SUPREME COURT OF QUEENSLAND

CITATION:	*A v Central Queensland Network Authorised Mental Health Service and Anor* [2019] QSC 15
PARTIES:	**A** (applicant) **v** **CENTRAL QUEENSLAND NETWORK AUTHORISED MENTAL HEALTH SERVICE** (first respondent) AND **MENTAL HEALTH REVIEW TRIBUNAL** (second respondent)
FILE NO/S:	SC No 917 of 2018
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	8 February 2019
DELIVERED AT:	Rockhampton
HEARING DATE:	14 January 2019
JUDGE:	Crow J
ORDER:	**The Application is dismissed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – APPLICATION FOR JUDICIAL REVIEW – where applicant seeks reasons for decisions relating to his detention under the Mental Health Act 2016 (Qld) - where applicant seeks an application for an order to comply under section 38 of the Judicial Review Act 1991 (Qld) – whether respondents made relevant decisions - whether decisions are reviewable - whether decisions were spent for decisions – whether applicant has been denied natural justice – where attorney-general's certificate preventing disclosure was issued *Judicial Review Act* 1991 (Qld), s 4 s 31, s 32, s 36 s 38, *Mental Health Act* 2016 (Qld), s 12, s 32, s 33, s 34, s 35, s 36, s 39, s 41, s 48, s 49, s 50, s 51, s 52, s 55, s 56, s 57, s 58, s 421, s 502, s 504, s 703, s 733, s 736, s 756 *Police Powers and Responsibilities Act* 2000 (Qld), s 16, s 34 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 *Griffith University v Tang* (2005) 221 CLR 99 *Perry v Director of Public Prosecutions* (1985) 6 FCR 578 *Deloitte Touche Tohmatsu v Australian Securities Commission*

(1995) 128 ALR 318;
Mid Brisbane River Irrigators Inc v Treasurer and Minister for Trade of the State of Queensland [2014] 2 Qd R 592
Lynch & Standon v Brisbane City Council (1961) 104 CLR 353
Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd (2001) 208 CLR 199
Kioa v West (1985) 159 CLR 550
Coco v The Queen (1994) 179 CLR 427
Sankey v Whitlam (1978) 142 CLR 1
Younan v Crime Reference Committee; Hamdan v Crime Reference Committee [2012] QSC 225
R v Kashani-Malaki [2010] QCA 222
Z'Quessah Bosch v Office of the Information Commissioner & Anor [2016] QCATA 191
Masters v Corrective Services (2001) 121 A Crim R 173

COUNSEL: The applicant appeared on his own behalf
SJ Deaves for the first respondent
SG Moon for the second respondent

SOLICITORS: The applicant appeared on his own behalf
GR Cooper Crown Solicitor for the first respondent
GR Cooper Crown Solicitor for the second respondent

Background

[1] The applicant is a mature and tertiary educated man who resides in Rockhampton. The applicant first consulted a psychiatrist in the year 2000 and has, from time to time during the last 18 years, received the assistance of a psychiatrist. The applicant admits to having a mental illness, but denies he suffers from paranoid schizophrenia. A psychiatrist, Dr Manoharan, has diagnosed paranoid schizophrenia.

[2] The applicant has not worked for many years, has a mental illness, and also suffers from a painful neck condition which has resulted from a head-tail motor vehicle accident. The applicant acknowledges that he was suffering from pain as a result of a motor vehicle accident and had taken pain medication which has led to a disruption of his sleeping pattern such that he was often awake during the night time or early hours of the morning preparing meals.

[3] On 23 May 2018, the applicant returned home to find a letter nailed to his front gate. The letter is exhibited and makes complaint of the applicant making loud banging noises early in the morning, disrupting the neighbourhood and the ability of a neighbour to sleep. The letter particularises that banging had occurred on numerous occasions, including specifically 21 May 2018 at 1:50am and 22 May 2018 at 2:23am.

[4] On 3 June 2018 at 12:30pm, the applicant alleges three police officers attended at the applicant's residence and advised him of the noise complaint. The applicant denied making noise and promised to "take extra care to prevent any annoyances to my neighbours". At approximately 3:30pm on 3 June 2018, the applicant alleges two police officers attended at his residence and a similar conversation occurred.

[5] The applicant further alleges that on Tuesday 5 June 2018, the neighbour responsible for nailing the letter of complaint to the applicant's front gate entered the applicant's property, confronted the applicant and:

> "The neighbour told me that he didn't hear anything on the 22nd but that another neighbour told him that I was making noise that night. The neighbour also advised me that he was using a listening device to record my noise coming from my house. I gave the neighbour my landline telephone number and asked him to call me when the noise that was disturbing him was occurring."[1]

[6] The applicant then alleges that at 12:30am on 12 June 2018 the same complaining neighbour called the applicant's telephone number advising that he was making too much noise and that he had already called the police.

[7] From the applicant's perspective, what then occurred was that on the morning of 15 June 2018 at approximately 9:20am,

> "QLD Health employees and police officers violently forced entry into my premises. The QLD Health employees advised me they had an examination authority…"

[8] The applicant was then detained for seven days, from 15 June 2018 to 22 June 2018 in the emergency department at the Mental Health Unit. Following his discharge on 22 June 2018, the applicant wrote letters to both respondents requesting the reasons that he was detained. During his detention and on 18 June 2018, a treatment authority was issued, signed by a general practitioner, Dr Rashid, and by Dr Manoharan, psychiatrist.

[9] On 22 June 2018 the applicant was discharged to his home and thereafter received outpatient care.

[10] The applicant underwent a further psychiatric review by Dr Duggan, psychiatrist, on 5 July 2018.

[11] On 16 July 2018, the second respondent (pursuant to s 56 of the *Mental Health Act* 2016 (Qld) "MHA") revoked the treatment authority (that was made on 18 June 2018).

[12] After the applicant had sought reasons for his detention, on 6 August 2018 the Attorney-General issued a certificate in accordance with s 36(1)(b) of the *Judicial Review Act 1991* (Qld), certifying that the disclosure of the information (the basis upon which the examination authority was issued) was contrary to the public interest.

The Application

[13] The applicant filed an application on 19 November 2018 which states:

> "Application in relation to the decision of the respondents that [A] be detained under the *Mental Health Act*. The applicant is aggrieved by the decision because –

[1] Applicant's Affidavit filed 7 January 2019 – Paragraph 3(v).

1. Jurisdictional error resulting in intentional tort to property.

2. Jurisdictional error resulting in intentional tort to person,

The details of the relief sought, the grounds on which it is sought, and the facts relied upon are set out in the accompanying affidavit."

[14] The applicant's affidavit, filed 19 November 2018 states in paragraphs 2 and 3:

"2. I am applying to the court for the following orders:

- An order under section 38 of the Judicial Review Act requiring the Central Queensland AMHS to comply with my request for reasons for the decision to detain me under Mental Health legislation;

- An order under section 38 of the Judicial Review Act requiring the Mental Health Review Tribunal to comply with my request for reasons for the decision to detain me under Mental Health legislation;

- An order directing the Central Queensland AMHS to cease any contact with the private medical practitioners who are treating me for the personal injuries I sustained in a motor vehicle accident;

- An order directing the Central Queensland AMHS to provide me with the details of any information they have requested from the doctor's [sic] that are involved in the treatment I have received since the motor vehicle accident. I am making this request so that any privileged information that has been divulged to the Central Queensland AMHS can be identified prior to the commencement of court proceedings.

3. The grounds for this application are as follows:

On the 3rd of July 2018 I applied to the Central Queensland AMHS for a statement of reasons for the following decisions made by it pursuant to the Mental Health Act 2016:

- The decision to apply to the Mental Health Review Tribunal for an examination authority for [the applicant] on 14 June 2018;

- The decision to request police assistance in order to execute the above mentioned examination authority;

- The decision to make a recommendation for assessment for [the applicant] on 15 June 2018;

- The decision to make a treatment authority for [the applicant] on 18 June 2018.

The Central Queensland AMHS has not complied with my request.

On the 2nd of July 2018 I applied to the Mental Health Review Tribunal for a statement of reasons for the following decisions made by it pursuant to the Mental Health Act 2016:

> - The decision to issue an examination authority for [the applicant] on 14 June 2018; and
>
> - The decision to request police assistance in order to execute the above mentioned examination authority.
>
> By correspondence dated 10 August 2018, the Mental Health Review Tribunal advised me that the Attorney General had issued a certificate prohibiting disclosure of the requested statement of reasons pursuant to section 36 of the Judicial Review Act. In this correspondence the 2nd respondent did not specify why disclosure of the reasons for its decisions would be contrary to the public interest (required by section 36 and section 37(3)(b) of the Judicial Review Act). My understanding is that the application for the examination authority emanated from a noise complaint by a resident of a neighbouring property. Accordingly, there is no apparent reason why complying with the request would be contrary to the public interest."

[15] At the commencement of the application[2], the applicant identified the relevant decisions as the first four dot points in paragraph 3 with the exception that the first dot point was intended to read "The decision to support the application to the Mental Health Review Tribunal for an examination authority for [the applicant] on 14 June 2018".

Reasons for Decision – s 38 Judicial Review Act

[16] Section 38 of the *Judicial Review Act 1991* (Qld((JRA) provides as follows:

> **38 Application for order to comply**
>
> (1) If—
>
> (a) a person (the requester) makes a request under section 32 to a person (the decision-maker) for a written statement in relation to a decision; and
>
> (b) the decision-maker does not comply with the request, or apply to the court under section 39 in relation to the request, within 28 days after receiving the request;
>
> the requester may apply to the court for an order under this section.
>
> (2) If the court considers that the requester was entitled to make the request, the court may order the decision-maker to give the statement within a specified period.

[17] Although the applicant did not identify the decisions in paragraph 2 of the applicant's affidavit filed 19 November 2018 as the relevant decisions, the applicant seeks an order pursuant to s 38 of the JRA requiring both respondents to comply with his request for "reasons for the decision to detain me under mental health legislation".

[18] In order to apply the provisions of the JRA, it is first necessary to determine the operative decision to which the application is brought. The application in paragraph 2 of

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2 T1-10 to T1-11.

the affidavit seeks reasons from both respondents "for the decision to detain me". It then needs to be determined whether there is an operative decision of the first or second respondent to detain the applicant.

[19] Section 32 of the MHA provides as follows:-

> **32 Powers of doctor or authorised mental health practitioner**
>
> (1) This section applies if a person is subject to an examination authority.
>
> (2) A doctor or authorised mental health practitioner may—
>
> (a) enter a place stated in the authority or another place in which the doctor or authorised mental health practitioner considers the person may be found, and any other place necessary for entry to either of those places, to find the person; and
>
> (b) examine the person, without the person's consent, at—
>
> (i) the place at which the person is found; or
>
> (ii) if the doctor or authorised mental health practitioner considers it clinically appropriate—an authorised mental health service or public sector health service facility; and
>
> (c) detain the person at the place at which the person is examined—
>
> (i) if the place is an authorised mental health service or public sector health service facility—for a period, of not more than 6 hours, starting when the person first attends at the service or facility for the examination; or
>
> (ii) otherwise—for a period, of not more than 1 hour, starting when the person is found at the place.
>
> (3) If subsection (2)(b)(ii) applies to the person, an authorised person may transport the person to the authorised mental health service or public sector health service facility for the examination.
>
> (4) The doctor or authorised mental health practitioner examining the person may extend, or further extend, the period under subsection (2)(c)(i) before it ends if the doctor or authorised mental health practitioner considers the extension is necessary to carry out or finish the examination.
>
> (5) An extension under subsection (4) may be for a period, of not more than 12 hours, starting when the person first attends at the service or facility for the examination.

[20] It may be seen in respect of the applicant's initial detention, that is, prior to assessment, that his detention was lawful, as it was made pursuant to a decision by a doctor or authorised medical health practitioner in accordance with s 32(3)(c). That is not at all a decision made by the first or second respondent, but rather the doctor or authorised mental health practitioner.

[21] The next step after the initial detention is the examination of the detainee. In this respect, s 39 of the MHA provides:

> **39 Making recommendation for assessment**

> (1) A doctor or authorised mental health practitioner may, after examining a person under section 31, make a recommendation for assessment for the person if satisfied—
>
> (a) the treatment criteria may apply to the person; and
>
> (b) there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.
>
> (2) The recommendation for assessment must be made within 7 days after the examination.
>
> (3) The recommendation for assessment must be in the approved form.

[22] Exhibit 2 page 3 to the applicant's affidavit filed 7 January 2019 shows that the doctor making the examination did make a recommendation for assessment pursuant to s 39. Again the basis for the detention after the initial examination is the power conferred upon the doctor or authorised medical practitioner pursuant to s 39. As is made plain by s 39(2) and s 41, the duration for the recommendation for assessment is a maximum of 7 days.

[23] Page 3 of exhibit 2 records that at the time of the recommendation for assessment, the assessing practitioner judged the applicant "to be psychotic, lacking capacity and unwilling to engage in an assessment (it was noted there were several empty vodka bottles at the house when he was visited)".

[24] The clinical report continues "[o]n the ward, he remained paranoid and did not think that he should remain in hospital and was consequently placed on a treatment authority (TA)".

[25] As noted above, the treatment authority was certified both by a general practitioner, Dr Rashid and the psychiatrist, Dr Manoharan. The treatment authority was issued on 18 June 2018. The applicant was discharged from the mental health facility on 22 June 2018. On the review pursuant to s 56 of the MHA on 16 July 2018, the second respondent revoked the treatment authority of 18 June 2018.

[26] It is concluded therefore, in respect of the application in paragraph 2 of the affidavit, that there was no operative decision of either of the respondents to detain the applicant. Furthermore, with respect to the decisions of the certifying general practitioner and psychiatrist, and as to their reasons, it could hardly be suggested that their decisions are administrative decisions as they are clinical, medical decisions.

[27] Assuming the "detention decisions" were decisions which could be subject to judicial review under the JRA, then the applicant faces a further difficulty, namely, s 31 of the JRA which provides:

> **31 Decision to which part applies**
>
> In this part—
>
> ***decision to which this part applies*** means a decision that is a decision to which this Act applies, but does not include—
>
> (a) a decision that includes, or is accompanied by a statement, giving the reasons for the decision; or
>
> (b) a decision included in a class of decisions set out in schedule 2.

[28] Assuming that the treatment authority (exhibit 2 of the applicant's affidavit of 19 January 2019) was in fact a decision to which the JRA applied, it is observed that the treatment authority includes reasons for the decision in section 2.

Application for a Statement of Reasons pursuant to paragraph 3

[29] As stated above, the amended paragraph 3 of the applicant's affidavit filed 19 November 2018 seeks a statement of reasons for the following four decisions:

1. The decision to support the application to apply to the Mental Health Review Tribunal (MHRT) for an examination order (s 502(1)) (Decision 1);

2. The decision to request police assistance to execute the examination authority (s 34 and s 16 of the PPRA) (Decision 2);

3. The decision to make a recommendation for assessment on 15 June 2018 (s 504) (Decision 3);

4. The decision to make a treatment authority on 18 June 2018 (s 49) (Decision 4).

Decision 1

[30] Section 502 of the MHA provides:

> **502 Application for examination authority**
>
> (1) The following persons may apply to the tribunal for an authority (an ***examination authority***) for another person—
>
> (a) the administrator of an authorised mental health service;
>
> (b) a person authorised in writing by the administrator of an authorised mental health service to make an application under this section;
>
> (c) a person who has received advice, from a doctor or authorised mental health practitioner, about the clinical matters for the person who is the subject of the application.
>
> *Note—*
>
> See section 32 for the powers of a doctor or authorised mental health practitioner under an examination authority.
>
> (2) The approved form for the application must include a statement by a doctor or authorised mental health practitioner about whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements under section 504(2) for making an examination authority for the person.
>
> *Note—*
>
> The application must be made in the approved form. See section 725.
>
> (3) In this section—
>
> ***clinical matters***, for a person, means—
>
> (a) general information about the treatment criteria, their application to the person, and whether there is a less restrictive

way for the person to receive treatment and care for the person's mental illness; and

(b) whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements under section 504(2) for making an examination authority for the person; and

(c) options for the treatment and care of the person; and

(d) how the person might be encouraged to have a voluntary examination relating to the person's mental illness.

[31] Section 502(1) sets out the three types of persons who are able to apply to the MHRT for an examination authority. The decision to apply is a decision of either of those persons, and not the first respondent. Indeed, as appears on the face of exhibit 2 of the applicant's affidavit filed 19 November 2018, the examination authority having been issued by the MHRT was issued to "Administrator – Authorised Mental Health Service". Accordingly, it cannot be concluded that it was the first respondent (nor the second respondent) who made any decision to apply for the examination authority which would be subject to review or an order to provide reasons under the JRA.

Second Decision

[32] The second decision falls into the same category as the first, namely it is a decision by a doctor or an authorised medical health practitioner, exercising a power pursuant to s 32 or s 34 of the MHA.

[33] Sections 32 and 34 of the MHA provide:

32 Powers of doctor or authorised mental health practitioner

(1) This section applies if a person is subject to an examination authority.

(2) A doctor or authorised mental health practitioner may—

(a) enter a place stated in the authority or another place in which the doctor or authorised mental health practitioner considers the person may be found, and any other place necessary for entry to either of those places, to find the person; and

(b) examine the person, without the person's consent, at—

(i) the place at which the person is found; or

(ii) if the doctor or authorised mental health practitioner considers it clinically appropriate—an authorised mental health service or public sector health service facility; and

(c) detain the person at the place at which the person is examined—

(i) if the place is an authorised mental health service or public sector health service facility—for a period, of not more than 6 hours, starting when the person first attends at the service or facility for the examination; or

(ii) otherwise—for a period, of not more than 1 hour, starting when the person is found at the place.

(3) If subsection (2)(b)(ii) applies to the person, an authorised person may transport the person to the authorised mental health service or public sector health service facility for the examination.

(4) The doctor or authorised mental health practitioner examining the person may extend, or further extend, the period under subsection (2)(c)(i) before it ends if the doctor or authorised mental health practitioner considers the extension is necessary to carry out or finish the examination.

(5) An extension under subsection (4) may be for a period, of not more than 12 hours, starting when the person first attends at the service or facility for the examination.

[…]

34 Asking police officer for help

For performing a function or exercising a power under section 32 in relation to a person, a doctor or authorised mental health practitioner is a public official for the *Police Powers and Responsibilities Act 2000*.

Note—

For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16.

[34] The decision therefore to request police assistance is a decision made by a doctor or authorised mental health practitioner. It is not a decision of the first nor second respondent. Nor is it a 'decision to which this Act applies' within the definitions set out in s 4 of the JRA.

[35] In *Australian Broadcasting Tribunal v Bond*[3] Mason CJ, with whom Brennan and Deane JJ agreed, said of the federal analogue to s 4 of the JRA:

> "… a reviewable "decision" is one for which provision is made by or under statute. That will generally, but not always, entail a decision which is final or operative and determinative, at least in a practical sense, of the issue of fact falling for consideration."

[36] More recently in *Griffith University v Tang*[4] Gummow, Callinan and Heydon JJ said:

> "The determination of whether a decision is 'made … under an enactment' involves two criteria: first, the decision must be expressly or impliedly required or authorised by the enactment; and, secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment. A decision will only be 'made…under an enactment' if both these criteria are met."

[37] The decision to request police assistance cannot, in any sense, be characterised as a final or operative determination of an issue of fact falling for consideration in terms of the *Bond* test. In respect of the *Tang* test, whilst it may be accepted that the decision to

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3 (1990) 170 CLR 321.

4 (2005) 221 CLR 99.

request police assistance is expressly authorised by the enactment (s 34 MHA), the second criteria cannot be fulfilled because the decision to request police assistance does not, of itself, confer, alter or otherwise affect legal rights or obligations.

[38] The deeming (pursuant to s 34) of the doctor or authorised person as a public official for the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) enables the doctor or authorised mental health practitioner simply to request police assistance to enable the doctor or authorised mental health practitioner to use the force that is necessary and reasonable pursuant to s 33 to enable the doctor or authorised mental health practitioner to exercise a power pursuant to s 32, that is, to detain and properly examine the person.

Third Decision

[39] The third decision, to make a recommendation for assessment, is a decision made pursuant to s 39 of the MHA. Sections 36 and 39 provide:

> **36 Powers of doctor or authorised mental health practitioner**
>
> (1) This section applies if—
>
> (a) a person asks for, or consents to, an examination under section 31 by a doctor or authorised mental health practitioner in an authorised mental health service or public sector health service facility; and
>
> (b) after examining the person, the doctor or authorised mental health practitioner decides under section 39 to make a recommendation for assessment for the person; and
>
> (c) there is a risk the person will leave the authorised mental health service or public sector health service facility in which the person is being examined before the recommendation for assessment is made.
>
> (2) The doctor or authorised mental health practitioner may detain the person in the authorised mental health service or public sector health service facility for the period, of not more than 1 hour, reasonably necessary to make the recommendation for assessment.
>
> (3) The doctor or authorised mental health practitioner must record in the person's health records—
>
> (a) the reasons for detaining the person under subsection (2); and
>
> (b) the duration of the detention.
>
> […]
>
> **39 Making recommendation for assessment**
>
> (1) A doctor or authorised mental health practitioner may, after examining a person under section 31, make a recommendation for assessment for the person if satisfied—
>
> (a) the treatment criteria may apply to the person; and
>
> (b) there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) The recommendation for assessment must be made within 7 days after the examination.

(3) The recommendation for assessment must be in the approved form.

[40] The first respondent submits there is no evidence before the Court that the first respondent made any recommendation for assessment of the applicant. That submission may be accepted. As stated above, on page 3 of exhibit 2 to the applicant's affidavit filed 7 January 2019 which recorded that the applicant was placed under the recommendation for assessment by the ACT Clinicians who examined the applicant on 15 June 2018.

[41] The decision made by the doctor or authorised medical health practitioner pursuant to s 39 of the MHA is not a decision made by the first (nor second) respondent and it is not a "decision of administrative character" within the meaning of s 4 of the JRA.

[42] The two criterion that must be satisfied pursuant to s 39 of the MHA require medical and clinical judgment be exercised by the doctor or authorised mental health practitioner.

[43] Section 12 of the MHA defines treatment criteria as follows:-

12 Meaning of *treatment criteria*

(1) The ***treatment criteria*** for a person are all of the following—

(a) the person has a mental illness;

(b) the person does not have capacity to consent to be treated for the illness;

(c) because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in—

(i) imminent serious harm to the person or others; or

(ii) the person suffering serious mental or physical deterioration.

(2) For subsection (1)(b), the person's own consent only is relevant.

(3) Subsection (2) applies despite the *Guardianship and Administration Act 2000*, the *Powers of Attorney Act 1998* or any other law.

[44] The determination of whether a person has a mental illness (s 12(1)(a)) is not "a decision of an administrative character". That is, the medical clinical decision determining whether a person has a mental illness is not a decision pertaining to "administration"[5] or concerning or relating to the administration of affairs[6].

Fourth Decision

[45] The fourth decision that the applicant seeks a statement of reasons for is the decision to make a treatment authority on 18 June 2018.

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5 Definition in Macquarie Concise Dictionary.

6 Definition of Australian Concise Oxford Dictionary.

[46] Part 4, Chapter 2 of the MHA sets out the several provisions relating to treatment authorities. Relevantly those sections include sections 48, 49, 50, 51, 52, 55, 56, 57 and 58.

[47] The treatment authority is exhibit 1 to the applicant's affidavit filed 7 January 2019 and is in the approved form. In respect of the applicant, the treatment authority places the treatment authority category as "inpatient" and determined that the applicant is not authorised for "limited community treatment". The treatment authority was issued under the assessment of the authorised doctor, Dr Rashid on 18 June 2018 at 10:09am and confirmed without amendment by the authorised psychiatrist, Dr Manoharan at 2:00pm on 18 June 2018.

[48] The relevant decisions are thus made by the authorised medical practitioner, Dr Rashid, and by the authorised psychiatrist, Dr Manoharan. The scheme of Part 4 of Chapter 2 thus may be seen, namely, the decision to issue a treatment order as a clinical medical decision made by an appropriately-qualified medical practitioner who, as a matter of law, owes personal duties to the patient.

[49] The clinical decisions of the authorised doctor are reviewed by an authorised psychiatrist. Both medical practitioners are required to tell the person affected by the decision about the decision and explain the decision to the person, provide them with a copy of the authority and also give a copy of the authority to the person's nominated support person, personal guardian, or attorney, if that is requested.

[50] Finally, and importantly, pursuant to s 58(2)(c) of the MHA, the MHRT receives written notice of the decision. That section requiring direct provision of the order to the second respondent, MHRT, practically engages Chapter 12 Part 2 of the MHA, the review of treatment authorities by the MHRT. In the present case, on 22 August 2018, the MHRT, exercising its authority pursuant to Chapter 12 Part 2, in particular s 421, revoked the treatment authority.

[51] The barriers to success for the applicant in the present case are formidable.

[52] Firstly, a decision to make a treatment authority is clearly not a decision of the first or second respondent, but rather of the authorised medical practitioner or authorised psychiatrist.

[53] Secondly, medical decisions are not of an administrative character.

[54] Thirdly, even if it were a decision to which the Act applied, under s 4 there is a further hurdle under s 31(a) of the JRA, which excludes from Part 4 any decision which includes the reasons for decisions. The treatment authority (Exhibit 1) is in the approved form and, as required, it sets out in Section 2 detailed reasons.

[55] There is a fourth issue raised in the written outlines of argument, namely that the decision to issue a treatment authority is "inoperative" or a "spent force".[7]

Spent Force Decisions

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[7] *Perry v Director of Public Prosecutions* (1985) 6 FCR 578; *Deloitte Touche Tohmatsu v Australian Securities Commission* (1995) 128 ALR 318; *Mid Brisbane River Irrigators Inc v Treasurer and Minister for Trade of the State of Queensland* [2014] QSC 196.

[56] In *Mid Brisbane River Irrigators Inc*[8] Jackson J said:

> "The originating application is for a statutory order of review under s 20 of the *Judicial Review Act* 1991 ("JRA"). Under s 20, there are three elements. First, there must be "a decision to which this act applies". Second, there must be "a person who is aggrieved by" the decision. Third, the application must be made upon one or more of the grounds set out in s 20(2)."

[57] As to the second element, there must be "a person who is aggrieved by" the decision, it has been held in circumstances where a decision is a "spent force" then a person cannot be aggrieved by the spent force decision. The concept of a spent force decision is made relevant to the present application because, pursuant to s 32(1) of the JRA, it is necessary for an applicant to show they are a person "who is entitled to make the application to the court under s 20 in relation to the decision".

[58] In *Perry's*[9] case the applicant had been the subject of a decision by a Magistrate in South Australia ordering her extradition to Victoria and then a subsequent review decision of a Supreme Court Justice in South Australia ordering her extradition to Victoria. Fisher J explained the position in the following way:

> "I would, however, accept and adopt his contention that Mrs Perry is not a person aggrieved by the decision of the magistrate. She is without doubt aggrieved and her interests are adversely affected by the fact that she is directed to return to Victoria. She was aggrieved by the decision of the magistrate at least up to the time that Bollen J pronounced, after a rehearing, upon her application to him. In my opinion, however, she is at present aggrieved not by the decision which she seeks to have reviewed under the Judicial Review Act but by the decision of Bollen J confirming and varying in part the decision of the magistrate. The operative decision now is the decision of Bollen J, which has at least, for practical purposes, superseded that of the magistrate. …The fact that the magistrate's decision is no longer for practical purposes an operative decision would suggest that it is not a "decision" for the purposes of the Judicial Review Act."

[59] In *Deloitte Touche Tohmatsu v Australian Securities Commission*[10] Lindgren J said:

> *"Perry's* case was decided prior to *Bond's* case in which Mason CJ passed upon the quoted passage from the judgment of the Full Court in *Lamb v Moss*. In the light of what the Chief Justice said (*Bond's* case at CLR 338 quoted above), Fisher J would, it seems, have based his decision on the ground that the magistrate's decision had ceased to be the relevant operative decision because it had been superseded by that of Bollen J.
>
> […]
>
> Similarly, in *Eskaya v Minister for Immigration, Local Government and Ethnic Affairs* (1989) 18 ALD 217 (Fed C of A, Lee J), a later decision not to grant an entry permit was treated as rendering an earlier decision not to do so "inoperative" and as being the only decision relevant for the purposes of review under the AD(JR) Act.

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8 *Mid Brisbane River Irrigators Inc v Treasurer and Minister of the Trade of State of Queensland* [2014] 2 Qd R 592 at 597.

9 *Perry v Director of Public Prosecutions* (1985) 6 FCR 578

10 *Deloitte Touche Tohmatsu v Australian Securities Commission* 128 ALR 318 at 332.

> Of relevance in the present context is the principle that a person is not entitled to challenge an administrative decision on natural justice or other grounds where there has been a comprehensive appeal or review which has "cured" any defect touching the earlier decision see: *Twist v Randwick Municipal Council* (1976) 136 CLR 106 at 116; 12 ALR 379 (Mason J) *Calvin v Carr* [1980] AC 574 (PC) *Preston v Carmody* (1993) 44 FCR 1; 31 ALD 309 (Fed C of A, Wilcox J) *Wu v Minister for Immigration and Ethnic Affairs* (1994) 48 FCR 294; 32 ALD 735 (Fed C of A, Wilcox J).
>
> For the foregoing reasons in my opinion the ASC's objection to competency should be upheld."

[60] Each of the decisions identified by the applicant fall into a continuum of decisions which is required by the MHA, with the effect that each latter decision necessarily renders the earlier decision inoperative or "spent" such that the applicant is aggrieved, in a legal sense, not by the decisions which occurred in the continuum.

[61] I conclude that each of the decisions identified by the applicant are spent decisions, and not reviewable decisions.

[62] In the present case, a decision by a person to support an application to the MHRT for an examination authority is superseded by the decision to actually apply for the examination authority, which is superseded by the decision of the MHRT to grant the examination authority which is superseded by the decision to make a treatment authority.

[63] The decision to make a treatment authority itself is a spent decision and not a reviewable decision because it is superseded by the decision of the MHRT on 16 July 2018 revoking the treatment authority.

[64] Additionally as set out above, in order to request a statement of reasons pursuant to s 32(1) of the JRA, the person must be a person entitled to make an application to the court under s 20 of the JRA. Section 20 engages s 13 of the JRA. Section 13 of the JRA provides:

> **13 When application for statutory order of review must be dismissed**
>
> Despite section 10, but without limiting section 48, if—
>
> (a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter; and
>
> (b) provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by another court or a tribunal, authority or person;
>
> the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

[65] I conclude in terms of s 32(1) of the JRA that the applicant is not entitled to an order pursuant to s 20 because s 13 of the JRA is engaged. That is, the MHA by itself, and in particular by s 56, specifically sets out the applicant's entitlement to seek review of the matter by a tribunal, namely the MHRT. Further, that did in fact occur, and on 16 July 2018, the MHRT revoked the treatment authority of 18 June 2018.

Decision to Issue the Examination Order of 14 June 2018

[66] Although by the application filed 19 November 2018, and by paragraphs 2 and 3 of the affidavit filed 19 November 2018, the applicant did not seek to challenge the decision of the MHRT to issue the examination order on 14 June 2018, the applicant's written submission filed 7 January 2019 and in particular by paragraphs 20, 22 and 26, the applicant seeks to challenge the issue by the MHRT of the examination authority.

[67] On page 3 of the applicant's affidavit filed 19 November 2018, the applicant states that he did, on 2 July 2018, apply to the MHRT for a statement of reasons for the decision "made by it pursuant to the Mental Health Act 2016 [for] the decision to issue an examination authority" for the applicant, and the "decision to request police assistance in order to execute the abovementioned examination authority". The second decision is subject to the reasons above.

[68] Furthermore, by exhibit 5 to the applicant's affidavit filed 19 November 2018, the applicant did, by his letter of 30 June 2018 directed to the MHRT, pursuant to s 32 of the JRA request reasons in writing for those decisions.

[69] In those circumstances, and notwithstanding that the application does not seek relief pursuant to s 38 of the JRA with respect to the decision of the MHRT to issue the examination authority, it is appropriate, given the issue is raised, to consider or decide that issue.

[70] Section 504 of the MHA provides as follows:

> **504 Decision on application**
>
> (1) In deciding the application, the tribunal must issue, or refuse to issue, an examination authority for the person.
>
> (2) However, the tribunal may issue an examination authority for the person only if the tribunal considers—
>
> (a) the person has, or may have, a mental illness; and
>
> (b) the person does not, or may not, have capacity to consent to be treated for the mental illness; and
>
> (c) either—
>
> (i) reasonable attempts have been made to encourage the person to have a voluntary examination relating to the person's mental illness; or
>
> (ii) it is not practicable to attempt to encourage the person to have a voluntary examination relating to the person's mental illness; and
>
> (d) there is, or may be, an imminent risk, because of the person's mental illness, of—
>
> (i) serious harm to the person or someone else; or
>
> (ii) the person suffering serious mental or physical deterioration.
>
> (3) An examination authority must—

(a) be in the approved form; and

(b) state the authorised mental health service responsible for the examination of the person under the authority.

[71] There are three other issues raised by the parties concerning the decision by the MHRT to issue the examination authority. The first is an argument by the second respondent, MHRT, that the decision to issue the examination authority is a spent decision and was superseded not only by the issue of the treatment authority of 18 June 2018 but more importantly by the MHRT review on 16 July 2017 revoking the treatment authority. As discussed above in the above paragraphs 56 to 65, that submission is correct.

[72] The second and substantive argument (going not only to the request for written reasons pursuant to s 32 of the JRA, but taking the decision itself) is the applicant's argument that he has been denied natural justice by the issue of the examination authority on 14 June 2018. The applicant points to s 733 of the MHA, which requires the MHRT to observe natural justice.

[73] Section 733 provides:

733 Conducting proceedings generally

(1) The procedure for a proceeding is at the discretion of the tribunal, subject to this Act and the tribunal rules.

(2) In all proceedings, the tribunal must act fairly and according to the substantial merits of the case.

(3) In conducting a proceeding, the tribunal—

(a) must observe the rules of natural justice; and

(b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the tribunal; and

(c) is not bound by the rules of evidence; and

(d) may inform itself on a matter in a way it considers appropriate; and

(e) must ensure, to the extent practicable, all relevant material is disclosed to the tribunal to enable it to decide the proceeding with all the relevant facts.

[74] The applicant submits that he was not told anything of the application for the examination authority and that, as a citizen, he was willing and able to attend the hearing of the MHRT, and had he been advised of the hearing which concerned his liberty and freedom, in all likelihood, the examination authority would not have been issued.

[75] The applicant argues that not only does s 733 expressly require the MHRT to observe the rules of natural justice, but the common law requires parliament to manifest a clear intention to limit or exclude natural justice.[11] The applicant argues that in the three-step process prescribed by the MHA for the detention of citizens who are not in custody or the subject of criminal proceedings, the crucial decision is the decision of the MHRT

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11 *Kioa v West* (1985) 159 CLR 550 at 584; *Coco v The Queen* (1994) 179 CLR 427 at 437.

whether or not to issue an examination authority, and he, as the person the subject of the authority, ought to have been notified of the application and given fair opportunity to provide both evidence and submissions upon the application.

[76] To deprive any citizen of his liberty is a serious matter and, absent a careful interpretation of the MHA, there is merit in the applicant's submission.

[77] The MHA is, necessarily complicated legislation because it deals with the important matter of the liberty and freedom of citizens. That the Act contains a number of checks and balances may be observed from the sections set out above and throughout the balance of the Act.

[78] In respect of the requirement for natural justice that the applicant be apprised of, the application being made for an examination order and being given fair opportunity to provide evidence and submissions in respect of such application the answer may be observed through the combination of reading of ss 703, 736, and 503, which provide as follows:

> **703 Definition for pt 2**
>
> In this part—
>
> "**party**" , to a proceeding—
>
> (a) for a proceeding under chapter 12 —means a person who has ***a right to appear in person*** at the hearing of the proceeding; or
>
> (b) for an appeal to the tribunal under chapter 13 —see section 532.
>
> […]
>
> **736 Right to appear**
>
> (1) A person who is ***entitled be given notice*** of the hearing of a proceeding has ***a right to appear in person*** at the hearing.
>
> (2) Also, without limiting subsection (1), the chief psychiatrist may, with the leave of the tribunal, appear in person at the hearing of a proceeding.
>
> (3) However, despite subsection (1), the following persons do not have a right to appear in person at the hearing of a proceeding—
>
> (a) the administrator of an authorised mental health service;
>
> (b) the administrator of the forensic disability service;
>
> (c) a person who is given notice of the hearing of the proceeding under section 287.
>
> (4) Subsection (3)(a) does not apply in relation to an application for an examination authority made under section 502 by an administrator of an authorised mental health service or a person authorised in writing by an administrator of an authorised mental health service.
>
> […]
>
> **503 Notice of hearing**
>
> (1) The tribunal must ***give the applicant*** written notice of the hearing of the application.
>
> (2) The notice must be given—

(a) at least 3 days before the hearing; or

(b) if the applicant agrees to a shorter period before the hearing—at least the agreed period before the hearing.

(my emphasis)

[79] Section 703 is careful in its definition of a "party" for the purposes under Chapter 12 (MHRT Proceedings) by defining that person as a person who has "a right to appear in person". As set out above in s 736(1) that is specifically defined as a person entitled to be given notice of the hearing.

[80] Furthermore, the staged structure of the involvement of the MHRT making decisions in respect of persons the subject of an examination authority is further set out by s 736(3)(a) and 736(4), that is, for the latter proceedings, the administrators who make applications for examination authorities are not parties to the proceedings.

[81] Section 502 sets out the three categories of persons who are the only persons who can apply for an examination authority and that clearly excludes "another person" i.e. the person who may be the subject of an examination authority. It is then made plain by s 503 that it is the applicant for the hearing, i.e. essentially any of those persons listed in s 502, and not the patient, that are the persons who obtain written notice for hearing.

[82] It is the combination of ss 703, 736, 502 and 503 by which parliament has manifested a clear intention that the patient (in this case, the applicant) is not a party to the proceedings for the MHRT to issue an examination order. Indeed, as set out in s 504, the tribunal may only issue an examination authority if they consider that the person has, or may have, a mental illness, and does not or may not have the capacity to consent to treatment for the mental illness.

[83] In construing the MHA as a whole, it may be seen that there are numerous sections which share the same heading as s 503 "Notice of Hearing". Section 115, 418, 439, 460, 471, 487, 500, 508, 511, 516, 524, and 674 are all titled "Notice of Hearing". It is by the definition of who is entitled to a notice of hearing that the Act has made plain who are parties to a hearing. In this regard, s 503 is unique in specifically excluding the person the subject of the application from being entitled to written notice of the hearing. Construing the Act as a whole it may seem that it is a clear legislative intent of parliament to exclude the person the subject of the application from the MHRT hearing deciding whether to issue an examination authority. Accordingly I conclude that the applicant's challenge to the decision to issue an examination authority on 14 June 2018 and his decision to seek reasons in respect of same ought to be rejected as he is not a party to that particular proceeding.

[84] The third and final argument between the parties relates to the issue of the Attorney-General's certificate pursuant to s 36 of the JRA.

Attorney-General's Certificate

[85] Sections 36 and 37 of the JRA provide:

36 Exception for information covered by Attorney-General's certificate

(1) This section applies to information relating to a matter if the Attorney-General certifies, by signed writing, that the disclosure of information relating to the matter would be contrary to the public interest—

(a) because it would involve the disclosure of deliberations or a decision of Cabinet or a Committee of Cabinet; or

(b) for any other specified reason that could form the basis for a claim in a judicial proceeding that the information should not be disclosed.

(2) Section 37 specifies the consequences of this section applying to information.

37 Consequences of s 35 or 36 applying to information

(1) If a person has been requested under section 32 to give a statement to a person—

(a) the person to whom the request is made is not required to include in the statement any information in relation to which section 35 or 36 applies; and

(b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.

(2) If, because of subsection (1)—

(a) information is not included in a statement given by a person; or

(b) a statement is not given by a person;

the person must give written notice relating to the request to the person who made the request.

(3) The notice must state—

(a) if subsection (1)(a) applies—

(i) that the information is not included; and

(ii) the reason for not including the information; and

(b) if subsection (1)(b) applies—

(i) that the statement will not be given; and

(ii) the reason for not giving the statement.

(4) The notice must be given—

(a) if subsection (1)(a) applies—at the time the statement is given; or

(b) if subsection (1)(b) applies—as soon as practicable and, in any event, within 28 days after receiving the request.

(5) Nothing in this section affects the power of the court—

(a) to make an order for the discovery of documents; or

(b) to require the giving of evidence or the production of documents to the court.

[86] In her affidavit filed 17 December 2018, the president of the Mental Health Review Tribunal, Ms Annette McMullen, deposes that on 6 August 2018 the Attorney-General issued a certificate pursuant to s 36(1)(b) of the JRA certifying that disclosure of information relating to the decision would be contrary to public interest.

[87] The applicant was advised of this in correspondence dated 10 August 2018, that letter being exhibit 6 to the applicant's affidavit filed 19 November 2018.

[88] In written submissions provided by the second respondent to the applicant, the second respondent made the applicant aware of the procedure for the receipt of s 36 certificates with specific reference to the views expressed by McMurdo P in *R v Kashani-Malaki:*[12]

> "Having examined the confidential affidavit and confidential public interest immunity submissions of the ACC in the application before the Chief Justice, I consider the appellant's application for his counsel and expert witnesses to view them should be refused because of public interest considerations. My approach to view the material but to refuse to allow the appellant's counsel and expert witnesses to view the material is consistent with established authority: see the observations of Gibbs A/CJ in *Sankey v Whitlam*; Gibbs CJ, Wilson, Brennan and Dawson JJ in *Alister v The Queen*; Mason CJ, Brennan, Deane, Dawson, Gaudron and McHugh JJ in *The Commonwealth v Northern Land Council*; Gummow and Crennan JJ in *Thomas v Mowbray*; and Crennan J in *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police (WA)*. I will, of course, consider the confidential affidavit and submissions in determining these grounds of appeal."

[89] Additionally, the applicant was referred to the decision of Margaret Wilson J in *Younan:*[13]

> "I examined the documents in issue in order to rule on the claim of public interest immunity, without allowing the applicants' counsel to view them. They reveal information about the incident and the conduct of persons after the incident beyond that in para 21 of the second respondent's affidavit in the 2009 proceeding. They reveal the identities of at least some of the police investigators, and contain information which might lead to the identification of informers. They reveal investigation techniques and the exchange of criminal intelligence between interstate and Queensland agencies."

[90] Despite the procedure, the reasons for the procedure and the case law being explained to the applicant, the applicant objected to the tender of a further affidavit of Ms McMullen containing the s 36 certificate and additional confidential information on the basis that such a procedure breached the rules of natural justice. That objection was overruled *ex tempore* with reasons and Ms McMullen's further affidavit being marked exhibit 1.

[91] Adopting the procedure set out by Margaret Wilson J, the affidavit was admitted, kept confidential (in the sense that it was not provided to the applicant) and ordered to be placed in a sealed envelope and to be marked "not to be opened without order of the Supreme Court". A similar approach, but in relation to a "prison management decision" was considered by Douglas J in *Masters v Corrective Services.*[14]

[92] Exhibit AM2 is the Attorney-General's certificate pursuant to s 36(1)(b) of the JRA, which certifies that "the disclosure information relating to the decision of the Mental Health Review Tribunal made on 14 June 2018 to issue an examination authority under

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12 [2010] QCA 222 at [53] (footnotes omitted).

13 *Younan v Crime Reference Committee; Hamdan v Crime Reference Committee* [2012] QSC 225 at [37] (footnote omitted).

14 (2001) 121 A Crim R 173.

the Mental Health Act 2016 in relation to [the applicant] would be contrary to public interest…"

[93] The first and second respondents are persons who, in terms of s 37(1)(a) have been requested to provide a statement of reasons pursuant to s 32 of the JRA. The respondents therefore are not required to include in any statement any information which relates to the Attorney-General certificate. Furthermore, pursuant to s 37(1)(b) of the JRA, the respondents are persons who are not required to give a statement if it can be reasonably concluded that the statement would be false or misleading if it did not include the information.

[94] Pursuant to s 37(2) of the JRA it was incumbent upon the person to whom the information was requested to give written notice "relating to the request to the person who made the request". That notice was provided in a letter to the applicant dated 10 August 2018 which is exhibit 6 to the applicant's affidavit sworn 19 November 2018. With respect to the decision of the MHRT to issue an examination authority on 14 June 2018, exhibit AM3 consists of a detailed three-page statement of reasons with the confidential information pursuant to s 36 of the JRA being highlighted in order to show that the statement would be false and misleading if it did not include the confidential information.

[95] More than one-third of the statement of reasons would need to be redacted to exclude the confidential information and the redaction would render the statement of reasons at least misleading, if not false. Accordingly, if the decision to issue the examination authority were reviewable, the second respondent is relieved from the obligation to provide a statement of reasons pursuant to s 37(1)(b) of the JRA.

[96] In *Z'Quessah Bosch v Office of the Information Commissioner & Anor*[15], the applicant was aggrieved by a decision of the Information Commissioner not to disclose a number of documents on public interest grounds. In that case, the applicant was subject of a Justices Examination Order ("JEO") under the *Mental Health Act* 2000 and cast a number of allegations against the conduct of the Mental Health Service. Thomas J (President) found that the application for a JEO is made on the basis that the information supplied by the applicant is used for the limited purpose of ensuring the administration of the MHA 2000, and that the disclosure of information about a JEO might reasonably be expected to render future JEO applicants reluctant to supply information, which could impact the quality of information needed for a proper JEO assessment. As stated by Thomas J:[16]

> "Healthcare agencies rely on information provided by third parties to assist patient care and treatment. Those third parties may be deterred from providing this type of information in the future if they are aware that it could be disclosed to the patient. This could prejudice the ability of healthcare providers to effectively treat patients by reducing the likelihood that they have access to all the relevant information about the patient."

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15 [2016] QCATA 191.

16 *Z'Quessah Bosch v Office of the Information Commissioner & Anor* (supra) at [57].

[97] In *Masters v Corrective Services*[17] a similar issue regarding whether a refusal to provide reasons could be based on a claim of public interest immunity pursuant to s 36 of the JRA was decided. Although the submissions were not detailed in the decision, Douglas J considered that the evidence in that case bore out the submission that any statement of reasons furnished would be false or misleading if it did not include the information to which the Attorney-General's certificate related and accordingly declined to furnish a statement of reasons.

[98] The applicant's submissions in respect to the Attorney-General's certificate are set out in paragraph 30 of his written submissions as follows:

> "My submission with respect to the Attorney-General's certificate is as follows:
>
> - The MHA contains specific provisions that allow the Attorney-General to become a party to a proceeding in circumstances where a mentally ill person is in custody or is the subject of criminal proceedings. The Attorney-General's role is to protect the public interest.
> - Part 2 of the Attorney-General Act (Qld) 1999 establishes the office of Attorney-General. Section 3 of the Act designates which minister is to hold the office of Attorney-General eg. the Minister for Justice and Attorney-General.
> - Part 3 of the Attorney-General Act deals with the Attorney-General's principal functions, powers and specific powers. The Attorney-General's specific powers include the presentment of indictments and the bringing of proceedings to enforce and protect public rights.
> - Part 2 of Chapter 19 of the MHA establishes the MHRT. Section 705 expressly states that the MHRT is an independent entity that is not subject to control by any Minister.
> - Under the MHA the Attorney-General has a right to appear at hearings in order to represent the public. The MHA specifically states the circumstances when the Attorney-General has a right to become a party to a proceeding, see for example Section 737. The Attorney-General's right of appearance is limited to reviews involving patients who are/were the subject of criminal proceedings.
> - Accordingly, the Attorney-General's role under the MHA does not extend to influencing the outcome of a request for reasons by a citizen who was detained under the MHA, but was not in custody or facing criminal proceedings. Further, the MHRT is an independent entity that is required to act judicially. The Attorney-General does not have the jurisdiction to influence the MHRT in any way. The same principles apply to the CQ Authorised Mental Health Service.

[99] The first five points made by the applicant may be generally accepted. Whilst the submissions made by the applicant are generally correct, they do not assist in the determination of the issue concerning the Attorney-General's certificate. The Attorney-General is entitled to and has issued a certificate under s 36 of the JRA. I have adopted the procedure set out and approved by McMurdo P in *R v Kashani-Malaki*.[18]

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17 (2001) 121 A Crim R 173 at 175 and 176.

18 *R v Kashani-Malaki* (supra) at [53].

[100] I find that were the tribunal required to furnish a statement of reasons relating to the examination authority, that may prejudice the ability of the tribunal to effectively determine the issue by reducing the likelihood the tribunal would have access to all relevant information, and further, that requiring the MHRT to furnish a statement of reasons (excluding the details the subject of s 36 certificate) would render the reasons false and misleading.

Injunctive Relief

[101] Although the application filed on 19 November 2018 does not seek any injunctive relief, the applicant, by the final two dot points of paragraph 2 of his affidavit filed 19 November 2018 does seek an injunction:

- "Directing the first respondent to cease any contact with private medical practitioners for treating [the applicant] for the personal injuries sustained in a motor vehicle accident;

- Directing the first respondent to provide [the applicant] with details of any information they have requested from the doctors that are involved in the treatment I have received since the motor vehicle accident."

[102] The basis for an injunction is a threatened or repeated unlawful interference with the plaintiff's rights.[19]

[103] The applicant does not identify what rights he alleges have been interfered with, and has not produced any evidence that the first or second respondents have committed or threatened to commit any act of interference. Furthermore, the affidavit of Dr Kristy Richardson demonstrates the first respondent has not been in any communication or correspondence with any private medical practitioners with respect to the applicant's motor vehicle accident and does not intend seeking such information.

[104] Insofar as the application inferentially seeks injunctive relief, the application is dismissed.

Conclusion

[105] The application is dismissed.

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19 *Lynch & Standon v Brisbane City Council* (1961) 104 CLR 353 at 360; *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199 at 265.