QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Myers v State of Queensland (Department of Education)* [2021] QIRC 108
PARTIES:	**Myers, Valerie** (Applicant) v **State of Queensland (Department of Education)** (Respondent)
CASE NO:	GP/2020/20
PROCEEDING:	General Protections - Application in existing proceedings
DELIVERED ON:	30 March 2021
MEMBER:	McLennan IC
HEARD AT:	On the papers
ORDERS:	**1. That the Application in existing proceeding is upheld.** **2. That the substantive Application is dismissed.** **3. That each party is to bear their own costs in the proceeding.**
CATCHWORDS:	INDUSTRIAL LAW – GENERAL PROTECTIONS – where Applicant failed to provide requested information - where Applicant delayed in complying with directions - where Respondent filed application pursuant to s 541 of the *Industrial Relations Act 2016* (Qld) to dismiss the

substantive matter - consideration of r 45 of the *Industrial Relations (Tribunals) Rules 2011* (Qld) - application to dismiss the substantive matter is granted

LEGISLATION:

Industrial Relations Act 2016 (Qld) s 3, s 541

Industrial Relations (Tribunals) Rules 2011 (Qld) r 6, r 45

CASES:

Cady v Capital SMART Repairs Australia Pty Ltd & Anor [2019] QIRC 144

Campbell v State of Queensland (Department of Justice and Attorney-General) [2019] ICQ 18

Cooper v Hopgood & Ganim [1998] QCA 114

House v R (1936) 55 CLR 499

Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd [1990] 98 ALR 200

Orchid Avenue Realty Pty Ltd t/a Ray White Surfers Paradise v Percival (2003) 174 QGIG 643

Quaedvlieg and Ors v Boral Resources (Qld) Pty Ltd [2005] QIC 73

Quinlan v Rothwell & Anor [2001] QCA 176

Seymour v Workers' Compensation Regulator [2017] QIRC 061

State of Queensland v Lockhart [2014] ICQ 006

Treanor v State of Queensland [2019] QIRC 146

Witten v Lombard Australia Ltd (1968) 88 W.N. (Pt. 1) N.S.W. 405

Workers' Compensation Regulator v Bero [2019] QIRC 36

Workers' Compensation Regulator v Varga [2019] QIRC 028

Reasons for Decision

[1] Ms Valerie Myers filed a Form 2 - Application to Queensland Industrial Relations Commission - non-chapter 12 approved form ('the Application') on 7 October 2020. In brief, the Application relates to Ms Myers' claims that during her employment by the Respondent she was subjected to:

- racial hatred from students, which was not addressed by management; and
- racial discrimination by several staff members.

[2] On 12 October 2020, the Industrial Registry issued an email to the parties that addressed Ms Myers and stated the following (emphasis added):

> Ordinarily, before the parties attend a conciliation for a matter such as this, the respondent is required to comply with Practice Note 1 of 2017 (attached). In particular, the respondent must provide a response advising whether the remedy sought is opposed and whether the material facts relied upon in the application are accepted. **The current difficulty with your application is that the nature of your claim, and the facts on which you rely, lack sufficient detail such that one is unable to discern what has actually transpired between you and your employer and, more importantly, how you claim you have been injured in your employment.**
>
> Although it is entirely a matter for you as to how your application is prepared, **in circumstances where it does not appear that you are represented, below are some categories of information that may be of assistance to the Commission** so that Commissioner Knight can better understand your claim:
>
> 1. Basic information about your employment. When were you appointed? What was the nature of your appointment? How long have you been employed for? Are you currently an employee of the Department of Education?
>
> 2. You have made reference to probation within your correspondence. The nature or circumstances of the probation to which you refer in your correspondence is not entirely clear. It would be helpful if you could provide the correspondence to which you refer and the circumstances of the probation.
>
> 3. What is your complaint? For example, is it the case that you are saying your employer has taken adverse action against you? If so, would you be able to provide more detailed

information about how your employer has adversely impacted you in your employment? Specific dates and timeframes are often helpful.

4. You have referred to being discriminated against in your employment. It would be helpful if you could provide specific instances of when and where you consider you have been discriminated during your employment.

5. You have sought compensation for loss of pay – it would be helpful if you could quantify and/or provide more details as to the specific compensation that is sought.

I ask that you provide both the Department of Education and the Industrial Registry with the above information by COB on Wednesday, 15 October 2020.

[3] Ms Myers subsequently filed a document on 15 October 2020.

[4] In response to the Application and supporting material, the Respondent in the substantive proceeding submitted the following:

- It is unclear what protection Ms Myers is disputing because the Application does not refer to the relevant section of the *Industrial Relations Act 2016* (Qld) ('the IR Act') to which Ms Myers' dispute relates;

- The Affidavit and attachment that Ms Myers filed in support of the Application does not provide the basis for the general protections orders she is seeking; and

- The materials filed by Ms Myers do not provide evidence of discrimination.

[5] The matter was conferenced before Commissioner Knight on 22 October 2020. The Application did not resolve at conference, and so was referred to me for hearing.

[6] A Directions Order was issued to the parties on 14 January 2021 ('the 14 January 2021 Directions') relevantly directing:

1. That the Applicant file in the Industrial Registry and serve on the Respondent a statement of facts and contentions (no more than 10 pages, type-written, line and a half spaced, 12-point font size and with numbered paragraphs), by **4.00pm on 28 January 2021**

2. In relation to the allegations in the Applicant's application that the Respondent has contravened s 285 of the *Industrial Relations Act 2016* ('the Act'), the Applicant's statement of facts and contentions must:

   (a) having regard to s 284 or s 286 of the Act, state the Applicant's workplace right or workplace rights;

   (b) having regard to s 282 of the Act, state the adverse action taken against the Applicant; and

   (c) having regard to s 285 of the Act, state why the adverse action was taken against the Applicant.

3. In relation to the allegations in the Applicant's application that the Respondent has contravened s 295 of the Act, the Applicant's statement of facts and contentions must:

(a) having regard to s 295(1) of the Act, state the attribute of the Applicant; or

(b) having regard to s 295(1) of the Act, state the attribute of another person with whom the Applicant had or has association or connection; and

(c) having regard to s 282 of the Act, state the adverse action taken against the Applicant; and

(d) having regard to s 295(1) of the Act, state why the adverse action was taken against the Applicant.

4. The Applicant's statement of facts and contentions must:

(a) having regard to s 314 of the Act, state the order or orders sought by the Applicant;and

(b) if an order for the payment of compensation to the Applicant is sought, specify:

(i) if general damages are sought, the amount of general damages claimed; and

(ii) if economic loss is claimed:

A. whether the economic loss claimed is past economic loss and/or future economic loss;

B. the exact circumstances in which the loss or damage was allegedly suffered;

C. the amount of past economic loss and/or future economic loss that is claimed; and

D. how the Applicant worked out or estimated the amount of past and/or future economic loss;

(c) if an order for the payment of an amount to the Applicant for remuneration lost is sought, specify:

(i) the gross amount of remuneration lost;

(ii) whether the remuneration was payable pursuant to a contract of employment, industrial instrument or other instrument; and

(iii) how the Applicant worked out or estimated the amount of remuneration lost.

[7] The relevant sections of the IR Act were referenced in the 14 January 2021 Directions for Ms Myers' convenience.

[8] On 1 February 2021, the Respondent issued an email to the Industrial Registry that copied in Ms Myers. In that email, the Respondent noted that a Statement of Facts and Contentions had not been served as directed under the 14 January 2021 Directions.

[9] In response, my Associate acknowledged that a Statement of Facts and Contentions had not been filed by Ms Myers and stated "Ms Myers, kindly explain that omission as a matter of urgency. Failure to comply with Directions may result in your application being dismissed."

[10] On 2 February 2021, Ms Myers responded by indicating she did not wish to go ahead with the matter due to impacts on her mental health. In response, my Associate asked Ms Myers to file a Form 27 if she wished to discontinue the proceeding.

[11] In an email to my Associate on 4 February 2021, Ms Myers explained the delay in complying with the 14 January 2021 Directions by alleging she was unaware that a Statement of Facts and Contentions needed to be filed and that some correspondence had gone to her junk mail.

[12] On 4 February 2021, my Associate issued an email to the parties summarising the situation as follows:

> Ms Myers, you were required to file a Statement of Facts and Contentions by 28 January 2021. That Direction was sent to you, at the same email address you had previously, and have subsequently, used to correspond with this Commission. You did not file that material.
>
> On 1 February 2021, both the Department and I wrote to you, at the same email address, advising that you were non-compliant and asking you to explain the situation. You were advised that if you failed to comply, your matter may be dismissed.
>
> On 2 February 2021, you replied to that correspondence and said: “I cannot go further with this as it causes me huge stress and anxiety which I don’t need in my life” and “I’m closing that chapter in my life, to go back and reopen it after so many months could prove harmful to my mental health and it may be worse than before.” That same day, I wrote to you and asked you to file a Form 27 Discontinuance to formally conclude the proceedings.
>
> Today, I have written to you advising that the Department has foreshadowed that, if you do not file a Form 27 Discontinuance, they will seek to have the matter struck out for non-compliance with Directions.
>
> Rather than respond to my email, your most recent email below is replying to my email of 1 February 2021, and does not acknowledge or include your previous correspondence, or indeed that from the Department or myself. Please find that other correspondence attached.
>
> As such, kindly file a Form 27 if you wish to Discontinue these proceedings. The Department has said that, if a Discontinuance is not forthcoming, they may file a Form 4 Application in existing proceedings seeking that the matter be struck out for non-compliance with Directions.

[13] On 5 February 2021, Ms Myers responded to the 14 January 2021 Directions by filing a document titled 'Statement of Facts'. That was filed 8 days after the date prescribed in Order 1 of the 14 January 2021 Directions.

[14] On 5 February 2021, an Amended Directions Order was issued to the parties ('the 5 February 2021 Directions'). An extract from my Associate's email (to which the 5 February 2021 Directions were attached) stated (emphasis added):

> Ms Myers, **your Statement of Facts and Contentions remains non-compliant with the Directions** issued in this matter on 14 January 2021. I particularly draw your attention to Directions 2, 3 and 4, which require you to particularise, amongst other things: the precise workplace right which you say is relevant, the adverse action connected to that right, why you believe that action was taken, what relevant attributes you possessed, and so forth.
>
> **If you remain non-compliant with Directions, per my previous correspondence your matter may be dismissed.**
>
> **In affording Ms Myers a further opportunity to comply, Commissioner McLennan has re-issued the Directions in this matter.** Please find attached Amended Directions, issued today in the matter above from the hand of Industrial Commissioner McLennan. This matter is to be heard regionally, and so it is imperative that the parties are compliant with the set timeframes as the Commission has limited availabilities in regional courthouses.
>
> **Ms Myers, I have included a link to the Workers' Compensation Appeals Guide. It sets out some general information about Statements of Facts and Contentions, which may assist you to understand what is required of you**: Workers' compensation | Queensland Industrial Relations (qirc.qld.gov.au) (click on 'Workers' Compensation Appeal Guide' in the second paragraph). If you have difficulty accessing that, please contact the Industrial Registry, who will be able to assist you.

[15] The 5 February 2021 Directions essentially replicated the 14 January 2021 Directions, relevant excerpts of which are outlined at [6] above with the exception that Ms Myers was afforded the opportunity to file an amended Statement of Facts and Contentions by 4:00pm on 10 February 2021.

[16] Ms Myers did not comply with the 5 February 2021 Directions, prompting the Respondent to file a Form 4 - Application in existing proceedings on 23 February 2021.

[17] On 26 February 2021, a Directions Order was issued ('the 26 February 2021 Directions') in terms including:

> 2. That, **by 4:00pm on 12 March 2021,** the Applicant file in the Industrial Registry and serve on the Respondent, any submissions as to whether or not the Application filed on 7 October 2020 should be dismissed under:
>
> a. s 541 of the *Industrial Relations Act 2016* (Qld); or alternatively
>
> b. r 45 of the *Industrial Relations (Tribunals) Rules 2011* (Qld).

[18] The relevant sections of the IR Act and *Industrial Relations (Tribunal) Rules 2011* (Qld) ('Tribunal Rules') were referenced in the 26 February 2021 Directions for Ms Myers' convenience.

[19] On 14 March 2021, being two days after the deadline imposed by the 26 February 2021 Directions, Ms Myers sent an email to my Associate, copying in the Respondent. Although not formally 'filed' as a document in the Industrial Registry, I have deemed Ms Myers' email dated 14 March 2021 to constitute her submissions, as ordered by the 26 February 2021 Directions.

[20] On 19 March 2021, the Respondent filed its submissions in relation to the Form 4 - Application in existing proceedings.

[21] Even now, the substantive requirements of the 14 January 2021 Directions, 5 February 2021 Directions and 26 February 2021 Directions (collectively 'the Directions') remain unfulfilled. At no stage has Ms Myers requested an extension.

[22] For the reasons that follow, I have determined that Ms Myers' continued and inadequately explained non-compliance with the Directions warrants the dismissal of her Application.

Submissions

[23] The entirety of Ms Myers' submissions concerning why her Application should not be dismissed are extracted below from her email dated 14 March 2021:

> To dismiss this file would give high schools in Queensland a ticket to continue bullying and harassing teachers from a different race/colour.
>
> I would like Education Queensland to pay for the damages they caused to my mental state of mind, banning me from working in any state school in Queensland, thus damaging me financially too. I had no means of getting work in a primary setting, I could not leave Queensland as borders were closed due to Covid. I was in a predicament from August 23rd the day I had no choice but to go on stress leave. The doctors took a long time to get me on adequate medication to improve my PTSD condition. This was all caused by Mackay Northern Beaches State High School.
>
> It is not a trivial matter, I have to be paid out by them, I'm asking only for pay from 23rd August as they didn't pay me for all the days I took stress leave , also term 3 holiday pay till January 2021, the next school term.

[24] In its submissions, the Respondent seeks that the matter be dismissed due to Ms Myers' non-compliance. In summary:

- Ms Myers failed to comply with the Directions;
- Ms Myers' non-compliance related to both matters of substance and time;
- There is no ability for this matter to proceed without the information sought from, and not provided by, Ms Myers:

> Specifically, the Applicant has failed to particularise the precise workplace right which she says is relevant (s284 or 2896 of the IR Act), the adverse action connected to that right (s282 of the IR Act), why she believes that action was taken (s285 of the IR Act), and what relevant attributes she possessed (s2905 of the IR Act).

[25] As set out and established above, Ms Myers has persistently failed to comply with the Directions.

[26] The question is then whether such non-compliance warrants dismissal of her Application.

Section 541(b)(ii)

[27] In its Application in existing proceedings, the Respondent sought to rely on s 541(b)(ii) of the IR Act. Section 541 of the IR Act provides (emphasis added):

> **541 Decisions generally**
>
> The court or commission may, in an industrial cause do any of the following-
> (a) make a decision it considers just, and include provision for preventing or settling the industrial dispute or dealing with the industrial matter to which the cause relates, without being restricted to any specific relief claimed by the parties to the cause;
> (b) **dismiss the cause**, or refrain from hearing, further hearing, or deciding the cause, if the court or commission considers-
> (i) the cause is trivial; or
> (ii) **further proceedings by the court or commission are not necessary or desirable in the public interest**;
> (c) order a party to the cause to pay another party the expenses, including witness expenses, it considers appropriate.

[28] With specific regard to s 541(b)(ii) of the IR Act, the Respondent simply submitted that because "there is no ability for this matter to proceed without the information sought from, and not provided by, the Applicant" that "it is therefore not desirable in the public interest to continue this matter…"

[29] Satisfaction of s 541(b)(ii) of the IR Act turns on whether further proceedings are not necessary or desirable in the public interest.

[30] The decision of his Honour Deputy President O'Connor (as he then was) in *State of Queensland v Lockhart* provided (emphasis added, citations removed):[1]

> In *O'Sullivan v Farrer*, Mason CJ, Brennan, Dawson and Gaudron JJ considered the expression 'in the public interest'. Their Honours wrote:
>
> > 'Indeed, the expression, 'in the public interest', when used in a statute, classically imports **a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the**

[1] *State of Queensland v Lockhart* [2014] ICQ 006, [21] followed in *Campbell v State of Queensland (Department of Justice and Attorney-General)* [2019] ICQ 18, [24].

> **statutory enactments may enable** … given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view.'

In *GlaxoSmithKline Australia Pty Ltd v Makin*, the Full Bench of Fair Work Australia in considering what constitutes 'the public interest' wrote:

> 'Appeals have lain on the ground that it is in the public interest that leave should be granted in the predecessors to the Act for decades. It has not been considered useful or appropriate to define the concept in other than the most general terms and we do not intend to do so. **The expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made to be made by reference to undefined factual matters, confined only by the objects of the legislation in question.**

[31] In *Campbell v State of Queensland (Department of Justice and Attorney-General),*[2] Justice Martin provided (citations removed):

> Similarly, in *Prange v Brisbane City Council*, Hall P held at [3] that:
>
> "**The power to dismiss proceedings pursuant to s. 331 of the Act, on the ground that further proceedings are not necessary or desirable in the public interest, is a discretionary power.** The discretion is not vested in this Court. The discretion is vested in the Commission. Only in limited circumstances may this Court intervene. In *House v The King* at 504 to 506, Dixon, Evatt and McTiernan JJ explained:
>
> > 'The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.'
>
> In the earlier case of *Quaedvlieg & Ors v Boral Resources (Qld) Pty Ltd* Hall P, in dealing with an application to strike out for want of prosecution, cited with approval the reasoning of Thomas JA in *Quinlan v Rothwell* as follows:
>
> > "**There is now a consciousness of the need for some level of efficiency in the use of the courts as a public resource.** That, of course, must not displace the need for reasonable access to the courts and the provision of justice according to law in each matter, but it highlights the fact that the former laissez faire attitude by courts towards the leisurely conduct of actions at the will of the parties has ended. At the same time the rules of court are not an end in themselves. **They do not exist for the discipline of practitioners or clients, or for the protection of courts from inefficient litigants, but rather as a means of ensuring that issues will be defined in an orderly way and that parties have the opportunity of full preparation of their case before the trial commences.** The rules also afford defendants the means of bringing to an end actions in which the other party will not abide by the rules."

---

[2] *Campbell v State of Queensland (Department of Justice and Attorney-General)* [2019] ICQ 18, [23]-[26].

[32] In *Orchid Avenue Realty Pty Ltd v Percival*,[3] President Hall cautioned against dismissing matters before they have been heard in their entirety (citations removed):

> In *Nugent v. Aromas Pty Ltd* I accepted that in exercising the power at s. 331(b) (then the power at s. 90(1)(b) of the *Industrial Relations Act 1990*) respect should be given to the general principle enunciated by O'Connor J in *Burton v. The President of the Shire of* that:
>
> > "Prima facie, every litigant has a right to have matters of law as well as of fact decided according to the ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals, and the inherent jurisdiction of the Court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action that is frivolous or vexatious in point of law will never be exercised unless the plaintiff's claim is so obviously untenable that it cannot possibly succeed.".
> >
> > I continue to adhere to that view. I also accept that great care must be exercised to ensure that under the guise of achieving expeditious finality an applicant is not improperly deprived of the opportunity of having the case tried by the appointed Tribunal, compare *General Steel Industries Inc v. Commissioner for Railways* (NSW).

[33] Section 541 of the IR Act clearly involves a broad discretionary determination informed by the facts of the matter itself and by the objects of the Act. In that regard, s 3 of the IR Act provides as follows:

> **3 Main purpose of Act**
>
> The main purpose of this Act is to provide for a framework for cooperative industrial relations that—
>
> (a) is fair and balanced; and
> (b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders.

[34] Without Ms Myers' compliance with the Directions, I cannot assess the prospects of success of the substantive matter, should it proceed to hearing. Therefore, I do not conclude that further proceedings are 'not necessary'. However, for the reasons outlined below I consider it is not desirable in the public interest for further proceedings to follow.

[35] Ms Myers has been afforded a reasonable opportunity to access the Commission and provision of justice. Ms Myers has been provided with information by the Industrial Registry and my Associate, in order to understand the requirements of her. Notwithstanding, Ms Myers has proceeded at her own leisure, with disregard for the interests of the Respondent.

[36] Ms Myers' delay and unwillingness or inability to clarify her case has meant the issues in dispute are not defined and therefore the Respondent is unable to prepare its case accordingly.

---

[3] *Orchid Avenue Realty Pty Ltd t/a Ray White Surfers Paradise v Percival* (2003) 174 QGIG 643, 644.

[37] With regard to President Hall's reasoning in *Orchid Avenue,*[4] I agree that "every litigant has a right to have matters of law as well as of fact decided to the ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals…" I have carefully considered the prejudice to be suffered by Ms Myers if this matter were dismissed. The most pointed prejudice would be that Ms Myers would be unable to attain the remedies she seeks.

[38] However, Ms Myers herself has not been complying with the ordinary rules of procedure and in so doing, has prejudiced the Respondent's ability to formulate its case. Where a litigant's actions are repeatedly and blatantly inconsistent with progression towards a fair hearing, I consider it must be dismissed for not being desirable in the public interest.

Rule 45

[39] In the 26 February 2021 Directions, the parties were also directed to make submissions with respect to r 45 of the Tribunal Rules. Rule 45 of the Tribunal Rules provides as follows (emphasis added):

> **45 Failure to attend or to comply with directions order**
>
> (1) This rule applies if -
> (a) a party to a proceeding receives notice of a directions order made by the court, commission or registrar stating a time, date and place for a hearing or conference for the proceeding; and
> (b) the party fails to attend the conference.
>
> (2) This rule also applies if -
> (a) a party to a proceeding **receives notice of a directions order** made by the court, commission or registrar; and
> (b) the party **fails to comply with the order**.
>
> (3) The court, commission or registrar may -
> (a) **dismiss the proceeding**; or
> (b) make a further directions order; or
> (c) make another order dealing with the proceeding that the court, commission or registrar consider appropriate, including, for example, a final order; or
> (d) make orders under paragraphs (b) and (c).

[40] The power under r 45(3)(a) of the Tribunal Rules involves an exercise of discretion. Foremost, discretionary powers must be "exercised judicially, according to rules of reason and justice, and not arbitrarily or capriciously or according to private opinion."[5] In exercising that discretion, I am informed by several factors, which are set out below. Ultimately, however, I must consider the particular circumstances of this case.[6]

---

[4] *Orchid Avenue Realty Pty Ltd t/a Ray White Surfers Paradise v Percival* (2003) 174 QGIG 643, 644.
[5] *House v R* (1936) 55 CLR 499, 503.
[6] *Cooper v Hopgood & Ganim* [1998] QCA 114, 6; citing *Witten v Lombard Australia Ltd* (1968) 88 W.N. (Pt. 1) N.S.W. 405.

[41] In *Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd*,[7] their Honours Wilcox and Gummow JJ considered a provision under the Federal Court Rules which is materially similar to r 45 of the Tribunal Rules. In that case, their Honours identified two broad types of failure to comply with directions which would warrant the dismissal of a matter (emphasis added):

> As it is impossible to foresee all of the circumstances under which the rule might be sought to be used, it is undesirable to make any exhaustive statement of the circumstances under which the power granted by the rule will appropriately be exercised. We will not attempt to do so. But two situations are obvious candidates for the exercise of the power: cases in which the history of non-compliance by an applicant is such as to indicate an inability or unwillingness to co-operate with the Court and the other party or parties in having the matter ready for trial within an acceptable period and **cases - whatever the applicant's state of mind or resources - in which the non-compliance is continuing and occasioning unnecessary delay, expense or other prejudice to the respondent.** Although the history of the matter will always be relevant, it is more likely to be decisive in the first of these two situations. Even though the most recent non-compliance may be minor**, the cumulative effect of an applicant's defaults may be such as to satisfy the Judge that the applicant is either subjectively unwilling to co-operate or, for some reason, is unable to do so. Such a conclusion would not readily be reached; but, where it was, fairness to the respondent would normally require the summary dismissal of the proceeding.**
>
> In the second of the two situations we postulate, a significant continuing default, it does not really matter whether there have been earlier omissions to comply with the Court's directions. **Ex hypothesi the default is continuing and is imposing an unacceptable burden on the respondent.**[8]

[42] Such reasoning was followed by his Honour O'Connor VP in this jurisdiction in *Workers' Compensation Regulator v Varga,*[9]and *Seymour v Workers' Compensation Regulator*,[10] as well as by his Honour Merrell DP in *Cady v Capital SMART Repairs Australia Pty Ltd & Anor*.[11]

[43] Ms Myers' default is certainly continuing, given her ongoing failure to comply with the substantive requirements outlined in the Directions. It also imposes an unacceptable burden on the Respondent, as it is unable to meaningfully respond to the Application without understanding Ms Myers' case.

[44] I have no doubt that Ms Myers understood her obligation under the Directions with respect to time period, as this was clearly stipulated. Notwithstanding, the clear lack of regard for the substantive directions indicates that Ms Myers either did not understand that aspect of the Directions, or simply did not put enough effort into responding accordingly.

[45] I acknowledge that Ms Myers is a self-represented litigant. In that regard, I would note that a lack of representation is a misfortune, which should be met with necessary procedural assistance, but is not a privilege entitling a self-represented litigant to

---

[7] [1990] 98 ALR 200.
[8] *Lenijamar Pty Ltd and Ors v AGC (Advances) Ltd* [1990] 98 ALR 200, 210.
[9] [2019] QIRC 028.
[10] [2017] QIRC 061.
[11] [2019] QIRC 144.

special consideration at the expense of the party or parties who are represented or more experienced in the jurisdiction.[12]

[46] In circumstances where every possible assistance has been provided to Ms Myers, her non-compliance with the Directions cannot be said to arise from her lack of understanding of the law. Her non-familiarity with the jurisdiction might explain a slightly deficient or poorly set out pleading, but not a blatant non-compliance with clear guidelines.

[47] Noting that Ms Myers has failed to comply with three sets of Directions, the cumulative effect of her non-compliance is substantial enough to satisfy me that Ms Myers is either unwilling to comply or for some reason is unable to do so and as a result, the Respondent's cased is prejudiced.

[48] In the exercise of my discretion under r 45 of the Tribunal Rules, I am also minded to consider the purpose of the Tribunal Rules, as set out in r 6:

> **6 Purpose of rules**
>
> The purpose of these rules is to provide for the just and expeditious disposition of the business of the court, the commission, a magistrate and the registrar at a minimum of expense.

[49] The terms 'just' and 'expeditious' may sometimes appear to be at odds. Australian Courts and Tribunals often wrestle with the task of maintaining the precarious balance between expeditious resolutions, and the ability of parties to prepare for and present their case. In considering that balance while dealing with an application to dismiss for want of prosecution, his Honour Thomas JA in *Quinlan v Rothwell & Anor* provided (emphasis added):

> There is now a consciousness of the need for some level of efficiency in the use of the courts as a public resource. That, of course, must not displace the need for reasonable access to the courts and the provision of justice according to law in each matter, but it highlights the fact that the former *laissez faire* attitude by courts towards the leisurely conduct of actions at the will of the parties has ended. At the same time **the rules of court are not an end in themselves. They do not exist for the discipline of practitioners or clients, or for the protection of courts from inefficient litigants, but rather as a means of ensuring that issues will be defined in an orderly way and that parties have the opportunity of full preparation of their case before the trial commences. The rules also afford defendants the means of bringing to an end actions in which the other party will not abide by the rules.**[13]

---

[12] See *Workers' Compensation Regulator v Bero* [2019] QIRC 36; *Treanor v State of Queensland* [2019] QIRC 146.

[13] *Quinlan v Rothwell & Anor* [2001] QCA 176, 8.

[50] While his Honour Thomas JA was considering the *Uniform Civil Procedure Rules 1999* (Qld), that passage has been adopted in this jurisdiction on a number of occasions,[14] as the underlying question to be determined is consistent with the exercise of discretion under r 45 of the Tribunal Rules.

[51] In this matter, Ms Myers' failure to comply with directions has resulted in a fundamental undermining of the Respondent's ability to fully prepare its case. As such, were this matter to progress to hearing, in the current state of Ms Myers' noncompliance, it would be fundamentally unjust to the Respondent.

[52] Time limits are imposed to ensure fairness between the parties as well as to ensure the expeditious advancement of the matter. Repeated failures to comply with such directions is not consistent with r 6 of the Tribunal Rules.

[53] One alternative to dismissal would be to place this matter into abeyance until either Ms Myers complies with the directions, or the matter lapses due to inactivity. However, Ms Myers has never expressed any genuine desire to comply with the directions, presently or at some stage in the future. Ms Myers has not explained to any sufficient extent why she continues to fail to comply with the substantive requirements of the Directions and why she continuously failed to comply with the directed time periods.

[54] Ms Myers' decision to not respond to the substantive requirements of the Directions evinces, to my mind, an intention that she was not, and is not, genuinely intending to comply with my Directions. As such, further delay would create a futile and unnecessary impediment to the expeditious resolution of this matter.

[55] Therefore, in my opinion, the purpose of the Tribunal Rules is best fulfilled in this case by exercising the discretion under r 45 of the Tribunal Rules to dismiss Ms Myers' Application.

Costs

[56] The power to award costs is ultimately discretionary. Given that the Respondent has not been required to file any significant material in this matter beyond written submissions and submissions about the dismissal, and that the matter has not progressed beyond conference stage, I am not minded to award costs.

Conclusion

[57] Ms Myers has failed to comply with Directions on several occasions. The non-compliance relates both to the substance of her submissions and the time limits imposed. Those failures have not been adequately explained nor have extensions been

[14] See *Quaedvlieg and Ors v Boral Resources (Qld) Pty Ltd* [2005] QIC 73; *Workers' Compensation Regulator v Varga* [2019] QIRC 028, 5-6.

sought. The substantive aspects of the Directions have still not been complied with. That is, despite the Industrial Registry and my Associate providing Ms Myers with information so that she may understand her obligations.

[58] Ms Myers has been unwilling or unable to take the necessary steps to prosecute her case in accordance with the Directions.

[59] The Respondent is entitled to understand the case they have to answer. This has been thwarted in the continuing circumstances of Ms Myers' non-compliance.

[60] As such, I find that Ms Myers' substantive Application should be dismissed under r 541 of the IR Act and under r 45 of the Tribunal Rules. I order accordingly.

Orders

1. **That the Application in existing proceedings is upheld.**
2. **That the substantive Application is dismissed.**
3. **That each party is to bear their own costs in the proceeding.**