

Chronology of Ella Leach (nee King)

Registered Nurse - Terminated from Qld Health due to COVID-19 Vaccine Mandates

Below is the chronology of the last two years and three months of my employment with Queensland Children's Hospital. I found the whole process extremely impersonal and certainly did not find their dealings with me reflective of the health services core values.

Respect - We listen to others, **Integrity** - We do the right thing, **Care** - We look after each other and show kindness and concern for others, **Imagination** - We dream big.

I have had many happy moments over the last two years overshadowed by this protracted process and will have spent half of my pregnancy, which should be a stress free and joyful time, affected by the untimely and harsh termination of my employment.

1. 11 September 2021

Health Employment Directive 12/21 Employee COVID-19 vaccination requirements (HED 12/21) was issued requiring Qld Health employees to receive two doses of a COVID-19 vaccine by 31 October 2021. First dose expected by September 30.

2. 21 September 2021

Received a generic email stating that non-compliant employees could not enter the premises from October 1st and would be able to access their leave entitlements or be placed on leave without pay.

3. 28 September 2021

Giving employees 2 days notice we received an email allowing us to continue to work if we had a pending exemption.

I received this 30/9/21 when I had arrived at work fully expecting it to be my last day. As you can imagine this did not give me much time to emotionally compute that I would now continue to work for the indefinite future, pending future correspondence regarding my employment.

The email outlined that after 31/10/21 we would be considered non-compliant and **may** be subject to disciplinary action, but possibility of termination of employment was not clear nor the fact that I would be immediately be deemed unable to enter my workplace.

4. 30 September 2021

I applied for an exemption on the basis that there was insufficient consultation around the vaccine and expressed concerns regarding the safety and efficacy of COVID-19 vaccination. I also supplied a letter from Father Scot Anthony Armstrong, in support of a religious exemption.

The criteria for exemptions was limited and despite witnessing numerous reactions in my colleagues post vaccination, hesitancy was not an acceptable reason to question the directive.

5. 25 October 2021

Once again giving minimal notice the DG sent an email saying we would not be permitted on the premises as of 01/11/21. This letter read more like a reprimand and displayed zero compassion or understanding for the predicament many QH employees found themselves in

6. 28 October 2021

It had been well over a month since the directive was announced and **I had received no correspondence from my own hospital addressed to me regarding this matter.** Naturally I was quite distressed by the uncertainty of my position moving forward. My Nursing Unit Manager tried to find some answers and the Medical Nursing Director, Juliana Buys, apparently could shed no light on the situation other than the fact the directive was clear.

On this date I received my first letter from Dominic Tait, the Executive Director of Clinical Services. This letter advised me that I would not be able to attend the workplace as of 1/11/21, **giving me one business days' notice.**

The letter said "Your manager will now be in contact with you to discuss alternatives for you." I refused to access my leave entitlements for, as is implied in the title "Annual Recreation Leave," I was accruing them for recreation and I do not consider being stood down from my employment "an activity done for enjoyment when one is not working."

It became clear to me that my NUM had not been given any clear and concise instructions on what to do with this situation and her immediate superior did not appear to have any more of a clue.

7. 8 December 2021

I received my "exemption denied letter".

Evidence or other material on which material questions of fact were based

Relevant material on which the findings on material questions of fact were based included:

1. The Directive
2. Your application for an exemption; and
3. The supporting documentation you provided.

Reasons for decision

Your individual circumstances, including your religious belief and the connection of that religious belief to the requirements under the Directions, were balanced against the purposes of the vaccination requirements.

I have had regard to the intention of the Directive, specifically the requirement to ensure the readiness of the health system in responding to the COVID-19 pandemic, to protect the lives of employees, patients and the community they serve.

The Directive contemplates the high degree of risk to public health associated with work performed in healthcare settings and will ensure Queensland Health can provide a safe environment for both employees and patients.

On balance, I consider that there is no less restrictive means other than vaccination which would sufficiently ensure the safety of yourself, other staff members and patients.

By this logic it is near impossible to receive an approval for your exemption and so I am unsure why the application process was offered to us. Being directed to "comply with the directive" completely disregards reasons for applying for an exemption and was both insulting and deflating.

8. 11 January 2022

Supportah, my legal representatives, requested an internal review of my denied exemption

9. 21 January 2022

An internal review of my exemption was denied due to my legal representatives sending the request 2 weeks out of time.

10. 24 January 2022

I received my first letter demanding I show cause why I should not be subject to disciplinary action.

My Allegation - that I had failed to follow a reasonable and lawful direction to comply with the vaccination requirements set out in HED 12/21

I was placed on suspension with pay until 18/4/22

11. 25 March 2022

I received my second show cause letter. (attached below)

Mr. Tait found the Allegation from my first letter substantiated - I had contravened, without reasonable excuse, a direction given to me as a public sector employee by a responsible person.

I was given 7 days from the receipt of the Second Show Cause Notice to respond to the proposed termination of her employment.

I was placed on suspension without pay until 29/4/2022, overriding the previous suspension with pay until 18/4/22.

QLD was now faced with Omicron, which has been widely accepted as a less virulent strain than Delta and Alpha, however Qld Health's vaccine mandate was not reviewed.

12. 5 April 2022

I responded to my Second Show Cause letter (attached below)

13. 20 April 2022

I filed a public service appeal with the QIRC against the decision to suspend me without pay

14. 29/4/2022-19/10/2022

Between the date of my suspension without pay lapsing (29/4/2022) and 19/10/2022 I received no update on the status of my employment. I was not formally on suspension but I was still unable to return to work.

15. 19 October 2022

Dominic Tait and Alan Fletcher (CHQ) conducted a Suspension and Discipline Review. My suspension without pay was extended until 31st March 2023

16. 5 December 2022

9 month periodic review letter from Children's Health Queensland CEO, Frank Tracy. Suspension and discipline to continue

17. 4 January 2023

Contacted Queensland Children's Hospital to express interest in a redundancy offer and I would drop my pending Public Service Appeal.

18. 12 January 2023

CHQ responded that a redundancy was not relevant to my situation and that "CHQ is not agreeable to an ex gratia payment in settlement of this matter at this time."

19. 29 February 2023

Suspension without pay extended again until 30/9/23.

20. 20 June 2023

I received a periodic review letter of the suspension and discipline from Shaun Drummond, QLD Director General. He informed me of continuation of my suspension and discipline and stated the progression of my disciplinary matter was placed on hold pending outcome of PSA

21. 25 September 2023

The Chief Health Officer and Acting Director General of Qld Health announce the revocation of HED 12/21 and that COVID 19 vaccination to work in Qld Health is no longer a requirement

22. 28 September 2023

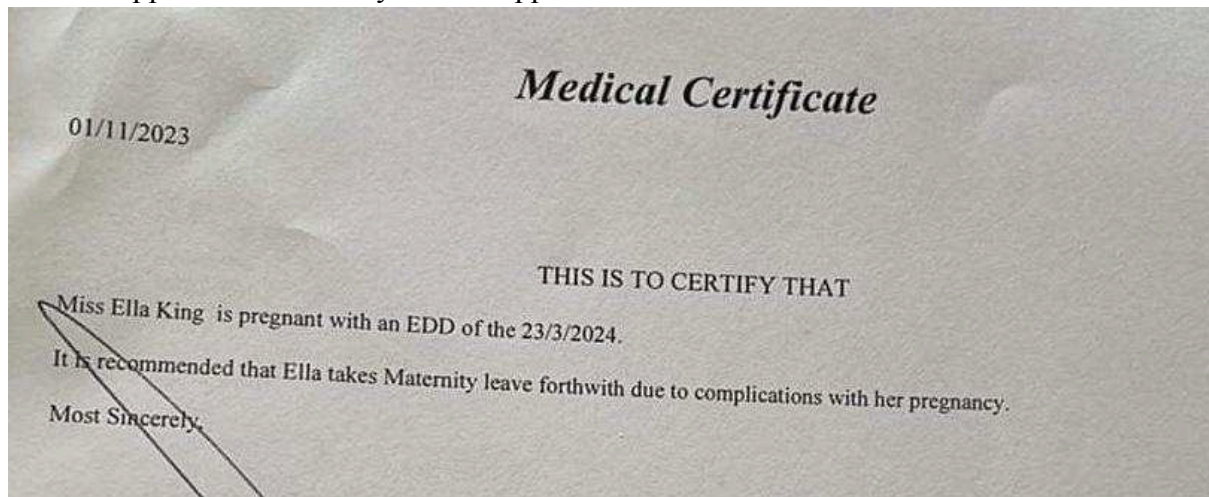
Suspension without pay extended again until 25/3/24

23. 23 October 2023

Michael Wlash, Acting QLD Director General did another suspension and discipline review. Informed me that both would continue.

24. 2 November 2023

I applied for Maternity Leave supported with a Medical Certificate.



25. 6 November 2023

I received a third notice to Show Cause as to why I should not be terminated. (letter was dated 3/11/23). (attached below)

This letter did not address my application for maternity leave despite my Nursing Unit Manager having escalated the request to HR

26. 9 November 2023

I responded to the show cause letter. (attached below)

I suggested that a financial penalty may be more appropriate as I believe that termination is an extreme measure.

27. 15 November 2023

HR acknowledged that they have received my response. Still no recognition of my maternity leave application. I respond with the following emails



28. 21 November 2023

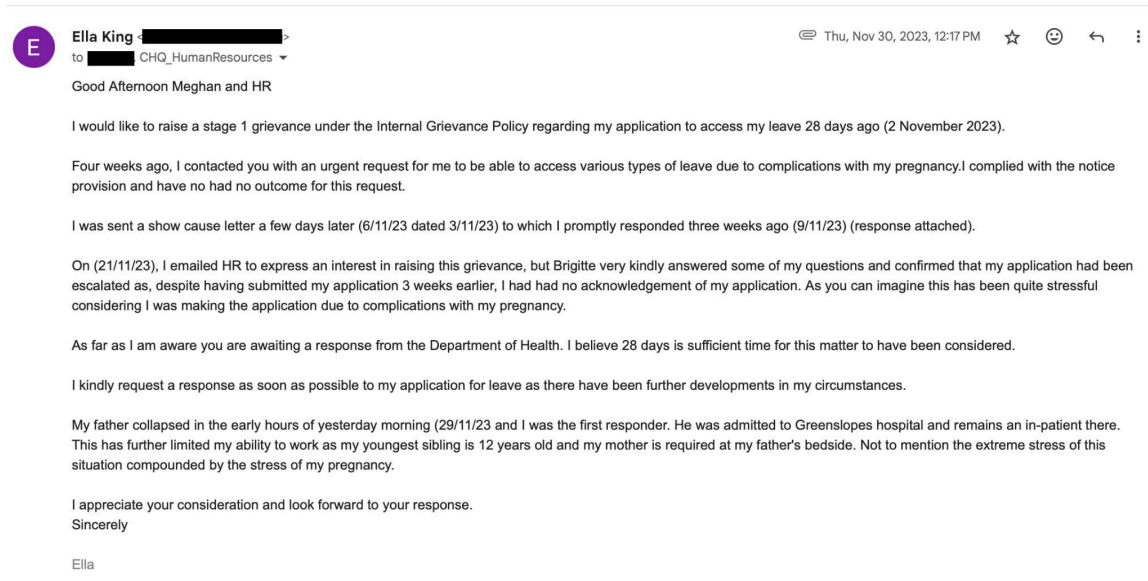
HR informs me that my matter has been escalated to the Department of Health for advice.

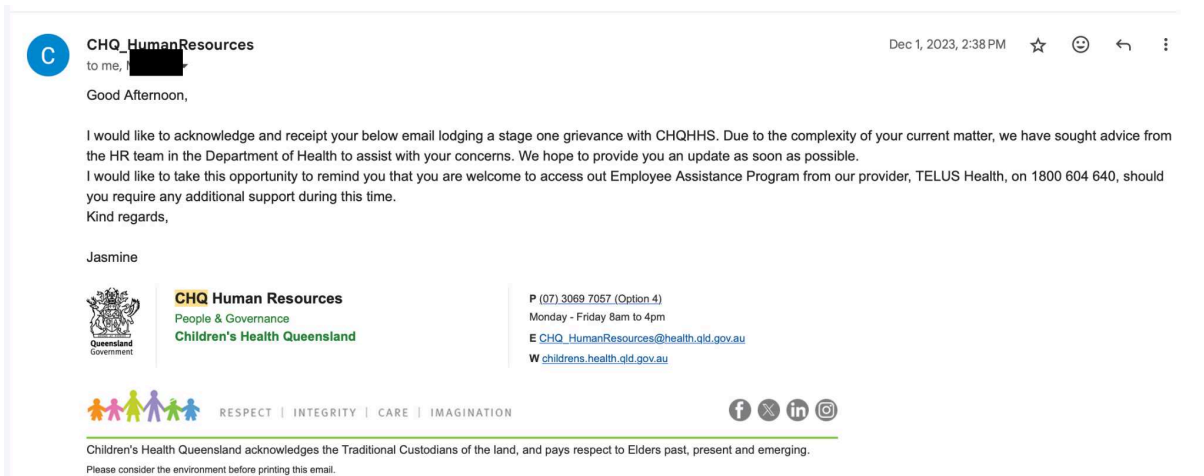
29. 29 November 2023

My father experienced cardiac complications, collapsed and was taken in an ambulance to hospital. I was the first responder. With my mother at his bedside and I still have a 13 year old sister my ability to work was further limited.

30. 30 November 2023

It has been over 28 days since I applied for maternity leave. I raised a Stage 1 Individual Grievance due to no correspondence regarding my maternity leave application.





31. 5 December 2023

My maternity leave was approved by the Department of Health and back dated to the date of my medical certificate.

32. 18 December 2023

My Nursing Unit Manager calls to inform me that I have “incoming correspondence” from HR and can contact employee assistance if I feel I need to talk to someone. I asked her if I was being terminated and she said that she did not know.

33. 21 December 2023

Despite the phone call from my NUM I had received no correspondence. Followed up with HR and had a call from Senior Human Resource Consultant, Renata, stating that there must have been some miscommunication as I had no incoming correspondence regarding my employment. I confirmed by saying "so I am not getting terminated" and she said "no, you are on maternity leave."

34. 3 January 2024

I received my Termination Letter with no follow up after my conversation with HR saying that I was **not** being terminated. My public service appeal was still active at this time. (attached below)

35. 5 March 2024

The date of my conciliation hearing with the Queensland Industrial Relations Commission for my unfair dismissal matter. I will be 3 weeks out from the due date of my baby.

Second Notice to Show Cause



Children's Health Queensland
Hospital and Health Service

Ms Ella King
Registered Nurse
Division of Medicine
Children's Health Queensland

Delivered via email:

and via registered post

Dear Ms King

I refer to my letter to you dated 24 January 2022, in which you were asked to show cause as to why disciplinary findings should not be made against you under the *Public Service Act 2008 (the Act)* in relation to the following allegation:

In contravention of a direction given to you by a responsible person, you have not received your second dose of a COVID-19 vaccine by 31 October 2021.

In my letter dated 24 January 2022, you were afforded a period of 14 days from the date of your receipt of that letter to provide a response to the allegations.

I have reached my own conclusions independently regarding the allegation. I have fully and carefully considered all of the information available to me, including your response. I have taken into account all of the matters raised in your response. The fact that a particular matter is not specifically addressed in this letter does not mean that I did not carefully consider it.

Allegation 1

In contravention of a direction given to you by a responsible person, you have not received your second dose of a COVID-19 vaccine by 31 October 2021.

Response

I am now in receipt of your response dated 8 February 2022. In your response you advise (in-part):

- *I cannot see fit to make a decision about the COVID-19 vaccine, based on your belief that consultation has been afforded. I do not believe that consultation has satisfactorily been provided by merely providing me information in the form of surveys, Q&A's, bulletins, emails, letters, and other content of like.*
- *Any claim that a request for risk assessment and/or consultation has not and will not influence the outcome of your decision regarding my ongoing employment cannot be sustained. This assumes that the process of risk assessment, and the opportunity to gather a deeper and more meaningful understanding of the risk to myself, will not create a change in my view of the COVID-19 vaccine. In fact, this could completely satisfy my needs and concerns as an employee.*

In your email in which you attached your response, you advised you are in the process of registering for the Covax-19/Spikogen trial and that you expect to be in a position to provide a valid medical certificate from your treating doctor by “close of business tomorrow”.

As at the date of this letter no medical certificate or additional information has been received from you in relation to your participation in a trial.

You advise in your response that proper consultation in relation to *Health Employment Directive No 12/21 Employee COVID-19 vaccination requirements* (the Directive) and a risk assessment in relation to you and your role have not been undertaken, even after multiple requests made by you. You assert that the provision of what you consider to be appropriate risk assessments and consultation could satisfy your needs and concerns as an employee, in relation to the COVID-19 vaccines.

I note that you ask for a stay in relation to this disciplinary process so that you can continue to exercise your industrial rights surrounding dispute resolution until you “can contemplate reaching a sound and secure decision about the COVID-19 vaccine.”

I refer to my correspondence dated 21 January 2022, in which I enclosed correspondence from Ms Teresa Hodges, Chief Human Resources Officer, Department of Health, addressed to your representative, Supportah Australia Pty Limited t/a IR Claims on 13 December 2021. Within the correspondence, Ms Hodges addressed the ‘Stage 2’ grievance lodged by Supportah Australia Pty Limited t/a IR Claims on your behalf, including concerns raised in relation to consultation and risk assessments. As Ms Hodges addressed the concerns raised on your behalf, she advised that she considered the matter closed.

In addition to your response dated 8 February 2022, on 2 March 2022, you emailed the CHQ People and Culture inbox, with correspondence addressed to me titled ‘show cause response Ella King 2’. In this response you advise that you are commencing a stage three grievance procedure in relation to consultation and risk assessments.

I note that you do not make any supporting submissions or include other material to dispute the factual basis for the findings and determinations of Ms Hodges or to otherwise identify or explain why the grievance in respect to consultation and risk assessments should be escalated to Stage three, apart from stating that the reason for the dispute is “lack of consultation and failure to adequately address my requests for a risk assessment.”

On 9 March 2022, you received a reply to your ‘show cause response Ella King 2’ submitted on 2 March 2022, which advised (in part):

“Noting it has been approximately 6 months since HED12/21 was implemented, I am instructed that the delegate has determined that no action will be taken in respect of a purported grievance regarding HED 12/21 received after 28 February 2022. This is consistent with the purpose and objective of the employee grievance procedure.

Should you be dissatisfied with this outcome you may refer the matter to the Queensland Industrial Relations Commission.”

I note that, you did not specifically respond to the allegation in either of your responses to the show cause letter. Given the above, I am satisfied your concerns regarding risk assessments and consultation have been addressed and you are aware of the nature of the direction given to you and the lawful source of the authority to give the direction.

I am therefore satisfied it is appropriate for me to continue with the disciplinary process. Accordingly, I will make a decision based on the information currently available to me.

My findings

I have carefully considered all the material before me including your submissions and I have determined that Allegation one is substantiated on the balance of probabilities on the following basis:

- You did not receive a COVID-19 vaccine by 31 October 2021.
- That as of the date of your responses on 8 February 2022 and 2 March 2022, you have not received a dose of an available COVID-19 vaccine.
- You were in the process of registering for the Covax-19/Spikogen trial, however have provided no evidence to support this claim.
- You do not have an exemption from the Directive, therefore by remaining unvaccinated you have not followed the Directive.
- Your concerns regarding risk assessments and consultation have been addressed and you are aware of the nature of the direction given to you and the lawful source of the authority to give the direction.
- You did not directly respond to the allegation.

On the basis of my finding in relation to Allegation one, I have determined that, pursuant to section 187(1)(d) of **the Act**, you have contravened, without reasonable excuse, a direction given to you as a health service employee by a responsible person, specifically:

Clause 8.1 of the Directive which provides as follows:

“Existing employees currently undertaking work or moving into a role undertaking work listed in a cohort of Table 1, must:

- a. have received at least the first dose of a COVID-19 vaccine by 30 September 2021; and*
- b. have received the second dose of a COVID-19 vaccine by 31 October 2021.”*

Appeal entitlements

If you believe that my decision to find the allegation above is substantiated (disciplinary finding decision) is unfair and unreasonable, you may lodge an appeal under the appeal provisions of the Act within 21 days of receipt of this letter.

Further information about the appeals process can be obtained from the Queensland Industrial Relations Commission (**QIRC**) website www.qirc.qld.gov.au (in particular the Public service appeal guide) or by contacting the QIRC Registry on 3227 8060 or email: qirc.registry@justice.qld.gov.au.

Show cause as to proposed disciplinary action

On the basis of my findings in relation to Allegation one against you and my determination that the above discipline ground exists, I am now considering whether disciplinary action should be taken against you.

Section 188 of **the Act** states that the chief executive may take action that the chief executive considers reasonable in the circumstances and may, for example, apply any one or more of the following disciplinary actions:

- termination of employment;
- reduction in classification level and consequential change of duties;
- transfer or redeployment to other public service employment;
- forfeiture or deferral of a remuneration increment or increase;
- reduction in remuneration;
- imposition of a monetary penalty;

- if a monetary penalty is imposed, a direction that a penalty be deducted from the employee's periodic remuneration payments; and/or
- a reprimand.

Proposed disciplinary action

In relation to the taking of a disciplinary action, I am currently giving serious consideration to the disciplinary action of **termination of employment**.

In accordance with the principles of natural justice, no final determination of the disciplinary action to be taken has been made, or will be made, until you have had the opportunity to respond.

Opportunity to respond

I am providing you **seven (7) calendar days** of receipt of this letter to show cause why the above proposed disciplinary action should not be taken. If you disagree with the proposed disciplinary action you have the opportunity to provide an alternative disciplinary action and reasons why you consider that disciplinary action is more appropriate.

Your response should be marked '**Private and Confidential**' and sent to:

Name: Dominic Tait
Executive Director Clinical Services
Or email: CHQ_People&Culture@health.qld.gov.au

If you are a member of a union, you may wish to seek their assistance in preparing your response.

Decision on termination

If, on consideration of your response to the proposed disciplinary action, I consider termination of your employment the appropriate disciplinary action I will refer this matter to the Health Service Chief Executive (HSCE) for a decision on the termination of your employment pursuant to section 188 of the Act. If I consider it is appropriate to make such a recommendation, I will forward my recommendation together with your responses and all relevant material to the HSCE for a final decision.

The HSCE has delegation to make the decision in relation to termination and will consider all your responses, including your responses to the first show cause and the second show cause, in making the final determination on the disciplinary action. The HSCE will also give consideration to the following (if applicable):

- the seriousness of the substantiated allegation/s
- your classification level and/or expected level of awareness about your performance and conduct obligations
- whether extenuating or mitigating circumstances applied to your actions
- your overall work record, including any previous management intervention and/or disciplinary proceedings
- any explanation given by you
- the degree of risk to the health and safety of staff, clients and members of the public
- the impact on your ability to perform the duties of your position
- your potential for modified behaviour in the work unit or elsewhere
- the impact a financial penalty may have on you
- the cumulative impact that a reduction in classification and/or pay-point may have on you
- the likely impact the disciplinary action will have on public and client confidence in Queensland Health and Children's Health Queensland and its proportionality to the gravity of the disciplinary finding

Following **seven (7) calendar days** after your receipt of this letter, the decision maker will contemplate the appropriate disciplinary action to take in relation to the substantiated allegation. If you do not respond, or if your response is received later than **seven (7) calendar days** of receipt of this letter, a decision will be made based on the available information.

You will not be afforded a further opportunity to make submissions in relation to the proposed disciplinary action, so it is essential that you provide all the information you believe is relevant or that you would like to be considered.

If, after considering any submission you may make, the HSCE decides the disciplinary action is termination of employment, your Public Service Appeal rights lapse once the termination decision is implemented. If after considering any submission you may make I decide that the disciplinary action is not termination, you retain appeal rights under the Act and you will be advised of them at that time.

Suspension

I confirm that in my letter of 24 January 2022, I wrote to you to inform you that you had been suspended from duty as a Registered Nurse, pursuant to section 137(1)(b) of **the Act** until 18 April 2022, I also advised you I was considering placing you on suspension without remuneration under the Suspension Directive.

Decision on suspension without normal remuneration

In your response of 8 February 2022, you responded to the show cause on suspension without normal remuneration. You advised (in-part):

- *In light of the above points, should it not be feasible to offer me alternative workplace arrangements until such time as the public health order ceases to exist, offer me the opportunity to be stood down with access to my employee entitlements, or offer me an extended period of non-paid leave thus generating no greater a burden to you.*

On 28 September 2021, the Director-General advised all Queensland Health employees that in accordance with the Directive, all employees would be required to have received a COVID-19 vaccine. Should an employee not have received a vaccine, they would be unable to enter a Queensland Health facility where care is provided.

I advised in my letter to you dated 24 January 2022 that I had considered alternative workplace arrangements prior to my decision to suspend you on full remuneration. I provided you with the considerations I had made and determined it was unsuitable to:

- Reasonably adjust:
 - as the duties and responsibilities of the role are front-line clinical and categorised as Group two under section 7.1 of the Directive.
- Undertake a Flexible Working Arrangement:
 - as the positions' core duties and responsibilities are front-line clinical, patient facing.
- Redeploy:
 - to a role where vaccination is not required. CHQ is a Health Service where clinical care and support is provided. In accordance with the Directive's 'risk profile', there continues to be the risk for you to expose patients, clients or other staff, or the broader community to the virus (e.g., occupying shared spaces such as lifts, cafeterias, car parks, with people working with suspected or actual COVID-19 patients).

Whilst I have had careful regard to all material before me, I have determined that in accordance with section 137 (4) of **the Act** that you should be suspended from duty without normal remuneration for the following reasons:

- I have found Allegation one substantiated and consider you are liable for discipline.
- The seriousness of the matter before me, that you are in contravention of a direction given to you by a responsible person, you have not received your second dose of a COVID-19 vaccine by 31 October 2021.
- My responsibility to protect health service employees and patients from infection with COVID-19, including to ensure the maintenance of a proper and efficient health system in a time of a global pandemic.
- Clause 6.3(c) of the Suspension Directive requires that I give consideration to the public interest of an employee remaining on suspension with remuneration. I have an obligation to manage public resources efficiently, responsibly and in a fully accountable way. Having regard to your non-compliant COVID-19 vaccination status, I do not consider it is an appropriate use of public monies for you to remain on suspension with remuneration during this period of a global pandemic.
- I note you currently have leave accruals which you may access during the period of your suspension without pay. As of 24 March 2022, your Recreation Leave balance is 218.91 hours which is available at half-pay. Should you wish to access these accruals please advise Ms Charmaine Griffin, Nurse Unit Manager, Medical Day Unit, CHQ as soon as possible so that this may be arranged.

Your suspension without remuneration will be in place until 29 April 2022, unless this disciplinary process is concluded prior to that date. Should the disciplinary process not be finalised at that date, I will consider the issue of suspension afresh.

I confirm that as previously directed, you must not return to your workplace or any other facility within Queensland Health other than to seek necessary medical treatment or visit family or friends receiving medical treatment, without prior permission through Ms Griffin.

Lawful directions

The directions issued to you in my letter dated 24 January 2022 regarding confidentiality, the requirement to behave appropriately towards others who may have provided information or may be a witness and your obligations to comply with the *Code of Conduct for the Queensland Public Service* continue to apply.

Should you fail to follow these lawful directions, you may be liable for disciplinary action under the *Public Service Act 2008* that may lead to dismissal.

Review provisions

In my first letter to you, I advised you of your right to request a review of a procedural aspect of Children's Health Queensland's handling of this matter from the Public Service Commission (**PSC**). This option for review by the PSC remains in place for the duration of this matter. Further information may be found in the PSC Discipline Directive 14/20 and PSC Suspension Directive 16/20.

Employee assistance

I acknowledge this may be a difficult time for you. Please be advised that the Employee Assistance Program, provided through LifeWorks, is available free of charge for departmental employees. This service is a confidential counselling and support service and is available on 1800 604 640. You may also seek assistance from your union.

Questions

If you have any questions in relation to the matters raised in this letter, please contact Ms Renata Belperio, Senior HR Consultant, People and Governance, CHQ

Yours sincerely

Dominic Tait
Executive Director Clinical Services
Children's Health Queensland
Hospital and Health Service
25/3/2022

Response to Second Show Cause

Mr. Dominic Tate
Executive Director Clinical Services
CHQ_People&Culture@health.qld.gov.au

Dear Mr. Dominic Tait,

I am writing this in response to your second 'show cause' letter dated 25/3/22 (received 28/3/22).

Firstly I would like to acknowledge that these directives have not come directly from you and the requirement to enforce them is somewhat out of your hands. However, that does not mean you are completely powerless in this circumstance and I would like to ask you to reconsider the termination of my employment.

In your latest 'show cause' you note that I have not specifically responded to your sole allegation. In response to **Allegation 1**, I can confirm that I have not received a second dose of a COVID 19 vaccination by 31/10/21.

I would like you to clarify who the "responsible" person is in **Allegation 1** of both 'show cause' letters? Judging by the QLD Health "*Workers in a healthcare setting Direction*" (You can find the direction [here](#)), I would deduce the responsible person would be yourself. According to this direction a healthcare worker may enter the workplace if they are a participant in a COVID-19 vaccine trial and the risk has been assessed by the responsible person. I acknowledge that I did not attach evidence of this in my last response, but will do so now.

Furthermore, this direction outlines that you may permit a health worker to enter a healthcare setting for up to three months in the case of a critical workforce shortage. From my colleagues still working at QCH I am led to believe that this may be the case. Nurses are "burning out" and many have taken sick leave due to contracting COVID among other things. Considering we had called a code yellow in our hospital prior to losing staff to these mandates it would not be inconceivable that this may be an ongoing issue. I would like to highlight that I also contracted COVID-19 on 30/1/22. I have attached the registration of my RAT test. Is a nurse with natural immunity not considered safer than no nurse at all? I ask you to consider these points as relevant to the possibility of my returning to work

I am sure my NUM would vouch for the quality of my work in 5B - QCH. I have worked in a position as acting CN and became one of the most experienced cannulators in the unit. I regularly attended MET calls, team lead, and provided care under very busy and stressful conditions. I have a great passion and love for my job. I have advocated for my own decisions as strongly as I advocate for my patients' and I do not view this as a negative quality. I have believed (and still hope to) that I will have a long career in nursing to look forward to. QCH has invested over 4 years into my development and vice versa. I am sure you are acutely aware of the fact that experience is not something that can be replaced overnight and, tragically, I know there are many with far more experience than I that the hospital is losing.

Below I have outlined a timeline of events. I have found the Director General and you have been quite unforgiving with your timeframes whilst affording us, personally, very little notice regarding directives. I would like to draw your attention to the fact that Mental Health week was 9-17th October 2021 and I had not received a single communication from executive regarding my situation. With mental health week not far behind us you gave me one business days' notice of my stand down with no clarification on my financial circumstances moving

forward. I hope you can imagine that this exacerbated an already stressful situation and I don't know how employees with greater financial responsibilities than I were able to deal with it.

The negative effects of potentially losing my permanent position are many. I had reached a point where I believed my unpaid tertiary days were behind me and I now face the very real possibility that I will be set back another seven years before attaining an equivalent to the position I currently hold.

I was applying for a permanent CN position at the time of being stood down.

I am paying off a HECS debt for a degree I may not be permitted to utilise.

My landlord is in the process of selling his house and the prospects of being approved for a rental application without a permanent position is precarious.

The financial stress this will impose on me is unsettling to put it mildly.

Today the Premier announced that mandates will continue to ease as of 14/4/22. We are seeing mandates dropped around the globe, including in healthcare. I would like to argue that terminating essential healthcare workers in a positively fast evolving situation would be premature, especially for a hospital system already under pressure. You have employees that could be called to assist the healthcare system at short notice and if, as you mentioned in your letter, the financial strain of employees stood down with pay is too great you may consider an extended period of leave without pay.

In accordance with the "principles of natural justice" I ask you take all of this in to account before making your final decision.

Sincerely

Ella King
Registered Nurse
Queensland Children's Hospital

11/9/21 – Received the DG's directive to be vaccinated

17/9/21 – QCH hosted a zoom Q&A session regarding the vaccination mandate. During this session it was indicated that you would reach out to individual staff members to provide additional support and information regarding vaccination. This was not done other than a suggestion to contact Employee Assistance Program

21/9/21 - Received email stating that we could not enter the premises from October 1st and would be able to access our leave entitlements or be placed on leave without pay.

28/9/21- Received email allowing us to work if we have a pending exemption.
I received this 30/9/21, when I had arrived at work fully expecting it to be my last day. As you can imagine this did not give me much time to emotionally compute that I would now continue to work for the indefinite future.

The email outlined that after 31/10/21 we would be considered non-compliant and **may** be subject to disciplinary action, but not indicating that we would once again face the upsetting reality of being banned from our workplace.

25/10/21 - Once again giving minimal notice the DG sent an email saying I would not be permitted on the premises as of 01/11/21. This letter read more like a reprimand and displayed zero compassion or understanding for the predicament many QH employees found themselves in

27/10/21 – **I had received no correspondence from our hospital addressed to me** and naturally was quite distressed by the uncertainty of my position moving forward. My manager tried to find some answers and the Medical Nursing Director, Juliana Buys, apparently could shed no light on the situation other than the fact the directive is clear.
I attempted to organise a meeting with Callan Battley, in the hope that I would be able to get some answers to my questions, but received no response until 3/11/21 by which point I was not permitted in the hospital.

28/10/21- I received my first letter from you and also the **first correspondence actually addressed to me** (dated 27/10/21). This letter advised me that I would not be able to attend the workplace as of 1/11/21, **giving me one business days' notice**.
You said "Your manager will now be in contact with you to discuss alternatives for you." I refused to access my leave entitlements for, as is implied in the title "Annual Recreation Leave," I was accruing them for recreation and I do not consider being stood down from my employment "an activity done for enjoyment when one is not working."
It became clear to me that my NUM had not been given any clear and concise instructions on what to do with this situation and her immediate superior did not appear to have any more of a clue.

8/12/21 - I received my "exemption denied letter".
You deduced that "there is no less restrictive means other than vaccination which would sufficiently ensure...safety." By this logic no one would receive an approval for their exemption and so I am unsure why the application process was offered to us. Being directed to "comply with the directive" completely disregards reasons for applying for an exemption and was both insulting and deflating.
You outlined that you found the limitations on my human rights was justifiable given the circumstances. However, I would like to highlight that at the time this was written we were dealing with the more threatening Alpha and Delta variants whereas are now faced with Omicron, which has been widely accepted as less virulent and I would like to once more request that you reconsider your decision.

21/1/22 - I received the response to a request for an internal review of your decision. You refused to afford me an internal review of your decision due to receiving the response later than your specified timeframe. As I have informed you this was representative error.

24/1/22 - I received my first show cause letter.

28/3/22 - I received my second show cause letter (dated 25/3/22.) Addressed above

Third Show Cause Letter



**Queensland
Government**

**Children's Health Queensland
Hospital and Health Service**

Ms Ella King
Registered Nurse
Division of Medicine
Children's Health Queensland

Delivered via email:

and via registered post

Dear Ms King

I refer to Mr Dominic Tait, Executive Director Clinical Services, Children's Health Queensland Hospital and Health Service (CHQHHS) letter dated 25 March 2022 in which Mr Tait found the following allegation against you substantiated:

In contravention of a direction given to you by a responsible person, you have not received your second dose of a COVID-19 vaccine by 31 October 2021.

On the basis of Mr Tait's findings in relation to the allegation, Mr Tait determined that:

- In respect of the Allegation, pursuant to section 187(1)(d) of the *Public Service Act 2008* (the repealed Act), you have contravened, without reasonable excuse, a direction given to the employee as a public service employee by a responsible person.

Mr Tait afforded you a period of seven (7) days from your receipt of that letter to show cause why the disciplinary action of the termination of your employment should not be imposed under section 188 of the repealed Act.

On 21 April 2022, you filed an appeal in the Queensland Industrial Relations Commission (QIRC) against a discipline decision. To date, your appeal has not progressed despite the Department submitting draft orders to the QIRC in April 2023.

Although no stay of the disciplinary process was ordered by the QIRC, the disciplinary process was not progressed while the matter of *Mocnik & Others v State of Queensland (Queensland Health)* [2023] QIRC 058 was before the QIRC. The decision in *Mocnik* was delivered in February 2023.

Although *Mocnik* involved applications for reinstatement, the questions determined in *Mocnik* are relevant to the public service appeals brought in relation to the direction contained in the Health Employment Directive No. 12/21 Employee COVID-19 vaccination requirements (HED 12/21) to receive two doses (and provide evidence of having received two doses) of a COVID-19 vaccine.

The employees in *Mocnik* were also represented by 'The Red Union', which includes NPAQ.

In his decision, Vice President O'Connor found:

1. HED 12/21 is a health employment directive about 'conditions of employment' within the meaning of section 51A of the *Hospital and Health Boards Act 2011*. HED 12/21 mandates that it is a condition of employment to be vaccinated, unless an exemption is granted.
2. HED 12/21 is not inconsistent with the *Anti-Discrimination Act 1991* because although HED 12/21 imposes a term, it is not unreasonable. The term is not unreasonable because all available COVID-19 vaccines are effective at preventing symptomatic infection and reducing the risk of serious illness or death; any adverse effects are usually mild with a low probability of developing serious complications; vaccination is the most effective and efficient control available to combat the risks posed by COVID-19 and COVID-19 poses a significant risk in the health care setting. Vice President O'Connor accepted the expert evidence on this point.
3. HED 12/21 is not inconsistent with the *Human Rights Act 2019* because HED 12/21 was an important health measure introduced to provide protection to the community from serious and widespread disease. The limit imposed by the issuing of HED 12/21 was a reasonable and justifiable limit and one which was demonstrably justified by reference to section 13 of the Human Rights Act 2019, taking into account the balancing interests of society, including the public interest.
4. Queensland Health did not have an obligation to consult directly with employees individually prior to implementing HED 12/21, noting the consultation which occurred with unions with total collective coverage of the workforce.
5. The *Hospital and Health Boards Act 2011* did not require Queensland Health to consult with the employees' representative because NPAQ is not a registered organisation and not an employee organisation for the purpose of the *Hospital and Health Board Act 2011*.
6. There was no obligation imposed on Queensland Health under the *Work Health and Safety Act 2011* to provide a risk assessment for each business unit to individual employees on request after HED 12/21 was implemented.

VP O'Connor accepted the dismissal of those employees who were applicants in *Mocnik* was not unfair.

Application of the new *Public Sector Act 2022*

On 1 March 2023, the *Public Sector Act 2022* (PS Act) came into force and repealed the *Public Service Act 2008*.

I confirm the new PS Act applies to the disciplinary process against you. The relevant provisions are set out in sections 90 – 93 and 313 of the PS Act (see enclosed).

Changes to Health Employment Directive No. 12/21 Employee COVID-19 vaccination requirements

HED 12/21 has been in place since September 2021 and sets out conditions of employment for employees. Further, failure to follow a Health Employment Directive is a breach of an employee's employment contract.

Following a period of consultation between 1 and 18 September 2023, the Director-General, Queensland Health decided to repeal HED 12/21, effective 25 September 2023.

The decision to repeal HED 12/21 does not absolve or excuse employees who have failed to follow the direction while HED 12/21 was in effect.

The HED 12/21 has applied to you for almost two years, from September 2021 to 25 September 2023, which is a significant amount of time. The fact that the HED 12/21 has now been repealed does not alter the discipline finding Mr Tait made on 25 March 2022.

Continuation of disciplinary process

I note various objections raised by employees to the direction to be vaccinated have been extensively ventilated and determined by the QIRC in favour of Queensland Health and the Hospital and Health Service.

I consider it is in everyone's best interests, including yours, if the disciplinary process against you is progressed.

Before I make my consideration, I am prepared to afford you a further 7 days from your receipt of this letter to respond to my letter dated 25 March 2022.

You are required to provide your response marked '**Private and Confidential**' to me. If you intend to reply by email, please address your response to CHQ_HumanResources@health.qld.gov.au and ensure that any documents you intend to rely on are attached.

If you do not respond, or if your response is received more than 7 days after your receipt of this letter, I will make a final consideration based on the material that is currently before me.

Decision on termination

If, on consideration of your response to the proposed disciplinary action, I consider termination of your employment the appropriate disciplinary action I will refer this matter to the Health Service Chief Executive (HSCE) for a decision on the termination of your employment pursuant to section 93 of the PS Act. If I consider it is appropriate to make such a recommendation, I will forward my recommendation together with your responses and all relevant material to the HSCE for a final decision.

Human Rights

For completeness, I acknowledge my decision to continue with the disciplinary process may impact on your human rights, including your right to privacy and reputation, and your right to participate in public life. However, taking into account the public interest in ensuring disciplinary matters are dealt with and progressed promptly, I consider any limitation to be reasonable and justified.

Employee assistance

I acknowledge this may be a difficult time for you. Please be advised that the Employee Assistance Program, provided through TELUS Health (formerly known as LifeWorks), is available free of charge for departmental employees. This service is a confidential counselling and support service and is available on 1800 604 640. You may also seek assistance from your union.

Questions

If you have any questions in relation to the matters raised in this letter, please contact Ms Renata Belperio, Senior Human Resources Consultant, People and Governance, CHQHHS

Yours sincerely

Craig Kennedy
A/Executive Director Clinical Services
Children's Health Queensland
Hospital and Health Service
03/11/2023

Enclosed:

Attachment 1 - PS Act 2022 Section 90 – 93

Attachment 2 - PS Act 2022 Section 313

Response to Third Show Cause Letter

8 November 2023

Craig Kennedy

A/ Executive Director Clinical Services

Children's Health Queensland

By email: CHQ_HumanResources@health.qld.gov.au

Dear Mr Kennedy,

1. I refer to your letter dated 3 November 2023 (sent to me on 6 November 2023), providing me 7 days to respond to a show cause as to disciplinary penalty, following the finding of disciplinary grounds by Dominic Tait, former Executive Director Clinical Services, on 25 March 2022.
2. I note that you have raised the fact that my disciplinary process has largely been held on foot, but for a few extensions of my suspension, owing to the fact that there has been ongoing litigation in this area.
3. You have referred to previous litigation in this area, notably *Mocnik & Ors v State of Queensland*, which has issues similar to mine in relation to applying for exemptions and receiving notice to show cause, though in that matter the employee was subsequently terminated.
4. I appreciate that, despite the rescinding of Health Employment Directive 12/21, that I am still liable for disciplinary action as I have not complied with an employment direction from Queensland Health.
5. However, I think it must be appreciated by Queensland Health that since the rescinding of HED 12/21 now allows unvaccinated employees to return to work, there are now different factors to consider in choosing an appropriate disciplinary penalty.
6. In Queensland Health's HR Policy E10, it notes a number of factors to consider at clause 4.3 for the decision maker to consider before coming to a decision. I will now focus on a number of these:
 - a. whether extenuating or mitigating circumstances applied to the employee's actions
 - b. the employee's overall work record including previous management interventions and/or disciplinary proceedings
 - c. the degree of risk to the health and safety of employees, customers and members of the public
 - d. the impact on the employee's ability to perform the duties of their position
 - e. the employee's potential for modified behaviour in the work unit or elsewhere
 - f. the likely impact the disciplinary action will have on public and customer confidence in the unit/agency and its proportionality to the gravity of the disciplinary finding
7. I will now discuss these factors I believe you ought to consider before making a decision, as well as proposed alternative penalties.

Whether extenuating or mitigating circumstances applied to the employee's actions

8. I was still working at QCH during the initial introduction of COVID vaccinations. I was alarmed at the number of colleagues requiring multiple days of sick leave post

vaccination due to adverse reactions. I was on a night shift with one colleague who was so unwell after her Astrazeneca vaccine and found out the next day that she had a pulmonary embolism and had been told that it was related to her vaccination. However, we had been assured of the safety of this vaccination and encouraged to receive it. Another colleague had Bell's Palsy, another was covered head to toe in a severe pruritic erythema for over 6 weeks post Astrazeneca and a 21 year old friend was hospitalised with myo and pericarditis post Pfizer. To this day he is still required to attend cardiology appointments.

9. During this time I had friends in Sydney who had contracted the Delta strain of COVID19 (without vaccination protection) and experienced minimal symptoms. While I acknowledge that this is not the case with every individual who contracts COVID, my observation of significant reactions to the vaccine in colleagues of a similar demographic led me to have many reservations.
10. I was further concerned that QCH must have expected a high rate of vaccination reactions, when:
 - a. Staff were told that only a couple of nurses could receive their vaccination per shift as the wards couldn't manage the amount of sick leave taken post vaccination (something I had never witnessed during the annual flu vaccination roll out).
 - b. QLD Health also introduced a special sick leave that could be accessed for sick leave required post vaccination (another thing I had never witnessed during flu vaccination roll out.).
11. On 17 September 2021, QCH hosted a zoom Q&A session regarding the introduction of the vaccination mandate.
 - a. During this session it was indicated that QCH would reach out to individual staff members to provide additional support and information regarding vaccination.
 - b. No effort was made by QCH executive to ascertain my position and allay my concerns, or look at alternative work; it was merely suggested that I contact the Employee Assistance Program.
12. While appreciating that I am responding to proposed disciplinary action and that the allegation that I "contravened, without reasonable excuse, a direction given to [me]", I further believe that the characterisation of my contravention of HED 12/21 as "without reasonable excuse" is misconceived in circumstances, including the above, where:
 - a. On 21 September 2021, I received an email stating that we could not enter the premises from October 1st and would be able to access our leave entitlements or be placed on leave without pay.
 - b. On 28 September 2021, I received an email notice allowing us to work if we have a pending exemption. I only received this 30/9/21 after I had arrived at work fully expecting it to be my last day.
 - i. As you can imagine this did not give me much time to emotionally compute that I would now continue to work for the indefinite future. However, I was temporarily relieved upon applying for an exemption on religious grounds.
 - c. On 25 October 2021, once again giving minimal notice, the DG sent an email saying I would not be permitted on the premises as of 01/11/21. This letter read more like a reprimand and displayed zero compassion or understanding for the predicament many QH employees found themselves in, nor did it offer

the opportunity to liaise with Queensland Health to discuss reasoning behind my non-compliance.

- d. By 27 October 2021, **I had received no correspondence from anyone in QCH** addressed to me and naturally was quite distressed by the uncertainty of my position moving forward.
 - i. My NUM had been given no instruction and tried to find some answers.
 - ii. The Medical Nursing Director, Juliana Buys, apparently could shed no light on the situation other than the fact the directive is clear, but no clarity on what I would be facing.
 - iii. I attempted to organise a meeting with Callan Battley, in the hope that I would be able to get some answers to my questions relating to the vaccine mandate, but received no response until 3/11/21 by which point I was not permitted in the hospital.
 - iv. But for the 17 September Zoom Q&A session, which did not provide an opportunity for employees to consult honestly and properly with Queensland Health, I still had no way of communicating my concerns in a two-way conversation; I simply had the opportunity to apply for an exemption or comply.
 - e. On 28 October, I received my first letter from Dominic Tait and also the first correspondence actually addressed to me (dated 27/10/21). This letter advised me that I would not be able to attend the workplace as of 1/11/21, **giving me one business days' notice**. He said "Your manager will now be in contact with you to discuss alternatives for you."
 - i. It became clear to me that my NUM had not been given any clear and concise instructions on what to do with this situation and her immediate superior did not appear to have any more of a clue, beyond providing me with the opportunity to take leave.
 - f. Furthermore I was in a very distressed state leading up to and during this period as I was set to be married 18 September 2021, but my engagement was broken off just one month before my wedding. I was finding it difficult enough to turn up to work without the added stress of making a decision regarding the future of my employment. My NUM at the time was aware of how much I was struggling.
13. In the above circumstances where I have tried to liaise with my employer and speak openly about my concerns with getting vaccinated, or arrange alternative work only to be left with no clear answers, I feel as though I have not complied with HED 12/21, but certainly not without reasonable excuse.
 14. Nonetheless, I understand that the allegation is substantiated and I am being asked to show cause as to why the proposed disciplinary outcome of termination of employment should not be imposed. I did want to make my position clear, however, before I now discuss why the proposed penalty is not appropriate in the current circumstances.

My overall work record including previous management interventions and/or disciplinary proceedings

15. Prior to my non-compliance with Health Employment Directive 12/21, I have never been subject to disciplinary processes or management intervention as a result of my performance or conduct.
16. Additionally, I have built great rapport with the staff and patients within my working unit
17. Furthermore, during the intervening period of September and October 2021 when the mandate had come into effect but many staff had applied for exemptions, I worked to the best of my ability while I was still allowed to attend the workplace. This is despite knowing that disciplinary procedures were soon to follow as a result of my non-compliance with HED 12/21.

The degree of risk to the health and safety of employees, customers and members of the public

18. The Health Employment Directive was removed by Queensland Health's Director-General, following the recommendation of the Chief Health Officer that it was no longer necessary for the safety of Queensland Health staff and patients.¹
19. Given the Chief Health Officer of Queensland Health has recommended the removal of HED12/21, any disciplinary penalty made to me ought to consider that the public health and safety factors considered in *Mocnik* and similar vaccination termination matters are now patently different to now.
20. Many reports indicate QLD Health have been facing severe staffing shortages that are only expected to get worse. It appears that the more salient threat to staff and the public is the risk of QLD hospitals being unsafely staffed and further staff becoming the victims of burnout.
21. Accordingly, any disciplinary penalty to terminate my suspension would only be based on my non-compliance with an employment directive, not the risk of safety to the public and my colleagues.

The impact on the my ability to perform the duties of their position

22. I have remained ready, willing and able to return to work and resume my duties as a Registered Nurse at Queensland Children's Hospital.
23. However, as detailed further below, I have made a request for maternity leave, as is my right as a permanent employee of Queensland Health.
 - a. This will obviously impact my ability to return to work in the immediate sense.

My potential for modified behaviour in the work unit or elsewhere

24. I have never been non-compliant with managerial directions in the past and remain committed to following the employment directions of Queensland Health so as to ensure a safe workplace.
25. My non-compliance with Health Employment Directive 12/21 is an exception to this because of my genuine cultural beliefs (detailed below) and other concerns (outlined above).

¹ 'Consultation to begin on repealing mandatory health staff COVID-19 vaccination requirements', Queensland Health, 1 September 2023, <<https://statements.qld.gov.au/statements/98569>>.

The likely impact the disciplinary action will have on public and customer confidence in the unit/agency and its proportionality to the gravity of the disciplinary finding

26. It is a matter of public record that the Health Employment Directive was ultimately considered for review nearly immediately following public outcry regarding unvaccinated nurses still being unable to return to work, despite major staffing issues in the Health Service.²
27. It is also a matter of public record that the health minister, Ms Shannon Fentiman, has laid bare a huge understaffing concern for Queensland Health due to the fast approaching retirement age of many QLD Health employees. She has stated that this will need to be remedied within the next decade, in order for the public health system to keep meeting deliverables.³
- a. I am currently 28 years of age and the current retirement age is 65 years of age. I have over another 35 years of a nursing career ahead of me with no need for the many proposed incentives that are being offered to others in an effort to entice them to work for QLD Health.
28. In light of this, I think it would not be seen in a positive light for Health Services to resume terminating staff who now have the ability to return to work to support patients and staff members.

Other considerations

29. I am still awaiting for my matter in the QIRC to continue, though I understand there is a backlog. I understand that you have elected to continue the disciplinary process despite this, owing to precedent in *Mocnik*.
30. However, I believe it is unfair and unjust to be terminated before my matter can be decided, when my matter is substantially different to that described in *Mocnik*, and the circumstances considered in the termination of employment during *Mocnik* are substantially different to mine because, as already stated above, I now have the ability to return to work in the future.
31. Additionally, I had a unique perspective in that my exemption request was based on cultural belief, not just solely exceptional circumstances re: legality of HED12/21, as the main applicant in *Mocnik* had relied.
- a. Attached with this response is the letter from my parish priest supporting the position that receiving the available mRNA vaccinations at that time would have been at odds with my conscience and consequently, refraining from getting vaccinated was congruent with my religious belief and exercising my human right to "Freedom of thought, conscience, religion and belief."
- b. It also outlines that the support of COVID 19 vaccination by Pope Francis did not constitute a direct moral instruction to practising Catholics.
32. To characterise my quiet non-compliance with a health employment directive, on personal grounds that are of great importance to me, I believe is unjust.

² 'More than 1000 qualified nurses ready to return to the wards', Courier Mail, 1 September 2023, <<https://www.couriermail.com.au/coronavirus/more-than-1000-qualified-nurses-ready-to-return-to-the-wards/news-story/a1a68a145bd342a068d7a163eaf6c745>>.

³ '40,000 extra health workers needed as Qld Health faces retirement cliff', Courier Mail, 1 November 2023, <<https://www.couriermail.com.au/news/queensland/qld-politics/40000-extra-health-workers-needed-as-qld-health-faces-retirement-cliff/news-story/4532852f3a150a8f5214481ae108d88b>>.

33. Serious misconduct is normally a characterisation of conduct that involves theft, fraud, or some other serious dishonest behaviour warranting summary dismissal.
34. This contrasts with my circumstances, wherein I simply disagreed with the Health Employment Directive because of deeply-held personal beliefs. With HED 12/21 no longer in existence, there is no apparent reason for the employer to not have faith in my abilities to fulfil my duties honestly.

Discrimination on the basis of exercise of workplace right, protected attributes

35. In your letter you say “I consider it is in everyone’s best interests, including yours, if the disciplinary process against you is progressed.” I would strongly disagree with this statement concerning myself given the information below.
36. In an email to my line manager, Meghan Pick on 2 November 2023, I requested early maternity leave on the advice of my treating medical practitioner, owing to some complications affecting my pregnancy to which I do not want to disclose.
37. In this email, I provided the required amount of notice, as well as a medical certificate. My NUM then forwarded my request to HR, and informed me of this on 6 November 2023.
38. In this email, I also applied for sick leave and annual leave to account for the notice period required under the Parental Leave Policy (C26). It is highly unusual for such requests to be referred to Human Resources in my experience working for Queensland Health.
39. I note that HR has not since acknowledged my request for maternity leave; instead issuing me a notice to show cause on 6 November 2023 (dated 3 November 2023).
40. In light of the above facts, and my aforementioned ability to return to work post-pregnancy as a result of the lifting of Health Employment Directive 12/21, I feel as though the sudden proposed termination of my employment is discriminatory.
41. Adverse treatment in employment for the exercise of a workplace right (maternity and other types of leave) is unlawful under the *Industrial Relations Act 2016* (Qld). Furthermore, it is unlawful to discriminate on the basis of pregnancy status, which is a protected attribute under discrimination law.⁴
42. Despite having two years to take disciplinary action, and some 9 months since the decision in *Mocnik & Ors v State of Queensland* (to which the show cause alludes to as cause for recommencing disciplinary action in spite of an active QIRC appeal), Childrens Health Queensland has acted decisively only after I sought to exercise my maternity leave entitlements.
43. I am also aware of other unvaccinated nurses employed by Queensland Health who have returned to work since the lifting of Health Employment Directive 12/21. This would appear to me to be disparate treatment on the basis of my protected attribute.

Alternative Penalties

44. In the case of Queensland Public Education staff who were unvaccinated and disciplined, the decision makers in the Department of Education decided not to terminate employment, but instead issue 20 week reduction in paypoint, with a reprimand, which was subsequently reduced to 18 weeks.⁵

⁴ *Anti-Discrimination Act 1991* (Qld) s 7(c).

⁵ *Nuske v State of Queensland* (Department of Education) [2023] QIRC 199.

45. This was considered in light of the fact that these employees could return to work from 1 July 2023.
46. Given the similar facts to my circumstances, I feel that termination is not an appropriate penalty, and I would instead suggest a penalty not disparate to that experienced by Department of Education employees who returned to work despite non-compliance with vaccination directives.
- a. I have demonstrated my ability to serve Queensland Health faithfully, without displaying any angst or sowing discontent during the September and October 2021 period, in spite of looming vaccination mandates which I disagreed with.
 - b. Now that I can return to the workplace, I commit to maintaining the same restraint and goodwill to my employer upon returning to work from maternity leave.
47. I am also aware of unvaccinated nurses in other Hospital and Health Services returning to work since the lifting of Health Employment Directive 12/21.
48. In light of the above, I would propose the same penalty that was ultimately given to Department of Education employees in the matter identified above, of **18 weeks reduction in paypoint with a written reprimand**, would be more appropriate to my circumstances.

Thank you for allowing me the opportunity to respond to the show cause process again. I hope that, following maternity leave, I can return to work as a passionate Registered Nurse to assist my colleagues, who I understand are currently struggling with a massive staffing shortage.

I appreciate that Queensland Health and I had disparate views as to Covid-19 vaccination. However, with the lifting of HED 12/21, I believe this no longer poses an obstacle to my continuing employment with Queensland Health, even if alternative disciplinary action is found to be necessary.

Yours sincerely,

Ella King

Termination Letter



Children's Health Queensland
Hospital and Health Service

Ms Ella King

Delivered via email:

and via registered post

Dear Ms King

I refer to the letter dated 25 March 2022 from Mr Dominic Tait, Executive Director Clinical Services, Children's Health Queensland Hospital and Health Service (**CHQHHS**) in which he found the following allegation against you to be substantiated:

1. *In contravention of a direction given to you by a responsible person, you have not received your second dose of a COVID-19 vaccine by 31 October 2021.*

Mr Tait determined that, pursuant to section 187(1)(d) of the *Public Service Act 2008*, you had contravened, without a reasonable excuse, a direction given to you as a health service employee by a responsible person. Mr Tait therefore afforded you a period of seven days to respond to why the proposed penalty of termination of your employment should not be imposed.

On 1 March 2023, the *Public Sector Act 2022 (PS Act)* came into force and repealed the *Public Service Act 2008*. I confirm the new PS Act applies to the disciplinary process against you. The relevant provisions are set out in sections 90 – 93 and 313 of the PS Act (**Attachment 1**).

On 3 November 2023, Mr Craig Kennedy, A/Executive Director Clinical Services, CHQHHS, wrote to you to inform you the repeal of *Health Employment Directive No. 12/21 Employee COVID-19 vaccination requirements (HED 12/21)* does not absolve or excuse employees who failed to follow the direction while HED 12/21 was in effect. Mr Kennedy informed you the disciplinary process against you is to progress and afforded you an additional seven days to provide any further submissions as to why the proposed penalty of termination of your employment should not be imposed.

Due to the serious nature of the allegations, Mr Tait proposed the disciplinary action of termination of your employment. In accordance with the CHQHHS Human Resources Sub-Delegations Manual, sub-function 37.04, this matter has now been referred to me as the appropriate delegate to determine the appropriate disciplinary action to take.

I acknowledge receipt of your response on 8 November 2023 to Mr Kennedy's letter to you dated 3 November 2023. In making my decision in relation to discipline action, I have also considered your response (dated 5 April 2022) to Mr Tait's letter dated 25 March 2022.

Response to proposed disciplinary action

In making a decision about the appropriate disciplinary action I have carefully considered all of the information available to me including your response to the proposed penalty dated 5 April 2022 and 8 November 2023, however all the information may not be specifically mentioned in my decision.

In your response dated 5 April 2022:

- You confirmed you had not received a second dose of a COVID 19 vaccination by 31 October 2021.
- You questioned who the responsible person who issued the direction to be vaccinated.

- You noted the Chief Health Officer's (now repealed) *Workers in a healthcare setting (COVID-19 Vaccination Requirements) Direction* allowed a healthcare worker to enter a healthcare setting for up to three months in the case of a critical workforce shortage. You believed there was a critical workforce shortage at the Queensland Children's Hospital.
- You contracted COVID-19 on 30 January 2022 and provided evidence of registration of your Rapid Antigen Testing. You considered yourself a nurse with 'natural immunity'.
- Losing your permanent position with CHQHHS would have many negative effects on you, including financially.

In your response dated 8 November 2023, you advise, in part:

- With respect to your refusal to be vaccinated, you say you have colleagues who experienced adverse reactions to vaccination.
- You set out attempts you say you made with your Nurse Unit Manager and other staff in CHQHHS to speak about your concerns with being vaccinated, but you did not receive clear answers.
- Prior to your non-compliance with HED 12/21, you have never been the subject of disciplinary processes or management action.
- Your non-compliance with HED 12/21 is an exception to your conduct in complying with directions. You did not comply with HED 12/21 because of your genuine cultural beliefs and concerns with the safety of the vaccines.
- You consider it is unfair and unjust to terminate your employment before your 'matter' (which I understand to be a reference to your public service appeal) can be decided. You consider your matter to be substantially different to that described in *Mocnik*.
- You say the circumstances considered in *Mocnik* are substantially different to your circumstances because you now have the ability to return to work in the future (as a result of HED 12/21 being revoked).
- You note employees of the Department of Education who failed to comply with the requirement to be vaccinated were not dismissed, but had the disciplinary action of a reduction in paypoint and a reprimand imposed.
- You consider termination is not an appropriate penalty, and suggest a penalty not disparate to those imposed on Department of Education employees.
- You say you are also aware of unvaccinated nurses in other Hospital and Health Services returning to work since the lifting of HED 12/21.
- You are concerned your employment is being terminated because you submitted a request to take early maternity leave. On 2 November 2023, you emailed your manager asking to take early maternity leave on the advice of your treating medical practitioner. You provided the required amount of notice as well as a medical certificate. As at the time of your response, Human Resources had not acknowledged your request for maternity leave.
- You feel the sudden termination of your employment is discriminatory and/or adverse action.

Preliminary matter

I wish to separately address your concern that the termination of your employment has only been proposed because you have asked for early maternity leave. This is a serious allegation.

I acknowledge the timing of you receiving the letter informing you the disciplinary process would resume unfortunately coincided with your request for paid maternity leave. However, at the time of sending his letter dated 3 November 2023, Mr Kennedy was not aware of your request for paid maternity leave.

Further, the letter to you dated 3 November 2023 was not the first time the termination of your employment was proposed. You were aware, as early as March 2022, that CHQHHS was giving serious consideration to the termination of your employment for your failure to comply with HED 12/21 and receive two doses of a COVID-19 vaccination. This was 20 months before you notified CHQHHS that you were pregnant and wished to access paid maternity leave.

I am satisfied there is no basis for your concern that your employment is being terminated because you applied to take maternity leave. The letter dated 3 November 2023 merely informed you the process was resuming and afforded you a further opportunity to respond. The decision to propose the termination of your employment was made in March 2022.

Further, despite being informed in March 2022 that CHQHHS was giving serious consideration to the termination of your employment, you have continued to fail to comply with the direction to be vaccinated. Any decision to terminate your employment is being made because of your lengthy (over two years) failure to comply with a lawful and reasonable direction, without any reasonable excuse.

Decision on disciplinary action

I wish to assure you I have carefully considered your circumstances and your response dated 5 April 2022 and 9 November 2023.

I have considered very carefully the submissions with respect to the proposed disciplinary action. However, I consider the disciplinary action of the termination of your employment remains the most appropriate action.

In reaching my decision on disciplinary action I have had regard to the following:

- HED 12/21 was issued on 11 September 2021. It required employees to whom it applied to have received two doses of a COVID-19 vaccine by 31 October 2021.
- As a Registered Nurse, you fall within Group 2 of HED 12/21. You have not disputed that HED 12/21 applied to you. You have also not disputed that you failed to comply with HED 12/21.
- HED 12/21 has repeatedly been found by the Queensland Industrial Relations Commission to be reasonable and lawful. Your reasons for failing to comply with the requirement to be vaccinated (vaccine hesitancy as a result of concerns with the safety and efficacy of the vaccine) and religious beliefs, have not been found to amount to a reasonable excuse for failing to comply with the direction.
- You have been given a lengthy period of time in which to make your own inquiries in relation to any concerns you may have about the possibility of an adverse reaction to the vaccine, based on your own, specific medical history. You have provided no evidence of any medical condition that means you are unable to be vaccinated against COVID-19. Neither Queensland Health nor CHQHHS were obliged to provide you with any assurances.
- You were aware that other health care workers were dismissed for failing to comply with the requirement to be vaccinated. You were therefore aware that the termination of your employment was a possible consequence of your failure to receive two doses of a COVID-19 vaccine. I am therefore satisfied that you deliberately and consciously chose not to be vaccinated, notwithstanding the possible impact on your employment.
- I do not consider that a lesser penalty is appropriate in the circumstances. The Department of Education employees who received a paypoint reduction were in breach of a direction to be vaccinated for a much shorter period of time than you. The Department of Education's vaccination mandate was revoked in June 2022, more than 12 months before HED 12/21 was revoked.
- HED 12/21 was able to be revoked because of the significant number of people within the community who became vaccinated against COVID-19. This was only able to occur after COVID-19 vaccines had been available for a long period of time. You were asked to comply with the direction to be vaccinated when COVID-19 was still highly prevalent within the community. By failing to comply with HED 12/21 you made yourself unable to perform work in the health care sector which was at the forefront of the pandemic response.
- You failed to comply with a lawful and reasonable direction from your employer. The direction to receive two doses of a COVID-19 vaccine was issued in the context of Queensland Health attempt to manage the impact of a highly contagious and potentially deadly virus. The failure to comply with a lawful and reasonable direction is a serious act of insubordination. It goes to the heart of any employment relationship. Although you say the behaviour is isolated, I can have no faith that you would not fail to comply with a direction in the future, should you have a personal objection to it.

I have decided the appropriate disciplinary action is the **termination of your employment** with immediate effect. You will be paid your outstanding leave entitlements to the date of this letter, along with your remaining paid maternity leave, being approximately 7 weeks.

A statement of service, as required by legislation, will be forwarded to you under cover of a separate letter.

Return of CHQ property

You are required to immediately return any Division of Medicine or CHQHHS property you may still have in your possession including your identification card. Please return all such property to Ms Charmaine Griffin, Nurse Unit Manager, Medical Day Unit, CHQHHS

Application for reinstatement

You may lodge an application for reinstatement in accordance with Chapter 8, Part 2 of the *Industrial Relations Act 2016* with the Queensland Industrial Relations Commission within **21 calendar days** of receipt of this letter. Information about lodging an application for reinstatement can be obtained from the website www.qirc.qld.gov.au.

Disclosure requirements

Section 71 of the *Public Sector Act 2022* provides that applicants (when applying for employment with the Queensland Public Service) must disclose their previous history of serious disciplinary action (this includes the decision to terminate your employment). In accordance with the Recruitment and Selection Directive 12/20, if a chief executive (or their authorised delegate) proposes to employ a person, the chief executive (or their authorised delegate) may require applicants to disclose particulars of any previous serious disciplinary action taken against them.

Human rights

I acknowledge that my decision to impose the disciplinary action of termination of your employment may impact and potentially limit your human rights including *the right to privacy and reputation, which extends to protecting professional relationships and reputation and the right to participate in public life (through employment in the public service)*.

More specifically, the disciplinary findings made against you, and the proposed disciplinary action, may limit your rights to privacy and reputation as they will form part of your formal disciplinary history and may be required to be disclosed to a prospective employer in certain circumstances. This may, for instance, have a negative impact on your prospects of obtaining alternative employment in the public service in the future.

However, I consider any limitation is demonstrably justified. This is because it is the public interest in ensuring that *public servants and employees of Queensland Health conduct themselves appropriately and in a manner consistent with the Code of Conduct*. I consider that this outweighs the limited potential impact on your human rights at this time.

Employee assistance

I appreciate this is potentially a difficult time for you. Although you are no longer a Queensland Health employee, I would like to offer you access for **up to two (2) free confidential sessions** with Queensland Health's employee assistance provider. If you wish to access this service, please contact TELUS Health (formerly known as LifeWorks) on 1800 604 640.

Questions

If you have any questions in relation to the matters raised in this letter please contact Ms Jasmine Bellinger, Senior Human Resources Consultant on telephone

Yours sincerely

Frank Tracey
Health Service Chief Executive
Children's Health Queensland
Hospital and Health Service
02/01/2024