

SELECTION OF LOCAL GOVERNMENT COURT DECISIONS OF INTEREST

Tan v City of Joondalup [2025] WASC 383

City of Joondalup successfully prosecuted Tan in Magistrates Court for 2 charges of failing or neglecting to comply with firebreak regulations. The Supreme Court overturned the convictions because in relation to the first charge, the firebreak notice was not given to Tan as required and the failure could not be remedied. Furthermore, the appeal court found that the City failed to comply with an order for full disclosure before trial, where documents would have shown a conviction could not be made. Furthermore, the court held in relation to the second charge that the Magistrate did not afford procedural fairness to Tan and overturned the conviction and remitted it to the Magistrates Court to be heard by a different Magistrate. During the course of the appeal the court noted that the City:

- was on notice of Tan's change of address but did not act on that notice as it should have
- did not have an accurate rate records as it was required to under the LG Act
- wrongly submitted to the appeal court that it could rely on an inaccurate rate record for valid service of a notice, where the City had breached its statutory obligation to update the rate record
- did not comply with the firebreak notice requirements
- did not disclose documents it was required to disclose at trial, where the obligation to afford *Tan* a fair hearing is one of the defining characteristics of a court and the City had model litigant obligations to do so
- 's counsel did not disclose documents it was required to disclose at trial, where the obligation to afford *Tan* a fair hearing is one of the defining characteristics of a court, and the City's legal representatives had model litigant obligations to do so
- did not intervene, as a model litigant should have, in the examination of *Tan* by the learned Magistrate where appeal court found as follows: ... the learned magistrate assumed *the conduct of the appellant's evidence in chief from the outset. His Honour therefore limited, no doubt unintentionally, the scope of the appellant's evidence to issues his Honour considered relevant to the issues he was to decide, but the consequence was that the appellant did not have the opportunity to advance the case she wished to run. The position was not corrected by asking the appellant at the conclusion of her evidence whether there was anything she wished to add.*

Radianct Holdings (Australia) Pty Ltd v City of Gosnells [2022] WASC 217

In a review of a Magistrates Court decision, the appellate court noted the defendant was assisted by a Mandarin interpreter but did not have legal representation, and ... *at no point did the magistrate ask if the appellant wished to obtain legal advice*, which the LG could have addressed but did not. The appellate court overturned an excessive Food Act fine, possibly with costs to the municipal funds and employee resources.

DWER v Shire of Esperance ES 112 of 2021 ES 113 of 2021 25 MAY 2021

In 2021 DWER prosecuted the Shire of Esperance body corporate for illegal land clearing undertaken by the LG's employees who had been put on notice by DWER that they required a clearing permit. The Shire of Esperance Council was not served with or notified of the proceedings by its administration. The CEO appointed legal representation and entered a plea of guilty in the Magistrates Court on behalf of the LG, which was then fined \$50,000 for the two counts of unlawful land clearing by its employees, which appears to have been paid from the municipal funds, all unbeknown to Council.

Town of Cambridge v The Hon. David Templeman MLA, Minister for Local Government Heritage, Culture and the Arts [2020] WASC 350

In this matter the LG Minister proposed to dismiss the Cambridge Council, which Council successfully stopped on the Supreme Court. The court held that ... *It is well established that this court can issue the prerogative writ of prohibition to prohibit the exercise of power pre-emptively or in anticipation of a decision in circumstances where there is a real likelihood that the Minister will act in accordance with views disclosed in advance of the proposed decision and those views reveal jurisdictional error...* The court found that the LG Minister was behaving in a legally unreasonable way and that this constituted a jurisdictional error.

Application for an order to stop bullying [LG CEO] Stephen Cain v [EMs] Stuart Downing; Logan Howlett; Lee-Anne Smith; Kevin Allen [2020] FWC 1914 PERTH, 8 May 2020

In this matter CEO Cain made an application to the Fair Work Commission (FWC) that he was being bullied by 4 EMs. The FWC held that the ... *anti-bullying jurisdiction should not be used as 'a means of hampering, or even stopping justified disciplinary action, implemented by an employer, as a reasonable management response to an employee's poor performance or misconduct ...* (noting FWC no longer has WA LG jurisdiction but the precedent remains apt)

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***Ayton v City of Armadale* [2020] WASCA 39**

The LG plead guilty to failing to maintain a safe work environment. (A member of public was seriously injured by a City of Armadale (City) Waste Facility (Site) vehicle, while dropping off green waste as directed by the staff). The City of Armadale was prosecuted and fined \$20,000 and ordered to pay \$2,657 costs. The City's Manager of Waste Services was prosecuted personally, fined \$12,500 and ordered to pay \$4,950 costs. The WA Court of Appeal increased fine against the City to \$110,000. Under the then LG Act s.5.41, the then CEO was responsible for, "...the employment, management supervision, direction and dismissal of employees...". Surprisingly, no mention was made in the decision about the CEO's statutory function of *management supervision* of the site manager's performance and for ensuring timely implementation of WorkSafe orders or directives.

***Whooley v Shire of Denmark* [2019] WASCA 28**

June 2015

The Shire of Denmark CEO informed Mr. Whooley (Whooley) that the Shire was summarily terminating his employment as Director of Infrastructure on his election as a Shire of Denmark EM. Proceedings then arose, which concerned a CEO's power to summarily terminate a *senior employee*.

October 2015

Whooley advised the CEO and EMs that he considered his dismissal unlawful but to avoid ambiguity or conflict, Whooley resigned. Whooley reached a settlement agreement with the LG in the Fair Work Commission (FWC).

Court and Tribunal Proceedings

After the FWC settlement, Whooley commenced proceedings in the WAIRC claiming an invalid termination and claiming contractual benefits, which had been denied. The WAIRC found the termination was invalid and ordered the LG to pay Whooley \$43,893.71. The LG appealed to Full Bench of WAIRC, which set aside the WAIRC decision and dismissed Whooley's claim. Whooley then appealed to WA Court of Appeal, which upheld WAIRC decision and dismissed Whooley's claim. The findings confirmed:

1. A LG is a body corporate with legal capacity of a natural person, with Council being its governing body.
2. A Council governs LG affairs and is responsible for the LG functions.
3. A statutory construction of an Act of the WA parliament requires careful analysis of the text of the statute to be understood in its proper context.
4. CEOs are responsible for employment, management supervision, direction and dismissal of all other employees.
5. However, Councils may designate employees, or persons as belonging to a class of employee, as *senior employees*.
6. The LG Act, distinguishes between *employees* and *designated senior employees*, and confers on CEOs the power to dismiss a *senior employee* only if the CEO informs Council, and Council has endorsed the CEO's recommendation; noting that CEOs do not have to advise Council about appointments of a senior employee without a written contract for a term not exceeding one year; unless Council resolution or policy provides otherwise.
7. *Senior employees'* employment must be governed by a contract.
8. The power to dismiss a *senior employee* is Council's non-delegable power.
9. CEOs' employee power is restricted by an employee being a *senior employee*, and employment rules.
10. The CEO did not have Council approval to dismiss Whooley. The termination letter was *ultra vires* and ineffective.
11. Whooley's second ground of appeal was that the FWC settlement agreement did not bar Whooley's claim against the LG. The Court held it did not have jurisdiction to hear the second ground and that the WAIRC decision stood, which was that the FWC settlement barred Whooley's claim.
12. The Court noted it is not sufficient for the Court to allow an appeal and reverse, vary, or quash a decision the subject of appeal, or send it back to the WAIRC Full Bench only because the Full Bench made an error in the course of its decision. Whooley had needed to show the Full Bench error affected/may have affected, their decision. There was no injustice because the WAIRC Full Bench found the FWC settlement agreement was valid and enforceable.

***City of Stirling v Murphy* [2018] WADC 35**

Court held that the City of Stirling had not been a model litigant and that it was required to be so. The Court noted that LGs can become at odds with ratepayers through unpaid rates, which some LG administration practices can exacerbate noting litigation practices can unnecessarily harm ratepayers' psychological health and adversely affect ratepayers' credit rating.

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