QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*Stys v State of Queensland (Queensland Ambulance Service)* [2022] QIRC 265
PARTIES:	**Stys, Hannah** (Appellant) **v** **State of Queensland (Queensland Ambulance Service)** (Respondent)
CASE NO.:	PSA/2022/458
PROCEEDING:	Public Service Appeal
DELIVERED ON:	13 July 2022
HEARD AT:	On the papers
MEMBER:	McLennan IC
ORDER:	**Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016*, the decision appealed against is confirmed.**
CATCHWORDS:	PUBLIC SERVICE - EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY - PUBLIC SERVICE APPEAL - where appellant applied for an exemption to COVID-19 vaccination requirements - where respondent refused appellants exemption application - where appellant applied for internal review of refusal to grant exemption - where upon review the respondent upheld the original refusal - whether exceptional circumstances exist - consideration of human rights - whether respondent considered alternative arrangements - where decision is fair and reasonable - decision appealed against confirmed
LEGISLATION:	*Human Rights Act 2019* (Qld) s 13, s 17 *Industrial Relations Act 2016* (Qld) s 451, s 562B, s 562C, s 564 *Public Service Act 2008* (Qld) s 194

	QAS HR Policy Employee COVID-19 Vaccination Requirements cl 2, cl 3, cl 5
	QAS HR Procedure – COVID-19 Vaccine Requirements cl 3
CASES:	*Bloxham v State of Queensland (Queensland Police Service)* [2022] QIRC 037
	Brasell-Dellow & Ors v State of Queensland, (Queensland Police Service) & Ors [2021] QIRC 356
	Gilmour v Waddell & Ors [2019] QSC 170
	Gundrum v State of Queensland (Queensland Health) [2022] QIRC 226
	Higgins v State of Queensland (Queensland Health) [2022] QIRC 030
	Kassam v Hazzard; Henry v Hazzard [2021] NSWSC 1320
	Kathryn Roy-Chowdhury v The Ivanhoe Girls' Grammar School [2022] FWC 849
	Minister for Immigration and Citizenship v Li (2013) 249 CLR 332
	Radev v State of Queensland (Queensland Police Service) [2021] QIRC 414
	Tilley v State of Queensland (Queensland Health) [2022] QIRC 002

Reasons for Decision

Introduction

[1] Mrs Hannah Stys (the Appellant) is employed as an Advanced Care Paramedic by Queensland Ambulance Service (QAS; the Respondent).[1]

[2] On 13 September 2021, the Code of Practice and QAS HR Procedure – COVID-19 Vaccine Requirements (the Procedure) was published.[2]

[1] Appeal Notice, 13 April 2022, 1.
[2] Respondent's Submissions, 28 April 2022, [4].

[3] The Procedure mandated that particular groups of QAS employees receive the COVID-19 vaccination.[3]

[4] Section 3.6 of the Procedure provided for employees to apply for an exemption to the mandatory vaccination requirements on the basis of a recognised medical contraindication, genuinely held religious belief or other exceptional circumstances.

[5] On 30 September 2021, the Appellant applied for an exemption on the basis of 'other exceptional circumstances'.[4] The Appellant annexed two letters from Kennedy Spanner Lawyers[5] to her exemption application.

[6] On 30 September 2021, Dr Wakefield PSM (Director-General) responded to the letters from Kennedy Spanner Lawyers.[6]

[7] On 31 January 2022, the Procedure was replaced by the QAS HR Policy *Employee COVID-19 Vaccination Requirements* (the Policy). Clauses 2 – 3 of the Policy mandated that particular groups of QAS employees receive the COVID-19 vaccination.

[8] On 1 February 2022, Mr Ray Clarke, Executive Director, Workforce wrote to the Appellant to enquire whether she intended to comply with the vaccination mandate, wished for her original exemption application to be considered under the Policy provisions or whether she wished to provide any updated information in support of her original exemption application.[7] The Appellant did not respond to this correspondence and so her exemption application was considered on the basis of the material already provided.[8]

[9] On 17 February 2022, Mr Clarke advised the Appellant her exemption application had been refused.[9] On 1 March 2022, the Appellant requested an internal review of the refusal.

[10] On 25 March 2022, A/Assistant Commissioner John Hammond advised the Appellant the internal review had been completed and confirmed the decision to refuse the Appellant's exemption application was fair and reasonable (the Decision). That is the Decision subject of the Appellant's Appeal Notice filed 13 April 2022.

Jurisdiction

The decision subject of this appeal

[11] I am satisfied the Decision constitutes a 'fair treatment decision' and the Appellant has used her employer's individual employee grievance process before lodging this appeal. On that basis, I accept the Decision is appealable under s 194(1)(eb) of the *Public Service Act 2008* (Qld) (the PS Act).

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[3] QAS HR Procedure – COVID-19 Vaccine Requirements cl 3.3.2.
[4] Respondent's Submissions, 28 April 2022, [8].
[5] Dated 27 September 2021 and 29 September 2021.
[6] Respondent's Submissions, 28 April 2022, [9].
[7] Ibid [11].
[8] Ibid [12].
[9] Ibid [13].

Timeframe for appeal

[12] Section 564(3) of the *Industrial Relations Act 2016* (Qld) (the IR Act) requires that an appeal be lodged within 21 days after the day the decision appealed against is given. That is the relevant inquiry with respect to timeframes. I note that despite the question posed in the Form 89 – Appeal Notice regarding when the decision was received.

[13] The Decision was given on 25 March 2022 and the Appeal Notice was filed on 13 April 2022. Therefore, I am satisfied the Appeal Notice was filed by the Appellant within the required timeframe.

What decisions can the Commission make?

[14] Section 562C of the IR Act prescribes that the Commission may determine to either:

- confirm the decision appealed against;
- set the decision aside and return the matter to the decision-maker with a copy of the decision on appeal and any directions considered appropriate; or
- set the decision aside and substitute another decision.

Consideration

Appeal principles

[15] Section 562B(2)-(3) of the IR Act provides that the appeal is decided by reviewing the decision appealed against "to decide whether the decision appealed against was fair and reasonable".

[16] The appeal is not conducted by way of re–hearing, but rather involves a review of the decision arrived at and the associated decision–making process.

[17] Findings made by the Respondent, which are reasonably open to it, should not be disturbed on appeal. Even so, in reviewing the decision appealed against, the Commission may allow other evidence to be taken into account.

[18] The relevant principles in considering whether a decision is 'unreasonable' were enunciated by Ryan J in *Gilmour v Waddell & Ors* (emphasis added, citations removed):[10]

> The focus of a review of the reasonableness, or unreasonableness, of a decision is on whether the decision is so unreasonable that it lacks intelligent justification in all of the relevant circumstances.
>
> The legal standard of unreasonableness is to be considered by reference to the subject matter, scope and purpose of the statute conferring the power.

[10] [2019] QSC 170, [207]-[210], citing *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, [63]-[76].

> A court considering an argument that a decision is unreasonable is not undertaking a merits review. If a decision may be reasonably justified, then it is not an unreasonable decision, even if a reviewing court might disagree with it.
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> The pluarity in *Li* said:
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> > … when something is to be done within the discretion of an authority, it is to be done according to the rules of reason and justice. That is what is meant by 'according to law'. It is to be legal and regular, not vague and fanciful …
> >
> > … there is an area within which a decision-maker has a genuinely free discretion. That area resides within the bounds of legal reasonableness. The courts are conscious of not exceeding their supervisory role by undertaking a review of the merits of an exercise of discretionary power. Properly applied, a standard of legal reasonableness does not involve substituting a court's view as to how a discretion should be applied for that of a decision-maker …
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> > … it is necessary to look to the scope and purpose of the statute conferring the discretionary power and its real object … The legal standard of reasonableness must be the standard indicated by the true construction of the statute. It is necessary to construe the statute because the question to which the standard of reasonableness is addressed is whether the statutory power has been abused.
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> > … Unreasonableness is a conclusion which may be applied to a decision which lacks an evidence and intelligible justification.

Submissions

[19] In accordance with the Directions Order issued on 21 April 2022, the Respondent filed written submissions in response to the Appeal Notice. The Appellant did not file submissions in reply, despite being given the opportunity to do so.

[20] Pursuant to s 451(1) of the IR Act, no hearing was conducted in deciding this appeal. The matter was decided on the papers.

[21] I have carefully considered all submissions and annexed materials but have determined not to approach the writing of this decision by summarising the entirety of those documents. My focus is on determining whether the Decision appealed against is fair and reasonable so I will instead refer only to the parties' key positions in my consideration of this appeal.

Relevant provisions

[22] Clause 5 of the Policy relevantly provides:

> Where an existing employee is unable to be vaccinated they are required to complete an exemption application form.
>
> Exemptions will be considered in the following circumstances:
> - Where an existing employee has a recognised medical contraindication;
> - Where an existing employee has a genuinely held religious belief;
> - Where another exceptional circumstance exists.

> If an existing employee is granted an exemption, they do not have to comply with clause 3 or 4 of this policy.

Exemption application

[23] The exemption application form sought details of the extenuating circumstances which preclude the Appellant from meeting the COVID-19 vaccination requirements. In response, the Appellant attached letters from Kennedy Spanner Lawyers dated 27 September 2021 and 29 September 2021. I note the letters have been relied upon by several other Appellants in similar Public Service Appeals.

[24] In the letter dated 27 September 2021, Kennedy Spanner Lawyers requests additional information in relation to the mandatory vaccination directions and outlines concerns of clients in relation to the directions. Those concerns broadly pertain to the following:

- safety of the COVID-19 vaccinations;
- the definition of "exceptional circumstances";
- the period for compliance;
- conflict with s 17 of the *Human Rights Act 2019* (Qld);
- omission of a conscientious objection provision;
- alternative arrangements not considered;
- lack of consultation; and
- workload for remaining staff.

[25] In the letter dated 29 September 2021, Kennedy Spanner Lawyers outlines the following further "extenuating circumstances" they submit preclude the Appellant from complying with the vaccination mandate:

- no risk assessments have been provided;
- the matters raised in the correspondence dated 27 September 2021 have not been addressed; and
- the Appellant cannot give free and informed consent.

Original refusal

[26] In correspondence dated 17 February 2022, Mr Clarke advised the Appellant that her request for an exemption had been refused. In that correspondence, Mr Clarke expressed:

- COVID-19 presents a significant risk to the health and safety of healthcare workers, support staff, families and patients;

- evidence demonstrates the safety and very high-level efficacy of the COVID-19 vaccination;
- vaccination reduces the risk of hospitalisation and death from COVID-19 as well as the risk of transmission;
- employees are not compelled to be vaccinated, but the mandate does impose employment consequences upon employees who are not vaccinated;
- to the extent that human rights are impacted, those impacts are reasonably justified in light of the purpose of the Policy;
- there is no reasonably practicable, effective and less restrictive way to achieve this purpose;
- the concerns expressed are of the nature of vaccine hesitancy;
- vaccination as a condition of employment is materially different from a situation involving coercive medical treatment or circumstances giving rise to an inability to provide free and informed consent; and
- the concerns raised do no constitute exceptional circumstances.

Request for internal review

[27] In correspondence dated 1 March 2022, the Appellant requested an internal review of Mr Clarke's decision to refuse the exemption on the basis that:

- QAS have not responded to the correspondence dated 27 September 2021 issued by Kennedy Spanner Lawyers;
- the vaccination is not being given voluntarily in the absence of undue pressure, coercion or manipulation; and
- there are no lawful grounds in which to justify requiring vaccination as a condition of employment.

[28] The Appellant requests various information, data and advice from QAS, indicating that only after receiving a response will she be able to consult her health advisors before accepting the vaccination mandate.

The Decision

[29] In correspondence dated 25 March 2022, A/Assistant Commissioner, Mr John Hammond determined that the decision made by Mr Clarke was fair and reasonable in the circumstances. His reasons are summarised below:

- the Department's position is that the COVID-19 vaccinations are safe, reliable and not experimental;

- the Director-General's decision to require vaccination was made considering the significant risk to the health and safety of healthcare workers, support staff, their families and patients;

- the decision does not itself compel a person to be vaccinated, but it does impose employment consequences upon those who choose not to – this does not remove the Appellant's ability to provide free and informed consent to medical treatment; and

- the grounds contained in the Appellant's exemption application and subsequent submissions do not constitute sufficient rationale to justify exemption.[11]

Consideration

[30] In *Radev v State of Queensland (Queensland Police Service) ('Radev'),* I considered "exceptional circumstances" and concluded the following:

> The term 'other exceptional circumstances' is broad because any number of circumstances may fall within its ambit. The key word is 'exceptional' which the Macquarie Online Dictionary defines as "forming an exception or unusual instance; unusual; extraordinary"… it is not for the Respondent to list a number of unusual situations that an employee can choose from. The ambit of the term allows for anyone who believes their circumstances may be exceptional to outline those circumstances and put their best case forward.[12]

[31] Upon review of the Appellant's initial request for exemption and subsequent submissions, it appears she is alleging her "exceptional circumstances" to be that she holds numerous concerns, has several questions that remain unanswered and takes issue with several elements of the vaccination mandate generally. I will consider those matters below.

Concerns and questions

[32] The 'Employee COVID-19 vaccine exemption application form' relevantly provides (emphasis added):

> In extremely limited circumstances, an employee may also use this form to detail other exceptional circumstances which preclude them from meeting the COVID-19 vaccine requirements. In this circumstance:
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> - Vaccine hesitancy and conscientious objection, by themselves, are not considered exceptional circumstances.
> - Some other extenuating circumstance must exist.
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> Where this can be demonstrated, the employee's circumstances will be considered on an individual basis in accordance with Queensland Health and QAS's legislative obligations and industrial arrangements however limited exemptions will be granted.

[33] For the reasons that follow, I find the Appellant's various concerns and refusal to get vaccinated until her questions are answered evince her personal preference not to receive the COVID-19 vaccination. I cannot identify the existence of any exceptional circumstances which would justify the approval of an exemption.

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[11] Letter from Mr J. Hammond to the Appellant, 25 March 2022.
[12] [2021] QIRC 414, 9 [37].

[34] With respect to the Appellant's various concerns - seeking an exemption because one is concerned of an adverse reaction, lack of consultation, the lawfulness of the Policy, a lack of medical evidence or compatibility with human rights are not unusual or extraordinary circumstances.

[35] Vaccine hesitancy is not itself uncommon and it may stem from a range of reasons as is the case for the Appellant. The Appellant has presented many arguments and raised many questions that are just that, arguments and questions - they are not "exceptional circumstances" warranting an exemption.

[36] The Appellant has also raised several issues with the accuracy and quality of evidence behind the COVID-19 vaccination. In doing so, the Appellant refers to her own research. Again, the issue for the Appellant is that her concerns are not 'exceptional' and on that basis, the Respondent had a fair and reasonable cause to refuse her exemption request.

[37] The Appellant contends that until she receives responses to her questions, she is unable to make an informed decision to enable her to consult her health advisors and proceed to comply with the Policy.

[38] Through the exemption application process, the Appellant was afforded the opportunity to present any medical contraindications as verified by a medical professional for the Respondent's consideration. However, the Appellant did not apply for an exemption on that basis. In the absence of a certified medical contraindication to the COVID-19 vaccination, I find it was fair for the decision-maker to conclude that the Appellant's fears of adverse reactions, in the absence of evidence of a medical contraindication, does not justify an exemption.

[39] The Appellant has had significant time to discuss any concerns with a medical professional who could have provided her with expert guidance and if appropriate, issued a letter outlining a medical contraindication warranting exemption. The Appellant has not provided such evidence and I find that her opinion with respect to the medical evidence simply differs from that of the Respondent.

[40] The Appellant also referred to the workload of the remaining staff as impacted by the Policy. That argument indicates to me that the Appellant does not understand the significant risk the COVID-19 virus carries and how it disproportionately affects healthcare workers connected to patients and the broader community. The Respondent has clearly assessed that the risk of unvaccinated QAS workers is too significant.

[41] I note that within the Decision, the decision-maker outlines the reasons why the Respondent is of the view that COVID-19 presents significant risk. In a reasonable attempt to address the Appellant's concerns, the Respondent notes the Chief Health Officer is the most senior medical officer in the State, the mandate was introduced to ensure compliance with the CHO Direction and to meet its duty of care to staff, patients and the public. The Respondent also noted the COVID-19 vaccinations have been approved by the Therapeutic Goods Administration and the Australian Technical Advisory Group on immunisation. Despite those comments, I accept QAS is not required to provide the Appellant with assurances concerning the safety or efficacy of the COVID-19 vaccinations.

[42] In *Higgins v State of Queensland (Queensland Health),* Deputy President Merrell relevantly concluded:

> [59] In Ms Higgins' letter dated 30 September 2021, submitted as part of her appeal and which was submitted as part of her application for exemption, she did not give any particular reasons which gave rise to any exceptional circumstance. Ms Higgins merely set out a number of questions to her Team Leader and to the Human Resources team in the Health Service in respect of which she requested answers. Ms Higgins then stated that upon considering those answers, she may then '… be happy to accept your offer to receive the treatment, but with certain conditions.'
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> [60] In my view, the Directive does not contain an offer to receive treatment but contains a direction to particular employees to be vaccinated.
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> [61] The fact that Ms Higgins may be hesitant to receive a COVID-19 vaccine and genuinely hold that hesitancy does not mean it is incumbent upon the State to accept that view.[13]

[43] Although the Appellant may not have received answers to her queries or has not been satisfied with certain responses does not constitute an "exceptional circumstance". In light of that finding, I reject the Appellant's arguments that the Decision was unfair and unreasonable on that basis.

Risk assessments and consultation

[44] With respect to the Appellant's arguments regarding risk assessments and consultation, I refer to Industrial Commissioner Dwyer's decision in *Gundrum v State of Queensland (Queensland Health)* ('*Gundrum*'), where he concluded:[14]

> [37] The submissions regarding risk assessment, consultation, and his contract of employment are, with all due respect to Mr Gundrum, rather stale. They have been run repeatedly by other litigants in similar or the same circumstances to Mr Gundrum and they have failed repeatedly.[15]
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> [38] An obligation for a duty holder (like the Health Service) to undertake a risk assessment under the *Work Health and Safety Act 2011* (Qld) does not, of itself, create a right by an employee to demand a documented copy of that risk assessment. In any event, Covid vaccine safety has been evaluated and confirmed as safe by the Australian Technical Advisory Group on Immunisation ('ATAGI') and as such there is no reasonable basis for Mr Gundrum to demand a risk assessment or complain he did not receive one. The approval of vaccines for use by a federal authority such as ATAGI ought to assuage any concerns.[16]
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> [40] Similarly, the arguments about lack of consultation also must fail. It was held by the Full Bench of the Commission that consultation may legitimately be conducted with registered unions through representatives rather than individuals in a large workforce…[17]

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[13] [2022] QIRC 030, 14.
[14] [2022] QIRC 226.
[15] See as but one example the decision of the Full Bench in *Brasell-Dellow & Ors v State of Queensland, (Queensland Police Service) & Ors* [2021] QIRC 356.
[16] ATAGI is the principal advisor to government on *inter alia* vaccine safety. See also *Kathryn Roy-Chowdhury v The Ivanhoe Girls' Grammar School* [2022] FWC 849 at [103].
[17] *Brasell-Dellow & Ors v State of Queensland, (Queensland Police Service) & Ors* [2021] QIRC 356, [124]-[128].

[45] I follow Industrial Commissioner Dwyer's reasoning in *Gundrum* as extracted above.

Human rights

[46] A concern raised by the Appellant is compatibility with human rights. With respect to the Appellant's arguments regarding human rights, Mr Clarke outlined in the original refusal decision:

> I am satisfied that my decision to refuse your exemption is compatible with human rights. While this decision engages a number of your human rights including your right to equality and non-discrimination and your right to not receive medical treatment without consent, I am satisfied that any limits on the human rights engaged are justified by the need to ensure the readiness of the health system in responding to the COVID-19 pandemic, and to protect the lives of employees, patients and the community they serve.

[47] I have taken into consideration the Appellant's arguments with respect to human rights and note s 13(1) of the *Human Rights Act 2019* (Qld) (the HR Act) provides that "A human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom." Section 13(1) of the HR Act clearly indicates that rights are generally not absolute and are allowed to be limited in justifiable circumstances.

[48] I am satisfied the Respondent's consideration of human rights does not render the Decision unfair or unreasonable. I accept the Respondent's conclusion to be reasonable in light of the need to ensure the readiness of QAS in responding to the COVID-19 pandemic as well as to ensure the safety of other employees, patients and the community more broadly. The Appellant's views on human rights simply differ to that of the Respondent and a differing view does not render the Appellant's circumstances 'exceptional'.

[49] For the reasons outlined above and as I similarly concluded in *Bloxham v State of Queensland (Queensland Police Service)*,[18] the Respondent thoroughly considered and appropriately concluded that any limitation of a human right by virtue of the Decision is reasonable and justified in light of competing interests and the seriousness of those interests. On that basis, I reject the Appellant's arguments that the Decision was not fair and reasonable by virtue of the consideration of her human rights.

Consent

[50] With respect to the Appellant's arguments regarding consent, I am not satisfied that the Appellant has been deprived consent in respect to receiving the COVID-19 vaccination. The Appellant may freely choose not to receive the COVID-19 vaccination - it is not being forced upon her. The alternative to consenting to the vaccination is to elect not to receive it – the Appellant has freely made that decision. There is no obligation that the Appellant continue to work for QAS.

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[18] [2022] QIRC 037, 11 [47].

[51] The issue of consent was also considered in the matter of *Kassam v Hazzard; Henry v Hazzard*[19] where it was confirmed that consent is not vitiated by it being given in response to a condition of continued employment. I accept that view.

Alternative arrangements

[52] With respect to the Appellant's argument regarding alternative arrangements not being considered, I note that in correspondence dated 1 February 2022, Mr Clarke advised the Appellant:

> In the current phase of the QAS COVID-19 response, there is a temporary requirement for a wide variety of administrative, logistical and other support activities to be undertaken, which may be possible to be undertaken remotely. Please be advised that, unless you are already undertaking alternate work arrangements or are absent because of an approved leave request that you have made, you may be required to participate in these arrangements in the near future, where directed.

[53] That excerpt suggests alternative arrangements had been appropriately considered.

[54] The Appellant's role as an Advanced Care Paramedic necessarily involves direct contact with patients, other staff and the broader community. The Appellant's role also involves attending various locations including the homes of patients and the hospital. Even if parts of the Appellant's role could be conducted remotely, as I found in *Radev*, there will inevitably be times where the Appellant is required to attend various locations and intermingle with other staff members and patients in order to fulfill her duties.[20] I appreciate that the positions of Mr Radev and the Appellant are different but consider that the same principle applies in both circumstances.

[55] In *Radev*, the appellant's workplace was the Brisbane Airport and I reached the conclusion that airports "are renowned for being particularly risky locations with respect to transmission of COVID-19".[21] The same can clearly be said for hospitals, ambulances and the various sites that paramedics visit – including crucially, the private homes of unwell patients. It is evident that the Appellant undertakes an important role in an important area that has been covered by the Policy for the safety of the Appellant, her colleagues and the broader community.

[56] In *Tilley v State of Queensland (Queensland Health)*, Industrial Commissioner Hartigan concluded the following:

> I am satisfied the Department considered alternative working arrangements for Mr Tilley. I consider that the view formed that there were no alternative working arrangements available for Mr Tilley to perform was a decision open to be made, having regard to the Department's responsibility to manage the risks associated with COVID-19 in the workplace which is frequented by employees, patients and the broader community. [22]

[57] In my view, an alternative arrangement is not an operationally feasible option in the Appellant's role and is therefore not a realistic circumstance, let alone an exceptional

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[19] [2021] NSWSC 1320.
[20] [2021] QIRC 414, [54].
[21] Ibid.
[22] [2022] QIRC 002.

circumstance warranting exemption approval. On that basis, I find that the Respondent's consideration of alternative arrangements do not render the Decision unfair and unreasonable.

Other matters

[58] The Appellant also made a series of other arguments in various correspondence. In response to those matters, I refer to *Tilley v State of Queensland (Queensland Health)* in which Industrial Commissioner Hartigan concluded the following:

> [39] The other matters, referred to above, raised by Mr Tilley form the basis of his personal preference not to receive a vaccine. I do not consider the matters relied on by Mr Tilley result in Directive 12/21 being unreasonable. In this regard, cl 6 of Directive 12/21 identifies the risk posed by the virus to staff, patients and the broader community and the Directive is aimed at minimising such a risk. I consider that to be reasonable.
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> …
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> [52] Finally, Mr Tilley relies on the financial impact of suspension without remuneration as a ground to argue that the decision was not fair and reasonable. There is no doubt that Mr Tilley will suffer a financial detriment associated with the loss of income. I consider that to be a serious matter. However, it must be considered in the context of all the relevant circumstances of the matter.
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> [53] The circumstances of this matter include, Mr Tilley failing to comply with a directive which consequently formed a condition of his employment. Further, Mr Tilley's submission indicates that he does not intend to comply with the condition in the immediate future. Given the nature of the substantiated allegation, I consider that it was available, on the information before the decision maker, to conclude that it was not appropriate for Mr Tilley to receive remuneration during the remainder of the disciplinary process. The Department confirms in its written submissions that Mr Tilley is not precluded from seeking alternative employment with another employer. I am satisfied that in making the decision, the Department has complied with s 137 of the PS Act.[23]

[59] I similarly conclude that the remaining matters raised by the Appellant evince her personal preference not to receive the COVID-19 vaccination. I do not consider those matters to render the Decision unfair or unreasonable. I accept the Respondent has reasonably balanced the Appellant's reasons for not getting the COVID-19 vaccination with the other circumstances relevant to this matter.

Conclusion

[60] The Appellant presented various reasons for why she contends her exemption application should have been accepted and why the refusal was not fair or reasonable. I have considered those submissions and conclude that the reasons for refusal were reasonably justified on the evidence before the decision-maker.

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[23] [2022] QIRC 002.

[61] The Decision set out evidence in support of the ultimate conclusion to refuse the Appellant's exemption request.

[62] I am satisfied the Decision included intelligible justification following consideration of relevant matters.

[63] I order accordingly.

Order

1. **Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016*, the decision appealed against is confirmed.**