

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Benjamin v Sharp & Ors (No. 2)* [2026]  
QIRC 117

PARTIES: **Benjamin, Louise**  
(Applicant)

v

**Sharp, Julie**  
(First Respondent)

and

**Hendy, Lisa**  
(Second Respondent)

and

**Parole Board Queensland**  
(Third Respondent)

and

**State of Queensland (Queensland  
Corrective Services)**  
(Fourth Respondent)

and

**Jackson, Tracey**  
(Fifth Respondent)

CASE NO.: AD/2024/36

PROCEEDING: Application in existing proceedings

HEARING DATE: 19 March 2026

DELIVERED ON: 10 April 2026

MEMBER: Merrell DP

HEARD AT: Brisbane

ORDERS: **The orders contained in paragraph [158]  
of these reasons for decision.**

## CATCHWORDS:

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – MOTIONS, APPLICATIONS AND INTERLOCUTORY APPLICATIONS AND OTHER PRE-TRIAL PROCEDURES – OTHER MATTERS – Applicant employed by the State of Queensland through Queensland Corrective Services – Applicant employed as a Legal Officer – Applicant made a complaint to the Queensland Human Rights Commission against the Respondents alleging that she had been the subject of unlawful reprisals within the meaning of s 40 of the *Public Interest Disclosure Act 2010* following her making a public interest disclosure – Applicant's complaint referred to the Queensland Industrial Relations Commission – Directions Orders made by the Queensland Industrial Relations Commission for the parties to file and serve statements of facts and contentions – application in existing proceedings by the Respondents that the Applicant's statement of facts and contentions filed on 30 August 2024 be struck out, or that certain paragraphs be struck out, and that the Applicant file and serve a second further amended statement of facts and contentions which discloses reasonable causes of action under the *Public Interest Disclosure Act 2010* – whether the Applicant's statement of facts and contentions filed on 30 August 2024 fails to set out the material facts to disclose reasonable causes of action under the *Public Interest Disclosure Act 2010* – the Applicant's statement of facts and contentions filed on 30 August 2024 fails to state the necessary material facts to disclose reasonable causes of action under the *Public Interest Disclosure Act 2010* – the Applicant's statement of facts and contentions filed on 30 August 2024 struck out – order made that the Applicant file and serve a second further amended statement of facts and contentions

## LEGISLATION:

*Anti-Discrimination Act 1991*, s 166, s 174B and s 209

*Crime and Corruption Act 2001*, s 15

*Industrial Relations Act 2016*, s 429, s 447,  
s 451 and s 536

*Public Interest Disclosure Act 2010*, s 5, s 7,  
s 12, s 13, s 14, s 15, s 16, s 17, s 40, s 41,  
s 42 and s 44

*Uniform Civil Procedure Rules 1999*, r 149  
and r 171

CASES:

*Banque Commerciale SA (En Liqn) v Akhil Holdings Ltd* [1990] HCA 11; (1990) 169 CLR 279

*Chilcott v Townsville Hospital and Health Service and Anor (No. 2)* [2026] QIRC 001

*Coe v Commonwealth* [1979] HCA 68;  
(1979) 24 ALR 118

*Dare v Pulham* [1982] HCA 70; (1982) 148 CLR 658

*Dawson v State of Queensland* [2025] QSC 3

*Equititrust Limited v Tucker and Others (No. 2)* [2019] QSC 248

*Fellows v State of Queensland (Department of State Development, Infrastructure and Planning, Office of Industrial Relations and Office of the Work Health and Safety Prosecutor)* [2025] QIRC 107

*Flori v Winter* [2023] QDC 110

*Flori v Winter (No. 3)* [2023] QCA 229

*Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255

*Kordamentha Pty Ltd v LM Investment Management Ltd & Anor* [2016] QSC 183

*Mathews v Morgan & Ors* [2005] QSC 222

*Oakey Coal Action Alliance Inc. v New Acland Coal Pty Ltd an Ors* [2021] HCA27;  
(2021) 272 CLR 33

*Plumb v Rockhampton Regional Council*  
[2025] QIRC 176

*Queensland Police Union of Employees v HS First Inc.* [2023] QIRC 030

*Rose v Secretary of the Department of Health and Aged Care* [2025] FCA 339

*Wride v Schulze* [2004] FCAFC 216

*Yousif v Workers' Compensation Regulator*  
[2017] ICQ 004

APPEARANCES:

Mr. N. M. Cooke of Counsel instructed by  
Mr. M Cuskelly of MPO Legal for the  
Applicant

Ms J. Marr of Counsel instructed by  
Ms. J. Scott of Crown Law for the  
Respondents

**Reasons for Decision**

- [1] Ms Louise Benjamin ('the Applicant'), at the time material to the present application, was employed by the State of Queensland through Queensland Corrective Services ('the Respondent') as a Legal Officer within the Secretariate of the Parole Board Queensland ('the Parole Board').
- [2] On 31 March 2023, the Applicant made a complaint to the Queensland Human Rights Commission ('the QHRC') alleging that she was the subject of unlawful reprisals by the Respondents because she made a public interest disclosure.
- [3] On 7 May 2024, the Applicant's complaint was referred from the QHRC to this Commission.
- [4] The Applicant filed a further amended statement of facts and contentions on 30 August 2024 ('the Applicant's contentions'). The Respondents filed their response on 4 October 2024.
- [5] By application in existing proceedings filed on 8 November 2024, the Respondents apply for an order:
  - that the Applicant's contentions be struck out in their entirety; or, in the alternative
  - that certain paragraphs of the Applicant's contentions be struck out; and

- that in either case, the Applicant be ordered to file and serve a second further amended statement of facts and contentions ('the Respondents' application').

[6] The basis for the Respondents' application is that the Applicant's contentions fail to properly set out the material facts to constitute the Applicant's allegations that the Respondents have engaged in unlawful reprisals contrary to s 40 of the *Public Interest Disclosure Act 2010* ('the PID Act').

[7] Central to the Respondents' application is their allegation that they are denied procedural fairness, in that by the vague and speculative terms in which the Applicant has stated her case, they are not put on fair notice of the case they have to meet.

[8] The question for my determination is whether or not the Applicant's contentions disclose reasonable causes of action against the Respondents and, if not, whether I should grant the relief sought by the Respondents.

[9] For the reasons that follow:

- the Applicant's contentions do not contain the material facts necessary to establish reasonable causes of action that the Respondents have engaged in unlawful reprisals contrary to s 40(1)(a) of the PID Act;
- the Applicant's contentions will be struck out in their entirety; and
- the Applicant will be required to file and serve a second further amended statement of facts and contentions in accordance with the orders I will make.

### **A preliminary issue**

[10] Because of certain submissions of the parties, it is necessary to deal with a preliminary issue.

[11] The Respondents submitted that, in support of their application, '... the informality of this jurisdiction does not erode the procedural fairness obligations of the applicant to clearly set out the framework of her case.'<sup>1</sup>

[12] The Applicant submitted that the Respondents' fundamental reasons for their application are contingent upon the Commission finding that her contentions fail '... to meet another jurisdiction's standard for pleadings for high level formality, technicality and precision.'<sup>2</sup>

[13] A person who contends that they have suffered a detriment because of a reprisal within the meaning of the PID Act, has two principal avenues in seeking civil redress.

[14] By s 42(1) of the PID Act, a reprisal, as defined by s 40 of the PID Act, is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment

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<sup>1</sup> The Respondents' written submissions filed on 18 February 2026 ('the Respondents' submissions'), para. 10.

<sup>2</sup> The Applicant's written submissions filed on 11 March 2026 ('the Applicant's submissions'), para. 6 c.

as a result. Pursuant to s 42(2) of the PID Act, any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal. Pursuant to s 42(3) of the PID Act, the right to bring proceedings for damages under s 42 of the PID Act does not affect any other right or remedy available to the person arising from the reprisal. Furthermore, pursuant to s 42(4) of the PID Act, such proceedings for damages may be brought even if a prosecution in relation to the reprisal has not been brought or cannot be brought under s 41 of the PID Act. In addition, the *Workers' Compensation and Rehabilitation Act 2003* does not apply to proceedings for damages brought under s 42 of the PID Act.

- [15] Alternatively, pursuant to s 44(1) of the PID Act, a person may make a complaint under the *Anti-Discrimination Act 1991* about a reprisal. Section 44(2) provides that the complaint may be dealt with under the *Anti-Discrimination Act 1991*, chapters 6 and 7, as if the complaint were about an alleged contravention of the *Anti-Discrimination Act 1991*. Relevantly, pursuant to the combined effect of s 166(1)(a) and s 174B(a)(iv) of the *Anti-Discrimination Act 1991*, this Commission has power to hear and determine work-related complaints made under the *Anti-Discrimination Act 1991*. Pursuant to s 209(1)(b) of the *Anti-Discrimination Act 1991*, the Commission may make an order requiring the respondent to pay to an affected person, within a specified period, an amount the Commission considers appropriate as compensation for loss or damage caused by the relevant contravention.
- [16] Where a person makes a claim to the District Court of Queensland or to the Supreme Court of Queensland, alleging that they suffered detriment as a result of a reprisal contrary to the PID Act, they must comply with the *Uniform Civil Procedure Rules 1999* ('UCPR') including ch 6 ('Pleadings').
- [17] The UCPR do not apply to proceedings before the Commission, however, the *Industrial Relations (Tribunals) Rules 2011* ('the Rules') do apply.
- [18] In *Yousif v Workers' Compensation Regulator ('Yousif')*,<sup>3</sup> Martin J, President relevantly stated (citations omitted):<sup>4</sup>

#### **Statements of Facts and Contentions**

- [10] The Commissioner relied, in part, on the Statement of Facts and Contentions filed by the appellant. The role of such Statements was the subject of submissions and it will assist if their status is examined before the grounds of appeal are considered.
- [11] In appeals brought to the Commission under the Act, it was once the standard practice for a direction to be given requiring the appellant to file and serve a Statement of Stressors. It is now the common practice for a direction to be given requiring the parties to file and serve Statements of Facts and Contentions. The legislative power to make such a direction is found in s 451(2)(a) of the *Industrial Relations Act 2016* (IR Act). More detailed provisions are contained in r 41 of the *Industrial Relations (Tribunals) Rules 2011*. Rule 45 also provides that, among other things, the Commission may dismiss a proceeding if there is a failure to comply with a direction.

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<sup>3</sup> [2017] ICQ 004.

<sup>4</sup> Although these comments were made in respect of an appeal to the Commission under ch 13, pt 3 of the *Workers' Compensation Rehabilitation Act 2003*, they are apposite in the present case.

[12] In *Blackwood v Adams*, I referred to Statements of Stressors as setting "the boundaries of the application". More recently, in *Carlton v Blackwood* I said:

"An appellant's case has to be known before the hearing starts. The Commission cannot allow a case to "evolve" and place the respondent in the position of having to contend with the shifting sands of an undefined argument. If an appellant wishes to advance a different case, then that should be done by seeking an amendment to the Statement of Stressors or the document identifying the facts and contentions. The Commission can then decide whether or not to allow such an amendment."

[13] A Statement of Facts and Contentions is not attended with the same level of formality as pleadings in the traditional sense are. The Commission is relieved, by s 531 of the IR Act, of many of the strict rules which apply in the civil courts. But, the Commission is still in charge of its own procedure and may, consistently with the provisions of s 531, require parties to provide an outline of their respective cases. This is particularly important in appeals under the Act where the nature of injuries, their cause, and the times at which they were suffered are essential to the resolution of an appeal. It follows, then, that the Commission is entitled to rely on the Statement as a complete statement of a party's case and, if an admission is made, to rely on that admission.

[14] Section 531 requires that the Commission be:

"... guided in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of–

- (a) the persons immediately concerned; and
- (b) the community as a whole."

[15] It is consistent with the requirements of s 531 for a party in an appeal under the Act to set out its case by way of a Statement of Facts and Contentions. It alerts the other party to the case it will have to deal with and it identifies the issues which exist which, in turn, allow for a confinement of the matters in dispute. An appeal under the Act is not the time for a broad ranging inquiry into an unlimited number of complaints or grievances. The time and resources of the Commission are constrained and it is necessary for those constraints to be acknowledged in this way. Subject always to the Commission's power to allow appropriate amendments (so that s 531 may be observed) a party will be bound by its Statement of Facts and Contentions and may not lead evidence which is not relevant to the identified issues.

[19] In addition to what was said by Martin J, President in *Yousif*, in my view, four other matters are relevant.

[20] *One*, because the Commission has been established by legislation as a court,<sup>5</sup> that means that any jurisdiction conferred on it is necessarily conditioned by the requirement that it observes procedural fairness in the exercise of that jurisdiction.<sup>6</sup>

[21] *Two*, s 447(2) of the *Industrial Relations Act 2016* ('the IR Act') provides that the Commission must perform its functions in a way that is consistent with the objects of the IR Act and that avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under the IR Act. However, the making of Directions Orders by the Commission, that parties file and serve statements of facts and contentions so that the Commission meets its requirement to observe procedural fairness in the exercise of its jurisdiction, does not constitute an unnecessary

<sup>5</sup> *Industrial Relations Act 2016*, s 429.

<sup>6</sup> See *Oakey Coal Action Alliance Inc. v New Acland Coal Pty Ltd an Ors* [2021] HCA 27; (2021) 272 CLR 33, [47] (Kiefel CJ, Bell, Gageler and Keane JJ).

technicality. It is necessary that the Commission observes procedural fairness in the exercise of its jurisdiction.

[22] *Three*, it is not just in respect of appeals under the *Workers' Compensation and Rehabilitation Act 2003* that the Commission orders parties to file and serve statements of facts and contentions. In other proceedings conducted by the Commission in the performance of its functions, the Commission orders the parties to address specific material facts, and other relevant matters, in statements of facts and contentions. These include proceedings where the Commission exercises judicial power, such as:

- the hearing and determination of complaints referred from the QHRC to this Commission alleging contraventions of the *Anti-Discrimination Act 1991* and of the *Human Rights Act 1999* ('discrimination complaints');<sup>7</sup> and
- the hearing and determination of applications alleging contraventions of ch 8, pt 1 ('**General Protections**') of the IR Act ('general protections claims').<sup>8</sup>

[23] As I stated in *Fellows v State of Queensland (Department of State Development, Infrastructure and Planning, Office of Industrial Relations and Office of the Work Health and Safety Prosecutor)* (citations omitted):<sup>9</sup>

[56] Directions Orders made by Members of the Commission are made pursuant to r 41 of the Rules and, as provided in r 6 of the Rules, the purpose of the Rules is to provide for the just and expeditious disposition of the business of the Commission at a minimum of expense.

[57] In respect of complaints made under the AD Act to the QHRC that are referred to the Commission, Members of the Commission commonly utilise standard Directions Orders which direct the parties to file and serve statements of facts and contentions and to make disclosure. Typically, these Directions Orders are made in advance of the complaints being the subject of conciliation by the Commission. Such Directions Orders are specific as to what is required to be set out in a statement of facts and contentions.

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[58] In stating the above, I have not lost sight of the fact that s 447(2) of the IR Act provides that the Commission must perform its functions, which includes any other function conferred on the Commission under another Act, in a way that is consistent with the objects of the IR Act and which '... avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under this Act.' For the same reasons given by Martin J, President in *Yousif*, the requirement that a complainant clearly articulates their case of an alleged contravention of the AD Act or of an alleged unreasonable limitation of a human right under the HR Act, or of an alleged failure to give proper consideration to a human right under the HR Act, is not an unnecessary technicality. The purpose of a Directions Order requiring a complainant to set out the material facts and contentions of their case is for the purposes of fairness and efficiency and does not rise to the level of technicality as required of pleadings in civil procedure rules.<sup>10</sup>

[24] The Directions Orders made by the Members of the Commission, in discrimination complaints and in general protections claims, that parties file and serve statements of

<sup>7</sup> See, e.g., *Chilcott v Townsville Hospital and Health Service and Anor (No. 2)* [2026] QIRC 001, [36]-[37] and [181]-[183].

<sup>8</sup> See, e.g., *Plumb v Rockhampton Regional Council* [2025] QIRC 176, [54]-[199].

<sup>9</sup> [2025] QIRC 107.

<sup>10</sup> See also *Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255 ('*Gilbert*'), [477]-[480] (Vice President O'Connor).

facts and contentions are specific about the material facts that must be alleged in respect of liability contentions.<sup>11</sup> Such Directions Orders are also specific about the material facts that must be alleged in respect of remedy contentions.<sup>12</sup>

[25] This is because of:

- the specific nature of the applicable statutory provisions that establish the relevant obligations and prohibit the contravention of those obligations; and
- the requirement of the Commission to observe procedural fairness in the exercise of its functions.

[26] *Four*, even though statements of facts and contentions that are the subject of Directions Orders made by the Commission do not rise to the same level of technicality as required of pleadings in civil procedure rules, their fundamental purpose is the same.

[27] This is clear when the purpose or function of a pleading under civil procedure rules is considered with the purpose of statements of facts and contentions as described by Martin J, President in *Yousif*.

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<sup>11</sup> For example, the standard Directions Order issued in respect of a discrimination complaint provides:

2. That the Complainant's statement of facts and contentions must:
- (a) if the complaint referred by the Queensland Human Rights Commission (the QHRC) contained allegations of direct, and, or in the alternative, indirect discrimination, identify the attribute or attributes within the meaning of s 7 of the *Anti-Discrimination Act 1991* (the AD Act) as stated in the complaint referred by the QHRC, upon which each allegation is made;
  - (b) for a complaint of **direct** discrimination:
    - (i) identify the section or sections of the AD Act alleged to have been contravened;
    - (ii) identify the name or names of the persons alleged to have contravened the AD Act;
    - (iii) if the Complainant relies upon an actual person as the comparator, state the name of the comparator and why that person is an appropriate comparator;
    - (iv) in the alternative, if the Complainant relies upon a hypothetical comparator as the appropriate comparator, describe the hypothetical comparator;
    - (v) describe how the Complainant contends that they were treated less favourably, than the appropriate comparator, by the person or persons alleged to have contravened the AD Act;
  - (c) for a complaint of **indirect discrimination**:
    - (i) identify the section or sections of the AD Act alleged to have been contravened;
    - (ii) identify the term the Complainant alleges was imposed by the Respondent (the term);
    - (iii) state why the Complainant could not comply or was not able to comply with the term;
    - (iv) state how the Complainant contends a higher proportion of persons without the Complainant's attribute could comply or were able to comply with the term; and
    - (v) state why the term is not reasonable.

<sup>12</sup> For example, the standard Directions Order issued in respect of a general protections claim provides:

7. The Applicant's statement of facts and contentions must:
- (a) having regard to s 314 of the Act, state the order or orders sought by the Applicant; and
  - (b) if an order for the payment of compensation to the Applicant is sought, specify:
    - (i) if general damages are sought, the amount of general damages claimed; and
    - (ii) if economic loss is claimed:
      - A. whether the economic loss claimed is past economic loss and/or future economic loss;
      - B. the exact circumstances in which the loss or damage was allegedly suffered;
      - C. the amount of past economic loss and/or future economic loss that is claimed; and
      - D. how the Applicant worked out or estimated the amount of past and/or future economic loss;
  - (c) if an order for the payment of an amount to the Applicant for remuneration lost is sought, specify:
    - (i) the gross amount of remuneration lost;
    - (ii) whether the remuneration was payable pursuant to a contract of employment, industrial instrument or other instrument; and
    - (iii) how the Applicant worked out or estimated the amount of remuneration lost.

- [28] In *Banque Commerciale SA (En Liqn) v Akhil Holdings Ltd*,<sup>13</sup> Mason CJ and Gaudron J relevantly stated (citations omitted):

The function of pleadings is to state with sufficient clarity the case that must be met: *Gould and Birbeck and Bacon v. Mount Oxide Mines Ltd. (In liq.)* per Isaacs and Rich JJ. In this way, pleadings serve to ensure the basic requirement of procedural fairness that a party should have the opportunity of meeting the case against him or her and, incidentally, to define the issues for decision. The rule that, in general, relief is confined to that available on the pleadings secures a party's right to this basic requirement of procedural fairness. Accordingly, the circumstances in which a case may be decided on a basis different from that disclosed by the pleadings are limited to those in which the parties have deliberately chosen some different basis for the determination of their respective rights and liabilities. See, e.g., *Browne v. Dunn*; *Mount Oxide Mines*.<sup>14</sup>

- [29] In *Dare v Pulham*,<sup>15</sup> Murphy, Wilson, Brennan, Deane and Dawson JJ stated (citations omitted):

Pleadings and particulars have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a fair opportunity to meet it (*Gould and Birbeck and Bacon v. Mount Oxide Mines Ltd. (In liq.)*); they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial (*Miller v. Cameron*); and they give a defendant an understanding of a plaintiff's claim in aid of the defendant's right to make a payment into court.<sup>16</sup>

- [30] Statements of facts and contentions have exactly the same purpose in respect of the parties and exactly the same purpose in respect of the Commission.

- [31] In addition, in considering an application to strike out a party's statement of facts and contentions in a proceeding before this Commission, the relevant considerations may reasonably be drawn from the considerations when pleadings, made under uniform civil procedure rules, may be struck out. Again, having regard to the fundamental purpose of Directions Orders made by the Commission for the filing and serving of statements of facts and contentions, such an analogy is appropriate even though the Rules do not have provisions equivalent to those in uniform civil procedure rules.<sup>17</sup>

- [32] In this regard, in *Rose v Secretary of the Department of Health and Aged Care*,<sup>18</sup> Katzmann J relevantly stated:

[49] Rule 16.02(2) provides that a pleading must not:

<sup>13</sup> [1990] HCA 11; (1990) 169 CLR 279.

<sup>14</sup> *Ibid* 286-287.

<sup>15</sup> [1982] HCA 70; (1982) 148 CLR 658.

<sup>16</sup> *Ibid* 664.

<sup>17</sup> For example, *Uniform Civil Procedure Rules 1999*, r 171 which provides:

**171 Striking out pleadings**

- (1) This rule applies if a pleading or part of a pleading—
- (a) discloses no reasonable cause of action or defence; or
  - (b) has a tendency to prejudice or delay the fair trial of the proceeding; or
  - (c) is unnecessary or scandalous; or
  - (d) is frivolous or vexatious; or
  - (e) is otherwise an abuse of the process of the court.
- (2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.

- (3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading.

<sup>18</sup> [2025] FCA 339.

- (a) contain any scandalous material; or
- (b) contain any frivolous or vexatious material; or
- (c) be evasive or ambiguous; or
- (d) be likely to cause prejudice, embarrassment or delay in the proceeding; or
- (e) fail to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or
- (f) otherwise be an abuse of process of the Court.

[50] A pleading which answers any of these descriptions is liable to be struck out either on the application of a party or at the initiative of the Court: rr 16.21, 1.40.

[51] In *Karlsson v Griffith University* [2022] FCA 591 at [43] I observed that:

These categories overlap. For example, a proceeding will be frivolous, if, among other reasons, the applicant has no reasonable prospects of successfully prosecuting it (*Spencer v Commonwealth of Australia* (2010) 241 CLR 118 at [22] per French CJ and Gummow J) or because no reasonable cause of action is disclosed (*Karlsson v Griffith University* per Wright J at [87]) and a proceeding may be an abuse of process if it is "vexatious and oppressive for the reason that it is sought to litigate anew a case which has already been disposed of by earlier proceedings": *Walton v Gardiner* (1993) 177 CLR 378 at 393 (Mason CJ, Deane and Dawson JJ). A reasonable cause of action is a cause of action with some chance of success if regard is only had to the allegations in the claimant's pleading: *Polar Aviation Pty Ltd v Civil Aviation Authority* (2012) 203 FCR 325 at [41]–[43] (Perram, Dodds-Streeton and Griffiths JJ).

[52] A pleading is "likely to cause prejudice, embarrassment or delay" where it is "unintelligible, ambiguous, vague or too general, so as to embarrass the opposite party who does not know what is alleged against him" (*Meckiff v Simpson* [1968] VR 62 at 70 per Winneke CJ, Adam and Gowans JJ); if it merely asserts a conclusion to be drawn from facts which are not stated (*Trade Practices Commission v David Jones (Australia) Pty Ltd* (1985) 7 FCR 109 at 114–115 per Fisher J); if it contains inconsistent or irrelevant allegations or alternatives that are "confusingly intermixed" (*Shelton v National Roads and Motorists' Association Ltd* [2004] FCA 1393; 51 ACSR 278 at [18] per Tamberlin J). And, as Wigney J remarked in *KTC v David* [2022] FCAFC 60 at [121]:

A pleading may be considered to be embarrassing if it suffers from narrative prolixity or irrelevancies to the point that it is not a pleading to which the other party can reasonably be expected to plead to: *Fuller v Toms* (2012) 247 FCR 440; [2012] FCA 27 at [80]–[84]. A party cannot be expected to respond to mere context, commentary, "history, narrative material or material of a general evidentiary nature": *Fuller v Toms* at [83].

[53] In *Oztech Pty Ltd v Public Trustee of Queensland* (2019) 269 FCR 349 at [28]–[32] Middleton, Perram and Anastassiou JJ observed:

The question of whether a pleading adequately raises a claim or defence is not concerned with the expression of the pleading as a matter of style, or of phrasing, or the structure of the pleading. Neither is it concerned with the formality of the process by which the issues in the proceeding are identified; be it a statement of claim, statement of contentions, concise statement, points of claim or points of defence. The verbal formulation of the allegations of fact, or the contentions of law, need not conform to a particular style guide or to any pro forma template.

**The sole objective of a pleading is to clearly identify matters in dispute and difference by and between the parties to the dispute.** This objective necessarily involves expressing the factual basis of each claim or defence. It is necessary that the legal elements of each cause of action or defence are expressed by reference to allegations of fact required to establish each element. It is not necessary to plead the legal conclusions that follow from the facts, but it is often convenient to do so. These are trite propositions but nevertheless vital to ensuring that the pleading serves its purpose.

There should be no doubt about whether any particular cause of action is relied upon. At a minimum, the pleading should be pellucidly clear about the causes of action, or claims, relied upon by the applicant, including any claims made upon an alternative hypothesis. **The explicit clarity with which a claim is expressed should ensure that there be no need for**

**the opposite party to closely scrutinise the pleading in a process of textual construction to determine whether a particular fact is relied upon, or the purpose for which it is alleged**, much less to decide whether a particular cause of action is raised. The same basic requirement applies to any defence raised in answer to a claim.

**Clarity in pleading is by no means an unattainable objective, even in the most complex litigation.** Often the elements of a cause of action require careful and precise identification to ensure that the relevant integer is properly characterised having regard to the context in which the claim arose. The pleading should always be a bespoke articulation of the dispute between the parties, even though the warp and the weft of its fabric may be the same as other claims based upon the same, or a similar, cause of action.

...  
(Emphasis added.)

- [33] To this I would also add that on an application to a court to strike out a pleading on the ground it discloses no reasonable cause of action, a court ordinarily assumes that factual allegations made by the plaintiff are true.<sup>19</sup>
- [34] For the reasons that I give below, certain authorities of the Supreme Court of Queensland identify some of the material facts required to be pleaded under the UCPR where a plaintiff commences a claim in the District or Supreme Court that he or she has suffered detriment as a result of a reprisal contrary to the PID Act. Where a complaint making the same allegation is referred to this Commission from the QHRC, so that this Commission meets the requirement that it observes procedural fairness in the exercise of its function of hearing and determining such a complaint, the same material facts should be set out in a statement of facts and contentions filed in this Commission. Those authorities also provide a sound guide as to when a party's statement of facts and contentions, in such a case as the present, is deficient.
- [35] My conclusion above does not have the effect of elevating the procedure of this Commission to that which is applied in the courts to which civil procedure rules apply. My conclusion ensures that the Commission meets its requirement to observe procedural fairness in the exercise of its function to hear and determine cases such as the present.

### **The relevant legislative provisions**

- [36] In determining the Respondents' application, it is necessary to first set out the relevant provisions of the PID Act.
- [37] Chapter 4 of the PID Act is headed '**Protection**' and pt 1 of that chapter ('**General**') relevantly provides:

#### **40 Reprisal and grounds for reprisal**

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that—
- (a) the other person or someone else has made, or intends to make, a public interest disclosure; or
  - (b) the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.

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<sup>19</sup> *Kordamentha Pty Ltd v LM Investment Management Ltd & Anor* [2016] QSC 183, [25] (Applegarth J).

- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

#### **41 Offence of taking reprisal**

- (1) A person must not take a reprisal.  
Maximum penalty—167 penalty units or 2 years imprisonment.
- (2) An offence against subsection (1) is an indictable offence.

#### **42 Damages entitlement for reprisal**

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.
- (4) The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the reprisal.
- (5) Proceedings for damages may be brought under this section even if a prosecution in relation to the reprisal has not been brought, or can not be brought, under section 41.
- (6) The *Workers' Compensation and Rehabilitation Act 2003* does not apply to proceedings for damages brought under this section.

...

#### **44 Complaint under the Anti-Discrimination Act 1991**

- (1) A person may make a complaint under the *Anti-Discrimination Act 1991* about a reprisal.
- (2) The complaint may be dealt with under the *Anti-Discrimination Act 1991*, chapters 6 and 7 as if the complaint were about an alleged contravention of the *Anti-Discrimination Act 1991*.
- (3) However—
  - (a) if a person commences proceedings in a court under section 42 in relation to a reprisal, the person can not subsequently make a complaint under the *Anti-Discrimination Act 1991* about the reprisal; and
  - (b) if the person makes a complaint under the *Anti-Discrimination Act 1991* about a reprisal and the complaint is accepted under that Act, the person can not subsequently commence proceedings under section 42 in relation to the reprisal.

- (4) A complaint under the *Anti-Discrimination Act 1991* about a reprisal may be made even if a prosecution in relation to the reprisal has not been brought, or can not be brought, under section 41.

[38] Section 40 of the PID Act must be read with other provisions of the PID Act.

[39] Chapter 2 of the PID Act is headed '**Public interest disclosures**'. It relevantly provides:

### **11 Meaning of *public interest disclosure***

A *public interest disclosure* is a disclosure under this chapter and includes all information and help given by the discloser to a proper authority for the disclosure.

*Note—*

This chapter sets out requirements about the information that may be disclosed and who may disclose it, to whom, and how.

...

### **12 Disclosure by any person**

- (1) This section applies if a person (whether or not the person is a public officer) has information about—
- (a) a substantial and specific danger to the health or safety of a person with a disability; or
  - (b) the commission of an offence against a provision mentioned in schedule 2, if the commission of the offence is or would be a substantial and specific danger to the environment; or
  - (c) a contravention of a condition imposed under a provision mentioned in schedule 2, if the contravention is or would be a substantial and specific danger to the environment; or
  - (d) the conduct of another person that could, if proved, be a reprisal.
- (2) The person may make a disclosure under section 17 in relation to the information to a proper authority.
- (3) For subsection (1), a person has information about the conduct of another person or another matter if—
- (a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
  - (b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

### **13 Disclosure by a public officer**

- (1) This section applies if a person who is a public officer has information about—
- (a) the conduct of another person that could, if proved, be—
    - (i) corrupt conduct; or

- (ii) maladministration that adversely affects a person's interests in a substantial and specific way; or
  - (b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
  - (c) a substantial and specific danger to public health or safety; or
  - (d) a substantial and specific danger to the environment.
- (2) The person may make a disclosure under section 17 in relation to the information to a proper authority.
- (3) For subsection (1), a person has information about the conduct of another person or another matter if–
- (a) the person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
  - (b) the information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.
- (4) If the other person is a commission officer, subsection (1)(a)(i) applies as though the Crime and Corruption Commission were a unit of public administration.
- (5) In this section–

*commission officer* see the *Crime and Corruption Act 2001*, schedule 2, definition *commission officer*, paragraph (a).

*unit of public administration* see the *Crime and Corruption Act 2001*, section 20.

[40] Section 7 of the PID Act defines the phrase '**public officer**'.

[41] The phrase '**corrupt conduct**' is defined in sch 4 to the PID Act by reference to s 15 of the *Crime and Corruption Act 2001*.

[42] Section 5 of the PID Act defines the phrase '**proper authority**'. Sections 14, 15 and 16 of the PID Act also provide the identities of proper authorities in particular circumstances.

[43] Schedule 4 to the PID Act is its Dictionary. It provides the following definition of 'detriment':

*detriment* includes –

- (a) personal injury or prejudice to safety; and
- (b) property damage or loss; and
- (c) intimidation or harassment; and
- (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- (e) financial loss; and

- (f) damage to reputation, including, for example, personal, professional or business reputation.

**The material facts of a complaint about a contravention of s 40 of the *Public Interest Disclosure Act 2010* that must be pleaded under the *Uniform Civil Procedure Rules 1999***

- [44] This issue was recently considered by Martin J in *Dawson v State of Queensland* ('*Dawson*').<sup>20</sup> In that case, the plaintiff sought damages from the State of Queensland for alleged reprisals within the meaning of the PID Act. The plaintiff alleged he was a public officer who made a public interest disclosure under s 13 of the PID Act.<sup>21</sup> From the reported decision, it appears to be the case that the plaintiff alleged he made a public interest disclosure about the conduct of other persons that could, if proved, be corrupt conduct within the meaning of s 13(1)(a)(i) of the PID Act.<sup>22</sup>
- [45] After setting out s 40 of the PID Act, Martin J referred to the decision of the Queensland Court of Appeal in *Flori v Winter (No. 3)* ('*Flori*')<sup>23</sup> where Dalton JA (Morrison and Flanagan JJA agreeing) stated (citations omitted):

- [30] Section 40 of the *Public Interest Disclosure Act* is set out above. Relevantly here, the statutory tort of reprisal is made out when a person causes detriment to another because the other has made a public interest disclosure. The language is very similar to s 41(1) of the repealed *Whistleblowers Protection Act*. That section was considered by this Court in *Howard v State of Queensland*. Thomas JA, with whom the other members of the Court agreed, said:

"... The requirement of s 41(1) is that someone causes detriment 'because, or in the belief that ... anybody has made ... a public interest disclosure'. ... the section seems to require that the offender's actions be motivated by some state of knowledge or belief that the target person has acted in a certain way."

- [31] The respondents referred us to *Board of Bendigo Regional Institute of Technical and Further Education v Barclay*. There the High Court dealt with s 346 of the *Fair Work Act 2009* (Cth) which prohibited one person taking adverse action against another, "because the other person engages ... in industrial activity". Gummow and Hayne JJ focused on the word "because". They stated that it "invites attention to the reasons why the decision-maker so acted".
- [32] The word "because" in s 40(1) of the *Public Interest Disclosure Act* requires an enquiry into the motive or reasons for the action said to be retaliatory. The respondents correctly conceded that, "read with s 40(5), it is sufficient if this reason was a 'substantial ground' for so acting".

- [46] Justice Martin then stated that it followed from the above analysis that '... the pleading must assert, by pleading material facts, the reason for concluding or inferring that the relevant party has the requisite reason or motive.'<sup>24</sup>

- [47] Justice Martin then set out:

<sup>20</sup> [2025] QSC 3 (*Dawson*).

<sup>21</sup> *Ibid* [18].

<sup>22</sup> *Ibid* [20].

<sup>23</sup> [2023] QCA 229 (*Flori*).

<sup>24</sup> *Dawson* (n 20), [14].

- the definition of 'Detriment' as defined in sch 4 to the PID Act; and
- s 42 of the PID Act.

[48] His Honour then stated:

[17] Before any action can exist, there must have been a "public interest disclosure". A public interest disclosure is defined in Chapter 2 as being a disclosure under that chapter including all information and help given by the discloser to a proper authority.

[49] Then, after setting out s 13 of the PID Act, Justice Martin stated:

[19] To demonstrate that a person has made a public interest disclosure under s 13, it must be shown:

- that the person "has information about" certain matters, such as another person's conduct of a specific type; and
- that a disclosure was made in relation to the information to a proper authority under s 17 of the PID Act.

...

[21] For the relevant person to "have information" about the conduct of another person, s 13(3) of the PID Act must be satisfied by demonstrating:

- that the person honestly believes on reasonable grounds that the information the person has tends to show the relevant conduct, e.g., "corrupt conduct"; or
- that the information that the person has tends to show the conduct or other matter, regardless of whether the person honestly believes that the information tends to show the conduct.

[22] It follows, then, that a pleading which alleges that a public interest disclosure was made must allege the material facts to support the proposition that the relevant person had the information in the relevant sense required under s 13 of the PID Act. It would also mean that, where it is alleged that the relevant person had the honest belief referred to in s 13(3), the reasonable grounds (and the material facts to support those grounds) for such an honest belief must be pleaded. If s 13(3)(b) is relied upon, then the material facts identifying the "discloser's" information and how that information tends to show the relevant conduct must be pleaded.

[23] Where, as here, damages for lost income and superannuation are claimed, then the pleading should include the causal link between the reprisal and the damage. The same applies where aggravated damages are claimed.

[50] Relevantly to the present case, the Court in *Dawson*:

- struck out paragraphs 43 to 45 of the relevant statement of claim (which alleged reprisal by two individuals) because:
  - they consisted of bare allegations of a particular motive or motives, but said nothing about the basis upon which the allegations were made and, therefore, did not meet the requirements of s 40 of the PID Act; and

- they did not allege any causal link between the conduct of which the two individuals allegedly engaged and any detriment allegedly caused;<sup>25</sup>
- struck out paragraphs 70 and 71 of the relevant statement of claim because:
  - they '... were insufficient to establish the elements of a public interest disclosure';
  - the plaintiff '... has not pleaded anything which would come within s 13(3)' of the PID Act;
  - the paragraphs '... are confusing and appear to be based on the assumption that an assertion of conduct is information that tends to show that conduct.'; and
  - the paragraphs did not make it clear if the plaintiff was relying upon s 13(3)(a) or (b) of the PID Act.;<sup>26</sup>
- struck out paragraphs 86 to 91 of the relevant statement of claim (which concerned an allegation that certain persons took reprisal action by attempting to terminate the plaintiff's employment) because:
  - no attempt was made to plead the factual basis on which any relevant motivation or reason might be inferred under s 40; and
  - they consisted of bare allegations without assertions of relevant material facts to support an inference of a relevant motivation;<sup>27</sup>
- struck out paragraphs 93 to 94 of the relevant statement of claim (which concerned an allegation that an individual had a responsibility to protect the plaintiff from reprisal) for reasons that included there was no pleading that the individual's conduct was a reprisal or that it was causative of any detriment;<sup>28</sup> and
- struck out paragraphs 113 to 123 of the relevant statement of claim (which concerned further allegations of a public interest disclosure and of a reprisal being a failure to approve a salary increase) for reasons that the plaintiff had not '... pleaded the elements of a reprisal including the material facts to support the alleged states of mind or motivation.'<sup>29</sup>

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<sup>25</sup> *Dawson* (n 20) [33]-[35].

<sup>26</sup> *Ibid* [48]-[50].

<sup>27</sup> *Ibid* [58]-[60].

<sup>28</sup> *Ibid* [62]-[63].

<sup>29</sup> *Ibid* [71]-[73].

## The parties' submissions

### *The Respondents' submissions*

[51] In summary the Respondents submit that, principally by reference to the provisions of the PID Act and to the decisions in *Flori*<sup>30</sup> and *Dawson*,<sup>31</sup> that the Applicant's contentions fail to identify:

- each disclosure alleged to constitute a public interest disclosure pursuant to s 12 or s 13 of the PID Act;<sup>32</sup>
- in respect of each alleged public interest disclosure:
  - the date the disclosure was made;
  - the material facts relied upon to allege that the disclosure constitutes information about any of the matters in s 12(1)(a) to (d) or s 13(1)(a) to (d) of the PID Act;
  - the material facts relied upon to allege that the disclosure was made to a proper authority pursuant to s 12(2) or s 13(2) of the PID Act and within the meaning of s 17 of the PID;
  - the information relied upon by the Applicant at the time of making the disclosure; and
  - the material facts relied upon to satisfy the elements in s 12(3) or s 13(3) of the PID Act;<sup>33</sup>
- as to each act of reprisal as alleged to be taken by the First, Second and Fifth Respondents:
  - the act said to constitute the reprisal; and
  - the state of knowledge or belief alleged to have motivated the reprisal, and where that knowledge or belief is alleged to relate to a particular disclosure, the identification of that disclosure; and the detriments alleged to flow from that reprisal;<sup>34</sup> and
- any other matter which may unfairly take them by surprise if not properly identified in the Applicant's contentions in respect of the alleged contraventions of s 40 of the PID Act.<sup>35</sup>

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<sup>30</sup> *Flori* (n 23).

<sup>31</sup> *Dawson* (n 20).

<sup>32</sup> The Respondents' submissions, para. 3 a.

<sup>33</sup> The Respondents' submissions, para. 3 b.

<sup>34</sup> The Respondents' submissions, para. 3 c.

<sup>35</sup> The Respondents' submissions, para. 3 d.

[52] Further, the Respondents' submit that:

- the Applicant's contentions are replete with bare assertions and rolled up allegations;<sup>36</sup>
- the Applicant proceeds on the basis that where a disclosure has been classified internally, or by the Crime and Corruption Commission ('CCC'), as a public interest disclosure, it constitutes a public interest disclosure under the PID Act whereas, to the contrary, the Applicant must establish that each relevant disclosure properly satisfies the requisite elements of a public interest disclosure under the PID Act and must properly identify the material facts alleged to satisfy each element;<sup>37</sup>
- the Applicant's contentions also raise various allegations of conduct by the Respondents but either fails to identify which of those is alleged to constitute reprisal action or which alleged public interest disclosure is said to motivate the alleged reprisal;<sup>38</sup> and
- the reprisal allegations against the Second Respondent are materially deficient in that they fail to reveal the basis on which the alleged conduct constitutes a reprisal or any alleged conduct on the Second Respondent's part at all.<sup>39</sup>

### *The Applicant's submissions*

[53] The Applicant submits that:

- the Respondents' argument that her contentions are materially deficient is dependent on a flawed assumption that a reprisal under s 40 of the PID Act has, as an element, that a public interest disclosure be actually made whereas s 40(1) of the PID Act provides that a person '... must not cause, or attempt or conspire to cause, detriment to another person, because, or *in the belief* that... the other person or someone else has made, or intends to make, a public interest disclosure';<sup>40</sup>
- it is not an element of s 40 of the PID Act that it must first be established that a public interest disclosure is actually made or that the disclosure meets the legal definition of a public interest disclosure under the PID Act before an applicant can claim a reprisal;<sup>41</sup> and
- to strike out her contentions, the Commission would have to find that reprisal under s 40 of the PID Act has, as an element, that a public interest disclosure must have been made, '... when it plainly does not.'<sup>42</sup>

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<sup>36</sup> The Respondents' submissions, para. 5.

<sup>37</sup> The Respondents' submissions, para. 6.

<sup>38</sup> The Respondents' submissions, para. 7.

<sup>39</sup> The Respondents' submissions, para. 8.

<sup>40</sup> The Applicant's submissions, para. 37.

<sup>41</sup> The Applicant's submissions, para. 37.

<sup>42</sup> The Applicant's submissions, para. 38.

[54] The Applicant further submits that (footnotes omitted):

39. The Respondents go even further to submit that not only does the applicant in a complaint of reprisal need to plead the material facts that there *was a PID*, the material facts for the PID itself must be plead even to the degree and level of detail to show that:
  - a. The PID meets the technical legal definition of a PID for the purposes of the PID Act (by reference to sections s 12(1)(a) to (d), or s 13(1)(a) to (d) of the PID Act);
  - b. The PID was made to a "proper authority" within the meaning of the PID Act, s 12(2) or s 13(3) and within the meaning of s 17;
  - c. The information relied on by the applicant at the time of making the disclosure (without any legal basis given for this whatsoever); and
  - d. The elements of ss 12(3) or 13(3) of the PID Act are satisfied (this itself would require the plaintiff proving that the PID is substantiated, which again is primarily the role of the Crime and Corruption Commission).
40. An analysis of the PID Act provisions does not support the Respondents' argument, and nor is there any case law that stands as authority that a PID must be first established and that without one that there can be no reprisal made out. The quotes that are extracted from the cases and cited in support of the Respondents' argument that a PID having been made is an element of reprisal under section 40 are taken out of context.<sup>43</sup>

[55] In regard to the submission that the Respondents' have taken their cited authorities out of context, the Applicant submits that in respect of the decision of Dalton JA in *Flori* at [30]-[32]:

- her Honour's decision was that s 40 of the PID Act required material facts to show '... that the reprisal action was *motivated by some state of knowledge or belief*, not the material facts there was a PID and the content and validity of that PID.';<sup>44</sup> and
- to leap to the conclusion that the decision of Dalton JA or any of the others cited in the Respondents' written submissions '... can be taken to mean that section 40 has, as an element, that a PID must first be made, and that the PID must meet the technical legal requirements for the purposes of the PID Act before reprisal can arise, would be entirely inconsistent with the construction of the words of section 40.'<sup>45</sup>

[56] The Applicant also submits that while Martin J in *Dawson* stated that the pleading must assert, by pleading material facts, the reason for concluding or inferring that the relevant party has the requisite reason or motive for engaging in the reprisal, his Honour did not state that an applicant had to plead the material facts of the public interest disclosure itself, but an applicant had to plead the facts to show that the person taking the reprisal has the requisite knowledge or motive of that public interest disclosure.<sup>46</sup>

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<sup>43</sup> Emphasis in the original.

<sup>44</sup> The Applicant's submissions, para. 43. Emphasis in the original.

<sup>45</sup> The Applicant's submissions, para. 43.

<sup>46</sup> The Applicant's submissions, para. 47.

[57] The Applicant then submits (footnotes omitted):

49. The statement in the Respondents' outline that "There is first a threshold question which must be determined: that is, whether there has been a PID" is poorly put, because it does not need to be determined whether there was a PID, but rather it needs to be determined *whether the circumstances surrounding any PID (or purported PID) could give rise to a person having the requisite mens rea when taking the reprisal action*. In other words, what needs to be determined (by reference to the material facts) is the state of a person's knowledge at the relevant time – whether the person, who took the alleged reprisal action, could have known of, or suspected the PID, or suspected someone might make a PID. Whether there was a PID at all is merely a theoretical question and one step in that process of logical reasoning.<sup>47</sup>

[58] The Applicant also submitted that:

- the Respondents' reference<sup>48</sup> to paragraph [32] of the decision of Jarro DCJ in *Flori v Winter*<sup>49</sup> – as supporting the decision of Martin J in *Dawson*<sup>50</sup> that the threshold question is whether there has been a public interest disclosure – has been taken out of context, because the Respondents cite only one of three key issues identified by Jarro DCJ;<sup>51</sup> and
- the Respondents' submission that the approach by Jarro DCJ was upheld on appeal by the Court of Appeal in paragraphs [19]-[28] in *Flori* is also taken out of context because those paragraphs '... deal with the question of whether or not there was a PID only for the limited purpose of deciding whether or not *Flori could have had an honest belief*.'<sup>52</sup>

[59] The Applicant concluded by submitting:

52. What this means for the present case is that for the purposes of the Commission, providing the SOFC puts facts forward that the detriment was done *because of the PID or in the belief that the other person made a PID* (subsection 40(1)(a)) then this is sufficient.<sup>53</sup>

[60] For the reasons that follow, I generally accept the Respondents' submissions and I am unable to accept the Applicant's submissions.

**The material facts that must be alleged in a statement of facts and contentions in a proceeding alleging a contravention of s 40 of the *Public Interest Disclosure Act 2010***

[61] Material facts are those necessary to constitute the claim (or response made to the claim).

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<sup>47</sup> Emphasis in the original.

<sup>48</sup> The Respondents' submissions, para. 19.

<sup>49</sup> [2023] QDC 110.

<sup>50</sup> *Dawson* (n 20), [17].

<sup>51</sup> The Applicant's submissions, para. 51.

<sup>52</sup> The Applicant's submissions, para. 51. Emphasis in the original.

<sup>53</sup> Emphasis in the original.

[62] Having regard to the provisions of the PID Act, and to the decisions in *Flori* and *Dawson*, where, as is the case alleged by the Applicant in the present case, a person alleges a contravention of s 40(1)(a) of the PID Act because he or she '... has made ... a public interest disclosure', the following material facts must be alleged in a statement of facts and contentions in a proceeding before this Commission.

***Public interest disclosure***

[63] First, the statement of facts and contentions must allege whether the disclosure was one made under s 12 or s 13 of the PID Act.

[64] Secondly, as seems to be alleged by the Applicant in the present case, if the disclosure was one allegedly made under s 13 of the PID Act, the statement of facts and contentions:

- must contain material facts alleging that the person who made the disclosure was a public officer within the meaning of the PID Act;<sup>54</sup>
- must contain material facts alleging that the person had information about the matters referred to in s 13(1)(a)(i) or (ii), s 13(1)(b), s 13(1)(c) and, or in the alternative, s 13(1)(d) of the PID Act;<sup>55</sup>
- if it is alleged that the person had information about the matters referred to in s 13(1)(a)(i) or (ii), s 13(1)(b), s 13(1)(c) and, or in the alternative s 13(1)(d) of the PID Act, in the circumstances described in s 13(3)(a) of the PID Act, must contain material facts alleging the honest belief held by the person, on reasonable grounds, that the information tended to show the conduct or other matter;<sup>56</sup>
- if it is alleged that the person had information about the matters referred to in s 13(1)(a)(i) or (ii), s 13(1)(b), s 13(1)(c) and, or in the alternative s 13(1)(d) of the PID Act, in the circumstances described in s 13(3)(b) of the PID Act, must contain material facts alleging how that information tended to show the conduct or other matter;<sup>57</sup>
- must contain material facts alleging that the person made the disclosure in a way referred to in s 17 of the PID Act;<sup>58</sup> and
- must contain material facts alleging that the person made a disclosure (in relation to the information about the matters referred to in s 13(1)(a) (i) or (ii), s13(1)(b),

<sup>54</sup> *Public Interest Disclosure Act 2010*, s 13(1).

<sup>55</sup> *Dawson* (n 20), [19](a).

<sup>56</sup> *Ibid* [22].

<sup>57</sup> *Ibid* [22].

<sup>58</sup> *Ibid* [19](b).

s 13(1)(c) and, or in the alternative of s 13(1)(d) of the PID Act) to a proper authority.<sup>59</sup>

### ***Reprisal***

[65] If the second person mentioned in s 40(1)(a) of the PID Act ('... the other person') claims, because he or she has made a public interest disclosure and has been caused detriment by the first person mentioned in s 40(1)(a),<sup>60</sup> the statement of facts and contentions must:

- contain the material facts of the retaliatory act (reprisal) taken by the first person;<sup>61</sup> and
- contain the material facts for concluding or inferring that the first person had the motive or reason for the reprisal and the detriment caused to the second person.<sup>62</sup>

### ***Remedy***

[66] If the second person mentioned in s 40(1)(a) of the PID Act claims that the first person mentioned in that section is liable in damages<sup>63</sup> to the second person because they have suffered detriment as a result of the reprisal, the statement of facts and contentions must contain the material facts of the detriment suffered by the second person as a result of the reprisal taken by the first person.<sup>64</sup>

### ***The Applicant's submissions cannot be accepted***

[67] This is for a number of reasons.

[68] First, s 40(1)(a) of the PID Act does provide that a person must not cause detriment to another person '... because or in the belief that' another person has made a public interest disclosure or intends to make a public interest disclosure. However, despite the text setting out alternative elements of the statutory tort, that does not mean that when an applicant alleges they were the subject of a reprisal because he or she has in fact made a public interest disclosure, that alleged material fact is not required to be included in a statement of facts and contentions.

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<sup>59</sup> *Public Interest Disclosure Act 2010*, s 13(2). If an applicant's complaint is that they have suffered detriment because, for example, they in fact made a disclosure within the meaning of s 12 of the *Public Interest Disclosure Act 2010*, then the statement of facts and contentions would need to contain the material facts addressing each element of s 12(1)(a), (b), (c) and/or (d), s 12(2) and s 12(3)(a) and/or (b) of the *Public Interest Disclosure Act 2010* as is the case when an applicant alleges they suffered detriment because they made a disclosure within the meaning of s 13 of the *Public Interest Disclosure Act 2010*.

<sup>60</sup> Which seems to be what is alleged by the Applicant in the present case, see the second para. 24 of Applicant's statement of facts and contentions filed on 30 August 2024 ('the Applicant's contentions').

<sup>61</sup> *Public Interest Disclosure Act 2010*, s 40(1).

<sup>62</sup> *Flori* (n 23) [30]-[32] and *Dawson* (n 20), [13]-[14].

<sup>63</sup> In the present proceedings before this Commission, this means '... compensation for loss or damage' within the meaning of s 209(1)(b) of the *Anti-Discrimination Act 1991*.

<sup>64</sup> *Public Interest Disclosure Act 2010*, s 42(1) and *Dawson* (n 20), [23].

- [69] As stated, material facts are those necessary to constitute the claim made. If an applicant alleges reprisal because they have made a public interest disclosure, that alleged material fact must be included in a statement of facts and contentions to ensure the respondent knows the case to be met.
- [70] In the present case, as I currently understand the Applicant's contentions, her claim is that she has suffered detriment due to reprisals because she actually made public interest disclosures.
- [71] Secondly, for the reasons I have given in paragraphs [61] to [64], if an applicant alleges that they have suffered reprisal because they have made a public interest disclosure pursuant to s 13 of the PID Act, the statement of facts and contentions must address the elements of s 13(1), s 13(2) and s 13(3) of the PID Act. As Martin J stated in *Dawson*, before any action can exist, there must have been a public interest disclosure of the kind defined in ch 2 of the PID Act including all the information and help given by the discloser to a proper authority.<sup>65</sup> Those material facts must be included in a statement of facts and contentions to ensure the respondent knows the case it has to meet. The decision in *Dawson*<sup>66</sup> confirms that the relevant material facts, to allege the elements of a public interest disclosure as contained in s 13(1) and s 13(3), must be addressed in a statement of facts and contentions.
- [72] Thirdly, the Applicant's submission that *Dawson* does not stand as authority for the proposition that an applicant does not have to plead the material facts of a public interest disclosure, and only has to plead the requisite reason or motive of the alleged wrongdoer, cannot be accepted. For the reasons given earlier, having regard to the text of s 40(1) of the PID Act, where an applicant alleges reprisal because they have in fact made a public interest disclosure (as is the case seemingly alleged by the Applicant) the material facts of the alleged public interest disclosure must be contained in a statement of facts and contentions to ensure the respondent knows the case to be met.
- [73] Finally, the Applicant referred to the Respondent's reliance on the decision of Jarro DCJ in *Flori v Winter & Ors*<sup>67</sup> where his Honour stated:

[32] To resolve Mr Flori's claim that the EBN Update, the Investigation Report and the Referral Letter constituted an unlawful reprisal, the key issues to determine include:

- (a) Whether the February 2010 letter constituted a public interest disclosure (having regard to the *Whistleblowers Protection Act 1994* in force at the time)? That issue requires the consideration of Mr Flori's state of mind at the time he made the disclosure (as discussed by the Court of Appeal in *Flori v Winter* (2019) 3 QR 22).
- (b) Did Mr Winter (via the EBN Update or the Investigation Report) cause or attempt to cause Mr Flori detriment because Mr Flori sent the February 2010 letter?
- (c) Did Mr Doyle (via the Referral Letter) cause or attempt to cause Mr Flori detriment because Mr Flori sent the February 2010 letter?

- [74] The Applicant submitted that this paragraph was taken out of context and submitted (at paragraph 52 of her written submissions) that the only material facts she needed to

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<sup>65</sup> *Dawson* (n 20), [17].

<sup>66</sup> *Ibid* [19] and [22].

<sup>67</sup> [2023] QDC 110.

state was that the detriment '... was done *because of the PID or in the belief that the other person made a PID.*' The Applicant also referred to the Respondents' reliance on paragraphs [19]-[28] of the decision of the Court of Appeal in *Flori* and submitted that those passages were similarly taken out of context.

- [75] These submissions cannot be accepted. The passages in the decision of Jarro DCJ and in the decision of the Court of Appeal, said by the Applicant to be taken out of context by the Respondents, were not taken out of context by the Respondents. The Respondents referred to the relevant passages in both of those cases as authority for the proposition that the first threshold question, in determining whether the elements of the statutory tort of reprisal contained in s 40 of the PID Act were made out, was whether there had been a public interest disclosure.<sup>68</sup> In any event, for the reasons I have given above, the passages of those two cases are not authority for the apparent proposition advanced by the Applicant, namely, that the material facts of the elements of s 13(1), s 13(2) and s 13(3) of the PID Act do not need to be set out in a statement of facts and contentions to disclose a reasonable cause of action pursuant to s 40(1)(a) of the PID Act.
- [76] In oral submissions,<sup>69</sup> the Applicant referred to the decision of Bowskill J in *Equititrust Limited v Tucker and Others (No.2)*<sup>70</sup> where at [11] her Honour stated (citations omitted):
- [11] While the court may determine a difficult question of law on such an application, the power to strike out a sufficiently pleaded statement of claim cannot be exercised "once it appears that there is a real question to be determined whether of fact or law and that the rights of the parties depend upon it".
- [77] The Applicant then submitted, in light of the above statement by Bowskill J, that if enough material facts are pleaded to establish her claim, then, for the purposes of the expediency of a trial, her contentions should remain as they are. The Applicant further submitted that the Respondents cannot be confused about the case alleged by her.<sup>71</sup>
- [78] In particular, after referring to s 40(1)(a) of the PID Act, the Applicant submitted that whether a public interest disclosure was made or was intended to be made is a matter of fact to prove at a hearing and not a matter for pleading. Furthermore, in response to the Respondents' complaint that paragraph 3 of the Applicant's contentions do not allege the elements of a public interest disclosure within the meaning of the PID Act, the Applicant also submitted that the issue raised is a matter for the hearing.<sup>72</sup>
- [79] The Applicant made the same submission about other complaints the Respondents made about her contentions. For example, the Applicant referred to the Respondents' complaint that in (the first) paragraph 18 of her contentions, she did not set out any material facts that supported a causal nexus between the alleged detriment she said she suffered and the alleged motivation or belief of the Fifth Respondent to engage in the alleged detrimental conduct. The Applicant submitted that the complaint raised was a

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<sup>68</sup> The Respondents' submissions, para. 18-19.

<sup>69</sup> T 1-23, l 41 to T 1-24, l 3.

<sup>70</sup> [2019] QSC 248.

<sup>71</sup> T 1-24, ll 4.

<sup>72</sup> T 1-24, l 5 to T 1-26, l 16.

matter for '... the trial Judge.<sup>73</sup> Similar submissions were made in relation to other complaints made by the Respondents about the Applicant's contentions.<sup>74</sup>

[80] I am unable to accept these submissions.

[81] In *Wride v Schulze*,<sup>75</sup> Spender, Tamberlin and Bennett JJ relevantly stated of pleadings:

Further, the pleadings must disclose a reasonable cause of action against the party against whom the cause of action is brought and must state all material facts necessary to establish that cause of action and the relief sought. A "reasonable cause of action" for this purpose means one which has some chance of success if regard is had only to the allegations and the pleadings relied on by the applicant.<sup>76</sup>

[82] Given the analogous function of statements of facts and contentions to that of pleadings, there is no reason this principle would not apply to statements of facts and contentions.

[83] The Applicant's contentions must state all material facts necessary to demonstrate she has some chance of success to establish a contravention of s 40(1)(a) of the PID Act.

[84] Therefore, for example, the Applicant's submission that she merely has to broadly or, in an imprecise manner, allege she made a public interest disclosure and then leave it to the Member of the Commission at the hearing to decide if a public interest disclosure within the meaning of s 13 of the PID Act was in fact made, cannot be accepted. To do so would mean, in my view, that the Commission would not be meeting its requirement that it observe procedural fairness in the exercise of its functions.

**Do the Applicant's contentions set out the material facts to constitute the Applicant's allegations that the Respondents have engaged in unlawful reprisals contrary to s 40 of the PID Act?**

[85] The Respondents complain that the Applicant's contentions do not disclose a reasonable cause of action because the Applicant:

- in respect of each alleged public interest disclosure, fails to allege the material facts to satisfy the elements of s 12 or s 13 of the PID Act;
- fails to allege the material facts to establish each alleged reprisal, namely;
  - the material facts for concluding or inferring that each alleged contravener had the requisite motive or belief at the time of each reprisal;
  - the material facts to allege a causal nexus between the alleged detriment and the alleged motivation or belief;

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<sup>73</sup> T 1-26, ll 32-44.

<sup>74</sup> T 1-26, l 45 to T 1-29, l 45.

<sup>75</sup> [2004] FCAFC 216 (*Wride*).

<sup>76</sup> *Ibid* [25].

- the material facts to identify the causal nexus between the alleged detriments and the alleged reprisal action; and
- fails to properly identify any alleged reprisal action against the Second Respondent.

[86] For the reasons that follow, the Applicant's contentions are deficient. They do not state all material facts necessary to establish a reasonable cause of action of a contravention of s 40(1)(a) of the PID Act.

[87] I will address each complaint made by the Respondents in turn.

[88] Before doing so, it is necessary to explain how the Applicant sets out her contentions.

***The Applicant's contentions***

[89] Under the heading of '**FACTS**', the Applicant alleges a number of facts which include that she made public interest disclosures and that, in various meetings and by various emails, certain action was taken against her by various persons including the First, Second or Fifth Respondents.

[90] Secondly, under the heading of '**CONTENTIONS**', the Applicant states 22 different contentions which are, in the main, bare allegations of wrongdoing made against the First and Fifth Respondents.

[91] Thirdly, under the heading '**DECISION SOUGHT**', the Applicant sets out the relief she seeks pursuant to s 209(1)(b) of the *Anti-Discrimination Act 1991*.

***Do the Applicant's contentions allege the material facts to satisfy the elements of s 12 or s 13 of the Public Interest Disclosure Act 2010?***

[92] The Respondents submit that in respect of each alleged public interest disclosure, the Applicant fails to allege the material facts to satisfy the elements of s 12 or s 13 of the PID Act.<sup>77</sup>

[93] As best as I understand her contentions, the Applicant alleges that she made two public interest disclosures.

[94] The first is that referred to, in the first paragraph 3,<sup>78</sup> alleged to be made '... in early April 2022' to the President of the Parole Board.

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<sup>77</sup> The Respondents' submissions, paras. 41 a.-e.

<sup>78</sup> The Applicant does not use consecutive paragraph numbers in her contentions. Paragraphs numbers 1 to 33 are used twice. As a consequence, where relevant, I will refer to the paragraph number by reference to whether it appears first or second in the Applicant's contentions.

[95] The second is that referred to in the first paragraph 7, alleged to be made on 10 May 2022, to the CCC '...regarding the same PID allegations that I made to the Parole Board Queensland President'.<sup>79</sup>

[96] There are five issues with the two public interest disclosures the Applicant alleges she made, which disclose deficiencies in what is alleged.

[97] First, it is not made expressly clear in the Applicant's contentions if the public interest disclosures she alleges she made, were made pursuant to either s 12 or s 13 of the PID Act.<sup>80</sup>

[98] Secondly, the Applicant's contentions do not contain the material facts required to allege that these two actions amount to public interest disclosures within the meaning of s 12 or s 13 of the PID Act. This is because they do not contain:

- the content of what was allegedly disclosed;
- the material facts that the Applicant had information about the matters referred to in s 12(1)(a), s 12(1)(b), s 12(1)(c), s 12(1)(d) of the PID Act, or in s 13(1)(a)(i) or (ii), s 13(1)(b), s 13(1)(c) or s 13(1)(d) of the PID Act; and
- the material facts that the Applicant had information about such matters in the circumstances described in s 12(3)(a) or s 13(3)(a) of the PID Act, namely, of the honest belief held by her, on reasonable grounds, that the information tended to show the relevant conduct or other matter as well as the material facts of the reasonable grounds; or
- the material facts that the Applicant had information about such matters in the circumstances described in s 12(3)(b) or s 13(3)(b) of the PID Act, namely, the material facts identifying the information as well as how that information tends to show the relevant conduct.<sup>81</sup>

[99] Thirdly, the Applicant's contentions do not contain:

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<sup>79</sup> In the first paragraph 24 of her contentions, the Applicant alleged that on 10 November 2022, she filed '... a complaint directly to Ethical Standards Group, Queensland Corrective Services for reprisal.' Given the statutory text of s 40(1)(a) and s 40(3) and s 40(4) of the *Public Interest Disclosure Act 2010* and because of text the Applicant uses, namely, that the '... complaint' was '...for reprisal' it could not be the case the Applicant was alleging this was a public interest disclosure. Further, in para. 41. b. of the Respondents' submissions, they refer to an email sent by the Applicant to their solicitors on 9 October 2024, exhibited to the affidavit of Ms Julia Scott filed on 8 November 2024 ('Ms Scott's affidavit') at exhibit 'JS-2', in which the Applicant stated that another public interest disclosure she allegedly made was that as contained in her contentions in the first paragraph 19, being: 'On 19 September 2022, I submitted further information to the Crime and Corruption Commission.' This paragraph is entirely vague. It does not state any of the material facts necessary to allege that, on that day, the Applicant made a public interest disclosure within the meaning of either s 12 or s 13 of the *Public Interest Disclosure Act 2010*.

<sup>80</sup> This deficiency was raised by the Respondents in their response filed on 4 October 2024 ('the Respondents' response'), paras. 15. b. and 16. a.

<sup>81</sup> See *Dawson* (n 20), [22]. These deficiencies were raised in the Respondents' response, paras. 15. a., 15. b. and 16. a.

- the material facts that she made the public interest disclosures in a way referred to in s 17 of the PID Act, as provided for in s 12(2) or s 13(2) of the PID Act,<sup>82</sup> and
- the material facts that she made the disclosures to a proper authority, as provided for in s 12(2) or s 13(2) of the PID Act, by reference to s 5 and to s 14, s 15 or s 16 of the PID Act.<sup>83</sup>

[100] For these reasons, the Applicant's statement of facts and contentions do not contain the necessary material facts to allege she made public interest disclosures within the meaning of s 12 or s 13 of the PID Act. The Applicant may well be able to set out such material facts in a statement of facts and contentions, but presently, she has not done so.

[101] Fourthly, the allegations made by the Applicant under the heading of '**FACTS**' about public interest disclosures she allegedly made are vague.

[102] In the first paragraph 3 of her contentions, after the Applicant refers to the '...PID' she made to the President of the Parole Board in '...early April 2022' she inserts a footnote in which she states:

1. Email to President, Michael Byrne KC dated 06 April 2022 making reference to the plan to discuss the Public Interest Disclosure (PID).

[103] No material facts are alleged of the content of what was allegedly disclosed to the President of the Parole Board. Further, it is not clear what allegation is meant to be made by way of the footnote. On one reading of the footnote, in conjunction with the first paragraph 3 of the Applicant's contentions, it could mean that no public interest disclosure at all was made to the President of the Parole Board, but that the Applicant had an intention to speak to that person about a public interest disclosure. The contention is entirely vague.

[104] Similarly, in the first paragraph 3 of her contentions the Applicant also alleges:

The PID was given to the then Acting Executive Director, Michelle Moore to address with support from Assistant Commissioner Kim Papalia.

[105] This allegation is entirely vague. It is not clear whether, in that part of the first paragraph 3 of her contentions, the Applicant is alleging that a further or separate public interest disclosure was made to Ms Moore.

[106] The second public interest disclosure allegedly made by the Applicant (the first paragraph 7 of the Applicant's contentions) was said to be made on 10 May 2022, when she '... filed a complaint to the Crime and Corruption Commission regarding the same PID allegations that I made to the' President of the Parole Board. This allegation is vague. It is not clear whether the Applicant is alleging that she made a new public interest disclosure to the CCC compared to the one she allegedly made in '... early

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<sup>82</sup> This deficiency was raised in the Respondents' response, paras. 15. c. and 16. b.

<sup>83</sup> This deficiency was raised in the Respondents' response, paras. 15. d. and 16. a.

April 2022' or whether she gave the same information to the CCC. Further, because of the vagueness of the contention in the first paragraph 3, the reader is not told of the content of the subject matter of the disclosure made to the President of the Parole Board so as to then know what was the subject matter of the '...complaint' the Applicant made to the CCC.

[107] Fifthly, the other paragraphs contained under the heading of '**FACTS**' are allegations of unfavourable action as against the Applicant. These allegations are made at large. There are no material facts contained in this part of the Applicant's contentions that allege a causal connection or nexus between the alleged unfavourable action and the public interest disclosures allegedly made by the Applicant.

[108] For example, in the first paragraph 23, the Applicant makes allegations of what was said in a meeting between her and the First and Fifth Respondents held on 8 November 2022. The allegations of what was said, and by whom, are taken from an audio recording of the meeting. In the eleventh footnote, the Applicant states: 'Audio recording of the meeting 08 November 2022 between Julie Sharp, Tracey Jackson and the Complainant.' The substance of the allegation is that on that day, the First and Fifth Respondents removed the Applicant from the Legal Services Unit on a permanent basis. However, no other material facts are given alleging that the unfavourable treatment contained in the first paragraph 23 was because the Applicant made any of the public interest disclosures she alleged she made.

[109] Some of the allegations are also vague. For example, in the first paragraph 14, the Applicant states:

14. Sometime during early August, my accesses to the systems required to do my job and the Legal Services case management and court files access were revoked.

[110] In addition to not stating the material facts to allege that this treatment was because she had made any of the public interest disclosures the Applicant alleges she made, it is not clear what is meant by '... accesses to the systems required to do my job'.

***Do the Applicant's contentions allege the material facts for concluding or inferring that each alleged contravener had the requisite motive or belief at the time of each alleged reprisal?***

[111] The Respondents submit that the Applicant's contentions do not contain the material facts for concluding or inferring that each alleged contravener had the requisite motive or belief at the time of each alleged reprisal.<sup>84</sup>

[112] The Applicant does not, at any point, allege material facts for concluding or inferring that the First, Second or Fifth Respondents had the requisite motive or belief at the time of each alleged particular reprisal taken by each of them.<sup>85</sup>

[113] There is an attempt, of sorts, to state such material facts in the second paragraph 25 of the Applicant's contentions in which the Applicant states:

<sup>84</sup> The Respondents' submissions, para. 41. j.

<sup>85</sup> See *Dawson* (n 20), [14].

25. I contend that:

- a) the First, Second and Fifth Respondents had the requisite suspicion, belief or awareness when taking the detrimental actions that I had made (or may make) a PID; and
- b) that the suspicion, belief or awareness of the First, Second and Fifth Respondents was a contributing factor (a substantial ground) in taking the detrimental actions.

[114] However, paragraph 25a) of the Applicant's contentions is so vague, it is in effect meaningless. It makes no specific reference to which alleged reprisal was committed by which of the First, Second and Fifth Respondents. It does not contain any material facts to assert the reason for concluding or asserting that either the First Respondent, the Second Respondent or the Fifth Respondent had the reason or motive to take any particular reprisal because the Applicant had made a particular disclosure.

[115] In fact, in paragraph 25a) of her contentions, the Applicant appears to allege by use of the phrase '... (or may make)', that the First, Second and Fifth Respondents caused detriment to her in the belief she intended to make a public interest disclosure. No material facts are set out in support of that particular allegation.

[116] For these reasons, the Applicant's statement of facts and contentions do not contain the necessary material facts to allege a contravention of s 40(1)(a) of the PID Act.

***Do the Applicant's contentions allege a causal nexus between the alleged detriment and the alleged motivation or belief?***

[117] The Respondents submit that a reprisal is only made out when a person is motivated to cause detriment to another because, or in the belief that the other person, or someone else, has made or intends to make a public interest disclosure. The Respondents further submit that the Applicant's contentions raise several allegations as to the detriment she says she suffered, that make no attempt, or an inadequate attempt, to clearly link those alleged detriments to the impugned motivation of the First, Second or Fifth Respondents.<sup>86</sup>

[118] I accept this submission.

[119] Apart from paragraph 25a) of the Applicant's contentions as referred to above, her contentions merely:

- under the heading of '**FACTS**', allege that she made certain disclosures and that certain actions were taken against her (principally) by the First and Fifth Respondents; and
- under the heading of '**CONTENTIONS**', make 22 different allegations of wrongdoing (principally) against the First and Fifth Respondents.

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<sup>86</sup> The Respondents' submissions, para. 41. k.

[120] As stated before, the allegations made in paragraph 25a) of the Applicant's contentions are so vague they are meaningless. Further, the Applicant's contentions do not make any attempt to link the 22 different allegations of wrongdoing made against her (apparently causing her the detriments she alleges she suffered as subsequently set out in the second paragraph 23 of her contentions) with any motive or belief of the First, Second or Fifth Respondents, that they engaged in the alleged wrongdoing because the Applicant made any particular public interest disclosure or disclosures.

[121] There are other issues with the 22 allegations of wrongdoing under the heading of '**CONTENTIONS**'.

[122] For example, in the second paragraph 16, the Applicant alleged that the Fifth Respondent's '... refusal to provide me with a referee report on 01 February 2023 was an act of reprisal.' There are no material facts that allege that conduct was motivated by a particular disclosure allegedly made by the Applicant.

[123] Some of the contentions are vague. For example, the Applicant alleges in the second paragraph 17:

17. I contend that there was no representation or documentation to support that reasonable management action was purported to be being taken for the text messages.

[124] Others are in the nature of submissions. For example, the Applicant alleges in the second paragraph 18:

18. I contend that the detriment suffered does not fall within the definition of reasonable management action because it was not taken in a reasonable way and it was not a reasonable response to remove the accesses required to do my job in order to simply protect the emotional wellbeing of Lisa Hendy.

[125] For these reasons, the Applicant's statement of facts and contentions do not contain the necessary material facts to allege a contravention of s 40(1)(a) of the PID Act.

***Do the Applicant's contentions allege a causal nexus between the alleged reprisal action and the alleged detriments?***

[126] The Respondents submit that the Applicant does not set out any material facts alleging a causal nexus between any alleged reprisal action taken by the First, Second or Fifth Respondents and the detriments she contends she allegedly suffered as set out in the second paragraph 23 of her contentions.<sup>87</sup>

[127] On one view, it may be that the Applicant contends that the 22 allegations contained in the second paragraphs 1 to 22 are specific acts allegedly taken by the First, Second or Fifth Respondents which then caused her the loss she alleges she suffered as subsequently set out in paragraph 23 which is then quantified in the second paragraph 31 under the heading '**DECISION SOUGHT**'. On another view, because of the use of the sub-heading '***Conclusion***' just before the second paragraph 23, it may be that what is subsequently set out in that paragraph 23 is a summary of the detriments the

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<sup>87</sup> The Respondents' submissions, para. 41. 1.

Applicant alleges she suffered as contained in the second paragraphs 1 to 22. It is not clear either way.

[128] If the former is what was intended by the Applicant, there are no material facts that set out the causal connection between the 22 allegations of wrongdoing alleged to be taken by the First, Second and Fifth Respondents (contained in the second paragraphs 1 to 22) and the loss the Applicant alleges she suffered as subsequently set out in the second paragraph 23 of her contentions. If it is the latter that was intended by the Applicant, then the purpose of paragraph 23 is unclear.

[129] For these reasons, the Applicant's statement of facts and contentions are vague as to the detriments she alleges she suffered as a result of any reprisals.

***Do the Applicant's contentions allege the material facts that the Second Respondent took reprisal action against her?***

[130] The Respondents submit that the Applicant's contentions are materially deficient in that they fail to properly identify any alleged reprisal action said to be taken by the Second Respondent.<sup>88</sup>

[131] The allegations made about the Second Respondent are vague.

[132] In the first paragraph 5 of the Applicant's contentions, the Applicant alleges that the Second Respondent was ignoring her and refusing to work with her, '... including refusing to do the handover with me so I could move to the PO6 role.' This alleged conduct by the Second Respondent is not the subject of any material facts alleging this was a reprisal because the Second Respondent was so motivated to act due to a public interest disclosure made by the Applicant.

[133] In the second paragraph 20, it is alleged by the Applicant that the First and Fifth Respondents took steps to '... constructively dismiss me' on behalf of the Second Respondent. This allegation is vague. While subsequently, in paragraph 23a) of her contentions, the Applicant '...contends' that the First, Second and Fifth Respondents constructively dismissed her by altering her position to her disadvantage by various means, it is not clear what the Applicant means when she alleges the First and Fifth Respondents constructively dismissed her '... on behalf of' the Second Respondent. Does this mean the First and Fifth Respondents exercised the authority of the Second Respondent as delegated to them? Or does it mean that the Second Respondent directed them to take the alleged action? Certainly, there is no allegation of any reprisal being taken by the Second Respondent against the Applicant because the Second Respondent was so motivated to act due to a specific public interest disclosure made by the Applicant. The closest such an allegation is made is in the subsequent paragraph 25a), which, for the reasons I have given earlier, is vague in itself.

[134] For these reasons, I accept the Respondents' submissions. The Applicant's contentions do not set out the material facts of any unlawful retaliatory action taken by the Second Respondent.

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<sup>88</sup> The Respondents' submissions, para. 41. m.

### What should be done?

[135] The unchallenged evidence is that by letter dated 16 October 2024, the solicitors for the Respondents wrote to the Applicant setting out, in detail, the complaints the Respondents presently make in respect of the Applicant's contentions.<sup>89</sup> The Respondents requested that the Applicant respond to their correspondence by 4.00 p.m. on 23 October 2024 to confirm whether the Applicant intended to file an amended statement of facts and contentions which addressed the deficiencies identified by the Respondents.

[136] The Applicant responded by email sent on 31 October 2024. In short, the Applicant rejected the assertions made by the Respondents about the deficiencies in her contentions.<sup>90</sup> In doing so, the Applicant stated that if her contentions were to be read by an objective bystander, '... it would be clear what the case is that the Respondents must meet.'<sup>91</sup>

[137] For the reasons I have given above, I do not accept the Applicant's position that, by her contentions, the Respondents clearly know the case they have to meet. Further, the Applicant's contentions do not allege the necessary material facts which gives rise to a conclusion that her claim, that the Respondents contravened s 40(1)(a) of the PID Act, has some chance of success.

[138] Section 174C of the *Anti-Discrimination Act 1991* provides:

**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.

[139] There is no dispute that s 451(1) of the IR Act is a source of power for the Commission to strike out a party's statement of facts and contentions and to order that the same party file and serve a further statement of facts and contentions.<sup>92</sup>

[140] In respect of pleadings under civil procedure rules, where objectionable material is mingled with other matters so that the pleading as a whole becomes difficult to understand and to plead to, then the whole statement of claim may be struck out.<sup>93</sup> There is no sound reason why such a principle would not also apply to a statement of facts and contentions.

[141] There are good reasons to strike out all of the Applicant's contentions.

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<sup>89</sup> Ms Scott's affidavit, para. 5 and exhibit 'JS-5'.

<sup>90</sup> Ms Scott's affidavit, para. 6 and exhibit 'JS-6'.

<sup>91</sup> Ms Scott's affidavit, para. 6 and exhibit 'JS-6', page 2 of 2.

<sup>92</sup> *Queensland Police Union of Employees v HS First Inc.* [2023] QIRC 030, [28] (Deputy President Merrell, Industrial Commissioner Pidgeon and Industrial Commissioner Power).

<sup>93</sup> See *Coe v Commonwealth* [1979] HCA 68; (1979) 24 ALR 118, 132 (Jacobs J) and *Mathews v Morgan & Ors* [2005] QSC 222, [19] (White J).

[142] First, the Applicant's contentions do not set out the necessary material facts to make the allegations the Applicant made public interest disclosures within the meaning of s 12 or s 13 of the PID Act.

[143] Secondly, there are no material facts alleging that the First, Second or Fifth Respondents took reprisals against her because she made any of the public interest disclosures she says she made. The second group of paragraphs numbered 1 to 23 are, in the main, bare allegations of wrongdoing primarily against the First and Fifth Respondents.

[144] Thirdly, there are no material facts alleging that any alleged reprisal by the First, Second or Fifth Respondents caused any of the detriments the Applicant alleges she suffered.

[145] There are other reasons why all of the Applicant's contentions should be struck out.

[146] The Applicant's contentions do not use consecutively numbered paragraphs. This has the potential to create confusion to any reader of the contentions.

[147] The Applicant makes allegations of fact in footnotes to her contentions.<sup>94</sup> In addition, the Applicant refers to evidence or submissions<sup>95</sup> and makes other unnecessary commentary<sup>96</sup> in some of the footnotes to her contentions. A statement of facts and contentions should allege the material facts necessary to establish a cause of action and the relief sought. Such material facts should be contained in the body of the statement of facts and contentions and not in footnotes. A statement of facts and contentions should not include evidence or other unnecessary commentary.

[148] Other paragraphs in the Applicant's contentions are so vague or otiose, it is difficult to understand why they were included. For example, in the second paragraph 24, the Applicant alleges:

24. I contend that I have direct evidence that at least the First and Fifth Respondents directly contravened section 40(1)(a) of the *Public Interest Disclosure Act 2010*.

[149] In the second paragraph 26, the Applicant alleges:

26. Section 42(1) of the *Public Interest Disclosure Act 2010* prescribes that a reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result. Section 42(2) of the *Public Interest Disclosure Act 2010* prescribes that any

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<sup>94</sup> As referred to earlier, in footnote 1 of the Applicant's contentions she states: 'Email to President Michael Byrne KC dated 06 April 2022, making reference to the plan to discuss the Public Interest Disclosure (PID).'

<sup>95</sup> For example, in footnote 6 of the Applicant's contentions she states: 'I was subsequently notified by Tracy Jackson on 07 November 2022 that this review had "come to nothing", and so to rely on it to resolve any workplace problems would be futile.' This footnote relates to the first paragraph 11 that states that in July 2022, a workplace culture review was undertaken by a psychologist engaged by the Parole Board.

<sup>96</sup> For example, in footnote 2 of the Applicant's contentions she states: 'The content of this PID is now subject to Queensland Corrective Services Ethical Standards investigation Ref C/23/00209 (now being undertaken by Ashdale Workplace Solutions, following being referred back to the agency from the Crime and Corruption Commission (CCC)).'

appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal.

[150] For all these reasons, the entirety of the Applicant's contentions should be struck out. There is so much objectionable material intertwined with other material, that striking out particular paragraphs and ordering the Applicant to amend her contentions to remedy the identified deficiencies would make the new document cumbersome to read and difficult to understand.

[151] The Applicant, as submitted by the Respondents, should be given an opportunity to file and serve a second further amended statement of facts and contentions. I agree. It may be the case that the Applicant can file and serve a statement of facts and contentions that contains material facts that establish a reasonable cause of action.

[152] Proceedings of the present kind are similar to other proceedings before this Commission where the Commission makes Directions Orders that set out specific requirements for a party's statement of facts and contentions. As stated earlier, this is due to the complexity of the relevant statutory duty or obligation.

[153] In this respect, and in line with the specific relief sought by the Respondents, I will make orders as to what at least must be addressed in the Applicant's second further amended statement of facts and contentions to be filed and served. The Respondents, in their application, have specified the content of the orders they seek for the purposes of the Applicant disclosing reasonable causes of action. The Applicant, in her written and oral submissions, did not take any issue with the orders sought by the Respondent if the Commission ordered that her contentions be struck out and that she file and serve further amended contentions. I will make orders consistent with those sought by the Respondents. For completeness, I will also make orders about what should be contained in the Applicant's further amended contentions concerning the relief she seeks.

[154] The Respondents also wanted an order that the Applicant's contentions clearly identify '... any other matter which may unfairly take' them '... by surprise if not properly identified.' This seems to be taken from r 149(1)(c) of the UCPR. If the Applicant complies with the orders I make below, I do not think such an order is necessary. The Respondents also wanted an order that earlier orders for disclosure be vacated. Given my decision and the orders I will make, those earlier orders for disclosure should be vacated.

[155] The Respondents reserved their right to seek their costs of their application. I will reserve the issue of the Respondents' costs of this application. The matter will be mentioned on a date that I fix.

### **Conclusion**

[156] For the reasons I have given, the Applicant's contentions are materially deficient. I will order that the Applicant's contentions be struck out in their entirety.

[157] The Applicant will be ordered to file and serve a second further amended statement of facts and contentions that addresses the material facts and other issues I set out in the orders that follow.

### **Orders**

[158] I make the following orders:

1. Pursuant to s 451(1) of the *Industrial Relations Act 2016*, the Applicant's further amended statement of facts and contentions, filed on 30 August 2024, is struck out.
2. Pursuant to r 41(1) of the *Industrial Relations (Tribunals) Rules 2011* ('the Rules'), by 4.00 p.m. on 11 May 2026, the Applicant must file in the Industrial Registry, and serve on each of the Respondents, a second further amended statement of facts and contentions, of no more than 10 pages, which is type-written, line and a half spaced, using 12-point font size and has consecutively numbered paragraphs and pages ('the Applicant's amended contentions').
3. The Applicant's amended contentions must:
  - (a) identify whether each disclosure the Applicant alleges she made:
    - (i) was a public interest disclosure made pursuant to s 12 of the *Public Interest Disclosure Act 2010*; or
    - (ii) was a public interest disclosure made pursuant to s 13 of the *Public Interest Disclosure Act 2010*.
4. The Applicant's amended contentions must, in respect of each public interest disclosure the Applicant alleges she made pursuant to either s 12 or s 13 of the *Public Interest Disclosure Act 2010*:
  - (a) contain the date the disclosure was made;
  - (b) contain the material facts relied upon to allege that the disclosure constituted information about any of the matters stated in s 12(1)(a) to (d) or in s 13(1)(a) to (d) of the *Public Interest Disclosure Act 2010*;
  - (c) contain the material facts relied upon to allege that the disclosure, in relation to the information, was made to a proper authority pursuant to s 12(2) or pursuant to s 13(2) of the *Public Interest Disclosure Act 2010*;
  - (d) contain the material facts relied upon to allege the disclosure, in relation to the information, was made in a way within the meaning of s 17 of the *Public Interest Disclosure Act 2010*;

- (e) contain the material facts of the information relied upon by the Applicant at the time of making the disclosure; and
  - (f) contain the material facts relied upon to allege that, pursuant to s 12(3) or s 13(3) of the *Public Interest Disclosure Act 2010*:
    - (i) at the time of the disclosure, the Applicant honestly believed on reasonable grounds that the information she had tended to show the conduct or other matter the subject of the disclosure; or
    - (ii) at the time of the disclosure, the information she had tended to show the conduct or other matter the subject of the disclosure.
5. The Applicant's amended contentions must, as to each act of alleged reprisal by the First Respondent:
- (a) contain the material facts of the act said to constitute the reprisal;
  - (b) contain the material facts of the state of knowledge or belief which is alleged to have motivated the taking of the reprisal, and where that knowledge or belief is alleged to relate to a particular disclosure, contain the identification of that disclosure; and
  - (c) contain the material facts of the detriments the Applicant allegedly suffered as a result of the reprisal.
6. The Applicant's amended contentions must, as to each act of alleged reprisal by the Second Respondent:
- (a) contain the material facts of the act said to constitute the reprisal;
  - (b) contain the material facts of the state of knowledge or belief which is alleged to have motivated the taking of the reprisal, and where that knowledge or belief is alleged to relate to a particular disclosure, contain the identification of that disclosure; and
  - (c) contain the material facts of the detriments the Applicant allegedly suffered as a result of the reprisal.
7. The Applicant's amended contentions must, as to each act of alleged reprisal by the Fifth Respondent:
- (a) contain the material facts of the act said to constitute the reprisal;

- (b) contain the material facts of the state of knowledge or belief which is alleged to have motivated the taking of the reprisal, and where that knowledge or belief is alleged to relate to a particular disclosure, contain the identification of that disclosure; and
  - (c) contain the material facts of the detriments the Applicant allegedly suffered as a result of the reprisal.
8. The Applicant's amended contentions must, having regard to s 209(1) of the *Anti-Discrimination Act 1991*, state all the orders sought by the Applicant.
9. The Applicant's amended contentions must, if an order for compensation is sought by the Applicant:
- (a) if general damages are claimed, specify the amount of general damages and state the material facts upon which the amount of general damages is claimed;
  - (b) if economic loss is claimed:
    - (i) specify whether the economic loss claimed is past economic loss and, or in the alternative, future economic loss;
    - (ii) state the material facts upon which the loss is claimed;
    - (iii) state the amount of past economic loss and, or in the alternative, future economic loss that is claimed; and
    - (iv) state how the Applicant worked out or estimated the amount of past economic loss and, or in the alternative, future economic loss;
  - (c) if any other type of compensation is sought by the Applicant:
    - (i) specify the nature of that compensation;
    - (ii) state the material facts upon which the compensation is claimed;
    - (iii) state the amount of the compensation claimed; and
    - (iv) state how the Applicant worked out or estimated that amount of compensation; and
  - (d) if the Applicant claims interest:
    - (i) specify the amount or amounts upon which interest is claimed;

- (ii) state the interest rate or interest rates claimed;
  - (iii) state the day or days from which interest is claimed; and
  - (iv) state the method of calculation.
10. Pursuant to r 41(1) of the Rules, by 4.00 p.m. on 15 June 2026 the Respondents must file in the Industrial Registry, and serve on the Applicant, a response to the Applicant's amended contentions of no more than 10 pages, which is type-written, line and a half spaced, using 12-point font size and has consecutively numbered paragraphs and pages.
  11. Pursuant to s 536(f) of the *Industrial Relations Act 2016*, paragraphs 2 and 3 of the Directions Order dated 25 October 2024 are vacated.
  12. That the costs of the Respondents' application in existing proceedings, filed on 8 November 2024, are reserved.
  13. That this matter be mentioned at 9.00 am on 26 June 2026.