

# SUPREME COURT OF QUEENSLAND

CITATION: *Vella & Ors v Heath & Anor; Comfortdelgro Corporation Australia Pty Ltd v McIlveen* [2024] QSC 53

PARTIES: **In Application BS1015 of 2023:**

**TAMMY VELLA**

(first applicant)

AND

**PETER DUVCEVSKI**

(second applicant)

AND

**WARREN BRIAN SUTTON**

(third applicant)

AND

**NATHAN TRAVIS SHEILLS**

(fourth applicant)

v

**BRETT KENNETH HEATH as Delegate of the  
Workplace Regulator under the *Work Health and Safety  
Act 2011 (Qld)***

(first respondent)

AND

**ANDREW JOEL LUCY as Delegate of the Workplace  
Regulator under the *Work Health and Safety Act 2011  
(Qld)***

(second respondent)

**In Application BS1016 of 2023:**

**COMFORTDELGRO CORPORATION AUSTRALIA  
PTY LTD (ACN 002 072 004)**

(applicant)

v

**PAUL McILVEEN as Delegate of the Workplace  
Regulator under the *Work Health and Safety Act 2011  
(Qld)***

(respondent)

FILE NO/S: BS1015/23  
BS1016/23

DIVISION: Trial

PROCEEDING: Applications

ORIGINATING COURT: Supreme Court of Queensland

DELIVERED ON: 8 April 2024

DELIVERED AT: Brisbane

HEARING DATE: 4 April 2023

JUDGE: Davis J

ORDERS: **Application BS1015 of 2023**

1. **It is declared that:**
  - (a) **Information request 26 in the notice given to the first applicant on 23 January 2023 is invalid and of no effect.**
  - (b) **Document request 2 in the notice given to the third applicant on 6 December 2022 is invalid and of no effect.**
  - (c) **Information request 26 in the notice given to the fourth applicant on 7 December 2022 is invalid and of no effect.**
2. **Otherwise the application is dismissed.**
3. **The respondents file and serve any written outline on the question of costs by 4pm on 15 April 2024**
4. **The applicants file and serve any written outline in reply on costs by 4pm on 22 April 2024**
5. **All parties have leave to file an application by 4pm on 29 April 2024 seeking leave to make oral submissions on costs.**
6. **In the absence of an application being filed by 4pm on 29 April 2024 the question of costs will be determined on the written submissions received with no further oral hearing.**

**Application BS1016 of 2023**

1. **The application is dismissed.**
2. **The respondent file and serve any written outline on the question of costs by 4pm on 15 April 2024.**
3. **The applicant file and serve any written outline in reply on costs by 4pm 22 April 2024**
4. **Both parties have leave to file an application by 4pm on 29 April 2024 seeking leave to make oral submissions on costs.**
5. **In the absence of an application being filed by 4pm on 29 April 2024 the question of costs will be determined on the written submissions received with no further oral hearing.**

CATCHWORDS: INDUSTRIAL LAW – WORK HEALTH AND SAFETY – GENERALLY – where various companies conducted bus services – where some of those companies conducted bus services in Victoria – where some of those companies conducted bus services in Queensland – where a workplace incident occurred in Victoria concerning one of the companies operating there – where that incident concerned injury to a worker repairing a bus by the side of the road – where a workplace incident occurred in Queensland concerning one of the companies operating there – where the incident concerned injury to a worker working on a bus by the side of the road – where the *Work Health & Safety Act* 2011(the Act) places obligations to ensure health and safety “so far as is reasonably practicable” – where the Act creates the role of Regulator – where the Regulator has coercive powers to require the production of documents and information – whether the power is vested for the purpose of investigating a possible contravention of the Act or assisting the Regulator to monitor or enforce compliance with the Act – whether the Regulator’s delegate formed a reasonable belief that the applicants had relevant documents or information – whether some of the requests were otherwise beyond the power vested by the Act

*Work Health & Safety Act 2011*, ss 3, 19, 152, 153, 154, 155, 160, 163, 164, 165, 166, 172, 191, 192, Sch 2

*Civil Proceedings Act 2011* s 10

*Byrnes v Kendle* (2011) 243 CLR 253; [2011] HCA 26, cited  
*George v Rockett* (1990) 170 CLR 104; [1990] HCA 26, followed

*Hunter Quarries Pty Ltd v State of New South Wales Department of Trade and Investment* [2014] NSWSC 1580, cited

*Hurt v The King* [2024] HCA 8, cited

*Hussien v Chong Fook Kam* [1970] AC 942, cited

*Lee v New South Wales Crime Commission* (2013) 251 CLR 196; [2013] HCA 39, followed

*McKinnon v Secretary to Department of Treasury* (2006) 228 CLR 423; [2006] HCA 45, followed

*Perilya Ltd v Nash* [2015] NSWSC 706, cited

*Potter v Minahan* (1908) 7 CLR 277; [1908] HCA 63, cited

*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; [1998] HCA 28, cited

*Prior v Mole* (2017) 261 CLR 265; [2017] HCA 10, followed  
*Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266; [1966] HCA 21, cited

*R v A2* (2019) 269 CLR 507; [2019] HCA 35, followed

*Trimboli v Onley (No 3)* (1981) 56 FLR 321, cited

*TVW Ltd v Robinson* [1964] WAR 33, followed

*Workers’ Compensation Board (Qld) v Technical Products*

*Pty Ltd* (1988) 165 CLR 642; [1988] HCA 49, followed

COUNSEL: JM Horton KC with D Caruana of Counsel for the Applicants in BS1015 of 2023  
SA McLeod KC with MJ Brooks of Counsel for the Respondents in BS1015 of 2023

JM Horton KC and D Caruana of Counsel for the Applicant in BS1016 of 2023  
SA McLeod KC and MJ Brooks of Counsel for the Respondent in BS1016 of 2023

SOLICITORS: DLA Piper for the Applicants in BS1015 of 2023  
GR Cooper, Crown Solicitor for the Respondents in 1015 of 2023

Herbert Smith Freehills for the Applicant in BS1016 of 2023  
GR Cooper, Crown Solicitor for the Respondent in 1016 of 2023

- [1] There are five applicants who together have brought two applications, being BS1015/23 (1015) and BS1016/23 (1016). All applicants received notices issued pursuant to s 155 of the *Work Health & Safety Act 2011 (WHS Act)* requiring them to produce documents and provide information. The respondents are delegates of the Regulator<sup>1</sup> who issued the various notices.
- [2] The applicants allege that the notices were improperly issued and they seek relief which would excuse them from compliance.

### **Background**

- [3] Comfortdelgro Corporation Australia Pty Ltd (Comfortdelgro Corporation Australia), who is the applicant in application 1016, is part of a group of companies who provide transport services across various states and territories of Australia.
- [4] Comfortdelgro Corporation Australia is a wholly owned subsidiary of Comfortdelgro Corporation Ltd (Comfortdelgro Corporation), a company based in Singapore.
- [5] Comfortdelgro Corporation Australia is the holding company of a significant number of subsidiary companies, all operating within Australia (the CDC Australia Group).
- [6] The CDC Australia Group has a history dating back to 2005. That is when Comfortdelgro Corporation Australia began operations in New South Wales. It then expanded its business by a systematic acquisition of various companies which were operating existing transport businesses.

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<sup>1</sup> *Work Health and Safety Act 2011* Part 8.

- [7] The Comfortdelgro Corporation Australia operations are organised into four businesses units. They are:
- (a) New South Wales (CDC NSW);
  - (b) Victoria (CDCVic);
  - (c) Regional Australian Division (CDC Regional); and
  - (d) National Patient Transport (NPT).
- [8] The division which is CDCVic includes CDC Victoria Pty Ltd (CDC Victoria), the shares in which are owned entirely by Comfortdelgro Corporation Australia. The division which is CDC Regional is the division which operates bus services in Queensland. Buslink Pty Ltd (Buslink) and Buslink Southern Pty Ltd (Buslink Southern) are also wholly owned subsidiaries of Comfortdelgro Corporation Australia. Together, Buslink and Buslink Southern own all issued shares in a number of companies which include CDC South East Queensland Pty Ltd (CDC South East Queensland).
- [9] CDC NSW, CDCVic and CDC Regional all operate buses. In particular, both CDC Victoria and CDC South East Queensland operate buses.
- [10] On 21 April 2022, an accident occurred at Nambour Connection Road. Two mechanics, employed by CDC South East Queensland, died as a result of the accident while working on a vehicle when they were struck by a car. An investigation was commenced by Workplace Health and Safety (WHS), a department within the Office of Industrial Relations.
- [11] Investigators learned that WHS' Victorian counterpart, WorkSafe Victoria, had made enquiries of CDC Victoria as to their procedures when employees were effecting roadside repairs. These enquiries were prompted by an incident involving employees of CDC Victoria when working at the roadside on a broken down bus.
- [12] On 19 October 2022, Paul McIlveen, who is the respondent to 1016 and a delegate of the Regulator, issued a notice to Comfortdelgro Corporation Australia pursuant to s 155 of the WHS Act requiring it to produce information and documents.
- [13] Brett Heath and Andrew Lucy, the respondents to 1015, are also delegates of the Regulator and they also issued notices in reliance upon s 155 of the WHS Act. The recipients of the notice, being the applicants in 1015, are all employees of companies with the CDC Australia Group. None of them reside or work in Queensland and none are employees of CDC South East Queensland.
- [14] The various applicants resist compliance with the notices on various grounds which I explain below. There is an underlying basis for the applicants' objections. The accident being investigated occurred in Queensland. The applicants say that each of the different divisions of the Comfortdelgro Australia operations have separate and distinct management structures and are, therefore, independent of each other. Enquiry into the operations of CDCVic, it is submitted, cannot advance the investigation by WHS into an accident which occurred involving employees in Queensland, who are employed through CDC Regional and in particular, by CDC South East Queensland.

- [15] That underlying contention of the applicants is, as I later explain, misconceived as it misunderstands the power vested in the Regulator by s 155 of the WHS Act.

### Legislation

- [16] The purpose of construction of any legal instrument<sup>2</sup>, including a statute, is to ascertain the objective meaning of the text with reference to the context of the relevant clause or provision. The context includes the statute's history and purpose and any statutory scheme against which it was enacted.<sup>3</sup> In order to ascertain the meaning of the text, regard has to be had to the statute as a whole.<sup>4</sup>
- [17] The objects of the WHS Act are expressed by s 3 which provides:

#### “3 Object

- (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by—
  - (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from particular types of substances or plant; and
  - (b) providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety; and
  - (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and
  - (d) promoting the provision of advice, information, education and training in relation to work health and safety; and
  - (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and
  - (f) ensuring appropriate scrutiny and review of actions by persons exercising powers and performing functions under this Act; and
  - (g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

<sup>2</sup> In *Byrnes v Kendle* (2011) 243 CLR 253, Crennan and Heydon JJ did not distinguish, in approach to the construction of statutes, contracts and testamentary instruments.

<sup>3</sup> *R v A2* (2019) 269 CLR 507 at [32] – [44] and [163] – [166].

<sup>4</sup> *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at [69].

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in Queensland.

(2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from particular types of substances or plant as is reasonably practicable.<sup>5</sup> (emphasis added).

[18] The “main object” of the WHS Act is as stated by the introductory words of s 3(1) and paragraphs (a) to (h) identify the ways in which that object is to be achieved.

[19] The WHS Act represents Queensland’s participation in a national work health and safety scheme instigated pursuant to the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety made in July 2008, through the Council of Australian Governments.<sup>6</sup>

[20] The risk minimisation mentioned in s 3(1)(a) is achieved at least in part by imposing health and safety duties upon persons in or connected with the workplace.<sup>7</sup>

[21] By s 19, relevantly here:

**“19 Primary duty of care**

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

- (a) workers engaged, or caused to be engaged by the person; and
- (b) workers whose activities in carrying out work are influenced or directed by the person;

while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking

(3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable—

- (a) the provision and maintenance of a work environment without risks to health and safety; and

<sup>5</sup> Statutory notes omitted.

<sup>6</sup> Known as “COAG”.

<sup>7</sup> *Work Health & Safety Act* 2011 Part 2.

- (c) the provision and maintenance of safe systems of work; and
- (d) the safe use, handling and storage of plant, structures and substances; and
- ...
- (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.”  
(emphasis added)

- [22] An offence regime exists to criminalise breaches of duty and thus enforce the scheme consistently with the measure described in s 3(1)(e).<sup>8</sup> However, enforcement and compliance is not achieved only by prosecution.
- [23] Schedule 2 of the WHS Act establishes various bodies to administer the scheme of the WHS Act. This includes the office of the Regulator.<sup>9</sup> Part 8 of the WHS Act governs the office of the Regulator as created by Schedule 2.
- [24] Division 1 of Part 8 contains ss 152 to 154. Section 152 prescribes the functions of the Regulator as:

**“152 Functions of regulator**

The regulator has the following functions—

- (a) to advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
- (b) to monitor and enforce compliance with this Act;
- (c) to provide advice and information on work health and safety to duty holders under this Act and to the community;
- (d) to collect, analyse and publish statistics relating to work health and safety;
- (e) to foster a cooperative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to work health and safety matters;
- (f) to promote and support education and training on matters relating to work health and safety;
- (g) to engage in, promote and coordinate the sharing of information to achieve the object of this Act, including the sharing of information with a corresponding regulator;

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<sup>8</sup> *Work Health & Safety Act 2011* Part 2 Division 5.

<sup>9</sup> *Work Health & Safety Act 2011* Schedule 2, Part 1 Section 1.



- (h) any other function conferred on the regulator under this Act.”<sup>10</sup> (emphasis added)

[25] Section 153 prescribes the powers of the Regulator:

**“153 Powers of regulator**

- (1) Subject to this Act, the regulator has the power to do all things necessary or convenient to be done for or in connection with the performances of the regulator’s functions.
- (2) Without limiting subsection (1), the regulator has all the powers and functions that an inspector has under this Act.” (emphasis added)

[26] Section 154 provides for the delegation of a power or function of the Regulator to an inspector:

**“154 Delegation by regulator**

- (1) The regulator may delegate to an inspector, appropriately qualified public service employee or a person prescribed under a regulation a function or power under this Act.
- (2) In this section –  
  
*appropriately qualified* includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.”<sup>11</sup>

[27] Against that context, s 155 (which is the only provision in Part 8 Division 2) provides:

**“155 Powers of regulator to obtain information**

- (1) This section applies if the regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the regulator to monitor or enforce compliance with this Act.
- (2) The regulator may, by written notice served on the person, require the person to do one or more of the following—
  - (a) to give the regulator, in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the way stated in the notice, that information of which the person has knowledge;
  - (b) to produce to the regulator, in accordance with the notice, those documents;

<sup>10</sup> Statutory notes omitted.

<sup>11</sup> Statutory notes omitted.

- (c) to appear before a person appointed by the regulator on a day, and at a time and place, stated in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

...

- (4) The regulator must not make a requirement under subsection (2)(c) unless the regulator has taken all reasonable steps to obtain the information under subsections (2)(a) and (b) and has been unable to do so.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Maximum penalty—100 penalty units.

- (6) Subsection (5) places an evidential burden on the accused to show a reasonable excuse.
- (7) Section 172, with any necessary changes, applies to a requirement under this section.”<sup>12</sup> (emphasis added)

[28] Section 155 vests powers in the Regulator upon establishment of a jurisdictional fact. The jurisdictional fact is that the Regulator “has reasonable grounds to believe” certain things.

[29] The parties have proceeded on the basis that the jurisdictional fact contains both a subjective and an objective element; the Regulator must hold the belief, and when holding the belief, the Regulator must have reasonable grounds to do so.

[30] The section does not expressly say that the belief must be held. It says the Regulator must have reasonable grounds “to believe”, not that he “does believe”.

[31] However, similar phrases have been read to include a requirement that a specific state of mind actually be held. In *Prior v Mole*<sup>13</sup>, the High Court so held about a provision in the *Police Administration Act 1978 (NT)*. There, a power arose when an officer “has reasonable grounds for believing [a certain thing]”.<sup>14</sup> Similarly in *TVW Ltd v Robinson*,<sup>15</sup> a magistrate, before exercising power, was to be convinced “there are grounds for supporting and grounds for believing [certain things]”. It was held that the magistrate must actually believe the thing. In *George v Rockett*,<sup>16</sup> s 679 of the Criminal Code required a magistrate on issuing a search warrant to be satisfied that there “are reasonable grounds for suspecting [certain things]”. It was decided that the suspicion (a different concept to belief) had to be actually held by the magistrate.

<sup>12</sup> Section 172 abrogates privilege.

<sup>13</sup> (2017) 261 CLR 265.

<sup>14</sup> The provision appears at (2017) 261 CLR 265 at [54] and see [1], [4], and [24].

<sup>15</sup> [1964] WAR 33.

<sup>16</sup> (1990) 170 CLR 104.

- [32] Existence of the jurisdictional fact allows for the exercise of coercive powers under the WHS Act. Given that circumstance, and the cases to which I have referred, I hold that the test requires both a subjective state of mind and reasonable grounds to support it. Here, the Regulator’s delegates have sworn that they held the requisite belief and that is not challenged. It is the objective aspect which is contentious.
- [33] The relevant belief is that the recipient of the notice “is capable of giving information, providing documents or giving evidence in relation to [one of two things]”. Those two things are “a possible contravention of [the WHS Act]” (the first belief) or that the information documents etc. “will assist the regulator to monitor or enforce compliance with [the WHS Act]” (the second belief).
- [34] Both beliefs have their origin in s 152(b).<sup>17</sup> The second belief mirrors the words of s 152(b).
- [35] The first belief requires “a possible contravention”. Usually identifying any “possible contravention” will be an act to “monitor and enforce compliance with [the WHS Act]”. However, the first belief is not intended to be a meaningless subset of the second belief. The requirement for the first belief is different to the second.
- [36] As to the first belief, what is required is that the recipient of the notice is capable of giving information etc. “in relation to a contravention of [the WHS Act]” (emphasis added). The term “in relation to”, when referring to a subject matter of enquiry, extends the scope of the enquiry beyond the subject matter to include matters related to the subject matter. The phrase though takes its meaning from the context in which it appears.<sup>18</sup> It is not necessary here to define the exact scope of the power.
- [37] As to the second belief, it is that the recipient of the notice is capable of giving information etc. “that will assist the regulator to monitor or enforce compliance with [the WHS Act]” (emphasis added).
- [38] Therefore, all that is required for the first belief is that the person is capable of providing information etc. “in relation to a contravention”, but the second belief requires that the person is capable of giving information etc. that “will assist” in monitoring or enforcing compliance.
- [39] Therefore, as to the first belief, the Regulator must:
- (a) identify a possible contravention of the Act;
  - (b) believe that the person is capable of giving information etc. “in relation to [that contravention]”; and
  - (c) hold reasonable grounds for that belief.
- [40] In relation to the second belief, the Regulator must:

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<sup>17</sup> Set out at paragraph [27] of these reasons.

<sup>18</sup> *Workers’ Compensation Board (Qld) v Technical Products Pty Ltd* (1988) 165 CLR 642, 653 and 654.

- (a) believe the person is capable of giving information etc. that will assist the Regulator to monitor compliance with the WHS Act or believe that the person is capable of giving information etc. that will assist the Regulator to enforce compliance with the WHS Act; and
  - (b) hold reasonable grounds for that belief.
- [41] In s 155 the word “monitor” is a verb. The Macquarie Dictionary relevantly defines “monitor” as “to supervise; observe critically”.<sup>19</sup>
- [42] There are various entities upon whom powers to “enforce” the WHS Act are bestowed. The power in s 155 is expressed to “assist the regulator to ... enforce compliance.” What is contemplated by s 155(1) is enforcement by use of the Regulator’s powers.
- [43] Part 9 is entitled “Securing compliance”. Division 1 concerns the ‘appointment of inspectors’ and Division 2 concerns the ‘Functions and Powers of Inspectors’. Section 160 provides:

**“160 Functions and powers of inspectors**

An inspector has the following functions and powers under this Act –

- (a) to provide information and advice about compliance with this Act;
  - (b) to assist in the resolution of—
    - (i) work health and safety issues at workplaces; and
    - (ii) issues related to access to a workplace by an assistant to a health and safety representative; and
    - (iii) issues related to the exercise or purported exercise of a right of entry under part 7;
  - (c) to review disputed provisional improvement notices;
  - (d) to require compliance with this Act through the issuing of notices;
  - (e) to investigate contraventions of this Act and assist in the prosecution of offences;
  - (f) any other function or power conferred on the inspector under this Act.”
- [44] What follows s 160 are provisions which bestow upon inspectors various powers and which regulate those powers.
- [45] Some of these powers only fall to be exercised where there is a belief of a contravention. Others do not, such as ss 163 – 166, which give powers of entry.

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<sup>19</sup> *Macquarie Dictionary*, 9<sup>th</sup> ed (2023) at 998, def 11.

These are an example of powers designed to facilitate the Regulator to “monitor compliance”. These powers can be contrasted with the search warrant provisions.<sup>20</sup> A search warrant can only be issued authorising the search and seizure of things,<sup>21</sup> where there are reasonable grounds for suspecting that the things will evidence the commission of an offence (or contravention).

- [46] Section 191 is another example of a power only exercisable where there is belief that a contravention has occurred. Sections 191 and 192 provide:

**“191 Issue of improvement notices**

- (1) This section applies if an inspector reasonably believes that a person—
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may issue an improvement notice requiring the person to—
  - (a) remedy the contravention; or
  - (b) prevent a likely contravention from occurring; or
  - (c) remedy the things or operations causing the contravention or likely contravention.

**192 Contents of improvement notices**

- (1) An improvement notice must state—
  - (a) that the inspector believes the person—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; and
  - (b) the provision the inspector believes is being, or has been, contravened; and
  - (c) briefly, how the provision is being, or has been, contravened; and
  - (d) the day by which the person is required to remedy the contravention or likely contravention.
- (2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the

<sup>20</sup> *Work Health and Safety Act 2011* Sections 167 – 169.

<sup>21</sup> It is the warrant, not the statute, which authorises the use of coercive powers: *Trimboli v Onley* (No 3) (1981) 56 FLR 321 at 327

matters or activities causing the contravention or likely contravention, to which the notice relates.

- (3) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.”

[47] The Regulator (having the powers of the inspectors) may therefore direct how a particular workplace is to be conducted. That “workplace” could include a roadside where mechanical work is being undertaken.

[48] Therefore, the function to enforce compliance includes directing how particular workplaces, such as those used for roadside repairs to broken down buses are conducted. In order to enforce compliance, the Regulator may “monitor”, which in context, must mean to conduct investigations and enquiries so as to inform the exercise of compliance powers. Those powers to enquire include the coercive powers granted by s 155 of the WHS Act.

[49] It is unsurprising in that context that the power under s 155 has been described as a broad one.<sup>22</sup>

[50] As earlier observed, the jurisdictional fact is dependent upon “belief”.

[51] Various statutes vest powers in persons dependent upon the formation of a specified state of mind. Often that is “suspicion”. Here it is a higher state of intellectual conviction than suspicion that is required, namely “belief”.<sup>23</sup>

[52] In *George v Rockett*<sup>24</sup> the High Court held that a “belief” exists where:

“The objective circumstances sufficient to show a reason to believe something need to point more clearly to the subject matter of the belief, but that is not to say that the objective circumstances must establish on the balance of probabilities that the subject matter in fact occurred or exists: the assent of belief is given on more slender evidence than proof. Belief is an inclination of the mind towards assenting to, rather than rejecting, a proposition and the grounds which can reasonably induce that inclination of the mind may, depending on the circumstances, leave something to surmise or conjecture.”<sup>25</sup> (emphasis added)

[53] The notion of “reasonable grounds” for a particular state of mind was also considered in *George v Rockett*<sup>26</sup> where it was observed:

“When a statute prescribes that there must be “reasonable grounds” for a state of mind – including suspicion and belief – it requires the

<sup>22</sup> *Perilya Ltd v Nash* [2015] NSWSC 706 at [93]; and *Hunter Quarries Pty Ltd v State of New South Wales Department of Trade and Investment* [2014] NSWSC 1580 at [39].

<sup>23</sup> *George v Rockett* (1990) 170 CLR 104 at 115- 116, following *Hussien v Chong Fook Kam* [1970] AC 942 at 498, *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266 at 303.

<sup>24</sup> (1990) 170 CLR 104.

<sup>25</sup> At 116, followed in *Prior v Mole* (2017) 261 CLR 265 at [4], [23] – [24], [73] and [99].

<sup>26</sup> (1990) 170 CLR 104.

existence of facts which are sufficient to induce that state of mind in a reasonable person.”<sup>27</sup>

- [54] In *McKinnon v Secretary to Department of Treasury*<sup>28</sup>, the High Court considered powers bestowed by the *Freedom of Information Act 1982* (Cth), where a relevant person could resist disclosure of documents if there were “reasonable grounds” for claiming that disclosure would be against the public interest.
- [55] The High Court held that the “reasonable grounds” test was an objective one to be determined by the tribunal reviewing the decision. Of the test, Gleeson CJ and Kirby J followed the statement of principle made in *George v Rockett*, which is set out at paragraph [53] of these reasons, and observed:

“This is an objective test. *George v Rockett* was concerned with a Queensland legislation empowering the issue of a search warrant if there were reasonable grounds for suspecting there was incriminating evidence in a house. The statutory formula, however, is widely used. The point of the objectivity of such a test, when it is necessary to consider whether a primary decision-maker had reasonable grounds for a given state of mind, is that the question is not whether the primary decision-maker thinks he or she has reasonable grounds. [footnote omitted]”<sup>29</sup>

**The determination of application BS1016 of 2023: *Comfortdelgro Corporation Australia Pty Ltd v McIlveen***

- [56] The notice under challenge is dated 19 October 2022. Relevantly it is in these terms<sup>30</sup>:

I, Paul McIlveen, holding a delegation from the Regulator pursuant to section 154 of the *Work Health and Safety Act 2011* (the Act), and being duly authorised, under section 155 of the Act require you to give information and produce documents.

Section 155 of the Act allows for the Regulator to require, by written notice served on a person, to provide information and produce documents to the Regulator, relevant to possible contraventions of the Act or to assist the Regulator to monitor or enforce compliance with the Act.

I have reasonable grounds to believe that you are capable of giving information and producing documents that will assist the Regulator to monitor or enforce compliance with the Act.

The Regulator is currently investigating an incident which occurred on 21 April 2022, at Nambour Connection Road (the site). At the location, two workers employed by CDC South East Queensland Pty Ltd (CDCSE), Mr. Aaron Pitt and Mr. Leyton Bartlett were struck by

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<sup>27</sup> At 112.

<sup>28</sup> (2006) 228 CLR 423.

<sup>29</sup> (2006) 228 CLR 423 at [10].

<sup>30</sup> All the notices are faithfully reproduced notwithstanding the appearance of obvious errors.

a moving car, whilst they were working on a broken down CDC vehicle. They received fatal injuries.

In a letter dated 9 September 2021, in a response to a S. 155 Notice issued to CDCCorp it was stated that:

*The CDC Australia Group comprises of the following operational divisions: Regional Australia Division (CDC RAD), Victoria (CDC Victoria), New South Wales (CDC NSW) and National Patient Transport (CDC NPT). Each operational division is comprised of a number of corporate entities. Where a request seeks documents or information within a “business group” or a “business unit” of CDC Corp Australia or “within its company structure”, CDC Corp Australia has sought information from the various operational divisions and corporate entities that comprise the CDC Australia Group to seek to assist the regulator and has indicated the documents and responses it has been able to ascertain in the time given to respond to the Notice accordingly.*

CDCSE is a business unit of ComfortDelGro Corporation Pty Ltd (CDCCorp). Therefore, there is a direct nexus between CDCSE based in Queensland and CDCCorp.

Enquiries indicate that CDCVic is conducting a business very similar to that of CDCCorp, that of providing transport services for the general public. Therefore, the operation of CDCVic, and any information they have about safe systems of work is highly relevant to the operation of CDCSE.

Within a Safety Sub-Committee of CDCCorp (the Sub-Committee) report (10.7.289 National Safety Update – February 2022, p.4 and attached), there is mention of WorkSafe Victoria attending sites of CDCVic (WorkSafe Vic reference number DHR-43517 and believed to have occurred on 21 February 2022 and conducted by Inspector Tony Kopestenski). In that interaction with WorkSafe Victoria, roadside repair was discussed. Enquiries conducted by WHSQ, indicate that on that day a document was discussed titled Truck Emergency Breakdown and Roadside Safety (3.4.3 – TEBARS and attached). That document discusses breakdown procedures for trucks. However, as explained by the attending WorkSafe Victoria Inspector, it was highly relevant to bus breakdowns and any response by CDCVic to broken down fleet. Following his visit, an Inspection Report (3.4.4 the Report and attached) was sent to Mr. Peter Duvcevski (email address of peter.duvcevski@cdcbus.com.au)

Enquiries have also revealed that on the Sub-Committee amongst others, there would be present the State CEOs, GM Safety and Risk and the National Health WHS Consultant (see 10.7.287 Doc 14 2.4.1.1 Terms of Reference, p.4 and attached).



On 21 April 2022, Mr. Soon Hua Nicholas Yap (believed to be also known as Mr. Nicholas Yap) and Mr. Anthony John Hopkins were the two directors of CDCSE.

It has also been established that the Bus Industry Confederation provided information about responding to bus breakdowns. That can be accessed at <https://movingpeople.com.au/bus-breakdown/>.

**Pursuant to the power vested in me by section 155 of the Act I require the following information to be provided by 5pm Friday 4 November 2022.**

... [irrelevant parts omitted]

**Copies of the following:**

CDCVic

1. Document showing the Austrian Business Number of CDCVic
2. Management chart of CDCVic covering the period of 1 January 2022 to 21 April 2022
3. Role description of the following (as of 21 February 2022):
  - a) Mr. Peter Duvcevski (believed the correct spelling)
  - b) Mr. Paul Murphy
  - c) Mr. John Ludviksen (believed the correct spelling)
4. Policies, procedures, Risk Assessments (or similar such document) in place before 21 February 2022, related to any kind of mechanical work performed by CDCVic employees on CDCVic vehicles whilst such vehicles would be stationary on roads
5. Policies, procedures, Risk Assessments (or similar such document) in place after 21 February 2022 to 21 April 2022, related to any kind of mechanical work performed by CDCVic employees on CDCVic vehicles whilst such vehicles would be stationary on roads
6. Resume or similar such document of the State CEO of CDCVic as of 21 February 2022.
7. Resume or similar such document of the State CEO of CDCVic as of 21 April 2022.
8. Role description of the State CEO of CDCVic as of 21 February 2022.
9. Role description of the State CEO of CDCVic as of 21 April 2022.
10. Any email sent or received by Mr. Duvcevski from 21 February 2022 to 30 April 2021, concerning the following:

- a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
11. Any email sent or received by Mr. Murphy from 21 February 2022 to 30 April 2021, concerning the following:
- a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
12. Any email sent or received by Mr. Ludviksen from 21 February 2022 to 30 April 2021, concerning the following:
- a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
- 13) Any email sent or received by the State CEO of CDCVic from 21 February 2022 to 30 April 2021, concerning the following:
- a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski

- e) The Report
- f) <https://movingpeople.com.au/bus-breakdown/>.

CDCCorp

- 14) Management chart of CDCCorp as of 21 February 2022
- 15) Management chart of CDCCorp as of 21 April 2022
- 16) Resume of similar such document for the GM Safety & Risk as of 21 February 2022
- 17) Resume or similar such document for the GM Safety & Risk as of 21 April 2022
- 18) Role description for the GM Safety & Risk as of 21 February 2022
- 19) Role description for GM Safety & Risk as of 21 April 2022
- 20) Resume or similar such document for the National WHS Consultant of 21 February 2022
- 21) Resume or similar such document for the National WHS Consultant as of 21 April 2022
- 22) Role description for the National WHS Consultant as of 21 February 2022
- 23) Role description for National WHS Consultant as of 21 April 2022
- 24) Any email sent or received by the GM Safety & Risk from 21 February 2022 to 30 April 2021, concerning the following:
  - a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
- 25) Any email sent or received by the National Health WHS Consultant from 21 February 2022 to 30 April 2021, concerning the following:
  - a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS

- c) Any mention of responding to broken down plant on the road
- d) Any mention of Tony Kopestenski
- e) The Report
- f) <https://movingpeople.com.au/bus-breakdown/>.

#### CDCSE

- 26) Resume of similar such document of the State CEO of CDCSE as of 21 February 2022
- 27) Any email sent or received the State CEO of CDCSE from 21 February 2022 to 30 April 2021, concerning the following:
  - a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
- 28) Any email sent or received by Mr. Yap from 21 February 2022 to 30 April 2021, concerning the following:
  - a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski
  - e) The Report
  - f) <https://movingpeople.com.au/bus-breakdown/>.
- 29) Any email sent or received by Mr. Hopkins from 21 February 2022 to 30 April 2021, concerning the following:
  - a) The site visit from WorkSafe Victoria on 21 February 2022
  - b) Any mention of TEBARS
  - c) Any mention of responding to broken down plant on the road
  - d) Any mention of Tony Kopestenski

- e) The Report
- f) <https://movingpeople.com.au/bus-breakdown/>.

### Questions requiring response

*To assist in compliance with the notice the answers to the following questions are required to be providing in writing.*

1. What services do CDCVic provide?
2. How many mechanics do CDCVic employ?
3. How many buses does CDCVic operate?
4. Prior to 21 April 2022, how did the mechanics employed by CDCVic respond to broken down buses off site and if necessary, conduct roadside repairs?
5. If yes, what training was provided to them to undertake such work?
6. In relation to 10.7.289 National Safety Update – February 2022, what work (if any) was undertaken by CDCCorp, or any of its business units in relation to information supplied by WorkSafe Inspector Tony Kopestenski relating to TEBARS?
7. In relation to the bus breakdown video at <https://movingpeople.com.au/bus-breakdown/>, what work (if any) was undertaken by CDCCorp, or any of its business units in relation to responding to bus breakdowns.

[... Further irrelevant parts omitted] ...”

[57] While the notice refers to the Regulator investigating the incident in Nambour, the power is expressed to be exercised for the purpose of monitoring and enforcing the WHS Act.

[58] The application seeks the following remedies by authority of s 10 of the *Civil Proceedings Act* 2011:

- “1 It is declared, pursuant to s 10 of the *Civil Proceedings Act* 2011 (Qld), that the Notice to Give Information to the Applicant dated 19 October 2022 (**Notice**), purportedly given under s 155 of the *Work Health and Safety Act* 2011 (Qld) is invalid as beyond power to issue.
- 2 Alternatively to 1 above, and only to the extent they are severable, that the following parts of the Notice are invalid as beyond power to issue:
  - (a) ‘Copies of the following’, Items 1 to 13 and 24 to 25;
  - (b) ‘Questions requiring response’, Items 1 to 7.”<sup>31</sup>

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<sup>31</sup> Originating Application filed 30 January 2023.

- [59] The notice of 19 October 2022 came after other notices had been served and communication passed between the Regulator and solicitors acting for the CDC Group.
- [60] On 25 April 2022, a delegate of the Regulator issued a notice under s 155 of the WHS Act to CDC South East Queensland. A response was given to that notice on 6 May 2022. Further correspondence was exchanged.
- [61] On 9 June 2022, a further notice under s 155 was served by a delegate of the Regulator. That was addressed to CDC South East Queensland. A response was given on 24 June 2022. There was then further correspondence.
- [62] On 12 August 2022, a further notice was served by a delegate of the Regulator. Again, this notice was issued under s 155 but this time it was addressed to Comfortdelgro Corporation Australia. That provoked a response on 9 September 2022. Included in that response were Terms of Reference of an organisation known as the “CDC Comfortdelgro Australia Pty Ltd Safety Sub-Committee” (the sub-committee). The terms of reference were issued in May 2021. The relevant parts of the terms of reference are:

“2. *Purpose*

*The Committee has been established to set the organisation’s safety culture, it’s safety strategy, ensure risk oversight nationally, monitor subsidiary compliance, and importantly, ensure that CDC’s Directors & Officers execute due diligence by:*

- *Keeping up to date with WHS matters that affect CDC, and our industry; and*
- *Understand the business, its WHS hazards, and risks; and*
- *Evaluate, and ensure, that CDC has the right resources and processes in place to eliminate or minimise WHS risks; and*
- *Ensure CDC has effective processes to receive and respond to incidents, hazards and other WHS information; and*
- *Verify the processes set out above through assurance and review.*

...

3. *Background*

*CDC has grown substantially and operates a multi-modal transportation business in NSW, Victoria, Northern Territory, Queensland and Western Australia. The change in core operational deliverables, combined with growth into new States, and in existing contracts brings with it a variety of new complexities, and challenges within the WHS area.*

*Accordingly, an enhanced level of governance is required to build an integrated and harmonised safety standard and culture across our national organisation. The principle purpose of this Committee is support and mandate the development of plans to meet this outcome.*

...

6. *Committee Members*

- *CEO Australia*
- *State CEOs*
- *GM Safety & Risk*
- *National WHS Consultant*
- *CDC Internal Legal Counsel*
- *CFO Australia*
- *State Safety, Finance, and or Ops Leads as required*<sup>32</sup>

- [63] Mr McIlveen obtained information that a Worksafe Victoria enquiry had been conducted relating to CDC Victoria on their response to broken down vehicles.
- [64] On 21 September 2022, another notice was issued under s 155 of the WHS Act but this time addressed to CDC Victoria.
- [65] That prompted a letter dated 6 October 2022 from CDC’s solicitors, the effect of which was to assert, consistently with Mr Yap’s later affidavit sworn in these proceedings, that the various entities operated independently. The letter asks for an explanation as to how the Regulator’s power under s 155(2) of the *WHS Act* can be used to require CDC Victoria to provide documents, etc. Correspondence passed but then the notice of 19 October 2022 was served. Further correspondence passed to which there is no need to refer.
- [66] Comfortdelgro Corporation Australia challenges the notice on three grounds. By Ground 1, it says that Mr McIlveen could not have held the requisite belief because each of CDC Victoria, CDC South East Queensland and Comfortdelgro Corporation Australia are all separate companies with separate legal identities. There is the unchallenged evidence of Mr Yap that each company had its own safety management system and was responsible for managing its own safety issues. Secondly, it is said that there is nothing to suggest that documents or information relating to CDC Victoria will have any bearing on an investigation relating to CDC South East Queensland or the accident which occurred in Queensland. Thirdly, there is no reference to a particular sub-committee meeting or discussion. Therefore, no link can be made, it is said, between the respective corporations. Fourthly, the Regulator was aware of the separate operation of the companies, at least by 6 October 2022. It is submitted by the applicant that, given those facts, reasonable grounds to found the belief cannot be found.
- [67] By Ground 2 it is alleged that irrelevant considerations were taken into account. Comfortdelgro Corporation Australia identifies these things as the irrelevant considerations:
- “a. CDC South East Queensland Pty Ltd is part of a group of companies that includes the Applicant and CDC Victoria Pty Ltd – said to create a ‘nexus’ between the companies (the significance of the ‘nexus’ and its type is not stated);
  - b. the business of CDC Victoria Pty Ltd being ‘very similar’ to that of the Applicant (how so is not stated);

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<sup>32</sup> Emphasis as appears in the affidavit of Mr. McIlveen at paragraph [14].

- c. a Safety Sub-Committee exists that includes amongst its members CEOs of the various divisions and the terms of reference for which refer to safety culture and standards throughout the Group; and
- d. an inspection by the regulator in Victoria relating to roadside repair vehicles occurred in Victoria in relation to CDC Victoria Pty Ltd.”<sup>33</sup>

- [68] The submission was that the relationship between the various companies was irrelevant to the requisite belief concerning incidents that occurred in Queensland.
- [69] By Ground 3 it is alleged that there was no evidence upon which a conclusion that the companies were relevantly interrelated could be made given the evidence of Mr Yap.
- [70] All these submissions ought to be rejected. They misunderstand the WHS Act.
- [71] There was an incident in Queensland where two employees of CDC South East Queensland were killed while repairing a vehicle which was broken down beside the roadway. By s 9 of the WHS Act, CDC South East Queensland was obliged to ensure the safety of those workers “as far as reasonably practicable”.
- [72] CDC South East Queensland, as at the date of the notice, was still conducting a bus line as are no doubt other companies in Queensland. Mr McIlveen’s enquiries were into “the reasonably practicable component of the matter”.<sup>34</sup> Mr McIlveen decided to gather information about things “including into industry practice relating to the breakdown of vehicles and repairs including on roads”<sup>35</sup>. In other words, Mr McIlveen as delegate of the Regulator, sought to enquire as to whether industry practices in roadside repairs were such as to ensure safety “so far as reasonably possible”. By so enquiring, Mr McIlveen was seeking to monitor compliance with the Act. Further, gathering information of non-compliance is one step in then enforcing the Act.
- [73] Comfortdelgro Corporation Australia’s apparent preoccupation with proving that the companies in the CDC Australia Group are each autonomous is misplaced. The companies operating in Victoria do not need to be organisationally linked to CDC South East Queensland before any can be the subject of a notice. Under s 155 of the WHS Act, if a company totally unrelated to the Comfortdelgro Australia Group had been involved in an incident where workers had been injured while effecting roadside repairs, then that company would no doubt possess information and documents as to the circumstances of the accident and what safety measures were then in place. Therefore, information about that incident will be relevant to “the reasonably practicable component of the matter” of the safety of workers when effecting roadside repairs, and therefore relevant to any investigation of the incident at Nambour. That is so because the inspector can compare the safety measures in place before the two accidents and consider whether the safety measures in place in Nambour were all those which could “reasonably practicably” have been deployed.

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<sup>33</sup> Applicant’s outline of submissions at paragraph 28.

<sup>34</sup> His affidavit, paragraph 9; clearly a reference to s 19(1)(a) of the WHS Act.

<sup>35</sup> His affidavit, paragraph 7.



- [74] It can also be imagined that entities which do not operate transport businesses at all may also be susceptible to notices under s 155. A university, for example, who had conducted a study on safety measures which could be taken to protect roadside workers would have documents and information that “will assist the Regulator to monitor or enforce compliance with [the WHS Act]” as the study would assist the Regulator to assess the practices of companies conducting transport businesses when roadside repairs are undertaken.
- [75] Notwithstanding Mr Yap’s evidence that the various companies are separately managed, there is evidence in the form of the terms of reference of the sub-committee that a group approach to safety is being taken by the CDC Australia Group through the sub-committee.
- [76] Given that CDC Victoria was involved in some incident arising from roadside repairs, there are reasonable grounds to believe that Comfortdelgro Corporation Australia, being the holding company of the CDC Australia Group and a participant in the sub-committee, will be in possession of information and documents relevant to the compliance of CDC South East Queensland and other bus operators with the WHS Act.
- [77] I so conclude because:
- (i) CDC Victoria was involved in an incident where workers working on a vehicle by the roadside were injured;
  - (ii) that incident occurred before the fatal incident near Nambour;
  - (iii) WorkSafe Victoria initiated an investigation in relation to CDC Victoria’s management of the circumstances leading to the incident in Victoria;
  - (iv) the only rational inference is that WorkSafe Victoria’s investigation would have considered whether CDC Victoria had taken all “reasonably practicable steps” to ensure safety to their workers;
  - (v) while Mr Yap’s evidence that the various divisions of the CDC Australia Group operate independently can be accepted, there is a national approach by Comfortdelgro Australia Group to safety. As the terms of reference of the sub-committee show, CDC Victoria, Comfortdelgro Corporation Australia and CDC South East Queensland are all parties to this approach;
  - (vi) employers in Queensland are obliged to take all “reasonably practical steps” to ensure safety including to workers performing roadside repairs; and
  - (vii) information and documents relevant to the steps that CDC Victoria took or did not take, WorkSafe Victoria’s investigations into those steps and the sub-committee’s reaction to them are all relevant to questions of compliance with the WHS Act in Queensland and, therefore, those documents and information “will assist the Regulator to monitor or enforce compliance with [the WHS Act]”.
- [78] Ground 1 fails.

[79] As to Ground 2, the considerations which are said to be irrelevant are, in my view, relevant to the decision to issue the notice.

[80] Dealing with them as they are identified in paragraph [67] of these Reasons:

- (a) the evidence shows there is a nexus between the companies. They are all part of a group of companies that take a joint approach, through the sub-committee, to questions of safety;
- (b) the business of CDC Victoria is indirectly the business of the applicant in the sense that the applicant is the holding company of CDC Victoria and it involves itself, through the sub-committee, in CDC Victoria's business at least in relation to issues of safety;
- (c) the sub-committee is an example of the joint approach by all the members of the Comfortdelgro Australia Group to safety. Comfortdelgro Corporation Australia's participation in the sub-committee tends to show that it will have information and documents relevant to the incident in Victoria, CDC Victoria's response, WorkSafe Victoria's investigation and the sub-committee's response. All of which are relevant to whether employers operating in Queensland, including CDC South East Queensland, are taking "all reasonably practicable" steps to ensure safety of workers conducting roadside repairs to vehicles; and
- (d) the Regulator in Victoria has conducted an investigation into the incident in Victoria. Such investigation must have included consideration of what steps can be reasonably practicably undertaken to protect workers effecting roadside repairs.

[81] Ground 2 fails.

[82] As to Ground 3, the point sought to be made is that the evidence of Mr Yap shows that there is no managerial nexus between the various companies. As previously explained, there is a nexus. It is the safety sub-committee. In any event, for the reasons explained, the absence of a nexus would not invalidate the notice.

[83] Ground 3 fails.

***The alternative challenge to the production of items 1 to 13 and 24 to 25 and questions items 1 to 7***

[84] The only submission made in support of the severance of these items from the notices is at paragraph [46] of the applicant's outline of argument:

"46 Alternatively that declaration ought to be directed to the following parts of the notice, as those most centrally affected by the matters impugned above [the three grounds of challenge to the validity of the notice]"

[85] As the validity challenge has failed, so should the challenge to these individual items. Demand for their provision is clearly within power.

[86] Items 1 to 13 concern CDCVic, its safety procedures applicable to mechanical work being conducted by employees by the roadside, and the WorkSafe Victoria

investigation. For the reasons already explained, all these matters are relevant to whether all “reasonably practicable” steps are being taken by operators and were taken in Nambour.

- [87] Items 24 and 25 directly concern Comfortdelgro Corporation Australia. The documents sought are relevant to the WorkSafe Victoria investigation and the response to it.
- [88] Questions 1 to 5 all concern CDC Victoria’s policies towards conducting roadside repairs. For reasons already explained, this is relevant to enquiries being conducted into compliance generally and the incident in Nambour in particular.

**The determination of application BS1015 of 2023: *Vella, Duvcevski, Sutton and Sheills v Heath and Lucy***

- [89] There are four applicants, each of whom received a notice pursuant to s 155 of the WHS Act. These notices were issued either by Mr Heath or Mr Lucy. They all refer to the incident in Nambour but all purport to be issued upon a belief concerning compliance and enforcement.
- [90] Ms Vella, the first applicant, was employed by CDC National Pty Ltd (CDC National) as a work health and safety consultant. She lives and works in New South Wales.
- [91] Mr Duvcevski, the second applicant, was employed by CDCVic. He lives and works in Victoria.
- [92] Mr Sutton, the third applicant, like Ms Vella, lives in New South Wales and was employed by CDC National as General Manager Safety and Risk.
- [93] Mr Sheills, the fourth applicant, like Mr Duvcevski, was employed by CDCVic. He held the position of Workplace Health and Safety Manager and lives in Victoria.
- [94] Ms Vella’s notice was given by Mr Heath, the first respondent, on 23 January 2023.
- [95] Mr Duvcevski’s notice was given by Mr Lucy, the second respondent, on 8 December 2022.
- [96] Mr Sutton’s notice was given by Mr Lucy on 6 December 2022.
- [97] Mr Sheills’ notice was given by Mr Lucy on 7 December 2022.<sup>36</sup>
- [98] The application challenging the notices was brought under Part 5 of the *Judicial Review Act 1991* for prerogative orders. What is sought in the application is<sup>37</sup>:

“The First Applicant claims:

1. The following requirements in the notice dated 23 January 2023 issued by the First Respondent in purported pursuance to s155 of the *Work Health and Safety Act 2011* (Qld) to the First Applicant (**The Vella Notice**) are beyond power:

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<sup>36</sup> Mr Sheills’ notice was dated a day earlier being 6 December 2022.

<sup>37</sup> The application is faithfully reproduced notwithstanding the appearance of obvious errors.

- a. Items 2 and 4 under “Copies of the following”.
  - b. Items 12 to 14, 17, 22, 25(a) and 26 under “Questions requiring response”.
2. The identified requirements in Vella Notice be:
- a. set aside by a certiorari order under s 30(1)(a) of the *Judicial Review Act 1991 (Qld)*;
  - b. alternatively, declared invalid and of no effect.

#### The Second Applicant claims

1. The notice dated 8 December 2022 issued by the Second Respondent in purported pursuance to s 155 of the *Work Health and Safety Act 2011 (Qld)* to the First Applicant (**The Duvceviski Notice**) be:
- a. set aside by certiorari order under s 30(1)(a) of the *Judicial Review Act 1991 (Qld)* as beyond power;
  - b. and alternatively, declared invalid any of no effect.
2. Alternatively to 1. above, Items 1 to 6 under “Copies of the following” and Items 9 to 38 under “Questions requiring response” of the Duvkevski Notice be:
- a. set aside by a certiorari order;
  - b. alternatively, declared invalid and of no effect.

#### The Third Applicant claims

1. The following requirements in the notice dated 6 December 2022 issued by the Second Respondent in purported pursuance to s 155 of the *Work Health and Safety Act 2011 (Qld)* to the First Applicant (**The Sutton Notice**) are beyond power:
- a. Items 2 under “Copies of the following”;
  - b. Items 15, 17, 25, 32 to 41 and 46 to 51 under “Questions requiring response”;
2. The identified requirements in Sutton Notice be:
- a. set aside by a certiorari order under s 30(1)(a) of the *Judicial Review Act 1991 (Qld)*;
  - b. alternatively, declared invalid and of no effect.

#### The Fourth Applicant claims

1. The notice dated 6 December 2022 issued by the Second Respondent in purported pursuance to s 155 of the *Work Health and Safety Act 2011 (Qld)* to the Fourth Applicant (**The Sheills Notice**) be:
- a. set aside by certiorari order under s 30(1)(a) of the *Judicial Review Act 1991 (Qld)* as beyond power;

- b. alternatively, declared invalid any of no effect.
- 2. Alternatively to 1. above, Item 1, under “Copies of the following” and Items 10 to 26, under “Questions requiring response” be:
  - a. set aside by a certiorari order;
  - b. alternatively, declared invalid and of no effect.”<sup>38</sup>

[99] Each of the four notices contain an assertion that it was issued by a force of s 155 of the WHS Act. Each of the notices contain this:

“I have reasonable grounds to believe that you are capable of giving information and producing documents that will assist the regulator to maintain or enforce compliance with the Act”.

### *Ms Vella’s Notice*

[100] Ms Vella’s notice is not challenged in its entirety. It is only alleged that some of the requests within the notice are beyond power. As to the documents requested, these are challenged:

“2. Any email related to question 16 (a, b, and c) <sup>39</sup>below in the questions requiring a response section.

...

4. Any email related to the sharing of 10.11.24a<sup>40</sup> prior to 21 April 2022 (please ensure they are provided in their original format and not PDF’d)”

[101] As to the request for information, the following questions are challenged:

“12. What was the role of Mr. Warren Sutton?

13. What was the role of Mr. Sheills?

14. What was the role of Mr. Duvcevski?”

...

17. Are you aware of this document (10.11.24a) was ever shared across any other business units?

...

22. Was the bus breakdown document (10.11.16b) ever discussed with Mr. Sutton?”

...

25. Prior to 21 April 2022, did you ever discuss (verbally or by email) the system of work used in any CDC associated

<sup>38</sup> Costs and ancillary relief are also sought.

<sup>39</sup> The reference to “(a, b and c)” must be a reference to the passage headed “Documents required” on page 2 of the notice.

<sup>40</sup> 10.11.24a is the cypher given to a particular document.

companies (including, but not limited to CDCSE and CDCVic) in relation to broken down buses on a road with any of the following:

a) Mr. Warren Sutton? (f yes, when and what was said)

...

26. Is there any other information you believe WHSQ should know that may assist with this investigation?"

[102] Document request 2 consists of emails relating to question 16. There is no objection to question 16. If question 16 is within power, then in the absence of any specific objection (as to form, etc.) a request for any email relating to question 16 would also be within power. There are no submissions of Ms Vella directed specifically to document request 2, so the challenge to the notice in that respect fails.

[103] Document request 4 concerns a document referred to as "10.11.24a". That document is a "Safe Work Method Statement" issued by CDC Victoria relating to work to be done to vehicles which are broken down on the road.

[104] The objections to document request 4 and questions 12, 13, 14, 17, 22 and 25(a) are made on the basis that Mr Heath could not have held the requisite reasonable belief due to the fact that safety management of CDC National was allegedly independent to that of CDC South East Queensland.

[105] For the reasons explained in relation to application 1016 and the notice issued to Comfortdelgro Corporation Australia, the exercise of discretion to issue a notice pursuant to s 155 of the WHS Act is not dependent upon any managerial connection between CDC South East Queensland and Comfortdelgro Corporation Australia.

[106] There is a reasonable basis for Mr Heath to have held the belief that Ms Vella has information and documents concerning steps taken to ensure safety to workers who are repairing vehicles by the roadside. That is sufficient to maintain the request for the documents and information challenged.

[107] The objections to document request 4 and questions 12, 13, 14, 17, 22 and 25(a) are not made out.

[108] Information request 26 requires Ms Vella to:

- (a) consider all information which she either knows or to which she has access;
- (b) form an opinion as to whether that information "may assist" WHSQ with its investigations; and
- (c) form a belief as to whether any such information is such that WHSQ "should know" the information.

[109] Section 155 of the WHS Act vests coercive powers in the Regulator to require production of documents and information. The statute provides criminal sanctions

for failure to comply. In construing s 155, the principle of legality is relevant<sup>41</sup> although it may have a somewhat limited application here to the construction of s 155, as the fundamental purpose of the section is to abrogate criminal rights and require production of documents and information.<sup>42</sup>

- [110] As already observed, s 155 requires the Regulator or its delegate to form a belief on reasonable grounds that the person is capable of giving information and providing documents relevant to a particular topic. Section 155(2) then provides that the Regulator may require the person to give “that information of which the person has knowledge” or “to produce to the Regulator ... those documents”.
- [111] On a proper construction of s 155, it is for the Regulator (or its delegate) to identify the information or documents. It may do this broadly because, of course, at the time of issuing the notice it will not have the documents or the information. However, s 155 does not authorise the issuance of a notice which casts upon the recipient the role of identifying the information and documents caught by the notice by reference to the recipient’s belief as to what information “may assist” the Regulator in its investigations, let alone whether that is information that the Regulator “should know”.
- [112] Information request 26 is not authorised by s 155 and it is beyond power.

***Mr Duvcevski’s notice***

- [113] Challenges were made to the entirety of the notice issued to Mr Duvcevski. The bases for the challenge are:
- (a) Mr Duvcevski’s role was limited to the operations of CDC Victoria, which is a separate entity to CDC South East Queensland. Mr Duvcevski had no involvement with CDC South East Queensland;
  - (b) Worksafe Victoria’s interaction with CDC Victoria is irrelevant to inquiries being made by the Regulator under the WHS Act into work health and safety issues in Queensland; and
  - (c) there is no evidence of any interaction between any officer or employee of CDC South East Queensland with WorkSafe Victoria and no knowledge of any employee in Queensland in WorkSafe Victoria’s investigations, so Mr Duvcevski cannot give any relevant information.
- [114] These grounds of challenge rely on the misunderstanding by all four applicants that the workplace incident in Victoria and CDCVic’s safety policies concerning bus breakdowns is irrelevant to the Regulator’s role in monitoring and enforcing compliance with the WHS Act. As previously explained, the incident in Victoria and the policies which CDCVic had in place to deal with repair of bus breakdowns are relevant to the issues being investigated by the Regulator.
- [115] Mr Duvcevski’s challenge to the notice as a whole should be dismissed.

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<sup>41</sup> *Potter v Minahan* (1908) 7 CLR 277 at 304; and *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at [307]-[314]; and recently considered in *Hurt v The King* [2024] HCA 8 at [106]-[107].

<sup>42</sup> *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at [314]; and *Hurt v The King* [2024] HCA 8 at [106].

[116] In the alternative, there are specific objections to the following:

- “1. Any document (such as an email) mentioned in question 12 below.
2. Any document (such as an email) mentioned in question 19 below.
3. Any document (such as an email) mentioned in question 21 below.
4. Any document mentioned in question 24 below.
5. Any document mentioned in question 25 below.
6. Any document (such as an email) mentioned in question 30 below”.

[117] The requests which are challenged are requests 9 to 38. They are as follows:

**“CDC Victoria Pty Ltd (CDCVic)**

9. When did you start working at CDCVic?
10. What was your first role at CDCVic?
11. What is your current role at CDCVic?

**WorkSafe Victoria**

It is believed on or around 18 February 2022, you have interacted with an Inspector from WorkSafe Victoria (the interaction). It is believed at one-point, safe systems of work relating to responding to broken down plant on the road were discussed.

12. Prior to the interaction, what was the system of work that CDCVic employed relating to responding to broken down plant on the road?
13. In as much detail as possible, what happened during the interaction?
14. In as much detail as possible, what was discussed and by whom in relation to safe systems of work relating to broken down plant on the road?
15. At any stage was the TEBARS document discussed?
16. If yes, what was your viewpoint on the document or its possible contents (if not seen)?
17. Did you at any point obtain a copy of that document?
18. If yes, how and when?

**After WorkSafe Victoria**

19. Following the interaction, did you communicate either verbally, or via any other means (including email) to any manager inside CDCVic, CDCCorp or any related CDC entity)



about the visit and specifically any discussion around safe systems of work related to safe system of work relating to broken down plant on the road were discussed?

20. If yes to the above question, to whom did you communicate with?
21. Following the interaction, did you communicate either verbally, or via any other means (including email to any manager inside CDCVic, CDCCorp or any related CDC entity) any copy of the TEBARS document?
22. If yes to the above question, to whom did you communicate with?

**Documents- 10.11.16 Email from yourself to Mr. Nathan Sheills dated 30 November 2020 and 10.11.16a Bus Breakdown Guide (draft) attached to the email**

23. Explain your role in the meetings connected with the Bus Breakdown Guide being created
24. In relation to 10.11.16a, did CDCVic have any kind of policy in place that would correspond to page 16 of the document, in relation to the bottom diagram, connected to the placement of cones, triangles and responding vehicles when mechanics would attend to a broken-down bus?
25. If yes, was that in a written down procedure?
26. If no, why not?
27. In the email (10.11.16), you wrote that “*As discussed attached are documents from BusNSW regarding Bus Breakdowns. This will be discussed at Exec in the first instance.*” What is the Exec?
28. When was this document (10.11.16a) discussed in the Exec?
29. Who was present in the Exec?
30. Was this document (10.11.16a) ever discussed with any of the following individuals (and if yes, explain in as much detail as to what was said, to whom and when was it said, or even communicated via email)
  - a) Mr. Soon Hua Nicholas Yap (believed to be known as Mr. Nicholas Yap)
  - b) Mr. Anthony John Hopkins?
  - c) Mr. Warren Sutton?
  - d) Ms. Tammy Vella?

**10.11.21 CDCVic minutes dated 14 December 2021**

31. Was this the Exec meeting that 10.11.16a was discussed at?

32. If yes, what exact part of 10.11.21 is it recorded that the document (10.11.16a) was discussed?
34. If no, what meeting was it reported it to?

**Email – 10.11.17 Email from Mr. Warren Sutton to yourself with Ms. Vella and Mr. Sheills copied into it dated 1 December 2022**

31. Did this email contain the attachment 10.11.16a?
32. In that email, Mr. Sutton stated, after you sent him an email (believed to be about 10.11.16), *“Thanks for sending this through, hadn’t seen it, and you’re right mate – we need to have a look at this and pull together a process to ensure best practice. I’ll pick this up with Tammy tomorrow and we’ll organise a discussion next week.*

Do you know what the result of the meeting was concerning the document (10.11.16a)?

33. To the best of your knowledge did this document change any work procedures at CDCVic?
34. To the best of your knowledge did this document change any work procedure at CDCSE?

**10.11.20 Email from yourself to Ms. Marissa Panzarino and copied to Mr. Nathan Sheills dated 12 July 2022 and 10.11.20a SWMS for on the road breakdown**

35. Who is Marissa Panzarino?
36. What is her role?
37. What is Forest (logo on the SWMS)?
38. How did this document come into your possession?”

[118] The documents requested are all expressed to relate to information requests. If the information requests are valid, then so are the requests for the corresponding documents.

[119] Questions 9 to 38 relate to:

- (a) Mr Duvcevski’s role at CDCVic;
- (b) the WorkSafe Victoria investigation; and
- (c) procedures that have been adopted and steps taken after the interaction with WorkSafe Victoria concerning safety procedures at bus breakdowns.

[120] For the reasons already explained, these are all proper subjects for a notice under s 155 of the WHS Act.

*Mr Sutton's notice*

[121] There is no general challenge by Mr Sutton to the notice as a whole. He challenges the production of item 2 and the provision of information under requests 15, 17, 25, 32 to 41 and 46 to 51.

[122] Document request 2 is:

“2. Any documentation (such as emails, notes etc.) that would assist WHSQ in understanding how the incident took place and what could have been done to prevent it from occurring.”

[123] The challenged information requests are:

“Knowledge of CDCVic

15. To the best of your knowledge, what was the business that CDCVic was engaged in?

...

17. What was the relationship between CDCCorp with CDCSE and CDCVic?

...

25. Prior to February 2021, in your role as GM Safety & Risk, what was your knowledge of how CDCVic responded to broken down buses?

...

National Safety Update and TEBARS document

32. Were you present at this meeting in February 2022?

33. Can you recall any conversation regarding a WorkSafe Victoria visit to sites of CDCVic?

a. If yes, what was discussed and by whom? (Please use full names where possible and indicate what their roles were)

34. Can you recall any conversation regarding Inspector Tony Kopestenski?

a. If yes, what was discussed and by whom? (Please use full names where possible and indicate what their roles were)

35. Can you recall any conversation regarding the TEBARS document?

a. If yes, what was discussed and by whom? (Please use full names where possible and indicate what their roles were).

TEBARS document

36. Did you ever see a copy of the TEBARS document?
  - a. If yes, when was it?
  - b. If yes, who gave you that document?
  - c. If yes, how was the document given to you, for example in person or by email?
37. Did you ever discuss the contents in general with anyone?
  - a. If yes, what was discussed, with whom and when?
38. Did you ever specifically discuss the TEBARS document in relation to responding to broken down plant?
  - a. If yes, what was discussed, with whom and when? (Please use full names where possible and indicate what their roles were)

Bus Industry Confederation (BIC)

39. Did you ever receive information from the BIC (either in draft or final form)?
  - a. If yes, how did you receive such information?
40. Did you ever see the video attached to the link <https://movingpeople.com.au/bus-breakdown/> ?
  - a. If yes, did you see this material before or after the incident?
  - b. If before, did you ever discuss it with anyone and if so, who, when and what was that discussion about?
  - c. If you saw the material after the incident, did you ever discuss it with anyone and if so, who, when and what was that discussion about?
41. Did you ever see any booklets or documents relating to the video?
  - a. If yes, did you ever discuss it with anyone and if so, who, when and what was that discussion about?
- ...
46. Have you ever seen 10.1.43b Breakdown Procedure?
  - a. If yes, when?
  - b. If yes, did you discuss it with anyone and if so, when did that conversation take place?
47. Have you ever seen 10.1.43c Portable Warning Triangle?
  - a. If yes, when?

- b. If yes, did you discuss it with anyone and if so, when did that conversation take place?

Email and attached document from Mr. Warren Sutton to Mr. Nathan Sheills and Ms. Tammy Vella

The following questions related to 10.11.24 Email from yourself to Mr. Nathan Sheills and Ms Tammy Vella, dated 9 September 2021, and the document attached to that email, 10.11.24a SWMS – On Road Breakdown.

- 48. In that email you state that *“This is great – really clear, I like the diagram and it should be something we use as a recurring toolbox talk with our breakdown crews to ensure its’ understood/followed.”* Did you ever use the document to conduct either directly or indirectly toolbox talks with breakdown crews?
  - a. If yes, provide as much detail as possible what entities were involved
  - b. If that didn’t take place, why not?
- 49. In that email you state that *“I made one small recommendation about being clear on what a safe area looks like in terms of parking for breakdown recovery services – but other than that, it’s awesome”* Please explain this sentence in as much details as possible.

Email from Mr. Sutton to Mr. Peter Duvceviski dated 1 December 2021 (10.11.17)

The following questions relate to an email from yourself to Mr. Peter Duvceviski dated 1 December 2021 (10.11.17). This email appears to discuss draft bus breakdown guides, which it is strongly believed relate to the BIC documentation about the same issue.

- 50. In the email you stated *“Thanks for sending this through, hadn’t seen it, and you’re right mate – we need to have a look at this and pull together a process to ensure best practice. I’ll pick this up with Tammy tomorrow and we’ll organise a discussion next week.”* What did you do in relation to this statement?
- 51. As a result of this email, did you implement any changes in CDCCorp or any entities in relation to the way broken down buses were responded to. If yes, what were they?
  - a. If no to the above question, why not?”

[124] Document request 2 is beyond power. The power in s 155 is limited in the way which I have previously explained.<sup>43</sup>

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<sup>43</sup> Paragraph [109]-[111] of these Reasons.

- [125] Document request 2 requires Mr Sutton to assess how particular documents might “assist WHSQ in understanding” the incident which occurred in Victoria. He then has to assess whether the documents “assist WHSQ in understanding” what steps could have been taken to prevent the incident in Victoria from occurring. A notice requiring Mr Sutton to make those assessments is beyond the power conferred by s 155 of the WHS Act and document request 2 is therefore invalid.
- [126] The information requests that are challenged concern procedures and steps for responding to bus breakdowns and information related thereto. For the reasons earlier explained, such subject matters are within the scope of the power in s 155.
- [127] Mr Sutton’s challenge to the provision of the information should be dismissed.

***Mr Sheills’ notice***

- [128] Mr Sheills challenges the notice in its entirety. Alternatively, he challenges the production of document request 1 and information requests 10 to 26.

- [129] Document request 1 is:

“1. As of 21 April 2022, any document to show what the documented system of work was in place at CDCVic relating to mechanics responding to broken-down plant on a public road.”

- [130] The challenged information requests are<sup>44</sup>:

“Documentation 1

Workplace Health and Safety Queensland have obtained an email dated 7 September 2021 sent from yourself to Mr. Warren Sutton and Ms. Tammy Vella (10.11.23.) Attached to that email is a Safe Work Method Statement (SWMS) (10.11.23a).

10. Who is Mr. Warren Sutton?
11. At the time of sending that email, what was his role?
12. Who is Ms. Tammy Vella?
13. At that time of sending that email, what was her role?
14. The SWMS describes the work activity as “*on road breakdown – emergency response*.” Prior to the drafting of this SWMS, was there a documented system of work in place for mechanics to respond to broken down plant?
15. If yes to the above question, what was it?
16. Who drafted the SWMS (10.11.23a)?
17. Was the SWMS ever introduced?
18. If yes to the above question, who trained the mechanics in the use of the SWMS?

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<sup>44</sup> The notice is faithfully reproduced notwithstanding the appearance of obvious errors.

## Documentation 2

Workplace Health and Safety Queensland have obtained an email dated 9 September 2021, from Mr. Sutton to yourself and Ms. Vella copied into it (10.11.24). Attached to that email is the SWMS with some minor changes (10.11.24a). In that email it is stated: *“Can I suggest you float this across each of the other BUs, get them to review as well, because it’s something we can shut down nationally and it highlights the great work you and Peter have done to address this risk”*

19. Did you ever share this document with any other BUs?
20. If yes, did you share it with CDCSE at any stage?
21. If yes to the above question, to whom did you share it and when?
22. Prior to 21 April 2022, did anyone from CDCSE ever speak to you about this SWMS?
23. If yes, to the above question, to whom did you speak to and what was said?

## 21 April 2022

24. As of 21 April 2022, did CDCVic have a documented system of work relating to mechanics responding to broken down plant.
25. If yes, please describe in detail who mechanics would respond to a broken-down plant situated on a public road

## Any other information

26. Is there any other information you believe WHSQ should know that may assist with this investigation?”

- [131] The challenge to the notice as a whole is that there is allegedly no relevant managerial connection between CDC South East Queensland and CDC Victoria, so enquiries about CDC Victoria’s activities and the incident in Victoria are beyond the power vested by s 155. For reasons previously explained, that submission is rejected.
- [132] The challenge to document request 1 should be rejected. Document request 1 is relevant to systems of work on broken down plant on a public road, and for the reasons previously explained, is a relevant subject matter of enquiry to pursue by the coercive powers in s 155.
- [133] With the exception of information request 26, all the challenged information requests are valid. The requested information concerns safety systems when responding to broken down plant by the roadside and communications with CDC South East Queensland. For the reasons earlier explained, these are valid subjects of interrogation.

- [134] Information request 26 requires Mr Sheills to form his belief as to what “other information WHSQ should know that may assist” with the investigation. For the reasons explained earlier, a request such as that is beyond power.

### **Conclusions and orders**

- [135] Three of the applicants in 1015 have been partially successful. It is appropriate to declare requirement 26 in the notice given to the first applicant, requirement 2 in the notice given to the third applicant and requirement 26 in the notice given to the fourth applicant invalid and of no effect. Otherwise, the application ought to be dismissed.
- [136] The applicant in 1016 of 2023 has been completely unsuccessful and the application ought to be dismissed.
- [137] All parties ought to be heard on the question of costs. It may be appropriate for that to be done in writing. I will order the exchange of written submissions and give leave to the parties to apply for leave to make oral submissions as to costs.

### **Orders**

#### ***Application BS1015 of 2023***

1. It is declared that:
  - (a) Information request 26 in the notice given to the first applicant on 23 January 2023 is invalid and of no effect.
  - (b) Document request 2 in the notice given to the third applicant on 6 December 2022 is invalid and of no effect.
  - (c) Information request 26 in the notice given to the fourth applicant on 7 December 2022 is invalid and of no effect.
2. Otherwise the application is dismissed.
3. The respondents file and serve any written outline on the question of costs by 4pm on 15 April 2024
4. The applicants file and serve any written outline in reply on costs by 4pm on 22 April 2024
5. All parties have leave to file an application by 4pm on 29 April 2024 seeking leave to make oral submissions on costs.
6. In the absence of an application being filed by 4pm on 29 April 2024 the question of costs will be determined on the written submissions received with no further oral hearing.

#### ***Application BS1016 of 2023***

1. The application is dismissed.



2. The respondent file and serve any written outline on the question of costs by 4pm on 15 April 2024.
3. The applicant file and serve any written outline in reply on costs by 4pm 22 April 2024
4. Both parties have leave to file an application by 4pm on 29 April 2024 seeking leave to make oral submissions on costs.
5. In the absence of an application being filed by 4pm on 29 April 2024 the question of costs will be determined on the written submissions received with no further oral hearing.