



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Timothy Stuart Lovell v Minister administering the State Service Act 2000
- Department of Justice [2026] TASICFB 1

PARTIES:

Timothy Stuart Lovell (Appellant)

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

SUBJECT: Appeal pursuant to s 70(1) against a decision of President Barclay in
matter T15185 of 2024

FILE NO: T15229 of 2025

HEARING LOCATION: Hobart

DATE REASONS ISSUED: 11 September 2026

COMMISSIONERS: Ellis AP
Lee C
Cirkovic C

CATCHWORDS: Appeal against exercise of discretion and dismissal of application –
– procedural fairness – equity and good conscience – opportunity to be heard - no
appealable error found - appeal dismissed

REPRESENTATION:

Appellant: In person

Respondent: Nicole Winton for the Minister administering the State Service Act 2000
/ Department of Justice

**TIMOTHY STUART LOVELL v MINISTER ADMINISTERING THE STATE
SERVICE ACT 2000 - DEPARTMENT OF JUSTICE**

THE DECISION UNDER APPEAL

HOBART, 11 SEPTEMBER 2026

[1] Timothy Lovell (the Appellant) has lodged an appeal with the Tasmanian Industrial Commission (the Commission) pursuant to s 70(1) of the *Industrial Relations Act 1984* (Tas) (the Act) against a decision of President Barclay to dismiss his application under s 21(2)(c) of the Act. The application which the President dismissed was made pursuant to s 29(1A) of the Act for the hearing of an industrial dispute relating to termination of employment.

[2] President Barclay dismissed the application extempore on 11 June 2025 and published reasons for the decision on 24 June 2025.

[3] By Notice of Appeal lodged with Commission on 30 July 2025, the Appellant advanced his grounds of appeal which we summarise as follows:

- (1) A breach of procedural fairness by the Commission in its failure to ensure the Appellant was given reasonable opportunity to be heard contrary to s20(1)(c) of the Act. The Appellant alleged he did not receive a Notice of Listing for the Directions Hearing on 11 June 2025;
- (2) Failure by the Commission to act according to equity and good conscience by dismissing the application without verifying the Appellant's attendance, contravening s20(1)(a) of the Act; and
- (3) Miscarriage of Justice as a result of various alleged failures by the Department to address his concerns as to reasonable adjustments; communications and rectify procedural errors related to a workers compensation claim and the associated failure by the Commission to meaningfully address these same concerns.

BACKGROUND

[4] The Appellant was employed as an Audit and Compliance Officer with Consumer, Building & Occupational (CBOS). The Appellant had been absent from work since June 2020 on various forms of leave. The Applicant began providing regular medical certificates to his employer in May 2022 indicating that he was incapacitated.

[5] On 23 January 2023, the Secretary of the Department of Justice notified the Appellant that, in accordance with s48(3) of the State Service Act 2000 and clause 7.1 of Employment Direction No. 6, she had reasonable grounds to believe that the Appellant may be unable to efficiently and effectively perform his duties.

[6] The Appellant continued to supply medical certificates certifying his incapacity to work until February 2023. Thereafter the Appellant did not supply medical certificates however continued to not attend the workplace.

[7] On 27 November 2024, in accordance with clause 8 of Employment Direction No. 6 the Secretary determined that the Appellant was unable to efficiently and effectively perform his duties. The Appellant's employment was terminated, and the Appellant was paid 5 weeks salary in lieu of the notice required under Part 1 Clause 9 of the Tasmanian State Service

Award. At the time of his termination, the Appellant had been absent from the workplace since June 2020.

[8] On 10 December 2024, the Appellant lodged an application with the Commission, pursuant to s29(1A) of the Act in respect of an industrial dispute.

[9] On 23 January 2025, the matter was listed for conciliation. The Appellant contacted the Commission on 22 January 2025 requesting an adjournment whilst he sought legal advice. The matter was relisted on 5 February 2025.

[10] On 4 February 2025, the Appellant wrote to the Commission to formally request an adjournment of the conciliation on 5 February 2025 due to a serious deterioration in his mental health. At the same time, the Appellant notified the Commission of a scheduled GP appointment on 13 February 2025, where he would seek to provide a medical certificate.

[11] On 5 February 2025, President Barclay made the following directions:

“The Applicant is to provide a medical certificate to the Commission and the Respondent certifying that he was unfit to attend the Commission on 5 February 2025. If the incapacity is ongoing the certificate should indicate for how long or alternatively when the Applicant will be fit to attend the Commission.

Once the certificate has been received the matter will be relisted.”

[12] On 7 March 2025, the President’s Associate emailed the Appellant and requested an update, having received no correspondence since the email from the Appellant on 4 February 2025.

[13] On 10 March 2025, the Appellant wrote to the Commission but did not provide a medical certificate.

[14] On 11 March 2025, the President’s Associate wrote to the Appellant requesting a medical certificate be provided to the Commission. The Appellant did not reply.

[15] On 4 April 2025, the President’s Associate wrote again to the Appellant requesting a medical certificate be provided to the Commission. Once again, the Appellant did not reply.

[16] On 2 May 2025, the Commission relisted the matter for Directions Hearing to be held on 8 May 2025.

[17] On 5 and 6 May 2025, the Appellant wrote to the Commission with an explanation of his personal circumstances and attempts to gain a medical certificate from his GP. The Appellant did not provide a medical certificate. This contact from the Appellant was the first contact he had made with the Commission since 10 March 2025.

[18] On 7 May 2025, the Appellant’s request for an adjournment of the Directions Hearing to be held on 8 May 2025 was accepted by the Respondent. However, the Respondent requested that the matter be relisted so that the Appellant would be provided with timeframes to work towards. The Commission again adjourned the matter until 27 May 2025.

[19] On 15 May 2025, the Appellant provided a medical certificate for the period 06/05/2025 to 27/05/2025.

[20] On 26 May 2025, the Appellant emailed the Commission requesting a further adjournment of the matter until he could be seen by his GP. The Respondent requested to be heard on the matter at the Directions Hearing set for 27 May 2025.

[21] On 27 May 2025, President Barclay made the following directions:

- “1. That the matter is adjourned until 11.00 am on Tuesday, 3 June 2025. An amended notice of listing is attached
2. That if the Applicant serves another medical certificate, it is to:
 - a. identify the medical condition(s) from which the Applicant suffers;
 - b. why it is that those conditions prevent his attendance at the Commission to advance his case. That is, what is it about the proceedings which prevent the Applicant from advancing his matter; and
 - c. include an opinion as to when the Applicant will be able to attend to the matter before the Commission.”

[22] On 29 May 2025, the Appellant wrote to the Commission providing details of a recent appointment with his GP. No further medical certificate was provided.

[23] On 3 June 2025, a Directions Hearing was held at the Commission. The Appellant did not attend. As the Respondent’s representatives were present, President Barclay made a direction that the matter be adjourned to 9:30 am on Wednesday, 11 June 2025 and that a Notice of Listing be issued to the parties with a notation that the matter may be dismissed if the Appellant failed to attend.

[24] On 3 June 2025, the Commission wrote to the Appellant to advise that the matter was relisted at 9:30 am on Wednesday, 11 June 2025. The email stated that if the Appellant failed to attend the listing his application may be dismissed. The wording “may be dismissed” was in red and bold font. It was also suggested that if it is more convenient for the Appellant, he may attend by TEAMS or telephone. The email stated that the Appellant was to advise if he wishes to attend by TEAMS or telephone by 4:00 pm on Tuesday, 10 June 2025.

[25] On 5 June 2025, the Appellant sent an email to the Commission attaching a medical certificate for the period 28/05/2025 - 20/06/2025. The medical certificate did not include particulars as to why the Appellant’s conditions prevented his attendance at the Commission to advance his case nor any of the material required by the directions of 27 May 2025. It is apparent from later events that the President was not aware that email was sent until it was brought to his attention during the Directions Hearing on 11 June 2025.

[26] On 11 June 2025, a Directions Hearing was held at the Commission. The Appellant did not attend. At the commencement of the hearing, the Respondent made a short submission seeking to have the matter dismissed. The grounds for that application were because of the Appellant’s continued failure to attend Commission proceedings and the lack of prospects for the application succeeding. President Barclay then proceeded to make an extempore decision dismissing the application. Relevantly in that decision the President referred to the Appellant’s continual non-attendance at the Commission, that the merits of

claim "...are not strong" and unfairness to the Respondent as the reasons for the dismissal of the application.

[27] However, the President also referred to the Appellant's medical certificates having expired, that the Appellant had not made contact with the Commission and failed to serve any further medical certificates. The President concluded his decision thus:

"I also note that the applicant failed to contact the Commission with any explanation as to his failure to attend on the 3rd of June or today. In all the circumstances, I am satisfied that the matter should be dismissed, and I order pursuant to s21(2)(c)(v) that application T15185/2024 is dismissed. Thanks, I shall adjourn."

[28] The Respondent, immediately brought to the President's attention that a medical certificate had in fact been supplied by the Appellant to them and the President's Associate, Robin Boyd, on the 5th of June 2025. The President then indicated that his Associate had not been at work, seemingly to explain the President's failure to have been aware of the certificate having been provided on the 5th of June 2025.

[29] The President then proceeded to amend the extempore decision (the first decision) he had already given. In doing so he referred to the earlier Direction he had made as follows:

"That if the applicant serves another medical certificate, it is to: (a) identify the medical condition(s) from which the applicant suffers; (b) why it is that those conditions prevent his attendance at the Commission to advance his case."

[30] The President noted that none of the medical certificates provided by the Appellant satisfied that requirement. The President concluded the amendment to his earlier decision as follows:

"I am not presently satisfied that there is an ongoing medical condition which means that the Applicant is unable to attend the Commission either in person, by telephone or by other remote means. As a result, I am satisfied that the matter cannot be permitted to drag on with which appears to be endless provision of medical certificates merely certifying an unspecified medical condition.

It seems to me that if I were to adjourn the matter again and to make a fresh direction it will not be complied with. As a result, pursuant to s21(2)(c)(iv), I dismiss the application."

[31] We refer to this decision as the amended decision.

[32] On 18 June 2025, the Commission provided the Appellant with a copy of the transcript from the Directions Hearing held on 11 June 2025.

[33] Subsequent to the 11 June 2026 hearing, the President published his reasons for decision which we will refer to as the published decision. Somewhat confusingly that decision refers to the hearing dates as "on the papers" rather than the date the first decision and amended decision were actually made on, 11 June 2025.

[34] In the published decision, the President set out in some detail the background to the application and in particular the numerous listings made by the Commission and the

Appellants continual failure to attend the Commission to advance his case. The President then includes the part of the transcript from the hearing on 11 June 2025 which constituted his amended decision referring to it as “comments” he made at the hearing. The remainder of the decision refers to the lack of merit of the Appellant’s case given the lengthy absences from the workplace and the failure of the Appellant to provide a medical certificate addressing the matters in the May directions. In the published decision the President also refers to prejudice and unfairness to the Respondent as a result of the ongoing delays caused by the Appellants non-attendance at the Commission. The President does not include any reference to the first decision where he dismissed the application

[35] On 9 July 2025, the Appellant was provided with the formal decision of President Barclay in matter T15185 of 2024 Timothy Lovell v Minister administering the State Service Act 2000 / Department of Justice.

LEGISLATIVE FRAMEWORK

[36] Section 21(2)(c) of the Act is a discretionary provision exercised by President Barclay, requiring him to be satisfied that for any other reason the matter should be summarily dismissed.

[37] It states:

(2) Without prejudice to the generality of subsection (1), the Commission may, in relation to a matter before it –

...

(c) at any stage of those proceedings, dismiss a matter or a part of a matter, or refrain from further hearing, or determining, the matter or part if the Commission is satisfied –

....

(iv) that, for any other reason, the matter or part should be dismissed or the hearing of those proceedings should be discontinued, as the case may be;

[38] Section 70(1)(ba) of the Act provides:

70. Rights of appeal

(1) An appeal may be made to the Full Bench against –

...

(ba) a decision made by the Commission to dismiss, or refrain from further hearing, a matter, or part of a matter, under section 21(2)(c) by the party who applied for the hearing;

[39] The Respondent correctly submitted that the principles to be followed on this appeal are those enunciated in *House v The King* (1936) 55 CLR 499. Relevantly, Dixon, Evatt and McTiernann JJ stated at 504-505:

“The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges

composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance.”

[40] On the hearing of an appeal, a Full Bench may do one or more of the following:

- (a) confirm, revoke or vary the award or decision appealed against;
- (b) make an award or decision dealing with the subject-matter of the award or decision appealed against;
- (c) direct the Commissioner who made the award or the Commissioner or Registrar whose decision is appealed against, or another Commissioner, to take further action to deal with the subject-matter of the award or decision in accordance with the directions of the Full Bench.

CONSIDERATION

Ground 1 - Mistake of fact and denial of procedural fairness

[41] The Full Bench understand from the Appellant’s written submissions that he considers there was a denial of procedural fairness in the proceedings before President Barclay. The Appellant submits that he did not have the opportunity to be heard.

[42] Additionally, it is the Appellant’s contention that President Barclay did not consider the 5 June 2025 medical certificate, a plainly relevant document addressing his inability to attend the Commission and seeking a further adjournment.

“From the transcript, my 5 June medical certificate was raised only at the very end, after dismissal had been pronounced.”

[43] The Appellant is correct in identifying the President dismissed the application in the first decision despite not knowing a further medical certificate had been provided by the Appellant. As set out earlier, when that error was brought to his attention by the Respondent, the President amended his first decision to deal with the 5 June certificate. Revision of decisions, including extempore decisions, is permissible. So long as the substance is not altered, nor the orders which they sustain. This is so even if the revisions are extensive. This extends to errors of fact within the constraints mentioned.¹

[44] In this matter, we are satisfied that the correction of the error to take into account the 5 June medical certificate did not alter the substance of the reasons nor made any difference to the result on the critical issues. That is because it is clear from the President’s first decision

¹ Bar-Mordecai v Rotman & Ors [2003] NSWCA 53 at para 192 and 194.

that a central consideration was the Appellant's continued failure to attend any proceedings of the Commission. The 5 June medical certificate demonstrates that situation was to continue. Further the 5 June certificate did not meet the requirements set out by the President in his directions of 27 May 2025.

[45] We accept that the approach the President took to dismissing the application was somewhat confusing however we are not satisfied that there was any error in the approach taken to dismiss the application for the reasons given.

[46] The Appellant's submissions in the Appeal Notice stated he did not receive any Notice of the Directions Hearing on 11 June 2025. The Notice of Listing was sent to the Appellant's normal email address where he had received all other past correspondence from the Commission and from which he had forwarded correspondence to the Commission.

[47] The Appellant's submissions failed to address his non-attendance at the Directions Hearing on 11 June 2025. The Appellant was offered attendance by TEAMS or telephone. The Notice of Listing for 9:30 am on 11 June 2025 and covering email from the Commission dated 3 June 2025, clearly stated:

"Please note that if the Applicant fails to attend that listing his application may be dismissed."

[48] It is clear the Appellant had received numerous Notices of Listing to his email, he made five requests for adjournments and failed to attend two directions hearings. The Appellant acknowledged he had received the Directions issued by President Barclay and his latest email to the Commission from that email address was dated 5 June 2025.

[49] The Appellant sent an email to the Commission on 5 June 2025 with a photograph of a medical certificate dated 28 May 2025 from the same email address.

[50] The Full Bench is of the view that that the Appellant did in fact receive or at least had a reasonable opportunity to receive the 11 June 2025 Notice of Listing sent on 3 June 2025. That Notice of Listing outlined that his application may be dismissed if he did not attend the Directions Hearing on 11 June 2025.

[51] In our view, the Appellant was provided procedural fairness and a reasonable opportunity to be heard.

[52] This ground of appeal is not made out.

Ground 2 - Failure to act according to equity and good conscience

[53] The Appellant provided no explanation as to why he did not comply with the directions from President Barclay on 27 May 2025. The medical certificate dated 28 May 2025 sent to the Commission on 5 June 2025 did not identify his medical condition, nor why it prevented him from attending the Commission to advance his matter and inclusion of an opinion when he would be able to attend before the Commission. The Appellant's email dated 29 May 2025, provided a current update, apologised for the disruption and procedural delays and notified the Commission of a retroactive medical certificate.

[54] The medical certificate from Dr Mitchell² dated 28 May 2025 stated:

² Attachment 6, Respondent List of Documentary Evidence.

“This is to certify that I have seen and examined Mr Timothy Lovell, who I believe is unfit to attend the forthcoming industrial tribunal, on personal health grounds, from and including

28/05/2025 to 20/06/2025.”

[55] The Respondent submitted the Appellant failed to attend a single preliminary conference or directions hearing at the Commission over the course of seven months following filing of his application on 10 December 2024.³

[56] The Respondent stated the Appellant made five requests for an adjournment, failed to provide a compliant medical certificate and failed to attend the last two directions hearings without seeking an adjournment.⁴

[57] The Respondent submitted the President afforded the Appellant procedural fairness and acted in accordance with equity, good conscience and the merits of the case in accordance with s 20(1)(a) of the Act.

[58] In our view the Appellant was aware and given adequate prior warning of the necessity to progress the matter to hearing to finalise and settle the dispute. The Associate to President Barclay wrote to the parties on 26 May 2025 seeking consent to the proposed directions for the Appellant to provide a detailed medical certificate and to appear remotely. It stated:⁵

“The President notes that the matter cannot remain adjourned indefinitely and must be finalised. It is for that reason the medical certificate should contain that material required by the proposed direction.

The President notes that it will also be likely that regardless of the terms of the medical certificate (if served) there will need to be a mention of the matter (which can be remote, by phone or TEAMS is that is easier for the Applicant) on the next occasion to discuss how the matter can be brought to finalisation.”

[59] Despite the Appellant’s submission that “greater care should have been taken”, it is our view that fair opportunity was provided, and the proceedings were conducted in accordance with equity and good conscience pursuant to s 20(1)(a) of the Act.

[60] This ground of appeal is not made out.

Ground 3 - Failure to meaningfully address the merits of the termination of employment

[61] The final ground of appeal relies on the alleged failure of the Department to meaningfully address his concerns during the investigation pursuant to Employment Direction 6 and the Commissions alleged failure to deal with those same concerns.

[62] The Appellant indicated his mental health deteriorated and his condition worsened markedly after learning of the dismissal and reading the transcript. He disagreed with statements made on transcript of his ongoing capacity and inability to work in the future and noted if given the opportunity and reasonable support he would return to work as soon as practicable.

³ Respondent Outline of Submissions, 30 October 2025.

⁴ Ibid

⁵ Attachment 11, Respondent List of Documentary Evidence

[63] As to the complaints of the Appellant regarding the alleged failures of the Department, this goes to the merits of the application. The merits of the s29(1A) application under the Act are not required to be considered as the appeal considers only the decision of President Barclay to dismiss the application.

[64] In determining to dismiss the application, the President correctly considered the merits of the application at a high level as part of his consideration as to whether to exercise the discretion to dismiss the application. His finding that the merits of the Appellant's claim were not strong was reasonably open to him in light of the Appellant's absence of some years from the workplace and his continued incapacity.

[65] This ground of appeal is not made out.

OUTCOME

[66] For the reasons given, we are not satisfied that the Appellant has made out any of his appeal grounds. The Appellant was provided numerous opportunities over a long period of time to advance his case but did not do so. He failed to comply with what we consider a reasonable direction from the President to provide further particulars as to his medical condition.

[67] We do not consider that the Appellant has demonstrated that the President acted on a wrong principle, allowed extraneous or irrelevant matters to affect the decision, mistook the facts, failed to take into account some material consideration or made a decision that was unreasonable or plainly unjust.

[68] Accordingly, the Full Bench confirms the decision of President Barclay and the appeal is dismissed.



N M Ellis

Acting President