SUPREME COURT OF QUEENSLAND

CITATION:	*Taylor v The National Injury Insurance Agency Queensland* [2020] QSC 132
PARTIES:	**THOMAS TAYLOR** (applicant) **v** **THE NATIONAL INJURY INSURANCE AGENCY, QUEENSLAND** (respondent)
FILE NO/S:	SC No 284 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	26 May 2020
DELIVERED AT:	Rockhampton
HEARING DATE:	12 May 2020
JUDGE:	Crow J
ORDER:	**1. The decision of the Respondent dated 25 February 2020 is set aside.** **2. The Respondent is to approve the Applicant's request for external case management.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – GENERALLY - where the Respondent is an agency under the *National Injury Insurance Scheme (Queensland) Act* 2016 (Qld) – where the Applicant is a participant in the scheme created by the *National Injury Insurance Scheme (Queensland) Act* 2016 (Qld) – where the Respondent denied the Applicants service request for external case management – where the Respondent sought to appoint itself as case manager - where the Applicant seeks review the decision under the *Judicial Review Act* 1991 (Qld) on the grounds that there was no evidence to justify the decision, the decision was an improper exercise of power conferred by statute, the decision was contrary to law, the Applicant was not afforded natural justice, and the Respondent was affected by bias – whether the Applicant's grounds for review are founded ADMINISTRATIVE LAW – JUDICIAL REVIEW – POWERS OF COURTS UNDER JUDICIAL REVIEW LEGISLATION – DIRECTION TO ACT OR REFRAIN FROM ACTING – where Respondent has improperly

exercised power conferred by statute in seeking to appoint itself as case manager – where relevant facts uncontested - whether appropriate to give direction to respondent to act under s 30(1)(d) of the *Judicial Review Act* 1991 (Qld)

National Injury Insurance Scheme (Queensland) Act 2016 (Qld), s 3, s 8, s 9, s 14, s 15, s 22, s 25, s 26, s 30, s 59, s 58, s 61, s 68
Judicial Review Act 1991 (Qld), s 20, s 22, s 24, s 30
National Injury Insurance Scheme (Queensland) Regulations 2016 (Qld) s 17, s 18, s 19, s 20

Anthony Lagoon Station Pty Ltd v Aboriginal Land Commissioner (1987) 15 FCR 565; [1986] FCA 460, cited
Attorney-General v Great Eastern Railway Co (1880) 5 App Cas 473, cited
Botany Municipal Council v Federal Airports Corporation (1992) 175 CLR 453; [1992] HCA 52, cited
Deng v Q-Comp [2011] QSC 191, cited
Kathleen Investments (Australia) Ltd v Australian Atomic Energy Commission and Anor (1977) 139 CLR 117; [1977] HCA 55, cited
Lowis v Queensland Industrial Relations Commission [2019] QSC 277, cited
Minister for Immigration and Ethnic Affairs v Conyngham and Others (1986) 11 FCR 528; [1986] FCA 289, cited
Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs (1989) 167 CLR 637; [1989] HCA 54, cited
Pierce & Ors v Rockhampton Regional Council (2014) 202 LGERA 61; [2014] QSC 104, applied
Stubberfield v Webster [1996] 2 Qd R 211; [1995] QSC 182, cited
Turner v Valuers' Registration Committee of Queensland [2001] 2 Qd R 100; [2000] QSC 94, cited

COUNSEL: S J Deaves for the applicant
S A McLeod QC for the respondent

SOLICITORS: Maurice Blackburn Lawyers for the applicant
Clayton Utz for the respondent

Background

[1] The applicant, Thomas Taylor is currently 54 years of age, having been born 5 March 1966.

[2] In December 2011, Mr Taylor moved to his wife's parents' 26-acre rural property at Bungandurra. Bungandurra situated approximately 20kms northwest of Yeppoon. The rural property has a main home, a separate cottage (inhabited by Mrs Taylor's aunt) and a caravan attached to a shed. From December 2011 to early 2017, Mr and Mrs Taylor and their 6 year-old son, Quinn, have lived in the main residence with Mrs Taylor's parents.

[3] On 17 December 2016, Mr Taylor was a passenger in a motor vehicle which reversed into a tree stump causing Mr Taylor to suffer from a soft tissue injury to the cervical spine which led to the development of post traumatic headache disorder with "migrainous features".[1] Prior to 17 December 2016, Mr Taylor had worked for some decades as a self-employed painter. Following the crash in December 2016, Mr Taylor began working less and less, eventually stopping completely in March 2018 following the insertion of an occipital stimulator to assist in dealing with the injuries sustained as a result of the 2016 accident.

[4] After the motor vehicle accident of 17 December 2016, as a result of his migraine headaches, Mr Taylor commenced to reside in the caravan/shed area as he required quiet spaces. "99% of the time" Quinn would sleep in the caravan with Mr Taylor, however Mrs Taylor would usually reside in the main house.[2] Mrs Taylor deposed that she and Mr Taylor were very close to her parents and that their son was the only grandchild.[3] The family plan was that Mr and Mrs Taylor would remain living on the property and make it their home "forever".[4]

[5] On 7 December 2019, Mr Taylor was a front seat passenger in a vehicle towing a trailer full of gravel along Woodbury Road, Yeppoon. The driver lost control of the vehicle and it rolled several times. As a result of the accident, Mr Taylor suffered:[5]

(a) A C7 spinal cord injury;

(b) A fracture of the lumbar spine;

(c) Bleeding on the brain;

(d) Several broken ribs; and

(e) A displacement of the occipital stimulator wires.

[6] Following the accident, Mr Taylor was taken by ambulance to the Rockhampton Base Hospital and then airlifted to the Royal Brisbane and Women's Hospital where he underwent a C7/T1 discectomy.[6] When he was "medically stable" he was transferred to the Spinal Injuries Unit at the Princess Alexandra Hospital.[7]

[7] As a result of the injuries sustained in December 2019 , Mr Taylor has been rendered a C7 tetraplegic and suffers from:[8]

(a) Complete loss of function in legs, bladder and bowel;

(b) Severely reduced function in his upper limbs;

(c) Difficulties with thermoregulation;

(d) Autonomic dysreflexia; and

---

1 Paragraph 6 of the affidavit of Thomas Taylor filed 23 March 2020.
2 Paragraph 8 of the affidavit of Thomas Taylor filed 23 March 2020.
3 Affidavit of Jodie Taylor filed 27 March 2020.
4 Paragraph 6 of the affidavit of Jodie Taylor filed 27 March 2020.
5 Paragraph 11 of the affidavit of Thomas Taylor filed 23 March 2020.
6 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.
7 Paragraph 13 of the affidavit of Thomas Taylor filed 23 March 2020.
8 Paragraph 18 of the affidavit of Thomas Taylor filed 23 March 2020.

(e) Complete sensory loss in lower limbs, and significantly reduced sensation in upper limbs.

[8] On 8 March 2020, Mr Taylor was transferred from the Princess Alexandra Hospital to the Rockhampton Base Hospital.[9] The applicant remains an inpatient of the Rockhampton Base Hospital and is expected to be discharged on 14 June 2020.[10]

[9] Mr Taylor's first motor vehicle accident is the subject of litigation.[11] Mr Taylor's first motor vehicle accident claim was scheduled to progress to a mediation on 13 December 2019 but was postponed due to the second motor vehicle accident. Mr Taylor had appointed Maurice Blackburn Lawyers to act on his behalf in respect of his first motor vehicle accident.

[10] Whilst he was an inpatient at the Spinal Injuries Unit of the Princess Alexandra Hospital, Mr Taylor instructed Maurice Blackburn Lawyers to retain Integrate Rehabilitation Pty Ltd ("Integrate Rehab") to assess Mr Taylor's rehabilitation needs. After being appointed on 7 January 2020, Integrate Rehab acted most efficiently, with Ms Manning, an occupational therapist, attending on Mr Taylor for a lengthy consultation on 9 January 2020.[12] On 21 January 2020, Ms Manning attended the Bungandurra property and undertook a home assessment.[13]

[11] After multiple interviews with both Mr and Mrs Taylor, a visit to the Bungandurra property, and with interviews of treating Allied Health and medical specialists at the Princess Alexandra Hospital, occupational therapists Erin Pavy and Chantel Manning, compiled a comprehensive 30-page rehabilitation needs assessment report.[14] The report of 7 February 2020, sets out, in minute detail, Mr Taylor's likely foreseeable needs in respect of occupational therapy, medical care, physiotherapy, transport needs, psychological care, assistive technology and equipment, medical consumables and the medication regime Mr Taylor has received through his Princess Alexandra Hospital pharmacy discharge.[15]

[12] Ms Pavy of Integrate Rehab concludes in paragraph 13.10. of her report:

> **"Case Management**
>
> 13.10. Given the complexity of Tom's injury and the multi-disciplinary approach required, case management services are required to:
>
> 13.10.1. Liaise with key parties;
>
> 13.10.2. Coordinate information provided by different disciplines;
>
> 13.10.3 Complete regular reviews with Tom to ensure access to reasonable rehabilitation; and,

---

9 Paragraph 14 of the affidavit of Thomas Taylor filed 23 March 2020.
10 Paragraph 41 of the affidavit of Jodie Taylor filed 27 March 2020.
11 SC No 45 of 2019.
12 Paragraph 24 of the affidavit of Thomas Taylor filed 23 March 2020.
13 Paragraph 12 of the affidavit of Chantal Manning fled 23 March 2020.
14 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.
15 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.

13.10.4. Provide regular verbal and written updates to key parties."

[13] Mr and Mrs Taylor have confidence in Integrate Rehab.

National Injury Insurance Scheme, Queensland

[14] On 23 December 2019, Mrs Taylor signed an application on behalf of Mr Taylor to be accepted as an interim participant in the National Injury Insurance Scheme.[16] Mr Taylor was unable to sign the application due to his injury. The application was accepted by the respondent, the National Injury Insurance Agency, Queensland ("Agency").

[15] Mrs Taylor deposes that it was the social worker at the Princess Alexandra Hospital, Ms Nolan, who completed the application and provided it for Mrs Taylor to sign. Unfortunately the email address on the application was incorrectly notated as Ttom1966@gmail.com.[17] The inclusion of the incorrect email address has led a lack of effective communication between the Agency and Mr and Mrs Taylor. The affidavit of Ms Jenner, head of participant care for the Agency, filed 5 May 2020, sets out the numerous steps undertaken by officers of the Agency to provide assistance to Mr and Mrs Taylor.[18] Without setting out all of the steps taken, it is helpful to set out a summary of the relevant consultations and interactions.

[16] On 13 January 2020, Ms Stammel, support planner for the Agency, attended at the Princess Alexandra Hospital to speak to Mr Taylor and his family. On 20 January, Ms Stammel sent an email to Ms Turner, senior intake officer of Spinal Life Australia. That email sought a quote for "an initial OT home visit and report to provide a detailed initial assessment of the home environment and its potential suitability as a discharge location for someone with a new Spinal Cord injury."[19]

[17] On 21 January 2020, the day which Integrate Rehab completed a home assessment, Ms Stammel, telephoned Mr Taylor and told him that an occupational therapist from Spinal Life would be completing a home assessment.[20]

[18] On 24 January 2020, Ms Stammel emailed Ms Turner and Ms Henry of Spinal Life Australia saying, in regard to the home visit by Spinal Life Australia:

> "Just for your further background information, Thomas [sic] solicitor has arranged a private OT from Brisbane to travel up and complete a home visit. This was conducted this week. So there might be questions from Thomas [sic] wife Jodie as to why another assessment is being conducted. I have explained to Thomas that it is *important for us* to form local connections with the local Spinal Cord injury experts in the area who will be the local supports for Thomas when he is discharged home. Furthermore, NIISQ wants to ensure that we have Spinal Cord injury experts on the ground who can help liaise with the Spinal

---

16 Affidavit of Bronwyn Selene Jenner filed 11 May 2020.
17 Affidavit of Jodie Taylor filed 12 May 2020.
18 Affidavit of Bronwyn Selene Jenner filed 5 May 2020.
19 Exhibit BSJ-7 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
20 Exhibit BSJ-9 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.

> injuries unit to ensure that Thomas is well set up with appropriate supports for discharge."
>
> (Emphasis added.)

[19] On 10 February 2020, Ms Stammel telephoned Mr Taylor confirming the next scheduled goal planning meeting on 17 February 2020.[21]

[20] On 17 February 2020, the Agency received a service request for case management, with a copy of the Integrate Rehab report attached.[22] On that same day, Ms Stammel attended the Princess Alexandra Hospital for the purpose of a scheduled goal planning meeting, however it did not occur. BSJ-19, a file note prepared by Ms Stammel, records that:[23]

> "…Met with Meghan Nolan Social worker, who advised that Tom was quite upset today and had requested to postpone/cancel the goal planning meeting. As such, Meghan advised that she would contact NIISQ to advise when the next meeting would be scheduled."

[21] Also on 17 February 2020, Ms Henry, occupational therapist for Spinal Life Australia, attended at Mr Taylor's residence at Bungandurra.[24]

[22] On 18 February 2020, after seeking an alternative time to conduct a meeting with Mr Taylor, Ms Stammel of the Agency was informed by Ms Nolan that Mr Taylor was still upset but "a little better since Monday, though still very much finding it difficult to cope with being separated from his family. He was however very open to meeting with you…"[25]

[23] One month after Ms Henry had performed the home assessment of Mr Taylor's residence at Bungandurra on 17 February 2020, Ms Henry sent her home assessment report to Ms Stammel. Exhibit BSJ-33 is the email of Ms Henry dated 17 March 2020 which records:[26] "Sorry for the delay in getting this too [sic] you. Please let me know if it is not sufficient. Unfortunately, I am not able to offer many recommendations in this situation."

[24] The occupational therapy report was commissioned to make an assessment of the current accommodation of Mr Taylor at Bungandurra and its suitability for wheelchair access. Accordingly, the report of Ms Henry is not intended to be and is not as comprehensive as the Integrate Rehab report. Nonetheless, on the issue of current accommodation, Ms Henry's report's conclusions are the same, namely Mr Taylor's current living situation was unsuitable, and the caravan/shed could not be modified to make it appropriate for Mr Taylor.[27]

[25] Ms Henry records that the option of living with the family in the main home was discussed but rejected. Ms Henry made enquiries as to the rental accommodation for disability accessible accommodation and concluded there was a limited supply of

---

21 Exhibit BSJ-16 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
22 Affidavit of Bronwyn Selene Jenner filed 5 May 2020.
23 Exhibit BSJ-19 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
24 Exhibit BSJ-22 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
25 Exhibit BSJ-23 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
26 Exhibit BSJ-33 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
27 Exhibit BSJ-33 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.

such accommodation, with such accommodation being "available occasionally, but demand is competitive."[28]

[26] Ms Henry's investigations showed that construction of a wheelchair accessible home was likely to be the most appropriate long-term solution.[29] This solution was costed with a disability access cabin costing $125,000 for a two-bedroom cabin with additional charges for plumbing and power. Ms Henry then reflected upon the difficulty that Mr and Mrs Taylor did not own the property, hence any construction required the approval of the owners.

[27] Between 17 February 2020 and 25 February 2020, there was no correspondence or contact between Mr and Mrs Taylor and any officer of the Agency.[30] On 25 February 2020, Ms Stammel sent an information notice containing a notification not to approve the service request to provide Mr Taylor with funding for external case management. The notice was emailed to Mr Taylor's solicitor at Maurice Blackburn and also forwarded to the incorrect email address Ttom1966@gmail.com. The email was sent after Ms Stammel and her manager, Ms Lee, had attended on Mr Taylor at the Princess Alexandra Hospital on 25 February 2020.

[28] As Mr Taylor deposes, the decision to refuse external case management was not discussed with him at all.[31] The file note of the face to face meeting of 25 February 2020, records the difficulty that Mr Taylor was placed in. External case management had been denied to him. Secondly the occupational therapist from Spinal Life Australia and Integrate Rehab had considered that modification of the shed/caravan area was not likely to be feasible with both occupational therapists recommending a purpose-built residence as the best option.[32]

[29] The file note records, *inter alia*:[33]

> "Discussed that NISQ can only fund necessary and reasonable modifications but unable to fund capital works as such, NIISQ could not fund a purpose-built house. Tom advised that he did not have the money to be able to afford to build a property currently. Discussed that Tom would speak with his solicitor to identify if there was an option for an 'advance' from CTP claim to address this need to potentially fund the purpose build."

[30] Subsequently Mr Taylor sought an advance from the CTP insurer (the CTP insurer being the same for both the 2016 and 2019 accidents). However, the CTP insurer, not being obliged to make an advance of damages, declined to do so. Furthermore, as a result of his acceptance into the NIISQ as a participant, pursuant to s 51(3A) of the *Motor Accident Insurance Act* 1994 (Qld), the CTP insurer of the accidents is relieved of its statutory obligation to provide rehabilitation. The need for proper

---

28 Exhibit BSJ-33 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
29 Exhibit BSJ-33 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
30 Affidavit of Bronwyn Selene Jenner filed 5 May 2020.
31 Affidavit of Thomas Taylor filed 23 March 2020.
32 Exhibit BSJ-26 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
33 Exhibit BSJ-26 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.

arrangements to be made urgently prior the Mr Taylors discharge from hospital was made plain in the Integrate Rehab report of 7 February 2020.[34]

[31] More than 3 months later, Mr Taylor has consistent expert advice that the only viable option for him is to have a new purpose-built disability cottage constructed at the Bungandurra property, yet nothing has been done. Mr Taylor has a severe injury and it is common ground that he requires urgent case management. However, that has not occurred. The cost of the urgent case management during the important 3-month-period to assist in the discharge from hospital is costed in paragraph 13.11 of the report of Integrate Rehab at a sum between $4,000 and $5,200.[35]

Judicial Review

[32] On 18 March 2020, Mr Taylor filed an application for a statutory order of review of the decision made by the Agency 25 February 2020 to refuse Mr Taylor's request to fund external case management. The six grounds set out in the application were:

1. There was no evidence or other material to justify the making of the decision;
2. The making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;
3. The decision was contrary to law in that the Respondent failed to take into account the matters required by Section 30 of the *National Injury Insurance Scheme (Queensland) Act* 2016;
4. The decision was contrary to law in that the Respondent failed to take into account the matters required by Section 15 of the *National Injury Insurance Scheme (Queensland) Act* 2016 and regulations 17, 18, 19 and 20 of the *National Injury Insurance Scheme (Queensland) Regulations* 2016;
5. The Respondent failed to afford to the Applicant natural justice in that the Respondent did not allows the Applicant the opportunity to make submissions prior to making the decision;
6. The decision of the Respondent was affected by bias.

[33] The application sought:

1. An order that the time for service of this application be shortened pursuant to rule 572 of the *Uniform Civil Procedure Rules* 1999;
2. An order that setting aside the decision of the Respondent dated 25 February 2020;
3. An order directing the Respondent to approve the applicant's service request to fund external case management; and
4. An order that the Respondent pay the applicant's costs of the application.

---

34 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.
35 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.

[34] On 20 March 2020, the Agency filed an application seeking an order "[t]hat the application for statutory order review filed by the applicant on 18 March 2020 be dismissed pursuant to s 48 and/or s 13 of the Judicial Review Act 1999 (Qld)."

[35] In *Stubberfield v Webster,*[36] Thomas J said:

> "It seems to me that the present situation is one in which adequate provision is made by another law, namely the *Magistrates Court Act*, under which the applicant was entitled to seek a review of the matter by another court. The requirements of s. 12 of the *Judicial Review Act* 1991 are satisfied and the appropriate course is to dismiss the application.
>
> I would add that the requirements for dismissal under s.13(b) are also satisfied, and there is no sufficient reason 'having regard to the interests of justice' why the requisite dismissal should not follow. Quite apart from the statutory provisions, the existence of an appeal procedure is relevant to the exercise by this court of its discretion to grant certiorari…There are therefore a number of concurrent overlapping principles that may restrict the availability of the present remedy. They are however separate discretions, and none of them reduces the ambit of the others. Indeed, S. 12 and 13 may be thought to have broadened the Court's discretion in controlling its own process.
>
> …
>
> As a general rule judicial review should not be seen as a substitute for the appellate process in the civil courts. Of course particular circumstances may yield different results, as for example in a case of obvious jurisdictional abuse when the liberty of a citizen is at stake… and other situations which I do not purport to limit…"

[36] Similarly, Holmes J (as her Honour then was) in *Turner v Valuers' Registration Committee of Queensland*[37] cited *Stubberfield* with approval and applied it in dismissing an application for judicial review. Lyons J (as her Honour then was) took a similar view in *Deng v Q-Comp*[38] and I followed these decisions and came to the same view in *Lowis v Queensland Industrial Relations Commission.*[39]

[37] Acting appropriately, and as a model litigant, the Agency does not press its application for dismissal under s 48 and/or s 13 of the *Judicial Review Act* 1991 (Qld) ("JRA"). As early as 2 April 2020, the Agency accepted that its decision was improperly made, and provided its consent to enter into an order in terms of paragraph 2 of the application, namely an order setting aside the decision of the Agency of 25 February 2020.

[38] The Agency, however, would not consent to an order in terms of paragraph 3, namely a direction from the court to the Agency approving the Mr Taylor's service request to fund external case management. As an alternative the Agency proposed

---

36 [1996] 2 Qd R 211 at 216-217.
37 [2001] 2 Qd R 100 at 103.
38 [2011] QSC 191.
39 [2019] QSC 277.

that the request to fund external case management be reassessed by the Agency with the Agency being provided with 7 days to provide any further material or submissions it wished to provide to the Mr Taylor, so as to ensure that the Agency did not breach the rules of natural justice by considering Mr Taylor's material.

[39] The Agency also agreed to a shortened time frame of 14 days, as opposed to 28 days pursuant to s 22(8) of the *National Injury Insurance Scheme (Queensland) Act* 2016 (Qld) ("NIISQ Act")) to make its decision upon the service request for external case management.

[40] The powers of the court in relation to applications for statutory review are set out in s 30 of the JRA as follows:

> **"30 Powers of the court in relation to applications for order of review**
>
> (1) On an application for a statutory order of review in relation to a decision, the court may make all or any of the following orders—
>
> (a) an order quashing or setting aside the decision, or a part of the decision, with effect from—
>
> (i) the day of the making of the order; or
>
> (ii) if the court specifies the day of effect—the day specified by the court (which may be before or after the day of the making of the order);
>
> (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for preparatory steps in the further consideration) as the court determines;
>
> (c) an order declaring the rights of the parties in relation to any matter to which the decision relates;
>
> (d) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties."

[41] In summary, therefore, the parties were in agreement that there ought to be an order pursuant to s 30(1)(a)(i), namely there ought to be an order setting aside the decision from the day of the making of the order, however the parties differed as to whether the consequential order ought to be an order pursuant to s 30(1)(b) referring the matter to the Agency for further consideration (as the Agency seeks) or (as Mr Taylor seeks) an order pursuant to s 30(1)(d) that is an order directing the Agency approve the Mr Taylor's service request to fund external case management.

[42] In 1986, Mr Conyngham, the managing director of a company that promoted tours of international performers, sought to obtain temporary entry permits for the American vocal group, or at least one version of that group, called "The Platters". The Minister for Immigration and Ethnic Affairs refused entry. Mr Conyngham and others sought judicial review of the Minister's decision pursuant to the *Administrative Decisions (Judicial Review) Act* 1977 (Cth) ("ADJR").

[43] Similar to the present application, the parties in *Conyngham and Others v Minister for Immigration and Ethinic Affairs* (1986) 11 FCR 528 ("*Conyngham*") were agreed that the Minister's decision to refuse entry should be set aside, but were in dispute over the nature of the relief to which the respondents were entitled. The applicants in *Conyngham* sought an order pursuant to s 16(1)(d) of the ADJR, which is in the same terms as s 30(1)(d) of the JRA. That is, the applicants sought an order directing the minister to grant the entry permits.

[44] The Minister sought an order pursuant to s 16(1)(b) of the ADJR which is analogous with s 30(1)(b) of the JRA, seeking an order referring the matter back to the Minister for decision according to law. In the first instance, Mr Conyngham and his fellow applicants succeeded in obtaining the direction to the Minister to issue the permits. The Minister's appeal was, however, successful.[40]

[45] Sheppard J, with whom Beaumont and Burchett JJ agreed with, concluded:[41]

> "Usually relief [under s 16(b), (c), or (d)] will not be granted unless that decision is set aside, so there will almost invariably be an order made under subs-s)(1)(a). More often than not, the accompanying order will be an order pursuant to subs-s 1(b) remitting the matter for further consideration. But in an appropriate case, there is no reason why the accompanying order may not be made pursuant to subs-s (1)(d) compelling a decision of particular kind or the acknowledgement of a right or entitlement, for instance, by directing the issue of a licence or the making of a payment.
>
> …
>
> Often the order will direct the affected person or body to exercise its power or perform its duty according to law.
>
> …
>
> It would not therefore seem unlikely to have been the intention of Parliament not to clothe this court with powers at least as extensive as courts of common law could exercise. That is a further reason why the language of s 16, including that of subs-s (1)(d), should not be the subject of a narrow or restrictive construction. On the contrary, it should receive the liberal construction normally given to remedial legislation."

---

40 *Minister for Immigration and Ethnic Affairs v Conyngham and Others* (1986) 11 FCR 528.

41 *Minister for Immigration and Ethnic Affairs v Conyngham and Others* (1986) 11 FCR 528 at 536-537.

[46] Sheppard J, with reference to the usual type of order made pursuant to subs 1(b) and the Minister's second reading speech, went on to say:[42]

> "Undoubtedly that is how the court has approached its function under the Act in the six years or so that it has been in force. But that does not mean that it may not be appropriate in some circumstances to make an order which will dictate the course which a decision-maker must take. In the course of his reasons, the learned primary judge suggested that this form of order may only be appropriate in cases where the matter complained of has involved the exercise of a power in such an unreasonable way that no reasonable person could have so exercised the power: s 5(1)(e) and (2)(g). In my respectful opinion the power which the court has, although it may be rarely exercised, ought not to be subject to any such limitation. Indeed, I would think that the power is more likely to be exercised where it is shown that the decision complained of involved an error of law: s 5(1)(f). If the only issue between the parties be one of law, it is not unlikely that there will be cases where the only course open to a decision-maker, who has made a decision which involves an error of law, is to decide the matter the other way. That will usually be the case if the decision is based *upon uncontested facts*. In that event it may well be thought that, to use the language of s 16(1)(d) of the Act, the doing of justice between the parties would require the court to direct a decision of a particular kind."
>
> (Emphasis added.)

[47] The reference by Sheppard J to s 5(1)(e) of the ADJR is reference to the ground of judicial review on the basis that that the making of the decision was an improper exercise of the power conferred by the enactment pursuant to which it was purported to be made. The reference s 5(2)(g) of the ADJR is a reference to the improper exercise of power to be construed as including a reference to an exercise of power that is so unreasonable that no reasonable person could have so exercised the power; that is to say, Wednesbury unreasonableness.[43]

[48] As Sheppard J made plain, an applicant need not demonstrate Wednesbury unreasonableness as a prerequisite to obtaining a direction under s 5(1)(d) of the ADJR. Furthermore, as Sheppard J found, it is not unlikely that there may be a direction order under s 30(1)(d) of the ADJR where the decision complained of involved an error of law, usually where the decision is based upon uncontested facts.

[49] The analogue of s 5(1) of the ADJR is s 20(2) of the JRA; each sets out the grounds of review on which an application may be made. Accordingly, whilst relief in terms of a direction pursuant to s 30(1)(d) of the JRA is more likely in cases where it has been demonstrated that there is an error of law, either under s 20(2)(f) of the JRA or where Wednesbury unreasonableness has been demonstrated (under s 20 (2)(e) or s

---

42 *Minister for Immigration and Ethnic Affairs v Conyngham and Others* (1986) 11 FCR 528 at 537.

43 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

23(g) of the JRA), they ought not to be considered pre-requisites to the granting of relief under s 30(1)(d) of the JRA.

[50] The reasons of Sheppard J however also underline the importance of conclusions being made upon the grounds for judicial review as an important matter in determining the nature of the relief to be granted where a decision is set aside or quashed.

[51] The underlying importance of conclusions being made upon grounds of review so as to assist in the determination of the appropriate relief was considered by the High Court in *Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs* (1989) 167 CLR 637.

[52] The factual background to *Park Oh Ho* involved the illegal arrival of several South Koreans, to Australia in 1985 and 1986. The Koreans were arrested and detained as "prohibited non-citizens."[44] The "prohibited non-citizens" remained detained in Villawood detention centre as they were considered possible witnesses in a prosecution case that was to be brought by the Commonwealth Director of Public Prosecutions. In late 1986, the Director of Public Prosecutions informed the Department of Immigration that the Department was "not obligated any longer" to hold up deportations, and arrangements were made to deport Park Oh Ho and his fellow prohibited non-citizens.[45]

[53] The Department's decision to deport was the subject of judicial review under the ADJR. Upon review, Davies J of the Federal Court set the department's orders aside, *ab initio.* However, Davies J refused to make a declaration that the detention had been unlawful.

[54] Appeals and cross-appeals before Federal Court were dismissed. However, on appeal to the High Court, the declaration was unanimously granted. The High Court said:[46]

> "The legislative purpose to be discerned in the conferral by s. 16(1)(c) and (d) of power to grant declaratory and injunctive relief in addition to the power to quash or set aside (with effect from a specified date) an impugned decision is clear. It is to allow *flexibility in the framing of orders so that the issues properly raised in the review proceedings can be disposed of in a way which will achieve what is 'necessary to do justice between the parties'* (s. 16(1)(d)) and which will avoid unnecessary re-litigation between the parties of those issues. The scope of the powers to make orders which the sub-section confers should not, in the context of that legislative purpose, be constricted by undue technicality. In particular, the phrase 'any matter to which the decision relates' in s. 16(1)(c) should be construed as encompassing any matter which is so related to, in the sense of connected with, the impugned decision that it is appropriate

---

44 *Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs* (1989) 167 CLR 637 at 639.

45 *Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs* (1989) 167 CLR 637 at 640.

46 *Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs* (1989) 167 CLR 637 at 644-645.

> that it be dealt with by the grant of declaratory relief in judicial proceedings for the review of the propriety of that decision. In a case such as the present where the impugned decision is a deportation order which has been found to have been null and void ab initio, the lawfulness of a period of forced imprisonment which was based solely on the void order could, depending on the circumstances, be such a matter. If the applicant in such a case is still held in custody by persons under the control of the respondent decision-maker, an injunctive order that the respondent do whatever be necessary to procure the applicant's release could be properly considered as 'necessary to do justice between the parties'. In that regard, it is relevant to mention that both declaratory and injunctive orders, as distinct from an order for damages, *can readily be seen as appropriate remedies of judicial 'review'* of administrative decisions and actions."
>
> (Emphasis added.)

[55] The High Court went on to reinforce the importance of finality, particularly with respect to issues that were "plainly raised and litigated in review proceedings".[47]

[56] In the present case, the issue of whether case management was required was plainly raised. The relevant facts were uncontested, it was not in dispute that because of the complexity of Mr Taylor's needs as tetraplegic, case management was required. The Agency, again properly and fairly, concedes that case management is required, at least for some time, to manage the difficulties faced by Mr Taylor during the transition out of hospital and into suitable accommodation.

[57] The information notice rejecting Mr Taylor's application for the service request for the funding of external case management records that the evidence or other materials relied upon in making the decision was limited to "service request dated 17 February in the form of email from Maurice Blackburn Lawyers with attached Integrate Occupational Therapy report dated 7 February."

[58] The Agency gave the following five reasons for its decision to reject case management:[48]

> "● The National Injury Insurance Scheme, Queensland (**NIISQ**) Support Planner team provides participant centred cased management to maximise health outcomes and community participation, support independence and assists participants to achieve their goals. The NIISQ team works together to deliver quality, coordinated, efficient and evidenced based services to participants and their families. This service is currently being provided to Thomas and his family.
>
> ● The requested service for external case management would therefore be a duplication of services already being provided

---

47 *Park Oh Ho and Others v Minister of State for Immigration and Ethnic Affairs* (1989) 167 CLR 637 at 645.

48 Exhibit 1 to the Direction Hearing 23 March 2020.

by NIISQ and as a result is not considered to be necessary or reasonable in this circumstance.

- Give the requested services is a duplication of services already being provided internally by NIISQ, the requested service is not considered to provide value for money. Thomas' support planner and current treating team from the Princess Alexandra Hospital Spinal Injuries unit are working closely with Thomas and his family to facilitate his discharge needs and working towards assisting Thomas to achieve his rehabilitation goals.
- There is no evidence to suggest that the case management services provided by the NISSQ team is currently unsuitable for Thomas.
- As a result, the NIISQ Agency does not consider funding external case management is necessary and reasonable in these circumstances."

Ground 1 - no evidence or other material to justify the making of the decision

[59] Section 24 of the JRA provides:

> **"24 Decisions without justification—establishing ground (ss 20(2)(h) and 21(2)(h))**
>
> The ground mentioned in sections 20(2)(h) and 21(2)(h) is not to be taken to be made out—
>
> (a) unless—
>
> (i) the person who made, or proposed to make, the decision was required by law to reach the decision only if a particular matter was or is established; and
>
> (ii) there was no evidence or other material (including facts of which the person was or is entitled to take notice) from which the person could or can reasonably be satisfied that the matter was or is established; or
>
> (b) unless—
>
> (i) the person who made, or proposes to make, the decision based, or proposes to base, the decision on the existence of a particular fact; and
>
> (ii) the fact did not or does not exist."

[60] The difficulties with the interpretation and application of s 20(2)(h) and s 24 of the JRA were reviewed by McMeekin J in *Pierce & Ors v Rockhampton Regional Council.*[49] Like McMeekin J, I do not find it necessary to resolve the conundrum as

---

49 (2014) 202 LGERA 61 at 79-80.

to proper interpretation and application, nor the interpretation and interactions between ss 20(2)(h) and 24.

[61] In this case, the material and facts taken into account in the decision are identified in the decision as the service request of 25 February 2020[50] and the Integrate Rehab report of 7 February 2020.[51] The reasons for the decision show that other material was taken into account by the Agency in determining to refuse the service request, that material being Agency's own knowledge of its ability to internally undertake case management.

[62] I consider that Agency's knowledge of its own resources and ability to deploy a type of internal case management through case planners is other material, plainly the Agency had reference to in coming to its decision to reject the service request.

[63] Mr Taylor's arguments in support of ground 1, which appear to be a denial of procedural fairness and improper application of various provisions of the Act and a lack of evidence as to what "the respondent's support planner team had undertaken" are addressed in grounds 2, 3, 4 and 5.

[64] I consider that the Mr Taylor has not discharged the burden of proof with regard to satisfying at least one of the subsections of s 24 of the JRA as the Agency had evidence and other material to reply upon in coming to its decision.

Ground 2 – improper exercise of power

[65] Mr Taylor's principal argument is that the act of the Agency appointing itself as the case manager is *ultra vires*. That is to say, the appointment of the Agency as case manager is beyond the legal authority of the Agency.

[66] In *Attorney-General v Great Eastern Railway Co,*[52] Lord Blackburn explained the position as follows:[53]

> "… where there is an Act of Parliament creating a corporation for a particular purpose, in giving it powers for that particular purpose, what it does not expressly or impliedly authorize [sic] is to be taken to be prohibited..."

[67] In order to determine whether, in the present case, the Agency exercised its powers under the NIISQ Act for the purpose of which it is empowered, it is necessary to examine the purpose of the Scheme and the duties and role of the Agency under the Scheme.

[68] The expressed purpose of the NIISQ Act is "to ensure that persons who suffer particular serious personal injuries as a result of a motor accident in Queensland receive necessary and reasonable treatment, care and support, regardless of fault."[54]

---

50 Exhibit 1 to the Direction Hearing 23 March 2020.
51 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.
52 (1880) 5 App Cas 473.
53 *Attorney-General v. Great Eastern Railway Co* (1880) 5 App Cas 473 at 481.
54 NIISQ Act s 3(1).

[69] How the Act intends to achieve that purpose is outlined in s 3(2) of the NIISQ Act, which provides:

> "(2) The purpose is achieved by establishing—
>
> (a) a national injury insurance scheme, Queensland for—
>
> (i) assessing the treatment, care and support needed by participants in the scheme; and
>
> (ii) making payments for the treatment, care and support of participants; and
>
> (b) a National Injury Insurance Agency, Queensland to administer the scheme; and
>
> (c) a national injury insurance scheme fund, Queensland."

[70] The meaning of the phrase "treatment, care and support needs" includes needs relating to, *inter alia*:[55]

- Rehabilitation;
- Attendant care and support services;
- Education or vocational training; and
- Home or transport modification.

[71] A treatment, care or support service which is "for the coordination of treatment, care or support" must be provided by a registered provider.[56]

[72] When an application is made to be accepted as a participant in the Scheme, the Agency must decide to:

(a) accept the injured person as a participant in the Scheme for the "*participation period"* (an "*interim participant*");[57] or

(b) accept the injured person as a participant for the rest of the person's life (a "*lifetime participant*");[58] or

(c) refuse the application.[59]

[73] The participation period for an interim participant extends for two years starting on the day of acceptance into the Scheme.[60] In the present case, Mr Taylor was accepted as an interim participant.

---

55 NIISQ Act s 8.
56 NIISQ Act s 9(2)(b); NIISQ Regulations s 21.
57 NIISQ Act s 14(3).
58 NIISQ Act s 14(2).
59 NIISQ Act s 22.
60 NIISQ Act s 14(5), Schedule 1.

[74] Once a participant is accepted into the Scheme the Agency must assess their treatment, care and support needs.[61] In doing so, the Agency must consult with the participant about what the participant considers are the necessary and reasonable treatment, care and support needs of the participant.[62] Following this assessment, the Agency must make a support plan.[63]

[75] A participant can make a "service request" that the Agency fund particular treatment, care or support either before or after a support plan is made.[64] In assessing a person's request, the Agency must consider, *inter alia*:[65]

(a) Whether or not the requested service relates to the participant's treatment, care and support needs as a result of their injury; and

(b) If so, whether or not the needs are necessary and reasonable in the circumstances.

[76] Section 15 of the NIISQ Act provides that, in deciding whether a participant's treatment, care and support needs are necessary and reasonable in the circumstances, it must consider matters prescribed by regulation. The matters required to be considered are contained in ss 17, 18, 19 and 20 of the NISSQ Regulations. These regulations require that the Agency consider matters relating to the benefit to the participant,[66] the appropriateness of the service,[67] appropriateness of the proposed provider (if any),[68] and the cost-effectiveness.[69]

[77] The main functions of the Agency as defined in s 58 of the NIISQ Act, do not include the actual provision of treatment, care and support needs of participants. Under section 59 of the NIISQA, in performing its functions, the Agency must have regard to the following principles:

(a) participants in the Scheme should be assisted to set and achieve individual goals;

(b) participants should be supported to maximise independence, participation in the community and employment; and

(c) participants should be encouraged, and given the opportunity, to take part in decision making and exercise choice and control.

[78] The matter continued in s 20 of the NIISQ Regulations, that is, cost-effectiveness, is at the heart of the dispute between the Mr Taylor and the Agency. The reasons for decision to deny the service request on 2 February 2020 expressly state that the "requested service is not considered to provide value of money".[70]

---

61 NIISQ Act s 25(1).
62 NIISQ Act s 25(2).
63 NIISQ Act s 26.
64 NIISQ Act s 26(1).
65 NIISQ Act s 30.
66 NIISQ Regulations s 17.
67 NIISQ Regulations s 18.
68 NIISQ Regulations s 19.
69 NIISQ Regulations s 20.
70 Exhibit 1 to the Direction Hearing 23 March 2020.

[79] While s 20 of the NIISQ Regulations does allow for the Agency to consider the alternate cost-effectiveness of another provider,[71] it does not support the conclusion that on the basis of cost-effectiveness the Agency is preferred.

[80] In a very general sense, and as a consequence of the Scheme, the Agency must, inevitably, consider the treatment, care or support needs already provided to the participant. In this very general sense, in every case, the agency performs case management to some degree, as it must do so as part of its decision making process to decide whether the provision of any treatment, care and support is "necessary and reasonable" in the circumstances.

[81] The current case differs, however, in that it was accepted by the Agency that Mr Taylor in fact needs a case manager, and on an urgent basis, because of the complexity of his case.

[82] As is demonstrated above, the statutory function of the Agency is to administer the fund, by assessing a "service request" to determine if a "treatment, care or support need" of a participant is "necessary and reasonable" and if so make payments for the "treatment, care and support" of the participant. The text of the NIISQ Act does not support the conclusion that the Agency render internal specialised case management services for those participants who demonstrate a "necessary and reasonable" need for case management. The Agency's role is to assess the service requests of participants not to assess a service request which the Agency makes to itself, nor deny a "necessary and reasonable" service request on the basis that it will perform the same service.

[83] The Agency relies upon section 61(1)(f) of the NIISQ Act as authorising the Agency to provide services. However, that section really goes no further than the common law position which allowed a Statute to impliedly authorise action.[72]

[84] In *Kathleen Investments (Australia) Ltd v Australian Atomic Energy Commission and Anor* (1977) 139 CLR 117 the High Court had to consider whether or not the Commission had the power to take up shares in a mining company by virtue of a provision in the act establishing the Commission had the "power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions".[73]

[85] Barwick CJ, whilst dissenting in the result, was not in disagreement as to the issues surrounding the determination of the extent of the Commission's powers. His Honour noted that:[74]

> "It is important that in the case of a statutory corporation the power and authority to do any particular thing be found in the language of the statute, in what it expressly provides and what it inferentially provides as a matter of necessary implication.

---

71 NIISQ Regulations s 20(2)(b).

72 *Attorney-General v Great Eastern Railway Co* (1880) 5 App Cas 473 at 481.

73 *Kathleen Investments (Australia) Ltd v Australian Atomic Energy Commission and Anor* (1977) 139 CLR 117 at 123.

74 *Kathleen Investments (Australia) Ltd v Australian Atomic Energy Commission and Anor* (1977) 139 CLR 117 at 130.

> 'What the statute does not expressly or impliedly authorize is to be taken to be prohibited'."
>
> (Footnotes omitted.)

[86] In *Botany Municipal Council v Federal Airports Corporation* (1992) 175 CLR 453, the primary functions of the Federal Airports Corporation ("FAC") included the operation of federal airports. The relevant statute expressly provided that in carrying out its primary functions the FAC could carry out "necessary or desirable extensions to, or alterations of, Federal airports".[75]

[87] The High Court held that dredging activities associated with extending Sydney airport by adding a third runway came within the FAC's power by virtue of a provision of the relevant statute conferring on the FAC power to do all things "necessary and convenient to be done for or in connection with the performance of its functions".

[88] In *Anthony Lagoon Station Pty Ltd v Aboriginal Land Commissioner* (1987) 15 FCR 565, the Full Federal Court found that statutory provision authorising the Commissioner to "do all things necessary or convenient for or in connection with the performance of his functions" did not authorise the Commissioner to make orders, give directions or confer authorities. Ryan J confirmed that, notwithstanding the apparent breadth of the provision, it had to be interpreted by looking at the "functions to which the power generally described in [the relevant section] as ancillary or incidental" rather than just looking at the "general descriptive words" in the relevant section.[76]

[89] An analysis of the relevant provisions of the NIISQ Act demonstrates the demarcation made by the NIISQ Act between both the administration of the scheme and the fund on the one hand and the delivery of services on the other.

[90] Under the NIISQ Act, the Agency is to administer the Scheme; the provision of services of a rehabilitative nature are not expressly included as a function of the Agency.[77]

[91] Section 61(1) of the NISSQ Act sets out specific powers of the Agency, none of which involve the provision of services. The power relied on by the Agency contained in section 61(1)(f) is expressly limited to things "done in the performance of its functions". The Agency is further empowered to employ staff "it considers appropriate to perform its functions".[78] Section 63 does not contain a provision to expressly allow the Agency to employ staff to deliver services of the sort referred to in s 8 of the Act.

[92] The NIISQ Act establishes and limits the functions and powers of the Agency to the administration of the scheme, assessing the needs of participants in the scheme and funding the services that participants require. The actual provision of services is neither expressly nor impliedly authorised by the NIISQ Act.

---

75 *Botany Municipal Council v Federal Airports Corporation* (1992) 175 CLR 453 at 460.
76 *Anthony Lagoon Station Pty Ltd v Aboriginal Land Commissioner* (1987) 15 FCR 565 at 585.
77 NIISQ Act s 58(1).
78 NIISQ Act s 63.

[93] As to the registration requirement of s 9(2) of the NIISQ Act, the Agency submits that it "clearly applies in respect of external providers". However, nowhere in the Act is there a reference to external as opposed to internal providers.

[94] Further, s 19 of the NISSQ Regulations expressly requires the Agency to consider whether the treatment, care or support is being provided by "an appropriate provider". Nowhere, either under the Regulations or the Act does it indicate, for example, that a relevant consideration for the Agency is whether or not the Agency could itself provide the treatment, care or support.

[95] On Ground 2, I conclude that the decision of the Agency to, in effect, appoint itself as the case manager for Mr Taylor was an error of law as it was a decision which was *ultra vires* of the Agency's powers and authority under the NIISQ Act.

Ground 3 – Agency failed to take into account matters required by s 30 NIISQ Act

[96] The error of law alleged in ground 3 is a failure by the Agency to take into account the matters referred to in s 30 of the NIISQ Act. Section 30 of the NIISQ Act provides:

> **"30 Assessing service request**
>
> In assessing a service request, the agency must consider the following matters—
>
> (a) whether or not the requested service relates to the participant's treatment, care and support needs as a result of the participant's injury;
>
> (b) if the requested service relates to the participant's treatment, care and support needs as a result of the participant's injury—whether or not the needs are necessary and reasonable in the circumstances;
>
> (c) if the requested service does not relate to the participant's treatment, care and support needs as a result of the participant's injury, or it relates to treatment, care and support needs that are not necessary and reasonable in the circumstances—whether or not the agency considers the requested service should be funded, in whole or part, under the scheme, having regard to the matters stated in section 26(1)(e)."

[97] As can be seen from the Agency's reasons for decisions set out at paragraph [58], s 30(a) is satisfied as the Agency did consider and accept that the requested service of case management did relate to Mr Taylor's treatment, care, and support needs as a result of his injury. Furthermore, s 30(b) is satisfied as the Agency accepted that the need for case management services was necessary and reasonable in the circumstances of Mr Taylor's case. The Agency's decision is that case management does result from his injury and is reasonable and necessary but that it should be provided by the Agency rather than Integrate Rehab.

[98] Accordingly, Mr Taylor has not succeeded in respect of ground 3.

Ground 4 – Agency failed to take into account matters required by s 15 NIISQ Act and matters under the *National Injury Scheme (Queensland) Regulations* 2016

[99] The Agency has acknowledged that it did fail to take into account s 15 of the NIISQ Act and the matters set out in ss 17, 18, 19 and 20 of the *National Injury Scheme (Queensland) Regulations* 2016 ("NIISQ Regulations"), thus the error of law set out in ground 4 is established.

[100] As discussed above, the establishment of an error of law as ground for review is important and relevant in exercising a discretion as to the appropriate form of relief under s 30(1)(d) of the JRA.

Ground 5 - breach of natural justice

[101] Mr Taylor points to the absence of any communication between the Agency and himself from the time the service request on 17 February 2020 until the decision, rejecting the service request, on 25 February 2020.

[102] As set out above, there was in fact no contact between the Agency and Mr Taylor or his solicitors during that period. However, there was an attempt by Ms Stammel to meet with Mr Taylor in hospital on 17 February 2020, though, the meeting could not occur because, as Mr Taylor was too upset. The decision, however, to provide or withhold case management to a tetraplegic who lived in Bungandurra for whom it was anticipated would be transferred from the Princess Alexandra Hospital firstly to the Rockhampton Base Hospital for further rehabilitation and then to an appropriate residence is a complex and important matter.

[103] Mr Taylor complains that he was "simply not given…opportunity at all to make submissions" prior to the decision to reject external case management,[79] the Agency submits that there was, "nothing preventing [the applicant] from doing so".[80]

[104] Given Mr Taylor's condition, the notion that "nothing" prevented Mr Taylor from providing submissions prior to the decision of 25 February 2020 is not supported by the evidence. The evidence, as recorded in several contemporaneous documents, is that Mr Taylor had recently been rendered a tetraplegic, had little use of his upper limbs, and was currently being administered a cocktail of strong medications, all of which culminated in, at that time, a very poor state of mind. The officers of the Agency knew of this, as is made plain by their failed attempt to conduct a face-to-face consultation on 17 February 2020 and their compassionate enquiry as to Mr Taylor's mental state the following day.[81]

[105] As noted in the report of Integrate Rehab,[82] the rehabilitation and repatriation of Mr Taylor is a complicated and important matter. As established by the multiple affidavits of Mr and Mrs Taylor, they are incapable of managing these complex rehabilitation and repatriation needs. The application for external case management on behalf of Mr Taylor was, however, made through his solicitor, Maurice Blackburn Lawyers, and the material shows there was no attempt to obtain any

---

79 Applicant's Outline of Submissions filed 29 April 2020 at paragraph 69.
80 Respondent's Outline of Submissions filed 11 May 2020 at paragraph 80.
81 Exhibit BSJ-23 to the affidavit of Bronwyn Selene Jenner filed 5 May 2020.
82 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.

further information or submissions from Maurice Blackburn Lawyers prior to refusing the request for external case management.

[106] Under those circumstances, I conclude that the Agency failed to give Mr Taylor proper opportunity to make submissions prior to the Agency's decision to refuse external case management and such failure constitutes a breach of the rules of natural justice.

[107] I acknowledge that ordinarily, a breach of natural justice alone, under s 20(2)(a) of the JRA, would lead to an order pursuant to s 30(1)(b) for referral back to the decision maker with directions made to ensure that the Mr Taylor would be afforded natural justice.

Ground 6 - Bias

[108] Bias as a ground for judicial review was discussed by the majority of the High Court in *Isbester v Knox City Council.*[83] *Isbester* involved a council officer, Ms Hughes, who was instrumental in the prosecution of Ms Isbester for offences under the *Domestic Animals Act* 1994 (Vic) in respect of Ms Isbester's dogs. Having succeeded in securing the convictions in the Magistrates Court, Ms Hughes then sat with two other council officers upon a council panel making administrative decisions as to whether or not the declare the dogs to be dangerous dogs which were to be destroyed or otherwise restrained. Plainly a public servant closely involved in the prosecution of a citizen for an offence, then sitting on a body adjudicating that same person's rights would be offensive to any fair-minded lay observer as that person would reasonably apprehend a lack of impartiality.

[109] There are over 100 pages of exhibits attached to Ms Jenner's affidavit sworn 30 April 2020,[84] which demonstrate that the officers of the Agency took considerable efforts in the performance of their duties to treat Mr Taylor with care and respect. There is nothing in the extensive material to demonstrate any hint of a bias against Mr Taylor; to the contrary, when Mr Taylor was understandably too upset to meet officials of the Agency, those officials did not press the issue. There is no bias that has been demonstrated in the present case against Mr Taylor within the commonly accepted meaning of the word.

[110] Assuming however that the Agency had to make a legitimate decision between appointing itself as case manager and any external provider as a case manager, then I conclude that any fair-minded lay observer would reasonably apprehend a lack of impartiality. In that sense, Mr Taylor has established bias, however, that finding is predicated upon the basis that the Agency was able to make a legitimate choice to between itself as a case manager and an external case manager, such as Integrate Rehab.

[111] However, as discussed above with regard to Ground 2, the Agency is not authorised to provide this sort of case management by itself. Accordingly, bias has not been established.

Conclusion

---

83 (2015) 255 CLR 135; [2015] HCA 20.

84 Affidavit of Bronwyn Selene Jenner filed 5 May 2020.

[112] In the present case, it has been established that

(a) Mr Taylor is an interim participant who is a tetraplegic that requires urgent treatment, care and support in the form of case management.

(b) Integrate Rehab Pty Ltd are a suitable external case manager.

(c) The decision of the Agency to reject external case management as the Agency intended to act itself as case manager over Integrate Rehab was an unlawful decision involving errors of law.

(d) A proper application of the provisions of the Act and Regulations compelled a decision to appoint Integrate Rehab Pty Ltd as case manager for Mr Taylor, at least on an interim basis to case manage Mr Taylor's transition, rehabilitation and repatriation.

(e) By reference to s 20 of the Regulations, the estimated costs for a three-month appointment of Integrate Rehab Pty Ltd at $4,000 to $5,200 (plus travel and reports) for the provision of services for 3 months does not, given the documented challenges facing Mr Taylor, represent an unreasonable expenditure.

[113] As discussed above, I consider that the remedies provided by s 30(1)(d) of the JRA provide a broad discretionary remedy to be exercised in cases where it is considered necessary to do justice between the parties for a direction to be provided. In the present case, where errors of law have been established and the relevant facts are uncontested, I conclude that it is necessary to do justice to the parties for the appointment of Integrate Rehab to provide case management services to Mr Taylor and I direct the Agency to appoint Integrate Rehab Pty Ltd as the case manager for Mr Taylor.

[114] In view of the evidence currently available, in particular, the evidence as contained in the report of Integrate Rehab of 7 February 2020[85] and the report of Ms Henry of Spine Australia[86] that there is a difficulty in obtaining suitable accommodation for Mr Taylor, I consider that it is appropriate for the Agency to appoint Integrate Rehab as case managers forthwith.

[115] I observe under s 17 of the NIISQ Regulations that the "benefits" to Mr Taylor are an important matter to be taken into account in determining the nature and extent of treatment, care and support. For the foreseeable future, I conclude that Integrate Rehab is the appropriate entity to provide such service, at least until Mr Taylor has transitioned from hospital and into suitable accommodation. I have not been asked to and do not set a time frame for the appointment of Integrate Rehab as case manager. Indeed, on the evidence of Ms Henry of Spine Australia and Ms Pavy it is impossible currently to estimate when suitable accommodation can be obtained for Mr Taylor.

[116] As with every treatment care and support need of a participant under the Act, whether the treatment, care and support needs remain necessary and reasonable is matter of evidence as to the applicable circumstances of the participant at any point in time. It may be as an interim participant Mr Taylor may require the case

---

85 Exhibit EP-2 to the affidavit of Erin Kate Pavy filed 23 March 2020.

86 Exhibit JT-1 to the affidavit of Jodie Taylor filed 27 April 2020.

management for the interim participation period of 2 years, however, I give no direction as to the time frame for the continuation of case management services.

[117] Accordingly, I order that:

1. The decision of the Respondent dated 25 February 2020 is set aside.

2. The Respondent is to approve the Applicant's service request to fund for external case management.