INDUSTRIAL COURT OF QUEENSLAND

CITATION:	*Nicholson v Carborough Downs Coal Management Pty Ltd & Ors (No 4)* [2023] ICQ 005
PARTIES:	**SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR)** (appellant) **v** **CARBOROUGH DOWNS COAL MANAGEMENT PTY LTD** (respondent)
	SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR) (applicant) **v** **CARBOROUGH DOWNS COAL MANAGEMENT PTY LTD** (first respondent) **ACTING MAGISTRATE ATHOL KENNEDY** (second respondent)
	SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR) (applicant) **v** **RUSSELL CLIVE UHR** (first respondent) **ACTING MAGISTRATE ATHOL KENNEDY** (second respondent)
	SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR) (appellant) **v** **BERNARD VANDEVENTER** (respondent)
	SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR) (appellant) **v** **KEVIN JAMES CASEY** (respondent)

SIMON NICHOLSON (WORK HEALTH AND SAFETY PROSECUTOR)
(appellant)
v
GARY ROY JONES
(respondent)

FILE NO/S: C/2022/16, C/2022/17, C/2022/18, C/2022/21, C/2022/22, C/2022/23

PROCEEDING: Appeals and applications

DELIVERED ON: 9 May 2023

HEARING DATE: 5 April 2023

MEMBER: Davis J, President

ORDERS:

1. **In each of appeals C/2022/16, C/2022/21, C/2022/22 and C/2022/23:**
   - **(a) the appeal is allowed;**
   - **(b) the orders made on 21 February 2022 are set aside;**
   - **(c) the complaint is remitted to the Industrial Magistrates Court at Mackay to be heard and determined according to law.**
2. **In each of applications C/2022/17 and C/2022/18, the complaint is remitted to the Industrial Magistrates Court at Mackay to be heard and determined according to law.**
3. **In each of appeals C/2022/16, C/2022/21, C/2022/22 and C/2022/23, and in each of applications C/2022/17 and C/2022/18:**
   - **(a) the applicant file and serve any written submissions on costs on or before 4.00 pm on 23 May 2023;**
   - **(b) the respondents in the appeals and the first respondents in the applications file and serve any written submissions on costs on or before 4.00 pm on 6 June 2023;**
   - **(c) the applicant file and serve any written reply by 4.00 pm on 13 June 2023;**
   - **(d) all parties have leave before 4.00 pm on 20 June 2023 to file and serve any application for leave to make oral submissions on costs;**
   - **(e) in the event that no application for leave is filed by 4.00 pm on 20 June 2023, the question of costs will**

be determined on any written submissions filed and without further oral hearing.

CATCHWORDS: PREROGATIVE WRITS AND ORDERS - GROUNDS FOR *CERTIORARI* TO QUASH – EXCESS OR WANT OF JURISDICTION – where complaints were made alleging offences against the *Coal Mining Safety and Health Act* 1999 (CMSH Act) – where summonses commanded the appearance of the defendants at the Magistrates Court – where the Magistrates Court has no jurisdiction to hear complaints for offences against the CMSH Act – where the Industrial Magistrates Court has exclusive jurisdiction to hear such complaints – where all magistrates are industrial magistrates – where the magistrate purported to sit as the Magistrates Court – where the magistrate refused to sit as the Industrial Magistrates Court – where the magistrate struck out the complaints – whether the Industrial Magistrates Court should be ordered to hear and determine the complaints – whether the appellant acceded to the jurisdiction of the Magistrates Court – whether in exercise of discretion prerogative orders ought not be made

COURTS – JURISDICTION AND POWERS – where complaints were made alleging offences against the CMSH Act – where summonses commanded the appearance of the defendants at the Magistrates Court – where the Magistrates Court has no jurisdiction to hear complaints for offences against the CMSH Act – where the Industrial Magistrates Court has exclusive jurisdiction to hear such complaints – where all magistrates are industrial magistrates – where the magistrate purported to sit as the Magistrates Court – where the magistrate refused to sit as the Industrial Magistrates Court – where the magistrate struck out the complaints – where the Industrial Court of Queensland has jurisdiction to make prerogative orders supervising the Industrial Magistrates Court – where the Industrial Court of Queensland has no jurisdiction to make prerogative orders supervising the Magistrates Court – whether the Industrial Court of Queensland has jurisdiction to declare the strike-out orders made in the Magistrates Court as invalid – whether the Industrial Court of Queensland should as a matter of discretion make such declarations – whether an order that the Industrial Magistrates Court should hear and determine the complaints is effective if the strike-out orders stand – whether as a matter of discretion such an order should be made if the strike-out orders stand

MAGISTRATES – COMMENCEMENT OF PROCEEDINGS – PARTICULARS AND CONTENT OF INITIATING PROCESS – where complaints were made alleging offences against the CMSH Act – where the CMSH Act provides that such proceedings are commenced and prosecuted under the *Justices Act* 1886 – where by the *Justices*

Act 1886 proceedings commenced by complaint are heard by the Magistrates Court unless another Act so prescribes – where the Industrial Magistrates Court has exclusive jurisdiction to hear such complaints – where s 255 of the CMSH Act confers that jurisdiction – whether the complaint should bear a reference to s 255 – where the complaints did not bear such a reference – whether complaints not bearing a reference to s 255 engaged the jurisdiction of the Industrial Magistrates Court – whether the complaints were defective – whether the complaints were void

Acts Interpretation Act 1954, s 44
Coal Mining Safety and Health Act 1999, s 34, s 39, s 41, s 42, s 255
Industrial Relations Act 2016, s 3, s 4, s 424, s 429, s 505, s 506
Judicial Review Act 1991, s 46
Justices Act 1886, s 19, s 27, s 42, s 43, s 43A, s 47, s 48, s 53, s 54, s 57, s 58, s 59, s 139, s 222
Justices Procedure Act 1919 (Tas)
Magistrates Act 1991, s 8
Magistrates Courts Act 1921, s 45
Summary Ejectment Act 1867 (Tas)
Summary Jurisdiction Act 1848 (UK)
Work Health and Safety Act 2011

CASES:

Attorney-General (NSW) v Mayas Pty Ltd (1988) 14 NSWLR 342, cited
BM Alliance Coal Operations Pty Ltd & anor v Lyne [2007] ICQ 39, considered
Cameron v Cole (1944) 68 CLR 571, cited
Davies v Andrews (1930) 25 Tas LR 84, considered
Director of Public Prosecutions v Edwards (2012) 44 VR 114, cited
Donahoe v Chew Ying (1913) 16 CLR 364, cited
Electronic Rentals Pty Ltd v Anderson & Anor (1971) 124 CLR 27, followed
Ex parte Williams (1934) 51 CLR 545, cited
Gilmour v Bannister Nominees Pty Ltd (1982) 60 FLR 308, followed
Gore v Carborough Downs Coal Management Pty Ltd & Ors [2022] ICQ 31, related
Harrison v President, Industrial Court [2017] 1 Qd R 515, cited
Herrington v Bell; Harland v Bell [2012] ICQ 10, cited
John L Pty Ltd v Attorney-General (NSW) (1987) 163 CLR 508, followed
Kirk v Industrial Court (NSW) (2010) 239 CLR 531, cited
McCulloch v Eolkin; Ex parte Eolkin [1929] St R Qd 113, considered
Minister for Immigration and Multicultural Affairs v Bhardwaj (2002) 209 CLR 597, cited

New South Wales v Kable (2013) 252 CLR 118, cited
Nicholson v Carborough Downs Coal Management Pty Ltd & Ors [2022] ICQ 34, related
Nicholson v Carborough Downs Coal Management Pty Ltd & Ors (No 3) [2023] ICQ 004, related
Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd (2021) 386 ALR 212, cited
Parisienne Basket Shoes Pty Ltd & others v White (1938) 59 CLR 369, cited
Pelechowski v The Registrar of the Court of Appeal of New South Wales (1999) 198 CLR 435, cited
Park Gate Iron Co Ltd v Coates (1870) LR 5 CP 634, cited
Pennington v Jamieson (2022) 317 IR 410, cited
Plenty v Dillon (1991) 171 CLR 635, cited
Re Macks; Ex parte Saint (2000) 204 CLR 158, cited
Shinnie and Shinnie v Bain; Ex parte Bain [1955] QWN 30, followed
Stanley v Director of Public Prosecutions (NSW) (2023) 407 ALR 222, cited
The Commonwealth v Verwayan (1990) 170 CLR 394, cited
Walsh v Doherty (1907) 5 CLR 196, followed
Witthahn v Chief Executive, Hospital and Health Services (2021) 9 QR 642, cited

COUNSEL: B J Power KC with B Dighton for the appellant in all appeals and the applicant in all applications
C J Murdoch KC with J A Bremhorst for the respondents in applications numbers C/2022/17 and C/2022/18 and appeal C/202216
J Hunter KC with S Cartledge for the respondent in appeal C/2022/23
J Ford for the respondent in appeal C/2022/22
K McAuliffe-Lake for the respondent in appeal number C/2022/21

SOLICITORS: Workplace Health and Safety Prosecutor for the appellant in all appeals and the applicant in all applications
McCullough Robertson for the respondents in applications numbers C/2022/17 and C/2022/18 and appeal C/2022/16
Thomson Geer for the respondent in appeal number C/2022/23
Mills Oakley for the respondent in appeal number C/2022/22
Ashurst for the respondent in appeal number C/2022/21

[1] These are appeals and applications for prerogative orders (the prerogative applications) arising from decisions of a magistrate, the second respondent to the prerogative applications, to strike out complaints alleging offences against the *Coal Mining Safety and Health Act* 1999 (CMSH Act).

Background

[2] At the times the complaints were sworn, Aaron Guilfoyle was the Work Health and Safety Prosecutor (WHSP) appointed under the *Work Health and Safety Act* 2011 (WHS Act). David Thomas Gore succeeded Mr Guilfoyle, and Simon Nicholson, who is the present appellant and applicant, is now the WHSP.

[3] Carborough Downs Coal Management Pty Ltd (Carborough Downs Coal) operates a coal mine (the coal mine) in an area south-west of Mackay on the Peak Downs Highway near Coppabella. Carborough Downs Coal is a respondent to one of the appeals and to one of the prerogative applications.

[4] On 7 September 2019, an accident occurred where part of the mine roof of the coal mine collapsed injuring a worker, Mr Cameron Best (the Best incident).

[5] On 25 November 2019, another incident occurred. On that occasion, material fell from a coal face killing a mine electrician, Mr Bradley James Duxbury (the Duxbury incident).

[6] The CMSH Act places safety obligations upon persons working in a coal mine.[1] Offences are committed upon breach of safety obligations.[2]

[7] As a consequence of the Best incident, Mr Guilfoyle swore five complaints alleging offences against the CMSH Act. In each case a breach of a safety obligation was alleged:

Defendant	Position Held
Gary Roy Jones	Coal mine worker
Bernard Vandeventer	Coal mine worker
Jeremy David Futeran	Site Senior Executive
Carborough Downs Coal	Coal mine operator
Kevin James Casey	Coal mine worker

[8] These five defendants are all respondents to the appeals to this Court. However, on 5 April 2023, consent orders were made whereby the appeal against Mr Futeran was dismissed and directions were made for written submissions on costs to be exchanged and the issue of costs determined without oral argument. There is therefore no need to further consider Mr Futeran's involvement in the Best incident, or the proceedings against him which flowed from it.

[9] The complaints sworn against each of the four remaining defendants, Messrs Jones, Vandeventer and Casey, and Carborough Downs Coal (collectively "the Best defendants"), are:

> THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1, 347 Ann Street, Brisbane in the State

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1 *Coal Mining Safety and Health Act* 1999, Part 3.
2 *Coal Mining Safety and Health Act* 1999, s 34.

of Queensland, made this twenty-second day of January 2021, before the undersigned, a Justice of the Peace for the said State, who says that on or about the sixth day of September 2019, near Coppabella in the said State, GARY ROY JONES was a coal mine worker at a coal mine, namely the Carborough Downs Coal Mine and, pursuant to section 39(2)(b) of the *Coal Mining Safety and Health Act 1999* (Qld), had an obligation to ensure, to the extent of the responsibilities and duties allocated to the said GARY ROY JONES, that the work or activities under his control, supervision, or leadership were conducted in a way that did not expose the worker or person or someone else to an unacceptable level of risk, and failed to discharge that obligation, contrary to section 34 of the said Act…

THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1, 347 Ann Street, Brisbane in the State of Queensland, made this twenty-second day of January 2021, before the undersigned, a Justice of the Peace for the said State, who says that between the eighteenth day of August 2019 and the eighth day of September 2019, near Coppabella in the said State or elsewhere, BERNARD VANDEVENTER was a coal mine worker at a coal mine, namely the Carborough Downs Coal Mine and, pursuant to section 39(2)(b) of *the Coal Mining Safety and Health Act 1999* (Qld), had an obligation to ensure, to the extent of the responsibilities and duties allocated to the said BERNARD VANDEVENTER, that the work or activities under his control, supervision, or leadership were conducted in a way that did not expose the worker or person or someone else to an unacceptable level of risk, and failed to discharge that obligation, contrary to section 34 of the said Act;

AND the said contravention caused grievous bodily harm to a coal mine worker…

THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1, 347 Ann Street, Brisbane in the State of Queensland, made this twenty-second day of January 2021, before the undersigned, a Justice of the Peace for the said State, who says that between the eighteenth day of August 2019 and the eighth day of September 2019, near Coppabella in the said State or elsewhere, CARBOROUGH DOWNS COAL MANAGEMENT PTY LTD A.C.N. 108 803 461 was a coal mine operator for a coal mine, namely the Carborough Downs Coal Mine and, pursuant to section 41(1)(a) of the *Coal Mining Safety and Health Act 1999* (Qld), had an obligation to ensure the risk to coal mine workers while at the said mine was at an acceptable level, and failed to discharge that obligation, contrary to section 34 of the said Act;

AND the said contravention caused grievous bodily harm to a coal mine worker…

THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1, 347 Ann Street, Brisbane in the State

> of Queensland, made this twenty-second day of January 2021, before the undersigned, a Justice of the Peace for the said State, who says that on or about the seventh day of September 2019, near Coppabella in the said State, KEVIN JAMES CASEY was a coal mine worker at a coal mine, namely the Carborough Downs Coal Mine and, pursuant to section 39(1)(a) of the *Coal Mining Safety and Health Act 1999*, had an obligation to comply with the said Act and procedures applying to the said KEVIN JAMES CASEY that were part of a safety and health management system for the said coal mine, and failed to discharge that obligation, contrary to section 34 of the said Act;
>
> AND the said contravention caused grievous bodily harm to a coal mine worker... (the Best complaints)

[10] The Best complaints are identical except as to the identity of the defendant and the safety obligations alleged to be breached. Messrs Jones, Vandeventer and Casey are all alleged to be coal mine workers whose safety obligations are imposed by s 39(2)(b) of the CMSH Act. Carborough Downs Coal is alleged to be the coal mine operator whose safety obligations arise by force of s 41(1)(a).

[11] Section 39(1) prescribes the general obligations of coal workers and then s 39(2) relevantly provides:

> "**39 Obligations of persons generally**
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> …
>
> (2) A coal mine worker or other person at a coal mine has the following additional obligations—
>
> (a) …
>
> (b) to ensure, to the extent of the responsibilities and duties allocated to the worker or person, that the work and activities under the worker's or person's control, supervision, or leadership is conducted in a way that does not expose the worker or person or someone else to an unacceptable level of risk …"

And s 41 relevantly provides:

> "**41 Obligations of coal mine operators**
>
> (1) A coal mine operator for a coal mine has the following obligations—
>
> (a) to ensure the risk to coal mine workers while at the operator's mine is at an acceptable level, including, for example, by providing and maintaining a place of work and plant in a safe state …"

[12] Extensive particulars appeared under each of the Best complaints, but it is unnecessary to refer to any of the particulars.

[13] Each of the Best complaints were accompanied by a summons commanding the attendance of each defendant at the Industrial Magistrates Court at Mackay on 20 April 2021.

[14] Mr Guilfoyle further swore three complaints concerning the Duxbury incident:

Defendant	Position Held
Jeremy David Futeran	Site Senior Executive
Carborough Downs Coal	Coal mine operator
Russell Clive Uhr	Site Senior Executive

[15] These three are all subject to the prerogative applications. All three prerogative applications were filed out of time, although an extension of time was granted which regularised the applications against Carborough Downs Coal and Mr Uhr. The application for an extension of time failed against Mr Futeran.[3]

[16] The complaints sworn against each of the remaining two defendants, Carborough Downs Coal and Mr Uhr (collectively the Duxbury defendants[4]), are:

> THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1, 347 Ann Street, Brisbane in the State of Queensland, made this twenty-fourth day of November 2020, before the undersigned, a Justice of the Peace for the said State, who says that between about the twelfth day of August 2019 and about the twenty-sixth day of November 2019, near Coppabella in the said State, CARBOROUGH DOWNS COAL MANAGEMENT PTY LTD A.C.N. 108 803 461 was a coal mine operator for a coal mine, namely the Carborough Downs Coal Mine, pursuant to section 41(1)(a) of the *Coal Mining Safety and Health Act 1999*, had an obligation to ensure the risk to coal mine workers while at the said mine was at an acceptable level, and failed to discharge that obligation, contrary to section 34 of the said Act;
>
> AND the said contravention caused the death of a coal mine worker…
>
> THE COMPLAINT of AARON JOHN GUILFOYLE, Work Health and Safety Prosecutor, Level 1 , 347 Ann Street, Brisbane in the State of Queensland, made this twenty-fourth day of November 2020, before the undersigned, a Justice of the Peace for the said State, who says that between about the twenty-third day of September 2019 and about the twenty-sixth day of November 2019, near Coppabella in the said State, RUSSELL CLIVE UHR was a site senior executive for a coal mine, namely the Carborough Downs Coal Mine and, pursuant to section 42(a) of the *Coal Mining Safety and Health Act 1999*, had an obligation to ensure the risk to persons from coal mining operations

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3 *Nicholson v Carborough Downs Coal Management Pty Ltd Pty Ltd & Ors* [2022] ICQ 34.

4 The Best defendants and the Duxbury defendants being collectively "the defendants".

was at an acceptable level, and failed to discharge that obligation, contrary to section 34 of the said Act;

AND the said contravention caused the death of a coal mine worker… (collectively "the Duxbury complaints")

[17] The Duxbury complaints are identical except as to the identity of the defendant and the safety obligations alleged to be breached. Carborough Downs Coal is alleged to be the mine operator.[5] Mr Uhr is alleged to be the site senior executive whose safety obligations are imposed by s 42(a) which provides, relevantly:

> "**42 Obligations of site senior executive for coal mine**
>
> A site senior executive for a coal mine has the following obligations in relation to the safety and health of persons who may be affected by coal mining operations—
>
> (a) to ensure the risk to persons from coal mining operations is at an acceptable level …"

[18] Each of the Duxbury complaints were accompanied by a summons commanding the attendance of each of the Duxbury defendants at the Magistrates Court at Mackay on 23 March 2021. It is common ground that it is the Industrial Magistrates Court, not the Magistrates Court, which has jurisdiction to hear complaints for offences against the CMSH Act.[6] The Duxbury defendants had therefore been summonsed to the wrong court.[7]

[19] Extensive particulars appeared under each of the Duxbury complaints, but it is not necessary to analyse the particulars.

The proceedings before the magistrate (second respondent to the prerogative applications)

[20] All defendants brought applications seeking to have the complaints struck out (the strike-out applications).

[21] The Best defendants raised two grounds in support of their strike-out applications. They were:

> "1. That the complaint against the Applicant / Defendant, Carborough Downs Coal Management Pty Ltd, made 22 January 2021 be struck out on the basis that it is void as it does not invoke the jurisdiction of the Court.
>
> 2. That the summons served on the Applicant / Defendant issued 22 January 2021 requiring it to appear before the Court be struck out as the complaint is a nullity…"[8]

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5 See *Coal Mining Safety and Health Act* 1999, s 41 which is set out at paragraph [11] of these reasons.
6 *Coal Mining Safety and Health Act* 1999, s 255(1).
7 Subject to what is said at paragraphs [75]-[82] of these reasons.
8 This is the application of Carborough Downs Coal. The other Best defendants made identical applications.

[22] The Duxbury defendants also raised two grounds in support of their applications. They are expressed in their amended form as:

> "1. That the complaint against the Applicant / Defendant, Carborough Downs Coal Management Pty Ltd, made 24 November 2020 be struck out for want of jurisdiction.
>
> 2. That the summons served on the Applicant / Defendant issued 24 November 2020 requiring it to appear before the Court be struck out as the complaint is a nullity and the summons is invalid…"[9]

[23] The strike-out applications made in the Best complaints were brought by applications headed "Industrial Magistrates Court" and filed in the Industrial Magistrates Court. The strike-out applications brought in the Duxbury complaints were brought by applications headed "The Magistrates Court" and were filed in the Magistrates Court.

[24] In support of the grounds in the strike-out applications, the Duxbury defendants submitted in relation to each of the Duxbury complaints:

1. the only court with jurisdiction to hear the complaints is the Industrial Magistrates Court, not the Magistrates Court;
2. a complaint must invoke the jurisdiction of a court to hear the complaint; here, the Industrial Magistrates Court;
3. prosecutions for summary offences are usually conducted in the Magistrates Court;
4. therefore, if the jurisdiction of some other court is to be engaged, the engagement must be manifest on the face of the complaint;
5. here, that required at least specific reference to those statutory provisions vesting jurisdiction upon the Industrial Magistrates Court, namely s 255 of the CMSH Act and also s 506 of the *Industrial Relations Act* 2016 (IR Act);
6. therefore the complaint is a nullity as it does not engage the jurisdiction;
7. further, the Magistrates Court to which the summons is returnable does not have jurisdiction;
8. further, if the complaint is a nullity, then so must be the summons as the jurisdiction to issue a summons is dependent upon the existence of a valid complaint; and
9. the summons is also invalid because it commands the appearance of the defendant at a Magistrates Court when it is the Industrial Magistrates Court, not the Magistrates Court, which has jurisdiction.

[25] The Best defendants made similar submissions[10] except for the points concerning the summons requiring the Duxbury defendants' appearance before the wrong court.[11]

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9 This is the amended Carborough Downs Coal's application. The other Duxbury defendants made identical applications.

10 Those described in paragraphs 1-6 of paragraph [24] of these reasons.

11 The Best defendants were summonsed to the correct court; the Industrial Magistrates Court.

[26] On 9 December 2021, Acting Magistrate Kennedy, the second respondent to the prerogative applications, heard the strike-out applications. Although the Best strike-out applications were brought to the Industrial Magistrates Court and the Duxbury strike-out applications were brought to the Magistrates Court, his Honour heard the applications together. Sensibly, no party takes any point about this. Acting Magistrate Kennedy was by force of the IR Act, an industrial magistrate[12] and therefore had jurisdiction to hear both applications. Judgment was delivered on 21 February 2022.

[27] His Honour was well aware of the issues raised by the Duxbury defendants as to the significance of the summons in each of the Duxbury complaints compelling attendance at the Magistrates Court. His Honour made orders in relation to the Best complaints which clearly purported to be orders made in his capacity as an industrial magistrate. His Honour made orders in respect of the Duxbury complaints clearly purportedly in his capacity as a magistrate.

[28] His Honour held that all complaints were void. He held that as the complaints did not specify the Magistrates Court district in which the offences allegedly occurred, s 139 of the *Justices Act* 1886[13] had been contravened and that contravention meant that the complaints were invalid. None of the respondents to either the prerogative applications or the appeals submits that the complaints are invalid for that reason.

[29] His Honour further found that all the complaints were invalid because they did not, on their face, otherwise enliven jurisdiction. This was because no reference to any section vesting jurisdiction on the Industrial Magistrates Court[14] appears in the complaints.

[30] His Honour also found that the Magistrates Court had no jurisdiction to hear the Duxbury complaints, and that the matters were before the Magistrates Court because of the terms of the summons in each complaint.

Course of the proceedings issued after the complaints were struck out

[31] On 22 August 2022, appeals were filed in this Court against each of the orders striking out each of the complaints. Appeals were also filed in the District Court against the orders made striking out the Duxbury complaints.[15] The rationale for that step was apparently that the orders were purportedly made in the Magistrates Court and appeals from the Magistrates Court lie, not to this Court but to the District Court.[16]

[32] Applications were made to this Court by the Duxbury defendants to strike out the appeals in the Duxbury complaints alleging that as those orders were made by the Magistrates Court, this Court had no jurisdiction to hear any appeal. On 28 October 2022, those applications were heard and dismissed.[17]

[33] On 8 November 2022, the prerogative applications were filed in this Court in relation to each of the Duxbury complaints in these terms:

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12 *Industrial Relations Act* 2016, s 505.
13 Which prescribes where complaints of a summary offence shall be heard.
14 In particular, *Coal Mining Safety and Health Act* 1999, s 255.
15 The appeal against Mr Futeran concerning the Best complaint which he faced has been withdrawn.
16 *Justices Act* 1886, s 222.
17 *Gore v Carborough Downs Coal Management Pty Ltd & Ors* [2022] ICQ 31.

"The applicant seeks:

1. Leave for this application to be brought outside the 28 day period after the relevant decision;

2. A prerogative order in the nature of certiorari compelling the Industrial Magistrate to exercise jurisdiction, pursuant to s 255 of the Coal Mining Safety and Health Act 1999, over the complaint filed against the respondent; and

3. An order that the court file be remitted to the Industrial Magistrate at Mackay for the complaint to be heard and determined according to law."

[34] As can be seen from the first order sought, each prerogative application was filed out of time.[18] Applications for extension of time were filed and they were heard on 2 December 2022. On 23 December 2022, extensions of time were given in relation to the prerogative applications brought against Mr Uhr and Carborough Downs Coal but not Mr Futeran.[19]

[35] The appeals to both this Court and the District Court concerning the strike-out orders made in the Duxbury complaints have been discontinued.

[36] On 13 January 2023, appeals were filed by Carborough Downs Coal and Mr Uhr against the orders giving an extension of time. Those appeals are to be heard by the Court of Appeal on 11 May 2023.

[37] On 17 February 2023, this Court ordered that the present appeals and applications be set down and determined notwithstanding the pending appeals to the Court of Appeal.[20]

The prerogative applications and appeals

[38] In each of the appeals the WHSP raised two grounds of appeal:

"1. The learned Industrial Magistrate erred in striking out the complaint for want of jurisdiction because it failed to recite the Magistrates Court district in which the alleged offence occurred.

2. The learned Industrial Magistrate erred in striking out the complaint for want of jurisdiction because it failed to recite, in a margin note, a reference to s 255 of the Coal Mining Safety and Health Act 1999 and the name of the court in which it was to be heard and determined."

[39] As already observed, none of the Best defendants sought to defend the appeals on the basis that the complaints were void only because the Magistrates Court district was not identified in them. Therefore, the appeals only raise one ground: whether the failure to recite s 255 of the CMSH Act (or some other provision identifying the

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18 The time limited for the bringing of applications for prerogative orders is three months, not 28 days. *Judicial Review Act* 1991, s 46. The prerogative applications were still out of time.

19 *Nicholson v Carborough Downs Coal Management Pty Ltd & Ors* [2022] ICQ 34.

20 *Nicholson v Carborough Downs Coal Management Pty Ltd & Ors (No 3)* [2023] ICQ 004.

jurisdiction of the Industrial Magistrates Court) on the face of the complaints, renders them invalid as not invoking the jurisdiction.

[40] The prerogative applications are each made on the following grounds:

> "1. Proceedings against the Respondent were instituted by a complaint sworn 24 November 2020 (''the complaint').
>
> 2. The complaint charged the Respondent with one offence under section 34 of the Coal Mining Safety and Health Act 1999 (Qld) ('the CMSHA').
>
> 3. Pursuant to s 255 of the CMSHA, the Industrial Magistrates Court has jurisdiction to hear summarily a complaint alleging that offence.
>
> 4. By a summons dated 24 November 2020, the Respondent was commanded to appear 'at the Magistrates Court' situated at the relevant address to answer that complaint.
>
> 5. The Respondent filed an application in the Magistrates Court of Queensland dated 9 August 2021 applying for the complaint and the summons to be struck out on the basis the complaint and summons were void as they did not invoke the jurisdiction of the Industrial Magistrates Court.
>
> 6. Sitting as a Magistrate in the Magistrates Court of Queensland, the court at first instance struck out the complaint as being a nullity.
>
> 7. There has been a failure by the Industrial Magistrate to exercise jurisdiction over the complaint against the Respondent.
>
> 8. Section 424(1)(e) of the Industrial Relations Act 2016 affirms that when the Industrial Court of Queensland is constituted by the President, then the Court may 'exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process' that 'the commission and magistrates exercise their jurisdictions according to law'. Prerogative relief is sought in this Court to compel the Industrial Magistrate to exercise their jurisdiction and hear the complaint according to law."

[41] If the second respondent was correct and the Duxbury complaints were invalid because they did not include a reference to s 255 of the CMSH Act, then the prerogative applications must fail. There can be no error in the second respondent refusing to exercise jurisdiction to try complaints which did not enliven the jurisdiction of the Industrial Magistrates Court.

[42] In addition to submitting that there is no legal requirement that the complaints bear a reference to s 255 of the CMSH Act in order to invoke the jurisdiction of the Industrial Magistrates Court, the WHSP submitted:

(a) each of the Best and Duxbury complaints invoked the jurisdiction of the Industrial Magistrates Court as:

(i) each complaint charged an offence against the CMSH Act;

(ii) the form of each charge followed s 47 of the *Justices Act*;

(iii) each charge showed the place where the offence occurred;

(b) the summons in each of the Duxbury complaints was not defective as it required the attendance of the defendants at a place where industrial magistrates would be;

(c) if the summons in each of the Duxbury complaints was defective, that defect did not affect the engagement by the complaint of the jurisdiction of the Industrial Magistrates Court;

(d) if the summons in each of the Duxbury complaints was defective, it could be amended.

[43] The defendants all submitted:

(a) the complaint is a nullity as it does not mention s 255 of the CMSH Act;

(b) the complaint cannot now be amended.

[44] The Duxbury defendants further submitted:

(a) the summons does not enliven the jurisdiction of the Industrial Magistrates Court;

(b) the summons cannot be amended;

(c) prerogative relief cannot be given and alternatively, in exercise of discretion, relief ought not be given.

Is each complaint a nullity?

[45] The defendants submit that:

(a) the *Justices Act* establishes a regime for commencing summary proceedings in the Magistrates Court;

(b) other legislation such as the CMSH Act engages the *Justices Act* for proceedings to be conducted in the Industrial Magistrates Court;

(c) in order to enliven the jurisdiction of the Industrial Magistrates Court, the complaint must contain a reference to a statutory provision which does so; otherwise the "default position" pertains, namely that the Magistrates Court jurisdiction is what is sought to be engaged by a complaint sworn pursuant to the *Justices Act*.

[46] Section 255 of the CMSH Act provides, relevantly:

> "**255 Proceedings for offences**
>
> (1) A prosecution for an offence against this Act, other than an offence against part 3A,[21] is by way of summary proceedings before an industrial magistrate…

[21] Not relevant here.

> (3) A person dissatisfied with a decision of an industrial magistrate in proceedings brought under subsection (1) who wants to appeal must appeal to the Industrial Court.
>
> (4) The *Industrial Relations Act 2016* applies, with necessary changes, to a proceeding before an industrial magistrate brought under subsection (1) and to a proceeding on appeal before the Industrial Court brought under subsection (3)…"

[47] But for s 255, summary proceedings under the CMSH Act would be within the jurisdiction of the Magistrates Court.[22]

[48] Proceedings brought under the *Justices Act* may be commenced by complaint. Section 42 provides:

> "**42 Commencement of proceedings**
>
> (1) Except where otherwise expressly provided or where the defendant has been arrested without warrant, all proceedings under this Act shall be commenced by a complaint in writing, which may be made by the complainant in person or by the complainant's lawyer or other person authorised in that behalf.
>
> (1A) However, where a defendant is present at a proceeding and does not object, a further charge or an amended charge may be made against the defendant and be proceeded with although no complaint in writing has been made in respect thereof.
>
> (2) Where a defendant has been arrested on any charge and no complaint in writing has been made and in a case to which subsection (1A) applies particulars of the charge against the defendant shall be entered on the bench charge sheet."

[49] Once a complaint is sworn, a Justice of the Peace (a Justice) may issue a summons,[23] or a warrant for the arrest of the defendant.[24] If the Justice issues a summons, it must be in the form prescribed by s 54. Section 54(1) provides:

> "**54 Form of summons and filing of complaint and summons**
>
> (1) Every summons shall be directed to the defendant and shall require the defendant to appear at a certain time and place before the Magistrates Court, or, as the case may require, before justices taking an examination of witnesses in relation to an indictable offence, to answer the complaint and to be further dealt with according to law. …" (emphasis added)

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22 *Acts Interpretation Act* 1954, s 44 and *Justices Act* 1886, s 27.

23 *Justices Act* 1886, s 53.

24 *Justices Act* 1886, s 59 warrants for the arrest of defendants charged with summary offences. As to arrest warrants for defendants charged with indictable offences, see ss 57 and 58.

[50] Section 27 explains how the jurisdiction conferred on the Magistrates Court to hear and determine complaints[25] should be exercised. It provides:

> "**27 Hearing of complaint**
>
> (1) Subject to the provisions of any other Act, every complaint shall be heard and determined by a Magistrates Court constituted by 2 or more justices.
>
> (2) If any Act authorises a matter of complaint to be heard and determined by—
>
> (a) a Magistrates Court constituted by 1 justice; or
>
> (b) 1 justice;
>
> that matter of complaint may be heard and determined by a Magistrates Court constituted by 1 justice."

[51] That a complaint should be heard by a "Magistrates Court" consisting of "2 or more justices" is "subject to the provisions of any other Act".[26]

[52] The *Magistrates Act* 1991 provides that a magistrate may exercise the jurisdiction conferred on two justices[27] and s 255 of the CMSH Act removes the jurisdiction of the Magistrates Court to hear particular complaints and vests that jurisdiction on another court: the Industrial Magistrates Court.

[53] A summons does not confer jurisdiction upon a court to hear and determine the charge. It is the complaint which confers jurisdiction.[28] The summons compels the appearance of the defendant before the Court which is vested by the complaint with jurisdiction to hear and determine the charge.[29]

[54] It follows that the complaint must contain sufficient information to establish jurisdiction. In *McCulloch v Eolkin; Ex parte Eolkin*,[30] it was said that there was "*the necessity for a specific written complaint or summons, so that the attention not only of the accused, but of the Magistrate, shall be sharply directed to the exact offence alleged and the jurisdiction invoked*".[31] *McCulloch v Eolkin* was a case where a defendant had been wrongfully arrested and then charged orally from the bench. There was no written complaint.

[55] The statement of principle in *McCulloch v Eolkin* which appears above[32] was followed by this Court in *Herrington v Bell; Harland v Bell*.[33] There, the complaint did not allege an offence, but the complainant swore that "It came to my knowledge

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25 *Justices Act* 1886, s 19.
26 *Justices Act* 1886, s 27.
27 *Magistrates Act* 1991, s 8.
28 *Walsh v Doherty* (1907) 5 CLR 196 at 199, *John L Pty Ltd v Attorney-General (NSW)* (1987) 163 CLR 508 at 519.
29 *Electronic Rentals Pty Ltd v Anderson & Anor* (1971) 124 CLR 27 at 41, *Gilmour v Bannister Nominees Pty Ltd* (1982) 60 FLR 308 at 311; although the primary purpose of the summons is to afford natural justice to the defendant; *Plenty v Dillon* (1991) 171 CLR 635 at 641-2.
30 [1929] St R Qd 113.
31 At 117.
32 At paragraph [54] of these reasons.
33 [2012] ICQ 10.

that [the stated offence had been committed]". It was held, following *McCulloch v Eolkin*, that as there was no allegation of the commission of an offence, no complaint had been made and the jurisdiction of the Industrial Magistrates Court was not engaged.

[56] These principles pose, but do not answer the question as to what content in a complaint is necessary to enliven the jurisdiction of a court to hear a complaint. The starting point must be the provisions of the *Justices Act*.

[57] Division 1 of Part 4 of the *Justices Act* (in which s 42 is found) deals with complaints. Section 46 concerns the description of persons and property and then s 47[34] relevantly provides:

> "**47 What is sufficient description of offence**
>
> (1) The description of any offence in the words of the Act, order, by-law, regulation, or other instrument creating the offence, or in similar words, shall be sufficient in law. …"

[58] No authority has been discovered which suggests that it is necessary to vest jurisdiction in a court other than the Magistrates Court that the section of the statute granting jurisdiction to that other court be endorsed upon the complaint. The defendants rely though upon *BM Alliance Coal Operations Pty Ltd & anor v Lyne* ('*BM Alliance*').[35]

[59] In *BM Alliance*, a complaint was laid under the CMSH Act but, like with the Duxbury complaints, the summons commanded an appearance by the defendants before "the Magistrates Court situated at [a particular Magistrates Court]".[36] For reasons which are later explained in more depth,[37] President Hall held that the summons was not defective. His Honour said:

> "Had it not been for the words 'before a Magistrates Court' the summons was entirely unexceptional. Absent those words the summons required the defendant to appear at a particular building, *viz*. the Magistrates Court situated at 21 Griffin Street, Moranbah (a place whereat Magistrates commonly sit) on a specified day at a specified time. Such a summons is not defective, compare the decision of the Full Court in *Shinnie and Shinnie v Bain, ex parte Bain* [1955] QWN 30. It is the words 'before a Magistrates Court' which let in the argument that the Defendant was required to appear at the incorrect court. That concession made, I do not accept the submission that the summons was 'quite unequivocal' in requiring the Defendant to appear in the Magistrates Court. The summons was served with a copy a the complaint (previously reproduced) which raised an offence capable of being heard only by an Industrial Magistrate and which, in the top left hand corner, specified the sections of the *Coal Mining Safety and Health Act 1999*, including s. 255, which brought about that result. The summons was at worst

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34 Sections 46 and 47 are within Part 4 Division 1.
35 [2007] ICQ 39.
36 At page 3.
37 Paragraph [79] of these reasons.

> confusing (though the Appellants/Applicants were not confused) ..."[38] (emphasis added)

[60] That passage is not authority for the proposition that s 255 of the CMSH Act must be endorsed on the complaint in order to engage the jurisdiction of the Industrial Magistrates Court.

[61] Each of the complaints here complies with s 47 and all other provisions of Division 1 of Part 4 of the *Justices Act*. The wording of each complaint follows the wording of the statute creating the offence. It identifies the safety obligation owed and identifies how it is breached. Importantly, the provision alleged to be offended against is specifically identified as a section of the CMSH Act.

[62] By identifying the provision of the CMSH Act which has been offended against, each complaint shows the relevant jurisdiction as that of the Industrial Magistrates Court. That is the legal effect of s 255 of the CMSH Act.

[63] Each complaint validly engaged the jurisdiction of the Industrial Magistrates Court at Mackay.

Can the complaint now be amended?

[64] Section 48 of the *Justices Act* gives a power to amend both the complaint and the summons. It provides:

> "**48 Amendment of complaint**
>
> (1) If at the hearing of a complaint, it appears to the justices that—
>
> (a) there is a defect therein, in substance or in form, other than a noncompliance with the provisions of section 43; or
>
> (b) there is a defect in any summons or warrant to apprehend a defendant issued upon such complaint; or
>
> (c) there is a variance between such complaint, summons or warrant and the evidence adduced at the hearing in support thereof;
>
> then—
>
> (d) if an objection is taken for any such defect or variance—the justices shall; or
>
> (e) if no such objection is taken—the justices may;
>
> make such order for the amendment of the complaint, summons or warrant as appears to them to be necessary or desirable in the interests of justice.

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38 At page 4.

> (2) Without limiting subsection (1), if the justices consider the offence charged in the complaint is also a domestic violence offence but the complaint does not include a statement to that effect, the court may order that the complaint be amended to state the offence is also a domestic violence offence."

[65] A similar provision was considered in *Davies v Andrew*,[39] a decision which is 93 years old where this was said in a passage now relied upon by the respondents:

> "The 'defects' 'in substance or form,' that it refers to, are either defects merely of form, or defects which, while of substance, are yet not defects which are so radical and fundamental as prior to Jervis' Act would have meant that the complaint in which they existed could not operate to confer jurisdiction on the justices…"[40]

[66] The reference to Jervis' Act is a reference to the English *Summary Jurisdiction Act* 1848. The terms of Jervis' Act were legislatively adopted in Tasmania,[41] so the Full Court of Tasmania looked to the law both before and after the passage of Jervis' Act.

[67] Mr Davies laid a complaint against Mr Andrews that he was keeping a horse at a premises without having a licence to do so. That was in breach of a Hobart City Council by-law. The Police Magistrate, before whom the complaint came, ruled that the charge did not disclose an offence known to the law so an amendment was sought. The Police Magistrate held that if the complaint was amended as requested, it would still not show an offence known to law. The amendment was refused.

[68] The Full Court unanimously upheld the Police Magistrate's decision. Clark J undertook an analysis of the authorities concluding that both before and after the enactment of Jervis' Act, the Police Magistrate would only have jurisdiction if the complaint alleged an offence known to the law. Given that the *Justices Procedure Act* 1919 (Tas) was in the same form, his Honour concluded that the complaint was a nullity, jurisdiction had not been vested upon the Police Magistrate and consequently there was nothing to amend.

[69] Modern cases suggest the power of amendment is wider. It will, for instance, extend to adding an allegation of a necessary element.[42]

[70] However, in argument before me, Mr Murdoch KC accepted that if his first point failed and the complaint vested jurisdiction in the Industrial Court, even though s 255 of the CMSH Act was not specifically mentioned, then the complaint could be amended. Mr Power KC for the WHSP conceded that if Mr Murdoch's first point was correct, then the complaint was a nullity and could not be amended.

[71] It is therefore not necessary to decide whether the complaint could be amended to add a reference to s 255 of the CMSH Act.

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39 (1930) 25 Tas LR 84.
40 At 109.
41 *Justices Procedure Act* 1919 (Tas).
42 *Harrison v President, Industrial Court* [2017] 1 Qd R 515 at [114].

Does the summons enliven the jurisdiction of the Industrial Magistrates Court?

[72] It is well-established that it is the complaint, not the summons, which confers the jurisdiction of the Magistrates Court or the Industrial Magistrates Court as the case may be. The summons is the procedure by which the defendants' appearance before the court is compelled,[43] and natural justice is afforded.[44]

[73] In argument before me, Mr Murdoch submitted that the summons in each of the Duxbury complaints, requiring as it did the Duxbury defendants to appear in the Magistrates Court rather than the Industrial Magistrates Court, is another factor which demonstrates that jurisdiction had not been vested by the Duxbury complaints.

[74] I reject that submission. For the reasons already explained, each complaint was a valid one and engaged the jurisdiction of the Industrial Magistrates Court. There was no reason why the second respondent could not have exercised his jurisdiction as an industrial magistrate.

[75] Further, while the error in the preparation of the summons has caused untold problems in the prosecution of the Duxbury defendants, I hold that the summons in each case validly compelled each Duxbury defendant to appear and answer the charge on the complaint.

[76] The summons accompanying each of the Duxbury complaints was in terms:

> "WHEREAS the above Complaint has been made before me: YOU ARE HEREBY COMMANDED, to appear at the Magistrates Court situated at:
>
> Place: 12 Brisbane Street, MACKAY QLD 4740
>
> Date: Tuesday, 23 March 2021
>
> Time: 9.00am"

[77] In *Shinnie and Shinnie v Bain; Ex parte Bain*,[45] the Full Court of the Supreme Court of Queensland considered a summons which had been issued on a complaint seeking possession of premises under the *Summary Ejectment Act* 1867. By that legislation, possession could be recovered upon a summons requiring the tenant to appear before a stipendiary magistrate. The summons attached to the complaint, however, required the tenant to appear before the "Police Court" at Coolangatta. It was argued that the summons was invalid as it did not seek to compel the tenant's appearance before a stipendiary magistrate.

[78] Macrossan CJ (with whom Mansfield SPJ and Hanger J, as their Honours then were, agreed) held:

> "In my opinion the summons was not defective. I think that the words 'Police Court' in it are a description of the building where the petty sessions of Coolangatta usually sit. It would be known to all persons concerned that there was only one Court House at Coolangatta and I

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43 *Electronic Rentals Pty Ltd v Anderson & Anor* (1971) 124 CLR 27 at 41.
44 *Plenty v Dillon* (1991) 171 CLR 635 at 641-2.
45 [1955] QWN 30.

> think it is well known that the buildings where the courts of petty sessions usually sit are commonly known as 'Police Courts'."[46]

[79] In *BM Alliance*,[47] the circumstances of which have been previously explained,[48] Hall P followed *Shinnie and Shinnie v Bain; Ex parte Bain*[49] and an earlier decision of the High Court of Australia in *Donahoe v Chew Ying*,[50] and held that while the summons there (as here) commanded appearance before a particular "Magistrates Court", that was a place where industrial magistrates were present. Industrial magistrates had jurisdiction to hear and determine the charge and consequently the summons was valid.

[80] In the present case, the Duxbury defendants appeared at the address specified in the summons. Although they purported to appear conditionally, and took jurisdictional points, they appeared before a judicial officer who was in law an industrial magistrate and who in law had jurisdiction to hear the complaint. They appeared at the place (12 Brisbane Street, Mackay) where the summons commanded them to appear.

[81] The summons served its purpose in securing the attendance of the Duxbury defendants at the place where the complaints would be heard and determined. The only difficulty was that, contrary to the proper submissions of counsel appearing for the WHSP,[51] the second respondent refused to acknowledge the necessity to sit as the Industrial Magistrates Court.

[82] The summons in each of the Duxbury complaints was valid.

Can the summons now be amended?

[83] I have held that the summons in each of the Duxbury complaints was valid. However, given the conditional appearance of the Duxbury defendants before the second respondent and the litigation that has ensued, the WHSP may seek to have the summons in each of the Duxbury complaints amended to nominate the Industrial Magistrates Court and then serve the complaints and summonses again.

[84] The Duxbury defendants say that such a course is not open. The Duxbury defendants' submission is made in reliance upon the passage in *Davies v Andrews*[52] to which I have already referred. The submission is that summonsing a party to the wrong court is such a fundamental defect that it cannot be amended.

[85] Where a complaint is sworn before a Justice alleging a summary offence, two alternative courses may be taken. The first is for the Justice to issue a summons and the second is for the Justice to issue a warrant. Section 59 of the *Justices Act* provides:

> "**59 Warrant in the first instance**
>
> (1) When complaint is made before a justice of a simple offence, the justice may, upon oath being made before the

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46 *Shinnie and Shinnie v Bain; Ex parte Bain* [1955] QWN 30 at [8].
47 [2007] ICQ 39.
48 Paragraph [59] of these reasons.
49 [1955] QWN 30.
50 (1913) 16 CLR 364.
51 Transcript, Magistrates Court Mackay, 9 December 2021, T 1-50, T 1-51.
52 (1930) 25 Tas LR 84 at 109.

> justice substantiating the matter of the complaint to the justice's satisfaction, instead of issuing a summons, issue in the first instance the justice's warrant to apprehend the defendant, and to cause the defendant to be brought before justices to answer the complaint and to be further dealt with according to law.
>
> (2) The justice may issue a warrant under subsection (1) for a simple offence, not being an indictable offence, only if the justice is satisfied—
>
> (a) proceeding by way of complaint and summons for the offence would be ineffective; or
>
> (b) the Act or law creating the offence authorises the issue of a warrant in the first instance."

[86] Section 59 authorises the warrant to be issued upon the making of a complaint "instead of issuing a summons". Even then the warrant cannot issue unless proceeding by way of complaint and summons would be ineffective.[53]

[87] Apart from amendment of the summons, there is no provision which could be used to compel the Duxbury defendants' attendance before the Industrial Magistrates Court unless it is argued that the fact that the summons was invalid means that now proceeding by summons "would be ineffective" as, on the Duxbury defendants' submission, it cannot now be amended.

[88] If the summons cannot be amended, a bizarre situation arises. The Industrial Magistrates Court has jurisdiction vested by valid complaints. Being seized of jurisdiction, the Industrial Magistrates Court should hear and determine the complaints, but it cannot, because it cannot compel the attendance of the Duxbury defendants.

[89] Apart from the general statements of principle in *Davies v Andrews*,[54] the Duxbury defendants point to no authority for the proposition that the summons could not be amended so as to require their attendance before the Industrial Magistrates Court being the court vested with jurisdiction by force of the complaints. In my view, there is nothing to suggest that s 48 does not authorise such an amendment.

[90] The Industrial Magistrates Court has jurisdiction to amend the summons on each of the Duxbury complaints to nominate the Industrial Magistrates Court at Mackay as the court to which each of the Duxbury defendants is summonsed.

Is there power to make prerogative orders?

[91] The respondents to the applications submitted that no effective prerogative orders could be made because there is no jurisdiction in this Court to set aside the strike-out orders made in the Magistrates Court.

[92] In supplementary submissions received by leave after the hearing of the appeals and prerogative applications, the WHSP seeks these orders in each application:

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53 Section 59(2)(a).

54 (1930) 25 Tas LR 84.

1. It is declared that the complaint against Russell Uhr made on 24 November 2020 was a valid complaint which invoked the jurisdiction of the Industrial Magistrates Court;

2. By way of a prerogative order in the nature of *certiorari*, the orders made on 2 August 2022 by Acting Magistrate Kennedy to dismiss the complaint commenced in the Industrial Magistrates Court against Russell Uhr, on the basis that the complaint did not invoke the jurisdiction of the Industrial Magistrates Court, are quashed; and

3. The complaint is remitted to the Industrial Magistrates Court at Mackay for hearing and determination according to law.[55]

[93] Three issues arise:

1. may this Court quash the decision of the Magistrates Court; if not

2. may this Court declare the decision of the Magistrates Court invalid, or otherwise infected by error; if not

3. what is the effect of this Court exercising its undoubted jurisdiction to direct the Industrial Magistrates Court to proceed and hear the complaints without setting aside the Magistrates Court's orders?

[94] The first two questions can be considered together.

Does this Court have the power to quash the decision of the Magistrates Court or declare it invalid or wrong?

[95] Section 424 of the *Industrial Relations Act* 2016 grants jurisdiction and powers to this Court. It provides:

> "**424 Jurisdiction and powers**
>
> (1) The court may—
>
> (a) perform all functions and exercise all powers given to the court under this Act or another Act; and
>
> (b) hear and decide, and give its opinion on, a matter referred to it by the commission; and
>
> (c) hear and decide an offence against this Act, unless this Act provides otherwise; and
>
> (d) hear and decide appeals from an industrial magistrate's decision in proceedings for—
>
> (i) an offence against this Act; or
>
> (ii) recovery of damages, or other amounts, under this Act; and
>
> (e) if the court is constituted by the president, exercise the jurisdiction and powers of the Supreme Court

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55 These are the orders sought against Mr Uhr. Identical orders are sought against Carborough Downs Coal.

to ensure, by prerogative order or other appropriate process—

(i) the commission and magistrates exercise their jurisdictions according to law; and

(ii) the commission and magistrates do not exceed their jurisdictions.

(2) In proceedings, the court may—

(a) make the decisions it considers appropriate, irrespective of specific relief sought by a party; and

(b) give directions about the hearing of a matter.

(3) The court's jurisdiction is not limited, by implication, by a provision of this Act or another Act.

(4) The jurisdiction conferred on the court by this Act or another Act is exclusive of the jurisdiction of another court or tribunal, unless this or the other Act provides otherwise."

[96] Notwithstanding provisions such as s 424(4),[56] the Supreme Court retains jurisdiction under the *Judicial Review Act* 1991.[57] Section 424(1)(e) also assumes this to be so.[58]

[97] The WHSP points to s 424(1)(e) and submits that, as well as powers to make prerogative orders, this Court has power to make declarations, being "other appropriate process". So much can be accepted. However, whatever the scope of the powers, their exercise is limited to the achievement of the purpose in s 424(1)(e)(i) and (ii).

[98] Reference to "magistrates" in s 424(1)(e)(i) and (ii) is a reference to industrial magistrates.[59] Reference to "the commission" is a reference to the Queensland Industrial Relations Commission (QIRC).[60] That the power of the Supreme Court exercisable by this Court should be limited to the supervision of industrial magistrates and the QIRC is consistent with the scheme of the IR Act.

[99] Sections 3 and 4 of the IR Act prescribes its purpose and how that purpose is to be achieved. The purpose of the IR Act is to provide a framework for industrial relations that should have certain characteristics.[61] That is achieved in various ways, including by establishing a specialist court and tribunal.[62]

[100] Chapter 11 of the IR Act establishes this Court, the QIRC and the Industrial Magistrates Court. Section 424 confers limited jurisdiction upon this Court,

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56 And see also s 450 which grants exclusive jurisdiction over some matters to the Queensland Industrial Relations Commission.
57 *Witthahn v Chief Executive, Hospital and Health Services* (2021) 9 QR 642.
58 And see *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 at [55].
59 *Industrial Relations Act* 2016, Schedule 5 Dictionary and s 505.
60 *Industrial Relations Act* 2016, Schedule 5, Dictionary and s 429.
61 Section 3.
62 Section 4(q).

including, by s 424(1)(e), supervisory powers over the other courts and tribunals in the scheme, namely the QIRC and the Industrial Magistrates Court.[63]

[101] The Magistrates Court exists beyond the scheme of courts and tribunals as established by the IR Act. It is established under its own legislation[64] with different avenues of appeal from its decisions while still being under the supervisory jurisdiction of the Supreme Court.

[102] This Court has no power to make any prerogative orders over decisions of a Magistrates Court. If there is any power in this Court to make declaratory orders concerning the Magistrates Court,[65] it ought not (at least in this case) do so given the avenues of appeal from a decision of a Magistrates Court and the availability of prerogative relief from the Supreme Court of Queensland.

What is the effect of this Court issuing prerogative relief against the Industrial Magistrates Court without setting aside the Magistrates Court's orders?

[103] The second respondent is both a magistrate and an industrial magistrate. To the second respondent, counsel then appearing for the WHSP submitted that:

1. the jurisdiction of the Industrial Magistrates Court was enlivened and the second respondent was therefore sitting as an industrial magistrate;[66]

2. alternatively, the second respondent should sit as an industrial magistrate and if necessary amend the summons.[67]

[104] The second respondent refused to exercise the jurisdiction of the Industrial Magistrates Court which he undoubtedly had. That justifies an order that the Industrial Magistrates Court hear and determine the complaints.

[105] It follows that the second respondent, having jurisdiction as an industrial magistrate which ousts that of the Magistrates Court, ought not have proceeded to dismiss the complaints in purported exercise of the powers of the Magistrates Court. To do so was to exceed the jurisdiction of the Magistrates Court.

[106] While a decision of a superior court of record is valid until set aside even if made in excess of jurisdiction,[68] an order of an inferior court such as the Magistrates Court enjoys no such status. Being an order made beyond jurisdiction, it is invalid and is, in law, not an order at all.[69]

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63 See generally *Pennington v Jamieson* (2022) 317 IR 410 at [122]-[125].

64 *Justices Act* 1886, appeals see s 222; *Magistrates Courts Act* 1921, appeals see s 45.

65 Ancillary to those in s 424 of the *Industrial Relations Act* 2016.

66 T 1-50 - T 1-52.

67 T 1-54.

68 *New South Wales v Kable* (2013) 252 CLR 118, *Cameron v Cole* (1944) 68 CLR 571 and *Re Macks; Ex parte Saint* (2000) 204 CLR 158.

69 *Ex parte Williams* (1934) 51 CLR 545 at 549-550, *Parisienne Basket Shoes Pty Ltd & others v White* (1938) 59 CLR 369 at 375 and 391-2 and *Pelechowski v The Registrar of the Court of Appeal of New South Wales* (1999) 198 CLR 435 at [27]-[28] adopting *Attorney-General (NSW) v Mayas Pty Ltd* (1988) 14 NSWLR 342 at 357; see also the analysis by Warren CJ in *Director of Public Prosecutions v Edwards* (2012) 44 VR 114 at [19]-[42] and see *Stanley v Director of Public Prosecutions (NSW)* (2023) 407 ALR 222 per Gageler J, dissenting on other grounds, at [15]-[16].

[107] As explained in *New South Wales v Kable*,[70] considerations of notions of decisions being "void" or "voidable" are often less helpful than consideration of those remedies which may flow from decisions made in excess of jurisdiction.[71] What is well-established is that decisions of an inferior court made in excess of jurisdiction may be collaterally challenged in other proceedings.[72]

[108] The dismissal orders only have any relevance *inter partes* parties between the Duxbury defendants and the WHSP. In any further prosecution of the Duxbury complaints the Duxbury defendants could, if the strike-out orders were made within jurisdiction, rely upon them. However, here the strike-out orders were made in excess of jurisdiction. If reliance on the strike-out orders on any further prosecution of the complaints in the Industrial Court is made, the WHSP may collaterally attack those orders challenging them as beyond jurisdiction.

[109] For reasons already explained, this Court will order the Industrial Magistrates Court to hear and determine the Duxbury complaints. In those circumstances, the defendants could hardly plead the strike-out orders made in the Magistrates Court in defence of the complaints. Given the prerogative orders made to the Industrial Magistrates Court to hear and determine the complaints, the industrial magistrate would be bound to proceed and hear them. Consistently with these reasons, the industrial magistrate would understand that the strike-out orders were no impediment to the prerogative orders being made and therefore no bar to the industrial magistrate hearing the complaints.

Should prerogative relief be given as a matter of discretion?

[110] These submissions only concern the Duxbury defendants.

[111] The Duxbury defendants' submissions are based on an alleged waiver. The point made is that:

1. the summons in each of the Duxbury complaints was returnable in the Magistrates Court;
2. the Duxbury defendants filed the strike-out applications in the Magistrates Court;
3. the WHSP did not seek to appear conditionally in the Magistrates Court;
4. the WHSP argued in opposition to the strike-out applications; therefore
5. submitted to the jurisdiction of the Magistrates Court.

[112] The WHSP appeared in the Magistrates Court and, through counsel, clearly asserted his position. That was:

1. the Duxbury complaints were valid;[73] and

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70 (2013) 252 CLR 118.

71 At paragraphs [20]-[22].

72 *Pelechowski v The Registrar of the Court of Appeal of New South Wales* (1999) 198 CLR 435 at [27]-[28], *New South Wales v Kable* (2013) 252 CLR 118 at 140-141, *Stanley v Director of Public Prosecutions (NSW)* (2023) 407 ALR 222 at [16] and see *Oakey Coal Action Alliance Inc v New Acland Coal Pty Ltd* (2021) 386 ALR 212 at [48] and generally, *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597 at [51].

73 T 1-42 and T 1-43.

2. the complaints enlivened the jurisdiction of the Industrial Magistrates Court;[74]

3. the second respondent was an industrial magistrate; and

4. the second respondent was and should exercise the jurisdiction of the Industrial Magistrates Court.[75]

[113] That is the position which the WHSP adopts before this Court.

[114] There was no waiver. It is not necessary to consider difficult questions (not the subject of submissions) as to whether alleged submission to the asserted jurisdiction of the Magistrates Court to exercise powers beyond jurisdiction could affect the validity or otherwise of the purported orders.[76]

Orders

[115] In relation to each of the appeals, it is appropriate to:

1. allow the appeal;

2. set aside the orders made in the Industrial Magistrates Court at Mackay on 21 February 2022;

3. remit the complaint to the Industrial Magistrates Court at Mackay to be heard and determined according to law.

[116] In relation to each of the prerogative applications, there should, for the reasons explained, be no order quashing the purported decision of the second respondent. There is no need for a declaration that each complaint is valid and invokes the jurisdiction of the Industrial Magistrates Court. An order remitting the complaint to the Industrial Magistrates Court to be heard and determined according to law is all that is required. That carries with it a finding of jurisdiction in the Industrial Magistrates Court to hear and determine the complaints.

[117] Costs raise difficult issues. It is appropriate to make orders for the exchange of written submissions on costs but with the parties being able to seek leave to make oral submissions. The second respondent made a submitting appearance. I will, therefore, not include the second respondent in the costs directions but give him an opportunity to be heard in the unlikely event that any party seeks costs against him.

[118] It is ordered:

1. In each of appeals C/2022/16, C/2022/21, C/2022/22 and C/2022/23:

   (a) the appeal is allowed;

   (b) the orders made on 21 February 2022 are set aside;

   (c) the complaint is remitted to the Industrial Magistrates Court at Mackay to be heard and determined according to law.

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74 T 1-50 ll 35-50.

75 T 1-51 ll 1-10 and T 1-52 ll 15-25.

76 *The Commonwealth v Verwayan* (1990) 170 CLR 394 per Brennan J (as his Honour then was) at 425, following *Park Gate Iron Co Ltd v Coates* (1870) LR 5 CP 634.

2. In each of applications C/2022/17 and C/2022/18, the complaint is remitted to the Industrial Magistrates Court at Mackay to be heard and determined according to law.

3. In each of appeals C/2022/16, C/2022/21, C/2022/22 and C/2022/23, and in each of applications C/2022/17 and C/2022/18:

   (a) the applicant file and serve any written submissions on costs on or before 4.00 pm on 19 May 2023;

   (b) the respondents in the appeals and the first respondents in the applications file and serve any written submissions on costs on or before 4.00 pm on 2 June 2023;

   (c) the applicant file and serve any written reply by 4.00 pm on 9 June 2023;

   (d) all parties have leave before 4.00 pm on 16 June 2023 to file and serve any application for leave to make oral submissions on costs;

   (e) in the event that no application for leave is filed by 4.00 pm on 16 June 2023, the question of costs will be determined on any written submissions filed and without further oral hearing.