

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *Jones v State of Queensland (Queensland Police Service)* (No 3) [2020] QIRC 047

PARTIES: **Jones, Lynette**  
(Applicant)

v

**State of Queensland (Queensland Police Service)**  
(Respondent)

CASE NO: D/2018/59

PROCEEDING: Arbitration of industrial dispute

DELIVERED ON: 30 March 2020

HEARING DATES: 26 February 2020  
11 March 2020

MEMBER: Thompson IC

ORDERS: **[1] Application granted.**

**[2] Full orders as per paragraph [213].**

CATCHWORDS: INDUSTRIAL LAW - INDUSTRIAL DISPUTE

-

where applicant has been served a notice of redeployment for indefinite period - where disciplinary process in relation to allegations of workplace harassment and bullying - where notice of redeployment issued to ensure compliance with respondent's work health and safety obligations - where adverse effects of the redeployment on applicant's career progression from senior constable to sergeant - where applicant seeking access to resources to continue her accreditation towards the rank of sergeant - whether respondent can manage access to required resources and

maintain health and safety of workforce avoiding interaction between applicant and employees involved in the disciplinary proceedings - whether respondent's refusal to allow the applicant access to the resources is unjust or unreasonable.

LEGISLATION:

*Industrial Relations Act 2016*, s 261, s 447, s 448, s 451

*Police Service Administration Act 1990* (Qld), s 4.1, s 4.6, s 4.8, s 4.9

*Work Health and Safety Act 2011* (Qld)

Industrial Relations (Tribunals) Rules 2011, r 61

Police Service Administration Regulation 2016 (Qld), s 7(o)

CASES:

*Jones v State of Queensland (Queensland Police Service)* [2019] QIRC 104

*SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115

*Jones v State of Queensland (Queensland Police Service)* (No 2) [2020] QIRC 029

*Queensland Services, Industrial Union of Employees AND Sunshine Coast Regional Council* (2009) 192 QGIG 5

*The Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees AND QR* (2000) 165 QGIG 526

*Queensland Nurses' Union of Employees v Sundale Garden Village, Nambour* (No 3) (2006) 182 QGIG 16

*Orchid Avenue Realty Pty Ltd t/as Ray White Surfers Paradise AND Julianne Lois Percival* (2003) 174 QGIG 8

*Irwin v Stewart (Commissioner of Police) & Anor* [2015] QSC 350

APPEARANCES:

Mr M. Black, Counsel instructed by Wallace O'Hagen Lawyers for Applicant.

Mr C.J. Capper, State of Queensland (Queensland Police Service), Respondent.

**Decision**

**Background**

[1] On 3 July 2018 Ms Lynette Jones (the applicant) filed a Notice of industrial dispute under s 261 of the *Industrial Relations Act 2016* (the IR Act) with the State of Queensland (Queensland Police Service) (the respondent). The subject matter of dispute is as follows:

1. The Applicant is a Senior Constable with the Queensland Police Service (QPS) and holds a permanent position in the QPS's Photographic and Electronic Recording Section.
2. On 19 April 2018, the QPS served the Applicant a notice of redeployment, the effect of which was to require her to attend for duty at the Coronial Support Unit rather than attending to her duties in the Photographic and Electronic Recording Section.
3. The Applicant has complied with the QPS direction but disputes the validity and appropriateness of the direction.
4. The adverse effects of the redeployment on the Applicant's career progression are potentially significant.
5. The redeployment is for an indefinite period and the QPS has not proposed to review the redeployment until October 2018.
6. The redeployment notice refers to 'allegations of workplace harassment and bullying within the Photographic and Electronic Recording Section' (presumably allegations against the Applicant) but gives no particulars of the alleged conduct.
7. Despite requests by the Applicant, the QPS has failed to disclose the basis for the issuing of the redeployment notice.
8. The QPS has acted unreasonably in ordering the redeployment and by failing to provide any (or any adequate) disclosure of the basis for the redeployment.
9. The Applicant seeks (a) revocation of the redeployment notice; (b) alternatively, immediate disclosure from the QPS of the basis for the redeployment notice and full review by the QPS of the redeployment notice by no later than 18 July 2018.

[2] The Queensland Industrial Relations Commission (the Commission) convened conferences with the first on 9 July 2018 before Bloomfield DP and the second on 17 August 2018 before Black C. As the matter was unable to be resolved at the second conference, the applicant sought it be referred for hearing and determination by the Commission. The following questions or issues arising out of the dispute were submitted:

- (a) Whether the Respondent's decision of 18 April 2018 to 'temporarily redeploy (the Applicant) to another workplace' is unjust or unreasonable.
- (b) Whether the Respondent's refusal to allow the Applicant access to the resources necessary for her to progress with her accreditation towards the rank of Sergeant during the period of the redeployment is unjust or unreasonable.

[3] The applicant also requested disclosure of the following material by the Respondent:

- A transcript of the disciplinary interview conducted with the Applicant by S/Sgt Leech on 26 July 2018.
- A copy of the report submitted by S/Sgt Leech to the Queensland Police Service as a result of the above interview.
- A copy of the allegations/information upon which Acting Assistant Commissioner Carless based the decision for redeployment.

- [4] The Commission (as constituted) issued a Directions Order on 28 September 2018 listing the matter for hearing commencing on 5 March 2019 for four days. Following a request from the applicant on 31 October 2018 for an extension of two weeks to provide her statement, a Further Directions Order was issued on 13 November 2018 to provide for the extension and retaining the dates already listed for hearing.
- [5] On 31 January 2019 the applicant requested an adjournment of the hearing listed to commence on 5 March 2019 "in the hope the matter may be resolved by 30 March 2019 without the need for further industrial action". The hearing dates were subsequently vacated.

### **Discovery**

- [6] On 22 March 2019 the applicant served an Attendance Notice to Produce (Notice) on the Respondent seeking disclosure of the following:
1. PDA Overview Report, authored by Insp. Paul Austin on or about Nov 2017 - Ref No: DOC 17/1817949.
  2. 28 Days Roster - Organisational Unit - Photographic Section - period December 2016 to April 2018 inclusive.
  3. Motor Vehicle Register - Service Vehicles - Photographic Section - period December 2016 to April 2018 inclusive.
  4. Transcript - Ethical Standards Command, Record of Interview with A/Inspector Steven Morley re CSS 2017/01734.
  5. Transcript of 4x audio recordings authored by the Notifier and provided to S/Sgt Pam Leech on 3 August 2018, as requested, re CSS 2017/01734.
  6. All QPRIME Reports re Lost/Stolen Police ID in the name of Stuart J Cross 4007253.
  7. QPS QPRIME Activity Report - access to the personal file of Police Officer Lynette J Jones 4009025 - period July 2013 to December 2015 inclusive.
- [7] By letter dated 11 April 2019 the Respondent raised an objection to the Notice stating:
- Pursuant to Rule 61 of the Industrial Relations (Tribunals) Rules 2011 (the Rules), the Respondent respectfully objects (sic) the production of all items listed in the Notice, with the exception of items 1, 2 (in redacted form), 4 and Item 5 (Nil to produce).
- [8] The respondent also provided written submissions supporting the objection and an outline of the grounds for the objection.
- [9] The Commission listed a Mention of the matter in relation to the objection on 1 May 2019. A Further Directions Order was issued that day for the Notifier (applicant) to file written submissions by 24 May 2019 and the Respondent to file submissions in reply by 31 May 2019.
- [10] The Commission, as constituted, released a Decision on 5 July 2019 in relation to discovery as follows:

- Items 1 and 4 - remain unaltered;
- Items 2 and 3 - remain with the option of redacting the names of persons with no direct involvement in allegations against the applicant;
- Item 5 - is set aside; and
- Items 6 and 7 - to be the subject of a further hearing in respect of public interest immunity.<sup>1</sup>

[11] On 28 August 2019 Mr Capper for the Respondent advised that following the release of a decision<sup>2</sup> by Daubney J there were significant similarities to the intended grounds to be relied upon in these proceedings in relation to public interest immunity, "the public interest claim will no longer be pursued by the Respondent". Mr Capper further advised that the QPRIME Reports sought by the Applicant would be produced later that day.

### **Hearing**

[12] On 8 November 2019 the Applicant's lawyers requested that further directions be issued for the conduct of the substantive matter. Directions were subsequently issued with a hearing listed for 26 February 2020.

[13] On 26 February 2020 the substantive hearing did not proceed as scheduled due to the failure of the respondent to comply with the directions issued previously. The Commission subsequently exercised a discretion in granting the respondent an extension of time for the filing of both the evidentiary material and submissions.<sup>3</sup>

### **Evidence**

[14] In the course of the proceedings evidence was provided by two witnesses. The Commission in deciding to precis the evidence of the witnesses and the submissions, notes that all the material has for the purposes of this decision been considered in its entirety.

### **Witnesses**

[15] The witness for the applicant was:

- Lynette Jones (Jones).

[16] The witness for the respondent was:

---

<sup>1</sup> *Jones v State of Queensland (Queensland Police Service)* [2019] QIRC 104.

<sup>2</sup> *SJN v Office of the Information Commissioner & Anor* [2019] QCATA 115.

<sup>3</sup> *Jones v State of Queensland (Queensland Police Service)* (No 2) [2020] QIRC 029.

- Bruce McNab (McNab).

## **Pre-hearing - Outlines of Submissions**

### **Applicant**

#### *Introduction*

- [17] The applicant holds the permanent position of Photographic Officer in the QPS Forensic Imaging and Electronic Recording Section (the Forensic Section), however since 18 April 2018 she has been subject to a direction requiring her to instead perform duty in the Coronial Support Unit. Generally, there is a prohibition attending the Forensic Section or having contact with staff in that area. The redeployment was said to be for "health and safety" purposes whilst allegations of workplace harassment and bullying were being considered through a disciplinary process without the timing of the finalisation of that process being known.
- [18] The redeployment has resulted in the applicant being unable to access the resources required in order to complete the requirements for attaining the rank of Sergeant and the inability to progress towards the rank of Sergeant. This has not only delayed her career progression, but has also a significant ongoing impact because she will be subject to compulsory retirement on 18 September 2021 with her superannuation based upon her final year salary.
- [19] In the arbitration of this matter, orders are being sought by the applicant to require the respondent to make certain resources available to her and the evidence supports that this can be done in a way that will maintain the "health and safety" purpose of the redeployment and not unduly impede the QPS's operational requirements.

#### *Jurisdiction*

- [20] The subject matter of the applicant's formal grievance (dated 3 July 2018) was that the redeployment which required her to attend for duty at the Coronial Support Unit was having "adverse effects . . ." on her career progression. The issue for the consideration of the Commission is whether the respondent's refusal to allow the applicant access to the resources necessary for progression towards the rank of Sergeant during the period of redeployment is unjust or unreasonable.
- [21] The subject of the application is an "industrial matter" for the purposes of the IR Act at s 9 and Schedule 5. Under s 447(1) of the IR Act, the Commission's functions include (relevantly):

#### **447 Commission's functions**

- (1) The commission's functions include the following -

- (i) resolving disputes by conciliation of industrial matters and, if necessary, by arbitration or making an order;

...

- (o) making declarations about industrial matters.

[22] Under s 448(1)(b) of the IR Act the Commission may "hear and decide":

**448 Commission's jurisdiction**

- (1) The commission may hear and decide the following matters -

...

- (b) all questions -
  - (i) arising out of an industrial matter; or
  - (ii) involving deciding the rights and duties of a person in relation to an industrial matter; or
  - (iii) it considers expedient to hear and decide about an industrial matter.

[23] The Commission has the power under s 451(1) and (2) of the IR Act to do all things necessary or convenient to be done for the performance of its functions and to make decisions or orders it considers appropriate.

[24] In the *QSU v Sunshine Coast Regional Council*,<sup>4</sup> the Commission noted that the arbitration of the industrial dispute in that case had been "conducted in the manner of a hearing *de novo* where the Commission considers the matter afresh". The applicant submits that a "hearing *de novo*" is the correct approach to the arbitration of an industrial dispute.

[25] An employer has the right to organise a business in the way it considers the most efficient however that prerogative is subject to it being exercised in a manner which could not be described as harsh, unjust or unreasonable.<sup>5</sup>

*Outline of facts*

[26] The applicant on 18 April 2018 was issued with a notice by the QPS giving effect to her redeployment following "allegations of workplace harassment and bullying within" the Forensic Section.<sup>6</sup> The notice contained directions including:

- (a) "Report for duty ... at the Coronial Support Unit" and "Perform all duties as directed" by a Detective Inspector at that Unit.
- (b) "Not attend the [Forensic Section] unless there is a legitimate operational reason for such attendance and you are supervised by a commissioned officer"; and
- (c) "Not contact any staff attached to the [Forensic Section] except as required by your official duties and at all times such contact is to be recorded in your official police notebook".

---

<sup>4</sup> *Queensland Services, Industrial Union of Employees AND Sunshine Coast Regional Council* (2009) 192 QGIG 5.

<sup>5</sup> *The Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees AND QR* (2000) 165 QGIG 526; *Queensland Nurses' Union of Employees v Sundale Garden Village, Nambour* (No 3) (2006) 182 QGIG 16.

<sup>6</sup> Exhibit 1, LJ-1.

[27] On 4 June 2019 the applicant was further advised the redeployment would continue until such time the disciplinary proceedings relating to the alleged conduct of the applicant had been finalised and that the previous directions remained in place.

[28] The applicant will seek leave to update her evidence to the effect that:

- (a) A disciplinary hearing notice was most recently issued to the applicant on 13 January 2020 under the hand of Acting Assistant Commissioner Mickelson.
- (b) On or about 7 February 2020, the QPS advised the applicant that due to Acting Assistant Commissioner Mickelson's pending retirement a new decision maker was to be appointed and a new disciplinary hearing notice will be issued.
- (c) There is no known date on which the disciplinary hearing notice will be issued and no known date by which the disciplinary proceedings will be finalised.

[29] As a result the redeployment and associated directions continue indefinitely.

### *Progression to Sergeant*

[30] The rank of Sergeant is a non-commissioned officer rank immediately above the rank of Senior Constable. The relevant legislation does not specify the criteria for advancement through the ranks.

[31] The QPS has certain arrangements in place for police officers to advance from the rank of Senior Constable to the rank of Sergeant. Relevantly, as a Photographic Officer the applicant is entitled to progress to the rank of Sergeant, subject to achieving the relevant competencies or authorisations. The QPS Guidelines provide as follows:

Police Officers in the Photographic Section have a competency based career path from Constable to Sergeant.

...

To be eligible to progress to the rank of Sergeant, Senior Constable must have:

- Attained all authorisations required to perform operational duties within the Photographic Section,
- Successfully completed all internal competencies and demonstrated competence within these skills for a minimum 12 month period, as per four year training plan retained by the Photographic Section,
- Demonstrated knowledge and skills through:
  - i. delivering a presentation to ANZFSS or external agency or
  - ii. publish an article through a Forensic Journal or
  - iii. create a new technique to enhance service delivery,
- Successfully complete MDP to Sergeant,
- Successfully completed relevant tertiary qualification from a recognised tertiary organisation,
- A minimum of four years' service in the Photographic Section.<sup>7</sup>

---

<sup>7</sup> Exhibit 1, LJ-5.4.

[32] It is the contention of the QPS that the applicant is still required to complete several steps in order to progress to the rank of Sergeant, in particular:<sup>8</sup>

- (a) High Speed Video training. This is required under the PERS specifications, but the applicant's evidence is that she undertook this training under the review of Sergeant Wayne Roberts on 8 April 2016.<sup>9</sup>
- (b) PIX 4D training. This is required under the PERS specifications and the applicant proposes that she be permitted to complete this training.
- (c) VIC training. This was required under the PERS specifications, but the current PERS specification provides that an officer may, as an alternative to completing the VIC training, instead complete RPA (i.e., Remote Piloted Aircraft) pilot training.<sup>10</sup> The applicant proposes that she be permitted to complete RPA pilot training.
- (d) FARO scanning training. This training is not currently required under the PERS specification, although the QPS has intimated that it will be introduced as a requirement.<sup>11</sup> The Applicant proposes that she be permitted to complete this training.
- (e) Demonstrated knowledge and skill through presentation to ANZFSS/external agency or publication in a forensic journal, or creation of a new technique. This is required by the Guidelines, and the Applicant proposes that she be permitted access to resources to enable her to complete this requirement.

[33] The failure of the QPS to permit the applicant's access to resources to complete the relevant training is unfair and she will advance specific proposals that would facilitate her training without defeating the purpose of the redeployment.

*Redeployment directions have a harsh and unfair operation*

[34] The effect of the redeployment and associated directions to preclude the applicant from attending at the Forensic Section or contacting staff there meant that her career progression has been entirely on hold since April 2018.

[35] The redeployment directions were broad and inflexible and prevent the applicant from attendance at the Forensic Section or contacting staff at the Forensic Section. The directions:

- (a) make no attempt to distinguish between Forensic Section staff who are involved in, or witnesses in, the disciplinary proceedings and those who are not;
- (b) make no provision for the applicant to attend the Forensic Section for the purposes of training, even under supervision or out of normal hours;
- (c) make no provision for the applicant to contact staff of the Forensic Section who are not involved in the disciplinary proceedings, even for the purpose of Sergeant accreditation; and
- (d) entirely preclude the applicant's ability to progress towards Sergeant.

---

<sup>8</sup> Exhibit 1, LJ-6.

<sup>9</sup> Exhibit 1, 13 and LJ-7.

<sup>10</sup> Exhibit 1, LJ-5.5 (current PERS) and LJ-6 (former PERS).

<sup>11</sup> Exhibit 1, LJ-6.

[36] At the time of hearing this proceeding the redeployment will have been in place over 22 months with the QPS yet to issue a final disciplinary hearing notice. Once such notice is issued the process will require:

- written submissions;
- a disciplinary hearing; and
- issuing of a formal decision.

[37] In the meantime the applicant has only 19 months remaining before she will reach the compulsory retirement age. Unless she is able to quickly resume the process of progressing towards the rank of Sergeant, she is likely to be denied the financial benefit of having her superannuation calculated by reference to a Sergeant's income.

[38] The redeployment directions as presently in force are harsh, unjust and unreasonable.

*Appropriate alternative directions are available*

[39] The ostensible purpose of the redeployment and the associated directions was to "eliminate or minimise risks to health and safety in the workplace".<sup>12</sup> The associated directions appear to have the intention to:

- remove the applicant from the physical location of where those allegations are said to have taken place; and
- remove the applicant from having contact with persons involved in those allegations (whether as complainants or witnesses).

[40] The merits of the allegations are not for determination in this matter and for present purposes it can be assumed that this "health and safety" purpose was an appropriate one. The question, however, is whether that purpose can be achieved in a way that does not unfairly impede the applicant's career progression whilst the allegations are determined.

[41] The applicant's evidence will be that there are reasonably practicable means by which the QPS could facilitate her continuing progression towards Sergeant accreditation whilst still achieving the "health and safety" purpose.

*PID 4D training*

[42] The applicant has identified the relevant training package which is accessible without the need for her to attend the Forensic Section or contact the staff. The applicant only requires the QPS approval to use the relevant data bases and none of this will have any impact on the operational needs or "health and safety".

*VIC training*

---

<sup>12</sup> Exhibit 1, LJ-3.

[43] The applicant has already completed the competencies required for a Remote Pilot Licence through a CASA approved supplier,<sup>13</sup> and holds the Aeronautical Radio Operator Certificate and Remote Pilot Licence.<sup>14</sup>

[44] In order to finalise the RPA pilot training the applicant is required to complete a practical and written test supervised by the QPS RPA Controller which can be achieved without impeding the QPS operational needs or "health and safety" in the following terms:

- (a) The written component of the test is accessible using any QPS computer, so the applicant does not need to access the Forensic Section (or its staff) for that requirement.
- (b) The practical component of the test is conducted at the Westgate police complex (i.e., not part of the Forensic Section). The only involvement of the Forensic Section is that the applicant will need access to the RPA/drone which is available only in the Forensic Section. This could be arranged without the applicant having to personally liaise with or attend at the Forensic Section, and would not unduly affect the Forensic Section's operations.

*FARO scanning training*

[45] The applicant has already completed the FARO basic operator's course and identified the relevant "Core Competency" document.<sup>15</sup> In order to complete the training she requires access to the FARO 3D scanner and software located in the Forensic Section. This can be achieved in a way that maintains the "health and safety" and without impeding operational needs as follows:

- (a) The applicant could take the FARO 3D scanner out to record a mock crime scene, which is a practice previously adopted in the Forensic Section. This could be done by the applicant attending at the Forensic Section to collect the scanner at a quiet time (such as on a weekend) or by having an appropriate officer deliver the scanner to her, and then return it to the Forensic Section.
- (b) The applicant would then need access to the FARO software. This could be done by the applicant attending at the Forensic Section during a quiet time (or a time when officers involved in the disciplinary proceedings will not be present) to use the computer software. Alternatively, if the software could be installed on a laptop computer, then that computer could be temporarily loaned out to the applicant so that she could use the software without the need to attend at the Forensic Section.

*Demonstrate knowledge and skill*

[46] The applicant proposes undertaking a case study on the Dreamworld incident which would not require access to the Forensic Section or staff but would require QPS approval to use the Forensic Register and QPRIME databases for the purposes of

---

<sup>13</sup> Exhibit 1, 19 and LJ-9.

<sup>14</sup> Exhibit 1, 20 and LJ-10.

<sup>15</sup> Exhibit 1, LJ-11.

undertaking that case study. If approval was given there would be no impact on the Forensic Section.

- [47] There are reasonably practicable means for access to the resources needed to be provided to allow for the continuation of the accreditation towards the rank of Sergeant without any undue imposition on the Forensic Section. Concerns about "health and safety" can be managed by allowing the applicant access to resources in a way that avoids interaction between her and persons involved in the disciplinary proceedings. This would provide a fairer balance of the competing interests.

*Orders sought*

- [48] The Commission has been requested to make the following orders:

- (a) An order that the applicant is authorised to access and use the QPS databases required for the purposes of completing the "PIX 4D initial user training" referred to in the "PERS Progression to Sergeant" specification.
- (b) An order that, for the purposes of the applicant completing the "RPA pilot training" referred to in the "PERS Progression to Sergeant" specification, the QPS is to:
  - (i) Arrange for the applicant to undertake the practical component of the RPA pilot test at the Westgate police complex (or other suitable location) under the supervision of Sergeant Rob Whittle (or other suitable officer) on a date no later than 28 days from the date of this order (or such other time agreed between the parties), and for that purpose the QPS is to ensure that a suitable RPA is available at the test location at the relevant time.
  - (ii) Permit the applicant to complete the written component of the RPA test using a QPS computer at her usual workplace.
- (c) An order that, for the purposes of the applicant completing FARO 3D scanner training, the QPS is to:
  - (i) Arrange for the applicant to have access to a FARO 3D scanner for the purpose of recording a mock crime scene on a date within 28 days of the date of this order (or such other time agreed between the parties), either by delivering that scanner to the applicant at the Coronial Support Unit or permitting the applicant to collect the scanner at a suitable time.
  - (ii) Permit the applicant to use the FARO 3D scanner related software on a date within 28 days of the date of this order (or such other time agreed between the parties), either by permitting the applicant to attend at the Forensic Section for that purpose or by delivering a laptop computer with that software to the applicant's workplace at the Coronial Support Unit.
- (d) An order that, for the purposes of the applicant completing a case study on the 2016 Dreamworld incident so as to demonstrate relevant knowledge and skills towards progression to the rank of Sergeant, the QPS is to authorise the applicant to use its Forensic Register and QPRIME databases for that purpose.

**Respondent**

### *Overview*

[49] The applicant, a Senior Constable with the QPS holds a permanent appointment to a position of Photographic Officer in the Forensic Section. A complaint about alleged bullying and harassing behaviours in the Forensic Section had been made which resulted in the applicant being directed on 18 April 2018 to perform duties in the Coronial Support Unit as a welfare measure to protect the safety and wellbeing of those alleged to have been subject to bullying and negative workplace behaviours by the applicant.

[50] On 3 July 2018 the applicant gave notice to the Commission of a grievance and sought to challenge the Redeployment Notice. As part of the challenge the applicant was initially seeking orders that:

- (a) the redeployment decision of 18 April 2018 be set aside; and
- (b) the redeployment decision is varied so that the applicant is permitted to contact any staff and attend at any workplace if doing so is reasonably necessary for the purpose of progressing with accreditation towards the rank of Sergeant and such contact or attendance is first authorised by the [applicant's] supervising officer.

[51] In these proceedings the applicant abandoned the first grounds of the 3 July 2018 application and now seeks other orders as identified at paragraph [47] of this decision.

[52] The only question remaining for the Commission in these proceedings is whether the redeployment of the applicant was harsh, unjust or unfair.

[53] The respondent's position is that the application should be dismissed on the basis that the applicant has already sought (and settled) a judicial review of matters which essentially raised the same issues, the subject of this application. Further, the applicant accepts that:

- this is not the forum for a determination of the merits of the allegations; and
- it can be assumed for present purposes that the redeployment for "health and safety" purposes is an appropriate one.

### *Background*

[54] On 4 March 2016 the applicant was appointed to a permanent police officer position within the Forensic Section and since April 2018 she has been temporarily redeployed to another QPS unit, being the Coronial Support Unit, with that redeployment continuing in the following circumstances.

[55] On 18 April 2018 the Acting Deputy Commissioner issued and served the Redeployment Notice.

[56] On 16 October 2018 a notice was served on the applicant by McNab which had the effect of continuing the temporary employment in similar terms to the previously issued notice with differences as follows:

- (a) recorded that the allegations of workplace harassment and bullying "are currently under investigation";
- (b) was issued by the second respondent on the basis that he had "determined it is necessary to continue [the applicant's] redeployment to the Coronial Support Unit pending an outcome of this investigation"; and
- (c) recorded that the temporary redeployment will "be reconsidered periodically following the completion of the current investigation, and in any event formally reviewed on or before 30 March 2019 after which you will be advised of any extension to, or rescission of, the temporary redeployment".

[57] On 18 March 2019 a further notice was issued by McNab in almost identical terms to the notice of 16 October 2018 save that it recorded it was to be formally reviewed on or before 30 August 2019.

#### *Challenges to redeployment in other forums*

[58] The applicant on numerous occasions has sought to review her redeployment in other forums including:

- Police Service Review;
- Queensland Civil and Administrative Tribunal (QCAT); and
- Supreme Court - Judicial Review.

[59] The proceedings before QCAT were dismissed for want of jurisdiction as the applicant contended the decision was one pertaining to discipline. A decision on the application for leave to appeal against this decision to the QCAT Appeals Tribunal is currently reserved.

[60] The judicial review proceedings seeking the redeployment decision to be set aside were settled on the basis that a Deputy Commissioner redetermined the redeployment issue.

[61] On 4 June 2019 Deputy Commissioner Gollschewski reviewed the redeployment of the applicant and confirmed the redeployment, precluding her attendance at the Forensic Section pending resolution of current disciplinary processes. No further review of that decision has been sought.

[62] The respondent submitted that the Commission should exercise its discretion and dismiss the application as the continuation of these proceedings, despite the settlement of the judicial review proceedings, is contrary to the doctrine of finality. Further, there was a risk of inconsistent decisions between QCAT and the Commission.

#### *Jurisdiction*

[63] The respondent accepted the submissions of the applicant as to the jurisdiction of the Commission.

*Facts*

[64] The respondent also accepted the submissions of the applicant on the facts outlined in paragraphs 12-18 inclusive of the applicant's submissions filed on 10 February 2020 and noted that the required competencies have been amended.

*Relevant provisions of the Police Service Administration Act 1990 (Qld) (PSAA)*

[65] The Office of the Commissioner of the QPS is created by statute, specifically s 4.1 of the PSAA. The Commissioner's responsibilities are set out at s 4.8 of the PSAA:

**4.8 Commissioner's responsibility**

- (1) The commissioner is responsible for the efficient and proper administration, management and functioning of the police service in accordance with law.
- (2) Without limiting subsection (1), a regulation may prescribe -
  - (a) particular matters within the scope of the prescribed responsibility; or
  - (b) additional responsibilities of the commissioner.
- (3) The commissioner is authorised to do, or cause to be done, all such lawful acts and things as the commissioner considers to be necessary or convenient for the efficient and proper discharge of the prescribed responsibility.
- (4) In discharging the prescribed responsibility, the commissioner -
  - (a) is to comply with all relevant awards or industrial agreements, determinations and rules made by an industrial authority; and
  - (b) subject to this Act, is to ensure compliance with the requirements of all Acts and laws binding on members of the police service, and directions of the commissioner; and
  - (c) is to have regard to section 4.6 and ministerial directions duly given thereunder; and
  - (d) is to discharge the responsibility in relation to such matters as are prescribed for the time being.

[66] The Commissioner is given the broad responsibility for the efficient and proper administration and function of the police service. The Commissioner is conferred a general power with those powers constrained only by the requirements that they be lawful, considered by the Commissioner to be necessary or convenient to discharge the Commissioner's prescribed responsibility, and finally comply with subsection 4.8(c) of the PSAA. The provision does not contain any specific power in relation to the redeployment of staff.

[67] However, s 4.8 of the PSAA must be read with regulation 7(o) of the Police Service Administration Regulation 2016 (Qld) which prescribes that "the internal redeployment or retraining of officers or staff members" are particular matters within the scope of the prescribed authority.

[68] Section 4.9 of the PSAA confers upon the Commissioner a power to give direction and provides:

**4.9 Commissioner's directions**

- (1) In discharging the prescribed responsibility, the commissioner may give, and cause to be issued, to officers, staff members or police recruits, such directions, written or oral, general or particular as the commissioner considers necessary or convenient for the efficient and proper functioning of the police service.
- (2) A direction of the commissioner is of no effect to the extent that it is inconsistent with this Act.
- (3) Subject to subsection (2), every officer or staff member to whom a direction of the commissioner is addressed is to comply in all respects with the direction.
- (4) A direction issued under subsection (1) to officers about functions, powers or responsibilities that are also functions, powers or responsibilities of watch-house officers is taken to be also issued to watch-house officers.
- (5) In all proceedings -
  - (a) a document purporting to be certified by the commissioner to be a true copy of a direction under subsection (1) is admissible as evidence of the direction; and
  - (b) a direction under subsection (1) is to be taken as effectual until the contrary is proved.
- (6) In this section -  
***watch-house officer*** means a staff member who is appointed by the commissioner to be a watch-house officer.

[69] The Commissioner issued directions under s 4.9 of the PSAA that all staff of the service were to comply with the provisions of Operational Procedures Manual (OPM) and also the Management Support Manual (MSM). These documents, as their names suggest, cover the subject matters relevant to operational policing and management aspects of policing.

[70] The redeployment of the applicant and its continuation were matters undertaken in the context of allegations of workplace harassment and bullying within the Forensic Section. This is clear on the face of each of the notices.

[71] In each of the redeployment notices the responsible officers were purporting to eliminate or minimise risks to health and safety in the workplace. The issues relied upon in the redeployment notices were unique to the working environment in which the applicant operated and were uniquely of interest to the Forensic Section.

[72] The decision and the determinations that preceded them were most appropriately assessed and undertaken by a person directly in charge of or with direct knowledge of the relevant Forensic Section from which the applicant was deployed.

[73] In the case of the MSM, s 3.6 identifies that:

Officers in charge and managers are to address health and safety risks as part of the normal risk management process and liaise with their local health and safety network to ensure that health and safety issues are appropriately controlled.

[74] Similarly, under s 1.4.4 of the OPM, it states:

- (i) the efficient and effective management of policing their district and effective deployment of members under their control;
- (ii) resource allocation, planning, and control of activities within the district, consistent with Service goals and objective;
- ...
- (iv) ensuring that members under their control comply with Service policy and demonstrate behaviour consistent with Service and community expectations.

[75] The QPS has a duty of care to ensure, so far as is reasonably practicable, the health and safety of its workers and that other persons are not put at risk from work carried out as part of the conduct of the business or undertaking. It is therefore trite to say pursuant to the *Work Health and Safety Act 2011* (Qld) (WHS Act) the QPS has a non-delegable duty to ensure, as reasonably practicable, the health and safety of its workers.

[76] In the affidavit of evidence from McNab,<sup>16</sup> concerns for the health and wellbeing of QPS employees were identified, arising from the alleged activities of the applicant and it remains that the applicant is presently the subject of discipline proceedings alleging ongoing and repeated acts of bullying and harassing behaviours directed at members of the Forensic Section. The redeployment notice was issued to ensure compliance with the QPS work health and safety obligations.

[77] It was also clearly demonstrated by McNab that the completion of the competencies by the applicant would necessitate the accessing of the Forensic Section, utilising equipment and resources contained therein and exposing staff members of that location to the applicant, which posed a risk of further work health and safety risks.

[78] The respondent acknowledges that the continued redeployment of the applicant from her duties in the Forensic Section had caused her to be unable to complete necessary training and demonstrate the necessary competencies, however given the circumstances of this case, such restrictions were not "unjust, harsh or unfair".

[79] The consequences faced by the applicant must be balanced against the serious consequences faced by the employees exposed to the alleged bullying and harassing behaviours of the applicant and the QPS, if it failed to provide a work environment without risks to the health and safety of such employees, would not be meeting their obligations.

[80] The exclusion of the applicant from the Forensic Section was not "unjust, harsh or unfair" but rather a necessary consequence of providing a safe working environment.

---

<sup>16</sup> Exhibit 3.

[81] The application should be dismissed.

## **Evidence**

### **Applicant**

#### *Jones*

[82] An affidavit of evidence was tendered in the proceedings by the applicant that included the following background information:

- currently holds the rank of Senior Constable having been sworn in as a police officer in 1992;
- on 17 December 2013 was seconded to the [then] Photographic and Electronic Recording Section (PERS) now known as the Forensic Imaging and Electronic Recording Section as a trainee Scenes of Crime (SOC) officer; and
- on 4 March 2016 she was appointed to a permanent position as a Photographic Officer within the Forensic Section.

[83] A Notice of Temporary Redeployment was served on the applicant on 18 April 2018 under the signature of Acting Deputy Commissioner Maurice Carless which directed that she be temporarily redeployed to another workplace and further directed her not to attend or contact the Forensic Section except in limited circumstances. A review of the redeployment was to occur on or before 18 October 2018.

[84] Further Notices of Temporary Redeployment under the signature of McNab were served on the applicant on 16 October 2018 and 18 March 2019 with additional documentation issued to the applicant under the signature of Deputy Commissioner Gollschewski, Crime, Counter-Terrorism and Specialist Operations (Gollschewski) informing her that her temporary employment in the Coronial Support Unit was to continue until such time as the disciplinary decision was delivered. Disciplinary proceedings had been commenced against the applicant with no findings having been made and no specific end date for those proceedings.

[85] The applicant at the time of the redeployment in April 2018 held the rank of Senior Constable and had been working towards satisfying the requirements for achieving the rank of Sergeant. As a Photographic Officer the applicant was entitled to automatically progress to the rank of Sergeant provided she obtained the relevant competencies and authorisations.

[86] The applicant attached to her affidavit documentation relating to the various redeployments which included the following commentary:

It has been brought to my attention there are allegations of workplace harassment and bullying within the Photographic and Electronic Recording Section. In accordance with my duty under the *Work Health and Safety Act 2011* (Qld) to, as far as practicable, eliminate or minimise risks to health and safety in the workplace, I have determined it is necessary to temporarily redeploy you to another workplace and issue you with further directions.<sup>17</sup>

[87] Other attachments to the affidavit included material relating to Progressional Arrangement Guidelines and in particular amendments to progressional arrangements which were said to "reflect the changing nature of technology in the photographic field and therefore the associated skills and qualifications required".

[88] As a result of the redeployment in April 2018 the applicant was precluded from performing her role as a Photographic Officer and the redeployment continues to prevent her from completing the necessary competencies and authorisations required to progress to the rank of Sergeant by way of a refusal to permit her to attend the Forensic Section, which is the only place where some of the necessary resources required to complete the competencies and authorisation are available.

[89] According to the applicant's training records (confirmed in an email by Gary Patterson (Patterson) from the Public Safety Business Agency (PSBA)) the applicant had completed the following core competencies and authorisations:

- Photography and Video training;
- IFIS training;
- ZEB training;
- RPA secondary observer training;
- VIC charts training; and
- AV proficiency training.<sup>18</sup>

[90] The applicant is required to complete the following training:

- High speed video training;
- PIX 4D training;
- VIC authorisation OR RPA pilot authorisation;
- Demonstrate knowledge and understanding through (Year 4);
  - Presentation to ANZFSS/external agencies; or
  - Publish article through Forensic Journal; or
  - Create new Technique to enhance service delivery.<sup>19</sup>

### *High Speed Video Training*

[91] On 8 April 2016 the applicant attended the Belmont rifle range with Sergeant Wayne Roberts (Roberts) where she received high speed video training which entailed the observation of and assistance in recording, fast moving projectiles passing through

---

<sup>17</sup> Exhibit 1, LJ-1.

<sup>18</sup> Exhibit 1, LJ-6.

<sup>19</sup> Ibid.

sheet glass and into targets. This job was technically reviewed by Roberts and the attendance recorded in forensic records in the following terms:

HIGH SPEED VIDEO RECORDING: Attended Belmont rifle range at the request of Simon Taylor (Security Counter Terrorism Unit) re High Speed video recording for Balistic staff Everest and Mankdelow. Received training re: 10 x video sequences in total of projectiles passing through sheet glass and into targets. (Refer FR1510173).<sup>20</sup>

[92] The applicant does not believe that the Forensic Section had developed a core competency document for high speed video training however in undertaking the specific high speed video training under the supervision of Roberts, she holds the view she has fulfilled the requirements for this competency.

*PIX 4D - 3D Mapping using Photogrammetry Software*

[93] According to the progressional guidelines the only requirement to meet this competency is the "initial user training".

[94] On 2 March 2017 during the Forensic Section's morning meeting Roberts advised that everyone was to be trained on PIX 4D, however a training package was still being developed by [then] Sergeant Owen Butters (Butters) and Senior Constable Rob Whittle (Whittle). The Forensic Section's "Training and Education" efolder now contains a training package for PIX 4D which references online video tutorials and exercise files for PIX 4D via LinkedIn Learning.

[95] The applicant already has access to those databases and only needs QPS approval to use the databases for the purposes of fulfilling this competency to progress to Sergeant. This would have no impact at all on the Forensic Section.

*RPA Pilot Authorisation*

[96] The applicant successfully completed and passed competencies required for a Remote Pilot Licence through a Civil Aviation Safety Authority (CASA) approved supplier on 29 April 2018. On 31 May 2018 and 8 June 2018 she received the following from CASA:

- Aeronautical Radio Operator Certificate; and
- Remote Pilot Licence.<sup>21</sup>

[97] To finalise this authorisation the applicant is required to successfully complete a practical and written test supervised by the QPS RPA Controller from PolAir Brisbane based at Archerfield Airport.

---

<sup>20</sup> Exhibit 1, LJ-7.

<sup>21</sup> Exhibit 1, LJ-10.

[98] Access would be required to the Remotely Piloted Aircraft (RPA or Drone) by the applicant to complete the practical component of this competency, which is conducted at the Westgate police complex, Wacol. If permission to attend the Forensic Section is denied it may be possible for alternative arrangements to be made for the applicant to complete this competency. The arrangement suggested by the applicant was said not to have an adverse effect on the Forensic Section.

*Demonstrate knowledge and understanding (Year 4)*

[99] On or about 7 September 2016 the Forensic Section's Senior Sergeant of Operations (Michell Roberts) was said to have advised the applicant that a submission of a "Case Study" on the Dreamworld incident would be a suitable project to meet the Year 4 competency. Such a case study would not require access to any specialised equipment, the Forensic Section or staff and would allow the applicant to continue to progress towards Sergeant. To complete the task she would need to use the Forensic Register and QPRIME databases and as there is already access to the databases as part of the applicant's ordinary work, all that was required was the approval to use the databases for the purpose of fulfilling the requirements to progress to Sergeant. This would not impact at all on the Forensic Section.

*FARO Focus 3D Scanner*

[100] The applicant on or around 15 September 2017 successfully completed the FARO basic operator's course. A new Core Competency for FARO Focus 3D scanner was developed at the Forensic Section on or around 23 April 2018 which requires (inter alia) the production of "three completed jobs to demonstrate competency". To successfully complete this competency the applicant would require access to the FARO 3D scanner and software only available within the Forensic Section. Previously, staff had been given permission to take FARO equipment out during quiet periods to capture mock crime scenes with the scanned data then used to produce a final product.

[101] If the applicant was allowed to access the FARO 3D scanner and software in the Forensic Section on the weekend, this would result in minimal contact with staff, particularly during the 2.00 pm - 10.00 pm shift when only one officer is rostered. Alternatively, the software in question could be transferred to a laptop with the conversion of the captured data to a final product, which would result in little or no contact with the Forensic Section's staff to complete this competency.

*Conclusion*

[102] The applicant has been the subject of redeployment since 18 April 2018 and throughout that time has been precluded from performing her role as a Photographic Officer and from progressing with the competencies and authorisations necessary to achieve the

rank of Sergeant. No specific dates were given as to when the redeployment would end or when the disciplinary proceedings would be finalised.

[103] On 18 September 2021 the applicant will reach the compulsory retirement age and her superannuation will be calculated on her substantive wage in the final year. Being denied the opportunity to progress to Sergeant, would cause a significant loss of income upon retirement.

[104] The ongoing redeployment has had long term consequences for her and was disproportionately punitive to the conduct alleged.

### **Respondent**

*McNab*

[105] McNab, a Superintendent of Police with the QPS, has held that rank since October 2015 and was appointed as Operations Commander of Forensic Services Group, Operations Support Command in October 2018. Whilst the role was titled "Operations Commander" the role is one and the same as a "District Officer" despite a different naming convention being used for roles within Operations Support Command.

[106] In his role as Operations Commander he is required to coordinate and command all operations within the Forensic Services Group. In particular, the responsibility of managing operational policing duties including:

- supervising the provision of effective and efficient operational policing and support activities; and
- providing a work environment committed to professional standards, ethical practices and discipline.

[107] In relation to the management of staff he is directed to ensure:

- effective performance of members;
- effective deployment of members under his control;
- resource allocation; and
- compliance with Service policy and demonstration of behaviour consistent with Service and community expectations.

[108] The responsibilities relevant to his role are contained in the OPM and constitute a direction of the Commissioner of Police. Also, the WHS Act establishes numerous responsibilities on the Service to eliminate and minimise risks to health and safety within the workplace. The QPS compliance with health and safety considerations and legislation are outlined in s 3.6 of the MSM.

[109] In his role as Operations Commander, McNab became aware of an investigation into allegations of workplace harassment and bullying made against the applicant. On 18 April 2018 then Acting Deputy Commissioner Carless issued and served a Redeployment Notice on the applicant requiring her to complete duties with the Coronial Support Unit, which forms part of McNab's area of responsibility.

[110] Based upon information received about the allegations of workplace harassment and bullying against the applicant, which remain the subject of a current disciplinary proceeding, McNab held significant concerns relating to effective performance of members and the health and safety of the workplace within his control. As a consequence of those concerns, on 16 October 2018 and 18 March 2019 respectively, he issued notices to the applicant further extending her redeployment.

[111] On 3 July 2018 the applicant filed proceedings in the Commission seeking orders that the Redeployment Notice be set aside and orders permitting her to contact Forensic Services Group's staff to progress her training with a view to attaining accreditation.

[112] On 13 November 2018 the applicant filed an application in the QCAT seeking McNab's decision of 16 October 2018 be set aside. The matter was the subject of a hearing with QCAT which dismissed the application,<sup>22</sup> however he is aware the applicant has filed an Application for Leave to Appeal and Appeal against the Tribunal's decision. That matter was heard on the papers with the decision reserved.

[113] On 20 March 2019 the applicant filed proceedings in the Supreme Court of Queensland seeking judicial review of McNab's decision of 18 March 2019. The judicial review proceedings were listed for hearing on 27 May 2019 whereby the applicant proposed a settlement of the judicial review proceedings on the basis of discontinuing the review proceedings, provided a Deputy Commissioner reviewed the decision within 14 days and the parties met their own costs.

[114] Deputy Commissioner Gollschewski confirmed the applicant's temporary redeployment pending finalisation of the current disciplinary processes and at the time of preparing this affidavit the disciplinary process was still underway and has not been finalised.

[115] McNab was aware that the applicant had abandoned her request for the Commission to review her redeployment in these proceedings, however she contends that she can progress to complete the outstanding competencies and accreditations to attempt her progression to the rank of Sergeant without impact on the Forensic Section. McNab rejected this contention.

[116] The applicant, to attain the rank of Sergeant within the accelerated progression program, is required to successfully complete numerous competencies and accreditations throughout her employment. Whilst many of the requirements remain

---

<sup>22</sup> *Jones v McNab* [2019] QCAT 213.

the same, the competencies or accreditations identified by the applicant through the Queensland Police Union of Employees (QPUE) have been superseded and do not reflect the current QPS requirements.

[117] In respect of the current requirements each of the competencies and accreditations not only require the undertaking of theoretical study and training but also require completion of a "mentor phase". The mentor phase requires the applicant to attend operational jobs to gain extensive practical experience, exposure to and application of, the highly technical skills within an operational environment.

[118] A further purpose of the mentor phase is for the applicant to demonstrate relevant investigative and forensic techniques and competencies under the supervision and direction of mentors drawn from the very highly skilled and limited group of technical experts within the Forensic Services Group and to be the subject of peer review. Many of these persons are the same persons alleged to have been the subject of the applicant's bullying and harassing behaviours.

[119] McNab received information about the allegations of workplace harassment and bullying against the applicant and of the concerns raised by numerous staff members about their physical, mental and emotional wellbeing if they were required to work with the applicant. He had been unable to identify appropriate persons who could undertake the required mentoring tasks. He was not satisfied that he could meet his workplace health and safety obligations by permitting the applicant to return to the Forensic Services Group workplace at this time.

[120] The observations of the applicant that the Forensic Services Group was the only location where the technical resources and tools required to complete the competencies could be undertaken was agreed by McNab, and that due to the highly technical and expensive nature of the equipment and resources, the QPS has very limited resources. The QPS has only two licences for the FARO Scene and other associated software presently located on the computers within the Forensic Services Group. To relocate the software was not viable as it would effectively halve the efficiency of the Forensic Services Group and result in significant costs for the QPS to purchase additional licences.

[121] The Forensic Services Group operate 16 hours per day which would require the applicant to be physically present with other staff if she was to use the programs and equipment, including staff who were colleagues and senior officers, many of whom are alleged to have been the subject of her bullying and harassment behaviours.

[122] Mr McNab caused enquiries to be made as to whether the applicant may have been able to complete the competencies under another policing jurisdiction to avoid potential risks to health and safety of the affected employees, however due to the uniqueness of the competencies and programs this was not likely to happen.

[123] Whilst the disciplinary proceedings were yet to be finalised, it was McNab's opinion that exposing the employees of the Forensic Services Group to the applicant at this time would give rise to an unacceptable risk of physical, mental and emotional wellbeing of those employees.

### **Applicant's Affidavit in Reply**

[124] The applicant, having reviewed a document attached to the affidavit of McNab, "Forensic Imaging Section's Internal Training Program"<sup>23</sup> indicated that many of the competencies and authorisations were the same as attachment (LJ-5.5) to the applicant's affidavit<sup>24</sup> with some differences including:

- Year 2 column of "BJM3" an entry for "FARO Training has been added;
- Year 3 column of "BJM3" the option for RPA pilot training as an alternative to VIC training has been removed; and
- Year 4 column of "BJM3" the MDP/Management Development Programme has been removed.<sup>25</sup>

[125] The provision of "BJM3" was said not to change the applicant's request to access resources for the purposes of career progression.

[126] McNab's affidavit referred to a requirement for a "mentor phase" for many of the competencies and accreditations, however according to "BJM3" the following accreditations being sought do not require a "mentor phase":

- FARO Training;
- PIX 4D; and
- Demonstrating knowledge and understanding in Year 4.

[127] As to the claim by McNab that he had been unable to identify appropriate persons who could undertake mentoring tasks, the applicant states she is not seeking to undertake any mentoring at this time.

[128] In response to McNab's evidence of it not being operationally viable for the QPS to enable the applicant to access computers or other equipment in the Forensic Section without exposing staff to potential risks in terms of health and wellbeing, the applicant offered the following reply:

- FARO training: The training required is in relation to the capture of Blood Pattern Analysis (BPA) scenes which could be completed by mock BPA scenes within the Forensic Section and FARO ZONE reconstructions. Access is required to the FARO 3D scanner and software which is only available in the Forensic Section. There are four photographic officers within the Forensic Section who are not involved in the disciplinary investigation and if the applicant was allowed to access the equipment

---

<sup>23</sup> Exhibit 3, BJM3.

<sup>24</sup> Exhibit 1.

<sup>25</sup> Exhibit 2.

during the 2.00 pm - 10.00 pm shifts would ensure the applicant had no contact with officers associated with the disciplinary process.

The Forensic Section requires an officer to be rostered on between 2.00 pm and 10.00 pm every day of the week, with each officer rostered on an afternoon/evening shift. This would allow for her attendance at the Forensic Section two or three times per fortnight when one of the officers who is not involved in the disciplinary process is on duty.

- PIX 4D and demonstrating knowledge and understanding: Access is not required to the Forensic Section nor is contact with the Forensic Section officers.
- RPA Pilot Training: The applicant claims to have previously undertaken the required training.
- VIC training: If there is some doubt regarding the training previously undertaken by the applicant and she is now required to complete the "VIC training", the progressional guidelines in "BJM3" specify a one month secondment to ERS which the applicant completed in 2007 and she does not seek any access for that requirement.

On the three-day mentor phase mentioned in "BJM3" which requires access to specialised software, this could be arranged through access to the Forensic Section during the 2.00 pm - 10 pm shifts when officers not involved in the disciplinary process were on duty.<sup>26</sup>

### *New Disciplinary Notice*

[129] On 25 February 2020 the applicant was served with a new disciplinary notice (dated 14 February 2020). There is still no end date in sight for either the disciplinary proceedings or the redeployment.

### **Oral Submissions**

#### *Applicant*

[130] Prior to the commencement of submissions, the applicant tendered revised orders as a consequence of evidence provided by McNab in the proceedings. The orders now sought are:

1. An order that, for the purposes of Senior Constable Lynette Jones completing the 'PIX 4D initial user training' referred to in the Year 2 training of the 'Forensic Imaging Section's Internal Training Program', the QPS is to authorise Senior Constable Jones to use its *Forensic Register* and the *Photographics fileserver - Training and Education*.
2. An order that, for the purposes of Senior Constable Lynette Jones completing the 'FARO Training' referred to in the Year 2 training of the 'Forensic Imaging Section's Internal Training Program', within 28 days of the date of this order the QPS is to:
  - (a) Arrange for Senior Constable Jones to have access to a FARO 3D scanner at the Forensic Imaging Section for the purpose of her recording a mock crime scene, by permitting Senior Constable Jones to use the scanner at times when no staff members involved in disciplinary proceedings against Senior Constable Jones are on duty.

---

<sup>26</sup> Exhibit 2.

- (b) Permit Senior Constable Jones to use the FARO 3D scanner related software at the Forensic Imaging Section at times when no staff members involved in disciplinary proceedings against Senior Constable Jones are on duty.
3. An order that, for the purposes of Senior Constable Lynette Jones completing the 'VIC Training' referred to in the Year 3 training of the 'Forensic Imaging Section's Internal Training Program', within 28 days of the date of this order the QPS is to permit Senior Constable Jones to attend at the Forensic Imaging Section and use the computers and software necessary for completing the VIC Training.
  4. An order that, for the purposes of Senior Constable Lynette Jones completing the requirement to 'Demonstrate relevant knowledge and understanding' referred to in the Year 4 training of the 'Forensic Imaging Section's Internal Training Program', the QPS is to authorise Senior Constable Jones to use its *Forensic Register* in order to complete a case study on the 2016 Dreamworld incident.
  5. An order that Senior Constable Lynette Jones be permitted to advise, via email, the Operations Commander of Forensic Services Group (currently Superintendent Bruce McNab) of her completion of any training referred to in the 'Forensic Imaging Section's Internal Training Program'.<sup>27</sup>

[131] The relevant facts were essentially undisputed in that:

- the applicant is a senior constable with the QPS;
- the applicant holds a permanent appointment to the position of Photographic Officer in the Forensic Section;
- since 18 April 2018 the applicant has been subject to a direction to undertake alternate duties in a different unit;
- the applicant is under a direction not to attend the Forensic Section or to contact staff attached to the Forensic Section unless it is a requirement of her current duties;
- the applicant is unable to access resources needed to progress with her accreditation towards the rank of Sergeant; and
- the applicant was temporarily redeployed following allegations of workplace harassment and bullying within the Forensic Section.

[132] On 4 June 2019 a deputy commissioner reviewed the applicant's redeployment, deciding to continue the redeployment following an application made by the applicant for a judicial review of the decision to redeploy. The previous proceedings hadn't looked at the merits of whether the applicant should access resources or otherwise and there was nothing in those proceedings that ought to cause the Commission any concerns in terms of their current task.

[133] The applicant suggested that the internal training program offered a certain flexibility in terms of when training was done and in particular the VIC training for a mentor phase

---

<sup>27</sup> Exhibit 4.

although at this point in time the application does not seek to access a mentor. Rather, what's sought in the application is access to the resources on the theoretical side of the training. Whilst the respondent claims they have been unable to identify an appropriate person to undertake the mentoring phase that was not a reason for not allowing the theoretical side to proceed.

[134] The resources for the FARO 3D scanner training and the VIC training are only able to be accessed through the Forensic Section and it was accepted that it was not operationally viable to relocate the FARO software to another computer.

[135] The applicant acknowledged that there are staff in the Forensic Section involved in the allegations levelled against her, however there are four staff in the Forensic Section who are not involved in the disciplinary proceedings. By the applicant attending the Forensic Section when these four staff were on duty could remove the potential risks to the health and wellbeing of other staff.

[136] There were other aspects of the training which could be accessed through any QPS computer and would not require the applicant's attendance at the Forensic Section location. Approval to access the particular programs was required by the QPS as the accessing of the programs would not be a part of her official duties.

[137] The applicant does not deny the risks identified by McNab if there was attendance by her at the Forensic Section, however argued that such risks can be managed by attending at a time when staff not involved in the allegations were on the 2.00 pm to 10.00 pm shift.

[138] Ultimately, the proposal put by the applicant was simply that the authority or the permission to attend the Forensic Section be given in limited circumstances when staff not involved in the disciplinary proceedings were on duty. This was a reasonable approach which balanced the risks identified by McNab in his evidence. There were legitimate welfare and career progression concerns for the applicant considering that in a month's time she will have been the subject of two years of redeployment which had placed her progression on hold.

[139] There is no end in sight for the disciplinary proceedings with a notice being issued to the applicant on 25 February 2020. The proposed orders that the applicant seeks have been crafted to attempt to fit within the risks identified by the respondent.

*Respondent*

[140] It was not contested that the allegations levelled against the applicant were serious in nature and the QPS had been very clear to say that the allegations gave rise to workplace health and safety risks associated with the applicant's presence in the workplace and the inability for the police service to provide a safe working

environment for staff. The allegations involve numerous staff and relate to issues of workplace bullying and harassing behaviours that took place over a number of years.

[141] Members of staff allege they have been affected by the behaviours of the applicant and whilst no findings of fact have yet to be made in respect of the alleged conduct, the QPS has a responsibility to manage risk in the workplace and to prevent the applicant from contacting the staff who attend the location in question.

[142] McNab, in evidence, stated that he could not allow the applicant to return to the workplace given the current allegations against her and that as the commander he had been unable to identify somebody suitable to supervise the applicant for development or mentoring. Mentoring in this case is not simply a "tap on" at the end but part of the continual development of officers in relation to their work.<sup>28</sup> Theory on its own was an isolation of one part of the process, creating an *ad hoc* approach to the process.

[143] The proposal of the applicant that she could attend the Forensic Section as not all of the staff were part of the alleged complaint was said to be a "simplistic approach", as there may be people who were not complainants but who had also been affected by the complaint or have their concerns about the alleged conduct. The issue for the QPS is not to expose members to negative workplace behaviours.

[144] The QPS in not suspending the applicant from the workplace state it was the right decision because it enabled her to be redeployed to a location away from the Forensic Section and if managed properly in the new workplace she may not have engaged in any further behaviours of concern. However, to allow her to return to the workplace could pose a significant risk and McNab was clear on this point in that he was unable to identify an appropriate means by which the applicant could continue her training without her being in the workplace and exposing the staff to risk. The Deputy Commissioner (Gollschewski) upon reviewing the applicant's file stated:

I am satisfied that I can't deal with your issues or permit you to remain in the workplace without exposing these people to a risk or harm".<sup>29</sup>

McNab confirmed that he was unable to manage that risk, at the moment, given the allegations before him.

[145] The purpose of discipline is to be rehabilitative and restorative in nature which would allow attempts to resolve the issues that form the underlying alleged behaviours and concerns. The QPS is trying to maintain the position where the health and wellbeing of those affected staff members are not impacted and therefore, at this particular time, it would not be unreasonable for the applicant to undertake duties elsewhere.

---

<sup>28</sup> TR6-13, L27-28.

<sup>29</sup> TR6-15, L37-38.

[146] As to the position of the QPS recorded in the redeployment notices to allow the applicant to attend the Forensic Section if there was a "legitimate operational" reason for such an attendance under the supervision of a commissioned officer, it had been anticipated that there wouldn't be a need to access the Forensic Section at all but if it was required, she would take appropriate measures through her new supervisor. The access sought in this application is of a "personal interest" and not operational.

[147] In the course of the submissions, the Commission raised the issue of the disciplinary proceedings having taken two years (to date) and generated the following response from the QPS advocate (Craig Capper):

Well, there's a number of issues that affect that which - some go to the service and delays in the service, of course. Others go to the way in which it has been responded to as well so - but I don't want to get into that because - again, that's outside the . . . of this matter. The matter has taken some time. It will have an effect on Ms Jones' superannuation should she not be able to keep the sergeant's requirements. But there is no guarantee that she will - firstly that she will meet those requirements.<sup>30</sup>

[148] The submissions continued to address the issue of the applicant's promotion to the rank of Sergeant indicating that:

- there is no right to be promoted to Sergeant;
- it was unreasonable to give her access to the workplace to undertake the programs given the nature of the allegations; and
- there was no operational requirement for the applicant to undertake this training at this time pending the outcome of the disciplinary decision.

[149] Inherent difficulties in granting the applicant the access sought included:

- a required change to rostering;
- there would have to be a commissioned officer appointed to chaperone the applicant; and
- potential exposure of staff to bullying conduct.

[150] The proper course at this point in time would be for the discipline to proceed and to have the matters fully investigated. Whilst the process had been protracted to date, disciplinary notices have now been issued and it was the position of the QPS that the delays had been unfortunate for both the applicant and the QPS.

[151] It had not been unreasonable for the QPS to redeploy the applicant and to withdraw her access to the particular services or programs at this time because the QPS was unable to accommodate the requests within the context of their workplace health and safety obligations.

*Applicant in reply*

---

<sup>30</sup> TR6-18, L45-47; TR6-19, L1-4.

[152] The very nature of the redeployment was that it was implicit the QPS accepted the applicant could work with other police officers without there being any particular risk to be managed. In almost two years of redeployment there has been no suggestion of any bullying or harassment by the applicant and it has always been contemplated that it was manageable for her to attend the Forensic Section. It is purely a resourcing question if the position of the QPS is to be accepted on the chaperone issue.

[153] The big factor for consideration is that it has been almost two years since the applicant's redeployment during which time the QPS has had the control of the disciplinary investigation which puts a different light on what is reasonable or unreasonable.

[154] The applicant, it was acknowledged, had a personal interest in the outcome of the application which is more than just the financial benefit of obtaining the rank of Sergeant, but also the status and sense of satisfaction in attaining that rank.

[155] Under the provisions of the OPM at s 1.4.4 - Responsibilities of District Officers - there are requirements for McNab to ensure that programs for training, development, welfare, performance measurement and discipline are implemented for police officers such as the applicant.

[156] If the proposals of the applicant were to have a resourcing impact on the Forensic Section or on the QPS's rostering and management, well so be it. This is a situation of the QPS's own making due to the time taken by them in managing the process. The fact that the applicant has had no access to the Forensic Section for two years means that at sometime if she was to return she would require a period of refreshing to bring her up to date and this would also involve a mentoring phase.

## **Conclusion**

### *Background*

[157] A notification of industrial dispute was filed by the applicant on 3 July 2018 which later became the subject of two conciliation conferences before the Commission on 9 July 2018 and 17 August 2018. At the conclusion of the conciliation process the matter was referred for arbitration with the following questions posed:

- (a) Whether the Respondent's decision of 18 April 2018 to 'temporarily redeploy (the Applicant) to another workplace' is unjust or unreasonable.
- (b) Whether the Respondent's refusal to allow the Applicant access to the resources necessary for her to progress with her accreditation towards the rank of Sergeant during the period of the redeployment is unjust or unreasonable.

[158] The application was initially set down for hearing on 5 March 2019 however those dates were vacated at the request of the applicant on 31 January 2019 for the reason "in

the hope the matter may be resolved by 30 March 2019 without the need for further industrial action".

[159] It is a matter of record that the sanguinity of the applicant was misplaced and the application proceeded on the basis of the following:

- 22 March 2019 - applicant served an Attendance Notice to Produce on the respondent;
- 11 April 2019 - respondent raises objection to the content of the notice to produce;
- 1 May 2019 - Commission issues a Further Directions Order requesting the parties to file written submissions in respect of the notice to produce;
- 5 July 2019 - Commission releases a decision regarding the notice to produce.<sup>31</sup>
- 8 November 2019 - applicant requested that further directions be issued for the conduct of the substantive matter; and
- 26 February 2020 - respondent failed to comply with the Directions Order issued on 25 November 2019. The Commission exercised a discretion by granting an extension of time to the respondent to file material<sup>32</sup> thereby enabling the respondent to effectively meet the dates contained in the Directions Order.

*Request for Commission to exercise discretion and dismiss the application*

[160] In the course of the proceedings the Commission was informed by the respondent that the applicant had (on numerous occasions) sought to have reviews of the redeployment decision dealt with in other jurisdictions that included:

- Police Service Review;
- QCAT; and
- Supreme Court.

[161] Based upon limited information provided to the Commission, it is possible to conclude with some degree of certainty, that the QCAT proceedings were dismissed for want of jurisdiction as it related to an issue of discipline and remains the subject of an appeal application with the outcome reserved.

[162] The judicial review proceedings correlated to the decision to redeploy the applicant but were said to have ceased with an agreed settlement whereby a Deputy Commissioner of Police (Gollschewski) reviewed the decision, subsequently confirming the redeployment. No finding was made as a result of these proceedings.

---

<sup>31</sup> *Jones v State of Queensland (Queensland Police Service)* [2019] QIRC 104.

<sup>32</sup> *Jones v State of Queensland (Queensland Police Service)* (No 2) [2020] QIRC 029.

[163] The respondent sought from the Commission the exercise of a discretion to discontinue this application on the basis of being contrary to the doctrine of finality. The grounds relied upon supportive of their application were the proceedings in both QCAT and the Supreme Court, where in effect it was argued that the application currently before the Commission had already been unsuccessfully prosecuted in the previously mentioned jurisdictions and therefore disposed of in the finality.

[164] The limited information available to the Commission would support the proposition that in respect of the decision to redeploy the applicant from the Forensic Section to the Coronial Support Unit on 18 April 2018 (and ongoing) had been the subject of the proceedings in jurisdictions other than the Commission, however the redeployment decision is no longer "live" for the purpose of the determination in this application.

[165] The subject of this arbitration is strictly limited to the content of the orders sought by the applicant in that the respondent be required to make certain resources available to her for the purpose of progressing with the competencies required to potentially achieve the rank of Sergeant, should the applicant successfully complete such competencies.

[166] In the matter of *Orchid Avenue Realty Pty Ltd t/as Ray White Surfers Paradise AND Julianne Lois Percival*<sup>33</sup> it was stated by Hall P:

In *Nugent v. Aromas Pty Ltd* (1996) 153 QGIG 630 I accepted that in exercising the power at s. 331(b) (then the power at s. 90(1)(b) of the *Industrial Relations Act 1990*) respect should be given to the general principle enunciated by O'Connor J in *Burton v. The President of the Shire of Bairnsdale* (1908) 7 CLR 76 at 92 that:

"*Prima facie*, every litigant has a right to have matters of law as well as of fact decided according to the ordinary rules of procedure, which give him full time and opportunity for the presentation of his case to the ordinary tribunals, and the inherent jurisdiction of the Court to protect its process from abuse by depriving a litigant of these rights and summarily disposing of an action that is frivolous or vexatious in point of law will never be exercised unless the plaintiff's claim is so obviously untenable that it cannot possibly succeed."

I continue to adhere to that view. I also accept that great care must be exercised to ensure that under the guise of achieving expeditious finality an applicant is not improperly deprived of the opportunity of having the case tried by the appointed Tribunal, compare *General Steel Industries Inc v. Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 130 per Barwick CJ. However, where a matter of construction is capable of finally resolving the matter, it seems to me that the exercise of construction should be undertaken notwithstanding that extensive argument may be necessary to demonstrate that the case of the applicant is so clearly untenable that it cannot possibly succeed, compare *Queensland University of Technology v. Project Constructions (Aust) Pty Ltd (in liq)* [2003] 1 QdR 259 at 265 per Holmes J (with whom Davies JA and Mullins J agreed) and *General Steel Industries Inc v. Commissioner for Railways (NSW)* (1964) 112 CLR

---

<sup>33</sup> *Orchid Avenue Realty Pty Ltd t/as Ray White Surfers Paradise AND Julianne Lois Percival* (2003) 174 QGIG 8, 644.

125 at 130 per Barwick CJ. That is particularly so when the matter goes to jurisdiction, *Stevenson v. Barham* (1976-1977) 136 CLR 190 at 202 to 203 per Mason and Jacobs JJ.

[167] I do not accept the position advanced by the respondent that the doctrine of finality has application in these proceedings, particularly as there was no evidence adduced to establish that the current discrete issue for arbitration had been dealt with and disposed of in another jurisdiction.

#### *Arbitration*

[168] The arbitration of whether the refusal of the respondent to allow the applicant access to QPS resources mandatory for progression towards the rank of Sergeant during the period of her re-deployment was unjust or unreasonable, requires it necessary to address the following:

- redeployment;
- allegations against the applicant;
- disciplinary proceedings;
- relevant training sought to satisfy progression requirements; and
- prejudice to the parties if the application for orders was granted or otherwise.

#### *Redeployment*

[169] The facts relevant to the temporary redeployment of the applicant were not of contest in the proceedings with the details of such redeployment particularised in multiple correspondence served upon the applicant by the QPS.

[170] On 18 April 2018 a formal Notice of Temporary Redeployment and Directions was issued by the QPS under the signature of Maurice Carless, Acting Deputy Commissioner (Specialist Operations) which advised that in relation to that temporary redeployment, it would:

- a) take effect from the date this notice is given to you;
- b) be reviewed on or before 18 October 2018, after which you will be advised of any extension to the temporary redeployment; and
- c) have no impact on any of your existing allowances.<sup>34</sup>

[171] The reasoning for the redeployment was also contained in the correspondence in the following terms:

It has been brought to my attention there are allegations of workplace harassment and bullying within the Photographic and Electronic Recording Section. In accordance with my duty under the *Work Health and Safety Act 2011* (Qld) to, as far as practicable, eliminate or minimise risks to

---

<sup>34</sup> Exhibit 1, LJ-1.

health and safety in the workplace, I have determined it is necessary to temporarily redeploy you to another workplace and issue you with further directions.<sup>35</sup>

[172] A second Notice of Temporary Redeployment and Directions was issued on 16 October 2018 by the QPS under the signature of McNab. The notice failed to identify an end date for the redeployment only advising that McNab had "determined it is necessary to continue your redeployment to the Coronial Support Unit pending an outcome of this investigation"<sup>36</sup>.

[173] The applicant was directed, amongst other things, to:

Not attend the Forensic Imaging and Electronic Recording Section unless there is a legitimate operational reason for such attendance and you are supervised by a commissioned officer.

Not contact any staff attached to the Forensic Imaging and Electronic Recording Section unless there is a legitimate operational reason for such attendance and you are supervised by a commissioned officer.<sup>37</sup>

[174] The third Notice of Temporary Redeployment and Directions issued to the applicant on 18 March 2019 by the QPS under the signature of McNab indicated the following:

You are advised this temporary redeployment will:

- a) take effect from the date this notice is given to you;
- b) be reconsidered periodically following the completion of the current investigation, and in any event formally reviewed on or before 30 August 2019 after which you will be advised of any extension to, or withdrawal of, the temporary redeployment; and
- c) have no impact on any of your existing allowances.<sup>38</sup>

[175] On 4 June 2019 correspondence was forwarded to the applicant under the signature of Gollschewski, in which he informed her that he had undertaken a review of her temporary redeployment in accordance with the "without prejudice" negotiations and compromise reached on 27 May 2019 as a result of her recent Supreme Court proceedings. The applicant was informed that:

I have undertaken a review of your temporary redeployment to the Coronial Support Unit and I am informed that your disciplinary investigation is now before the prescribed officer, with the outcome estimated to be delivered on or before 30 August 2019.

Accordingly, in the interests of continuity for you and the work unit, I consider it is appropriate for your temporary redeployment to continue in the Coronial Support Unit until such time as the impending decision is delivered.<sup>39</sup>

[176] At the final day of hearing (11 March 2020) the applicant remained the subject of a Notice of Temporary Redeployment which had the effect of removing her from the

---

<sup>35</sup> Ibid.

<sup>36</sup> Exhibit 1, LJ-2.

<sup>37</sup> Exhibit 1, LJ-2.

<sup>38</sup> Exhibit 1, LJ-3.

<sup>39</sup> Exhibit 1, LJ-4.

location where she undertook her substantive role, causing her a detriment to the extent she was unable to access specialist resources for the purposes of seeking to progress to the rank of Sergeant.

[177] The Commission accepts that the reason for redeployment identified on 18 April 2018 as being in connection with allegations of workplace harassment and bullying levelled against the appellant was genuine and for the purpose of duty of care. The QPS were obligated to firstly remove the applicant from the work area subject of the allegations and secondly investigate the allegations in a timely manner.

[178] The redeployment at all times had the connotations of being temporary in nature, however when temporary becomes two years in duration one must at least examine, for the purposes of the impact upon the applicant, whether a two year temporary redeployment was reasonable or otherwise.

[179] The Shorter Oxford English Dictionary defines "temporary" as:

**Temporary** - Lasting for a limited time; existing or valid for a time (only); transient; made to supply a passing need; Occurring or existing in time (not from eternity).<sup>40</sup>

[180] In the matter of *Irwin v Stewart (Commissioner of Police) & Anor* (Irwin), McMurdo JA stated:

#### **Introduction**

The applicant is a senior constable in the Queensland Police Service. Until earlier this year, he worked from the Surfers Paradise police station. On 25 March 2015 the second respondent gave the applicant a document described as a "Notice of Temporary Redeployment and Directions", in which the second respondent wrote that he had decided to "temporarily redeploy" the applicant to the Coomera police station. The second respondent also directed that the applicant not attend the Surfers Paradise station except under supervision from a more senior officer. Consequently the applicant went to work at the Coomera police station.

On 28 April 2015 the second respondent again wrote to the applicant. The second respondent wrote that he was considering whether to transfer the applicant to the Southport police station or the Nerang police station and invited comment from the applicant.<sup>41</sup>

[181] In Irwin, the application also related to a disciplinary action as described by McMurdo JA:

Under Pt 7 a police officer is liable to disciplinary action in respect of the officer's conduct which is considered to be misconduct or a breach of discipline on such grounds as are prescribed by regulation. If the "prescribed officer" decides that misconduct is proved against an officer, then there is a "range of disciplines" that may be imposed by the prescribed officer by way of

<sup>40</sup> *The Shorter Oxford English Dictionary Vol 11* (3rd ed, 1973) "temporary".

<sup>41</sup> *Irwin v Stewart (Commissioner of Police) & Anor* [2015] QSC 350, 1,2.

disciplinary action and there is a merits review which is available in the Queensland Civil and Administrative Tribunal.<sup>42</sup>

[182] In the case of Irwin, he was advised just beyond one month after being given a Notice of Temporary Redeployment and Directions of a consideration by the second respondent to transfer him to another station, which accords in my view with the temporary nature of the redeployment.

[183] The applicant in this matter was served with a new disciplinary notice on 25 February 2020, suggesting in her evidence "there is still no end date in sight for either the disciplinary proceedings or the redeployment".<sup>43</sup> This is despite the advice of Gollschewski on 4 June 2019 that:

I am informed that your disciplinary investigation is now before the prescribed officer, with the outcome estimated to be delivered on or before 30 August 2019".<sup>44</sup>

[184] In submissions, there was a concession by the respondent regarding the issue of the disciplinary proceedings having taken two years to date:

Well, there's a number of issues that affect that which - some go to the service and delays in the service, of course."<sup>45</sup>

[185] I am of a view that the failure of the QPS to undertake the disciplinary proceedings in terms of the allegations that had been levelled against the applicant in regard to her conduct in the workplace in a timely manner was unreasonable, particularly as there is an absence of evidence in the proceedings to justify the actions of the respondent. Undoubtedly, this has had the effect of causing a detriment to the applicant with the continued redeployment away from her substantive workplace.

#### *Allegations against the applicant*

[186] The allegations levelled against the applicant were unquestionably serious in nature and outwardly the decision of the respondent to order the temporary redeployment of the applicant to another location best served the interests of the applicant, the complainants and the respondent at the time. Equally important, of course, would have been the prompt resolution of the allegations. This would have provided both the complainants and the subject officer with an outcome that gave some certainty to their employment circumstances in going forward.

[187] The Commission was not required to give consideration to the substance of the allegations relating to the applicant's conduct in the workplace, *per se*, however as the allegations were identified by the respondent as the exclusive ground upon which the

---

<sup>42</sup> *Irwin v Stewart (Commissioner of Police) & Anor* [2015] QSC 350, 5.

<sup>43</sup> Exhibit 2.

<sup>44</sup> Exhibit 1, LJ-4.

<sup>45</sup> TR6-18, L45-46.

redeployment of the applicant was initiated, they are a factor for consideration in determining the reasonableness of the conduct of the QPS in denying the applicant access to the specialist resources for the purpose of attempting to rise in rank because of the failure to progress this issue in a timely manner.

*Disciplinary proceedings*

[188] The relevance of the disciplinary proceedings in this application is effectively limited to the failure of the respondent to undertake such proceedings in a timely manner, which facilitated the continued redeployment of the applicant and the subsequent refusal to allow her entry to her substantive workplace.

[189] In the Notice of Temporary Redeployment and Directions (dated 16 October 2018), McNab made the following reference to the allegations:

... following the completion of the current investigation, and in any event formally reviewed on or before 30 March 2019 ...<sup>46</sup>

[190] Further, in a Notice of Temporary Redeployment and Directions (dated 15 March 2019), McNab again referenced the allegations:

... following the completion of current investigation, and in any event formally reviewed on or before 30 August 2019 ...<sup>47</sup>

[191] On 4 June 2019 the respondent in correspondence under the signature of Gollschewski advised the applicant of the ongoing disciplinary investigation in less ambiguous terms:

... I am informed that your disciplinary investigation is now before the prescribed officer, with the outcome estimated to be delivered on or before 30 August 2019.<sup>48</sup>

[192] In an email dated 4 September 2018, Patterson, Director Employee Relations/Human Resources, Public Safety Business Agency advised the applicant's legal representative the following:

Senior Constable Jones participated in a formal disciplinary interview regarding these matters on 26 July 2018, so is well aware of the details of the allegations. The investigation report is currently with the QPS Ethical Standards Command, who are yet to make a decision on how the matter is to be progressed.<sup>49</sup>

[193] It was conceded by the respondent in oral submissions that the disciplinary process had "been protracted and I accept that".<sup>50</sup>

---

<sup>46</sup> Exhibit 1, LJ-2.

<sup>47</sup> Exhibit 1, LJ-3.

<sup>48</sup> Exhibit 1, LJ-4.

<sup>49</sup> Exhibit 1, LJ-6.

<sup>50</sup> TR6-21, L3.

[194] At the time of the hearing (11 March 2020) the status of the disciplinary process was that a disciplinary hearing notice had been served on the applicant on 25 February 2020 and there was no evidence available regarding an end date to those proceedings.

[195] Full consideration of the history available in respect of the disciplinary process to date gives the Commission little confidence that these proceedings will be finalised in the short term, therefore they remain as an inhibitor to any potential return by the applicant to her substantive workplace. The consequence of this factor means that if the current prohibition against the applicant being able to enter the workplace for any reason other than operational would remain, thus her ability to pursue training in an effort to progress in rank remains on hold, which in the view of the Commission is unreasonable and unfair.

*Relevant training sought to satisfy progression requirements*

[196] The applicant tendered revised orders in the proceedings on 11 March 2020 and identified the training being sought which had the effect of addressing (from the applicant's perspective) claims by the respondent, that certain competencies and accreditations had been superseded in the period she had been absent from her substantive workplace and they were said not to reflect the current requirements of the respondent.

[197] The respondent, through the evidence of McNab, provided information on the current requirements for each of the competencies and accreditations being sought, in particular the need to undertake theoretical study and training, but also the completion of a "mentor phase" which placed certain responsibilities on a person to attend operational jobs to gain exposure to the application of highly technical skills within an operational environment.<sup>51</sup> McNab expanded on the mentor phase in respect of them being "drawn from the very highly skilled and limited group of technical experts within the Forensic Services Group and to be the subject of peer review".<sup>52</sup>

[198] Nevertheless, the applicant despite the evidence of McNab continues to seek the training identified in the orders sought on the basis of such training being relevant in terms of the progression to the rank of Sergeant.

[199] It is incumbent upon District Officers pursuant to the OPM at 1.4.4(v) to be responsible for:

- (v) ensuring programs for the training, development, welfare, performance measurement, and discipline of members under their control are implemented and that facilitators of those programs are adequately resourced.

---

<sup>51</sup> Exhibit 3, 26.

<sup>52</sup> Exhibit 3, 27.

[200] McNab's position as Operations Commander is one and the same as that of a District Officer and as the applicant's substantive role falls under his control he has an obligation to facilitate the requirements of the OPM as they relate to the applicant.

*Prejudice to the parties if the application for orders is granted or otherwise*

[201] If the application for orders allowing the applicant to undertake the appropriate steps necessary to enable her to complete the training required to be considered for progression from the rank of Senior Constable to the rank of Sergeant was denied, the applicant would be prejudiced in the following terms:

- effectively denied the opportunity in the foreseeable future to attempt to meet each of the competencies and accreditations necessary for the progression in rank; and
- the requirement for mandatory retirement in September 2021 when the applicant attains the age of 60 years means that if the applicant is required to wait until the disciplinary proceedings are completed by the respondent before being able to seek the requisite training identified in the orders sought, it is most probable, should the applicant satisfy all the criteria for progression, that would not occur before September 2020. This would mean that any benefit for the applicant in respect of her progression in rank (if successful) as it pertains to her superannuation, would be denied by not being in the particular rank for the 12 months prior to the retirement.

[202] The granting of the application, based upon the evidence of McNab in the proceedings, would have a prejudicial impact on the respondent in that:

- arrangements would have to be made by the respondent to facilitate the attendance of the applicant at the Forensic Section location to undertake certain training;
- arrangements would have to be made for the applicant to attend at a time when other employees, most likely complainants in the allegations levelled against the applicant, were not present in the Forensic Section; and
- arrangements would have to be made for a member of the QPS to be present at all times when the applicant was on the premises at the Forensic Section.

## **Findings**

[203] In consideration of the evidence, material and submissions placed before these proceedings it is more than evident that the primary objection to the granting of the

orders being sought by the applicant was built on concerns for the health and safety of existing staff in the Forensic Section, if they were to be exposed to the applicant whom they allege had bullied and harassed them in the workplace.

[204] There is an acknowledgement by the Commission that the respondent has a duty of care to all employees to ensure there is a safe work environment, however I am of the view that it is not insurmountable for procedures to be put in place whereby such attendance by the applicant could be scheduled with the suggested impact on the health and safety being effectively managed to avoid any breach of health and safety protocols.

[205] For all of the applicant's redeployment, a provision has been in place for her to attend upon the Forensic Section at any time providing there was a "legitimate operational reason for such attendance" and that she was "supervised by a commissioned officer". Also, during the redeployment period of almost two years, the applicant's conduct in the workplace has been with no incident or suggestion of bullying or harassment behaviours.

[206] The question upon which the Commission was required to determine in these proceedings was effectively the second of the two questions arising from the conciliation phase of the notification:

Whether the Respondent's refusal to allow the applicant access to the resources necessary for her to progress with her accreditation towards the rank of Sergeant during the period of the redeployment is unjust or unreasonable.

[207] The answer to the question is **YES**. This is supported by reasoning previously identified in the body of this decision that related to the failure of the respondent to conduct the disciplinary proceedings in the timely manner necessary to address the allegations which had been levelled against the applicant.

[208] The applicant was the subject of a detriment by her continued exclusion from her substantive place of work on "temporary" redeployment, unable to gain access to specialist facilities that were the domain of the Forensic Section and unavailable in any other operational sector the QPS.

[209] The allegations, it must be emphasised, are in fact only allegations and the applicant is entitled to a presumption of innocence until such time as an investigation and subsequent disciplinary outcome has been finalised.

[210] The proposition relied upon by the respondent that the applicant should continue to be refused access to the Forensic Section due to having been informed on 16 October 2018 by McNab that an attendance at the section could only occur if there was a "legitimate operational reason" and she was supervised by a "commissioned officer" is neither fair nor reasonable in circumstances where the applicant for almost two years of redeployment had been "squeaky clean" in terms of her conduct which effectively

demonstrates a pattern of behaviour that would warrant a relaxing of the conditions imposed on her attendance at the Forensic Section location.

[211] The applicant put forward a constructive alternative that would allow for her attendance in the course of the afternoon shift (2.00 pm to 10.00 pm) at a time when the Forensic Section was attended by persons not involved in the allegations subject of the disciplinary proceedings. Further, the requirement to be supervised by a commissioned officer could be abrogated to allow for such supervision to be undertaken by "a more senior officer" (see Irwin) which could allow for a person holding the rank of Sergeant to act in that role. This access would undoubtedly require consideration of the roster circumstances in the Forensic Section, but as mentioned previously they would not in the view of the Commission be insurmountable.

[212] I intend to grant the revised orders sought by the applicant at the hearing on 11 March 2020, noting that the respondent on that day raised no objection to the amended format of the orders.

[213] The Commission orders as follows:

### **Orders**

- 1. An order that, for the purposes of Senior Constable Lynette Jones completing the 'PIX 4D initial user training' referred to in the Year 2 training of the 'Forensic Imaging Section's Internal Training Program', the QPS is to authorise Senior Constable Jones to use its *Forensic Register* and the *Photographics fileserver - Training and Education*.**
- 2. An order that, for the purposes of Senior Constable Lynette Jones completing the 'FARO Training' referred to in the Year 2 training of the 'Forensic Imaging Section's Internal Training Program', within 28 days of the date of this order the QPS is to:**
  - (a) Arrange for Senior Constable Jones to have access to a FARO 3D scanner at the Forensic Imaging Section for the purpose of her recording a mock crime scene, by permitting Senior Constable Jones to use the scanner at times when no staff members involved in disciplinary proceedings against Senior Constable Jones are on duty.**
  - (b) Permit Senior Constable Jones to use the FARO 3D scanner related software at the Forensic Imaging Section at times when no staff members involved in disciplinary proceedings against Senior Constable Jones are on duty.**

- 3. An order that, for the purposes of Senior Constable Lynette Jones completing the 'VIC Training' referred to in the Year 3 training of the 'Forensic Imaging Section's Internal Training Program', within 28 days of the date of this order the QPS is to permit Senior Constable Jones to attend at the Forensic Imaging Section and use the computers and software necessary for completing the VIC Training.**
- 4. An order that, for the purposes of Senior Constable Lynette Jones completing the requirement to 'Demonstrate relevant knowledge and understanding' referred to in the Year 4 training of the 'Forensic Imaging Section's Internal Training Program', the QPS is to authorise Senior Constable Jones to use its Forensic Register in order to complete a case study on the 2016 Dreamworld incident.**
- 5. An order that Senior Constable Lynette Jones be permitted to advise, via email, the Operations Commander of Forensic Services Group (currently Superintendent Bruce McNab) of her completion of any training referred to in the 'Forensic Imaging Section's Internal Training Program'.**