



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Angela Jane Armstrong v Minister administering the State Service Act 2000/Department of Justice [2025] TASIC 12

PARTIES: Angela Jane Armstrong (Applicant)

Minister administering the State Service Act 2000/Department of Justice (Respondent)

SUBJECT: *Industrial Relations Act 1984*, s 29(1A) application for hearing of an industrial dispute

FILE NO: T15203 of 2025

HEARING DATE(S): 3 and 4 July 2025

HEARING LOCATION: Launceston Supreme Court

DATE REASONS ISSUED: 22 August 2025

COMMISSIONER: Deputy President Ellis

CATCHWORDS: Termination of employment – legal practitioner – valid reason found – breach of code of conduct – application dismissed.

REPRESENTATION:

Nicole Winton for the Respondent

Angela Armstrong, Applicant

PARAGRAPH 170 OF THIS DECISION HAS BEEN CORRECTED BY ORDER OF DEPUTY PRESIDENT ELLIS ISSUED ON 24 OCTOBER 2025, [2025] TASIC28.

ANGELA JANE ARMSTRONG v MINISTER ADMINISTERING THE STATE SERVICE ACT 2000-DEPARTMENT OF JUSTICE

REASONS FOR DECISION

22 AUGUST 2025

[1] The Applicant was employed as a Legal Practitioner with Tasmania Legal Aid Legal Help Program. Within the first three months of her employment, a range of allegations were raised by the Respondent. In essence, they related to her alleged conduct of contacting a client of Child Safety Services, advocating for children who are in foster care, not declaring a conflict of interest for her advocacy work and breaching a Lawful and Reasonable Direction (LRD) by contacting a witness to her alleged conduct in the Employment Direction 5 (ED5) investigation.¹

[2] Despite being in her probationary period, an ED5 investigation of the Applicant was undertaken. The Secretary's Determination found breaches of the State Service Code of Conduct, and as a result the Applicant's employment was terminated.²

[3] The Respondent submits there are multiple valid reasons for the termination of the Applicant's employment, it was not otherwise unfair, and that reinstatement (although not sought) is impracticable.³

[4] The Respondent submits the application should be dismissed.⁴

[5] It is the Respondent's case that any one or more of the following allegations are true and constitute a valid reason for termination:

- a. On or about 10 October 2023 Ms Armstrong contacted [Person 1] via phone and identified herself as a Tasmania Legal Aid employee, and she implied she was acting in the course of her employment when she was not.
- b. By identifying herself as a Tasmania Legal Aid employee, Ms Armstrong used her position inappropriately to attempt to gain a benefit for [Person 2].
- c. Ms Armstrong failed to disclose a conflict of interest when resuming her 'advocacy' for [Person 2].
- d. An email sent by Ms Armstrong to Ms Katryn Brown on 15 February 2024:

¹ The names of some persons have been omitted for reasons of privacy.

² On 14 March 2025, the Applicant lodged with the Tasmanian Industrial Commission (the Commission) an application under s29(1A) of the *Industrial Relations Act 1984* (Tas).

³ Respondent's Outline of Submissions dated 3 June 2025.

⁴ Ibid, p9.

- i. was a contravention of a lawful and reasonable direction issued to Ms Armstrong on 3 January 2024 by Ms Kristy Bourne, in her capacity as Acting Secretary Department of Justice, when notifying Ms Armstrong of a Code of Conduct investigation.
- ii. was inappropriate and/or threatening;
- iii. constituted intimidation of witnesses, with the potential to interfere in the Code of Conduct investigation.”⁵

[6] The Applicant conceded she may have breached the Respondent’s conflict of interest (COI) policy and breached the LRD by sending the email to Ms Brown.⁶ She acknowledged the process of investigation and determination were procedurally fair, however noted the evidence for the valid reason was flawed to determine the outcome.

[7] The Applicant is seeking a finding that her termination of employment was unfair and compensation for the harm caused be ordered. She has not sought reinstatement due to the alleged hostile work environment.⁷

Background

[8] On 11 July 2023, the Respondent appointed the Applicant to a level 1 Legal Practitioner within Tasmania Legal Aid (Legal Aid) Legal Help Program, which was then known as the Advice and Legal Services Team.⁸ The Applicant’s primary duty was to provide legal information and advice to members of the public, including information and advice in relation to Child Safety and Child Protection matters.⁹

[9] On 14 July 2023, the Applicant executed a declaration of conflict of interest form¹⁰ after her onboarding training, declaring that she was a casual senior policy writer for the Council of Small Business. That is the only conflict of interest the Applicant declared during her onboarding with the Respondent.¹¹

[10] Within the first few months of her employment, the Applicant encouraged Person 2, to attend a clinic with Legal Aid to determine whether a previous grant of Legal Aid could be transferred to Tasmania Legal Aid. The grant related to Person 2’s desire to adopt Person 1’s children (the children), who Person 2 had previously fostered.

[11] On or around 10 October 2023 (date is contested), the Applicant made a phone call to Person 1, whose children are in the legal custody of the State. The State had removed Person 1’s children from their previous foster care placement with Person 2.

[12] During the phone call, the Applicant allegedly represented to Person 1 that she was a Legal Aid lawyer who wanted to meet with her regarding the children’s new care arrangement and the possibility of the children returning to the care of Person 2.

⁵ Ibid p3 – 4.

⁶ Exhibit R2, p467 and p479.

⁷ Exhibit A1, p10.

⁸ Exhibit R5, p2.

⁹ P100 Transcript.

¹⁰ Exhibit R2, p294.

¹¹ Exhibit R5, p2.

Person 1 alleged that the female caller proposed to meet at Banjo's on Launceston Show Day.

[13] On 10 October 2023, Person 1 contacted Annique Rattray, Practice Leader, Child Safety Service North, Department for Education, Children and Young People (DECYP) for advice about the phone call and proposed meeting. Ms Rattray did not answer Person 1's call.¹²

[14] On 11 October 2023, Person 1 called Ms Rattray again and they spoke about the phone call from the Legal Aid lawyer. Ms Rattray advised Person 1 not to attend the meeting. Ms Rattray made a file note following the phone call. The file note recorded that Person 1 was certain that the caller was a lawyer from Legal Aid.¹³

[15] On 11 October 2023, Ms Rattray then contacted Katryn Brown of the Child Safety Legal Group within the Office of the Director of Public Prosecutions (ODPP), who was the primary legal practitioner in Launceston and who has also previously had carriage of a file pertaining to Person 1's children.¹⁴

[16] Ms Brown then emailed Sally Hunt, Manager, Family Practice North at Legal Aid to understand why a Legal Aid lawyer was arranging a meeting with Person 1 in a public shopping centre on a public holiday.¹⁵ Ms Hunt had carriage of Person 2's Legal Aid file which related to Person 2's hopes to adopt Person 1's children.¹⁶

[17] After receiving the email from Ms Brown, Ms Hunt escalated the matter to Sally Campbell, who was the then Associate Director of Legal Aid's civil law practice. Ms Campbell, in turn, informed then Acting Director of Legal Aid, Vanessa Fenton.¹⁷

[18] Ms Campbell informed Ms Fenton that a Legal Aid staff member had allegedly contacted a witness in a Child Protection matter. Ms Campbell advised Ms Fenton that she was attempting to confirm the identity of the staff member.¹⁸

[19] On 11 October 2023, Person 1 provided Ms Rattray with screenshots of text messages to confirm the meeting arranged during the phone call of 10 October 2023.¹⁹ Those screenshots were then provided to Ms Brown who emailed the screenshots to Ms Hunt. Ms Hunt forwarded the screenshots to Anne-Marie Kerr, Manager of Legal Help Program at Legal Aid, who identified the phone number as belonging to the Applicant.²⁰

[20] Ms Fenton contacted the Applicant on the evening of 11 October 2023 and advised the Applicant not to meet with Person 1.²¹

¹² Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p2.

¹³ Exhibit R1, attachment C.

¹⁴ Ibid.

¹⁵ Exhibit R3, attachment H.

¹⁶ Respondent's Outline of Submissions dated 3 June 2025, p3.

¹⁷ Exhibit R7, p2.

¹⁸ Ibid.

¹⁹ P105 Transcript.

²⁰ Exhibit R5, attachment E.

²¹ Exhibit R7, p2.

[21] On 13 October 2023, a meeting was held between the Applicant, Ms Fenton, Ms Kerr and Sarah Ellis, Workplace Relations, Department of Justice (DOJ) to discuss the incident and the alleged failure by the Applicant to recognise or declare a conflict of interest between her private advocacy for Person 2 and her professional position within Legal Aid.²²

[22] After the meeting, an immediate management decision was made to stop the Applicant from providing legal information and advice relating to Child Safety. At this time the Applicant was three months into her probationary period.²³

[23] On 23 October 2023, statements were sought from Ms Rattray and Person 1 which were provided on 25 October 2023 and 11 November 2023, along with Ms Rattray's file notes made on the day of her initial conversation with Person 1.²⁴

[24] On 8 November 2023, Legal Aid wrote to Person 2 to advise that a conflict of interest had arisen and that Legal Aid could no longer continue to act on behalf of Person 2 in her matter.²⁵

[25] On 8 November 2023, Kirsten Wylie, Director of Legal Aid, wrote to the Applicant about the allegations raised by the phone call with Person 1 and the contemporaneous statement of Ms Rattray.²⁶

[26] On 9 November 2023, the Applicant responded to Ms Wylie's letter. The Applicant denied the allegations raised by the phone call with Person 1 and the contemporaneous statement of Ms Rattray.²⁷

[27] On 5 December 2023, Ms Wylie wrote to the Applicant to advise that the matters arising during her probationary employment had been referred to the Secretary of the Department of Justice for consideration.²⁸

[28] On 3 January 2024, Kirsty Bourne, then Acting Secretary Department of Justice, wrote to the Applicant advising that she had reasonable grounds to believe that the Applicant had breached the State Service Code of Conduct. The letter advised the Applicant that in accordance with ED5 an investigation of six allegations would be carried out by Paula Sutherland & Associates.²⁹

[29] The Applicant was suspended from duty on full pay from 3 January 2024.³⁰ An LRD was issued to the Applicant, directing her not to discuss the investigation with anyone, except her support people and to avoid prejudicing the investigation by not communicating with other employees or non-employees named as witnesses or who may have knowledge of the allegations.³¹

²² Ibid, p3.

²³ Respondent's Outline of Submissions dated 3 June 2025, p7.

²⁴ Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p3.

²⁵ Exhibit R7, p2.

²⁶ Exhibit R2, p10

²⁷ Exhibit R2, p14.

²⁸ Exhibit R2, p17.

²⁹ Exhibit R2, p19.

³⁰ Ibid.

³¹ Ibid.

[30] On 15 February 2024, the Applicant sent an email to Ms Brown.³² Ms Brown was a witness in the ED5 investigation. In the email, the Applicant asserted that she possessed grounds for defamation stemming from allegations that Ms Hunt purportedly informed a lawyer named Ms Rebecca Brown that the Applicant had been terminated.³³

[31] On 3 April 2024, Ms Ginna Webster, then Secretary of the Department of Justice, wrote to the Applicant to advise there were reasonable grounds to believe that the Applicant had further breached the Code of Conduct due to concerns of potential witness intimidation, and that she had failed to comply with the LRD by contacting witnesses. The letter detailed that the scope of the ED5 investigation had been expanded to incorporate these new allegations.³⁴

[32] The ED5 investigation report was submitted on 19 July 2024.³⁵ A copy of the report was provided to the Applicant on 24 July 2024, and she was given an opportunity to respond to the report, which she did on 26 July 2024.³⁶

[33] On 19 September 2024, the Applicant wrote to Ms Bourne seeking to be returned to the workplace.³⁷ On 1 October 2024, Ms Bourne wrote to the Applicant advising that her suspension was due to the nature and seriousness of the allegations against her, which involved false representations and failure to identify and manage a conflict of interest. At that stage, there had been no change regarding the basis for the suspension, so it remained Ms Bourne's decision not to lift the suspension at that time.³⁸

[34] On 18 November 2024, the Applicant lodged a general protection application under section 372 of the *Fair Work Act 2009* alleging she had been exonerated of the fabricated allegations against her and that the length of her suspension and investigation was unreasonable and affecting her mental health.³⁹ On 2 December 2024, the Respondent objected to the application on the basis of jurisdiction, in particular, that the Fair Work Commission does not have jurisdiction to hear matters relating to Tasmanian State Service employment.⁴⁰

[35] On 5 December 2024, the Applicant provided a medical certificate from George Town Medical Centre citing impacted mental health due to circumstances at work. This was accompanied by an email from the Applicant stating it was the length of time it was taking for the determination that was affecting her mental health and that she did not wish for this to continue into the New Year.⁴¹

³² Exhibit R2, p25.

³³ Ibid.

³⁴ Exhibit R2, p31.

³⁵ Exhibit R2, p36.

³⁶ Exhibit R2, p472.

³⁷ Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p5.

³⁸ Ibid, p5.

³⁹ Ibid, p5.

⁴⁰ Ibid, p5.

⁴¹ Ibid, p5.

[36] On 17 December 2024, Ms Bourne wrote to the Applicant to advise that she had determined that four of the seven allegations were substantiated and that the proposed sanction was termination of employment.⁴²

[37] On 17 December 2024, Ms Ellis contacted the Applicant to advise the determination had been made. Ms Ellis gave the Applicant the option for the determination to be emailed immediately or to meet with Ms Wylie in person the next day. The Applicant elected to meet with Ms Wylie on 18 December 2024.⁴³

[38] On 18 December 2024, Ms Wylie tested positive for COVID-19 and was unable to attend the meeting. Ms Ellis immediately contacted the Applicant to reschedule for a week's time. The Applicant elected to have the determination emailed to her.⁴⁴

[39] On 7 January 2025, the Applicant provided her response to the proposed sanction of termination of employment.⁴⁵ The Applicant denied she had identified herself as a Legal Aid employee or that she was acting in her capacity as a Legal Aid employee.⁴⁶ She further denied she was acting as Person 2's lawyer for Person 2's benefit.⁴⁷

[40] On 3 March 2025, Ms Bourne made her final determination and advised that the sanction to be imposed would be termination of employment.⁴⁸ Ms Ellis then contacted the Applicant, offering to either send the final determination via email or arrange a meeting the following Wednesday so that the Applicant could receive it in person.⁴⁹

[41] On Wednesday 12 March 2025, Ms Ellis and Mr Sean Barry, Assistant Director, CBOS, met with the Applicant, accompanied by her teenage son, and issued the final determination.⁵⁰ The Applicant received payment of two weeks in lieu of notice from 12 March 2025.⁵¹

⁴² Exhibit R2, p484.

⁴³ Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p6.

⁴⁴ Ibid, p6.

⁴⁵ Exhibit R2, p496.

⁴⁶ Ibid, p497.

⁴⁷ Ibid.

⁴⁸ Exhibit R2, p652.

⁴⁹ Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p6.

⁵⁰ Ibid, p6.

⁵¹ Ibid, p6.

The Law

[42] The parties are not in dispute about the statutory framework which applies in this case. Section 30 of the *Industrial Relations Act 1984* (the Act) relates to the criteria to be applied in relation to this dispute. It provides:

“30. Criteria applying to disputes relating to termination of employment

(1) In this section –

continuing employment means employment that is of a continuing or indefinite nature or for which there is no expressed or implied end date to the contract of employment;

employee means a person who is or was engaged to work casual employment, part-time employment, full-time employment or probationary employment and includes a former employee;

relationship status means the status of being, or having been, in a personal relationship, within the meaning of the Relationships Act 2003.

(2) In considering an application in respect of termination of employment, the Commission must ensure that fair consideration is accorded to both the employer and employee concerned and that all of the circumstances of the case are fully taken into account.

(3) The employment of an employee who has a reasonable expectation of continuing employment must not be terminated unless there is a valid reason for the termination connected with –

(a) the capacity, performance or conduct of the employee; or

(b) the operational requirements of the employer's business.

(4) Without limitation, the following are not valid reasons for termination of employment:

(a) membership of a trade union or participation, or involvement, in trade union activities;

(b) seeking office as, acting as, or having acted as, a representative of employees;

(c) non-membership of a trade union;

(d) race, colour, gender, sexual preference, age, physical or intellectual disability, marital status, relationship status, family responsibilities, pregnancy, religion, political opinion, national

extraction or social origin, except where the inherent nature of the work precludes employment for any of those reasons;

(e) absence from work during maternity or parental leave;

(f) temporary absence from work because of illness or injury, provided that nothing in this paragraph is to be construed as removing an employer's right to terminate an employee's employment on account of persistent or unjustified absenteeism;

(g) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities.

(5) Where an employer terminates an employee's employment, the onus of proving the existence of a valid reason for the termination rests with the employer.

(6) Where an applicant alleges that his or her employment has been unfairly terminated, the onus of proving that the termination was unfair rests with the applicant.

(7) The employment of an employee must not be terminated for reasons related to the employee's conduct, capacity or performance unless he or she is informed of those reasons and given an opportunity to respond to them, unless in all the circumstances the employer cannot reasonably be expected to provide such an opportunity.

(8) An employee responding to an employer under subsection (7) is to be offered the opportunity to be assisted by another person of the employee's choice.

(9) The principal remedy in a dispute in which the Commission finds that an employee's employment has been unfairly terminated is an order for reinstatement of the employee to the job he or she held immediately before the termination of employment or, if the Commission is of the opinion that it is appropriate in all the circumstances of the case, an order for re-employment of the employee to that job.

(10) The Commission may order compensation, instead of reinstatement or re-employment, to be paid to an employee who the Commission finds to have been unfairly dismissed only if, in the Commission's opinion, reinstatement or re-employment is impracticable.

(11) In determining the amount of compensation under subsection (10), the Commission must have regard to all the circumstances of the case, including the following:

(a) the length of the employee's service with the employer;

(b) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated;

(c) any other matter the Commission considers relevant.

(12) Where the Commission finds that an employee's employment has been unfairly terminated and has determined that reinstatement or re-employment is impracticable, any amount of compensation must not exceed an amount equivalent to 6 months' ordinary pay for that employee.

(13) The Commission is to take into account any efforts of the employee to mitigate the loss suffered as a result of the termination of his or her employment."

[45] The Respondent submitted the Applicant's employment was terminated in accordance with s 44(3)(a) of the *State Service Act 2000*. Section 44 relevantly provides:

"Termination of employment of officers and employees

- (1) The Minister may at any time, by notice in writing, terminate the employment of a permanent employee.
- (2) The notice is to specify the ground or grounds that are relied on for the termination.
- (3) The following are the only grounds for termination:
 - (a) that the permanent employee is found under section 10 to have breached the Code of Conduct;
 - (b) that the Head of Agency has requested the Minister under section 47(11) to terminate the employment of the permanent employee;..."

[46] Section 10 of the *State Service Act 2000* relevantly provides the possible sanctions where a breach of the Code has been found. It states:

"Breaches of Code of Conduct

- (1) The Minister may impose one or more of the following sanctions on an employee who is found, under procedures established under subsection (3), to have breached the Code of Conduct:
 - (a) counselling;
 - (b) a reprimand;

...

(g) termination of employment in accordance with section 44 or 45.

(2) The Employer is to establish procedures for the investigation and determination of whether an employee has breached the Code of Conduct..."⁵²

WAS THERE A VALID REASON FOR TERMINATION OF THE APPLICANT'S EMPLOYMENT?

[47] The Respondent relies on the findings of a breach of the Code of Conduct as a valid reason for termination of employment. However, the Applicant disputes the findings in allegation one, two and four (partially).

[48] The evidence before me includes witness statements, documents and oral evidence given by witnesses at the hearing. I have taken into consideration the totality of that evidence in this decision. The Commission must make a finding as to whether the conduct of the Applicant occurred based on the evidence before it.⁵³

[49] A reason for the termination of an employee's employment must be "sound, defensible or well founded" to be valid.⁵⁴ "[T]he reason for termination must be defensible or justifiable on an objective analysis of the relevant facts".⁵⁵

Allegation 1

*It is alleged by the Respondent "that on or about 10 October 2023, Ms Armstrong contacted Person 1 via phone and identified herself as a Tasmania Legal Aid employee, and she implied she was acting in the course of her employment when she was not".*⁵⁶

When was the telephone call made from the Applicant to Person 1?

[50] The date of the telephone call is contested by the parties. The Applicant gave evidence she telephoned Person 1 on the afternoon of her day off, Wednesday, 11 October 2023, the day before Launceston Show Day.⁵⁷

[51] The Respondent submits the call was made on Tuesday, 10 October 2023. The evidence from Ms Rattray is that Person 1 contacted her on the afternoon of Tuesday, 10 October 2023 and Ms Rattray then returned Person 1's call around midday on Wednesday, 11 October 2023. Ms Rattray recorded this in her contemporaneous file note.⁵⁸

⁵² *State Service Act 2000* (Tas) s10.

⁵³ *King v Freshmore (Vic) Pty Ltd*, AIRCFB, Print S4213, at [24].

⁵⁴ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 at 373.

⁵⁵ *Rode v Burwood Mitsubishi*, AIRCFB, Print R4471, at [19].

⁵⁶ Respondent's response to Application signed by Elise McCarthy, date 28 March 2025, p7.

⁵⁷ Exhibit A1, p2.

⁵⁸ Exhibit R1, Attachment C.

[52] Screenshots of a 4:30 pm text message from the Applicant to Person 1, were requested by Ms Rattray from Person 1 at 4:19pm on Wednesday, 11 October 2023. The time on the screenshot indicates it was taken at 1:38pm. If that screenshot was taken at 1:38pm on Wednesday, 11 October 2023 then it had to have been taken prior to the time the Applicant alleges she made the call.⁵⁹

[53] The initial evidence from Person 1 was that the call from the Applicant was on Wednesday 11 October 2023 around 3:30 pm.⁶⁰ In cross examination, Person 1 agreed she made a call to Ms Rattray on the Tuesday, 10 October, after she received the call from the Applicant on that day.⁶¹

[54] Person 1 gave evidence she sent the screenshots of the text messages to Ms Rattray on Wednesday, 11 October 2023.⁶² The text sent by the Applicant was headed “yesterday, 3:35pm”⁶³ being Tuesday. Person 1 gave evidence that she took the screenshot at 1:38pm on Wednesday, 11 October 2023.⁶⁴

[55] As a witness for the Respondent, Ms Rattray’s evidence explained how the Child Safety database works and stated the record entries are made as soon as possible and within 24 hours.⁶⁵ Ms Rattray’s report was entered on Wednesday, 11 October 2023 at 4:50pm.⁶⁶ I am satisfied the witness evidence sufficiently corroborates the Respondent’s evidence.

[56] Ms Brown stated she had been employed at the ODPP since 2012. Her evidence corroborates the dates and follow up actions, as she was called around lunchtime on Wednesday, 11 October 2023 by Ms Rattray, seeking advice.

[57] Ms Kerr’s evidence was that the Applicant worked half a day on Tuesday and full days Thursday and Friday with some extra shifts worked at times.⁶⁷ The result being the Applicant was not possibly at work on either Tuesday or Wednesday afternoon.

[58] Evidence from Ms Fenton further substantiated the date of the phone call. Ms Fenton received a call on Wednesday, 11 October 2023 from Sarah Campbell, informing her of a situation involving a staff member allegedly contacting a witness in a child protection matter.

[59] An email sent to Ms Hunt from Ms Brown seeking identification of the caller, was sent on Wednesday, 11 October at 12:54pm.⁶⁸ Ms Fenton then contacted the Human Resources team for guidance at 5:15 pm.⁶⁹ Ms Fenton then emailed the Applicant on Thursday, 12 October 2023, to confirm a meeting with the Applicant to discuss the complaint from Person 1 and the possible conflict of interest.

⁵⁹ Exhibit R6.

⁶⁰ P78 Transcript.

⁶¹ Ibid, P92.

⁶² Ibid, P94.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ P104-105 Transcript.

⁶⁶ Exhibit R1, attachment C.

⁶⁷ P162 Transcript.

⁶⁸ Exhibit R7, Attachment B

⁶⁹ Ibid, p2

[60] I am satisfied that these actions all occurred before the time the Applicant alleges she made the telephone call to Person 1. The evidence indicates the telephone call by the Applicant to Person 1 was made on the afternoon of Tuesday, 10 October 2023, in conflict with the Applicant's sworn evidence.

Was she acting as a Legal Aid Lawyer in the course of her employment?

[61] The Applicant stated that she did not represent herself to Person 1 as a Legal Aid lawyer, nor did she imply she was acting in the course of her employment, or that she was advocating for Person 2.

[62] When the Applicant wrote to the Respondent in response⁷⁰ to the Investigator's Report she stated that she:

- obtained Person 1's telephone number from her niece, who was concerned for the welfare of the children and not from Legal Aid resources;
- had no idea Person 1 was a current client of Legal Aid; and
- did not access any file pertaining to Person 2.

[63] However, she conceded she "may have mentioned that she was a lawyer however not a TLA⁷¹ employee" on the phone to Person 1.⁷²

[64] Her evidence was consistent, stating she said she was a lawyer to Person 1 as a trust building exercise but not stating she was working for Legal Aid. Under cross examination:

"Now, your statement makes no reference to you referring to yourself as a lawyer, although, you repeatedly and contemporaneously stated that you may have. Is that correct? So, you may – you maybe said you were a lawyer? I can take you through the documents, if you like, starting on – ?.....Yeah, I maybe said I was a lawyer but not a Legal Aid lawyer, and I've always maintained that if I did say I was a lawyer, that was just – I'd never met [REDACTED] [Person 1] that was just to instil, you know, trust and confidence.

So, you reiterate your prior statements that if you – you maybe did refer to yourself as a lawyer, you did so as a trust building exercise?.....Correct.

But you're not sure if you referred to yourself as a lawyer?.....No.

Than how can you be sure that you never referred to TLA?.....Because I wouldn't do that."⁷³

[65] During their meeting on 13 October 2023, the Applicant's manager, Ms Fenton, expressed concerns about the Applicant stating she was a lawyer as a 'trust building exercise'. During examination in chief Ms Fenton expanded:

⁷⁰ Exhibit 2, p475.

⁷¹ The acronym "TLA" is used during the hearing by the parties and witnesses to refer Tasmania Legal Aid.

⁷² Applicant's submission in response to Respondent's submissions dated 10 June 2025.

⁷³ Transcript P41

“And in paragraph 20 of your statement, you state that Ms Armstrong denied representing herself as a TLA lawyer but admitted she may have said she was a lawyer as a trust-building exercise, and you expressed concern about that.

.....

I guess, they didn't really have an option not to meet with you. That it held a lot of importance around it because it was a lawyer that was contacting you.”⁷⁴

[66] The Applicant's evidence is that she asked Person 2 to secure Person 1's telephone number from a family member and to ensure she was comfortable with the Applicant making contact. The Applicant maintains she contacted Person 1 on her day off, Wednesday, 11 October 2023.⁷⁵

[67] The Applicant's evidence in her interview with the ED5 investigator was that she introduced herself to Person 1 as “fellow foster carer who had met her children”⁷⁶ who was concerned about the welfare of Person 1's children, in their current foster care.⁷⁷ The Applicant told the ED5 investigator that “I didn't represent myself as Person 2's solicitor and the premise was to go and have a coffee at Banjo's and take the children if they were available to the show as my treat after that coffee meeting.”⁷⁸

[68] In her response to the Respondent's submissions, the Applicant confirms she made the call to Person 1 on Wednesday 11 October 2023, but that it was Person 1's who suggested to meet at Banjos.⁷⁹

[69] The Applicant's evidence was initially that Person 1 proposed a face-to-face meeting at Banjo's, however conceded in cross examination, that she told the ED5 investigator she had proposed to the meeting at Banjo's, Meadow Mews.⁸⁰

[70] It was the Applicant's evidence that Person 1 indicated she did not like Person 2 so the Applicant stated she dropped the proposition that Person 2 would attend the proposed meeting. However, the Applicant's follow-up text message indicated that both her and Person 2 would be present at Banjos.⁸¹

[71] In her examination in chief, Person 1 gave evidence that the Applicant said she was a lawyer for Legal Aid.⁸² Person 1 corroborated the facts that she had received the text messages from the Applicant about the meeting at Banjo's and that Person 2 would also be there and that maybe they could go to the show together.⁸³

⁷⁴ Transcript P169

⁷⁵ Exhibit A1, p2.

⁷⁶ Exhibit R2, p436.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Applicant's submission in response to Respondent's submissions dated 10 June 2025, p1.

⁸⁰ Exhibit A1, p3 and Exhibit R2, p452.

⁸¹ Exhibit A1, p4.

⁸² Transcript, P80.

⁸³ Ibid, 84.

[72] Person 1 gave the following evidence:

“What’s an affidavit?.....It’s a file that you put through court to get custody of the kids, to put through Family Court, that’s what you was gonna do.

Okay. So, you’re saying under oath, that I said – ?.....Yep.
– that I had an application and an affidavit – ?.....Yes.
– that I wanted you to sign?.....Yes.”⁸⁴

[73] In cross examination Person 1 reiterated her evidence:

“MS WINTON: (Resuming) Would you have agreed to attend the meeting if the lady hadn’t said she was a lawyer from Legal Aid?.....No.

Did she tell you she was from Legal Aid when introducing herself?.....Yes.

Did she tell you she worked at Legal Aid in this town, in Launceston?.....Yes.

And you thought she was Person 2’s lawyer?.....Yes.”⁸⁵

[74] The Applicant alleged that the evidence provided by Person 1 was questionable due to her inconsistencies, a conflation of perceived, imagined and factual challenges and her recount was chronologically inconsistent.

[75] Having considered all the evidence, I am satisfied the Applicant did say she was a lawyer as she wanted to meet with Person 1. Based on the evidence, it is clear to me that the Applicant was aware Person 1 was vulnerable and subject to court proceedings relating to the custody of her children.

[76] I have formed the view that the Applicant appeared to be very keen to meet with Person 1 and used her title as lawyer, to establish the authority and trustworthiness. I have reached the conclusion that, whilst Person 1 has no reason to lie, it is understandable she made the assumption that the Applicant was from Legal Aid, due to her significant dealings with Child Safety Services and the Legal Aid system.

[77] Therefore, on the evidence, I conclude Person 1 was convinced the phone call from the Applicant was a Legal Aid lawyer contacting her about the custody of her children. Person 1 gave evidence that this was the only reason she agreed to meet with the Applicant. Person 1 admitted she did not like Person 2 or want to meet with her.⁸⁶

[78] The fact Person 1 immediately rang Ms Rattray to seek advice, confirms she believed it was more than a social chat with a stranger.⁸⁷ The potential discussion

⁸⁴ Ibid, P86.

⁸⁵ Ibid, P90.

⁸⁶ Ibid, p88 and p89.

⁸⁷ Ibid, p90.

about the condition of her children and their status appeared to rightly cause fear for Person 1. This is to be expected and, in my view, resulted in Person 1 concluding the Applicant was from Legal Aid and was acting in the course of her employment.

[79] I am not convinced, through the evidence, that the Applicant used words to describe herself as being from Legal Aid and acting in the course of her employment. Rather, I am satisfied as she was acting as a child advocate for her fellow foster carer, Person 2, and as such demonstrating a clear failure to recognise the conflict of interest and error of professional judgement.

[80] The Applicant was aware Person 2 had a file with a case manager at Legal Aid for legal guidance and has consistently stated she was not acting as Person 2's lawyer. She has consistently stated she did not say she was a Legal Aid lawyer. I am satisfied the Applicant stated she was a lawyer, however I am not satisfied she identified herself as a Legal Aid lawyer. In my view, Person 1 has made this assumed connection. I am also not satisfied that the Applicant implied to Person 1 that she was acting in the course of her employment.

[81] I find the request to meet with Person 1 was a serious lapse in professional judgement and a conflict of interest with her role at Legal Aid.

[82] Despite concluding the Applicant did not purport to be a Legal Aid lawyer and was therefore, not acting in the course of her employment, I find her conduct to be inappropriate and a serious lapse of professional judgement due to her lack of recognition of the conflict and therefore, undeclared conflict of interest with her role as a Legal Aid lawyer. Full disclosure should have been provided.

Allegation 2

By identifying herself as a Tasmania Legal Aid employee, Ms Armstrong used her position inappropriately to attempt to gain a benefit for Person 2.

[83] In the telephone call to Person 1, the Applicant's evidence was she intended Person 2 to attend the meeting with Person 1 so that she could see the children, but Person 1 reacted badly to the mention of Person 2 being present. The Applicant's evidence was she stated she was unaware there was so much animosity between them when she made the call to Person 1.

[84] Despite that assumption, the Applicant presented evidence that she followed up her call with a text message that stated:

"Hi [Person 1]. [Person 1] and I will be at Banjos a bit early. Are [Person 1] and [Person 1] going to the show? Maybe we could all go? Shoe (sic) bags and rides. I am sure they would love it! My treat. Ange."⁸⁸

[85] Person 2 provided positive character references for the Applicant and stated the Applicant "never claimed to be my lawyer, nor has she offered legal counsel."⁸⁹

⁸⁸ Exhibit A1, p4.

⁸⁹ Exhibit A3

[86] In cross examination, Person 2 stated she was not going to attend the meeting at Banjos and she said:

“WITNESS: I only knew that Ange had suggested that they all go to the Show, just do that Ange could see the kids were okay. Sorry, it’s the truth.

MS WINTON: (Resuming) So, that’s all you knew, that it – ?.....Yeah, I didn’t know that I was meant to be going. I had no idea.

You had no idea that you were meant to be going?.....Nope.”⁹⁰

[87] Person 2 provided evidence that the Applicant had previously accompanied her to court, assisted her with dealings with Department agencies, filling out forms and corresponding on her behalf.⁹¹ Person 2 noted that whilst the Applicant had accompanied her, the Applicant did not act for her.

[88] The Respondent has adduced evidence of times when the Applicant referred to herself as Person 2’s lawyer and in an email, dated 12 January 2023 to Clare Wiseman Acting Director, Services for Children and Families, Department for Education, Children and Young People.⁹² The Applicant wrote:

“As her legal adviser, I request evidence to substantiate the claims.”⁹³

[89] During cross examination, the Applicant further provided a response:
“And you were using your status as a lawyer to advance your advocacy?.....Well, I’m a lawyer. I’m a trained lawyer – admitted lawyer.”⁹⁴

[90] The Applicant was drawn on her ability to practice without a current practising certificate. However, the Applicant, when pressed continued to state she was qualified and admitted to the bar, but not practising.⁹⁵ The Applicant agreed she included in her email footer the titles of solicitor and barrister admitted to the Supreme Court to give her greater veracity⁹⁶.

[91] The Applicant conceded she had a deeming practising certificate under the *Legal Profession Act 2007* only whilst she worked for Legal Aid, which only covered her for the purposes of her employment. She agreed she was not covered to use the title “legal practitioner” in her email footer and for private use. Under cross examination, the Applicant was pressed on her use of professional title in her email signature:

“Where in your signature you use your professional title, even though it was from your Gmail?.....Well, I am a legal practitioner.

⁹⁰ P136 Transcript.

⁹¹ Ibid, P137-138.

⁹² Exhibit R2, P588.

⁹³ Ibid.

⁹⁴ Transcript, P15.

⁹⁵ Ibid, P19.

⁹⁶ Ibid, P20.

Only for the purposes of your employment though, aren't you, when you hold it – I'll step back a moment. Whilst you worked at Tasmania Legal Aid, you had a deemed practising certificate under the Legal Profession Act, did you not?.....Yes.

And that only covered you for the purposes of your employment, is that not correct?.....I guess so.

Well, you should – you didn't know, Ms Armstrong – ?.....Well, I mean – I – I mean – we interchange lawyer and legal practitioner all the time. I mean, I don't know what you explain – how you explain to people what you do for a living, but – or what you're qualified to do, but – sorry, what was the question?

The question is – is you're using your position, legal practitioner, which you have the ability to call yourself at your legal practitioner for the purposes of your employment under the State Service Act with the TLA, but in this capacity, this email that you're sending to her, that's not in the course of your employment. Correct?.....Correct.”⁹⁷

[92] Ms Brown's evidence was that the Applicant was potentially acting as a legal practitioner for Person 2, without authority to practice. Emails tendered indicate the Applicant repeatedly requested assistance from Child Safety Services to Ms Brown, signing the emails as “Angela Armstrong BAs (Public Relations and Psychology) LLB Grad Dip Legal Practice”.⁹⁸

[93] The Applicant provided evidence of her submission to the Children's Commissioners inquiry into the then current Out-of-Home-Care Team-Based Model. In that submission she described her capacity as “Emergency, Respite and Full time Foster Carer, Solicitor and Barrister admitted to Practice in the Supreme Court of Tasmania and the Federal Court of Australia and Independent Foster Child and Carer Advocate”.⁹⁹

[94] Further, evidence adduced by the Respondent demonstrates the Applicant's email signature footer stated she was a lawyer, advocate, foster care and mother.¹⁰⁰

[95] The Respondent alleged she was using her title as a legal practitioner only by virtue of her deemed practising certificate through her employment at Legal Aid. Further, the Applicant agreed her signature footer stated she was a lawyer, advocate, foster care and mother. The Respondent submitted this confirms the Applicant was unable to separate these roles resulting in the conflict.

[96] The Respondent adduced evidence of an email trail sent from the Applicant's Legal Aid email address to Person 2 during her employment. The emails related to recommendations arising from the Inquiry into State Government Responses to Child Sexual Abuse in Institutional Settings as well as information about the Tasmanian Civil and Administrative Tribunal (TASCAT) having a review jurisdiction for departmental

⁹⁷ Ibid, P28.

⁹⁸ Exhibit R3, annexure C.

⁹⁹ Exhibit R2, P594

¹⁰⁰ Exhibit R3, annexure G.

decisions.¹⁰¹ The Applicant wrote: “We can apply to have the Department’s decision reviewed”. The Applicant gave evidence insisting she was not acting as Person 2’s lawyer, rather the email was just sent from her Legal Aid email address, to notify Person 2 of this possible review.¹⁰²

[97] Under cross examination, Person 2 stated:

“MS WINTON: I – I simply seek confirmation that Ms Armstrong wrote to say, “I’m going to ring TASCAT now,” at a time when she was clearly at work.

WITNESS: I do remember talking to Ange about this, and I do remember that she was on a break when she contacted TASCAT.”¹⁰³

[98] The evidence demonstrated to me that the Applicant, while at work, wrote to Person 2 from her Legal Aid email, brought Person 2 to Legal Aid to become a client and advised her of a legal right to a review.

[99] It was not contested that the Applicant had been the person who suggested to Person 2 to attend the Legal Aid clinic to see if her grant of legal aid for custody of the children with Rae and Partners was still valid. The Applicant agreed she attended the clinic with Person 2 and Peter Briffa, and a litigation file was opened by her then colleague, Ms Hunt.¹⁰⁴

[100] The Applicant gave evidence that at the time, she was unsure about the status of Person 2’s file at Legal Aid but was aware her file had been closed following the incident in October.¹⁰⁵

[101] Witness for the Applicant, Maria Menichelli, worked for Child Protection for 35 years and met the Applicant through out of home care only a few times. Ms Menichelli provided frank, passionate and believable evidence. Ms Menichelli’s evidence was that she had never heard the Applicant claiming to be Person 2’s lawyer. She spoke highly of the Applicant’s advocacy work.¹⁰⁶

[102] As a witness for the Applicant, Person 2 gave evidence that the Applicant had not represented her:

“MS ARMSTRONG: (Resuming) Did I ever tell you that I was your lawyer?.....No, quite the opposite. Um, you – you never – you always said that – especially after getting your job, that you could never represent me or pretend to be in any way, shape or form. It could risk your career, so.

¹⁰¹ Exhibit R3, annexure G.

¹⁰² Transcript, P26.

¹⁰³ P129 Ibid

¹⁰⁴ Ibid, P25.

¹⁰⁵ Ibid, P46.

¹⁰⁶ Transcript, P65-66.

Do you believe I ever claimed to act for you?.....No way. No. Only ever as a fellow foster carer for the children and that was it. Never as a lawyer capacity.”¹⁰⁷

[103] Person 2 confirmed that she stated in the investigation interview, that the Applicant helped her with emails and correspondence with the Department, whenever she had time after the Applicant’s employment commenced at Legal Aid.

[104] Person 2 gave evidence to not implicate that the Applicant had ever acted as her lawyer. However, Person 2 gave evidence that agreed she wrote an email to the Applicant’s Legal Aid work email address saying she was “an amazing lawyer” and agreed the Applicant continued to advocate for her after she started work at Legal Aid.¹⁰⁸

[105] Further evidence established the fact that the Applicant continued her advocacy for Person 2 during her employment at Legal Aid. The evidence from Ms Brown was she received an email¹⁰⁹ from the Applicant on 27 September 2023, whilst the Applicant was employed at Legal Aid. This email was sent only three weeks prior to making the call to Person 1, where clearly the Applicant continued to advocate to have the decision to remove the children from Person 2 reviewed. The email trail corroborates Person 2 had sent an email to the Applicant’s work email at Legal Aid.

[106] In cross examination, Ms Brown conceded the Applicant was careful to not describe herself as a lawyer and stated:

“MS ARMSTRONG: (Resuming) Okay. Have you ever personally witnessed me misrepresent myself as a – [REDACTED] [Person 2] lawyer?.....Um, you – I think you have been very careful not to represent yourself as acting as a lawyer. But I certainly think that a lot of your actions are consistent with what you might think a lawyer’s role would be. But no, you have been very careful not to describe yourself as a lawyer.

Have I described myself more as an advocate then in your opinion?.....Yes, you use the word advocate.”¹¹⁰

[107] The Applicant unequivocally refuted she contacted Person 1 in any other capacity than as an independent, concerned former foster carer, child advocate and mother. It had nothing to do with her employment and was not in connection with her employment at Legal Aid and she was not acting in the course of her employment. She stated she did not disclose she was a Legal Aid legal practitioner and therefore did not use her position as a Legal Aid lawyer, to mislead Person 1, nor attempt to gain a benefit for Person 2.¹¹¹

[108] Having considered all materials and the evidence, I conclude that the Applicant continued to advocate for Person 2 during her employment, using the work equipment

¹⁰⁷ Ibid, P122.

¹⁰⁸ Ibid, P135-138.

¹⁰⁹ Exhibit R3, Annexure G.

¹¹⁰ Transcript, P150.

¹¹¹ Exhibit R2, P477-478.

for email formulation, using her title as legal practitioner conditional to her employment and deemed practising certification and to contact TASCAT, directly in relation to Person 2's case review.

[109] It was the Applicant who facilitated Person 2 to meet with Legal Aid to seek case management. Despite clearly knowing there was an open Legal Aid file for Person 2, the Applicant still arranged to meet with Person 1. From my review of the evidence, I have concluded that the Applicant wanted to meet with the biological mother of the children, to advance Person 2's efforts to have the former foster children returned to Person 2.

[110] It is noted that the Applicant was careful not to represent herself as acting as Person 2's lawyer. However, I am satisfied there are blurred lines with the careful delineation to 'acting under instruction' for Person 2. It is my finding, the Applicant leveraged her position as a lawyer for her advocacy, as evidenced in emails sent to Ms Brown.

[111] I am satisfied the purpose of attempting to meet with Person 1 was to gain a benefit for both the Applicant to check on the welfare of the children and for Person 2 to be present, regardless of Person 2's evidence that she did not know about the meeting.

[112] I have found that the Applicant did not represent herself as a Legal Aid lawyer, but I have found she did represent herself as a lawyer to Person 1. The allegation as stated is not found.

[113] Despite this, I am satisfied that her conduct blurred the lines between purporting to be acting for Person 2 and strongly advocating for Person 2 and the children. The evidence indicates aspects of this advocacy was done while at work, using the Applicant's work email and during the period of employment without any declaration of the clear conflict.

[114] I find that the Applicant did use her position inappropriately to advocate for Person 2 and to gain a benefit in the terms of pursuing the adoption of Person 2's previous foster children through a variety of opportunities, while working at Legal Aid.

Allegation 3

Ms Armstrong failed to disclose a conflict of interest when resuming her 'advocacy' for Person 2.

[115] In her response to the Secretary's proposed determination, the Applicant conceded she should have declared a conflict of interest as it related to her role as a State appointed foster carer and her advocacy work on behalf of children in State Care and those that care for them. She conceded that she may have breached s 9(8) of the State Service Code of Conduct and should have declared a conflict of interest:

“...as it relates to my dealings with Child and Family Service, and my voluntary/unpaid advocacy work on behalf of children in the State’s care and those that care for them.”¹¹²

[116] However, in her application, the Applicant stated, “The finding of the COI is testament to how flawed the System has been over decades.”¹¹³

[117] The Applicant’s evidence is that her failure to declare the conflict of interest was due to her not fully understanding and recognising the conflict of interest and the “limited onboarding training”.¹¹⁴ Under cross examination her evidence was that she had been taken through the Respondent’s conflict of interest policy by Ms Kerr as part of onboarding and had been taught legal professional responsibility at law school, in which conflict of interest was part of the course.¹¹⁵ Ms Kerr’s evidence corroborated this action occurred.¹¹⁶

[118] The Applicant did however disclose her conflict of interest as a casual senior policy writer for Council of Small Business Organisations Australia (COSBOA), in the Declaration of Conflict of Interest form, dated 14 July 2023.¹¹⁷ The form was countersigned by her Output Manager, Kristen Wylie.

[119] I found the Applicant’s evidence evasive around the conflict of interest in her advocacy work. The statements made to ED5 Investigator, Manfred Ewikowski were that she had stopped advocacy work early 2023.

[120] “Have I drafted letters? Absolutely. But I hadn’t drafted anything after, anything after Legal Aid. I’d downed tools. I had completely downed tools”.¹¹⁸

[121] Conflicting evidence was adduced by the Respondent and given by the Applicant under cross examination.

“All right. Now, your LinkedIn states that you were an independent foster child and foster care advocate from July 2022 to March 2025. Correct?.....Correct.

So, that would be the whole of the time you worked at Tasmania Legal Aid?.....I’ve always advocated for children since 2018, so – those dates are –

You’ve always done so, including during your time at TLA?.....For children, that I’m aware of, absolutely.”¹¹⁹

[122] Her evidence at the hearing contradicted this position, where she stated:

¹¹² Exhibit R2, P501.

¹¹³ Letter to Tasmanian Industrial Commission attached to Application dated 13 March 2025.

¹¹⁴ Exhibit R2, P502.

¹¹⁵ P23 Transcript.

¹¹⁶ Exhibit R5.

¹¹⁷ Exhibit R7, annexure F.

¹¹⁸ Exhibit R2, P444.

¹¹⁹ P11 Transcript.

“But that can’t be true because in September of 2023, you were continuing those tools, you – ?.....Only after I was made aware that the children were suffering in their new placement.”¹²⁰

[123] The Applicant was aware Person 2 was a client of Legal Aid when she privately raised her own concerns with counsel for Child Safety Services and included her colleagues on email correspondence, but did not recognise any conflict of interest.

[124] Her evidence in response to the issues raised about the conflict of interest at the meeting with Ms Fenton on 13 October 2023, was that she accepted there may have been a conflict of interest when it was brought to her attention. This was outlined in the meeting notes which she attested to signing and her response to a question about why she did not disclose her advocacy activities was:

- “Stated it was something she did in her own time and didn’t see her role at TLA had anything to do with it.
- Further stated she didn’t see there would be a crossover.
- Hadn’t been active in the advocacy space since March 2023 so it didn’t cross her mind to disclose anything when taken through the COI declaration form
- Advised she did disclose advocacy at interview”¹²¹

[125] Further to this response when asked if she “still doesn’t see a conflict of interest”¹²² the notes state that the Applicant’s response was:

“Advised does now but emphasised she does not have carriage of matter. But can see why it could be perceived as a conflict.”¹²³

[126] The Applicant conceded she had researched how to legally get the children returned to Person 2 in June and queried whether that was advocacy. It was also conceded she sent an email to Ms Brown advocating for Person 2 for a review right to TASCAT in September, during her period of employment with Legal Aid.

[127] There was an immediate management decision to remove the Applicant from giving advice on any Child Safety matters following the meeting on 13 October 2023, due to the potential conflict of interest with her advocacy.

[128] Ms Brown provided evidence that she considered a junior lawyer would be able to recognise the basic conflict of interest principles arising in this matter.¹²⁴

¹²⁰ P51 Transcript.

¹²¹ Exhibit R7, annexure D, P36.

¹²² Ibid, P37.

¹²³ Ibid.

¹²⁴ P144 Transcript.

[129] The Applicant applied for a fixed term administration role with Director of Public Prosecutions. When Ms Brown was contacted regarding the Applicant's application for the position, she recognised the conflict of interest and stated the Applicant could not be employed as she was advocating against Child Safety Services. The Applicant had not recognised the conflict of interest and emailed Ms Brown on 14 April 2023 stating:

"Dear Katryn,
I have just had a job offer at the DPP retracted because of a conflict of interest. Can you confirm that is my advocacy work for children in care and asking questions of your client is at the root of this?
If so this is profoundly unjust and unethical....."¹²⁵

[130] In her closing arguments, the Applicant stated the allegation of a conflict of interest for her advocacy and her role as a Legal Aid lawyer was incorrect. She stated:

"According to the Department of Justice:

A conflict of interest arises when private interests improperly influence or appear to influence an employee's duties.

There is no evidence of improper influence. I did not benefit personally. I did not act in breach of my duties. On the contrary, my actions were consistent with the mandatory obligations imposed on all State service employees particular to the duty to protect the safety and welfare of children in State care. Instead of acknowledging that duty, the respondent has misinterpreted it as misconduct.

Instead of valuing that responsibility, it has treated it as a liability and in doing so it has acted in a way that is fundamentally at odds with the values Tasmanian Legal Aid claim to uphold."¹²⁶

[131] This summary highlights the inability of the Applicant to accept she was required to manage the conflict between her advocacy for children and her employment. There is a fundamental duty to manage conflict of interest, enshrined in the State Service Code of Conduct.

[132] I am satisfied there has been a breach of s 9(8) of the State Service Code of Conduct, which states:

An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.¹²⁷

[133] I find this lack of understanding and recognition of managing conflicts of interest to be concerning in all aspects. The evidence has provided many examples of the Applicant being completely unaware of her conflict of interest with her child advocacy

¹²⁵ Exhibit R3, annexure E.

¹²⁶ Transcript, P178.

¹²⁷ *State Service Act 2000* (Tas) s9.

and working in an environment with access to files, including the file relating to management of her as an advocate against the same Department.

[134] In my view the Applicant has refused to accept accountability for a breach of the conflict on interest duty whilst continuing to advocate for Person 2 and foster children throughout her employment period.

Allegation 4

An email sent by Ms Armstrong to Ms Katryn Brown on 15 February 2024:

- i. was a contravention of a lawful and reasonable direction issued to Ms Armstrong on 3 January 2024 by Ms Kristy Bourne, in her capacity as Acting Secretary Department of Justice, when notifying Ms Armstrong of a Code of Conduct investigation.*
- ii. was inappropriate and/or threatening;*
- iii. constituted intimidation of witnesses, with the potential to interfere in the Code of Conduct investigation.*

[135] The Lawful and Reasonable Direction issued on 3 January 2024 by Ms Bourne, directed the Applicant to not discuss the investigation with anyone, except her support people, and to avoid prejudicing the investigation by not communicating with other employees or non- employees named as witnesses or who may have knowledge of the allegations.¹²⁸ It was specified which approved individuals were available for contact, and Ms Brown was not listed.

[136] The Applicant has conceded that by sending an email to Ms Brown on 15 February 2024, she breached the Lawful and Reasonable Direction but denies it was threatening.¹²⁹

[137] In her response to the proposed determination, the Applicant wrote to Ms Bourne and stated:

“I concede also that in contacting Ms Brown (A colleague with whom I had been corresponding with for some time prior to my TLA appointment), I failed to comply with a standing order to not contact anyone outside those privy to the investigation, and I was in breach of section 9(6) of the State Service Code of Conduct.”¹³⁰

[138] The Applicant further stated the email was not an attempt to intimidate Ms Brown as a potential witness, nor interfere with the investigation. She did concede she may have used assertive frankness which may have been interpreted as aggression. Her evidence was that it did not occur to her that Ms Brown was a witness when she sent her the email.¹³¹

¹²⁸ Exhibit R2, P19.

¹²⁹ Ibid, P476.

¹³⁰ Ibid, P501-502.

¹³¹ Ibid, P465.

[139] Ms Brown's evidence was that she received an email from the Applicant at 10:23 pm on 15 February 2024, which alleged false allegations had been made against the Applicant and she raised a potential defamation claim against DOJ and DECYP. She sent a copy of this email to Ms Kerr for her reference.

[140] The Applicant's email stated:

"Dear Ms Brown

The false allegations made out about me by your client the Department of Education Children and Young people need to be addressed.

I have grounds for defamation against your client and as it has transpired today the Department of Justice for mismanagement of this matter

Your [sic] faithfully

Angela Armstrong BA LLB GDLP MScFMH".¹³²

[141] While no evidence was led at the hearing, Ms Brown reported to the investigator¹³³ that receipt of the email made her think very hard, but while she was not actually intimidated, Ms Brown believed the email sent by the Applicant on 15 February 2024 was intended to intimidate her.¹³⁴

[142] I am satisfied the email sent on 15 February 2024 did breach the Lawful and Reasonable Direction to not contact other employees or non-employees named as witnesses or who may have knowledge of the allegations.

[143] I find the nature of the content of the email inappropriate and could be perceived as bullying, intimidatory and threatening. This is corroborated by the evidence of the recipient, Ms Brown.

Consideration on Valid Reason

[147] To determine if there was a valid reason for termination of employment, the onus of proof rests with the Respondent.¹³⁵ Valid reasoning pertains to whether there was a sound, defensible and well-founded reason for the dismissal, in the context of the employee's capacity or conduct.¹³⁶

[148] The reasons for the termination of employment must be valid, not just in the subject matter, but in soundness, defensibility and based on a proper foundation.

[149] The civil standard of proof, which is the balance of probabilities, applies, as do the principles in *Briginshaw v Briginshaw*.¹³⁷ The Commission must reach a comfortable level of satisfaction in finding the matters proved on the balance of

¹³² Exhibit R3, annexure I.

¹³³ Exhibit R3, annexure K.

¹³⁴ Ibid.

¹³⁵ Section 30(5) of the *Industrial Relations Act 1984* states the onus is on the employer to prove a valid reason for the termination. This context should be applied to the relationship between an employer and employee where both parties have rights, responsibilities and duties conferred and imposed on them.

¹³⁶ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.

¹³⁷ (1938) 60 CLR 336.

probabilities consistent with the seriousness of the allegations and reflecting the serious consequences of any finding.

[150] I am not bound by the reasons given by the employer. Rather, I must determine afresh whether there was a valid reason for dismissal based on all the evidence before me in accordance with s30(2) of the Act.

[151] Relying on the principles outlined in *Walton v Mermaid Dry Cleaners Pty Ltd*,¹³⁸ my role is not to stand in the shoes of the employer who made this decision, rather the role of the Commission is "...to assess whether the employer has a valid reason connected with the employee's capacity or conduct".¹³⁹

[152] I have taken into account all the circumstances of the case and have considered the evidence, the authorities and materials provided by the parties, as well as the context of the conduct and applied a commonsense approach to my determination.

[153] The Applicant states there is a lack of credible evidence to justify her termination, and she does not consider any of the statements of any interviewees participating in the investigation to be "factual evidence".¹⁴⁰

[154] She contests the evidence relied on to substantiate the alleged breaches which she states misinterprets the intent and substance of the single private telephone call between Person 1 and herself.

[155] In cross examination the Applicant conceded her probationary period could have been concluded.

"So, instead of firing you on the grounds of probationary employment, the employer decided to give you a procedurally fair process, which took quite some time. Correct?.....I don't know why they made that decision when it was within their rights to terminate me. I don't know why they chose the ED5." ¹⁴¹

[156] The Applicant concurred that a valid reason needed to be "sound, defensible or well founded"¹⁴² and not capricious and fanciful which she alleges applies in this case.

[157] The Applicant submitted that a medical certificate confirmed the impact on her mental health, due to the length of the process and nature of the allegations, which impaired her professional judgment.

[158] The Applicant further alleges the poor management of her suspension has resulted in damage to her professional and personal reputation resulting in her inability to secure an interview for a suitable legal role in Tasmania.¹⁴³

¹³⁸ (1996) 142 ALR 681.

¹³⁹ Ibid [685].

¹⁴⁰ Exhibit R2, P473.

¹⁴¹ P55 Transcript.

¹⁴² Exhibit A1, P3.

¹⁴³ Applicant's letter to Commission dated 13 March 2025, accompanying the Application.

[159] It was submitted her professional performance reviews at Tasmanian Legal Aid were unproblematic with no disciplinary matters afoot.¹⁴⁴ This was supported by her Manager, Ms Kerr and her evidence stated there were no performance issues raised, she carried out her duties diligently and no client complaints were received.¹⁴⁵

[160] The Applicant stated her application is:

“...not being made on grounds of procedural fairness as is provided in the legislation. I concede that due process was followed in that I was given every opportunity to participate in the investigation process, to respond to the findings, and to Acting Secretary Bourne’s proposed determination.”¹⁴⁶

[161] The Applicant is seeking a remedy providing compensation due to the impact on her mental health, and harm done to her professional reputation resulting in an inability to secure an interview for a legal role in Tasmania.

[162] The valid reason for termination of the employment was based on the findings of breaches of the Code of Conduct. As such, the Respondent submitted that reinstatement is impracticable, and the employment relationship has irretrievably broken down.

[163] The Respondent submits the payment of 15 months’ salary whilst suspended on pay during the investigation process, is ample compensation and the decision to perform an investigation rather than terminate the Applicant’s employment during her probation period was fair.

[164] Susan Johnson, Acting Manager Recruitment and Staffing Services, Department of Justice gave evidence that the Applicant had submitted at least 14 applications and was successful for one position. Ms Johnson provided a summary of reasons why the Applicant was not shortlisted as specified in the selection reports.¹⁴⁷

[165] I concur with the Respondent’s submission that the investigation process has not influenced the Applicant’s lack of ability to find other legal positions, but rather it is her limited experience of nine months practice since admission three years and three months ago that had been a contributing factor.

Conclusion

[166] I find that Allegations 3 and 4 are proven. I am satisfied the conduct of the Applicant in Allegations 1 and 2, while not proven based on the wording of the allegations, demonstrates unacceptable conduct and demonstrates a significant error of professional judgement resulting in a blurring of professional employment and voluntary advocacy roles.

[167] The breach of conflict of interest policy alone is, in my view, conduct that gives rise to a valid reason for termination of employment. The alleged conduct of one

¹⁴⁴ Exhibit A1, P8.

¹⁴⁵ P163 Transcript.

¹⁴⁶ Angela Armstrong Witness Statement, dated 13 May 2025.

¹⁴⁷ Exhibit R4, P156 Transcript.

telephone call, as outlined by the Applicant, is not the sole reason for the valid reason. When combined with the breach of conflict of interest, use of workplace resources for personal advocacy, as well as and the breach of the LRD whilst using intimidating language results in a sound, defensible and well-founded reason for termination of employment.

[168] I find the conduct of the Applicant forms a valid reason for termination of employment. While I acknowledge her conduct resulted out of passionate advocacy, the employment relationship was untenable with the lack of acknowledgement and no declaration of this clear conflict of interest. Evidence from the fact, that the conflict arose within three months of employment during her probationary period.

[169] The Applicant conceded the process was procedurally fair, and I concur with this position. The material was reviewed afresh and independently to the investigation process.

[170] In accordance with s 21(2)(c)(iv) of the Act, I dismiss the application.

