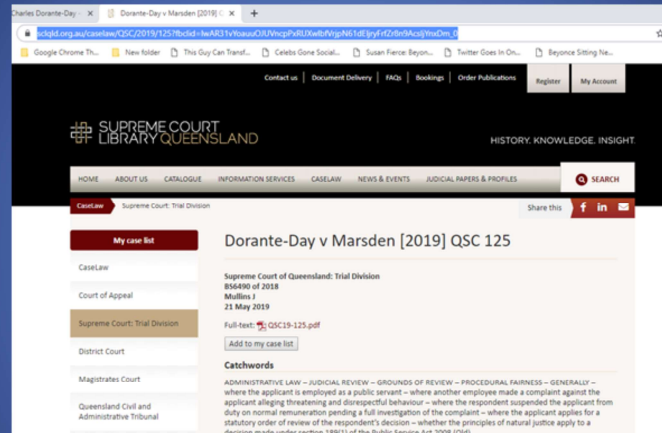


May 2019 – Podcast Four



Mullin's Decision: "Point(s) of Law"

Hello again, no doubt everybody has seen the newspaper reports and stories over the decision.

You can download the whole decision from the Queensland Supreme Court Library website in PDF and I encourage you to read the whole decision, but you can download it at this address and read the whole thing if you want.

Here - <https://www.sclqld.org.au/caselaw/QSC/2019/125>

I've received numerous media calls, emails, texts comments about my position and everybody want's to know what I'm doing next? or what does this mean? Or what went wrong?

So here's my brief summation of one of the seven point(s) of Law that I have with Justice Mullin's decision.

[33] To the extent the applicant bases this application on denial of natural justice, he cannot succeed, as s 190(2) of the PSA specifically excluded the principles of natural justice from the respondent's decision to suspend the applicant from duty on full pay.

[10] Section 190 of the PSA regulates the procedure for disciplinary action:

- “(1) In disciplining a public service employee or former public service employee or suspending a public service employee, a chief executive must comply with this Act, any relevant directive of the commission chief executive, and the principles of natural justice.
- (2) However, natural justice is not required if the suspension is on normal remuneration.”

- 1. MUST - Adhere to the Act (Public Service Act 2008, PSA)**
- 2. MUST - Adhere to the relevant directive of the commission (Public Service Commission, PSC)**
- 3. MUST - Principles of Natural Justice**

In her decision that you can download paragraph [33] it states that “to the extent the applicant bases this application on denial of natural justice, he cannot succeed, as s.190(2) of the PSA (Public Service Act 2008) specifically excluded the principles of natural justice from the respondent's decision to suspend the applicant from duty on full pay”.

So she is highlighting what I referred to in Podcast 2 as the removal of Natural Justice from the process, which Mr. Marsden and the Qld Government Executive did.

Ok also from her decision document paragraph [10] explains the operation of s.190 under which I was suspended and the enactment of clause (2).

Now the three (3) things that s.190 directs them they MUST observe, not if, maybe of if they feel like it – that they MUST observe these are:

1. MUST adhere to the Act – the PSA 2008
2. MUST adhere to the relevant directive of the commission (Public Service Commission [PSC]) which are Guidelines; and
3. MUST adhere to the principles of Natural Justice.

So these are the three things – Now - take one (1) away that being Principles of Natural Justice as Mullin's, Marsden and the Executive claim they can because the legislation states this and you are still left with two (2) things – the Act and the Guidelines that they MUST adhere to!

Lets look at those

[8] Section 189 of the PSA deals with suspension of the employee liable to discipline:

- “(1) The chief executive may suspend a public service employee from duty if the chief executive reasonably believes the employee is liable to discipline under a disciplinary law.
- (2) However, before suspending the employee, the chief executive must consider all alternative duties that may be available for the employee to perform.
- (3) The chief executive may cancel the suspension at any time.”

1. **MUST** consider all alternative duties

Again this is from Justice Mullin’s document paragraph [8] which explains the operation of s.189 - the suspension; which they **MUST** follow.

The main point is that they **MUST** consider **ALL** Alternative duties to which I could be assigned – that’s what the Act states so it’s a Statutory Obligation upon the chief executive who was Mr. Marsden

For the record I previously worked from home for two months when my Wife damaged her knee – and there were other facilities where Mr. Wootton won’t go – like the Radio and Electronics QPS section at Alderley, Public Works in Caboolture {which I was discussing with Cameron Allen} and even RES in Cairns, Townsville or Mackay.

That’s what the Act say’s now let’s look at the guidelines.

Commission Chief Executive Guideline 01/17: Discipline

11.8. Suspension under section 189 of the PSA

- (a) The PSA allows a chief executive to suspend an employee (with or without remuneration) if it is reasonably believed the employee is liable to discipline⁹ (i.e. there is information that indicates a ground for discipline may exist – see s187). The requirement for the decision maker to consider all alternative duties that may be available is an absolute obligation under the PSA (s189(2)) and must occur before any suspension, not as an afterthought; suspension should be the last option. In reaching a decision to suspend an employee in the context of a disciplinary process, a record should be kept of the alternative duties considered and the reasons they were deemed unworkable.

The requirement is an **ABSOLUTE OBLIGATION**

MUST occur before any suspension – not as an afterthought

- 1) A record should be kept of what was considered; and
- 2) A record should be kept of why they were **DEEMED** unworkable

Here are the guidelines – in the top right hand corner PSC – Public Service Commission – Commission Chief Executive Guideline 01/17: Discipline

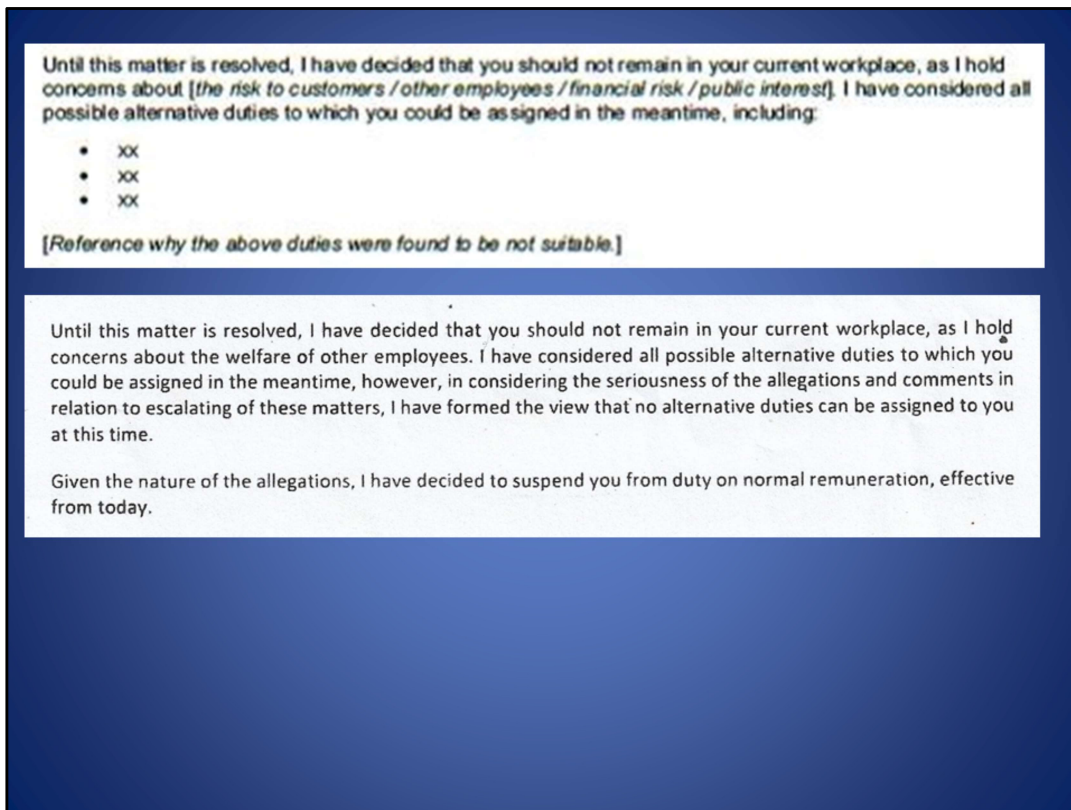
One of the guidelines and directives s.190 speaks of that they **MUST** observe

Not only is it expressed as an **ABSOLUTE OBLIGATION** that **MUST** occur **BEFORE** any suspension but they **MUST** have:

- 1) A record should be kept of what was considered; and
- 2) A record should be kept of why they were **DEEMED** unworkable

I had direction hearings in the Supreme Court trying to obtain this information and was informed by the respondents legal team that a) I don't need it because it's not relevant; and b) It doesn't exist. Justice Mullin's took one of these hearings so she was well aware. However, I **DID** submit the proof of their refusal and admission and I also pointed to Mr. Marsden's affidavit where he admits a) offloading this statutory obligation to Cameron Allen and Ms. Patane and admits that no records were kept of anything because it wasn't required!

I'm not the only one who has an issue with this - a Queensland Education Principal on the South Side of Brisbane was suspended and they didn't consider her alternative duties correctly either – so I'm sure her legal team will be interested in this decision!



The top picture is a snip from the Pro Forma document 5 at the back of the Guidelines – you notice the point forms! Three of them

What the Pro Forma is – is a document that Government workers can copy and paste into their document when they're writing the suspension notice.

It states – I have considered all possible alternative duties to which you could be assigned in the meantime, including: point form 1 through 3” then the brackets state - Reference why the above duties were found to be unsuitable.

Now the bottom picture is the same paragraph from my suspension letter – it states – “Untill this matter is resolved, I have decided that you should not remain in your current workplace, as I hold concerns about the welfare of other employees {No evidence has ever been produced for anyone having an issue other than Mr. Wootton and Ms. Patane}. I have considered all possible alternative duties to which you could be assigned in the meantime {No - he offloaded that to Cameron Allen and Ms. Patane}. However, in considering the seriousness of the allegations {My use of a metaphor} and the comments in relation to escalating of these matters {the Royal Authorities bit}, I have formed the view that no alternative duties can be assigned to you at this time.”

That’s it no point forms, no explanation before, during or after and the Court knows this and I’ve stated it in every hearing including the Trial in front of the Courier Mail and Reutuers (Nicholas) so make your mind up?

[42] The respondent was not bound to comply in all respects with the Guideline. The respondent was bound to comply with s 189 of the PSA. I am not satisfied that the applicant has shown that there was a failure to comply with the procedures required by law to be observed in relation to making the suspension decision that is amenable to review.



So this is what “Justice” Mullins says about the whole thing at paragraph [42] – “The respondent was NOT bound to comply in all respects with the guideline {Yes he was – I just justified that}, The respondent WAS bound to comply with s.189 of the PSA {He didn’t – I just demonstrated that as well}. I am NOT satisfied that the applicant {me – Mr Dorante-Day} has shown that there was a failure to comply with the procedures {Even though it was all submitted and mentioned in the Trial} required by Law to be observed in relation to the making of the suspension decision” – Wow!!

So according to Justice Mullin’s the Government aren’t forced to comply with the Law’s they expect the Public to adhere too!!

There is now no Law and Order – they did that not me – according to Dorante-Day v Marsden [2019] QSC 125 paragraph [42] – you don’t have to abide by law because the Government don’t!

That’s one of seven points I have so we are off to this building the Federal Court in Brisbane

Thak you for listening