

SUPREME COURT OF QUEENSLAND

CITATION: *Lake v Hermann* [2026] QSC 193

PARTIES: **SLAVICA LAKE**
(applicant)
v
STUART GORDON HERMANN
(first respondent)
WENDY JANET HERMANN
(second respondent)
QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL
(third respondent)

FILE NO/S: 656/26

DIVISION: Trial Division

PROCEEDING: Application for Judicial Review

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 21 August 2026

DELIVERED AT: Brisbane

HEARING DATE: 21 May 2026 (corrections to the applicant's final submissions received 24 May 2026).

JUDGE: McLeod J

ORDER: **The amended application for review filed 5 March 2026 is dismissed.**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – where the Queensland Civil and Administrative Tribunal did not provide reasons for the decision – whether a decision to refuse an application for extension of time to appeal made by the Queensland Civil and Administrative Tribunal without reasons constitutes jurisdictional error.

Judicial Review Act 1991 (Qld), s 13, s 20, s 23, s 48
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 61, s 121, s 122, s 135, s 142, s 143

Armstrong v Kawana Island Retirement Village [2011] QCATA 324
Lake v Hermann, unreported, QCATA, Member Oliver, 26 October 2022
Lake v Hermann No 2, unreported, QCATA, Member Oliver, 26 September 2025

Minister for Immigration and Citizenship v AMU19 [2026] FCAFC 29
Minister for Immigration and Citizenship v Li (2013) 249 CLR 332
Stuart v Queensland Building and Construction Commission [2018] 1 Qd R 339; [2017] QCA 115
Thompson v Raud [2015] QCA 193

COUNSEL: The applicant appeared on her own behalf
 N G Harris for the respondents

SOLICITORS: The applicant appeared on her own behalf
 Hall Payne Lawyers for the respondents

- [1] Pursuant to an amended application for review (“the review application”), the applicant seeks to challenge the decision made by the Queensland Civil and Administrative Tribunal (“Tribunal”), on 10 February 2026, to refuse the applicant’s application for an extension of time to appeal a decision made by the Tribunal on 26 October 2022.
- [2] The applicant contends that the decision “was affected by a jurisdictional error within the meaning of section 20(2)(a)(e) and/or section 23 of the *Judicial Review Act 1991* (Qld) (the JR Act”), as it constituted an improper exercise of power”.¹
- [3] The first and second respondents (“the respondents”) filed an application to dismiss the review application pursuant to ss 13 and 48 of the JR Act, however, that application was not pressed. Accordingly, the review application proceeded by way of final determination.

Factual background

- [4] The applicant and the respondents share a common property boundary located at Greygum Court, Ningi, which is near Bribie Island. There has existed a long running neighbourhood dispute over vegetation on the respondents’ side of the common boundary encroaching onto the applicant’s property.
- [5] The applicant commenced proceedings in the Tribunal seeking orders to remedy what was said to be a failure on the part of the respondents to manage the vegetation on their side of the boundary.
- [6] A hearing occurred on 14 June 2022. On 26 October 2022, the Tribunal delivered its decision and made a number of orders.² Broadly stated, the orders were directed at the respondents to either completely remove trees; lop, prune and reduce in size a tree; undertake the removal of the root base of a tree; and to install a root barrier to prevent further root intrusion. The works were required to be carried out by 27 January 2023.

¹ Applicant’s review application at para 4.

² *Lake v Hermann*, unreported, QCATA, Member Oliver, 26 October 2022.

- [7] The applicant subsequently applied to the Tribunal, under s 135 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (“QCAT Act”), to correct the orders made by the Tribunal. The application was determined by the Tribunal on the papers. Relevant for present purposes, by decision dated 26 September 2025, the Tribunal extended time for the filing of the application and made an amendment to one of the orders.³
- [8] On 3 November 2025, the applicant filed an application for leave to appeal or appeal the Tribunal’s decision dated 26 October 2022.⁴ The applicant was cognisant of the fact that her application for leave to appeal or appeal was out of time because an application to extend time in which to appeal was also filed with the Tribunal. Submissions accompanied this application. The application for an extension of time was determined on the papers. On 10 February 2026, the Appeal Tribunal issued a number of directions, with the first direction stating:

“The Application to extend or shorten a time limit or for waiver of compliance with procedural requirement filed by the Applicant on 5 November 2025 thereby seeking an extension of time within which to commence the appeal against a final decision of the Tribunal made on 26 October 2022 ... is **refused**.”⁵

- [9] As stated, it is this decision that is sought to be challenged by the applicant.

The applicant’s challenge to the Appeal Tribunal’s decision of 10 February 2026

- [10] The application for review refers to the “factual basis” to support the applicant’s challenge to the Appeal Tribunal’s decision. They are as follows:
- (a) the Appeal Tribunal provided no reasons for the refusal of an extension of time beyond a single sentence direction;
 - (b) the Appeal Tribunal failed to weigh the importance of allowing a delayed appeal to proceed in circumstances where it was reasonably arguable that the original decision contained a legal error, effectively ignoring a material consideration affecting substantive justice; and
 - (c) the failure to give reasons, to consider relevant prior approval, and to consider the importance of preserving appeal rights, constitutes a denial of procedural fairness.
- [11] The stated “legal basis” for the applicant’s claims are articulated in the application for review to be:
- (a) the decision lacked an evident and intelligible justification;
 - (b) the refusal was legally unreasonable and in breach of the duty to act fairly; and
 - (c) procedural finality cannot override correction of jurisdictional error.

³ *Lake v Hermann No 2*, unreported, QCATA, Member Oliver, 26 September 2025.

⁴ *Lake v Hermann* unreported, QCATA, Member Oliver, 26 October 2022.

⁵ Exhibit 9, affidavit of Lake filed 16 February 2026. For the purposes of the QCAT Act Schedule 3 provides that a “Decision” of the Tribunal is taken to mean a direction given by the Tribunal.

The legislative scheme and the applicant's contentions

- [12] Section 142(1) of the QCAT Act provides that a party to a proceeding may appeal against a decision of the Tribunal to the Appeal Tribunal, unless a judicial member constituted the Tribunal.
- [13] The time for filing an appeal or an application for leave to appeal is prescribed by s 143 of the QCAT Act.⁶ Here, the applicant's application for leave to appeal or appeal, which was filed on 3 November 2025, required an extension of time by the Tribunal as the application was plainly out of time.
- [14] Section 61 of the QCAT Act confers a discretion on the Tribunal to extend the time limit or waive compliance with a procedural requirement. More specifically, s 61(1) provides that the Tribunal may, by order:
- “(a) extend a time limit fixed for the start of a proceeding by this Act or an enabling Act; or
 - (b) extend or shorten a time limited fixed by this Act, an enabling act or the rules; or
 - (c) waive compliance with another procedural requirement under this Act, an enabling Act or the rules.”
- [15] Chapter 2 Part 7 of the QCAT Act is headed, “Decisions and Enforcement”. Part 7 Division 2 deals with “Giving Decision etc”. Section 121(1) provides that the Tribunal must give its final decision in a proceeding in writing to the specified entities set out therein.⁷
- [16] The decision by the Appeal Tribunal to refuse the applicant's extension of time to appeal the Tribunal's decision did not constitute a final decision as it did not finally dispose of the proceeding.⁸ As Gotterson JA observed in *Thompson v Raud*,⁹ a refusal of an extension of time does “not finally decide any matter between the applicant and the respondents. It does no more than refuse an extension of time for filing an application for leave to appeal”: see also *Stuart v Queensland Building and Construction Commission*.¹⁰ Consequently, s 121 of the QCAT Act was not engaged.
- [17] Section 122 relevantly provides:

“122 Request for written reasons

- (1) This section applies if the tribunal makes a decision in a proceeding, including its final decision, and does not give written reasons for the decision.

⁶ Namely, the 28 day period, see s 143(3) and (4)(b).

⁷ See generally the observations of Wilson J and Member Stilgoe as to the requirements imposed by s 121 in *Armstrong v Kawana Island Retirement Village* [2011] QCATA 324 at [13].

⁸ “Final decision” is defined in Schedule 3 of the QCAT Act to mean the Tribunal's decision that finally decides the matter the subject of the proceeding.

⁹ [2015] QCA 193.

¹⁰ [2018] 1 Qd R 339; [2017] QCA 115 at [18] per Sofronoff P.

- (2) A party to the proceeding may, within 14 days after the decision takes effect under section 127, request that the tribunal give written reasons for the decision.
- (3) The tribunal must comply with a request under subsection (2) within 45 days after the request is made or, if the president extends the period, the extended period.
- (4) However, the tribunal is not required to comply with a request for written reasons for a decision made under section 51, 54(1), 55(1), 56(1), 57, 61(1), 62(1) or (3), 63(1) or (4) or 64(1).¹¹

- [18] As discerned from s 122 of the QCAT Act, in the event the Appeal Tribunal does not give written reasons for its decision, a party may request written reasons in particular circumstances. For completeness, I note as part of the applicant's written submissions on the review application, two documents were attached, namely, a document headed "QCAT Request for reasons for a decision" and what appears to be a screenshot of a document that may be related to the first document referred to.¹² The respondents took no objection to the Court receiving the two documents.¹³ In my view, all that can be drawn from the documents is that the applicant, at some undisclosed point in time, was aware of s 122 of the QCAT Act. The documentation is irrelevant to the Court's determination of matters associated with the review application because no ground of challenge is in any way referable to the documentation, or by extension, s 122 itself.
- [19] The crux of the applicant's argument, as set out in her written submissions and reiterated in oral argument, is that the Appeal Tribunal failed to provide reasons identifying why the extension of time was not granted. As the applicant submitted, she should "know why the appeal right was taken ... refused".¹⁴ Furthermore, because of this failure, the applicant contends that she is not in a position to discern whether or not the discretion was lawfully exercised by the Tribunal.¹⁵
- [20] It is fair to conclude, from the applicant's submissions, that she held an expectation that the Appeal Tribunal would provide detailed reasons for its decision because of the approach taken by the Tribunal in *Lake v Hermann No 2*¹⁶ when reasons were provided.
- [21] That said, however, the applicant must overcome the hurdle in this case that the Appeal Tribunal's obligation to provide reasons for its decision is regulated by the QCAT Act. When considering the statutory scheme of the QCAT Act, it is apparent that the Appeal Tribunal was not required to provide reasons for the decision to refuse the applicant's extension of time application. Thus, there was no error by the Appeal Tribunal in not furnishing reasons for its decision to the applicant.

¹¹ Relevantly, "Proceeding" is defined by Schedule 3 of the QCAT Act to mean a proceeding before the Tribunal, including an appeal before the Appeal Tribunal and a proceeding relating to an application for leave to amend to the Appeal Tribunal.

¹² See applicant's final submissions, dated 10 April 2026 (Court file number 6) annexure 5.

¹³ T 1-28 lines 30-47.

¹⁴ T 1-15 lines 37-42.

¹⁵ T 1-17 lines 3-9.

¹⁶ Unreported, QCATA, Member Oliver, 26 September 2025.

- [22] The fact the Appeal Tribunal did not provide reasons for its decision did not deny the applicant procedural fairness. It was open to the applicant to request reasons pursuant to s 122, yet that was not done. The applicant filed submissions in support of her application for an extension of time and was therefore afforded a fair opportunity to present her case. I do not accept that it can be said that there was any denial of procedural fairness. This aspect of the applicant's complaint reveals no jurisdictional error.
- [23] In support of the contention that the decision was legally unreasonable the applicant's submission effectively complained that the absence of reasons precluded any inference being drawn that there is an evident and intelligible justification for the decision: see generally *Minister for Immigration and Citizenship v Li*.¹⁷ However, as stated above, there existed no statutory obligation on the Appeal Tribunal (in the circumstances of this case) to provide reasons. The observations made by the Full Court of the Federal Court in *Minister for Immigration and Citizenship v AMU19*¹⁸ are apt to the present proceedings:

“[44] ... whether an inference of error can be drawn from the failure to give reasons will depend upon the circumstances and the statutory context, and there are many situations where it is not open to infer some error such as legal unreasonableness from a failure to give reasons where there is no obligation to give reasons: ...” (Citations omitted)

- [24] Accordingly, the decision of the Appeal Tribunal cannot be regarded as legally unreasonable. To reiterate, the Appeal Tribunal was entitled, as provided by the QCAT Act, to determine the matter without providing reasons. This aspect of the error alleged by the review application fails.

Disposition

- [25] For the reasons set out above, the applicant has not identified any error apt to vitiate the Appeal Tribunal's decision. The review application must be dismissed. I will hear the parties on costs.

¹⁷ (2013) 249 CLR 332.

¹⁸ [2026] FCAFC 29 per Wheelahan, Meagher and McDonald JJ.