciplinary decision until some 14 days later. The Respondent submits that the significant delay in seeking clarification undermines Mr Gibson's argument that the delay in receiving clarification from the Respondent adversely impacted the finalisation and subsequent filing of the appeal within the 21-day timeframe.
- [35] The Respondent points out that the requirement to submit hardcopy files is separate and irrelevant to the clarification sought by Mr Gibson on 16 February 2024 given the electronic Appeal was lodged on the 21<sup>st</sup> day of the Appeal timeframe. Further, the Respondent states that its letter of 20 February 2024 did not indicate or imply that the

Appeal timeframe would differ to the actual date of the decision issued 2 February 2024.

- [36] The Respondent says that Mr Gibson's misunderstanding of the Practice Direction does not negate the late filing.
- [37] The Respondent maintains that Mr Gibson's failure to provide a valid justification for the delay in filing the appeal significantly weakens his position in seeking leniency or exceptions to file outside the prescribed 21-day appeal timeframe.
- [38] The Respondent emphasises that Mr Gibson had legal representation at the time of filing, which implies he had access to professional advice and guidance regarding the appeal process and its requirements. The Respondent submits that legal representation carries an expectation of understanding and compliance with industrial obligations.

*Prejudice to the Appellant*

- [39] The Respondent acknowledges Mr Gibson's arguments regarding the prejudice he would suffer if an extension of time is not granted. However, the Respondent says that adherence to statutory timeframes and procedural rules is crucial to maintain the integrity of the process and ensure equal treatment of all parties involved.
- [40] The Respondent acknowledges Mr Gibson's submissions regarding the investment of time, personal anguish, and resources in dealing with the matter and submits that granting of extensions to statutory deadlines should be based on clear justifications and exceptional circumstances, rather than personal investments or potential consequences.

*Prejudice to the Respondent*

- [41] The Respondent says that the prejudice it will suffer is a relevant consideration, particularly where the delay is significant and the delay itself is considered to give rise to a general presumption of prejudice to the Health Service.
- [42] The Respondent argues that an extension of time will disrupt its operations, burden its resources, and undermine the timely resolution of the matter, as well as setting a concerning precedent for future proceedings. The Respondent says it has already expended resources in the disciplinary process and granting an extension would unfairly burden it by allowing Mr Gibson to circumvent the 21-day timeframe, potentially leading to delays in resolving the matter.
- [43] The Respondent rejects Mr Gibson's assertion regarding the Respondent's knowledge of the Appeal being filed electronically and says that this does not mitigate the prejudice to the Respondent.



*Conduct of the Health Service*

- [44] The Respondent says there is no evidence that its conduct supports allowing Mr Gibson to start the appeal within a longer period.

*Merits of the substantive appeal*

- [45] The Respondent refers and relies upon its decision letter of 1 February 2024 and says that it clearly articulates Mr Gibson's conduct and the serious consideration afforded to his responses. The Respondent submits that the appeal has limited prospects of success.

**Consideration**

*Length of delay*

- [46] The electronic version of the appeal was filed on the final day of the 21-day appeal period, which was 23 February 2024. That was a Friday afternoon. According to the information before me, on Monday morning 26 February 2024, the Registry informed Mr Gibson's representative that the appeal document was over 30 pages long and would not be accepted for filing until a hard copy was received.
- [47] The hard copy was eventually filed, and the Registry stamp indicates the filing date was 28 February 2024. Accordingly, even though an attempt was made to file the appeal on 23 February 2024, it remains 5 days out of time due to the need to file a hard copy.
- [48] A five-day delay is significant in the context of an appeal period of only 21 days. However, I acknowledge that this is not a situation where no action at all was taken to file the appeal until 5 days after the statutory timeframe expired.

*Explanation for the delay – document over 30 pages*

- [49] It seems to me from Mr Gibson's submissions that he was relying on his legal representative to prepare and file his public sector appeal. It is unclear to me whether Mr Gibson's legal representatives informed him that, pursuant to s 530A(3), no legal representation is allowed in these matters. The filing was accompanied by a letter stating '...we act for the appellant'. So it may be that his lawyers were unaware of the prohibition on lawyers acting in public sector appeals.
- [50] Mr Gibson describes a 'misapprehension' of the effect of the Practice Direction as it relates to the filing of documents over 30 pages. I have reviewed the Form 89 Appeal notice. It clearly states that, 'Documents which are longer than 30 pages in length must be provided to the Industrial Registry in hard copy before it will be accepted for filing'. The form also states, 'For further information please contact the Industrial Registry...'. If the wording regarding documents over 30 pages only being able to be filed in hard

copy was unclear to Mr Gibson's lawyers, it was open to them to seek clarification from the Registry.

[51] Mr Gibson's submissions specifically refer to the Practice Direction. I have reviewed the content of the Practice Direction and note the following relevant clauses:

1. This Practice Direction applies to all documents sought to be filed with the Industrial Registry.  
...
4. A person may only electronically file a soft copy of a document with the Industrial Registry that is 30 pages or fewer in length.
5. If a soft copy of the document which a person seeks to electronically file is more than 30 pages, then the document will not be accepted for filing until a hard copy of the document is supplied to the Industrial Registry.  
...
14. A document will only form part of the file once it is accepted for filing.

[52] One may argue that it was possible for the Registry to receive the Form 89 for filing and to await a hard copy before filing attachments. The difficulty with this is that, save for information required to be provided in parts 1 to 5 of the form, no other information is included in the form itself. Section 7 of the form invites the Appellant to 'Briefly state the basis of your appeal. You should refer to the Appeals Guide and relevant Directive to determine whether you have a valid ground for appeal'. That section of Mr Gibson's Appeal Notice states: 'I intend to rely on the attached Annexure A – 'Affidavit of Jason Gibson affirmed 23 February 2024'.

[53] Further, Section 5 of the Form 89 also states that the appeal will not be processed unless a copy of the decision is provided with the Appeal Notice. Annexure A is 349 pages long. The decision being appealed is attached as Exhibit J to the Affidavit at page 329. There was no practical way that the Form 89 could have been legitimately filed on 23 February 2024 when the reasons for appeal and the decision itself were included in a 349-page document and not included either in the space provided on the form or immediately attached.

[54] I feel compelled to note that all that was required to file the Form 89 was for brief reasons for appeal to be noted in the form and for the decision letter to be attached. There is absolutely no requirement for an affidavit to be filed to accompany a public sector appeal. No directions had been issued requiring the filing of either an affidavit or exhibits. The decision letter is 6 pages long. The affidavit outlining the background to the matter and the reasons for appeal is 6 pages long. Effectively, these were the only documents that were required to be filed on or before 23 February 2024 (noting also that the reasons for appeal did not need to be in the form of an affidavit). If only the necessary information was included, the filing could have been done electronically as the attachment would have been no more than 30 pages long.

[55] Instead, puzzlingly, many items are attached as exhibits to the affidavit. In the absence of any directions seeking submissions and a requirement only to outline brief reasons for appeal and attach a copy of the decision under appeal, there is no sensible reason for the Appellant or his representatives to have annexed the majority of the 349 pages of material which includes:

- the Certificate of Approval for the *Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 4) 2022* (2 pages);
- a complete copy of the *Health Practitioners and Dental Officers (Queensland Health) Certified Agreement (No. 4) 2022* (83 pages);
- a complete copy of the *Health Practitioners and Dental Officers (Queensland Health Award)* (56 pages);
- Mr Gibson's CV (5 pages);
- A 'List of Achievements supplementary to CV' (2 pages);
- The alternative duties notice dated 5 June 2023 (3 pages);
- The first show cause notice dated 30 May 2023 (7 pages);
- A complete copy of the Code of Conduct for the Queensland Public Service 1 January 2011 (18 pages);
- Sunshine Coast Health Learning On-Line Transcript for Jason Gibson (3 pages);
- Role title for Clinical Measurement Scientist – Consultant (Director of Cardiac Sciences) (5 pages);
- Email of Tuesday 16 February 2023, 'Notification of possible breach' (2 pages);
- File Notes dated 15/02/2023 (2 pages);
- File Note dated 14/02/2023 (1 page);
- Email of Thursday 16 February 2023, 'Echo out of hours' (2 pages);
- Email of Tuesday 14 February 2023, 'Echo Request' (1 page);
- Letter informing Mr Gibson of the allegations dated 10 May 2023 (3 pages);

- Various sections of the *Public Sector Act 2022* (Qld) (14 pages);
- A complete copy of Discipline (Directive 05/23) (14 pages);
- Human Resources Policy Discipline E10 (QH-POL-124), June 2021 (15 pages);
- Sections of the *Public Interest Disclosure Act 2010* (Qld) (1 page);
- Human Resources Policy *Public Interest Disclosure* I5 (QH-POL-202) (27 pages);
- Response to show cause notice, 30 June 2023 (6 pages);
- Disciplinary decision and show cause on proposed disciplinary action dated 5 October 2023 (9 pages);
- Response to show cause and disciplinary finding decision dated 3 November 2023 (6 pages);
- Disciplinary Action Decision dated 1 February 2024 (6 pages);<sup>10</sup>
- Letter seeking confirmation of disciplinary action being taken dated 14 February 2024 (2 pages);
- Departmental correspondence clarifying disciplinary action to be taken dated 20 February 2024 (3 pages);
- HP stream wage rate table (1 page).

[56] Mr Gibson made the decision to engage legal representatives for this matter. I assume that his lawyer has determined each of the above documents to be essential to the appeal. While I do not think the inclusion of unnecessary attachments to the appeal document provides a reasonable excuse for the delay, I cannot find that it would be fair for Mr Gibson, who is now representing himself in this matter, to be held responsible for the decision of his legal representatives to file all of the material listed above. In fact, had Mr Gibson prepared his own appeal and simply followed the instructions on the Form 89, it is entirely unlikely he would determine to file the hundreds of pages of material as set out at [55].

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<sup>10</sup> The decision being appeal, a copy of which must be attached to the form before it will be accepted for filing.

*Explanation for delay – lawyers seeking clarification of disciplinary action to be taken*

- [57] I think it is reasonable that Mr Gibson would seek to properly understand the particulars of the disciplinary action to be taken against him. It is troubling to me that the letter he received simply stated that a decision had been made to impose a 'reduction of classification level and a consequential change of duties'. How could Mr Gibson properly decide whether that decision was not fair and reasonable without knowing what the reduction of classification level entailed and what the proposed change of duties was?
- [58] What is not clear to me is why Mr Gibson's lawyers waited until 14 February 2024, two thirds of the way through the statutory appeal timeframe, to seek this clarification. Or for that matter, why Mr Gibson could not have sought clarification himself on the day he received the letter. While his lawyers set a deadline of 16 February 2024 for a response to be provided, they had to have known that the 21-day appeal period was continuing to elapse. In any case, the delay of the provision of that information until 20 February 2024 did not cause Mr Gibson's appeal to be filed out of time. It was completed and ready to be submitted electronically three days after the Respondent provided Mr Gibson's lawyers with the particulars of the disciplinary action to be taken.

*Prejudice to the parties*

- [59] I accept that there is prejudice to the Respondent if I extend time for the filing of the appeal. However, the Respondent was aware that Mr Gibson would likely appeal the decision and was seeking further particulars to be provided in a timely matter to support his decision-making on the appeal; received the appeal via email on the day it was electronically submitted within the appeal period; and were aware that the Registry had advised that the attachment needed to be filed in hard copy. This is not a situation where the Respondent is being surprised and inconvenienced by an appeal many days or weeks after they believed the statutory timeframe had expired.
- [60] I understand and appreciate the Respondent's submissions about respect for Commission processes and statutory timeframes. Those matters are why discretion to extend time should only occur following a proper consideration of each matter and why a 'limitation provision is the general rule; an extension provision is the exception to it'.<sup>11</sup>
- [61] There is a clear prejudice to Mr Gibson if I do not extend time to file the appeal. The disciplinary finding and proposed disciplinary action are of a very serious nature. If I do not extend time, Mr Gibson loses the opportunity to have an external assessment of whether the decision was fair and reasonable. The proposed disciplinary action involves a financial penalty and a change of duties. In circumstances where the impact on

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<sup>11</sup> *Brisbane South Regional Health Authority v Taylor* (n 3) 553.

Mr Gibson will be significant, I find that the prejudice to him if I refuse to extend time outweighs the prejudice to the Respondent if I allow the appeal to be heard.

*Conduct of the health service*

- [62] There is no information before me to suggest that the conduct of the health service contributed to the failure to file the hard copy of the appeal within the 21-day timeframe.

*Merits of the substantive appeal*

- [63] I am not going to comment on the merits of the substantive appeal as I have only Mr Gibson's appeal reasons and no submissions from the Respondent. While I note the Respondent points to the decision letter which it says provides reasons for the decision, I have not heard from the Respondent in response to the matters raised in Mr Gibson's affidavit. I note, however, that I am particularly interested in the lack of particulars provided to Mr Gibson about the precise nature of the disciplinary action to be imposed. It may be that particulars were provided in some other way. However, in the absence of that detail, it seems to me that the appeal should be heard and that the case is not without merit to the extent that would support the refusal of an extension of time.

**Conclusion**

- [64] For the reasons set out above from [46] – [63], I have determined to grant the application to allow Mr Gibson's appeal to be started within a longer period pursuant to section 564 of the IR Act.
- [65] I will issue directions for submissions to be filed addressing the substantive matter in due course.

**Order**

- 1. The Appellant's application to allow their appeal to be started within a longer period is granted.**