

6 November 2024

2024/3798

CELINE GILLIAN BAUMGARTEN

Applicant

ESAFETY COMMISSIONER

Respondent

NOTICE OF PRESIDENT'S DECISION - GUIDANCE AND APPEALS PANEL

The President has decided to refer the application for review in this proceeding to the Guidance and Appeals Panel (GAP) in accordance with section 122(1) of the [Administrative Review Tribunal Act 2024](#) (ART Act).

In making this decision, the President:

- (a) has taken into account the submissions made by the parties and has had regard to the circumstances of the parties;
- (b) is satisfied:
 - i. the application for review raises an issue of significance to administrative decision making, namely:

Whether, on the facts to be found by the Tribunal, an agency such as the respondent may avoid the jurisdiction of the Tribunal by achieving an outcome by taking steps which may not amount to a formal exercise of a statutory power instead of achieving that outcome by formally exercising a statutory power whose exercise is subject to review by the Tribunal.

and

- ii. it is appropriate in the interest of justice that the Tribunal be constituted by the GAP for the purposes of the proceeding in relation to the application for review.

Pursuant to section 43 of the ART Act, the President will reconstitute the Tribunal to three members, one of whom will be the President or a Deputy President.

The hearing before Deputy President O'Donovan scheduled for 12 November 2024 is vacated. The hearing before the GAP will take place on 13 December 2024. Prior to the hearing, the parties will be advised of the three members constituting the Tribunal and the mode and place of hearing.

Dr Kylie Ingram
Guidance and Appeals Panel Registrar

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