QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Bond v Multicap Limited* [2020] QIRC 051
PARTIES:	**Coralie Bond** (Applicant) v **Multicap Limited** (Respondent)
CASE NO:	AD/2020/22
PROCEEDING:	Anti-discrimination – Application for Orders
DELIVERED ON:	6 April 2020
HEARING DATE:	30 March 2020
MEMBER:	Power IC
HEARD AT:	Brisbane
ORDER:	**1. The Respondent is prohibited from terminating the employment of Ms Bond pending the resolution of the complaint currently before the QHRC or further order of the QIRC.**
CATCHWORDS:	ANTI-DISCRIMINATION – APPLICATION FOR ORDERS PROTECTING COMPLAINANT'S INTERESTS UNDER S 144 OF THE ANTI-DISCRIMINATION ACT – TEST UNDER S 144 – APPLICABILITY OF USUAL TESTS FOR INTERIM ORDERS – WHETHER ARGUABLE CASE FOR RELIEF

LEGISLATION:	*Anti-Discrimination Act 1991* (Qld), ss 136, 144, 174B
CASES:	*Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57.
	Brackenreg v Queensland University of Technology [1999] QADT 11.
	Connor v Evans & Salvation Army [1998] QADT 14.
	Coop v State of Queensland [2014] QCATA 205.
	Jones v Queensland Health [2010] QCAT 700.
	McAllister v Anti-Discrimination Commission Queensland [2018] QIRC 120.
	McIntyre v Hastings Deering (Australia) Ltd and Anor [2012] QCAT 438.
	Mount Isa Mines Ltd v Hopper (1998) QSC 287.
	Navaratnam v State of Queensland [2013] QCAT 131.
	Simpson v Welch [2002] QADT 17.
	Toodayan & Anor v Anti-Discrimination Commissioner Queensland [2018] QCA 349.
	Transport Workers' Union, Boss and Wood v Boral Resources [2006] QADT 10.
APPEARANCES:	Discrimination Claims & Worker Law for the Applicant by telephone.

Nikki A-Khavari, of counsel, instructed by McCullough Robertson, for the Respondent by telephone.

Reasons for Decision

[1] This matter concerns an application for an order pursuant to s 144(1) of the *Anti-Discrimination Act 1991* (Qld) ('Act') pending determination of a complaint filed in the Queensland Human Rights Commission (QHRC).

[2] The Applicant lodged a complaint with the QHRC on 3 January 2020 alleging direct discrimination on the basis of impairment (breast cancer), indirect discrimination on the basis of impairment (breast cancer), unlawful request to supply unnecessary information, and victimisation**.**

[3] The Applicant received a 'show cause' letter from the Respondent dated 11 March 2020 advising that consideration was being given to the termination of her employment due to her ongoing inability to perform the inherent requirements of her role. The letter requested that the Applicant provide a response by 17 March 2020.

[4] The Applicant filed an application for an order protecting complainant's interests (Form 84) on 12 March 2020 and a mention was held on 16 March 2020 at the Queensland Industrial Relations Commission (QIRC). The QIRC issued an interim order to stay the 'show cause' process pending the hearing of this application on 30 March 2020.

[5] Written submissions were filed by both parties prior to a hearing on 30 March 2020. Affidavits were filed by Kate Johnson, Chief Employee Experience Officer, Multicap Ltd and Zaccaria Alexander Casagrande, Solicitor at Supportah Ops.

Legislative framework

[6] The Act confers a range of functions on the Queensland Industrial Relations Commission (QIRC) as outlined in s 174B. Of particular relevance in this matter is s 174B(a)(i).

> **174B Functions of Industrial Relations Commission**
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> The industrial relations commission has the following functions -
>
> (a) In relation to complaints about contraventions of this Act that are referred, or to be referred, to the commission under this Act -
> (i) to make orders under section 144 before the complaints are referred to the tribunal; and

(ii) to review decisions of the commissioner under section 169 about lapsing of the complaints; and

(iii) to enforce agreements for resolution of the complaints by conciliation; and

(iv) to hear and decide the complaints;

(b) To grant exemptions from this Act in relation to work-related matters;
(c) To provide opinions about the application of this Act in relation to work-related matters;
(d) Any other function conferred on the commission by this Act;
(e) To take any other action incidental or conducive to the discharge of a function mentioned in paragraphs (a) to (d).

[7] The section upon which the QIRC may make an order in respect to this application is s 144 of the Act, outlined as follows:

144 Applications for orders protecting complainant's interests (before reference to Tribunal)

1. At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order prohibiting a person from doing an act that might prejudice -
   (a) The investigation or conciliation of the complaint; or
   (b) An order that the tribunal might make after a hearing.
2. A party or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order varying or revoking an order made under subsection (1).
3. If the tribunal is satisfied it is in the interest of justice, an application for an order under subsection (1) may be heard in the absence of the respondent to the application.

[8] Section 36 of the Act outlines the requirements to make a complaint to the QHRC:

136 Making a complaint

A complaint must -

(a) Be in writing; and
(b) Set our reasonably sufficient details to indicate an alleged contravention of the Act; and
(c) State the complainant's address for service; and
(d) Be lodged with, or sent by post to, the commission.

Jurisdictional issues

[9] The Respondent opposes the Application both on the basis that the application fails to satisfy s 144 in substance as well as a view that the QIRC does not have jurisdiction to make the order under s 144 of the Act for the following reasons:

a. The Applicant does not currently have a "valid complaint" where the QHRC has yet to accept the complaint under s 141 and/or 138(2) of the Act, and/or in the alternative the QHRC has yet to determine that there is a 'complaint' for the purposes of s 136 of the Act.

b. Jurisdiction is conferred on the QIRC by the Act where a complainant only has a right to refer a valid complaint to the QIRC under ss 164A or 166.

c. The functions conferred on the QIRC under s 174B only relate to 'complaints about contravention of this Act that are referred, or to be referred', to the QIRC under the Act, which includes s 174B(a)(i) to make orders under s 144 before the (valid) complaint is referred to the QIRC.

Is there a complaint pursuant to section 136 of the Act?

[10] As outlined above, s 136 of the Act outlines mandatory components of a complaint under the Act. The Respondent notes that Multicap has yet to be named in the complaint lodged with the QHRC, however it is not submitted that this is a requirement of s 136. There has been no submission that the complaint has not adhered to the requirements of s 136(a),(c) and (e). The Respondent submits however that the complaint does not fulfil the requirements of s 136 on the basis that s 136(b) has not been satisfied.

> **136 Making a complaint**
>
> A complaint must -
>
> > (b) Set our reasonably sufficient details to indicate an alleged contravention of the Act; and

[11] It appears from the affidavit of ZA Casagrande that the QHRC have determined that a complaint has been lodged by the Applicant and have allocated the reference number "Bond-BNE3415681:AN' to the matter.

[12] As referred to by the Applicant, and attached to the affidavit of ZA Casagrande ('ZAC-02'), the correspondence from the QHRC also states, inter alia:

a. *"Thank you for sending us your complaint"*
b. *"Your complaint appears to be covered by the Act however there appears to be some confusion regarding the timeline of events."*
c. *"So that we can consider your complaint further …"*

[13] The Respondent submits that the correspondence from the QHRC dated 17 February 2020, particularly the words *"your complaint appears to be covered by the Act however there appears to be some confusion…"* implies that a decision has yet to be made as to whether s 136(b) of the Act has been complied with. The Respondent submits that the uncertainty of the timing of the allegations prevents the "making of a complaint" under s 136, as s 138(1) of the Act only entitles a person to "make a complaint" within one year of the alleged contravention unless discretion has been exercised under s 138(2).

This discretion has yet to be exercised in relation to the 'out of time' sections of the complaint.

[14] As best I understand it, the correspondence from the QHRC is directed at seeking clarification regarding dates of events, rather than suggesting that sufficient details alleging contraventions have not been outlined. The statement "*Your complaint appears to be covered by the Act*" suggests that alleged contraventions have been outlined in a manner that is reasonably sufficient as required by s 136(b).

[15] The reference in the correspondence to the timeline of events does not exclude the complaint at this point, as a decision by the QHRC regarding the exercise of discretion pursuant to s 138(2) has not yet been communicated to the Applicant, as far as I am aware.

[16] The Respondent submits that neither the Respondent nor any of the named individuals in the lodged complaint have been contacted by the QHRC regarding an accepted complaint as is required by s 143 of the Act. I accept that this indicates that a decision has not yet been made by the QHRC as to whether to accept the complaint. There is no dispute that the complaint has not at this stage been accepted or rejected.

[17] I accept the Applicant's submission that this correspondence can be contrasted with the type of correspondence provided by the QHRC in matters in which s 136(b) has not been satisfied. In the matter of *Toodayan & Anor v Anti-Discrimination Commissioner Queensland*[1] the relevant correspondence stated, "*We cannot decide whether your complaint comes under the Act because you have not provided enough detail for us to consider accepting your complaint.*" This correspondence suggests that if the Applicant had not provided reasonably sufficient details as required by s 36(b) the correspondence from the QHRC would have indicated that this was the case.

[18] Based on the above reasons, I find that the Applicant's complaint has been made in accordance with s 136 of the Act.

Is the jurisdiction of the QIRC dependent on the complaint being accepted?

[19] The Respondent submits that the QIRC does not have jurisdiction as the Applicant's complaint has not been accepted by the QHRC.

[20] The Respondent submits that a complaint is first lodged by an applicant exercising his/her right to complain under s 134(1)(a) of the Act, however a complaint is not 'made' until the requirements of s 136 of the Act are met, and the complaint is then accepted or rejected by the Queensland Human Rights Commissioner (QHC

[1] [2018] QCA 349.

Commissioner) under s 141(1) of the Act, with an accepted complaint becoming a 'valid complaint'.

[21] The requirement in s 144 is simply that a complaint has been made. The term 'valid' is not mentioned and there is no definition of a 'valid complaint' within the Act.

[22] In *Simpson v Welch*[2] the then President of QADT, Justice Sofranoff, relied upon the decision in *Mount Isa Mines & Ors v Hopper*[3] to conclude that the jurisdiction of the Tribunal to grant interim relief under s 144 depends upon the existence of a valid complaint.

> "The jurisdiction of the Tribunal to grant interim relief under s.144 depends upon the applicant being a "complainant". The expression "complainant" is defined in s.4 of the Act to mean, relevantly the person making a complaint. Such a complaint must of course, be a valid complaint. As Moynihan SJA pointed out in MIM & Ors v. Hopper (1998) QSC 287 [Hopper v MIM], the jurisdiction of the Tribunal depends upon the existence of a valid complaint."

[23] I note that the complaint in *Simpson v Welch* had already been rejected at the time the s 144 hearing was held. This is distinguished from this matter in which the complaint has not yet been accepted or rejected.

[24] The issue of whether a complaint must be accepted in order to be valid was not canvassed in *Mount Isa Mines Ltd v Hopper*, with the Moynihan SJA determining that that "*the Tribunal's jurisdiction is conditioned on there being a complaint in terms of s 136".* Similarly, in *Simpson v Welch* the reference is to a valid complaint rather than an accepted complaint. The reference to *Mount Isa Mines* in *Simpson v Welch* indicates that 'valid' is taken to mean 'a complain in terms of s 136' given that no reference is made to the former case to a complaint being 'accepted'.

[25] The then President of QCAT Justice Wilson has however equated the concept of a valid complaint with a complaint that has been accepted by the QHRC. In *Jones v Queensland Health,* Justice Wilson referred to the decision in *Simpson v Welch* stating the following:

> "*A decision of the President of QCAT's predecessor Tribunal, the Anti-Discrimination Tribunal Queensland, suggested that the section can only apply to a valid complaint - ie. one which has been accepted by the Commissioner under s 141. This section is intended to protect, primarily, the interests of a complainant before reference of the complaint to QCAT. Only an accepted complaint can be referred to this Tribunal: Hopper v Mount Isa Mines Limited.*"

[26] The Applicant submits that in the absence of direct consideration of the reasoning of Justice Sofronoff, and where it stated that it is a 'suggestion' as provided in the quoted

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2 [2002] QADT 17.

3 (1998) QSC 287.

section of Justice Wilson's reasoning that "*[Justice Sofronoff] suggested that the section can only apply to a valid compliant"* that *Jones v Queensland Health* is not informative to the question at hand. This may be so, however a suggestion may still be considered. However as discussed above, in both *Simpson* and *Mount Isa Mines* it was determined that the complaint must be valid which I am not convinced necessarily extends to being accepted.

[27] An alternative view to that of *Jones v Queensland Health* was held in *Brackenreg v Queensland University of Technology* in which the Tribunal member stated:

> *"I am not of the opinion that acceptance by the Commissioner is a necessary prerequisite under the terms of s.144 of the Act because the decision in Proust (supra) was based on s.45(a)(1) of the Victoria Equal Opportunity Act 1984 which required the complaint to have been lodged.*[4] *This section has now been replaced by s.131 of the Victorian Equal Opportunity Act 1995.*
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> *However, I do consider it preferable in view of the wide powers that the Tribunal has under this section that the complaint be accepted by the Commissioner which occurred in this case on 9 September 1999."*

[28] A similar view was held by in *TWU, Boss and Wood v Boral Resources* in considering an application for an interim order under s 144. Member Forrest stated:

> "*On the 10th of March 2006 a complaint was lodged with the Anti-Discrimination Commission, Queensland alleging discrimination against the applicants because of their age. I am not aware of the current status of that complaint before the Commission, except to the extent that it has been submitted to me in these proceedings today that the complaint is yet to be accepted and that assertion has not been disputed. I do not consider that it matters in any event.*" [my emphasis added]

[29] It seems to me that there is a preference that complaints be accepted, but there is no clear authority that the jurisdiction of the QIRC with respect to s 144 is only enlivened when a complaint has been accepted by the QHRC. I am persuaded that the correct interpretation of s144 is that it relies upon a complaint being made in accordance with s 136. To place restrictions around the interpretation of the 'complaint' would be to effectively insert the description 'accepted' into the provision where it does not exist. If it was intended that only complaints that had been accepted by the QHRC were to be subject to s 144, the legislature would presumably have ensured that the section was phrased accordingly. It is beyond the scope of my powers as a Commissioner to import words into the section in order to provide clarity.

[30] The requirement for a complaint to exist for the purposes of s 144 relies only on the fulfilment of the requirements in s 136. As outlined above, I accept that these

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[4] As submitted by the Respondent, the only requirement for a complaint was that it was lodged as opposed to lodged and accepted.

requirements have been fulfilled. The complaint is therefore also valid for the purposes of s 164A and s 166 of the Act.

Requirements of section 144

[31] Section 144 of the Act allows for the complainant to apply for an order prohibiting a person from doing an act that might prejudice the investigation or conciliation of the complaint or an order that the QIRC might make after a hearing.

[32] In this matter, the QIRC must be satisfied that the termination of Ms Bond's employment might prejudice the investigation or conciliation of her complaint, or any order the QIRC might ultimately make.

[33] When applying the provisions in s 144, Wilson J observed *McIntyre v Hastings Deering (Australia) Ltd and Anor*:

> "The consideration of those questions occurs within the ambit of a provision which, on its face, involves the exercise of a wide discretionary power to make orders directed to the maintenance of the status quo for the purpose of enabling processes provided under the Act to be effectively pursued, and to maximise the opportunity for its objectives to be achieved. Those objectives include protection from unfair discrimination; the investigation of complaints in which discrimination is alleged; and, if the commissioner believes resolution by conciliation is possible, attempts to do so.
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> The applicant only has to show that prejudice might occur. The obligation on the applicant is to show that a possibility of prejudice exists that is tangible or, at least perceptible and plausible and not too remote or unlikely…"[5]

[34] The practice of the Tribunal when determining these applications has been to adopt the common law approach of considering whether there is a serious question to be tried and then considering the balance of convenience.[6]

[35] The relevant common law principles to be applied when determining interlocutory injunctions are outlined in *Australian Broadcasting Corporation v O'Neill*[7]:

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[5] [2012] QCAT 438, [14].

[6] *Anderson & Anor v Australian Meat Holdings Pty Ltd* [1997] QADT 25.

[7] (2006) 227 CLR 57 [65].

> "The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief … The second inquiry is … whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted."

[36] The decision in *Connor v Evans & Salvation Army*[8] determined that it was not necessary for the applicant to establish a prima facie case, however the QIRC must be satisfied of the existence of a serious issue to be tried. In the more recent case of *Jones v Queensland Health*[9] Justice Wilson outlined the two main enquiries required as per the common law approach:

(a) Has the applicant made out a prima facie case, in the sense that if the evidence remains as it is, there is a sufficient likelihood of success to justify the preservation of the status quo pending the trial; and

(b) Whether the inconvenience of injury which the Applicant would be likely to suffer if an injunction is refused outweighs, or is outweighed by, the injury which the defendant would suffer if an injunction were granted.[10]

Prima facie case

[37] As outlined in the Applicant's submissions, the complaint to the QHRC is seeking an order for compensable non-financial damage and economic loss, due to allegations of:

(a) Direct discrimination in the area of work on the basis of the Applicant's impairment of breast cancer, an impairment for the purposes of s 7(h) of the Act; or

(b) Indirect discrimination in the area of work, where the alleged term is that the Applicant is required to be fully fit, at work and not absent, where the Applicant is unable to comply with the imposed term on the basis of her breast cancer, where others without the attribute of breast cancer can comply, and the imposition of the term is not reasonable; and

(c) Unlawful requests for information in contravention of s 124 of the Act; and

(d) Victimisation under s 130 of the Act.

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[8] [1998] QADT 14.

[9] [2010] QCAT 700.

[10] [2010] QCAT 700 [8].

[38] The Applicant submits that a prima facie case has been made out on the basis of the affidavit of Z. A. Casagrande, sworn 11 March 2020. The document filed with the complaint, (affidavit attachment 'ZAC-01') outlines the allegations of contraventions of the Act in considerable detail.

[39] It is noted that the QHRC can reject complaints that are frivolous, trivial, vexatious, misconceived or lacking in substance under s 139. The correspondence from the QHRC in this matter provides some indication that the complaint as outlined does not fall into any of these categories.

[40] The Respondent submits that the ZAC Affidavit outlines mere allegations without evidence to support the allegations contained within the lodged complaint. It is not necessary at the complaint stage of the process that the specificity required in pleadings is adhered to. Nor is it necessary that all evidence is presented. The names of potential witnesses have been identified and so the allegations are capable of being supported by evidence, if the evidence given but such witnesses is taken as credible. I am satisfied that if the allegations made in the complaint are supported by credible evidence at a hearing, the matter has sound prospects of success.

[41] The Respondent also refers to *Navaratnam v State of Queensland*[11] in which Senior Member Endicott held that *"the injunctive process under section 144 must arise from the context of the actual complaint lodged by Dr Navaratnam of discriminatory conduct."* The Applicant submits that the alleged discriminatory conduct resulted in Ms Bond disengaging with the workplace which has ultimately resulted in the threat of termination. There is a sufficient nexus between the alleged discriminatory conduct and the show cause process to satisfy this issue.

[42] I am satisfied based on the information outlined in the affidavit of Z. A. Casagrande, including the complaint and the correspondence from the QHRC, that a prima facie case exists in this matter.

[43] My acceptance that there is a prima facie case does not extend to the issues involving the Independent Medical Examination (IME).[12] The material does not provide sufficient details as to how the process of directing the Applicant to attend an IME was linked to the alleged contraventions of the Act. This is necessary on the basis that s 124(2) provides that subsection 124(1) does not apply to a request that is necessary to comply with an existing provision of another act. In this matter the Respondent has outlined that the decision to obtain an IME was taken in accordance with the Respondent's work health and safety obligations under the *Work Health and Safety Act 2011*. This matter will be explored further at a hearing, should the matter not be resolved prior, however I

11 [2013] QCAT 131.

12 *Coop v State of Queensland* [2014] QCATA 205 ('*Coop*').

have given no weight to the issue for the purposes of ascertaining if a prima facie case exists.

Balance of convenience

[44] The injury or inconvenience that is likely to be suffered in an application for an order under s 144 of the Act is outlined by the section itself. That is, prejudice to the investigation or conciliation of the complaint in the QIRC, or to the orders which might be made by the QIRC after a hearing.

[45] Determining the balance of convenience requires consideration to be given to the injury or inconvenience which is likely to be suffered by the Applicant if the injunction is not granted, and for that to be weighed against the injury or inconvenience which is likely to be suffered by the Respondent if the order is granted.[13]

[46] The Respondent submits that the Applicant's position of Service Manager is a key leadership role within the organisation and that multiple people have been required to backfill the Applicant's position in an acting capacity as a result of the Applicant's absence.

[47] The absence of the Applicant from work has had a number of impacts on the Respondent including:

a) leadership stability and the staff and customer experience through regular changes, lack of knowledge/skill, and disruption in planning routines;

b) the regional Manager's role as they have had to provide extra coaching and support, to those acting up in the Applicant's role for an extended duration; and

c) the stress levels of the team to fulfil the inherent requirements of the Applicant's role over an extended period of time (now 1 year, 9 months).

[48] The Respondent submits that they would be prejudiced in the event the Applicant's position becomes redundant as a result of Covid-19, as such an order would prevent the Respondent from engaging in a redundancy process with the Applicant.

[49] The Applicant submits that if an order protecting the Applicant's interest were not to be granted, the Applicant's employment may be terminated which would cause the

[13] Ibid.

Applicant significant personal and financial hardship and would suffer material prejudice through needing to seek new employment. The Applicant submits that damages would be an inadequate remedy for this hardship.

[50] The personal impact on the Applicant of having her employment terminated because of her absence due to medical reasons caused by conduct during her employment, as alleged by the Applicant, is submitted to be severely detrimental to the Applicant's psychological state.

[51] The Applicant submits that they will suffer prejudice if the termination proceeds as they will be required to run additional components in Ms Bond's claim to argue in favour of either reinstatement or future economic loss as a result of the Respondent's termination of the Applicant's employment.

[52] In oral submissions the Applicant indicated that the investigation or conciliation of the complaint will be prejudiced if the order is not granted as new investigations would be created by the termination of Ms Bond's employment. The Applicant submitted that the QIRC will also be required to have regard to the additional components such as economic loss and additional onuses which will result in significant additional work in the way of consideration of such additional steps. This would not be necessary if the status quo remained in place.

[53] In my view caution should be exercised when considering authorities that have arisen in different statutory contexts to s 144 of this Act. The power under s 144 is more limited in scope than the general injunctive power at common law.[14] Ultimately the central question to be answered is whether or not it has been established that the proposed termination of Ms Bond might prejudice the investigation or conciliation of her complaint, or an order that the QIRC might make after a hearing.

[54] The Respondent made detailed submissions citing the authority of *Coop v State of Queensland*[15] with respect to applications under s 144 intended to prevent the termination of employment.

[55] The decision in *Coop* provides that an order under s 144 should not be made simply to prevent an employment termination, noting that provisions in the Act allow for an order for reinstatement to be made. Although the issues in *Coop* can be distinguished from those in this matter[16] I accept the interpretation that an order to simply prevent

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[14] *Jones v State; Coop.*

[15] Ibid

[16] In Coop, all decisions relating to the termination had already been made and communicated to the Appellant.

employment termination for that reason alone does not satisfy s 144, and that specific prejudice must be demonstrated as characterised in the section itself.

[56] It may well be practically difficult for the QIRC to order reinstatement when circumstances may have changed considerably between now and when the outcome of the complaint is finalised. A decision to sever the employment relationship now may impact a future order insofar as the Applicant's psychological fitness to return to the workplace. The possibility that a replacement will be appointed to the Applicant's position or the position made redundant may prejudice an order of reinstatement being granted. The possible impact on an order for reinstatement in circumstances where an employee has been terminated and replaced was discussed in *Coop*:

> "It has been observed, in the context of considering whether reinstatement of unfairly or unlawfully dismissed employees is impracticable or inappropriate, that the effect of a reinstatement order on a third party, whilst not a conclusive consideration, ought cause a Court to hesitate before making an order that forces the dismissal of that third person."[17]

[57] The view that the QIRC may hesitate to make an order to reinstate the Applicant due to the effect on a third party who may have been appointed to fill her position gives weight to the view that a potential order of the QIRC may be impacted if an order under s 144 is not given.

[58] As considered in *McIntyre v Hastings Deering (Australia) Ltd and Anor* the QIRC has discretionary powers under s 144 to make orders *"... directed at the maintenance of the status quo for the purpose of enabling the processes provided under the ADA to be effectively pursued, and to maximise the opportunity for its objectives to be achieved.*"[18] In my view, allowing this order will result in minimal prejudice to the Respondent whilst allowing the complaint to be determined in a manner unconstrained by the consequences of the Applicant's potential termination.

[59] I am satisfied that the prejudice that may result from Ms Bond's termination is not simply the inconvenience of being terminated. On the material before me, it appears that a potential order for reinstatement may be prejudiced by virtue of Ms Bond's ability to re-engage with the workplace following the psychological impact of being terminated.

[60] I also accept that the balance of convenience favours the Applicant on the basis that Ms Bond is not currently working or being paid by the Respondent. I acknowledge the organisational burden of having staff act in the role during the Applicant's absence,

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[17] *Coop* [73].

[18] *McIntyre v Hastings Deering (Australia) Ltd and Anor* at 41.

however the financial impact on the Respondent by continuing to employ the Applicant until the matter is resolved will be minimal.

[61] Although brief submissions were made by the Applicant suggesting the investigation or conciliation process would be prejudiced pursuant to s 144(1)(a), these submissions did not extend beyond a view that the grounds to be argued by the Appellant would increase if reinstatement was to be included in the complaint resulting in an additional onus to be discharged at hearing. Whilst this may require additional work, I do not consider it to be significantly prejudicial so as to satisfy s 144(1)(a).

Conclusion

[62] As outlined above, the complaint as lodged in the QHRC is valid pursuant to s 136.

[63] Consequently, the QIRC has jurisdiction pursuant to s 174B(a)(i) to make orders under s 144 of the Act.

[64] The requirements of s 144 have been considered above, guided by the common law approach to injunctions. I am persuaded that a prima facie case exists based on the affidavit material alleging contraventions of the Act. I am also satisfied that the balance of convenience favours the Applicant, specifically in the terms set out by s 144(1)(b).

[65] Based on the reasons outlined above, I am persuaded to grant appropriate interim relief in this matter.

[66] I order as follows:

Order

1. **The Respondent is prohibited from terminating the employment of Ms Bond pending the resolution of the complaint currently before the QHRC or further order of the QIRC.**