

# What the Kitchen v Quinlivan decision means for practitioners with PSR history

Reading time:

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A landmark Queensland Supreme Court decision has put the Professional Services Review (PSR) process under the spotlight, and if you have been through a PSR investigation, you may be wondering whether it has any bearing on your situation.

In [Kitchen v Quinlivan \(No 3\) \[2025\] QSC 351](#), delivered on 19 December 2025, the court found that the former Director of the PSR, Prof Quinlivan, had committed misfeasance in public office. The finding arose because the Director referred an ophthalmologist, Dr David Kitchen, to a PSR Committee under the [Health Insurance Act 1973 \(Cth\)](#) without first reading or genuinely considering the 96-page submission he had been invited to make under section 89C(2) of that Act.

The Director had communicated her decision to refer Dr Kitchen to a Committee just 17 minutes after receiving the summary email containing his submission. The court found, after a detailed review of the evidence, that she had not read the submission at all. That failure was found to constitute a deliberate or recklessly indifferent exercise of a public power, a misfeasance in public office. Dr Kitchen was awarded damages exceeding \$1.9 million, which was subsequently increased to \$2.1 million.

## What this means in practice

Since the decision was published, MIPS has received calls from members who have previously been subject to PSR investigations and want to understand whether this case has any relevance to their own circumstances.

It is important to be clear: the Kitchen decision does not automatically give rise to a right to challenge or reopen a past PSR matter. Each situation will depend on its own facts and circumstances. The court's finding turned on specific evidence about what the former Director did and did not do in that particular case. Moreover, the decision in Kitchen has recently been appealed by Prof Quinlivan and we await the findings of appellate court, which are expected later this year.

That said, the decision is a meaningful recognition that practitioners subjected to PSR processes are entitled to procedural fairness, and that a failure to genuinely engage with a practitioner's submissions can have serious legal consequences.

## If you have concerns about a past PSR matter

If you believe that procedural fairness was not afforded to you during a PSR investigation, for example, that your submissions were not genuinely considered before a referral decision was made, this is something worth discussing with a qualified legal adviser.

There are important questions to consider, including:

- whether the relevant statutory timeframes and limitation periods affect your ability to take any action
- what evidence may be available about how your submissions were handled
- whether there is a viable legal pathway given the specific circumstances of your matter

These are complex questions, and the answers will differ depending on when your investigation took place, how it was resolved, and what documentation is available.

## MIPS is here to help

If you are a MIPS member with concerns about a past or current PSR matter, our medico-legal advisers are available 24 hours a day, seven days a week. They can provide guidance on your specific situation and, where appropriate, help connect you with legal representation.

MIPS members also have access to comprehensive indemnity cover of up to \$20 million, including support for matters arising from Medicare and PSR investigations. If you are not yet a MIPS member and are facing a PSR matter, we encourage you to contact us to discuss your options.

This is an evolving area of medico-legal practice, and the Kitchen decision is a significant development for the profession. Understanding your rights, and having the right support behind you, has never been more important.

To speak with a MIPS medico-legal adviser, call 1800 061 113 or visit [mips.com.au](https://mips.com.au).

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