

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION *Fraser v State of Queensland (Queensland Police Service)* [2023] QIRC 089

PARTIES: **Fraser, Eddie James**
(Appellant)

v

State of Queensland (Queensland Police Service)
(Respondent)

CASE NO: PSA/2022/929

PROCEEDING: Public Sector Appeal – Appeal against a fair treatment decision

DELIVERED ON: 21 March 2023

HEARING DATE: 6 March 2023

HEARD AT: Brisbane

MEMBER: Pidgeon IC

DATES OF WRITTEN SUBMISSIONS: Appellant’s written submissions filed 10 November 2022 and 1 February 2023

Respondent’s written submissions filed 27 October 2022 and 28 February 2023

ORDER: **Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016 (Qld)*, the decision appealed against is confirmed.**

CATCHWORDS: PUBLIC SECTOR – EMPLOYEES AND SERVANTS OF THE CROWN GENERALLY – appeal against a fair treatment decision – where the appellant applied for a flexible work arrangement – where the application was partially approved – whether meaningful work could be undertaken remotely – consideration of the respondent’s operational requirements – consideration of the quality of work undertaken remotely – whether the respondent considered the request on an individual basis – where decision was fair and reasonable

LEGISLATION: *Industrial Relations Act 2016* (Qld) ss 27, 28, 562B, 562C

Public Sector Act 2022 (Qld) ss 129, 131, 289, 324

CASES: *Gilmour v Waddell & Ors* [2019] QSC 170

Petrie v State of Queensland (Queensland Mental Health) [2022] QIRC 343

Reasons for Decision

Background

- [1] Mr Eddie Fraser (the Appellant) is employed by the Respondent, the State of Queensland (Queensland Police Service) (QPS), as a Prosecutor (Legal Officer), classification PO3, within the QPS Legal Division.
- [2] The Appellant commenced employment with the Respondent in May 2019 and was permanently appointed as a Prosecutor on 30 August 2019.
- [3] On 14 April 2022, Mr Fraser made application for a flexible working arrangement (FWA) seeking to work from home for one day of each week. The application was not supported but a trial arrangement was put in place for Mr Fraser to work from home for one day each month.
- [4] On 29 July 2022, Mr Fraser made a second application for an FWA to enable him to work from home for one day per week.
- [5] On 5 August 2022, Inspector Ian Park, Prosecution Services, wrote to Mr Fraser and advised him that the application was not being supported, but offered to continue the current duties on the basis of one day every four weeks.¹ Inspector Park said:

... I cannot support you working from home one day per week.

This is particularly the case while you are working in the arrest courts. There is simply no meaningful work directly related to your current duties that you can perform from home.

I understand you have been assisting with some sentencing schedules on your one day per month, which is appreciated. I will advise you that the feedback I have received is that the preparation work completed was very basic and required significant value adding to be ready for presentation

¹ Appeal Notice filed 7 October 2022, Appendix 2; Email from Mr Eddie Fraser to Inspector Ian Park, 5 August 2022 at 10:00 am.

in court. To be specific I am informed that you only generated the sentencing schedule from QPRIME and that it appeared not to have been edited as it contained many spelling and grammatical errors. You did not gather any relevant exhibits such as photographs etc and you did not provide any information as to comparable sentences. I would have thought these were all things an experienced lengthy plea prosecutor would know would be required without being specifically tasked to compile them.

Dr Ladhams raises a number of concerns with respect to the conditions at the arrest courts. I understand at times the days can be long, breaks can be short or at times not provided by the magistrate. I also understand other days can finish relatively early. While the long days with minimal breaks [are] neither ideal nor desired, they only go to show why having a member of the Prosecutions team working from home is counterproductive if they are not physically present to assist other prosecutors and provide them with relief.

...

Therefore:

I am once again prepared to offer an extension to the current arrangement in the interests of your health and permit a further two (2) months where you can work from home one day per 28 day roster period. This will be dependent upon the following conditions:

1. There are sufficient prosecutors rostered in the arrest courts to permit this to occur. I understand that A/S/Sgt Parfitt has recommenced forward planned allocations in the arrest courts, so that should provide a clear picture of what day (if any) is suitable for you to work from home; and
2. That you complete work from home as tasked to a standard acceptable to the lengthy pleas module manager...²

[6] On Thursday 11 August 2022, Mr Fraser sought a review of that decision. The review was undertaken by Superintendent Amanda Brownhill, Prosecutions Services, who on 19 August 2022, provided the following advice to Mr Fraser by email:

... The outcome of my review is as follows

1. To affirm the decision of Inspector Park to decline the FWA application for remote work one day per week at this time.
2. To advise Insp Park to support the continuation of a remote working day one day per month for the remainder of 2022. This will allow for continued negotiations regarding your request.
3. To advise Insp Park to review your work performance whilst working remotely to determine suitability of any remote work arrangement into the future. This is able to be reviewed sooner than the end of 2022 if necessary.

² Respondent's submissions filed 27 October 2022, Exhibit 2.

4. To advise Insp Park to discuss with you the concerns you have raised with your medical practitioners regarding your role as a prosecutor and the impact on your health and wellbeing.

The reasons for my decision are as follows which are based on the advice I have received and consideration of our operational and organisation requirements.

1. I am advised your current location in the arrest courts does not provide an opportunity to undertake any meaningful remote work related to that role. You have been allocated work from another module to facilitate the one day a month remote working opportunity. The staff in the arrest courts are absorbing your absence on this day. I am advised this is not sustainable on a weekly basis. I am advised you were consulted prior to commencing work in the arrest courts. This is one of several modules you are required to work in and falls within your position description of Prosecutor, Brisbane Police Prosecution Corps (PPC). I acknowledge you are yet to work in all modules.
2. I am advised by Insp Park the work produced by you when working remotely is not adequate and you are receiving mentoring and guidance in that regard. I understand this is ongoing with an expectation of improvement after recent discussions.
3. I am advised your absence from the workplace places an additional workload on other prosecutors who are required to attend to additional court requirements, phone calls and other office related duties. This challenges the operational ability of Prosecution Services to meet our service delivery obligations and also impact the health and wellbeing of other staff.
4. I am advised alternate work locations are being considered however you are still rotating through the modules and are yet to undertake duties in several modules. When being trained in each of these areas of prosecuting, you will require guidance and mentoring which limits the opportunity to work remotely on a weekly basis. For example, hearings and committals. I note FWA/FHA arrangements are able to be considered when working in each of these areas.

An application for a FWA requires negotiation and I am happy to continue discussions with you, through Insp Park (and your advocates if desired) as we move forward with your remote work performance and other work you undertake as a prosecutor in Brisbane PPC. The main service delivery area for prosecutors is to service (including personal appearance) the courts daily and this will always be a significant consideration when assessing FWA's from staff.

My decision outlined above is made at this point in time and can be reviewed periodically in accordance with the reasons/considerations I have outlined and any additional information provided or change in circumstances.

Eddie, I appreciate you will be disappointed with my decision but is very important that we work together to get the best outcome for you and the organisation. I do believe we are heading in the right direction by both continuing with some remote work and the focus on quality improvement...³

[7] On 29 August 2022, Mr Fraser submitted a grievance. On 30 August 2022, the Stage 3 Grievance was allocated to Mr Cameron Hurren, Grievance Review Officer, Employee

³ Appeal notice filed 7 October 2022, Appendix 1.

Relations Unit, for investigation. The review culminated in a document dated 26 September 2022.

- [8] The Grievance Review indicated that Mr Hurren contacted Mr Fraser to seek further clarification of the issues. Mr Hurren identified that Mr Fraser's grievance regarding the FWA decision and the internal review decision included: failure to properly consider reasonable adjustments where medical grounds exist, moving from the Lengthy Pleas Module to the Arrest Courts, and issues raised regarding the standard of work and performance whilst undertaking work from home.⁴
- [9] Mr Hurren goes on to address each of these matters giving consideration to Mr Fraser's submissions and information provided along with the reasons for decision given by Superintendent Brownhill. Mr Hurren then summarises the matters as follows:

SUMMARY

14. Mr Fraser has made a FWA request in accordance with the *Industrial Relations Act 2016* and the QPS Flexible Working Arrangements Policy to work from home one day of each week.
15. Mr Fraser's FWA request has been reviewed by Management in consideration of the requirements of his position, the nature of his duties as a prosecutor and the operational ability of the work unit to meet its service delivery obligations and has not been approved.
16. Whilst Mr Fraser has included medical material in support of his FWA request, the medical material provided however does not include information specifying a medical condition, restrictions on duties that can or cannot be undertaken nor hours of work that can be performed.
17. If Mr Fraser is seeking reasonable adjustment to his current duties or hours of work due to a medical condition, then this needs to be clearly identified and coordinated by the QPS Health and Safety Unit as part of the process of implementing a suitable duties plan rather than seeking to establish a plan through a FWA request.
18. The reasons for the non-approval of the FWA request have been provided in writing to Mr Fraser and are based on the operational and organisation requirements of the work unit and the inability to provide Mr Fraser meaningful duties at this time.
19. Given the nature of the duties being undertaken by Mr Fraser as a Prosecutor, the review officer supports the position of Prosecutions Management that a weekly absence from the workplace to perform limited functions from home would be detrimental to the unit and would place an additional workload on other prosecutors who are required to attend to additional court requirements, phone calls and other office related duties.
20. In regards to the timing of Mr Fraser's move to the arrest courts. The move from the lengthy plea module to the arrest courts or another module would have occurred regardless

⁴ Respondent's submissions filed 27 October 2022, Exhibit 3; Grievance Review Memorandum, 26 September 2022.

of the FWA request given there are numerous modules that prosecutors are required to work through and Mr Fraser is yet to work in all modules.

21. In relation to issues raised in regards to the standard of work being produced by Mr Fraser whilst undertaking duties for the lengthy pleas module in a remote capacity. Whilst it is acknowledged that those concerns have not been formally documented, the lengthy please module manager has confirmed the following:
- that the standard of work produced was not satisfactory
 - for Mr Fraser to continue to undertake work for the lengthy please module as part of any remote work agreement, there would need to be an improvement in the standard of work being produced to make it viable.
22. It is clear that there is support in continuing the current one day per month working from home arrangements providing the work being produced by Mr Fraser for the lengthy please [sic] module is at a level satisfactory to the lengthy pleas module manager.

RECOMMENDATIONS

23. It is recommended that:
- The decision to not approve the FWA request from Mr Fraser be supported.
 - If Mr Fraser is seeking reasonable adjustment to his current duties or hours of work due to a medical condition, then this needs to be clearly identified and coordinated by the QPS Health and Safety Unit as part of the process of implementing a suitable duties plan.
 - In accordance with Superintendent Brownhill's advice to Mr Fraser on 19 August 2022, the following actions are to be implemented:
 - To advise Insp Park to support the continuation of a remote working day one day per month for the remainder of 2022.
 - To advise Insp Park to review Mr Fraser's work performance whilst working remotely to determine suitability of any remote work arrangement into the future. This is able to be reviewed sooner than the end of 2022 if necessary.
 - To advise Insp Park to discuss with Mr Fraser, with the assistance of the Health and Safety Unit, the concerns raised by his medical practitioners regarding his role as a prosecutor and the impact on his health and wellbeing.

This report and advice of your decision be returned to Employee Relations for action and advice to Mr Fraser and the Executive Director, Legal Division...

Is the Appellant entitled to appeal?

- [10] Mr Fraser filed his appeal notice against a fair treatment decision on 27 October 2022, within 21 days of the decision being received on 6 October 2022. I am satisfied that the Appellant may appeal the decision.

[11] The Appellant filed his appeal before the commencement of the new *Public Sector Act 2022* (Qld) (the PS Act) on 1 March 2023. Section 289 of the PS Act repeals the previous *Public Service Act 2008* (Qld) which was in effect at the time the decision-maker considered Mr Fraser's application for flexible working arrangements and when Mr Fraser filed his appeal.

[12] Section 324 of the PS Act relevantly provides:

- (1) This section applies if—
 - (a) before the commencement, a person appealed against a decision under the repealed Act, section 194; and
 - (b) immediately before the commencement, the appeal had not been decided.
- (2) From the commencement, the appeal must be heard and decided under chapter 3, part 10.

[13] Immediately before the commencement of the new PS Act, Mr Fraser's appeal had not been decided. I will therefore decide Mr Fraser's appeal under ch 3, pt 10 of the new PS Act.

Legislative framework

[14] Section 131 of the PS Act lists various categories of decisions against which an appeal may be made. Section 131(1)(d) provides that an appeal may be made against a fair treatment decision.

[15] Section 129 of the PS Act defines 'fair treatment decision' as 'a decision a public sector employee believes is unfair and unreasonable'.

[16] Flexible working arrangements are dealt with by ch 2, pt 3, div 4 of the *Industrial Relations Act 2016* (Qld) (the IR Act).

[17] The IR Act relevantly provides:

27 Request for flexible working arrangements

- (1) An employee may ask the employee's employer for a change in the way the employee works, including—
 - (a) the employee's ordinary hours of work; and
 - (b) the place where the employee works; and
 - (c) a change to the way the employee works, for example, the use of different equipment as a result of a disability, illness or injury.
- (2) The request must—
 - (a) be in writing; and
 - (b) state the change in the way the employee works in sufficient detail to allow the employer to make a decision about the request; and
 - (c) state the reasons for the change.

28 Decision about request for flexible working arrangements

- (1) The employer may decide to—
 - (a) grant the request; or

- (b) grant the request in part or subject to conditions; or
 - (c) refuse the request.
- (2) The employer may grant the request in part or subject to conditions, or refuse the request, only on reasonable grounds.
 - (3) The employer must give the employee written notice about its decision within 21 days after receiving the request.
 - (4) If the employer decides to grant the request in part or subject to conditions or to refuse the request, the written notice about the decision must state—
 - (a) the written reasons for the decision, outlining the reasonable grounds for granting the request in part or subject to conditions or for the refusal; and
 - (b) that the commission has jurisdiction to hear and decide a dispute over the request under chapter 6.

Appeal principles

[18] Section 562B(3) of the IR Act provides that the appeal is to be decided by reviewing the decision appealed against and that ‘the purpose of the appeal is to decide whether the decision appealed against was fair and reasonable’.

[19] Findings made in the decision which are reasonably open on the relevant material or evidence before the decision-maker, should not be expected to be disturbed on appeal.

[20] A public sector appeal is not an opportunity for a fresh hearing, but a review of the decision arrived at by the decision-maker.

[21] In deciding this appeal, s 562C(1) of the IR Act provides that the Commission may:

- (a) confirm the decision appealed against; or
- ...
- (c) For another appeal-set the decision aside, and substitute another decision or return the matter to the decision maker with a copy of the decision on appeal and any directions considered appropriate.

[22] With respect to decisions about requests for flexible working arrangements, s 28(2) of the IR Act provides that ‘The employer may grant the request in part or subject to conditions, or refuse the request, only on reasonable grounds’.

[23] The principles to consider in determining whether a decision is 'unreasonable' were set out by Ryan J in *Gilmour v Waddell & Ors*:⁵

The focus of a review on the reasonableness, or unreasonableness of a decision is on whether the decision is so unreasonable that it lacks intelligent justification in all of the relevant circumstances.

⁵ [2019] QSC 170 (*Gilmour*).

The legal standard of unreasonableness is to be considered by reference to the subject matter, scope and purpose of the statute conferring the power.

A court considering an argument that a decision is unreasonable is not undertaking a merits review. If a decision may be reasonably justified, then it is not an unreasonable decision, even if a reviewing court might disagree with it.⁶

Grounds of appeal

[24] Mr Fraser filed his *Form 89 - Appeal notice* on 7 October 2022. In Part C of the Form 89, Mr Fraser provides his reasons for appeal. I summarise Mr Fraser's grounds of appeal as follows:

- It is contended that the refusal was not based on reasonable grounds.
- The request has led to a performance issue being raised.
- The decision-maker has not properly considered the material provided by practitioners who have been supporting his mental health.
- The Flexible Working Arrangements Policy (the FWA Policy) states that each request is to be considered on a case-by-case basis and that his personal circumstances have not been considered.
- Mr Fraser's productivity is improved when working from his home office and he has improved focus and concentration due to the lack of office-related distraction.
- Mr Fraser can better manage his personal health issues when working from home, including his mental health and work-life balance.
- The decision-maker's reasons make it clear that Mr Fraser's medical condition was not considered in any meaningful way.

Respondent's submissions

[25] The Respondent filed its first written submissions on 27 October 2022. Those submissions provide extensive information about the initial application, decision, internal review and grievance outcome.

[26] In reply to the matters raised in the appeal, the Respondent says that there was limited ability for Mr Fraser to work from home due to the nature of the work he was undertaking at that time. The Respondent notes that the offer for Mr Fraser to work from home one day a month was made 'at the expense of other officers in the

⁶ Ibid [207]-[209].

prosecution role who were required to take on additional aspects of the Appellant's workload for the day'.⁷

[27] The Respondent says that in considering the reasonableness of the decision to not approve the FWA, Superintendent Brownhill considered those principles articulated in the FWA Policy, and the reasonableness of those principles in relation to the matters raised by the Appellant in their request. The Respondent says that the following considerations were enunciated in the advice to Mr Fraser on 19 August 2022:

- a) Whether there is an operational ability to meet the service delivery obligations of the work unit.
- b) Capacity to reorganise work arrangements.
- c) Availability of replacement staff.

The Respondent says that the considerations listed in [23] reflect those considerations of what the Queensland Industrial Relations Commission (QIRC) considered as reasonable grounds in *Petrie v State of Queensland (Queensland Mental Health)*.⁸ In that decision, the Industrial Commissioner found that the 'consideration of the needs of other employees and the organisation as a whole' as well as 'the impact of a greater workload for staff members' were reasonable grounds for refusing the FWA.

[28] With regard to the medical information provided by Mr Fraser in support of his appeal, the Respondent says that the medical certificates and letters provide no medical diagnosis other than a suffering of stress and no medical management plan other than a request that the Appellant work from home one day a week.

[29] The Respondent says that there has been no information supplied to the Respondent to develop a suitable duties plan and the Injury Management Unit (IM), Health and Safety, has advised that there is no suitable duties plan in place and no certificates have been provided by Mr Fraser to IM from his treating physicians explaining diagnosis, issues of concern and what is required for a suitable duties program.

[30] The Respondent says that IM intends to write to Mr Fraser's treating physician seeking further and better particulars about the medical condition and the proposed management plan, however, to date, no informed consent has been provided by Mr Fraser allowing IM to discuss medical issues and concerns with his treating physicians.

[31] The Respondent says that in considering the initial request, Inspector Park contacted IM regarding the letters and certificates from doctors and sought advice as to the process to follow. IM advised that as the letters and certificates were non-specific in respect of any medical condition, a proper diagnosis was needed to act upon.

⁷ Respondent's submissions filed 27 October 2022, [37].

⁸ [2022] QIRC 343, [21]-[23].

- [32] The Respondent notes that one of the letters provided by Mr Fraser states that he has been highly productive on his one day of work from home each month. The Respondent says this does not accord with the feedback Mr Park received about the work undertaken by Mr Fraser via emails of 15 August 2022 from Lisa Pye, Sergeant Administrator, and Carrie Davidson, Senior Sergeant, both from Prosecution Services.
- [33] The Respondent says that it is important to identify that when working in another prosecution module, Mr Fraser can again seek the FWA. I also note that it appears clear that it is open to Mr Fraser to provide informed consent for the IM team to discuss his medical concerns with his treating physicians and determine if there are reasonable adjustments or suitable duties that may be put in place to support Mr Fraser.

Appellant's submissions

- [34] Mr Fraser provides information about a number of employees he believes are engaged on FWAs and says that most of these occur on a Friday. He says that as a result of this, it appears that if one is a sworn officer, 'operational requirements' are not an issue.⁹
- [35] Mr Fraser reiterates that he is available to change the day he works remotely to meet operational requirements. Further, Mr Fraser submits that working from home has provided him with 'more time to exercise, re-adjust and focus on mental health and well-being and self-care and make significant improvements to mental health, physical health and overall health and well-being'. Mr Fraser says that the QPS should be leading the way in modelling initiatives that support living a healthier lifestyle and that he should not have to ask for a reasonable workplace adjustment for a matter that should fall within an FWA.
- [36] Mr Fraser submits that working remotely significantly improves his work-life balance by providing him with extended time with his young family, allowing time to flexibly share the parental and household load, and enabling him to be available for both his children and aging mother-in-law at short notice if required.
- [37] Mr Fraser says that the Respondent's comments regarding mental health 'seem to indicate that unless an employee has a specific diagnosed mental health condition, any considerations of mental-wellbeing do not apply' and this does not align with the FWA Policy.
- [38] Mr Fraser says that working from the office negatively affects his mental health when compared with working from home and adds to the external stresses associated with family life.

⁹ T 2–37, ll 8–19. I note that that at the hearing and in its final written submissions filed 28 February 2023, the Respondent submitted that there are not any staff in the prosecutions section who are on FWAs, however several members have part-time working arrangements.

- [39] Mr Fraser submits that the move to the arrest court was strategically implemented as a result of his FWA. Mr Fraser also makes an allegation that rotation to the arrest court is used against people who raise concerns about workload issues and lack of support. However, I note that at the hearing, Mr Fraser stated that the move had been a positive one for his wellbeing. Further, the appeal is not about the rotation to the arrest courts and so I will not deal with allegations regarding consultation or adverse action here.
- [40] While the Respondent submits that a suitable duties plan should be implemented rather than an FWA, Mr Fraser says that the advice contained in his medical material should be sufficient to support a work-from-home day each week and that the outcome would be the same.
- [41] Mr Fraser submits that the previous medical information held by the Respondent provides the information required regarding a diagnosis and that he would be concerned if the Respondent did not have this information.
- [42] With regard to the issues raised about the quality of work undertaken on the one day of remote work Mr Fraser undertakes per month, Mr Fraser says that this matter only arose as a strategy to support an unjust decision and that it was not fair for it to form a part of the reviewer's final recommendation.
- [43] Mr Fraser says that the delegate is 'unable to demonstrate they worked with me and the larger team to find solutions that best meet work, team, and personal needs'.
- [44] Mr Fraser says that the decision is so unreasonable that it lacks intelligent justification in all the relevant circumstances, particularly to the circumstances he has put forward with 'an active attempt to incorporate adverse actions to prohibit an equitable outcome and to shift the notions to another area rather than deal with the issues at hand as applied for'.
- [45] Mr Fraser says that the absence of any consultation or evidence of an investigation being undertaken regarding his request supports the conclusion that the decision was not fair and reasonable.
- [46] Mr Fraser states that during the period of time directions have been in place for this appeal, he has provided letters from Dr Ladhams and Marion Sullivan and that he has further ongoing appointments scheduled with other practitioners.
- [47] Mr Fraser has attached to his submissions some correspondence from his medical practitioners that post-dates the decision appealed against. In circumstances where I am

required to consider whether the final grievance decision was fair and reasonable, I will not take this new material into account.¹⁰

Appellant's further submissions

- [48] Mr Fraser filed further submissions in support of his application on 1 February 2023.
- [49] In these submissions, Mr Fraser appears to allege adverse action and makes a number of allegations regarding deliberate attempts on the part of the Respondent to cause fear and intimidation and cause further detriment to his health and wellbeing. This is not the forum for such matters to be considered and I will not take them into account in this appeal.
- [50] Mr Fraser also provides medical information from a previous period when suitable duties were put in place. Further, Mr Fraser refers to correspondence between the Respondent and his treating practitioners which post-dates the decision under appeal. The historical material is considered in this decision only so far as it gave rise to implementation of suitable duties and permanent restrictions. I will not be taking the more recent material into account as I find that it is not relevant to the decision under appeal and is more appropriately considered as part of a future FWA or reasonable adjustments request.

Respondent's submissions in reply

- [51] The Respondent rejects submissions made by Mr Fraser regarding accusations of adverse action and attempts by it to cause fear and intimidation. As noted above, I am not considering those matters in this decision.
- [52] With regard to the historical medical material provided by Mr Fraser with his further submissions, the Respondent notes that a return-to-work program was completed and that there are permanent restrictions which remain in place as a result of that program. The Respondent says that it has never denied knowledge of the existing restrictions and conditions which resulted from its actions arising from medical advice in 2020 and 2021.
- [53] The Respondent notes again that Mr Fraser has not provided informed consent for the IM team to talk with his medical team. The Respondent says that it will act upon medical advice from treating physicians in respect of its staff and if further and better

¹⁰ I also determined that I would not allow Mr Fraser to lead new evidence from his medical practitioners at the oral hearing he requested. It is my view that any new medical material should be considered as part of either a fresh FWA application or should form the basis of considerations regarding reasonable adjustments via the Injury Management, Health and Safety.

medical particulars are required to assist in any management plan, it will seek further information.

- [54] The Respondent notes that further medical material which has been provided post-dates the decision subject of the appeal. As I have determined not to take this material into account, I will not address the Respondent's submissions regarding that material here.
- [55] With regard to Mr Fraser's submission about the benefits that working from home would afford him, the Respondent says that s 27 of the IR Act allows an employee to apply for a change in the way the employee works and includes the hours, place, and the potential use of different equipment to assist the employee. The Respondent says that s 27 of the IR Act allows undertaking work from home, not undertaking a range of other matters Mr Fraser sees as appropriate. The Respondent says that Mr Fraser's submissions would indicate that a more suitable arrangement for him would be part-time work which has been offered to him and which he has refused. The matter of part-time work is not subject of this appeal and I will not further consider this suggestion here.
- [56] With reference to all of the new material filed by Mr Fraser in this matter, the Respondent suggests that Mr Fraser seek a suitable duties plan based on the most recent medical advice.
- [57] Finally, the Respondent refers to *Gilmour v Waddell & Ors*,¹¹ and says that for a decision to be unreasonable, it must lack evidence and intelligible justification, and where a decision may be reasonably justified, it is not an unreasonable decision, even if a reviewing court may disagree with it. The Respondent submits its decision of 19 August 2022 sets out its considerations and provides intelligent justification for the decision to decline the appellant's flexible working arrangement request.

Consideration

- [58] The submissions made by Mr Fraser in this matter have gone well beyond the material which was before the decision-maker at the time the decision was made, reviewed and escalated through the grievance process. At the mention, in the directions orders and via correspondence provided through the Registry, I have made it clear that the focus of this appeal is on the decision appealed against and the reasonableness of that decision. It is a matter for Mr Fraser whether he chooses to pursue allegations he has made in his submissions or whether he intends to seek another FWA, or work with Injury Management to identify any reasonable adjustments which may be put in place to support his medical wellbeing.

¹¹ *Gilmour* (n 5).

- [59] While the focus is on the decision of Superintendent Brownhill on 19 August 2022, it appears that the correspondence dated 26 September 2022, being the Stage 3 Grievance Outcome is what prompted Mr Fraser to lodge this appeal.
- [60] The Stage 3 Grievance helpfully sets out the background to the matter and the key aspects of the decision Mr Fraser is aggrieved by. It also sets out the issues raised by Mr Fraser and his submissions in support of his grievance.
- [61] I will consider the written and oral submissions of the parties and address each of the reasons for decision which were provided to Mr Fraser by Superintendent Brownhill and addressed in the Stage 3 Grievance document.

A lack of meaningful work to be undertaken remotely

- [62] It appears to be commonly understood that there was a lack of meaningful work from his own module that Mr Fraser could undertake in order to work one day a week from home while he was on rotation in the arrest courts. In order to undertake the one day a month working from home arrangement, work was allocated to Mr Fraser from another work module. I consider this to be a reasonable solution to enable Mr Fraser to access some form of flexible working arrangements, albeit for one day per month. As I understand it, this aspect of the decision is not contested by Mr Fraser.¹²

Quality of work being undertaken remotely

- [63] While the decision makes mention of concerns with the quality of work produced by Mr Fraser on this one day a month arrangement, the eventual outcome is that the matter was raised with Mr Fraser and it was noted that there was an expectation of improvement. There is no evidence before me that the quality of the work being undertaken was used as a reason to reject the one day a week FWA or to cancel the one day per month arrangement. Nor is there any evidence that Mr Fraser is subject of a formal performance improvement process with regard to this work. Rather, I find that a reasonable expectation was communicated to Mr Fraser regarding the work to be undertaken. It is clear that if any concerns about performance were to be escalated at any time, then the proper procedure would need to be followed and Mr Fraser must be afforded procedural fairness.

Operational impact of Mr Fraser working from home one day a week while on rotation in the arrest courts

¹² T 2-32, 133 – T 2-33, 11.

[64] At reasons 1 and 4 of her decision, Superintendent Brownhill addresses operational matters. She says that other staff absorbing Mr Fraser's absence on his day of working from home is not sustainable on a one day a week basis. She also states that Mr Fraser's absence from the workplace places an additional workload on other prosecutors and challenges the operational ability of Prosecution Services to meet service delivery obligations and impacts on the health and wellbeing of other staff. Superintendent Brownhill states that when considering FWAs, the need for prosecutors to service the courts daily, including making personal appearance, is the significant consideration. This is a reasonable approach which is consistent with the FWA Policy.

[65] Superintendent Brownhill makes it clear in her decision that the outcome of Mr Fraser's FWA was related to the specific circumstances of his employment at that time. Superintendent Brownhill makes it clear that the FWA can be reviewed periodically and can take into account any change in circumstances. This appears to be an entirely reasonable approach to take.

Mr Fraser's submission that the move from Lengthy Pleas to the Arrest Courts was done to deliberately stymie his FWA

[66] The evidence before me makes it clear that Mr Fraser's role requires him to rotate through the various modules and to undertake guidance and mentoring in each area. Superintendent Brownhill notes that in some of these areas, a one day a week work from home arrangement would be limited, but in others, is able to be considered. While there is mention of a lack of consultation with Mr Fraser regarding the move to the arrest courts, there is also no evidence before me that there was a requirement for consultation with Mr Fraser regarding the rotation. As noted above, Mr Fraser's oral submissions indicated that the rotation ended up having a positive impact on his wellbeing. In any case, I accept that the rotation was both a part of Mr Fraser's role and also that the timing was based on the operational needs of the Respondent rather than being motivated by an attempt to stop Mr Fraser from accessing flexible work arrangements.

Mr Fraser's concern that medical information was not taken into account and that the FWA should be approved on medical grounds

[67] When asking for a review of the decision, Mr Fraser drew attention to the suitable duties plan and permanent medical restrictions he said were in place. In his email correspondence with the review officer, Mr Fraser stated his belief that it was 'incumbent on an employer to further consider reasonable adjustments where medical grounds exist'.

[68] The evidence before me is that a suitable duties plan was not in place at the time of Mr Fraser's FWA. Rather, a permanent medical restriction was in place limiting his hours of work to 7:00am to 3:00pm and stating that he must not be required to travel more than 50 kms or one hour from home to work.

- [69] The Respondent says that if Mr Fraser is seeking a reasonable adjustment to his current duties or hours of work due to a medical condition, such a process is to be undertaken from the QPS Health and Safety Unit rather than seeking to establish a plan through a FWA request.
- [70] I find that this is an entirely reasonable and responsible approach to take, particularly in circumstances where in the not-so-distant past, Mr Fraser undertook a return-to-work process which involved a suitable duties plan.
- [71] As best I can gather, the suitable duties plan at that time did not include a requirement that Mr Fraser undertake work from home in order to manage a medical condition. It is appropriate that if there is an update or there has been a change in circumstances, that this is worked through by the QPS Health and Safety Unit in conjunction with Mr Fraser's medical team. It seems to me from the submissions made at the oral hearing of submissions, that QPS Health and Safety is seeking to make inquiries of Mr Fraser's medical team to gather specific information on the nature of the medical condition and why a work from home arrangement is recommended. Mr Fraser also provided recent medical material which I determined not to consider with regard to this appeal but which I assume is now in the possession of the Respondent and will be relevant to any fresh FWA request or consideration of suitable duties.

Mr Fraser's concern that an FWA should be able to be approved on the basis of medical information and that he should not be required to seek reasonable adjustments through Injury Management

- [72] I acknowledge and agree with Mr Fraser's submission that application for a suitable duties plan is not necessary each time an employee applies for an FWA for reasons involving managing a medical condition or their wellbeing. Further, I do not doubt that working from home provides Mr Fraser with the benefits he sets out in his submissions. I note the Respondent's concerns that some of the matters listed by Mr Fraser in his reasons for seeking an FWA may make a part-time working arrangement more appropriate. I also note Mr Fraser's submissions to the effect that he is not seeking a part-time arrangement and that to move to a part-time arrangement would have a detrimental effect on his finances and wellbeing. However, as stated above, in circumstances where an employee has recently completed a suitable duties plan and had permanent restrictions implemented on the basis of a medical condition, I find that it was reasonable for the Respondent to determine that the best way forward is to discuss suitable adjustments. As I noted in [67] above, Mr Fraser has also indicated his expectation that the employer consider further reasonable adjustments.
- [73] There may be more specific medical information now available as a result of Mr Fraser providing further information and the inquiries undertaken by the Respondent. However, this information was not available to Superintendent Brownhill at the time

the decision was made. Regardless of the new medical information available, I find that the course of action determined by Superintendent Brownhill and upheld in the Stage 3 Grievance was reasonable and appropriate.

- [74] It is of particular importance that Injury Management, Health and Safety are involved in considering these matters in circumstances where operational requirements preclude a one day a week working from home arrangement, as it may be necessary to work with Mr Fraser's medical team to identify other reasonable adjustments to address the concerns they have raised.

Conclusion

- [75] I disagree with Mr Fraser's submission that the decision lacks intelligent justification in all the relevant circumstances. I find that the decision was reasonably justified when taking into account the Respondent's Flexible Working Arrangements Policy and the specific circumstances surrounding Mr Fraser's FWA request, his role and position at the time the request was considered, the medical issues he raised and the recent history involving the implementation of suitable duties and permanent restrictions.

- [76] The decision appealed against is confirmed.

Order

- 1. Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016 (Qld)*, the decision appealed against is confirmed.**