SUPREME COURT OF QUEENSLAND

CITATION:	*Ryle v Venables & Ors* [2021] QSC 60
PARTIES:	**LINDA RYLE** (applicant) **v** **RUTH VENABLES** (first respondent) **ANTI-DISCRIMINATION COMMISSION** (second respondent) **STATE OF QUEENSLAND** (third respondent)
FILE NO/S:	BS No 3443 of 2020
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland at Brisbane
DELIVERED ON:	31 March 2021
DELIVERED AT:	Brisbane
HEARING DATE:	16 November 2020
JUDGE:	Davis J
ORDER:	**1. The application is dismissed.** **2. The applicant pay the third respondent's costs of the application.** **3. There be no order as to costs as between the applicant and the first and second respondents.**
CATCHWORDS:	ADMINISTRATIVE LAW - JUDICIAL REVIEW - STANDING TO INSTITUTE PROCEEDINGS - GENERALLY - where the applicant was employed by the Department of Justice and Attorney-General - where the applicant made a public interest disclosure in relation to a bail program being run by the applicant's colleague, W - where the applicant alleges that W spread exaggerated allegations of criminal conduct against the applicant in the workplace as reprisal for the applicant's disclosure - where the applicant was cleared of any wrong doing or criminal conduct by a departmental investigation - where the applicant suffered a psychiatric injury as a result of the alleged reprisal - where the applicant suffered alleged discrimination as a result of the psychiatric injury - where the applicant made a complaint of reprisal contrary to the *Public Interest Disclosure Act* 2010 - where the applicant made a complaint of impairment

discrimination contrary to the *Anti-Discrimination Act* 1991 - where both complaints were made after the statutory time limit had expired - where the complaint of reprisal was accepted by the first respondent acting in her function as the delegate of the Anti-Discrimination Commissioner - where the complaint of impairment discrimination was rejected by the first respondent acting in her function as the delegate of the Human Rights Commissioner on the basis of it being out of time - where the applicant sought judicial review of the decision to reject the impairment discrimination complaint - whether the applicant has made out one of the grounds of review.

Acts Interpretation Act 1954, s 14A, s 14B
Anti-Discrimination Act 1991, s 6, s 7, s 8, s 15, s 134, s 135, s 136, s 138, s 139, s 141, s 142, s 154A, s 158, s 164A, s 166, s 167, s 168, s 174B, s 174C, s 175, s 178, s 204, s 205, s 206, s 207, s 208, s 209, s 23A
Human Rights Act 2019, s 3, s 118
Industrial Relations Act 2016, s 429, s 448, s 451
Judicial Review Act 1991, s 4, s 7, s 20, s 23
Public Interest Disclosure Act 2010, s 11, s 40, s 41, s 42, s 43, s 44
Limitation of Actions Act 1974
Uniform Civil Procedure Rules 1999, r 171

ABT17 v Minister for Immigration and Border Protection & Anor [2020] 383 ALR 407, cited
Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT) (2009) 239 CLR 27, cited
Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, cited
Attorney-General (NSW) v Quin (1990) 170 CLR 1, cited
Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541, cited
Buderim Ginger Ltd v Booth [2003] 1 Qd R 147, cited
Carlson v QBT & Anor [1999] 2 Qd R 483, cited
Cooper v Hopgood & Ganim [1999] 2 Qd R 113, cited
Dempsey v Dorber [1990] 1 Qd R 418, cited
Dixon v Anti-Discrimination Commissioner of Queensland [2005] 1 Qd R 33, cited
Federal Commissioner of Taxation v Consolidated Media Holdings Ltd (2012) 250 CLR 503, followed
Griffith University v Tang (2005) 221 CLR 99, cited
Hertess v Adams [2011] QCA 73, cited
Legal Services Commissioner v Madden [2009] 1 Qd R 149, cited
Minister for Immigration and Border Protection v Singh & Anor (2014) 231 FCR 437, cited
Minister for Immigration and Citizenship v Li & Anor (2013) 249 CLR 332, cited
Minister for Immigration and Citizenship v SZIAI (2009) 83

ALJR 1123, cited
Minister for Immigration and Multicultural Affairs v Eshetu (1999) 197 CLR 611, cited
Project Blue Sky Inc & Ors v Australian Broadcasting Authority (1998) 194 CLR 355, followed
R v Australian Broadcasting Tribunal & Ors; Ex parte Hardiman & Ors (1980) 144 CLR 13, cited
State of Queensland v Walters [2007] 2 Qd R 451, cited
SZTAL v Minister for Immigration and Border Protection (2017) 91 ALJR 936, followed
The Queen v A2; The Queen v Magennis; The Queen v Vaziri (2019) 93 ALJR 1106, followed

COUNSEL: MA Rawlings for the applicant
JA Ball (Solicitor) for the first and second respondents
AD Scott and KJE Blore for the third respondent

SOLICITORS: Susan Moriarty & Associates for the applicant
Queensland Human Rights Commission for the first and second respondents
GR Cooper, Crown Solicitor for the third respondent

[1] Linda Ryle is an indigenous lady who is a lawyer. She was, at relevant times, an employee of the State of Queensland having been employed in the Department of Justice and Attorney-General (DJAG). At the time of the events in question, Ms Ryle had not been admitted as a lawyer but she has now.

[2] As a result of events alleged to have occurred in October 2012, Ms Ryle made a complaint of "reprisal" contrary to the *Public Interest Disclosure Act* 2010 (the PID Act). As a result of events alleged to have occurred in 2014, Ms Ryle made a complaint of impairment discrimination contrary to the *Anti-Discrimination Act* 1991 (the AD Act). Both complaints were properly directed to the Anti-Discrimination Commission. However, they were made well beyond the statutory time limit.[1]

[3] I have used the term "complaint" neutrally to mean a formal allegation. As will become clear, the meaning of the word "complaint" as it is used in the AD Act is very much a matter of contention.

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1 *Anti-Discrimination Act 1991*, s 138.

[4] In 1991, the AD Act was passed and the Anti-Discrimination Commission, and the position of Anti-Discrimination Commissioner, were established.[2] Over the course of events relevant to the dispute there were significant legislative changes. The *Human Rights Act* 2019 (the HR Act) was passed which sought to protect and promote human rights.[3] It also amended various statutes, including the AD Act.

[5] By s 118 of the HR Act, the Anti-Discrimination Commission was replaced by the Human Rights Commission and the office of the Anti-Discrimination Commissioner became the office of the Human Rights Commissioner. The Human Rights Commissioner retained those rights and duties under the AD Act which had formally been held by the Anti-Discrimination Commissioner and also acquired new rights and duties under the HR Act.

[6] Ruth Venables, who is the first respondent, was the delegate[4] of the Anti-Discrimination Commissioner and later the delegate of the Human Rights Commissioner. The Anti-Discrimination Commissioner, and later the Human Rights Commissioner, possessed the statutory power to decide whether or not to accept Ms Ryle's complaints beyond time.[5] Ms Venables, as delegate of the Anti-Discrimination Commissioner, decided to accept the reprisal claim and, as delegate of the Human Rights Commissioner, decided to refuse to accept the impairment discrimination complaint.

[7] Ms Ryle seeks judicial review of Ms Venables' decision to reject the impairment discrimination claim.

[8] Consistently with the *Hardiman* principle,[6] the first and second respondents did not take any active part in the proceedings. No costs orders are sought by or against the first and second respondents.[7]

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2 *Anti-Discrimination Act* 1991, s 23A.
3 *Human Rights Act* 1991, s 3.
4 *Anti-Discrimination Act* 1991, s 244.
5 *Anti-Discrimination Act* 1991, s 138(2).
6 *R v Australian Broadcasting Tribunal & Ors; Ex parte Hardiman & Ors* (1980) 144 CLR 13 at 35-36.
7 Consistently with *Dixon v Anti-Discrimination Commissioner of Queensland* [2005] 1 Qd R 33 at 39 and *Carlson v QBT & Anor* [1999] 2 Qd R 483 at 489.

[9] The State of Queensland, the third respondent, was and is Ms Ryle's employer and the employer (through DJAG) of the persons about whom she has complained. The State is Ms Ryle's contradictor in the proceedings.

[10] It was properly conceded by the State that the decision of Ms Venables was a "decision under an enactment"[8] and that Ms Ryle is a "person aggrieved" by the decision.[9] Therefore, the decision is one that is subject to judicial review and Ms Ryle has standing to challenge it. The only issue is whether Ms Ryle has made out one of the grounds of review identified in s 20 of the *Judicial Review Act* 1991 (the JR Act).

Background

[11] The PID Act is designed to "facilitate the disclosure in the public interest of information about wrongdoing in the public sector and to provide protection for those who make disclosure".[10] Those are called "public interest disclosures".[11] Provisions of the PID Act recognise the possibility of reprisal against persons making public interest disclosures.[12] Reprisal is recognised as a tort by s 42 of the PID Act but statutory remedies are also created. By s 44, a complaint may be made of reprisal and that complaint is then dealt with as a complaint made under the AD Act.[13]

[12] The provisions of the AD Act are central to the determination of this application and are analysed in detail later. However, where a complaint concerns a "work related matter",[14] the complaint may ultimately be heard by the Queensland Industrial Relations Commission (the QIRC).[15] Where a complaint does not relate to a "work related matter", the complaint may be heard by the Queensland Civil and Administrative Tribunal (QCAT).

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8 *Judicial Review Act* 1991, ss 4 and 20 and see *Griffith University v Tang* (2005) 221 CLR 99.
9 *Judicial Review Act* 1991, ss 7 and 20.
10 Long title to the *Public Interest Disclosure Act* 2010.
11 *Public Interest Disclosure Act* 2010, s 11.
12 Sections 40, 41, 42 and 43.
13 Chapter 7.
14 See *Anti-Discrimination Act* 1991, s 4, Schedule Dictionary definitions of "work related matter" and "work".
15 Constituted under the *Industrial Relations Act* 2016, s 429.

[13] The AD Act recognises various species of discrimination. One of those is discrimination on the basis of "impairment".[16] "Impairment" is defined in the Schedule to the AD Act but it is unnecessary to refer to that definition.

[14] On 25 July 2018, Ms Ryle lodged a complaint with the Anti-Discrimination Commission. That complaint took the form of a lengthy and detailed letter in which Ms Ryle explained the conduct of which she complained, the surrounding circumstances and the damage caused to her, and why the complaint should be accepted out of time.

[15] As already explained, Ms Ryle is now a lawyer. The structure and content of the complaint reflects her legal training. She clearly intended the complaint to be one against reprisal.[17]

[16] Ms Ryle's complaint was directed at W. Ms Ryle had earlier made a public interest disclosure to the effect that W, also an employee of DJAG, had run a bail program and had caused participants in that program to work on his private property. That public interest disclosure complaint was accepted in 2011 and W was counselled.

[17] In 2012, a quite extraordinary set of circumstances developed. Ms Ryle had been assisting an indigenous youth, M, who was then battling with alcohol and drug addiction. Ms M, at Ms Ryle's invitation, stayed at Ms Ryle's home from time to time to escape domestic violence and other dangers occurring at her own household. Over time, however, M's behaviour became such that Ms Ryle had to withdraw her support.

[18] M was ultimately charged with criminal offences which were dealt with in the Magistrates Court. During submissions on M's plea of guilty, it was asserted on her behalf that Ms Ryle and M had been in a sexual relationship for some time and that Ms Ryle had taken advantage of M. It appears that the police prosecutor made no challenge to these allegations and M was sentenced on the basis that the allegations were true.

[19] I appreciate that the lists are often very busy in the Magistrates Court and it is often the case that on sentence hearings submissions are made from the Bar table which

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16 Section 7(h).
17 See the last paragraph of the letter.

are accepted without the support of admissible evidence and without any investigation by the prosecution as to their veracity. Here, the allegations were serious and besmirched Ms Ryle who, while not at that stage an officer of the court, was certainly a person working in the criminal justice system. It is hard to conclude that it was in the interests of justice for the prosecution to simply accept the assertions made on M's behalf without enquiries being made. There being no challenge to the allegations, it was unsurprising that the Court acted upon them in sentencing M.

[20] Ms Ryle alleges that W then exaggerated the allegations made by M and peddled them within and beyond the workplace. Ms Ryle alleges that conduct was by way of reprisal for the public interest disclosure that she had made concerning W and his involvement in the bail program.

[21] The allegations had significant professional and personal impact upon Ms Ryle. This included cultural impact as Elders had become aware of the allegations. She was the subject of disciplinary action through her employment and suffered what she described as a "total mental breakdown". Ms Ryle was cleared of any wrongdoing after a departmental investigation. In the letter of complaint, she alleged that she was disadvantaged in the workplace as a result of the mental health issues that she had suffered because of the alleged reprisal.

[22] As already observed, Ms Ryle's complaint was very detailed and I have not attempted to summarise it all. My short summary is all that is necessary given the limited nature of judicial review.

[23] A Ms Corkhill reviewed the complaint for the Anti-Discrimination Commission. She contacted Ms Ryle in August 2018. She told Ms Ryle that she thought that the letter of 25 July 2018 actually contained two complaints, being a complaint of reprisal (Ms Ryle's complaint against W) and a complaint of impairment discrimination against O, P and Q. It was resolved on the telephone that Ms Ryle would lodge a second complaint, being an impairment discrimination complaint.

[24] On 1 February 2019, the first respondent, Ms Venables, on behalf of the Anti-Discrimination Commission accepted the reprisal complaint.

[25] On 27 February 2019, Ms Ryle lodged a second complaint. This was a complaint of impairment discrimination. It is the complaint which was clearly invited by Ms Corkhill. Ms Ryle complained of the conduct of O, P and Q, all mentioned in the original complaint, and also complained of the conduct of R.

[26] In the impairment discrimination complaint, Ms Ryle alleged that she suffered an impairment, being the psychiatric injury caused by the reprisal and she was then discriminated against in the following ways as a result of the impairment:

> "1. I was denied reinstatement to my substantive position and location;
>
> 2. I was denied a graduated return to work program when I was medically cleared for such, which is a benefit offered to me by my employer and reproduced in various policies and industrial instruments;
>
> 3. I was denied 'reasonable adjustments' to my position and workplace to enable me to return to my substantive position and location;
>
> 4. I was denied the graduated return to work program recommended by a psychiatrist who clinically approved a 3 month timeframe and instead directed to return to fulltime work after two weeks on a graduated plan."

[27] On 27 February 2020, Ms Venables, on behalf of the Human Rights Commissioner, made the decision not to accept the impairment discrimination complaint. That is the decision the subject of the present application. Reasons accompanied the decision.

Statutory provisions

[28] Since Ms Venables' decision, the AD Act has been amended. What are relevant are the provisions of the AD Act in force at the time of the decision.

[29] The purpose of the AD Act is explained in s 6:

> "**6 Act's anti-discrimination purpose and how it is to be achieved**
>
> (1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.
>
> (2) This purpose is to be achieved by—

(a) prohibiting discrimination that is—

(i) on a ground set out in part 2; and

(ii) of a type set out in part 3; and

(iii) in an area of activity set out in part 4;

unless an exemption set out in part 4 or 5 applies; and

(b) allowing a complaint to be made under chapter 7 against the person who has unlawfully discriminated; and

(c) using the agencies and procedures established under chapter 7 to deal with the complaint."

[30] Section 7 identifies "attributes" and prohibits discrimination based on those attributes. It provides:

"**7 Discrimination on the basis of certain attributes prohibited**

The Act prohibits discrimination on the basis of the following attributes—

(a) sex;

(b) relationship status;

(c) pregnancy;

(d) parental status;

(e) breastfeeding;

(f) age;

(g) race;

(h) impairment;

(i) religious belief or religious activity;

(j) political belief or activity;

(k) trade union activity;

(l) lawful sexual activity;

(m) gender identity;

(n) sexuality;

(o) family responsibilities;

(p) association with, or relation to, a person identified on the basis of any of the above attributes." (emphasis added)

[31] As earlier observed, the relevant attribute here is "impairment" as prescribed in s 7(h).

[32] The notion of "discrimination on the basis of [an attribute]", as prohibited by s 7, is explained in s 8 as follows:

> "**8 Meaning of discrimination on the basis of an attribute**
>
> ***Discrimination on the basis of an attribute*** includes direct and indirect discrimination on the basis of—
>
> (a) a characteristic that a person with any of the attributes generally has; or
>
> (b) a characteristic that is often imputed to a person with any of the attributes; or
>
> (c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
>
> (d) an attribute that a person had, even if the person did not have it at the time of the discrimination.
>
> *Example of paragraph (c)—*
>
> If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have."

[33] Part 4 prescribes the areas of activity in which discrimination is prohibited. That includes the workplace. Section 15 provides:

> "**15 Discrimination in work area**
>
> (1) A person must not discriminate—
>
> (a) in any variation of the terms of work; or
>
> (b) in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or
>
> (c) in dismissing a worker; or
>
> (d) by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
>
> (e) in developing the scope or range of such a program; or
>
> (f) by treating a worker unfavourably in any way in connection with work.
>
> (2) In this section—

> ***dismissing*** includes ending the particular work of a person by forced retirement, failure to provide work or otherwise."

[34] Subdivision 2 of Part 4 provides exemptions to discrimination in the workplace. Section 25 gives the right to "impose genuine occupational requirements for a position". That recognises that a particular "attribute" might legitimately disentitle a person to suitability for a particular role.

[35] Chapter 7 concerns enforcement. Section 134[18] identifies those who may complain. It provides:

> "**134 Who may complain**
>
> (1) Any of the following people may complain to the commissioner about an alleged contravention of the Act—
>
> (a) a person who was subjected to the alleged contravention;
>
> (b) an agent of the person;
>
> (c) a person authorised in writing by the commissioner to act on behalf of a person who was subjected to the alleged contravention and who is unable to make or authorise a complaint.
>
> (2) Two or more people may make a complaint jointly.
>
> (3) A relevant entity may complain to the commissioner about a relevant alleged contravention.
>
> (4) However, the commissioner may accept the relevant entity's complaint under section 141 only if the commissioner is satisfied that—
>
> (a) the complaint is made in good faith; and
>
> (b) the relevant alleged contravention is about conduct that has affected or is likely to affect relevant persons for the relevant entity; and
>
> (c) it is in the interests of justice to accept the complaint.
>
> (5) In this section—
>
> ***relevant alleged contravention*** means an alleged contravention of section 124A.

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18 Contained within Chapter 7.

> ***relevant entity*** means a body corporate or an unincorporated body, a primary purpose of which is the promotion of the interests or welfare of persons of a particular race, religion, sexuality or gender identity.
>
> ***relevant persons***, for a relevant entity, means persons the promotion of whose interests or welfare is a primary purpose of the relevant entity." (emphasis added)

[36] Section 135 is critical to Ms Ryle's submissions. It provides:

> "**135 Complaint may allege more than 1 contravention**
>
> A person may make a complaint alleging more than 1 contravention of the Act.
>
> *Example—*
>
> C applies to real estate agent R to rent a house and is asked to fill out a form which includes a question about his country of birth. C is not offered a house, and believes this is on the basis of his national origin. C may make a complaint about being required to answer a question about his national origin contrary to section 124 (Unnecessary information), or a complaint about unlawful discrimination under section 82 (Discrimination in pre-accommodation area), or both." (emphasis added)

[37] There is no definition of "complaint" in the AD Act, but s 136, which is also critical to Ms Ryle's application, prescribes how a complaint is made. It provides:

> "**136 Making a complaint**
>
> A complaint must—
>
> (a) be in writing; and
>
> (b) set out reasonably sufficient details to indicate an alleged contravention of the Act; and
>
> (c) state the complainant's address for service; and
>
> (d) be lodged with, or sent by post to, the commissioner." (emphasis added)

[38] There is a definition of "complainant". That is:

> "***complainant*** means—
>
> (a) in relation to a representative complaint—a person named in the complaint or otherwise identified in the complaint as a person on whose behalf the complaint is being made; or
>
> (b) in relation to a complaint by a relevant entity under section 134—the relevant entity; or
>
> (c) otherwise—the person who is the subject of the alleged contravention of the Act."

[39] Section 138 is the section which authorised Ms Venables' decision. It provides:

> "**138 Time limit on making complaints**
>
> (1) Subject to subsection (2), a person is only entitled to make a complaint within 1 year of the alleged contravention of the Act.
>
> (2) The commissioner has a discretion to accept a complaint after 1 year has expired if the complainant shows good cause."

[40] Section 138 achieves two things. Firstly, it provides a time limit within which a complaint may be made as of right. Secondly, it confers a discretion upon the Commissioner to accept a complaint beyond the time limit. Therefore, any complainant making a complaint beyond the time limit has no right to have the complaint accepted but must rely upon a favourable exercise of discretion.

[41] Section 139 provides for the regulation of complaints that are frivolous or otherwise lacking in substance. It provides:

> "**139 Commissioner must reject frivolous, trivial etc. complaints**
>
> The commissioner must reject a complaint if the commissioner is of the reasonable opinion that the complaint is—
>
> (a) frivolous, trivial or vexatious; or
>
> (b) misconceived or lacking in substance."[19]

[42] Section 141 provides as follows:

> "**141 Time limit on acceptance or rejection of complaints**
>
> (1) The commissioner must decide whether to accept or reject a complaint within 28 days of receiving the complaint.
>
> (2) The commissioner must promptly notify the complainant of the decision."

[43] Section 142 obliges the Commissioner to give reasons for rejecting a complaint. It provides:

> "**142 Reasons for rejected complaints**
>
> (1) If a complaint is rejected, it lapses and the complainant is not entitled to make a further complaint relating to the act or omission that was the subject of the complaint.

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19 And see also s 168.

(2) If a complaint is rejected, the complainant may, within 28 days of receiving notice of the rejection, ask the commissioner for written reasons.

(3) If requested, the commissioner must promptly give the complainant written reasons for the rejection."

[44] There are a number of machinery provisions to which it is unnecessary to refer.

[45] Division 2 of Part 7 concerns "the investigative process". Section 154A provides:

"**154A Investigation of complaint**

The commissioner may investigate a complaint at any time after the complaint is received by the commissioner."

[46] Section 155 obliges the Commissioner to conduct an inquiry in some circumstances. Various investigative powers are bestowed upon the Commissioner by s 156.

[47] Division 3 of Part 7 concerns "the conciliation process". Section 158 provides:

"**158 Conciliation of complaints**

If the commissioner believes that a complaint may be resolved by conciliation, the commissioner must try to resolve it in that way."

[48] There are, again, various machinery provisions and, importantly, various provisions whereby the complaint may be referred either to the QCAT or the QIRC. In each of those provisions,[20] the power of the Commissioner is "to refer the complaint[21] to … [either the QCAT or] the Industrial Relations Commission[22]" depending on the subject matter of the complaint.

[49] Part 2 of Chapter 7 concerns "what the Tribunal may do". Section 174B concerns complaints referred to the QIRC. It provides:

"**174B Functions of industrial relations commission**

The industrial relations commission has the following functions—

(a) in relation to complaints about contraventions of this Act that are referred, or to be referred, to the commission under this Act—

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20 Sections 164A, 166 and 167.
21 Emphasis added.
22 Relevantly here.

(i) to make orders under section 144 before the complaints are referred to the tribunal; and

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

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

(iv) to hear and decide the complaints;

(b) to grant exemptions from this Act in relation to work-related matters;

(c) to provide opinions about the application of this Act in relation to work-related matters;

(d) any other function conferred on the commission by this Act;

(e) to take any other action incidental or conducive to the discharge of a function mentioned in paragraphs (a) to (d)."

[50] Section 174C provides as follows:

"**174C Powers of tribunal under relevant tribunal Act**

(1) If this Act confers jurisdiction on the tribunal in relation to a complaint or other matter, the tribunal may exercise the powers conferred on it under this Act or the relevant tribunal Act.

(2) Nothing in this Act limits the industrial relations commission's powers under the IR Act, section 539."

[51] There is then a "pre-hearing process" prescribed by Chapter 7 Part 2 Division 1 and a "hearing process" prescribed by Chapter 7 Part 2 Division 2.

[52] As to the pre-hearing stage, s 175 provides:

"**175 Time limit on referred complaints**

(1) The tribunal must accept a complaint that is referred to it by the commissioner, unless the complaint was made to the commissioner more than 1 year after the alleged contravention of the Act.

(2) If the complaint was made more than 1 year after the alleged contravention, the tribunal may deal with the complaint if the tribunal considers that, on the balance of fairness between the parties, it would be reasonable to do so."

[53] Section 178 allows amendment to "complaints". It provides:

"**178 Complaints may be amended**

(1) The tribunal may allow a complainant to amend a complaint.

(2) Subsection (1) applies even if the amendment concerns matters not included in the complaint."

[54] Sections 175 and 178 provide another level of discretion. An out of time complaint can only be referred to a tribunal if the complaint has been accepted under s 138. It is only a complaint which has been accepted which proceeds and can ultimately be referred to a tribunal under s 164A. However, by s 175, a discretion exists in the tribunal to refuse to deal with a complaint which was not made within the time prescribed by s 138(1).

[55] Section 178 may authorise the amendment of a complaint to include a matter which may have been excluded under s 138(2). However, whether such a course is open depends upon the proper construction of s 142(1). It is unnecessary to resolve that question.

[56] As to the hearing process, ss 204 to 208 provide as follows:

"**204 Burden of proof—general principle**

It is for the complainant to prove, on the balance of probabilities, that the respondent contravened the Act, subject to the requirements in sections 205 and 206.

205 Burden of proof—indirect discrimination

In a case involving an allegation of indirect discrimination, the respondent must prove, on the balance of probabilities, that a term complained of is reasonable.

206 Burden of proof—exemptions

If the respondent wishes to rely on an exemption, the respondent must raise the issue and prove, on the balance of probabilities, that it applies.

207 Commissioner may provide investigation reports

(1) The commissioner may give the tribunal a report relating to the investigation of a complaint which the tribunal is hearing.

(2) The report must not contain a record of oral statements made by any person in the course of conciliation.

(3) The tribunal must give a copy of the report to the complainant and the respondent.

208 Evaluation of evidence

(1) The tribunal is not bound by the rules of evidence and—

(a) must have regard to the reasons for the enactment of this Act as stated in the preamble; and

(b) may draw conclusions of fact from any proceeding before a court or tribunal; and

(c) may adopt any findings or decisions of a court or tribunal that may be relevant to the hearing; and

(d) may receive in evidence a report of the commissioner, but only if each party to the hearing has a copy of the report; and

(e) may permit any person with an interest in the proceeding to give evidence; and

(f) may permit the commissioner to give evidence on any issue arising in the course of a proceeding that relates to the administration of the Act.

(2) Nothing said or done in the course of conciliation can be admitted as evidence in a hearing before the tribunal."

[57] Section 209 concerns orders which may be made by the Tribunal. It provides, relevantly:

"**209 Orders the tribunal may make if complaint is proven**

(1) If the tribunal decides that the respondent contravened the Act, the tribunal may make 1 or more of the following orders—

(a) an order requiring the respondent not to commit a further contravention of the Act against the complainant or another person specified in the order;

(b) an order requiring the respondent to pay to the complainant or another person, within a specified period, an amount the tribunal considers appropriate as compensation for loss or damage caused by the contravention;

(c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant and another person because of the contravention;

(d) an order requiring the respondent to make a private apology or retraction;

(e) an order requiring the respondent to make a public apology or retraction by publishing the apology or retraction in the way, and in the form, stated in the order;

(f) an order requiring the respondent to implement programs to eliminate unlawful discrimination;

(g) an order requiring a party to pay interest on an amount of compensation;

(h) an order declaring void all or part of an agreement made in connection with a contravention of this Act, either from the time the agreement was made or subsequently. …"

[58] The QIRC is a court of record recognised by s 429 of the *Industrial Relations Act* 2016 (the IR Act) although it was constituted under earlier legislation.

[59] The QIRC's jurisdiction is governed by s 448 of the IR Act. It provides, relevantly:

"**448 Commission's jurisdiction**

(1) The commission may hear and decide the following matters—

(a) a question of law or fact brought before it or that it considers expedient to hear and decide for the regulation of a calling;

(b) all questions—

(i) arising out of an industrial matter; or

(ii) involving deciding the rights and duties of a person in relation to an industrial matter; or

(iii) it considers expedient to hear and decide about an industrial matter;

(c) an industrial dispute referred to the commission under this Act or another Act by a member who has held a conference at which no agreement has been reached;

(d) all appeals properly made to it under this Act or another Act;

(e) all matters referred to the commission under this Act or another Act. …" (emphasis added)

[60] Section 451 concerns the powers of the QIRC. It provides:

"**451 General powers**

(1) The commission has the power to do all things necessary or convenient to be done for the performance of its functions.

(2) Without limiting subsection (1), the commission in proceedings may—

(a) give directions about the hearing of a matter; or

(b) make a decision it considers appropriate, irrespective of the relief sought by a party; or

(c) make an order it considers appropriate.

(3) The commission may, by general order or for a particular case, delegate to the registrar—

(a) the working out of a decision of the commission to implement the decision; or

(b) a function relating to the decision, including, for example—

(i) the giving of directions; or

(ii) the making of orders; or

(iii) the preparation of rosters and schedules; or

(iv) a similar function it considers appropriate.

(4) The full bench may, to assist it in the resolution of proceedings—

(a) refer the whole or part of a question or matter before it to the commission—

(i) for investigation by the commission and the preparation of a report on the investigation; or

(ii) for another action it decides; or

(b) direct 1 or more of its members to carry out an investigation or inspection and prepare a report on the investigation or inspection.

(5) The commission or member must comply with the reference or direction."

The judicial review application

[61] Ms Ryle filed an application for judicial review on 26 March 2020. Pursuant to an order of Dalton J made on 14 April 2020, Ms Ryle filed an amended application. The amended application alleges seven grounds. Only three were pressed. They were:

1. "The decision involved an error of law" (ground 1);

2. "[Ms Venables] failed to exercise her discretion as required by s 138 of the [*Anti-Discrimination Act* 1991]" (ground 2);

3. "[Ms Venables] failed to take into account relevant considerations and took into account irrelevant considerations" (ground 4).

Consideration

Ground 1: The decision involved an error of law

[62] Ms Ryle submits that the discretion under s 138 of the AD Act is to accept or not accept a "complaint". The "complaint", Ms Ryle submits, is the document the contents of which are prescribed by s 136 and which initiates the processes of Chapter 7. The "complaint" is the document containing allegations. The allegations themselves are not the "complaint", Ms Ryle submits.

[63] This is said to be the proper meaning of "complaint", primarily because of s 135 which provides that "a person may make a complaint" alleging "more than one contravention" of the AD Act, and because in a number of other sections the terms "complaint" and "contravention" are used.[23] Therefore, Ms Ryle submits, there is a distinction between the "complaint" (which must be the document lodged) and the "contravention" which is the breach of the AD Act alleged in the "complaint". In Ms Ryle's submission, the discretion in s 138 is to accept a "complaint", that is the document which complies with s 136, or to not accept the "complaint". The discretion does not extend, Ms Ryle submits, to accepting that part of a "complaint" (being the document complying with s 136) which alleges a contravention of the AD Act (or the PID Act) and rejecting that part of the complaint which alleges other contraventions.

[64] It follows, so it is submitted, that having accepted the reprisal allegations beyond time, the impairment allegations had to be accepted as they were part of the same "complaint".

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[23] Sections 6, 117, 121-123, 125, 127, 130, 131C, 131F, 132-140, 140A, 141, 141A, 142-154, 154A, 155, 158, 160, 164, 164A, 164AA, 165-168, 168A, 169, 170, 171, 174A-C, 175, 178, 189, 191, 193, 193A, 194-200, 207, 209, 210, 226, 231, 235, 263A, 263B, 263C, 263E-I, 266, 267, 268, 270, 271, 273-276 definitions in the dictionary of "complainant", "contravention", "respondent" and "work-related matter".

[65] Here, there were in fact two separate complaints. The letter of 25 July 2018 was treated as a reprisal complaint and the letter of 27 February 2019 was treated as a separate complaint of impairment discrimination. Arguably then, the point does not arise for decision at all.

[66] However, the two separate complaint documents unquestionably came about as a result of Ms Corkhill's suggestions. Ms Ryle's real point is that Ms Corkhill was wrong when she suggested that a separate complaint ought to be made in relation to impairment discrimination. Section 135 expressly provides that a "complaint" may allege more than one "contravention". Therefore, on Ms Ryle's submissions, the letter of 25 July 2018 ought to have been regarded as a "complaint" which contained allegations of more than one "contravention", being reprisal contrary to the PID Act and impairment discrimination contrary to the AD Act.

[67] This potentially gives rise to a number of considerations. Did the first and second respondents make a decision through Ms Corkhill? Was that decision to reject the complaint of 25 July 2018 on a question of form? Was that a failure to make a decision on the complaint? Was the apparent rejection of the form of the letter of 25 July 2018 a decision under an enactment?

[68] At the time of Ms Corkhill's conversation with Ms Ryle, and at the time Ms Venables accepted the reprisal complaint, the office of the Anti-Discrimination Commission was in existence. By the time Ms Venables refused to accept the impairment discrimination complaint, that office had ceased to exist and Ms Venables made the decision as delegate of the Human Rights Commissioner. It is therefore somewhat of a mystery that the second respondent is named as the "Anti-Discrimination Commission".

[69] The State has taken a pragmatic view which, fortunately, avoids all these issues. The State accepts that Ms Venables' decision to reject the impairment discrimination complaint, once the reprisal complaint was accepted, constituted an error of law if Ms Ryle's construction of s 138 is correct. No point is taken that the Human Rights Commission's predecessor is named as the second respondent, and no point is taken that, in the end, two separate "complaints" were lodged.

[70] The point of construction was raised but not determined in *State of Queensland v Walters*,[24] although Douglas J expressed the following view[25]:

> "In the circumstances it is unnecessary to decide what would be the effect of the rejection of one alleged contravention on the complainant's ability to continue with a complaint raising a number of possible contraventions of the Act. Because s. 135 allows a person to make a complaint alleging more than one contravention of the Act, it seems more practical to permit the Commissioner to treat such a complaint as one where several complaints have been made, some of which may be rejected without affecting the status of the others. That follows from my view that it is possible to accept separate alleged contraventions of the Act at different times after the original complaint was made."

[71] *State of Queensland v Walters* dealt with the effect of ss 139 and 142(1) rather than s 138, which is the crucial section here.

[72] It can be accepted that in various provisions of the AD Act, including ss 135, 136 and 138 there is recognition of the concept of a contravention of the AD Act and of a complaint about that contravention.

[73] It does not though follow that, on a proper construction of s 138, the discretionary power vested in the Human Rights Commissioner is severely limited in the way Ms Ryle submits. It is well settled that the proper construction of the text of a statutory provision is determined, not only from the text itself, but from a consideration of the context of the legislation as a whole and its purpose.[26]

[74] The structure of Chapter 7 of the AD Act and the purposes of sections like ss 138 and 139 is quite obvious.

[75] Chapter 7 provides a scheme whereby disputes concerning alleged contraventions of the AD Act are resolved. That commences with the citizen making an allegation.[27]

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24 [2007] 2 Qd R 451.

25 At [20].

26 *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at [47], *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503, *SZTAL v Minister for Immigration and Border Protection* (2017) 91 ALJR 936 at [14] and [35]-[40], *The Queen v A2*; *The Queen v Magennis*; *The Queen v Vaziri* (2019) 93 ALJR 1106 at [32], *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 at [78]; *Acts Interpretation Act* 1954, ss 14A and 14B.

27 Sections 134-137.

Then the allegation is the subject of conciliation and, if not resolved by agreement, the QIRC[28] hears and determines the dispute.

[76] Ultimately, the "complaint" is what the QIRC hears and determines. The complaint is the subject of the exercise of jurisdiction by the QIRC and in that respect limits the jurisdiction of the QIRC.[29]

[77] However, a complaint which is ultimately the subject of conciliation or is considered by the QIRC is subject to various provisions.

[78] Under s 136, a complaint made by a complainant identified in s 134 may be made. Sections 138 and 139 both provide circumstances where a discretion arises which may lead to the summary dismissal of the complaint.

[79] Section 139 is similar to *Uniform Civil Procedure Rules* 1999, r 171. A judgment may be made by the Commissioner as to whether the complaint is frivolous or lacking in substance, etc so that its continuation is not warranted. Relevant considerations to the exercise of that discretion go to the substance and merits of the allegations.[30]

[80] Section 138 puts a time limit on complaints but gives a discretion to accept the complaint out of time. The difficulty of determining rights arising out of circumstances long before a hearing of the dispute is well recognised.[31] The *Limitation of Actions Act* 1974 is a statutory response to such concerns. A significant consideration in determining whether an old complaint should be allowed to proceed is whether, despite the delay, justice can be done to the respondent.[32]

[81] There is a discretion in the QIRC, by s 178, to allow an amendment of a complaint. That may include "matters not included in the complaint". Whether that would allow the addition of a completely new allegation of contravention need not be

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28 If a "work related matter".

29 See cases like *Legal Services Commissioner v Madden* [2009] 1 Qd R 149.

30 *Buderim Ginger Ltd v Booth* [2003] 1 Qd R 147 at [23].

31 *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541.

32 *Buderim Ginger Ltd v Booth* [2003] 1 Qd R 147 at [22], *Dempsey v Dorber* [1990] 1 Qd R 418 at 420 (an application to serve a writ), *Cooper v Hopgood & Ganim* [1999] 2 Qd R 113 at 118 (an application to dismiss a claim for want of prosecution), *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541 at 554-444, *Hertess v Adams* [2011] QCA 73 (cases considering s 31 of the *Limitations of Actions Act* 1974).

decided. However, the power of amendment in s 178 effectively allows the QIRC to widen its jurisdiction to matters not originally contained in the complaint.[33]

[82] The QIRC, by s 175, has its own powers to reject a late complaint. Ultimately though, the purpose of Chapter 7 is to authorise and regulate the determination of allegations of contraventions of the AD Act by conciliation or by hearing by the QIRC. As part of that process, ss 138 and 139 exist to exclude the litigation of allegations that are lacking in merit or where circumstances are such that a complaint cannot be fairly litigated.[34]

[83] That purpose is not advanced, and indeed is severely hindered by the construction proposed by Ms Ryle.

[84] Section 138 operates when the complaint is made after one year has expired. Therefore, upon Ms Ryle's suggested construction:

1. If a complaint was made which contains allegations of a contravention within one year, and also contains allegations of a contravention beyond one year, then if the "complaint" is the document containing all allegations, it must follow that the "complaint" makes allegations beyond the one year time limit prescribed by s 138(1). It must also follow then that all allegations of contravention (whether within time or not) fall unless there is a favourable exercise of discretion under s 138(2).

2. However, if, as a matter of form, the allegations are broken into different complaints (on separate documents), a separate discretion could be exercised in relation to those claims made beyond time and no discretion would arise in relation to those made within time.

3. Where, as here, there is more than one allegation of contravention, the discretionary considerations which arise in relation to each contravention may be very different. For instance, the application might be made in relation to a contravention which occurred one year and one day previously and where, over that whole period, there had been correspondence between the parties and there could be no suggestion of any prejudice. The other contravention

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33 As was the case in the legislation considered in *Legal Services Commissioner v Madden* [2009] 1 Qd R 149.

34 Section 38.

might relate to conduct years previously where the first the respondent knew of any allegation was the receipt of the complaint. In Ms Ryle's interpretation, both allegations would persevere in full or perhaps would fall together.

[85] If Ms Ryle's construction of s 138 is correct, then the term "complaint" must surely have the same meaning in s 139 as it does in s 138 and it would then follow that the Commissioner's powers under s 139 are limited to rejecting the complaint as a whole or rejecting none of it.

[86] In relation to s 139, the construction submitted by Ms Ryle gives even odder results. If contained in the document there are allegations that are frivolous, trivial or vexatious, then a discretion would arise to reject other claims made in the same document that are arguably potentially valid claims. If, in order to preserve the valid claims the discretion was exercised to accept the "complaint", then the frivolous, trivial or vexatious claim would also proceed to conciliation and, presumably, to hearing in the QIRC despite the fact those allegations have no merit.

[87] Another large difficulty with the construction proposed by Ms Ryle is that different allegations of contraventions of the AD Act made in the one complaint document may give rise to different rights in different parties.

[88] The current case is on point. Ms Venables recognised that on the issue of whether the reprisal complaint should be accepted, she needed to afford natural justice to W. She invited submissions from him. He provided submissions. Similarly, she invited submissions from O, P, Q and R on the impairment discrimination complaint. Submissions were made.

[89] If the allegations against W and the allegations against O, P, Q and R all must be considered as one "complaint" then prejudice identified to be suffered by say W, would have to be considered in the allegations against O, P, Q and R or vice versa. In that way, submissions made by a party against whom an allegation of contravention had been made, must be considered in determining the fate of other matters in which that party has absolutely no interest.

[90] The language used in Chapter 7 is a little awkward but the intention is clear. Chapter 7 concerns alleged breaches of the AD Act. These contraventions do not

trigger the powers of the chapter until they are acted upon by the complainant. They are acted upon when a complaint is made. The complaint, though, is a complaint of contravention of the AD Act. A complaint of more than one contravention of the AD Act may be made.[35] The complaints of contraventions are regulated by ss 138 and 139. There is, in my view, no reason to think that the legislative intention was to limit the discretion created by ss 138 and 139 to rejecting or accepting all allegations of contravention which may be complained of in the one document lodged with the Commissioner.

[91] Ms Venables was correct in approaching the exercise of discretion in relation to the reprisal complaint separately to the exercise of the discretion in relation to the impairment discrimination complaint.

[92] No error of law has been demonstrated and there is no substance in ground 1.

Ground 2: The first respondent failed to exercise her discretion as required by s 138 of the Act

[93] Ms Ryle's complaint here is that the discretion was not exercised reasonably. She relies upon ss 20(2)(e) and 23(g) of the *Judicial Review Act*. Section 20(2)(e) provides a ground of review as:

> "(e) that the making of a decision was an improper exercise of the power conferred by the enactment under which it was purported to be made."

[94] Section 23 provides, relevantly:

> "**23 Meaning of improper exercise of power (ss 20(2)(e) and 21(2)(e))**
>
> In sections 20(2)(e) and 21(2)(e), a reference to an improper exercise of a power includes a reference to—
>
> (a) …
>
> (g) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power; …"

[95] The unreasonableness ground has its origins in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*[36] but has been in statutory form in Australia for decades. The challenge is to distinguish between the identification of

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35 Section 135.
36 [1948] 1 KB 223.

unreasonableness which vitiates the exercise of discretion (which is a valid ground of review) and an impermissible merits review.[37]

[96] It is well recognised that an unreasonable exercise of power can be demonstrated in the process of reasoning and/or in the outcome of the decision.[38]

[97] Here, Ms Ryle's initial written submission was:

> "31. This ground is advanced on the basis the Applicant says the First Respondent exercised her discretion unreasonably. The Applicant says that a reasonable decision-maker would not have formed the view the Applicant could not show *good cause* in circumstances where the same decision-maker considered that *good cause* was shown in relation to complaints made on the same day."

[98] Expressed in the alternative was a further submission in these terms:

> "33. Further, and in the alternative, the determination that the representations of the Second Respondent in relation to the management of the original complaint were *irrelevant* is unreasonable. That is, the decision-maker's process of reasoning when determining the question of *good cause* was not reasonable in circumstances where the she has expressly excluded consideration of relevant advice given to the Applicant from the Second Respondent in relation to the management of the complaint. Accordingly, the decision is liable to be set aside."

[99] The submission made in paragraph [33] of the written submissions, has similarities with the submissions made in support of ground 4. The determination that Ms Corkhill's involvement was irrelevant is said to constitute a failure to take into account relevant considerations (ground 4) and also renders the decision unreasonable (ground 2).

[100] The reasons given by Ms Venables for the decision are detailed and extensive. She firstly dealt with two preliminary issues. The first was as to when the complaint

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37 *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 at [40], *Minister for Immigration and Citizenship v Li & Anor* (2013) 249 CLR 332 at [30] and [66], *Attorney-General (NSW) v Quin* (1990) 170 CLR 1, *Minister for Immigration and Citizenship v SZIAI* (2009) 83 ALJR 1123 and *ABT17 v Minister for Immigration and Border Protection & Anor* [2020] 383 ALR 407.

38 *Immigration and Citizenship v Li & Anor* (2013) 249 CLR 332 at [27]-[28] and [72], *Minister for Immigration and Border Protection v Singh & Anor* (2014) 231 FCR 437 at [44] and *ABT17 v Minister for Immigration and Border Protection & Anor* (2020) 383 ALR 407 at [122] per Edelman J.

was made against P, Q, R and S. She concluded the complaint was made against P, Q, and R when the initial reprisal allegations were made, namely 25 July 2018. She concluded that the claim against S was made when the second complaint was received, namely 27 February 2019.

[101] Ms Venables was concerned whether, as a matter of law, she could entertain the impairment discrimination complaint given that "the allegations that formed the substance of the complaint were included in the complaint that was previously accepted and referred to the QIRC". She determined that she could.

[102] After dealing with the two preliminary issues, Ms Venables then turned to the question of "good cause" to accept the impairment discrimination complaint out of time. She directed herself to the Court of Appeal's decision in *Buderim Ginger Ltd v Booth*[39] and in particular:

> "Although it is not essential to show that there is a reason for and justification for the delay in order to show good cause, such consideration is always relevant to such a decision. In forming an opinion that the complainant has shown good cause, the Commissioner is not fettered by rigid rules but must take into account all of the relevant circumstances of the particular case such as the length of the delay; whether the delay is attributable to the acts or omissions of the complainant or his or her legal representatives, the respondent, or both; the circumstances of the complainant; whether there has been a satisfactory explanation for the delay and whether or not the delay will cause prejudice to the respondent."

[103] After considering various issues, Ms Venables reached the following conclusion:

> "The allegations in this complaint were first advised to the Commission on 26 July 2018, but it was not until further detail was provided on 27 February 2019 that the Commission commenced dealing with the complaint including seeking submissions on the time limit issue. Having decided that the complaint was made on the earlier date, it is unfortunate that the Commission did not deal with it promptly after receiving the complainant's verbal confirmation in August 2018 that she intended to pursue it. It is important to ensure that no party's rights are compromised as a result of the Commission's delay. I have therefore approached this decision as I would have, had I dealt with it promptly after the complaint was first made.

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39 [2003] 1 Qd R 147.

The onus to show good cause always rests with the complainant and there are significant factors that weigh heavily in support of her case. Having found herself in an extremely unenviable position with her professional and personal reputation tarnished through no fault of her own, it is hardly surprising that her mental health deteriorated and her workplace relationships were adversely affected.

Difficult personal and financial circumstances no doubt added to the burden, as did the significant energy the complainant expent to investigate the facts and circumstances giving rise to her complaint of reprisal and to pursue her rights in respect of that and other matters.

Whether or not her decision to pursue each and every one of her concerns was wise with hindsight, I regard the fact that she did so as relevant in the sense that they demonstrate just how difficult the complainant's circumstances were during the period of the delay.

While the length of the delay is not, of itself, prohibitive of a finding that good cause has been shown, in the context of a one year time limit, a delay that continued for more than three years after the time limit had already expired, weighs substantially against acceptance and sets the bar to show good cause quite high. While the complainant's circumstances coupled with her lack of awareness of her right to complain go some way towards clearing that bar, in a situation where she was aware of the relevant facts and circumstances giving rise to the complaint at the time they arose, had consulted solicitors experienced in discrimination matters in relation to those issues and had demonstrated an ability to pursue her rights, I am not persuaded that she has cleared that bar. Arguments concerning the Commission's interactions with the complainant, all of which occurred *after* the impairment complaint had been made, do not persuade me otherwise.

The fact that the Commission accepted the reprisal complaint after an even longer delay does not render a conclusion that there is good cause to accept this complaint inevitable, although I accept that many of the same factors relied on to support the decision in the reprisal complaint also apply here. The case for good cause in the reprisal complaint relied substantially on some specific, unique and exceptional circumstances. The two complaints are not comparable in many ways in my view.

Significantly, the complainant expressed a very real fear that the reprisal complaint may have necessitated an airing of painful allegations, risking serious damage to her professional and personal reputation. This factor weighed heavily in my decision to allow such lenience to the complainant in her efforts to show good cause for the lengthy delay in lodging that complaint. They do not apply to this complaint. Other distinguishing features of the reprisal complain include the complainant's submission to the effect that she was not even aware that an act of reprisal had been committed until well after the (alleged) fact, whereas in this case, the

> complainant was aware of the individual respondents' actions in real time, and in fact took steps to address her concerns about them at that time. While there are many persuasive factors in the complainant's favour in this case, when weighed against those that support the respondents' case, including the very real risk of prejudice were I to accept the complaint after such a lengthy delay, I am not persuaded that good cause has been shown.
>
> For all the reasons set out above and weighing all the factors together, I am of the view that the complainant has not shown good cause to accept the complaint outside the statutory time limit." (emphasis added)

[104] In the course of her reasons, she said:

> "… subsequent communications between the complainant and Commission staff as irrelevant to the issue of good cause, as are the submissions made on the complainant's behalf regarding the circumstances surrounding the conciliation of the reprisal complaint."

[105] The two complaints said to ground unreasonableness are quite discrete so it is not necessary to look in detail at the reasons given for the acceptance of the reprisal complaint. While the reprisal complaint and the impairment discrimination complaint broadly arise out of the same circumstances, namely the false complaint by M, there are obvious differences:

1. The respondents to the respective complaints are different.
2. The conduct complained of is different.
3. The effect of the conduct complained of is different.
4. The reasons which might justify not having earlier made the reprisal complaint are different from reasons which might be said to justify not earlier making the impairment discrimination complaint.

[106] The submission that, having accepted the reprisal complaint, the only reasonable exercise of discretion in relation to the impairment discrimination complaint was to accept it, ought to be rejected. It was open to Ms Venables to draw different conclusions on the various discretionary factors relevant to the respective complaints.

[107] The second complaint is as to Ms Venables' finding that Ms Corkhill's interventions were irrelevant.

[108] Had Ms Ryle's submissions on ground 1 been accepted, then Ms Corkhill's involvement may have been significant. If Ms Ryle had the right to piggyback the impairment discrimination complaint upon the reprisal complaint so that upon acceptance of the reprisal complaint, the impairment discrimination complaint must be automatically accepted, then Ms Corkhill's suggestion to lodge separate complaints may have disadvantaged Ms Ryle. However, for the reasons I have given in relation to ground 1, that is not the case. Whether the complaint about the two respective contraventions were made in the one complaint document or two, there was a separate discretion to be exercised by Ms Venables to accept either or both of the complaints.

[109] The only other possible impact that Ms Corkhill's advice could have is that Ms Venables could have considered "good cause" on the basis that the impairment discrimination complaint had been made on 27 February 2019. However, Ms Venables did not do that. She specifically regarded the complaint against P, Q and R as having been lodged on 25 July 2018 and considered "good cause" on that basis.

[110] It can be seen then that Ms Corkhill's actions had absolutely no impact on Ms Venables' decision and she correctly regarded Ms Corkhill's actions as irrelevant.

[111] Ground 2 has not been made out.

Ground 4: Failure to take into account relevant considerations and took into account irrelevant considerations

[112] As argued, this ground was confined to a failure of Ms Venables to take into account the statements made by Ms Corkhill which led to the impairment discrimination complaint being separately lodged with the Commission. The representations of Ms Corkhill which were relied upon were:

> "a. a representation that the submission of a separate complaint is a sensible approach to the management of her matters with the Commission; and
>
> b. a representation that, while time was of the essence in the submission of the complaint, it was not a pressing concern."

[113] Then the submission was:

> "39. The Applicant says the circumstances of the complaint are such that the Commission direct, or at least encouraged, the separation of the allegations of contraventions under the AD Act and under the PID Act. In doing so, the Applicant appears to have weakened her position in relation showing cause within the meaning of Section 138(2) of the AD Act. As such, the weakening position of the Applicant in relation to showing cause was precipitated by the advice, direction or encouragement of the Second Respondent; this circumstance is a relevant consideration when determining whether the Applicant can show (or has shown) *good cause*."

[114] For the reasons I have already explained:

1. the fact that the two complaints were lodged separately did not affect Ms Venables' power to accept one complaint and refuse to accept the other complaint;

2. the State defended the application on the understanding that both matters of complaint were made on 25 July 2018 in the initial letter to the Commissioner;

3. the complaint against P, Q and R was regarded by Ms Venables as having been made on 25 July 2018, not 27 February 2020.

[115] It follows that Ms Corkhill's representations were irrelevant and so ground 4 fails.

Conclusions and orders

[116] As all grounds of review have failed, the application will be dismissed.

[117] No submissions were made against the usual order that costs follow the event.

[118] I make the following orders:

1. The application is dismissed.

2. The applicant pay the third respondent's costs of the application.

3. There be no order as to costs as between the applicant and the first and second respondents.