

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Cousins v State of Queensland (Queensland Police Service)*
[2022] QIRC 491

PARTIES: **DAVID COUSINS**
(applicant)
v
STATE OF QUEENSLAND (QUEENSLAND POLICE SERVICE)
(respondent)

FILE NO/S: D/2022/83

PROCEEDING: Dispute

DELIVERED ON: 21 December 2022

HEARING DATE: 7 December 2022

MEMBER: Davis J, President, O'Connor VP, Merrell DP

ORDER/S: **The alleged Referral of the complaint is invalid because a referral pursuant to s 7.10 of the *Police Service Administration Act 1990* must identify the particular prescribed officer by name and rank.**

CATCHWORDS: POLICE - INTERNAL ADMINISTRATION - DISCIPLINE AND DISMISSAL FOR MISCONDUCT - QUEENSLAND - where the applicant is a sworn police officer - where a complaint was made about him - where a delegate of the Commissioner was appointed to determine whether the complaint should be referred to "a prescribed officer" - where the delegate determined that the complaint should be referred to a prescribed officer - whether the delegate did refer the complaint to a prescribed officer - where the prescribed officer was identified as the "Office of State Discipline" - whether the referral was valid

Crime and Corruption Act 2001
Police Service Administration Act 1990, s 2.2, s 6A.1, s 7.1, s 7.2, s 7.3, s 7.4, s 7.5, s 7.6, s 7.7, s 7.8, s 7.9, s 7.10, s 7.11, s 7.14, s 7.15, s 7.16, s 7.17, s 7.18, s 7.19, s 7.20, s 7.21, s 7.22, s 7.23, s 7.25, s 7.26, s 7.27, s 7.28, s 7.29, s 7.30, s 7.31, s 7.32, s 7.34, s 7.35, s 7.36, s 7.41, s 7.42, s 7.43

CASES: *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27, followed
CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384, followed
Langerak v State of Queensland (Queensland Police Service)

[2022] QIRC 327, followed
Norvill v Commissioner of Queensland Police Service & Anor [2022] QCA 104, followed
Nugent v Commissioner of Police (Qld) and Anor (2016) 261 A Crim R 383, cited
Police Service Board v Morris and Martin (1985) 156 CLR 397, cited
Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355, followed
R v Independent Broad-Based Anti-Corruption Commissioner (2016) 256 CLR 459, cited
SZTAL v Minister for Immigration and Border Protection (2017) 262 CLR 362, followed
The Queen v A2; The Queen v Magennis; The Queen v Vaziri (2019) 269 CLR 507, followed

APPEARANCES: M Black for the applicant instructed by Gnech & Associates
 C O'Connor for the respondent instructed directly by the Queensland Police Service

- [1] The applicant, Detective Senior Sergeant David Cousins, is a police officer about whom an internal disciplinary investigation has been conducted.
- [2] By various provisions of the *Police Service Administration Act* 1990 (PSA Act), disciplinary proceedings may not be commenced against a police officer unless “the complaint” has been “referred” to a “prescribed officer” by the Commissioner of the Queensland Police Service (“the Commissioner” and “the QPS”).¹ The QPS asserts that a valid referral has been made and DSS Cousins submits otherwise.

Factual basis of the dispute

- [3] The parties have agreed the relevant facts. They are:
- “1. David Cousins (the Applicant) is employed by the Queensland Police Service (the QPS). At all times material to this proceeding:
 - (a) The Applicant held the rank and position of Detective Senior Sergeant with the QPS’s Ethical Standards Command (ESC); and
 - (b) Detective Superintendent Tod Reid was the Superintendent in charge of ESC and had command and control over the Applicant.
 2. On a date soon after 27 October 2021, Detective Inspector Michael Newman of the QPS was tasked with conducting a disciplinary investigation relating to the Applicant.
 3. On 22 April 2022, Detective Inspector Newman finalised an investigation report in respect of the disciplinary investigation.

¹ *Police Service Administration Act* 1990, ss 7.10 and 7.11.

4. On 3 May 2022, Superintendent Reid, acting as a delegate of the QPS Commissioner, made a decision under s 7.10 of the *Police Service Administration Act 1990* (Qld) (the Police Act) referring a disciplinary matter regarding the Applicant to ‘the Office of State Discipline’ (the Referral).
5. The ‘Office of State Discipline’ is an administrative unit within the QPS and is the ‘central unit’ mentioned in s 7.43 of the Police Act.
6. On 16 May 2022, Chief Superintendent B R Martain of the QPS (the Prescribed Officer), issued a Disciplinary Proceeding Notice (the Notice) as a ‘prescribed officer’ for the purposes of Part 7 of the Police Act (incorrectly dated 16 May 2021). The Notice set out certain disciplinary allegations and called on the Applicant to respond in writing as to why a disciplinary finding should not be made against him.
7. On 4 August 2022, the Applicant’s solicitors wrote to the Prescribed Officer. Relevantly, the Applicant contended that the Notice was invalid.
8. On 15 August 2022, the Prescribed Officer wrote to the Applicant’s solicitors. He rejected the submission and stated that he intended to continue with the disciplinary proceeding...”

[4] The document which is said, in paragraph 4 of the agreed facts, to constitute the referral² records the allegations against DSS Cousins, identifies material and then records Superintendent Reid’s consideration of the matter in terms:

“QUEENSLAND POLICE SERVICE PRESCRIBED OFFICER REFERRAL - CONSIDERATION

Subject Member: Detective Senior Sergeant David COUSINS (4008582)

Allegation 4: Improper Disclosure of Information

1. Pursuant to sections 7.10 of the *Police Service Administration Act 1990*, in deciding whether to refer this complaint file to a prescribed officer, I have had regard to all factors including:
 - (a) any professional development strategy, or other management action, that has been implemented in relation to the subject officer;³
 - (b) whether implementation of any other professional development strategy would be sufficient to achieve the purposes mentioned in section 7.1(b);
 - (c) the subject officers discipline history and service history;

² Affidavit of Calvin Gnech, solicitor for Mr Cousins, filed 19 August 2022, exhibit “CRG2” (the referral document).

³ A reference to Detective Senior Sergeant Cousins.

- (d) the seriousness of the conduct to which the complaint relates; and
 - (e) whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b).
2. I have further taken into consideration the relevant provisions of the *Humans Rights Act 2019*.
 3. I have determined this matter should be referred for the consideration of a prescribed officer.
 4. I have determined the appropriate level for prescribed officer concerning this matter is a referral to the Office of State Discipline.
 5. This file can be referred to the State Coordinator and forwarded as indicated below:

<i>Return to investigating officer/PPM for Outcome Notices</i>	
<i>For consideration by Chief Superintendent ESC</i>	
<i>Forward to ESC Legal and Policy for consideration [Dismissal]</i>	
<i>Forward to Crime and Corruption Commission</i>	
<i>Other: Outline (if required) - Office of State Discipline</i>	x

6. In addition to the referral for Allegation 4, I also support the recommendation that allegation 1 and 5 should be resolved by way of LMR, and allegation 2 and 3 are finalised as NFA.”

[5] As is obvious from paragraph 6 of the referral consideration that there were five allegations being considered by Superintendent Reid. The effect of paragraph 6 of the referral consideration is that:

1. in relation to two allegations (allegations 1 and 5), managerial action was recommended;
2. in relation to another two allegations (allegations 2 and 3), insufficient evidence to proceed further was identified, so no further action was recommended;
3. it was determined that allegation 4 ought to be the subject of referral for disciplinary action.

[6] The Disciplinary Proceeding Notice issued by Chief Superintendent Martain on 16 May 2022⁴ charged what was originally allegation 4 in these terms:

“That on the 21st of August 2017 at Brisbane or elsewhere your conduct was improper in that you disclosed confidential information obtained from a disciplinary investigation when you were not authorised to do so.

⁴ Paragraph 6 of the agreed facts.

Section 1.4 and 7.4 of the *Police Service Administration Act 1990*, Section 4.4 of the *Code of Conduct for Queensland Public Service*, Section 16 of the *Standard of Practice*, Section 2 of the *Complaint & Client Service Reporting Complaint Management Policy*”

- [7] The Disciplinary Proceeding Notice which contained the charge also contained detailed particulars to which, for present purposes, it is not necessary to refer.

Statutory provisions

- [8] The QPS is a disciplined force.⁵ Discipline for members of the QPS is governed by Part 7 of the PSA Act. Section 7.1 prescribes the purposes of Part 7 and s 7.2 provides:

“7.2 Application of part

This part applies in relation to a complaint about an officer (the *subject officer*) if—

- (a) the complaint is received by the commissioner or the CCC; and
- (b) the CCC has not assumed responsibility for investigating the complaint under the *Crime and Corruption Act 2001*, section 47 or 48.

Note—

See section 7.7 for when the complaint is received by the commissioner or the CCC.”

- [9] Of some significance is that s 7.2 introduces the notion of a “complaint”.
- [10] Section 7.3 contains definitions. Importantly here:
- “*complaint*, about an officer, includes a report about the officer’s conduct under section 6A.1.”⁶

And:

“*prescribed officer* means a police officer mentioned in section 2.2(2)(a), (b) or (c) who holds a rank above the rank of the subject officer.”

And:

“*professional development strategy* means a requirement that the subject officer do 1 or more of the following things—

- (a) undertake mentoring for a stated period not longer than 6 months;

⁵ *Police Service Board v Morris and Martin* (1985) 156 CLR 397 at 412, *Nugent v Commissioner of Police (Qld) and Anor* (2016) 261 A Crim R 383 at [103] and *R v Independent Broad-based Anti-Corruption Commissioner* (2016) 256 CLR 459 at [56]-[57].

⁶ Section 6A.1 concerns the obligation of one police officer to make a report about another police officer’s conduct.

- (b) undertake closer supervision for a stated period not longer than 6 months;
- (c) comply with additional reporting obligations for a stated period not longer than 6 months;
- (d) complete internal training;
- (e) complete external training or professional development, at the expense of the service or the subject officer;
- (f) undertake counselling, whether provided within the service or externally, at the expense of the service or the subject officer;
- (g) receive guidance;
- (h) undertake a temporary reassignment of duties for a stated period not longer than 6 months;

Note—

See also section 7.5(1) in relation to a temporary reassignment of duties.

- (i) undertake or complete another program, development or strategy, at the expense of the service or the subject officer and with the subject officer's agreement;
- (j) anything else prescribed by regulation.”

[11] Subsections 2.2(2)(a), (b) and (c) identify the Commissioner, “executive police officer[s]” and officers holding commissioned rank. Non-commissioned officers are not authorised to be prescribed officers.

[12] Section 7.4 identifies the grounds for disciplinary action.

[13] Section 7.5 concerns “professional development strategies”. That section provides:

“7.5 Imposition of professional development strategies etc.

- (1) For the definition professional development strategy, paragraph (h),⁷ a temporary reassignment of duties may be imposed on the subject officer under this part only if—
 - (a) the subject officer is not required to travel more than 40km by road from the officer's place of residence to the location of the officer's reassigned duties without the officer's consent; and
 - (b) during the reassignment, the officer's salary, allowances and other entitlements under an industrial instrument are not less than the officer's entitlements immediately before the reassignment.

⁷ A reference to paragraph (h) in the definition of “professional development strategy” in s 7.3.

- (2) Nothing in this part limits a senior officer—
 - (a) imposing, in a reasonable way, professional development strategies on the subject officer in relation to a ground for disciplinary action; or
 - (b) giving the subject officer guidance in relation to inappropriate acts or omissions of the subject officer in the performance of the subject officer's duty.
- (3) Subsection (2) applies even if the period for starting a disciplinary proceeding against the subject officer based on the ground for disciplinary action has ended.”

[14] Section 7.6 concerns “corrupt conduct” and the interaction between the provisions of the PSA Act and the *Crime and Corruption Act 2001*. Sections 7.7 and 7.8 are machinery provisions. Sections 7.9, 7.10 and 7.11 provide:

“7.9 Implementation of professional development strategies by commissioner

- (1) This section applies when the complaint mentioned in section 7.2 is received by the commissioner, regardless of whether it was first recorded by the CCC.
- (2) The commissioner must consider whether to impose a professional development strategy on the subject officer.
- (3) The commissioner may impose a professional development strategy under this section—
 - (a) to reduce the risk of recurrence of similar conduct; or
 - (b) to improve the subject officer's performance; or
 - (c) for any other purpose.
- (4) The professional development strategy must be implemented, in a reasonable way, as soon as practicable after the ground for disciplinary action arises.

Note—

See also section 7.35(3) in relation to the professional development strategy being taken into account by a prescribed officer deciding the disciplinary sanction to be imposed on the subject officer.

- (5) In this section—
recorded see section 7.7.

7.10 Referral of complaint to prescribed officer

- (1) This section applies if—

- (a) the complaint mentioned in section 7.2 has been received by the commissioner; and
 - (b) the commissioner has considered under section 7.9 whether to impose a professional development strategy.
- (2) The commissioner must decide whether to refer the complaint to a prescribed officer, having regard to the following matters—
- (a) any professional development strategy, or other management action, that has been implemented in relation to the subject officer;
 - (b) whether implementation of any other professional development strategy would be sufficient to achieve the purposes mentioned in section 7.1(b);
 - (c) the subject officer’s disciplinary history and service history;
 - (d) the seriousness of the conduct to which the complaint relates;
 - (e) whether it is necessary to take disciplinary action against the subject officer to achieve the purposes mentioned in section 7.1(b).

7.11 Requirements for starting disciplinary proceeding

- (1) This section applies if the commissioner has, under section 7.10, referred the complaint to a prescribed officer.
- (2) The prescribed officer may start a disciplinary proceeding against the subject officer if the prescribed officer reasonably believes there is a ground for disciplinary action against the subject officer.” (emphasis added)

[15] The PSA Act establishes a multi-staged disciplinary process in which the Commissioner has a pivotal role. In the first stage, the Commissioner must consider whether or not to impose a professional development strategy.⁸

[16] If the Commissioner has determined not to impose a professional development strategy, she must then engage in the second stage, which is to determine whether to refer the complaint to a “prescribed officer”.⁹

[17] If the Commissioner makes a decision under s 7.10 to refer the complaint to a prescribed officer, then the third stage commences.¹⁰ That starts with s 7.11.

⁸ Sections 7.9 and 7.10(1)(b); *Norvill v Commissioner of Queensland Police Service & Anor* [2022] QCA 104 at [28].

⁹ Section 7.10, *Norvill v Commissioner of Queensland Police Service & Anor* [2022] QCA 104 at [29].

¹⁰ *Norvill v Commissioner of Queensland Police Service & Anor* [2022] QCA 104 at [30].

- [18] For s 7.11, there is a power in the prescribed officer to start disciplinary proceedings “if the prescribed officer reasonably believes there is a ground for disciplinary action against the subject officer”.¹¹ However, s 7.14 provides:

“7.14 Examination by medical practitioner

- (1) This section applies if—
 - (a) a prescribed officer is considering starting disciplinary action against the subject officer; and
 - (b) the disciplinable conduct involves absence from duty.
- (2) The prescribed officer may—
 - (a) appoint a medical practitioner to examine the subject officer and give the commissioner a written report on the subject officer’s mental or physical condition; and
 - (b) direct the subject officer to submit to the examination.
- (3) The report on the medical examination must include the medical practitioner’s opinion as to whether the subject officer’s mental or physical condition was a cause of the subject officer’s absence from duty.
- (4) The commissioner must give the subject officer a copy of the report.” (emphasis added)

- [19] Division 3 of Part 7 provides for “Abbreviated Disciplinary Proceedings” where, in effect, sanction can be agreed. Sections 7.15 to 7.23 provide as follows:

“7.15 Application of division

This division applies in relation to the subject officer if a disciplinary proceeding under division 4 relating to the complaint mentioned in section 7.2—

- (a) has not been started; or
- (b) has been started but has not been finally dealt with.

Note—

See also the requirements in sections 7.11 and 7.12 for starting disciplinary proceedings under this division.

7.16 Offer to impose disciplinary sanction or professional development strategy

- (1) A prescribed officer may offer to impose a disciplinary sanction or professional development strategy on the subject officer under this division.

¹¹ Section 7.11(2).

- (2) However, the offer may be made only if the CCC has agreed to the making of the offer.
- (3) The offer may be made regardless of whether an investigation relating to the complaint has started or been finalised.

7.17 Requirement to give subject officer an invitation and ability to seek further information

- (1) Before seeking the agreement of the CCC for section 7.16, the prescribed officer—
 - (a) must comply with subsections (2) and (3); and
 - (b) may obtain further information from the subject officer under subsection (4).
- (2) The prescribed officer must give the subject officer a written notice (an *invitation*) stating the following matters—
 - (a) the date and details of the complaint and alleged ground for disciplinary action;
 - (b) any further particulars necessary to identify the conduct alleged to constitute the ground for disciplinary action;
 - (c) that the subject officer may give the prescribed officer a written submission and other material, within a stated period of at least 21 days, addressing—
 - (i) the complaint; or
 - (ii) what disciplinary sanction or professional development strategy the subject officer would accept if an offer were made under section 7.16.
- (3) The prescribed officer must consider any written submission or other materials given within the stated period to the prescribed officer by the subject officer.
- (4) After complying with subsection (3), the prescribed officer may, by written notice, require the subject officer to give the prescribed officer further stated information (the *required information*) reasonably required by the prescribed officer to decide—
 - (a) whether to make the subject officer an offer under section 7.16; or
 - (b) the disciplinary sanction or professional development strategy to be offered to the subject officer under section 7.16.

- (5) A notice given under subsection (4) must state the period, of at least 14 days, within which the required information must be given to the prescribed officer.
- (6) The prescribed officer may extend the period mentioned in subsection (5).

7.18 Abbreviated process notice

- (1) An offer under section 7.16 must be made by giving the subject officer a written notice (an *abbreviated process notice*) stating the following matters—
 - (a) the date and details of the complaint and alleged ground for disciplinary action;
 - (b) any further particulars necessary to identify the conduct alleged to constitute the ground for disciplinary action;
 - (c) the disciplinary sanction or professional development strategy (the *proposed sanction or strategy*) the prescribed officer proposes to impose;
 - (d) that the proposed sanction or strategy will be imposed only if the subject officer accepts it;
 - (e) the period within which, and how, the subject officer may accept the proposed sanction or strategy;
 - (f) that the subject officer's acceptance of the proposed sanction or strategy may be accompanied by a submission or other materials about the complaint or the proposed sanction or strategy;
 - (g) that if a disciplinary sanction or professional development strategy is imposed under this division—
 - (i) the sanction or strategy will be part of the subject officer's disciplinary history; and
 - (ii) there is no right of review under this Act or the *Crime and Corruption Act 2001* in relation to the imposition of the disciplinary sanction or professional development strategy;
 - (h) that the subject officer may apply to QCAT under section 7.24 for an order quashing the disciplinary proceeding in particular circumstances.
- (2) For subsection (1)(e), the stated period must be a reasonable period of at least 21 days after the subject officer is given the abbreviated process notice.

7.19 Subject officer may ask commissioner to make offer

- (1) The subject officer may, at any time, ask the commissioner to consider making an offer under section 7.16.
- (2) The request may be accompanied by a written submission or other materials about matters the subject officer believes the commissioner should consider in deciding—
 - (a) whether to make the offer; or
 - (b) an appropriate disciplinary sanction or professional development strategy to be proposed.

7.20 Definition for subdivision

In this subdivision—

required period means—

- (a) the period stated in the abbreviated process notice under section 7.18(1)(e); or
- (b) if the period mentioned in paragraph (a) is extended under section 7.21(3)—the extended period.

7.21 Subject officer's acceptance of proposed sanction or strategy

- (1) If an abbreviated process notice is given to the subject officer, the subject officer may, by written notice that complies with subsection (2)(a), accept the proposed sanction or strategy.
- (2) The subject officer's notice—
 - (a) must be given to the prescribed officer—
 - (i) within the required period; and
 - (ii) in the way stated in the abbreviated process notice under section 7.18(1)(e); and
 - (b) may be accompanied by a submission or other materials about the complaint or the proposed sanction or strategy.
- (3) The prescribed officer may, by agreement with the subject officer, extend the period stated in the abbreviated process notice in which the subject officer may accept the proposed sanction or strategy.

7.22 Ending of proceeding—subject officer does not accept proposed sanction or strategy

- (1) If the subject officer does not accept the proposed sanction or strategy within the required period—

- (a) the disciplinary proceeding under this division ends; and
 - (b) a disciplinary proceeding against the subject officer may be started under division 4; and
 - (c) each of the following is not admissible against the subject officer in any proceeding, including a subsequent disciplinary proceeding—
 - (i) a submission made by the subject officer in response to an invitation under section 7.17, including any accompanying materials;
 - (ii) a request made by the subject officer under section 7.19, including any accompanying submission or other materials.
- (2) For starting a disciplinary proceeding against the subject officer under division 4, section 7.12(1)(b) applies as if it referred to the period of 6 months from the following day—
- (a) if the subject officer gives the prescribed officer a written notice refusing to accept the proposed sanction or strategy within the required period—the day the notice is given;
 - (b) otherwise—the day the required period ends.

7.23 Imposition of disciplinary sanction or professional development strategy

- (1) This section applies if the subject officer accepts the proposed sanction or strategy within the required period.
- (2) The prescribed officer must, after considering any written submission and other materials given to the prescribed officer by the subject officer under this division—
 - (a) impose the proposed sanction or strategy; and
 - (b) give the subject officer notice of the decision, including a brief statement of the reasons for the decision.
- (3) The subject officer is taken to have admitted the alleged ground for disciplinary action stated in the abbreviated process notice.
- (4) The imposition of the disciplinary sanction or professional development strategy finalises the complaint to which the proceeding relates.
- (5) This section applies subject to section 7.24 and division 5.” (emphasis added)

[20] Division 4 concerns the process applying to disciplinary hearings. Sections 7.25 to 7.27 provide:

“7.25 How disciplinary proceeding is started

A prescribed officer may start a disciplinary proceeding under this division by giving the subject officer a notice (a disciplinary proceeding notice) stating—

- (a) particulars of the alleged ground for disciplinary action (the disciplinary charge); and
- (b) that the subject officer may, within a stated period of at least 28 days, give the prescribed officer a written submission and other materials to show why disciplinary action should not be taken in relation to the disciplinary charge.

Note—

See also the requirements in sections 7.11 and 7.12 for starting disciplinary proceedings under this division.

7.26 Subject officer’s right to make written submission

- (1) The subject officer may, within the required period, give the prescribed officer a written submission and other materials to show why disciplinary action should not be taken in relation to the disciplinary charge.
- (2) The prescribed officer may, by agreement with the subject officer, extend the period stated in the disciplinary process notice under section 7.25(b).

- (3) In this section—

required period means—

- (a) the period mentioned in the disciplinary proceeding notice under section 7.25; or
- (b) if the period mentioned in paragraph (a) has been extended under subsection (2)—the extended period.

7.27 Decision about whether disciplinary charge is proved

- (1) This section applies if—
 - (a) either—
 - (i) the required period under section 7.26 has ended; or
 - (ii) a written submission has been given to the prescribed officer by the subject officer under section 7.26(1); and

- (b) the prescribed officer has considered any written submission and other materials given to the prescribed officer by the subject officer under section 7.26(1).
- (2) The prescribed officer must decide whether the disciplinary charge, or another ground for disciplinary action, is proved.
- (3) Subsection (4) applies if—
- (a) the prescribed officer is not reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved; or
- (b) the prescribed officer—
- (i) is reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved; but
- (ii) does not propose to impose a disciplinary sanction or professional development strategy on the subject officer.
- (4) Within 14 days after making the decision, the prescribed officer must—
- (a) for a decision mentioned in subsection (3)(a)—
- (i) give the subject officer written notice of the decision; and
- (ii) give the CCC a QCAT information notice for the decision; or
- (b) for a decision mentioned in subsection (3)(b)—give the subject officer and the CCC a QCAT information notice for the decision.

Notes—

- 1 If the prescribed officer is satisfied the disciplinary charge or another ground for disciplinary action is proved, see also section 7.31 for the requirement to give a QCAT information notice for—
- the decision that the disciplinary charge, or another ground for disciplinary action, is proved
 - the decision to impose, or not to impose, a disciplinary sanction or professional development strategy.
- 2 See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decisions mentioned in subsection (3).” (emphasis added)

- [21] Subdivision 2 of Division 4 concerns the imposition of a disciplinary sanction or professional development strategy. Sections 7.28, 7.29, 7.30 and 7.31 provide as follows:

“7.28 Proposed sanction notice

- (1) This section applies if, under section 7.27, the prescribed officer is reasonably satisfied the disciplinary charge, or another ground for disciplinary action, is proved.
- (2) The prescribed officer may give the subject officer a notice (a *proposed sanction notice*) stating each of the following matters—
 - (a) that the prescribed officer has decided the disciplinary charge, or another ground for disciplinary action, is proved;
 - (b) the reasons for the decision;
 - (c) the disciplinary sanction or professional development strategy (the *proposed sanction or strategy*) the prescribed officer proposes to impose on the subject officer;
 - (d) that the subject officer may give the prescribed officer a written submission and other materials, within a stated period of at least 21 days, to show why the proposed sanction or strategy should not be imposed.

7.29 Subject officer’s right to make written submission

- (1) The subject officer may, within the required period, give the prescribed officer a written submission and other material to show why the proposed sanction or strategy should not be imposed.
- (2) The prescribed officer may, by agreement with the subject officer, extend the period stated in the proposed sanction notice under section 7.28(2)(d).
- (3) In this section—
required period means—
 - (a) the period stated in the proposed sanction notice under section 7.28(2)(d); or
 - (b) if the period mentioned in paragraph (a) has been extended under subsection (2)—the extended period.

7.30 Decision about imposition of disciplinary sanction or professional development strategy

- (1) This section applies if—

- (a) the prescribed officer has given the subject officer a proposed sanction notice; and
 - (b) either—
 - (i) the required period under section 7.29 has ended; or
 - (ii) the subject officer has given the prescribed officer a written submission under section 7.29(1); and
 - (c) the prescribed officer has considered any written submission and other materials given to the prescribed officer by the subject officer under section 7.29(1).
- (2) The prescribed officer must decide—
- (a) to impose on the subject officer—
 - (i) the proposed sanction or strategy; or
 - (ii) any other disciplinary sanction or professional development strategy that is no more detrimental to the subject officer than the proposed sanction or strategy; or
 - (b) not to impose a disciplinary sanction or professional development strategy on the subject officer.
- (3) A decision under subsection (2)(a) takes effect on the day the subject officer is given a QCAT information notice for the decision under section 7.31.
- (4) This section applies subject to division 5.

7.31 QCAT information notices

- (1) Within 14 days after making a decision under section 7.30(2), the prescribed officer must give the subject officer and the CCC a QCAT information notice for each of the following decisions—
 - (a) the decision under section 7.27(2) that the disciplinary charge, or another ground for disciplinary action, is proved;
 - (b) the decision under section 7.30(2) to impose, or not to impose, a disciplinary sanction or professional development strategy.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decisions mentioned in subsection (1).

- (2) A QCAT information notice for a decision to impose a disciplinary sanction or professional development strategy must state the following matters—
- (a) the disciplinary sanction or professional development strategy imposed;
 - (b) the date the sanction or strategy takes effect;
 - (c) whether the sanction or strategy is suspended under section 7.41 and, if so, the period and any conditions of the suspension;
 - (d) that the sanction or strategy will form part of the subject officer’s disciplinary history;
 - (e) that the sanction or strategy may be taken into account in future disciplinary proceedings for deciding—
 - (i) whether to start a disciplinary proceeding for any future alleged disciplinable conduct; and
 - (ii) the suitability of the subject officer to be or continue to be a police officer, including a police officer of a particular rank.

Note—

If the disciplinary sanction is probation, see also section 7.36(3) for additional matters that must be stated in the QCAT information notice.

- (3) Subsection (2) does not limit the QCAT Act, section 157(2).” (emphasis added)

[22] Section 7.32 guides the prescribed officer in the conduct of disciplinary proceedings. It provides:

“7.32 Principles for conducting disciplinary proceeding

In conducting the disciplinary proceeding, the prescribed officer—

- (a) must observe the rules of natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the prescribed officer; and
- (c) is not bound by the rules of evidence; and
- (d) may get information on a matter in a way the prescribed officer considers appropriate; and
- (e) may decide the procedures to be followed for the proceeding, subject to any guidelines made under section 7.44.” (emphasis added)

[23] Division 5 of Part 7 concerns the disciplinary sanctions themselves. Relevant to the current matter are ss 7.34, 7.35, 7.36, 7.41 and 7.42. They are:

“7.34 Disciplinary sanctions

Each of the following sanctions is a *disciplinary sanction*—

- (a) dismissal;
- (b) suspension from duty without pay for not longer than 12 months;
- (c) probation for not longer than 12 months;

Note—

See also section 7.36 in relation to probation.

- (d) demotion, whether permanently or for a stated period;
- (e) comprehensive transfer;
- (f) local transfer;
- (g) performance of up to 100 hours of community service;

Note—

See also section 7.39 in relation to community service.

- (h) a fine of up to 50 penalty units;

Note—

See also section 7.40 in relation to fines.

- (i) a reprimand.

7.35 Power of prescribed officer to impose disciplinary sanction

- (1) The prescribed officer may impose a disciplinary sanction on the subject officer that—

- (a) is mentioned in subsection (2); and
- (b) the prescribed officer considers is appropriate in the particular case.

- (2) For subsection (1)(a), the following disciplinary sanctions may be imposed—

- (a) if the prescribed officer is the commissioner—any disciplinary sanction;
- (b) if the prescribed officer is a deputy commissioner—any disciplinary sanction;
- (c) if the prescribed officer is an assistant commissioner—
 - (i) suspension from duty without pay for not longer than 28 days; or

- (ii) demotion; or
- (iii) local transfer; or
- (iv) community service; or
- (v) a fine; or
- (vi) a reprimand;
- (d) if the prescribed officer is a commissioned officer—
 - (i) community service; or
 - (ii) a fine; or
 - (iii) a reprimand.
- (3) In deciding the disciplinary sanction to be imposed, the prescribed officer must have regard to the following matters—
 - (a) any considerations provided for in a guideline made under section 7.44;
 - (b) the subject officer's disciplinary history and service history;
 - (c) any professional development strategies imposed on, or completed by, the subject officer in relation to the ground for disciplinary action.
- (4) For the removal of doubt, it is declared that the prescribed officer may impose more than 1 disciplinary sanction on the subject officer.

7.36 Probation

- (1) This section applies if the disciplinary sanction imposed on the subject officer is probation.
- (2) The prescribed officer may impose conditions on the probation.
- (3) Without limiting the QCAT Act, section 157(2), the information notice for the decision to impose the disciplinary sanction given to the subject officer under section 7.31(1)(b) must state—
 - (a) the period and any conditions of the probation; and
 - (b) that the subject officer may be asked to show cause as to why the officer should not be dismissed if—
 - (i) the subject officer breaches the probation; or
 - (ii) the commissioner reasonably believes the subject officer is unsuitable to continue to be a police officer.

- (4) The purpose of the probation is to enable—
- (a) during the period of the probation, the commissioner to assess the subject officer's suitability to continue to be a police officer; and
 - (b) if, during the period of the probation, the subject officer breaches the probation or the commissioner reasonably believes the subject officer is unsuitable to continue to be a police officer—the dismissal of the subject officer after conducting a show cause proceeding.
- (5) For this section, the subject officer *breaches* the probation if, during the period of the probation, the subject officer—
- (a) commits misconduct; or
 - (b) fails without a reasonable excuse to comply with a condition of the probation.
- (6) A show cause proceeding for dismissal of the subject officer on a ground mentioned in subsection (3)(b) must—
- (a) be conducted by a prescribed officer who is authorised under this division to impose a disciplinary sanction of probation; and
 - (b) be started within 12 months from the date of the breach; and
 - (c) observe the rules of natural justice.
- (7) The prescribed officer who conducts the show cause proceeding must give the subject officer and the CCC a QCAT information notice for the decision to dismiss, or not to dismiss, the subject officer.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decision. . . .

7.41 Suspension of disciplinary sanctions

- (1) This section does not apply if the disciplinary sanction imposed on the subject officer is dismissal or probation.
- (2) The prescribed officer imposing the disciplinary sanction may wholly or partly suspend the sanction for not more than 12 months—
 - (a) by giving the subject officer written notice of the suspension; and
 - (b) subject to any conditions stated in the notice.

- (3) If the subject officer complies with the conditions of the suspension—
- (a) the disciplinary sanction remains part of the subject officer's disciplinary history but, to the extent it is suspended, is not to be given effect; and
 - (b) when the suspension ends, the disciplinary sanction is taken to have been discharged or satisfied.
- (4) If the subject officer does not comply with the conditions of the suspension—
- (a) as soon as reasonably practicable after becoming aware of the non-compliance, the commissioner must give the CCC a written notice stating—
 - (i) details of the non-compliance; and
 - (ii) any information known to the commissioner about the reasons for the non-compliance; and
 - (b) a prescribed officer of at least the same rank as the officer who imposed the suspended sanction must give effect to the disciplinary sanction unless the subject officer can show cause why the conditions should be varied or cancelled.
- (5) A show cause proceeding under subsection (4)(b) must be started within 12 months from the end of the period of the suspension.
- (6) The prescribed officer conducting a show cause proceeding under subsection (4)(b) must decide to—
- (a) give effect to the disciplinary sanction; or
 - (b) continue the suspension of the disciplinary sanction and vary the conditions, including by extending the period of the suspension for a further period of not more than 12 months; or
 - (c) continue the suspension and cancel the conditions.
- (7) The prescribed officer must give the subject officer and the CCC a QCAT information notice for the decision.

Note—

See the *Crime and Corruption Act 2001*, chapter 5, part 3 in relation to review by QCAT of the decision.

7.42 Professional development strategies

The prescribed officer may decide to impose, in a reasonable way, 1 or more professional development strategies on the subject officer—

- (a) for achieving the purposes of this part; and

(b) instead of, or as well as, a disciplinary sanction.”

(emphasis added)

Issues and submissions

[24] Detective Superintendent Reid was, for the purposes of the complaint against DSS Cousins, the delegate of the Commissioner. He purported to exercise the power of the Commissioner under s 7.10 of the PSA Act and refer allegation 4 to a prescribed officer.

[25] The parties have identified the question for determination as:

“Question 1:

Is the referral of a complaint concerning the Applicant pursuant to section 7.10 of the *Police Service Administration Act 1990* made by Detective Superintendent Reid on 3 May 2022 (the **Referral**) invalid because the Referral does not nominate which rank or level of Prescribed Officer within the Office of State Discipline the complaint is being referred to?”

[26] During the course of argument, it became apparent that the real question was whether a referral under s 7.10 had to name a particular person as the “prescribed officer”. This was the issue the subject of submissions by DSS Cousins’ solicitor in correspondence to the QPS before the application was filed. If a particular person has to be nominated as the “prescribed officer”, then the question formally posed by the parties falls away as any named police officer will hold a particular rank.

[27] No more general attack was made upon the referral,¹² even though:

1. there is no clear act of referral. The closest is the determination that the complaint “should be referred”;
2. the determination is that the complaint be referred to the “Office of State Discipline”¹³ or perhaps the “State Coordinator” of the “Office of State Discipline”;
3. the “Office of State Discipline” is not a person and therefore cannot be a “prescribed officer” as defined in ss 2.2 and 7.3 of the PSA Act;
4. it was not intended that the State Coordinator (at least that is a person) personally be the “prescribed officer”.

[28] What seems to have been contemplated by Detective Superintendent Reid is to refer the complaint to the State Coordinator who would then nominate a particular “prescribed officer”. In correspondence to DSS Cousins’ solicitors on 15 August 2022, Chief Superintendent Martain asserted:

“I consider the complaint has been properly referred as required by the Act *‘for the consideration of a prescribed officer’*¹⁴ and was referred to the Office of State Discipline for this purpose. As a

¹² Which appears at paragraph [4] of these reasons.

¹³ A division of the Queensland Police Service; *Police Service Administration Act 1990*, s 7.43.

¹⁴ Paragraph 3 of Prescribed Officer Referral - Consideration signed by Detective Superintendent Reid.

prescribed officer within the Office of State Discipline, I intend to continue with the disciplinary proceeding and allow a further 7 days for any further submissions you may wish to make in the matter.”

- [29] The notion that the Commissioner (through her delegate) would refer the case to some administrative body within the QPS which would then nominate a “prescribed officer” to hear the complaint is not consistent with the scheme of the PSA Act.
- [30] It was submitted on behalf of DSS Cousins that:
1. the Commissioner must assess the complaint and determine whether to refer it to a prescribed officer;
 2. in so doing, she must consider, amongst other things, “the seriousness of the conduct to which the complaint relates”;¹⁵
 3. in identifying the appropriate “prescribed officer”, the Commissioner must turn her mind to s 7.35 which prescribes the types of disciplinary sanctions that can be imposed by prescribed officers categorised by rank;
 4. therefore, the referral must nominate the particular prescribed officer or, at least, the rank of the prescribed officer to be later identified.
- [31] On behalf of the QPS, it was submitted that:
1. section 7.10(2) just required the Commissioner to decide a threshold question as to whether the complaint ought to be referred to a prescribed officer;
 2. the Commissioner is not required to nominate a prescribed officer or identify any particular rank of prescribed officer who ought to consider the complaint;
 3. although the submission does not explain how a particular prescribed officer is then identified, the submission is then made that “a prescribed officer” assumes control of the disciplinary proceedings pursuant to s 7.11.

Consideration and determination

- [32] The question falls for determination upon a proper construction of the provisions of the PSA Act. The object of the construction exercise is to determine the meaning of the actual words used by Parliament, but by reference to purpose and context.¹⁶
- [33] The PSA Act, by Part 7, establishes a carefully structured scheme for the imposition of discipline in the QPS. It is a mistake to attempt to construe individual sections in isolation from the scheme or the legislation as a whole.¹⁷
- [34] Sections 7.10 and 7.11 must be read together. Section 7.10 requires the Commissioner to make a determination as to “whether to refer the complaint to a prescribed officer”. It does not expressly empower the Commissioner to then refer

¹⁵ Section 7.10(2)(d).

¹⁶ *The Queen v A2*; *The Queen v Magennis*; *The Queen v Vaziri* (2019) 269 CLR 507 at [32]-[37] and see *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384, *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 and *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362.

¹⁷ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

the complaint. Section 7.11(1) assumes such a power. Section 7.11 “applies if the commissioner has, under section 7.10, referred the complaint to a prescribed officer”.

- [35] Reading ss 7.10 and 7.11 together and in the context of Part 7 as a whole, the Commissioner is obliged to decide whether to refer the complaint to a prescribed officer¹⁸ and, in doing so, must consider the matters prescribed by s 7.10(2). She is then empowered to actually refer the complaint to a prescribed officer. Once she does, s 7.11 empowers the prescribed officer to start a disciplinary proceeding “if the prescribed officer reasonably believes there is a ground for disciplinary action against the subject officer”.¹⁹ “The prescribed officer” referred to in s 7.11(2) must be “the prescribed officer” to whom the complaint has been referred.²⁰ Frankly, nothing else makes sense.
- [36] As the Full Bench decided in *Langerak v State of Queensland (Queensland Police Service)*,²¹ the “grounds” upon which the “prescribed officer” may commence disciplinary proceedings are limited to those grounds within the scope of the “complaint” actually “referred” under s 7.10. The purpose of s 7.10 is for the Commissioner to triage complaints so that only those of substance proceed. The scheme is that once the Commissioner has performed that important role, she passes the further conduct of the matter to a prescribed officer.²²
- [37] A prescribed officer is a police officer and, therefore, a human being. By s 7.10, read with s 7.11, the Commissioner refers the complaint to “a prescribed officer”. By the natural meaning of the language in ss 7.10 and 7.11, the Commissioner nominates a particular human being, who must be a member of the category of persons defined by the term, “prescribed officer” to deal with “the complaint”. In making the decision to refer the complaint to a particular person (a particular “prescribed officer”), the Commissioner must take into account those considerations prescribed by s 7.10(2). One of those considerations is “the seriousness of the conduct to which the complaint relates”.²³
- [38] Therefore, the Commissioner must nominate a person who is “a prescribed officer”. That person then becomes:
1. “the prescribed officer” who may start disciplinary proceedings;²⁴
 2. “the prescribed officer” who may direct the subject officer to undergo a medical examination;²⁵
 3. “the prescribed officer” who may engage in the abbreviated disciplinary proceedings;²⁶
 4. “the prescribed officer” who conducts the disciplinary hearing;²⁷

¹⁸ Section 7.10(2).

¹⁹ Section 7.11(2).

²⁰ Section 7.11(1) read with s 7.10.

²¹ [2022] QIRC 327.

²² *Langerak v State of Queensland (Queensland Police Service)* [2022] QIRC 327 at [59] and [60].

²³ Section 7.10(2)(d).

²⁴ Section 7.11.

²⁵ Section 7.14.

²⁶ Sections 7.17, 7.18, 7.21, 7.22, 7.23.

²⁷ Sections 7.26, 7.27.

5. “the prescribed officer” who determines sanction;²⁸
6. “the prescribed officer” who is bound by the principles for conducting disciplinary proceedings.²⁹

- [39] By s 7.35, the sanctions are limited by the rank held by “the prescribed officer”. As already observed, the scheme is that “the prescribed officer” is the person to whom the complaint has been referred under s 7.10. In determining the identity of the “the prescribed officer” to whom the complaint is referred, the Commissioner must consider the “seriousness of the conduct” and should, no doubt, consider s 7.35 and any limitations that imposes upon “the prescribed officer’s” ability to impose a just and fair sanction in the particular case under consideration.
- [40] In the course of argument, it was pointed out that ss 7.16 and 7.25 refer not to “the prescribed officer”, but “a prescribed officer”. Taken in context, those sections do not detract from the operation of ss 7.10 and 7.11 and the scheme as we have described it.
- [41] Sections 7.16 and 7.25 are referring to powers vested in all officers who might be nominated under s 7.10. The sections which follow ss 7.16 and 7.25³⁰ all refer to “the prescribed officer”. There is no doubt that “the prescribed officer” who is empowered by Part 7 to conduct the disciplinary proceedings is the prescribed officer to whom the Commissioner has referred the complaint pursuant to s 7.10.
- [42] This is reinforced by s 7.41. Section 7.41 operates where “the prescribed officer” has imposed a suspended sanction³¹ but the subject officer has breached the terms of the suspension. The PSA Act then expressly departs from the general scheme where it is “the prescribed officer” which is empowered to take action. Under s 7.41(4)(b), it is “a prescribed officer of at least the same rank as the officer who imposed the suspended sanction”.

Conclusions

- [43] We would answer the question referred to arbitration as follows:
- “The alleged Referral of the complaint is invalid because a referral pursuant to s 7.10 of the *Police Service Administration Act 1990* must identify the particular prescribed officer by name and rank.”
- [44] Both parties accepted that costs are not an issue in the proceedings.

²⁸ Sections 7.28, 7.29, 7.30, 7.31.

²⁹ Section 7.32.

³⁰ See ss 7.17, 7.26, 7.27 and 7.28.

³¹ Section 7.41(2).