



## Notable case

**Discipline—open to the decision-maker to make a post-employment disciplinary declaration**

**Conflict of Interest—employee sought to influence recruitment process**

Date of decision: 14 June 2019

### Overview

This case is concerning a disciplinary declaration appeal regarding a decision to make a post-employment disciplinary declaration against the employee under section 188A of the *Public Service Act 2008* (“the PSA”).

#### Timeline of events:

- The employee commenced employment in July. The employee had not worked in the public service before.
- By October of the same year, the employee was involved in a recruitment process in the employee’s capacity as a business services manager.
- The recruitment process led to the adult child of the employee and the children of other senior staff being appointed to the roles.
- In January of the following year, the employee was advised they were under investigation, which was undertaken by a third-party investigator.
- In February of the following year, allegations were put to the employee regarding their involvement in the recruitment process, including:
  - engaging in improper process and/or failing to comply with department policies and procedures in relation to end to end recruitment, selection and onboarding for the position that was advertised in October
  - failing to declare and/or inappropriately manage an actual and/or perceived conflict of interest in relation the end-to-end recruitment, selection, onboarding and subsequent employment conditions relevant to particular applicants
  - inappropriately falsifying panel members signatures on the selection report and/or knowingly submitting the report despite it not being approved and personally signed by all required panel members.
- The employee provided a response, and in March of that year the allegations were substantiated against the employee and the following disciplinary action proposed:
  - Termination, or
  - Reduction in remuneration (from the .4 paypoint level to the .1 paypoint level) and training in departmental policies and procedures



- In May that year, the employee resigned from their employment.
- In June that year, a disciplinary declaration was issued which stated that, had the appellant remained a public service employee and not resigned, the disciplinary action that would have been taken was termination of employment.

## Decision

The Queensland Industrial Relations Commission Commissioner (the QIRC Commissioner) dismissed the appeal.

The reasons for the decision included that:

- The Commissioner considered that although there was limited *direct evidence* that the appellant sought to influence the recruitment process from the outset and advantage their own adult child and other managers' children or relatives, there was sufficient *circumstantial evidence* from which the decision-maker could reasonably infer this fact. The employee:
  - nominated four people for the interview stage, including their own adult child and the children or relatives of managers in the employee's division, prior to any applications being received
  - did not disclose a conflict of interest as required by policies, guidelines and procedures
  - was heavily involved in devising selection criteria in the shortlisting brief which may have been incidentally favourable to their adult child's background
  - influenced the shortlisting and contacting of candidates in respect of attending assessment centres prior to the application closing date and, one day later, completing the recruitment process
  - influenced the overall scores of candidates
  - signed off the selection report on behalf of two panel members (unbeknownst to them).
- The Queensland Public Service *Code of Conduct* as well as the agency's *Conflict of Interest Procedure* and *Recruitment and Selection Guide* clearly set out employee obligations for recruitment and conflict of interest situations.
- Whilst the employee was a relatively new employee and may not have received comprehensive training in every respect, they were a manager in a position of seniority. In the Commissioner's view, the employee erred in ways that were at best naïve and, at worst, quite dubious and neglectful.
- The employee did not need to undertake a training module or have a wealth of public service experience to realise that the participation of their adult child in a recruitment process over which the employee had substantial responsibility and influence necessitated the disclosure of a conflict of interest. As a matter of common sense, such a disclosure would need to occur at the *start* of the process, not following the completion thereof.
- The employee held a position as a senior manager with the department. In circumstances where the department has determined that the employee's conduct departed from the expected behaviour of an employee in such a role, the Commissioner concluded that it was fair and reasonable to impose the disciplinary action in the form of the disciplinary declaration.

## Messages for managers

- An employee who is involved in or able to influence a recruitment and selection process should disclose to their supervisor a conflict of interest when a relative or close friend of the employee applies for the position.
- Depending on the seniority of the employee, knowing that you have to disclose a conflict of interest in such a situation is often a matter of common sense. It may not be necessary for the employer to demonstrate that the employee undertook a training module or had extensive public service experience.