

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Hurling v State of Queensland (Queensland Police Service)*
[2022] QIRC 084

PARTIES: **Hurling, Tracy**
(Applicant)

v

State of Queensland (Queensland Police Service)
(Respondent)

CASE NOS.: B/2021/80
D/2021/125

PROCEEDING: Application for declaration
Notice of industrial dispute

DELIVERED ON: 15 March 2022

HEARING DATE: 17 December 2021

MEMBER: Power IC

HEARD AT: Brisbane

ORDERS: **1. In answer to the questions referred for arbitration in D/2021/125:**

(a) The decision maker did not contravene s 137(9)(a) of the *Public Service Act 2008* (Qld);

(b) The decision maker did not err in her application of s 137(4)(b) of the *Public Service Act 2008* (Qld);

(c) The decision maker did not err in her application of s 58(1)(a) of the *Human Rights Act 2019* (Qld);

(d) the decision maker did not contravene s 58(1)(b) of the *Human Rights Act 2019* (Qld).

2. That the application for declaratory relief in matter B/2021/80 is dismissed.

CATCHWORDS: PUBLIC SERVICE – EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY – whether decision to suspend applicant without remuneration was lawful – whether decision maker contravened s 137 of the *Public*

Service Act 2008 (Qld) – decision maker did not contravene s 137 of the *Public Service Act 2008* (Qld) – decision lawful and fair

HUMAN RIGHTS – HUMAN RIGHTS LEGISLATION – whether decision maker contravened s 58 of the *Human Rights Act 2019* (Qld) – whether decision to suspend applicant without remuneration was made in a way that is not compatible with human rights – whether decision maker failed to give proper consideration to a human right relevant to the decision – decision maker did not contravene s 58 of the *Human Rights Act 2019* (Qld)

LEGISLATION:

Criminal Code Act 1899 (Qld), sch 1 ss 92A and 408E

Human Rights Act 2019 (Qld), s 58

Industrial Relations Act 2016 (Qld), s 261

Public Service Act 2008 (Qld), s 137

Directive 16/20 Suspension, cl 6

APPEARANCES:

Mr M. Rawlings of Counsel, instructed by Anderson Fredericks Turner for the Applicant

Mr C. Hurren for the Respondent

Reasons for Decision

Introduction

- [1] Ms Tracy Hurling ('the Applicant') is employed by the State of Queensland (Queensland Police Service) ('the Respondent') as an AO6 Senior Business Analyst within the Queensland Police Records and Information Management Exchange Team ('QPRIME') at Core Systems, Organisational Capability Command.
- [2] By letter dated 30 August 2021, Ms Virginia A Nelson APM, Acting Assistant Commissioner, Ethical Standards Command, informed the Applicant of the decision to suspend the Applicant without remuneration, effective from midnight on 3 September 2021 until 2 September 2022, unless otherwise advised, pursuant to s 137 of the *Public Service Act 2008* (Qld) ('the PS Act').
- [3] The Applicant filed a Notice of industrial dispute pursuant to s 261 of the *Industrial Relations Act 2016* (Qld) (D/2021/125) and an Application for declarations (B/2021/80) in the Industrial Registry on 22 September 2021.

- [4] Further to a conference before Vice President O'Connor, it was ordered by consent that the proceedings in matters B/2021/80 and D/2021/125 be heard together.
- [5] The agreed questions for determination are as follows:
- (a) Whether the decision maker contravened s 137(9)(a) of the PS Act by not complying with the principles of natural justice;
 - (b) Whether the decision maker erred in her application of s 137(4)(b) of the PS Act;
 - (c) Whether the decision maker erred in her application of s 58(1)(a) of the *Human Rights Act 2019* (Qld) ('HR Act'); and
 - (d) Whether the decision maker contravened s 58(1)(b) of the HR Act.
- [6] The Commission is asked to determine whether the decision-maker has failed to apply the law such that the decision to suspend the Applicant without remuneration is invalid (declaration), and whether any failure to apply the process constitutes unfairness (industrial dispute).

Relevant legislative provision and Directives

- [7] Section 137 of the PS Act provides for the suspension of a public service employee:

137 Suspension

- (1) The chief executive of a department may, by notice, suspend a person from duty if the chief executive reasonably believes—
 - (a) for a public service officer—the proper and efficient management of the department might be prejudiced if the officer is not suspended; or
 - (b) for a public service employee—the employee is liable to discipline under a disciplinary law.
- (2) The notice must state—
 - (a) when the suspension starts and ends; and
 - (b) whether the person is entitled to remuneration for the period of the suspension; and
 - (c) the effect that alternative employment may, under subsection (5), have on any entitlement to remuneration.
- (3) However, before suspending the person, the chief executive must consider all reasonable alternatives, including alternative duties, a temporary transfer or another alternative working arrangement, that are available to the person.
- (4) A public service employee is entitled to normal remuneration during a suspension, unless—
 - (a) the person is suspended under subsection (1)(b); and
 - (b) the chief executive considers it is not appropriate for the employee to be entitled to normal remuneration during the suspension, having regard to the nature of the discipline to which the chief executive believes the person is liable.
- ...
- (8) The chief executive may cancel the suspension at any time.

- (9) In suspending a public service employee under this section, the chief executive must comply with—
 - (a) the principles of natural justice; and
 - (b) this Act; and
 - (c) the directive made under section 137A.
- (10) However, natural justice is not required if the person is entitled to normal remuneration during the suspension.

[8] Section 58 of the HR Act provides as follows:

58 Conduct of public entities

- (1) It is unlawful for a public entity—
 - (a) to act or make a decision in a way that is not compatible with human rights; or
 - (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.
- (2) Subsection (1) does not apply to a public entity if the entity could not reasonably have acted differently or made a different decision because of a statutory provision, a law of the Commonwealth or another State or otherwise under law.
Example—
 A public entity is acting to give effect to a statutory provision that is not compatible with human rights.
- (3) Also, subsection (1) does not apply to a body established for a religious purpose if the act or decision is done or made in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of the people of the religion.
- (4) This section does not apply to an act or decision of a private nature.
- (5) For subsection (1)(b), giving proper consideration to a human right in making a decision includes, but is not limited to—
 - (a) identifying the human rights that may be affected by the decision; and
 - (b) considering whether the decision would be compatible with human rights.
- (6) To remove any doubt, it is declared that—
 - (a) an act or decision of a public entity is not invalid merely because, by doing the act or making the decision, the entity contravenes subsection (1); and
 - (b) a person does not commit an offence against this Act or another Act merely because the person acts or makes a decision in contravention of subsection (1).

[9] Clause 6 of *Directive 16/20 Suspension* ('the Directive') relevantly outlines the factors that must be taken into consideration in considering suspending a public service employee without remuneration:

6. Suspension without remuneration

- 6.1 Section 137(4) of the PS Act provides that the chief executive may decide that normal remuneration is not appropriate during a period of suspension where the employee is a public service employee liable to discipline.
- 6.2 A decision that normal remuneration is not appropriate during the suspension will usually occur after a period of suspension with remuneration but may be made from the start of the suspension.

- 6.3 In deciding that normal remuneration is not appropriate, the factors the chief executive is to consider include:
- (a) the nature of the discipline matter
 - (b) any factors not within the control of the agency that are preventing the timely conclusion of the discipline process
 - (c) the public interest of the employee remaining on suspension with remuneration.
- 6.4 A decision to suspend an employee without remuneration is subject to the principles of natural justice. Natural justice is the right to be given a fair hearing and the opportunity to present one's case, the right to have a decision made by an unbiased or disinterested decision maker and the right to have that decision based on logically probative evidence¹. As part of the suspension process:
- (a) The employee must be given the opportunity to respond to the proposed suspension without remuneration prior to the decision being made by the delegate. This can occur through a 'show cause' process at the time of notification of the initial suspension on normal remuneration, or at any subsequent stage during the suspension.
 - (b) The employee is to be provided with written notice, including the particulars required by section 137 of the PS Act, and reasons for the decision that suspension is without normal remuneration.
 - (c) The chief executive must provide the employee with a minimum of 7 days from the date of receipt of a show cause notice to consider and respond to the notice, having regard to the volume of material and complexity of the matter. The chief executive may grant, and must consider any request for, an extension of time to respond to a show cause notice if there are reasonable grounds for extension.
 - (d) If the employee does not respond to a show cause notice or does not respond within the nominated timeframe in clause 6.4(b) and has not been granted an extension of time to respond, the chief executive may make a decision on grounds based on the information available to them.
- 6.5 A public service employee may appeal a decision to suspend without normal remuneration. An appeal is made to the Queensland Industrial Relations Commission (QIRC) and further information can be found in their Appeals Guide.
- 6.6 An employee must be reimbursed for remuneration the employee does not receive during the employee's suspension if a decision on discipline has been made that does not result in termination of their employment.
- 6.7 The amount to be reimbursed is the employee's normal remuneration at the date of suspension without pay for the period the employee was suspended:
- (a) taking into account any increase due to certified agreements or rulings made in State Wage Cases, but
 - (b) less any amounts of paid leave taken by the employee during a period of suspension.
- 6.8 An employee who ceases employment prior to a decision on discipline being made is not entitled to reimbursement.
- 6.9 Any amount earned by the employee from alternative employment the employee engaged in during the period of suspension must be deducted from the amount repaid to the employee under 6.7 above, unless:
- (a) the employee was engaged in the employment at the time of the suspension, and
 - (b) the employee, in engaging in the employment, was not contravening:
 - (i) the PS Act, or
 - (ii) a standard of conduct applying to the employee under an approved code of conduct or standard of practice under the Public Sector Ethics Act 1994.
- 6.10 If the employee was not available to work during the period of suspension for reasons other than being suspended (for example, due to being detained in a corrective services

facility), then the amount repaid to the employee must be less the total number of days that the employee was not available to work during the period of suspension.

Background

- [10] On 13 August 2020, the Respondent suspended the Applicant on full remuneration. On 21 April 2021, the Applicant was arrested on four charges of computer hacking and misuse and a single charge of misconduct in relation to public office.
- [11] On 13 May 2021, the Applicant's suspension on full remuneration was extended for a further 12 months.
- [12] On 22 June 2021, the Respondent issued the Applicant with a notice to show cause as to why she should not be suspended without remuneration.
- [13] The Applicant provided submissions in response to the notice to show cause on 21 July 2021 and on 30 August 2021, the Respondent made the decision to suspend the Applicant without remuneration.

Consideration

Did the decision maker contravene s 137(9)(a) of the PS Act by not complying with the principles of natural justice?

- [14] Section 137(9) of the PS Act provides that, in suspending a public service employee, the chief executive must comply with the PS Act, the Directive and the principles of natural justice.
- [15] The Applicant submits the decision maker failed to provide natural justice and procedural fairness as required under s 137(9)(a) in the following ways:
 - (a) the decision maker had regard to evidence, and had access to evidence, which the Applicant was not provided until after the decision was made;
 - (b) the decision maker forced the Applicant to either respond to the notice to show cause, or abrogate her right to silence in relation to the proceedings;
 - (c) the decision maker is in a position of apprehended bias, or actual bias, as the prosecuting authority for the criminal proceeding and the decision maker for the suspension decision;
 - (d) the decision maker did not provide particulars of the allegations against the Applicant, such that it required the Applicant to guess the formulation of criminal allegations against her; and
 - (e) by making a finding of fact that media attention would be given to the criminal charges, without evidence or notice of such a factual proposition.
- [16] The Respondent submits that the decision maker has complied with the principles of natural justice as required by s 137(9)(a) of the PS Act by the following actions:

- (a) the Applicant was provided with the allegations made against her and all material relating to the matter that was being relied upon by the decision maker to consider the suspension without remuneration prior to the decision being made; and
- (b) the Applicant was provided with an opportunity to respond to the proposed suspension without remuneration prior to the decision being made by the delegate.

[17] As outlined in cl 6.4 of the Directive, natural justice is the right to be given a fair hearing and the opportunity to present ones' case, the right to have a decision made by an unbiased or disinterested decision maker and the right to have that decision based on logically probative evidence.

[18] The Applicant was suspended from the workplace on full remuneration on 13 August 2020. On 22 June 2021, the Applicant was served with a show cause notice for suspension without remuneration in which the Applicant was given 14 days to respond. On 5 July 2021 correspondence was received from the Applicant's legal representatives requesting an extension of time to respond and requesting that the Respondent provide all information relevant to the show cause process. The Respondent provided the Applicant with all material that the decision maker would be relying upon when making this decision on 6 July 2021. The Applicant provided a response on 21 July 2021, noting that the submissions addressed the legal and procedural reasons why she should not be suspended without remuneration whilst continuing to exercise her right to silence and privilege against self-incrimination with respect to the criminal allegations.

[19] It was entirely reasonable for the decision maker to invite the Applicant to provide information to assist in its consideration of relevant factors pursuant to cl 6.3 of the Directive. The Applicant was not 'forced' to provide a response contrary to her right to silence, with the show cause process simply providing the opportunity for the Applicant to respond. Natural justice requires that parties be provided with an opportunity to be heard, however the extent to which a party chooses to avail themselves of that opportunity is a matter for each individual.

[20] The Applicant submits that the decision maker had regard to evidence with respect to the allegations which the Applicant was not provided until after the decision was made. The Applicant outlined a number of documents including an executive briefing note and additional witness statements that were not provided. The Respondent submits that all material upon which the decision maker relied on to make this decision was provided to the Applicant. The decision outlined the following:

In addition to this notice, you were also provided an Executive Briefing note detailing more specifically the allegations and witness statements providing analysis of your activities and actions in the QPrime environment. Together those documents provide you with firm knowledge of the allegations in an industrial and administrative context. As the decision maker for this matter, my decision is based on the material provided to you. I have not considered any other material other than what you have been provided.

...

[21] The allegations were sufficiently particularised and evidence outlined such that the Applicant could respond meaningfully to the show cause notice. The rules of natural justice are to ensure fairness in proceedings. I do not consider that the Applicant

suffered any unfairness as a result of not receiving every document relating to the allegations as this was not a show cause notice relating to disciplinary proceedings. If consideration was given only to the material that was provided to the Applicant, the allegations and evidence as outlined in the decision provided a reasonable basis upon which the decision maker could determine that the Applicant was liable to discipline and that continued remuneration whilst under suspension was not appropriate in the circumstances.

[22] The Applicant submits that the decision maker is in a position of apprehended or actual bias as the same people who are prosecuting the criminal offence are *'enacting what is a quasi-disciplinary process'*. I do not accept that there is either apprehended or actual bias in these circumstances as the decision maker is applying an entirely separate legislative framework to that of the Criminal Code when considering whether an employee is to be suspended without remuneration. Having access to evidence of conduct that may also form the basis of any criminal proceedings does not indicate bias. Although the Respondent is the authority responsible for prosecuting criminal charges, it also has the ability to enforce relevant industrial instruments including potential code of conduct breaches by its employees. Any other employer would have access to the same evidence as the decision maker in this instance as the alleged conduct was undertaken by their own employee in their own workplace. The Ethical Standards Command is in this manner no different from a human resources department for any other employer in which investigations occur and evidence is gathered following allegations of inappropriate conduct. The only unique feature of the Respondent is that the alleged conduct may also give rise to criminal charges which may be prosecuted through the court process by the Respondent. In similar circumstances, non-QPS employers would have the option of providing the Respondent with evidence if they believed an employee's conduct was also potentially criminal in nature. There is no evidence in this matter that the Acting Assistant Commissioner of the Ethical Standards Command was in a position of apprehended or actual bias in conducting this suspension process.

[23] The allegations put to the Applicant were sufficiently particularised to allow the Applicant to respond to the show cause notice and were framed as disciplinary allegations rather than criminal charges. The allegations in the notice to show cause were outlined as follows:

On 13 August 2020 you were suspended from duty with salary and allowances as a result of an investigation into allegations you:

- Inappropriately accessed records within QPRIME; and
- Inappropriately modified records within QPRIME.

[24] The submission that the Applicant was required to 'guess the formulation of criminal allegations against her' is misguided as the decision involved consideration of whether the Applicant was liable for a disciplinary penalty and not criminal sanctions. The decision proceeded to confirm that the Applicant had been charged with particular offences relating to the allegations,¹ however these charges did not form the basis for the decision.

¹ One charge of Misconduct in Relation to Public Office (s 92A Criminal Code) and four charges of Computer Hacking and Misuse (s 408E Criminal Code).

- [25] The Applicant made submissions as to what was described as the 'cross-pollination' of the criminal court process and the disciplinary matter. Counsel for the Applicant submitted:

...It is not to say that any person charged with a criminal offence cannot be suspended without remuneration, but what the decision maker has done in the process here is suspended her because of the criminal offence, not because of a disciplinary matter associated with the criminal offence...²

- [26] I do not accept that submission. The fact that the allegations, if proven, may constitute a criminal offence was not relied upon by the decision maker to make the decision. The decision maker considered that it was not appropriate for suspension to continue with remuneration having regard to the nature of *discipline* that she believed the Applicant was liable. It is not unusual that the same conduct that may give rise to disciplinary proceedings may also give rise to criminal charges. The decision was not made as a consequence of the potential criminal aspects of the conduct, rather it was after consideration that the Applicant may be liable to discipline under a disciplinary law.
- [27] Neither the PS Act nor the Directive provide that a decision to suspend without remuneration can only occur following the commencement of a formal disciplinary process. Whether a disciplinary process has commenced is not a factor to be considered pursuant to s 137(1) of the PS Act or cl 6.3 of the Directive.
- [28] I am satisfied that natural justice was afforded to the Applicant throughout this process and in accordance with s 137(9)(a) of the PS Act.

Did the decision maker err in her application of s 137(4)(b) of the PS Act?

- [29] Section 137(4)(b) of the PS Act provides that a public service employee is entitled to normal remuneration during a suspension unless the chief executive considers it is not appropriate, having regard to the nature of the discipline to which the chief executive believes the person is liable.
- [30] The Applicant submits that the decision maker seemingly made the decision exclusively on the basis of potential media exposure to the Respondent, and that the mere potential for media exposure is not sufficient to meet the statutory test of 'not appropriate'. The Applicant submits that she was not liable to any disciplinary action at 30 August 2021, and if she is, such action has not been disclosed.
- [31] The Respondent submits that the decision maker has articulated the reasons in the written notice of suspension without remuneration and the decision is in accordance with the Directive.
- [32] Clause 6.3 of the Directive outlines the factors the decision maker is to consider in deciding whether normal remuneration is appropriate:
- (a) the nature of the discipline matter
 - (b) any factors not within the control of the agency that are preventing the timely conclusion of the discipline process
 - (c) the public interest of the employee remaining on suspension with remuneration.

² T 1-9, ll 28-31.

[33] The Applicant submits that the decision maker is required to consider whether it is appropriate for the employee to receive full remuneration having regard to the nature of the discipline to which 'the person is liable' pursuant to s 137(4)(b) of the PS Act. There is an important distinction between the submitted wording and that of the entire section which refers to having regard to the nature of the discipline to which 'the chief executive believes the person is liable'. It is not necessary that the process has progressed to the point that the person is determined to be liable, only that the chief executive *believes* that the person is liable. In this matter, the decision maker has formed a reasonable belief that the Applicant is liable for discipline based on the information available. There is nothing unreasonable about that determination.

[34] The decision maker outlined the evidence she considered and the basis for the decision. I accept the Respondent's submission that the allegations are serious and involve multiple instances of inappropriately accessing and modifying records with the QPRIME. The decision maker demonstrated consideration of s 137(4)(b) in the following paragraph in the decision:

In accordance with Section 137(1)(b) of the Act I have decided to suspend you from duty without remuneration because on preliminary consideration of the material, I reasonably believe you are liable to discipline. Further, pursuant to section 137(4)(b) of the Act, and having regard to the nature of the discipline I believe you are liable to, I have decided it is not appropriate for you to be entitled to normal remuneration during your suspension.

[35] The Applicant's submission regarding disciplinary action is misguided in that s 137(4)(b) contains no requirement that the disciplinary process reach a particular stage before the decision can be made. This section provides the decision maker with a discretion to suspend without remuneration if she is of the belief that the Applicant was liable to discipline. As outlined above, the decision maker clearly outlined the basis upon which she formed the view that the Applicant was liable to discipline.

[36] The Applicant submits that the most important consideration in the decision was the potential adverse media attention and that this is a misapplication of the words 'not appropriate'. I do not accept that the most important consideration was the potential adverse media attention, with the decision maker clearly outlining her concerns regarding the seriousness of the allegations.

[37] There is no evidence that the decision maker erred in her application of s 137(4)(b) of the PS Act.

Did the decision maker err in her application of s 58(1)(a) of the HR Act?

[38] Section 58(1)(a) of the HR Act provides that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights.

[39] The Applicant submits that in requiring the Applicant to make submissions on the probative value of the evidence presented against her in the criminal trial, and by the decision maker engaging in a qualitative assessment of the evidence, the Respondent has failed to presume innocence until guilt was proven. The Applicant submits that this chain of reasoning is inconsistent with the HR Act, being the Applicant's right to a fair

trial, the presumption of innocence, and the right to silence or the common law privilege against self-incrimination.

[40] The Applicant also submits that the reasoning for the suspension without remuneration is inconsistent with human rights as the fear of possible adverse media attention presumes that the criminal charges will be proven.

[41] The Respondent submits that the decision to suspend without remuneration was based on material provided to the Applicant and the Applicant was provided with the opportunity to respond to logically probative evidence.

[42] The decision maker included the following considerations in the decision:

5. I also make the following comments in relation to further issues raised in your submission:

...

(iv) You submit this process fails to afford you natural justice and undermines your right to silence in relation to the criminal allegations. This process in no way abrogates your right to silence and is an administrative process, not criminal. You have not been directed to provide submissions, nor was the notice indicative you were ultimately suspended without remuneration. The notice was provided to you in the context of an opportunity to make submission on a decision to suspend you without remuneration.

...

(vi) I accept you have the right to be presumed innocent. In this instance significant evidence has been accumulated and provided to you including detailed analysis of the Queensland Police Records and Information Management Exchange system capturing compelling evidence sufficient to prefer serious charges against you.

...

[43] The decision maker is not precluded from making this administrative decision simply because a criminal matter is proceeding before the courts. There is no evidence that the Respondent has failed to adhere to the presumption of innocence nor the right to silence. The only decision made was to suspend the Applicant without remuneration because the decision maker is of the belief that the Applicant is liable to discipline. This does not require a consideration of criminal charges. As outlined above, the Applicant was provided an opportunity to respond to the show cause notice but was not compelled to do so.

[44] The Applicant submits that fear of possible adverse media attention indicates that the decision maker presumed that the criminal charges will be proven. The decision maker reasonably referred to possible adverse media attention simply because of potential coverage of a criminal trial, regardless of whether the charges are proven. This is a legitimate consideration of the public interest in retaining confidence in the Respondent as outlined by the decision maker. It was however not the only consideration, with the decision maker confirming that consideration was also given to the proper discharge of the Commissioner of the Respondent's prescribed responsibilities, stating:

Pursuant to section 4.8 of the *Police Service Administration Act* 1990, the Commissioner has the responsibility for the efficient and proper administration, management and functioning of the Queensland Police Service (QPS) in accordance with law. The protection of the reputation of the QPS and maintaining community confidence are essential factors in our ability to fulfill statutory

functions. Subsequently, any action I take in this matter is after careful consideration of the affect, not only on yourself, but also on the QPS as a whole and the perceptions of the general public.

You are liable to discipline under a disciplinary law pursuant to Chapter 6 of the Act and it appears to me on reasonable grounds that the efficient and proper discharge of the prescribed responsibility of the Commissioner might be prejudiced, if your paid employment is continued.

- [45] I do not consider that the decision maker failed to presume innocence, nor that this process denied the Applicant a right to silence or a fair trial and consequently do not accept that the decision maker erred in her application of s 58(1)(a) of the HR Act.

Did the decision maker contravene s 58(1)(b) of the HR Act?

- [46] Section 58(1)(b) provides that it is unlawful for a public entity to fail to give proper consideration to a human right relevant to the decision.
- [47] The Applicant submits that the decision maker did not consider all of the human rights which were held by the Applicant, nor did the decision maker consider that the impact of the subordination of those rights due to the prospect of adverse media attention.
- [48] The decision maker refers to the HR Act in the decision and states that she has had regard to the rights contained in the legislation and, based on the available material, considered that her decision is compatible with the obligations under the HR Act.
- [49] The decision maker demonstrated proper consideration of a human right relevant to the decision by clearly stating that the Applicant is presumed to be innocent of the allegations and ensuring that the Applicant was not compelled to forego her right to silence. This decision did not require a finding to be made on the allegations and there is no evidence that the decision maker made any such determination, ensuring that the presumption of innocence is maintained.
- [50] Whilst a more fulsome explanation of considerations given to relevant human rights would be ideal, I do not consider that the decision maker failed to give proper consideration to a human right relevant to the decision.

Conclusion

- [51] I am satisfied that the decision-maker complied with the requirements of both the PS Act and the Directive in making the decision to suspend the Applicant without remuneration. The decision was also consistent with the requirements of the HR Act. The decision is both lawful and fair. It follows that the decision is not invalid.
- [52] I order accordingly.

Order

1. In answer to the questions referred for arbitration in D/2021/125:

- (a) **The decision maker did not contravene s 137(9)(a) of the *Public Service Act 2008* (Qld);**

- (b) The decision maker did not err in her application of s 137(4)(b) of the *Public Service Act 2008* (Qld);
 - (c) The decision maker did not err in her application of s 58(1)(a) of the *Human Rights Act 2019* (Qld);
 - (d) the decision maker did not contravene s 58(1)(b) of the *Human Rights Act 2019* (Qld).
2. That the application for declaratory relief in matter B/2021/80 is dismissed.