



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT GOSTENCNIK

C2022/6891

s.739 - Application to deal with a dispute

**Police Federation of Australia (200V)
and
Chief Commissioner of Police T/A Victoria Police
(C2022/6891)**

Melbourne

9.58 AM, TUESDAY, 30 MAY 2023

PN1

THE DEPUTY PRESIDENT: Yes, good morning. Ms Morris, you're appearing for the applicant?

PN2

MS R. MORRIS: Yes, that's correct.

PN3

THE DEPUTY PRESIDENT: Yes, good morning. And Mr Garozzo, you're appearing for the respondent?

PN4

MR GAROZZO: I am. Good morning, Deputy President.

PN5

THE DEPUTY PRESIDENT: I'm not sure whether we've dealt with the issue of permission. Is permission to be represented by a lawyer opposed?

PN6

MS MORRIS: It's not, Deputy President.

PN7

THE DEPUTY PRESIDENT: I may well have already dealt with this matter, but if I haven't, permission is granted. Yes. Yes, Ms Morris?

PN8

MS MORRIS: Thank you, Deputy President. I'm not sure whether you wish to be addressed on the issue of jurisdiction prior to commencing the hearing today.

PN9

THE DEPUTY PRESIDENT: I don't think the parties have requested that the matter be dealt with as a preliminary matter, have they?

PN10

MR GAROZZO: No.

PN11

THE DEPUTY PRESIDENT: So, I don't require you to deal with that matter now. We will obviously need to, at some stage, but for present purposes I can indicate to the parties that I have read the material, so I don't need an opening. I'm not going to stop you from making one if you wish, but I don't need one, and I'm assuming there will be some cross-examination?

PN12

MR GAROZZO: A small amount.

PN13

THE DEPUTY PRESIDENT: Yes, all right. Unless you want to make an opening, Ms Morris, I suggest we call Senior Sergeant Salter.

PN14

MS MORRIS: Yes.

PN15

THE DEPUTY PRESIDENT: Okay.

PN16

MS MORRIS: I'm content with that, Deputy President. We call Senior Sergeant Salter.

PN17

THE ASSOCIATE: Can you please state your full name and address for the record.

PN18

MS SALTER: My name is Jennifer Anne Salter, (address supplied).

<JENNIFER ANNE SALTER, SWORN [10.00 AM]

EXAMINATION-IN-CHIEF BY MS MORRIS [10.00 AM]

PN19

THE DEPUTY PRESIDENT: Yes, thank you, Senior Sergeant, take a seat.

PN20

MR GAROZZO: Can I just one thing, Deputy President?

PN21

THE DEPUTY PRESIDENT: Yes.

PN22

MR GAROZZO: Commander McAlpine is in the room, and she's Victoria Police's witness. I'm not sure if my learned friend objects to her remaining in the hearing room.

PN23

THE DEPUTY PRESIDENT: Do you?

PN24

MS MORRIS: I don't have an issue with that, no.

PN25

THE DEPUTY PRESIDENT: That's all right, thank you.

PN26

MS MORRIS: Thank you. Thank you, Senior Sergeant Salter. You've provided two statements as part of these hearings, is that correct?---That's right, yes.

PN27

Are those statements true and correct?---Yes.

*** JENNIFER ANNE SALTER

XN MS MORRIS

PN28

Do you wish to add anything in relation to those statements?---No, I don't.

PN29

I just have a few questions for you in regards to those statements.

PN30

THE DEPUTY PRESIDENT: Before you do, perhaps we might just tender the statements and see whether there's any objection to any aspect of them. Is there any objection to - - -

PN31

MR GAROZZO: No, Deputy President.

PN32

THE DEPUTY PRESIDENT: No? All right. I will mark the witness statement of Jennifer Anne Salter, dated 24 February 2023, comprising 44 paragraphs, and the attachments thereto, as exhibit 1, and I will mark the supplementary witness statement of Senior Sergeant Jennifer Salter, dated 12 April 2023, comprising 29 paragraphs, as exhibit 2.

**EXHIBIT #1 WITNESS STATEMENT OF JENNIFER ANNE
SALTER COMPRISING 44 PARAGRAPHS, INCLUDING
ATTACHMENTS**

**EXHIBIT #2 SUPPLEMENTARY WITNESS STATEMENT OF
JENNIFER ANNE SALTER, COMPRISING 29 PARAGRAPHS**

PN33

Yes.

PN34

MS MORRIS: Thank you, Deputy President. Senior Sergeant Salter, in regards to your role, your current role at People Development Command, and there are two other Senior Sergeants within your unit, is that correct - - -?---Yes, that's correct.

PN35

Yes, and your unit or your current position, is the Probationary Constables Extended Training Program, is that correct?---That's correct.

PN36

Yes. The two other Senior Sergeants, they occupy fulltime, ongoing positions?---Yes, that's right.

PN37

And you were on reduced hours of 25 hours per week, is that correct?---Yes.

PN38

But are your responsibilities of leadership and management shared amongst the three senior sergeants?---Yes, that's right.

*** JENNIFER ANNE SALTER

XN MS MORRIS

PN39

In regards to professional standards investigations, in relation to sexual assault or family violence offences perpetrated by police officers - - -?---Mm'hm.

PN40

Is there a dedicated unit who investigates these matters?---As part of Professional Standards Command, there is, yes.

PN41

Yes?---There is now, yes.

PN42

Yes, and what is that unit called?---Sexual Offences, Family Violence Unit, maybe.

PN43

Yes?---SOFVU. I know the acronym. I know the acronym but - - -

PN44

So, there's an acronym that's used colloquially - - -?---Correct.

PN45

Called 'SOFVU'?---Yes.

PN46

Yes, and that stands for, 'Sexual Offences, Family Violence Unit'?---Yes, correct.

PN47

Yes. And your understanding is that if there's elements of criminality involved in regards to sexual assaults and family violence offending, it may be investigated by SOFVU?---That's correct.

PN48

Or it may be - - -

PN49

THE DEPUTY PRESIDENT: I'm not aware of any sexual assault or family violence that doesn't involve criminality.

PN50

MS MORRIS: Yes, that's correct. But if it doesn't amount to criminality then it may amount to - - -

PN51

THE DEPUTY PRESIDENT: Well, the question doesn't make sense.

PN52

MS MORRIS: Okay.

JENNIFER ANNE SALTER

XN MS MORRIS

PN53

THE DEPUTY PRESIDENT: The nature of a sexual assault or family violence is that in all cases it will involve criminality.

PN54

MS MORRIS: Yes. Thank you. Are you aware if either of your Senior Sergeant colleagues has been allocated bringing investigation of a sexual assault or family violence investigation in the time that you've been there?---No.

PN55

In your statement you state you were only aware of one investigation filed that was reallocated, but that you were not consulted about, was that correct?---That's right, yes.

PN56

And what was the allegation of that investigation filed, if you're aware of it?---I'm aware it was involving some predatory behaviour perpetrated by a Sergeant, you know, like a local police station. I know nothing other than that.

PN57

Yes, okay?---And that was after the reallocation, I was told that.

PN58

Yes. But you weren't spoken to about the allocation, whether you felt comfortable with being allocated that investigation file?---No. There was no consultation with me, no.

PN59

Is your understanding – does the PMO final advice preclude you from handling matters of workplace inappropriate behaviour?---No.

PN60

MR GAROZZO: I object to that. Well, the answer has already been given. Some of these questions that are being asked, the applicant has had an opportunity to put a couple of witness statements. Now we are sort of traversing matters that are already in evidence. I mean, the answer to that question is meaningless, in my submission, because it's a matter of Senior Sergeant Salter's interpretation of what's a piece of medical advice that will be a matter for the Commission to construe. But perhaps if I can just flag that if there's going to be more questions like that, I will object a bit more quickly.

PN61

THE DEPUTY PRESIDENT: Yes, all right. Ms Morris.

PN62

MS MORRIS: Thank you. Upon returning to work in 2019, can you detail to the Deputy President, the inquiries that you made about participating in the Senior Sergeants Qualifying Program?---Yes - - -

*** JENNIFER ANNE SALTER

XN MS MORRIS

PN63

MR GAROZZO: I object to that, as well, because it has since been dealt with in the reply submission, in the first paragraphs to the reply submission. If there is anything else that Ms Morris wants to ask Senior Sergeant Salter, that she hasn't had an opportunity to put in evidence, then I won't object, but otherwise we're just covering old ground, again.

PN64

THE DEPUTY PRESIDENT: In the reply statement, you mean?

PN65

MR GAROZZO: Yes, the reply statement, yes.

PN66

THE DEPUTY PRESIDENT: Yes. Yes.

PN67

MR GAROZZO: From paragraphs 2 to 5, paragraphs.

PN68

MS MORRIS: It's put in the reply statement that Senior Sergeant Salter was confirmed at rank, therefore there was no requirement for her to complete the Senior Sergeant's Qualifying Program. If that's accepted, I'll move on.

PN69

MR GAROZZO: Well, that's not accepted, but that's not my objection.

PN70

THE DEPUTY PRESIDENT: I think the point that's being made, is that if these matters you are now seeking to elicit were relevant, they ought to have been in the reply statement or the first statement. That's really the objection. That is, you're seeking to lead evidence from this witness that could have been included in one of her two statements, and it wasn't.

PN71

MS MORRIS: There is evidence in the statement, so I'll leave it there, but it's in the material. Thank you.

PN72

THE DEPUTY PRESIDENT: All right.

PN73

MS MORRIS: Since your time within the People Development Command as a Senior Sergeant, have you delivered classroom training?---I've assisted in delivering classroom training, yes.

PN74

And do you feel comfortable doing that?---Yes.

PN75

Just one moment. I have no further questions, thank you.

*** JENNIFER ANNE SALTER

XN MS MORRIS

PN76

THE DEPUTY PRESIDENT: Yes, all right. Thank you, Ms Morris. Mr Garozzo?

CROSS-EXAMINATION BY MR GAROZZO

[10.09 AM]

PN77

MR GAROZZO: Could I just have one moment, your Honour?

PN78

THE DEPUTY PRESIDENT: Yes, of course.

PN79

MR GAROZZO: Senior Sergeant Salter, I've just got a few questions for you. You mentioned just then in response to a question from Ms Morris, that you assisted in the provision of classroom training, is that right?---That's correct.

PN80

But you haven't actually performed the classroom training, yourself, directly?---No.

PN81

And you can't do that because you don't have the Certificate IV?---I can't deliver sessions that are part of a diploma. My work group delivers pre-deployment briefing sessions, post feedback sessions, and things like that, after field placements, and I assist in those sessions, yes.

PN82

Just drawing you back to the question, you don't, yourself, provide classroom training?---No.

PN83

And that's a component of the duties of the position of Sergeant Supervisor?---Correct.

PN84

Yes. When was the last time you participated in the Senior Sergeant Qualifying Program? If I was to suggest to you that it was in March 2021, does that sound about right?---I would need to refer to my own notes to confirm, but I take that, but- - -

PN85

It sounds about right?---I commenced the two day information, kind of, lead into the one week program that it was decided that I would participate in, and I would take – if that's the date then. I would need to refer to my notes, but I take that, yes.

*** JENNIFER ANNE SALTER

XXN MR GAROZZO

PN86

All right. Is that a copy of the court book in front of you? Thank you. Would you mind opening that for me, and just turning to your supplementary statement,

which is in court book page 151, and it's tab 5? Sorry, on page 151, which is paragraph 23 on the other page?---Mm'hm.

PN87

You give evidence there that you're prepared to undertake the Certificate IV?---That's correct, yes.

PN88

And you say that you never said that you cannot undertake the Certificate IV?---That's right.

PN89

In paragraph 22 above that, you say that it was the PMO's advice in November of 2020, that you shouldn't undertake the Certificate IV while you were undertaking the Senior Sergeant Qualifying Program?---That's correct. Her advice was to do one thing at a time, one component at a time.

PN90

So, you then say that enrolments in the course, in the Certificate IV course, were put on hold in February of 2022, due to - - -?---My enrolment, or?

PN91

No, no, no, sorry, enrolments in the Certificate IV program were put on hold in February 2022, because of a contract renegotiation?---Mm'hm.

PN92

It's in paragraph 22 where you give that evidence?---Mm'hm.

PN93

Are you aware, whether or not the Certificate IV program is actually still running, some modules are being offered, still?---That's correct. At the moment, yes.

PN94

Have you applied to undertake any of those modules?---I made inquiries a couple of weeks ago with our Quality Education Unit, and spaces are limited, so other members in my office and other people who are delivering classroom training now, are getting priority to commence that.

PN95

Okay?---That's the advice I've been given. And I know that with managing my own staff starting the program.

PN96

But have you applied to do it?---No, not on that basis, no.

PN97

Okay. Is there a reason why you haven't applied? Because presumably, in order to be admitted to the program you need to apply for it?---Correct.

*** JENNIFER ANNE SALTER

XXN MR GAROZZO

PN98

So, the Police Medical Officer's advice that I spoke about a moment ago, was in November of 2020. That is, that you shouldn't undertake the Certificate IV and the Senior Sergeant Qualifying Program at the same time, and this slow down of enrolments due to the renegotiation of the contract, happened in February 2022?---Mm'hm.

PN99

Why did you not complete the Certificate IV in the period between the last time you engaged in the Senior Sergeant Qualifying Program, which I think you said was March 2021, or you agreed with my suggestion got you that it was March 2021 and February of 2022?---Before negotiation – or before the contract – sorry, I'm sorry, I'm - - -

PN100

I'll reframe it?---I'm getting confused.

PN101

So, you get the advice from the PMO in November of 2020, right?---Mm'hm.

PN102

The last time you engage in the Senior Sergeant Qualifying Program is in March 2021. There's then a slow-down – there's then an interruption, you might say, of the enrolments in the Certificate IV in February of 2022?---Mm'hm.

PN103

What prevented you from applying for, and engaging in the Certificate IV between March 2021, when you last completed the Senior Sergeant Qualifying Program, and February 2022?---Involvement in this process, in - - -

PN104

In the dispute?---Yes.

PN105

Did you not think that it would assist you in the outcome of the dispute, to have applied for and participated, engaged in the Certificate IV?---Yes, but the dispute was my priority, as well, so I had to balance my involvement in both.

PN106

Is it the case that you thought if the dispute was successful, you might not have to engage in the Certificate IV?---No. No, not at all, no. I'm quite prepared to do that.

PN107

Okay, but just to confirm, since November, or I suppose I should say, since March of 2021, you haven't ever applied to undertake the course?---No.

*** JENNIFER ANNE SALTER

XXN MR GAROZZO

PN108

All right. On the next page down, so it's court book page 152, paragraph 24, you say, 'In regards to investigation files', so this is one of the matters that Ms Morris was just raising with you, and you say at the end there, 'I am more than happy to

be consulted in regards to allocation of files', that is, investigation files, 'and can manage my illness and limitations accordingly.' You then go on to give an example that you recently managed a report from a DTW, which is a designated training workplace, which is in your agreement?---Correct.

PN109

At DTW accredited site, where a probationary Constable alleged inappropriate behaviour and conduct by a Sergeant in the workplace. And you claim to have managed that report and to be ready, willing and able, effectively, to conduct more of those matters in the future, yes?---Correct.

PN110

But you weren't investigating that matter, were you?---Yes.

PN111

You weren't investigating the alleged inappropriate behaviour of the Sergeant towards the Senior Constable?---No, I wasn't investigating that matter, no. No, I wasn't investigating the report at the site. I was investigating how my work group would now manage that site, in terms of their accreditation status.

PN112

But that doesn't really address the issues that Commander McAlpine's raised in her statement, does it? Because the issues that she has raised, is your ability to be allocated files that deal with complex behavioural matters including, for instance, inappropriate behaviour or other matters that the PMO advice would prevent you from considering?---So, what - - -

PN113

Well, it doesn't address the issue that Commander McAlpine has raised in her statement?---My statement doesn't address the issue?

PN114

MS MORRIS: Which issue? If you could clarify which issue you're referring to?

PN115

MR GAROZZO: Okay. Bear with me, I'll take you to Commander McAlpine's statement. Can I take you to court book page 184, paragraph 54. Can you see that Commander McAlpine there is talking about your ability to conduct investigations, yourself, of a complex or protracted nature?---Of what theme? I mean, that - - -

PN116

Well, the sort of themes that are prohibited by the PMO advice?---There's many other themes. Those themes, yes, I have limitations in relation to those direct themes, but - - -

*** JENNIFER ANNE SALTER

XXN MR GAROZZO

PN117

All right, pausing there for a moment, do you accept that it forms part of the duties to be expected of a Senior Supervisor, to conduct investigations in relation to themes of that kind?---Yes, correct.

PN118

Yes?---And other kinds, also.

PN119

Yes?---I also hold an investigator qualification. Well, clearly, I've come from an investigative background.

PN120

Yes?---So that there's other crime themes - - -

PN121

Yes, of course?---Of investigations that I can be allocated, of a complex nature.

PN122

But themes involving major trauma, the PMO advice precludes you from dealing with?---Limits my exposure, yes, correct.

PN123

So, when, if I can take you back to your supplementary statement – the issue that I was attempting to raise with you, and I apologies if it was confusing, but in paragraph 24 you say, 'In regards to investigation files', so do I take it that you were referring to that aspect of Commander McAlpine's evidence? Court book page 152, paragraph 24, you say, 'In regards to investigation files needing to be allocated to Senior Sergeants and increasing their workload.' That's the matter that Commander McAlpine was just raising in that paragraph I took you to?---Right. Yes.

PN124

So, coming back to the question I asked, originally, given that background, the example that you give in paragraph 25 is not really addressing the point, is it?---No, because I accept I'm not investigating the incident that occurred between the Sergeant and the Constable at the DTW site.

PN125

Which you've accepted - - -?---I accept that, yes.

PN126

Is the sort of thing that would be expected of somebody in a Senior Supervisor role to be able to perform?---Yes. Yes.

PN127

Thank you. And it's the case that since you returned to work in 2019, you haven't conducted any investigations of that type?---No, that's right.

PN128

I don't have any further questions, Deputy President.

PN129

THE DEPUTY PRESIDENT: Yes, thank you. Is there any re-examination?

*** JENNIFER ANNE SALTER

XXN MR GAROZZO

RE-EXAMINATION BY MS MORRIS

[10.22 AM]

PN130

MS MORRIS: Just a couple of matters. Is it the case that you, as counsel have put it, have to apply to do the Certificate IV, or are you on a waiting list to do it?---No, there is an application process, and then there is a waiting list, and then there's a priority on that waiting list, yes.

PN131

Yes, so what steps have you taken to be enrolled, or apply to do the Certificate IV training?---Only a – like I said, a few weeks ago I made some email inquiries in relation to availability, and what information – what historic information was on record around my ability to do Cert IV.

PN132

Yes?---That's right.

PN133

And what was the result of that inquiry that you made?---The response was that the information on file with QED was as a result of conversations I'd had with Superintendent Rudd, also, that my involvement in Cert IV was on hold indefinitely, until – I guess, until all my confirmation, all the PMQP situation, all my return to work, till everything had settled - - -

PN134

Yes?---And everything was finalised, I guess. That was the response that I had, and I've – like I said, I'm waiting, I guess, for the outcome of this dispute and things like that.

PN135

Thank you. No further questions.

PN136

THE DEPUTY PRESIDENT: Yes, thank you. Senior Sergeant Salter, thank you for your evidence, you're excused?---Thank you.

<THE WITNESS WITHDREW

[10.24 AM]

PN137

Does that conclude the evidentiary case for the applicant?

PN138

MS MORRIS: It does, thank you, Deputy President.

PN139

THE DEPUTY PRESIDENT: Thank you, Ms Morris. Yes, Mr Garozzo.

PN140

MR GAROZZO: Thank you, Deputy President. Victoria Police calls Commander Andrea McAlpine.

*** JENNIFER ANNE SALTER

RXN MS MORRIS

PN141

THE DEPUTY PRESIDENT: Yes.

PN142

THE ASSOCIATE: Would you please state your full name and address for the record.

PN143

MS McALPINE: My name is Andrea Lee McAlpine, (address supplied).

<ANDREA LEE MCALPINE, SWORN [10.25 AM]

EXAMINATION-IN-CHIEF BY MR GAROZZO [10.25 AM]

PN144

THE DEPUTY PRESIDENT: Yes, thank you, Commander, take a seat?---Thank you.

PN145

MR GAROZZO: Deputy President, if I could seek leave to just ask a couple of questions arising from Senior Sergeant Salter's reply statement?

PN146

THE DEPUTY PRESIDENT: Yes, of course, but perhaps we might deal with her statement, first.

PN147

MR GAROZZO: Yes. Of course. Of course, sorry. Commander, have you filed a statement in this proceeding?---Yes.

PN148

Would you mind opening that court book in front of you, and turn to tab 8?---It doesn't have tabs, sorry. Can I have a page number?

PN149

It's eight hundred and - - -

PN150

THE DEPUTY PRESIDENT: Eight hundred and seventy?---Thank you. Yes. Thank you.

PN151

MR GAROZZO: Is that a statement comprising 60 paragraphs between page 117 and 185 of the court book? That's the statement you've made in this proceeding?---Yes, correct.

PN152

And there's 17 annexures to that statement, going right through to the end of the court book?---Yes. Yes.

*** ANDREA LEE MCALPINE

XN MR GAROZZO

PN153

Is it true and correct?---Yes.

PN154

I tender that, your Honour.

PN155

THE DEPUTY PRESIDENT: Is there any objection?

PN156

MS MORRIS: No, Deputy President.

PN157

THE DEPUTY PRESIDENT: Thank you. I will mark the witness statement of Commander Andrea Lee McAlpine, dated 22 March 2023, comprising 60 paragraphs and the annexures thereto, as exhibit 3.

EXHIBIT #3 WITNESS STATEMENT OF COMMANDER ANDREA LEE McALPINE DATED 22/03/2023, COMPRISING 60 PARAGRAPHS, AND ANNEXURES

PN158

Yes, Mr Garozzo.

PN159

MR GAROZZO: Thank you. Now, Commander, would you mind turning to page 147, and looking at paragraph 2 of this document – this is the supplementary witness statement of Senior Sergeant Salter, yes?---Yes, correct.

PN160

Have you read that?---Yes, I have.

PN161

At paragraph 2, Senior Sergeant Salter says that because while she was on WorkCover leave, in her absence she was confirmed at the rank of Senior Sergeant, and she says that this meant that the Senior Sergeant's qualifying program was not a mandatory requirement as she'd already been confirmed that she'd be treated as a professional development matter, do you agree with that?---Confirmation of promotion in these instances can be by default, if the person's not there or no action is taking, so my understanding is Senior Sergeant Salter's confirmation of rank was by default, because she wasn't at work at the time. But there is a section in the position description that actually talks about the qualifications, and it advises to qualify within 12 months, but it also says, 'Acquire and maintain the qualifications.' And my understanding is that if it's not acquired within the 12 months there's still an expectation that you will acquire and maintain, and if there are limitations to some of the content, as is the case here then you would acquire those elements that you could to maintain the position.

PN162

Thank you. Can I take you to page 204 of the court book?---Yes.

*** ANDREA LEE MCALPINE

XN MR GAROZZO

PN163

Commencing on page 203, and this is the position description for Senior Sergeant Salter's position. On page 204 at the bottom of the page, can you see it says under the heading 'Ongoing requirements':

PN164

These ongoing requirements are required to own this position. If they are not held or current at the time of appointment they must be obtained within the nominated time. Failure to require and maintain these qualifications may result in redeployment from this position.

PN165

Is that what you're referring to?---Yes.

PN166

And the third dot point of that is:

PN167

Applicants must have completed the senior sergeant qualifying program or qualify within 12 months of appointment.

PN168

?---Correct.

PN169

Thank you. I just take you back to Senior Sergeant Salter's supplementary witness statement, page 152 of the court book, paragraphs 27 to 29. Now, in these paragraphs Senior Sergeant Salter gives evidence that in her role she's required to deal with probationary constables in a number of scenarios, and that in those scenarios the probationary constables are often exhibiting a level of stress or distress or instability. Do you see that?---The role that Senior Sergeant Salter primarily has is about the accreditation of our training sites as opposed to the direct interaction with the probationary constables. So the other senior sergeants that have confirmation of appointment and those sorts of requirements have a greater role in terms of that direct contact to be able to ensure confirmation. The sergeants more so would be actually dealing directly with the individual members, and potentially reporting up to Senior Sergeant Salter, but ordinarily it would be the sergeants themselves that would deal with, and Senior Sergeant Salter's role is more of a governance administrative type role from that perspective in terms of probationary constables interaction.

*** ANDREA LEE MCALPINE

XN MR GAROZZO

PN170

Finally I just want to ask you a question about Senior Sergeant Salter's supplementary statement generally. She has included quite a lot of detail about her duties that she claims to perform in her position. Having read those claims does it change your view at all that she cannot be with her medical limitations accommodated in the position?---It doesn't - it doesn't change my view. If the limitations in isolation were things that we could accommodate, and we have been accommodating on I guess a temporary period while she was returned to work. If

they were individual then we could, but collectively, I guess accumulative there are a number of them, and for a senior sergeant in a role such as that we can't accommodate. Because as well as fulfilling her own duties and all of the elements expected of a senior sergeant there are proactive, I guess, expectations of a senior sergeant in terms of managing your own staff, managing their qualifications, demonstrating and role modelling their qualifications, their commitment to the programs, given we are in a training environment, completing the actual training programs that are relevant to the environment. The accreditation, because we are a registered training organisation and our trainers need to be accredited. And being able to undertake the files, et cetera, that you've referred to. So there have been instances where Senior Sergeant Salter has been given files in the past and not taken any action and not asked for assistance, not sought guidance, and so they've been reallocated. So there have been decisions made by managers based on her own reactions and actions where they haven't further allocated files. But there is an expectation that there would be - that senior sergeants at that level particularly are undertaking qualifications and responsibilities themselves without needing to be directed at that senior level.

PN171

Thank you. Thank you, Deputy President.

PN172

THE DEPUTY PRESIDENT: Yes, thank you. Cross-examination?

CROSS-EXAMINATION BY MS MORRIS

[10.34 AM]

PN173

MS MORRIS: Thank you. Commander McAlpine, you've had the chance to read the senior sergeant's supplementary statement dated 12 April 2023. You agree there are two other senior sergeants within the PCET program?---There are two other senior sergeants in that unit. They have different roles and responsibilities.

PN174

Yes. So they have different roles, responsibilities, portfolios, and you've given evidence today that Senior Sergeant Salter's portfolio, role, responsibility isn't one of the DTW accreditation and more of governance and administration; is that correct?---Mm-hm.

PN175

And the sergeants underneath her deal with issues as they arise and report up to her; is that correct? So she's providing leadership and management of those sergeants?---She has a role to provide leadership and management of those sergeants. In terms of her ability to provide leadership and guidance, or things that she can't undertake herself, or matters that may be sensitive, I would suggest is limited based on her own limitations.

*** ANDREA LEE MCALPINE

XXN MS MORRIS

PN176

In the correspondence between Victoria Police and the Association previously you said there were no performance issues raised in regards to her performance; is that correct?---This is not about performance, correct.

PN177

Okay. So when you say that she hasn't progressed a file and she hasn't been spoken to about her performance - - -?---So she was spoken to about those files at the time that they occurred.

PN178

Yes?---The question is we can manage it as an underperformance issue, but there's also, and it had been progressive return to work in capacity issue, so it's the - the query I guess is, is it underperformance or is it that Senior Sergeant Salter has an issue in terms of limitations and capacity and how far do we push those limitations and capacity to manage performance in a case where we would then put her health and wellbeing at risk.

PN179

Or is it an issue more with the amount of hours that she's working and the workload and allocation that she has? Has that been explored by Victoria Police?---No. The hours - we could - we could accommodate the hours if she could undertake the role of her duties.

PN180

In terms of the duties and what you term resourcing of workload pressures on the workplace have you spoken to her senior sergeant colleagues about this?---Me? Not directly.

PN181

Has any of your other managers within Victoria Police spoken to the other senior sergeants about resource and workload?---So the inspectors and the superintendents manage the resources on workload and the allocation of files. So I would expect they have. I have not asked that question.

PN182

So as far as you're aware there's been no issues raised from the other senior sergeants about workload or resource allocation in accommodating Senior Sergeant Salter's restriction?---The senior sergeants and the inspectors across foundation I know are under workload pressures, so I actually do know, and it's the broad cohort. So you're just focusing on the three there. But the allocation of those files are across that whole division, so it's not just those three senior sergeants. So it is about the workload of all of them, and they are under a lot of pressure and they are under a huge workload. So, yes, we are aware of that and they are having conversations about it.

PN183

Yes. So broadly there are workload and resourcing pressures across foundation training?---Correct.

*** ANDREA LEE MCALPINE

XXN MS MORRIS

PN184

So issues may come up where files aren't progressed and people need to be spoken to, but it hasn't been identified as a performance issue with Senior Sergeant Salter yet?---Could you explain that question a little more?

PN185

I'll withdraw and move on. Are there other members within People Development Command that for a variety of reasons, whether it be caring responsibilities or personal circumstances, who perform work on a part-time basis?---Yes.

PN186

Are there sworn members within People Development Command who are non-operational and who have been accommodated?---Yes.

PN187

Are you in a position to tell the Deputy President how many non-operational sworn members are working within People Development Command?---No. I don't have that detail, and it does change, because people have limited injuries or reasons why they can't perform operational duties, but then then would be able to perform other duties if required to backfill other people if they are deployed.

PN188

You state in your statement – I'll take you to page 182 of the court book. Have you found that?---Yes.

PN189

During an emergency response a significant amount of resources have been required to be provided from PDC in line with resource requests, including those of the police emergency response model –

PN190

THE DEPUTY PRESIDENT: Are you reading from paragraph 46?

PN191

MS MORRIS: 46, that's correct. The last line:

PN192

to supply resources to support an emergency response.

PN193

So I'll focus on the fact that PDC supports an emergency response. Is that correct?---Yes.

PN194

Could it be the case that if resources are required from PDC that they could be directed to an incident, a regional or a state policing operation centre?---Yes.

PN195

I'll take you to page 240 of the court book, which is the People Development Command Training Tier Response Plan?---Yes.

*** ANDREA LEE MCALPINE

XXN MS MORRIS

PN196

Is it correct that that document categorises foundation training, that is, the training of all recruits and probationary constables, as essential training?---Yes.

PN197

Has a tier 4 training suspension ever occurred, that is, the suspension of all training within Victoria Police?---Not in my time.

PN198

If a tier 4 suspension of training was to occur, that would be for a maximum of one month, is that correct, according to that document?---No. It's not to say that's the maximum. It's to say that there will be significant impacts the longer it is. So it's not that it - - -

PN199

Suggested maximum?---Yes. But to be honest, it's suggested that it's never.

PN200

Yes?---We actually never suspend.

PN201

Yes?---But if we had to, the longer these things happen, the greater the impact.

PN202

That's right, and that's because it's an organisation risk, is that correct?---Absolutely, as, I would suggest, all of those training programs.

PN203

So in your time the suspension of all training has never occurred?---Correct. I will say there, and I'm not quite sure what you're seeking clarity for, but there are trainers from within our staff from a number of those programs, even using that tiered model, but ones where the programs continue but trainers are still deployed. So we don't only take it from those programs that are stopped.

PN204

Okay. In regards to the completion of the Certificate IV, you've heard Senior Sergeant Salter's evidence today that when Superintendent Rudd first came to the division, she had a conversation with her and was told it was put on hold. You were here when Senior Sergeant Salter gave evidence of that. Are you aware of that discussion or any discussions that were had at that time?---Yes, and I've seen the email from Senior Sergeant Rudd, which referred to that, and that was based on the PMO advice, which essentially said for her to complete the PMQP requirements first and then be able to do the Cert IV.

PN205

SSQP and PMQP, they're the same thing?---Yes, sorry, they are the same. My apologies, yes.

*** ANDREA LEE MCALPINE

XXN MS MORRIS

PN206

Yes, sorry. I know we get stuck in acronyms, but is it now called the Senior Sergeants Qualifying Program, or it's now called the PMQP, Police Managers?---PMQP.

PN207

So subsequent to Senior Sergeant Salter not being able to complete the SSQP and the Cert IV, were there any discussions with the PMO about that being facilitated?---Not with the PMO, no. The PMO had given final advice, which was just that in consultation with Senior Sergeant Salter, and depending on her ability to participate and complete those programs would be I guess the determination about whether she continued with those programs and when she could move over to the other program.

PN208

So you agree the final advice from the PMO was that to support Senior Sergeant Salter regarding balancing her work and study commitments as negotiated with her?---(No audible reply)

PN209

What conversations were had with her during that time to support and facilitate her doing those courses?---There are a number of from PMQP, or SSQP. There were a number of offers made by that program of ways that the course could be adjusted so that she could undertake it. So there are requirements where they do group assignments, et cetera, and stakeholder engagement, and they, in support of Senior Sergeant Salter, they offered that she could do her own individual program and assignment to reduce that pressure. She could break up the attendance at the intro days and the qualifying days. She was offered an extension on assignments. So there were a number of offers made, which subsequently Senior Sergeant Salter did not pursue or take up, and has not further progressed, and then has not, because she's not progressed those - and my assumption is she's never rolled over and then enrolled into the Cert IV. As she said before her recent inquiry about it, there's been no effort. She's never been put on a list; never made inquiries about herself participating in that program.

PN210

Yes, but you agree in her statement she details the ad hoc nature of her enrolment on the SSQP, so in the normal order of things, attendees would attend for a week block, is that correct, whereas she doesn't have the capacity to do that. So you agree in your statement she said it was broken up?---It was broken up, and she could absolutely, and they offered a number of other dates where she could complete the others and would be supported to complete the others. Absolutely.

PN211

In regards to – you've given evidence today that the SSQP, there were limitations as to content. What do you mean by that?---I'm sorry, I gave evidence saying there were limitations of content?

PN212

Yes?---In the context of what? I'm sorry, I don't recall.

*** ANDREA LEE MCALPINE

XXN MS MORRIS

PN213

I'm asking the question, it was around the SSQP, you said there were limitations to content. Is there content on that course where - - -

PN214

MR GAROZZO: I object. That's not my recollection. I can't remember anything about limitations on content.

PN215

MS MORRIS: I made a note, but I'll move on if you don't immediately recall?---I don't, sorry.

PN216

Sorry, if I can have a minute?

PN217

THE DEPUTY PRESIDENT: Yes.

PN218

MS MORRIS: I have no further questions. Thank you.

PN219

THE DEPUTY PRESIDENT: Is there any re-examination?

PN220

MR GAROZZO: Just one question, Deputy President.

RE-EXAMINATION BY MR GAROZZO

[10.47 AM]

PN221

MR GAROZZO: Ms Morris asked you about whether there were any other non-operational members in the division, and you said that there were. Do you remember that?---Yes.

PN222

And you said that when other members became operational, it was important that those members were able to backfill the non-operational duties of those members?---Correct.

PN223

Is Senior Sergeant Salter able to do that effectively, that is, to backfill?---No. No, because she doesn't have a training qualification, she can't instruct or train by herself, which is a primary role obviously at People Development Command. Investigations, other things, doing the supervisory duties, doing the operational supervision of the site, all of those things, that would be done by the operational members that are deployed, need to be backfilled, and she can't undertake those duties.

PN224

Thank you. Nothing further.

*** ANDREA LEE MCALPINE

RXN MR GAROZZO

PN225

THE DEPUTY PRESIDENT: Yes, thank you. Commander McAlpine, thank you for your evidence. You're excused.

<THE WITNESS WITHDREW

[10.48 AM]

PN226

THE DEPUTY PRESIDENT: Yes, Ms Morris, do you want a few minutes to gather your thoughts?

PN227

MS MORRIS: Yes. I was wondering if we could have just a short break, Deputy President.

PN228

THE DEPUTY PRESIDENT: That's fine. We'll adjourn till 11 o'clock.

PN229

MS MORRIS: Thank you.

SHORT ADJOURNMENT

[10.48 AM]

RESUMED

[11.02 AM]

PN230

THE DEPUTY PRESIDENT: Yes, Ms Morris?

PN231

MS MORRIS: Thank you, Deputy President. The placement of Senior Sergeant Salter into her current position at the PCET program was only expressed as temporary when Victoria Police sought to redeploy her first via the maximum time in position process and then pursuant to clause 119.10.

PN232

Senior Sergeant Salter and her medical restrictions have been accommodated in her current position from February 2019 until the current day and there's no reason why this should not continue.

PN233

Victoria Police submit that all is required pursuant to clause 119.10 is an assessment by Victoria Police whether Senior Sergeant Salter can be accommodated in her current position.

PN234

It's the PFA's submission that this is incorrect, as the clause goes further to stipulate whether duties can be modified to accommodate the employee's limitations or restrictions.

PN235

Victoria Police assert it's not sufficient to contend that Senior Sergeant Salter is capable of performing a modified form of her position. This is exactly what clause 119.10 is instructing the employer to do, modify the duties performed by

the employee in their current position to accommodate the employee's limitations or restrictions. The PFA submits clause 119 must be read in the context of anti-discrimination law.

PN236

When interpreted, having regard to context, the agreement, viewed as a whole, and purpose, the mission statement, the Victoria Police is committed to a healthy and productive workplace and one that creates a diverse workforce and recognises diversity in the context of, amongst other things, gender, age and disabilities. This demonstrates a clear commitment to accommodate employees with restrictions in their existing roles.

PN237

The PFA rejects Victoria Police's submission that the senior sergeant is only performing a minor proportion of the duties of her position. We further reject that Victoria Police purport - is an inability to perform key aspects of her position. The completion of the SSQP program was offered to Senior Sergeant Salter as professional development and never expressed as a mandatory requirement. She remains ready, willing and able to complete that program.

PN238

Senior Sergeant Salter's medical restrictions do not preclude her from classroom training. Victoria Police's own inability to contract a cert IV training and assessment provider has precluded her from doing so. She, again, is ready, willing and able to complete this training.

PN239

Senior Sergeant Salter's medical restrictions do not preclude her from the allocation of professional standards investigations or suitability files. She has dealt with many of these files.

PN240

The remaining aspect, that Senior Sergeant Salter is unable to perform is operational policing duties as required, the operational policing duties is the minor proportion of the duties of the position and reasonable adjustments can be made by Victoria Police.

PN241

Senior Sergeant Salter can perform duties to support an emergency policing response across Victoria and she can also perform the critical function of maintaining core and essential training functions, which are maintained at all times to ensure business continuity, as evidenced by Commander McAlpine in her evidence today. The on-boarding and the training of recruits does not cease in the event of an emergency.

PN242

Victoria Police's own document titled People Development Command Training Tier Response Plan categorises foundation training, the training of recruits and probationary constables, as essential training which is only suspended as a last resort and hasn't occurred yet.

PN243

The PMO was well aware of senior sergeant's role in providing her final medical advice in regards to the medical limitations and the inherent requirements of Senior Sergeant Salter's substantive position. The PMO's final advice was, 'Member's preference is to remain at the police academy, and this is medically supported.'

PN244

Having regard to Senior Sergeant Salter's current position and recommendations of the police medical officer, the question is Victoria Police able to redeploy Senior Sergeant Salter to an alternative position within Victoria Police, we submit the answer is no. Thank you, Deputy President.

PN245

THE DEPUTY PRESIDENT: You don't want to deal with the jurisdictional issue now - or you want to deal with it in reply?

PN246

MS MORRIS: Yes, that's correct. Thank you, Deputy President.

PN247

THE DEPUTY PRESIDENT: All right. Yes. Mr Garozzo?

PN248

MR GAROZZO: Thank you, Deputy President. I don't have any submissions to make on the jurisdictional issue beyond what's in the written submission so I refer to that unless there are any questions which I can - - -

PN249

THE DEPUTY PRESIDENT: Mr Garozzo, does Victoria Police say I don't have jurisdiction to deal with the matter?

PN250

MR GAROZZO: It says that it appears, based on the Referral Act and the exclusions from the referral of jurisdiction to Commonwealth and the excluded matters, being transfer and mental and physical fitness, that this dispute falls squarely within there, and it's difficult to characterise it otherwise, in my submission.

PN251

THE DEPUTY PRESIDENT: Yes. So to be clear, yes, it - - -

PN252

MR GAROZZO: Yes.

PN253

THE DEPUTY PRESIDENT: Yes. Fine. Because the written submission wasn't that forthright.

PN254

MR GAROZZO: Yes. I - - -

PN255

THE DEPUTY PRESIDENT: I understand why.

PN256

MR GAROZZO: Yes.

PN257

THE DEPUTY PRESIDENT: But, you know, you need to state your position.

PN258

MR GAROZZO: On your request, I would say that, yes, that's my submission.

PN259

THE DEPUTY PRESIDENT: Yes. I understand. Thank you.

PN260

MR GAROZZO: The merits of this dispute are about one thing, which is whether it's reasonably open to Victoria Police to determine that Senior Sergeant Salter's medical restrictions cannot be accommodated in her current position as senior supervisor.

PN261

For the reasons that follow, I submit that the Commission can be satisfied that the decision that's been made by Victoria Police in that regard was reasonably open and the Commission should therefore decline to disrupt that decision or intervene in it.

PN262

Our submissions will cover four topics. Firstly, what clause 119.10 of the enterprise agreement requires, secondly, what the evidence says about Senior Sergeant Salter's medical restrictions, thirdly, the impact that those restrictions have on her ability to perform the duties of that position, and fourth, the assessment that's been made by Victoria Police that those restrictions can't be accommodated.

PN263

Clause 119.10 is extracted in paragraph 48 of the respondent's submission. It says as follows:

PN264

On receipt of the recommendations of the police medical officer, Victoria Police will first assess whether the employee's limitations or restrictions, if any, can where practicable, be accommodated through modifying the duties performed by the employee in their current position.

PN265

119.11 is the one that provides that:

PN266

Where those medical limitations cannot be accommodated, Victoria Police will attempt to identify, as far as practicable, any alternative position which can be accommodated.

PN267

You'll see from this that what is required is an assessment to be made by Victoria Police. As Ms Morris has identified, Victoria Police's position is that assessment, which is important - and I'll come back to this later, but it's for Victoria Police to make the relevant assessment and for the Commission to determine on an objective basis whether or not that assessment was open to it.

PN268

I submit, and I won't go into it, but for the reasons given in the written submission, that the references to extraneous concepts that come from Equal Opportunity legislation in different contexts is liable to distract, most importantly because the tests generally call for an objective assessment of what are reasonable adjustments here.

PN269

In my submission, it's for Victoria Police to make an assessment subjectively and for the Commission to determine objectively whether or not that was open to it. They don't need to be determined, the objective assessment, by reference to the evidence, to which I now turn.

PN270

As has come out in the evidence, Senior Sergeant Salter suffered a serious injury in February 2017 that rendered her incapable for work. She was then off work indefinitely from February 2017.

PN271

In October 2018, so roughly just over 18 months later, for the whole period of which she had been absent, Senior Sergeant Salter was referred to the police medical officer for an assessment of her ability to safely perform the duties of her position.

PN272

She then returned to work in February 2019 on a graduated return to work plan, working limited duties of four hours per week, graduating to 25 hours per week, which is the amount of hours that she's working now.

PN273

On 16 August 2021, after a lengthy process of assessing Senior Sergeant Salter's fitness for work, the PMO handed down her final advice. I'll take the Commission to that. If you could turn, please, to tab 8, page 207, which is exhibit ALM4.

PN274

THE DEPUTY PRESIDENT: Yes.

PN275

MR GAROZZO: As you'll see, Deputy President, on that first page, right in the middle where there's the X in the box, it makes clear that this is the final advice and that the examination of Senior Sergeant Salter's capacity has concluded.

PN276

A few pages down, on page 211 of the court book, part 4, which deals with the employee's work capacity, the police medical officer says - the chapeau to the table says:

PN277

Under the provisions of the Victoria Police Enterprise Agreement, I consider the employee -

PN278

- and then third box down -

PN279

- has capacity for work with permanent limitations and can return to the position, with the limitations set out in attachment B, where applicable.

PN280

Onto 212, some questions are answered:

PN281

Is the employee safe to perform the inherent requirements of their position or an alternative position, as indicated above?

PN282

The police medical officer has advised:

PN283

Fit for non-operational work up to 25 hours per week, otherwise in accordance with general practitioner instructions, spread over three to four days at the police academy.

PN284

The third sentence there:

PN285

The member should not be exposed to family violence or sexual assault matters in any of her work. Support regarding balancing work and study commitments as negotiated with the member.

PN286

Moving down, question 2, the third sentence:

PN287

Non-operational work.

PN288

Question 3:

PN289

For what period of time do the restrictions apply?

PN290

Answer:

PN291

Indefinite.

PN292

Moving down to attachment B, which is where the assessment of the relevant work limitations is set out, that's on page 215 of the court book.

PN293

You'll see, Deputy President, that there's a key at the top of the page where what are called the work capacity codes are set out, A, B, C, D, E. A means able to perform the task, B and C means can perform the task subject to certain qualifications, E means not assessed at this review, but D means unable to safely and/or effectively perform the task.

PN294

The assessment is broken down into a series of categories, so dealing with operational general policing duties, you'll see that either the matter was not assessed or Senior Sergeant Salter has been assessed as unable to safely and/or effectively perform a task. So these are things like driving, pursuing individuals involving running.

PN295

Over the page, at 216, nothing assessed, but in the box at the bottom of every table the PMO is saying, 'Non-operational work', 'Non-operational work', 'Non-operational work'.

PN296

In relation to nervous system, sensory and communication functions, communicating in noisy environments, including using a police radio, et cetera, there's a D.

PN297

There's a couple of Bs, maintaining awareness of surroundings and communicating or concentrating on other issues, et cetera, but you can see that for the purposes of non-operational work - and I should say; it's not controversial, it's not in issue, Senior Sergeant Salter is not fit for that work.

PN298

Moving down to page 219, mental and psychological function, the first item there is assisting and managing victims of crime or disasters. There's a B with an asterisk, and in the 'Additional comments, if any' section at the bottom, it says:

PN299

Avoid sexual assault and family violence matters. Avoid major trauma.

PN300

Back into the table, the second column, managing incidents involving significant conflicts and aggressive people, emotional distress, transport accidents, domestic violence, child abuse, public disturbance, street fights, industrial accidents, significant violence, 'D. Unsafe to perform.'

PN301

Examining, collecting evidence at the scenes of accidents of crime, this is back into the operational stuff so that's a D, and then there are matters that might occur in the course of office work, such as prioritising tasks effectively and making decisions under pressure, sound cognitive and memory function, including reasoning and planning skills, and there's a B for both of those.

PN302

On page 220 - I won't go through each one of these miscellaneous functions, but you can see that again the PMO is saying in the box at the bottom of the first table:

PN303

Non-operational work. Avoid sexual assault and family violence matters. Avoid major trauma.

PN304

And in terms of working hours, which is in the next table, second column, adapting to regular shift changeover and protracted investigations not conducive to regular scheduled breaks, and that's a D, 'Unable to safely perform'.

PN305

Again, and this is the final comment:

PN306

Non-operational work up to a maximum of 25 hours per week -

PN307

- et cetera.

PN308

In terms of the position of senior supervisor that Senior Sergeant Salter holds and the impact of those limitations on those duties, if I can take the Commission to exhibit ALM2, which is on page 200. This is the current position description for the position of senior supervisor.

PN309

Under the first heading of Special Requirements, I'll take the Commission to the relevant ones. The last bullet point on the page:

PN310

In accordance with the enterprise agreement, the Victoria Police Manual, the Emergency Management Act and the Senior Sergeant Qualifying Program, you will be required to provide supervision, leadership and oversee OHS requirements, undertake operational patrol duties, but not limited to taking control of crime scenes -

PN311

- so that's operational work -

PN312

- participate in professional development and ensure staff development and training requirements are identified and met.

PN313

Over the page, under the heading Position Duties, again, only relevantly, paragraph 1 says:

PN314

Lead and manage the relevant centres in a diverse range of quality research and analysis, policy development services, governance and/or continuous improvement in the domain and applied policing to establish and build upon best practice.

PN315

Paragraph 3:

PN316

Manage and deliver high quality instruction to students in a classroom and other learning environment.

PN317

Paragraph 8:

PN318

Perform duties as required in support of emergency management arrangements.

PN319

And 9:

PN320

Perform operational duties in support of general policing and other frontline policing as required.

PN321

Under the heading Ongoing Requirements, these ongoing requirements are required to own the position. I took Commander McAlpine to these in her evidence:

PN322

If they are not held or current at the time of appointment, but they must be obtained within the nominated time. Failure to acquire and maintain these qualifications may result in redeployment from this position.

PN323

The first one is successfully completing and maintaining OSTT, which is Operational Safety and Tactics Training qualification. That's the qualification that enables a member of Victoria Police to be operational, and noting that the last few words of that dot point are:

PN324

Unless certified medically unfit to do so.

PN325

Bullet point 2, a silver class driving authority, or qualify within six months. The evidence is that Senior Sergeant Salter has that driving authority but she can't use it because she's not certified to drive - that is, 'not certified', I mean the PMO's advice is that she can't, safely.

PN326

Thirdly, applicants must have completed the SSQP, which is the Senior Sergeant Qualifying Program, or qualify within 12 months of appointment.

PN327

And 4 is qualified in the certificate IV in training and assessment or equivalent or prepared to qualify within 12 months. That's the cert IV, certificate IV, that had some attention in the evidence.

PN328

So what does the evidence say that she can do? Going to the start of Commander McAlpine's statement on page 170, behind tab 8, and then, sorry, to the 10th page of that, which is page 180 of the court book, paragraph 36, here Commander McAlpine gives the reasons for Victoria Police making the assessment that it has, that Senior Sergeant Salter's medical restrictions can't be accommodated.

PN329

The first thing to point out is that Senior Sergeant Salter is unable to conduct training. That's the classroom training that I referred to a moment ago which was a key duty of the position.

PN330

It came out in evidence of Senior Sergeant Salter this morning that she assists in that training, and as I put to her in cross-examination and as she accepted, the position requires a person in the position of senior supervisor to actually directly conduct the training themselves.

PN331

That's the classroom teaching, and as Commander McAlpine said, it's important that somebody in the position of a senior supervisor in this unit themselves lead the unit by performing that teaching themselves.

PN332

Senior Sergeant Salter can't do that, that is, she can't complete the training herself directly, and so she can't utilise her skills and experience and portray it to the students that are taught in this area (1) because she doesn't have the certificate IV. So as Commander McAlpine said, they're a registered training organisation, so that certificate is necessary if the training is going to be conducted.

PN333

But, secondly, because to the degree that they come up in training, she has to avoid - I withdraw that.

PN334

Senior Sergeant Salter claimed that she's prepared to undertake the training, as I think was demonstrated in evidence this morning.

PN335

THE DEPUTY PRESIDENT: Sorry, Mr Garozzo, just to be clear, the inability of Senior Sergeant Salter to undertake training as opposed to assisting in the provision of training is a product exclusively the result of her not having the certificate IV.

PN336

MR GAROZZO: Yes.

PN337

THE DEPUTY PRESIDENT: So there's no medical restriction, as such.

PN338

MR GAROZZO: No. The medical restriction appears to come in in her obtaining the certificate IV, and the barrier there appears to be because she can't obtain, pursuant to the PMO's advice, both the Senior Sergeant Qualifying Program qualification at the same time as doing the certificate IV. It's been put off. She's now returned to work, coming up on five years ago, and neither of those two qualifications have been obtained. So it's a bit of a Catch-22 situation.

PN339

THE DEPUTY PRESIDENT: The limitation is on doing both at the same time, not on doing them sequentially.

PN340

MR GAROZZO: Yes.

PN341

THE DEPUTY PRESIDENT: Yes.

PN342

MR GAROZZO: The sequential issue is, as Ms Morris addressed with Commander McAlpine, that there's been a preference by Victoria Police that the Senior Sergeant Qualifying Program be completed first, because it's a threshold requirement for attainment of the rank that she has.

PN343

THE DEPUTY PRESIDENT: Yes.

PN344

MR GAROZZO: But in any event, in the circumstances, given the time that's passed, there's no good reason to think, based on the evidence before the Commission, that Senior Sergeant Salter would be able to complete the certificate IV training any time soon.

PN345

The second major issue is operational duties. It's uncontroversial, as I've said, that she can't do it. The requirement for a senior supervisor, a person holding the rank of senior sergeant, to be able to be deployed operationally is, even in

circumstances where, as here, the position itself, the main duties of that position, are non-operational, as Commander McAlpine says in paragraph 43 of her statement, which is on page 182 of the court book:

PN346

The requirement is real. The need to utilise those resources are not remote.

PN347

Since Commander McAlpine says in paragraph 44:

PN348

To effectively deliver policing services throughout the state of Victoria including as part of any emergency response, Victoria Police must be able to do two things: firstly, to deploy the sworn officers to assist with front-line policing duties and/or operations responses - - -

PN349

- - - which is what I've just been speaking about. There's another aspect to it, which is to be able to ensure that central duties of Victoria Police can continue to be performed while other officers are out on the frontline or performing operational duties themselves. That's the distinction here between somebody in the position of Senior Sergeant Salter, who can't be deployed operationally and any other officer of Victoria Police who can be deployed operationally but who otherwise can backfill the full suite of duties of the officers who are deployed, if that makes sense. So they're sort of – there are two stressors on resourcing that occurs by virtue of Senior Sergeant Salter's operational and non-operational incapacity.

PN350

Commander McAlpine goes on to give evidence in paragraph 45 – I don't need to go into it in detail. It's probably a matter on which the Commission can take judicial notice at this point, but the need to officially deploy police officers and emergency services resources has been well-evidenced over recent years, and the testing of those resources has never been more significant and the requirement to respond to those tests, never more important. In scenarios where the resources are tested, as Commander McAlpine says at paragraph 46, Victoria Police needs all of the operational resources that are available to properly respond and render assistance to the community.

PN351

During an emergency response a significant amount of resources have been required to be provided from PDC in line with resource requests, including those of the police emergency response model. Over the page on page 183 of the court book, at the bottom of paragraph 47, Commander McAlpine says:

PN352

These resourcing demands within the command (that is people development command) these resourcing demands can put the command under significant pressure in order to meet the competing needs to both deploy resources operationally and to ensure the running of core programs within PDC.

PN353

So that's that dual stress that I spoke about a moment ago. Now, if I can take the Commission to page 77 of the court book, to Senior Sergeant Salter's original statement, paragraphs 14 and 15, which is on page 77, starting at paragraph 14, Senior Sergeant Salter's response to this concern of Victoria Police is that – well, she says:

PN354

PDC also provide members more broadly (so she recognises that) to operational situations and events were needed to facilitate an emergency and/or planned response.

PN355

She gives some examples. She says at the bottom of the paragraph:

PN356

Members are asked to volunteer in the first instance. If there are no volunteers, members will be directed to deployments.

PN357

She says this very rarely occurs as there has always been sufficient volunteers. Then in paragraph 15:

PN358

In all instances where PDC is required to provide an operational response there is a cohort of PDC members who are unable to fulfil this requirement due to personal reasons at the time, including caring, parenting responsibilities for children or other family members – not to say these members don't make up for their responsibilities at other convenient times. However, there are most often enough volunteers to cover any required deployment. Now, that point of view or perspective in my submission fails to confront the following facts: first is that if you have fewer operational resources available, it puts more pressure on those who can be operational to volunteer and of course people at the rank of senior sergeant, that is a fairly high managerial rank or a very high one – might be expected to put their hand up.

PN359

But they're being drawn from a smaller pool of resources if there are more operational resources falling back. So that's a significant resourcing issue. Secondly, if there aren't enough people who put their hands up as Senior Sergeant Salter's evidence does concede, Victoria Police requires that baseline ability to redeploy people and so you come back to the same issue. that's where the resourcing issue really bites. There needs to be people who are operational that can be redeployed and then there's that additional compounding factor again: once you've redeployed the people that can be – sorry. Once you deploy the people who can be deployed operationally, you then need a cohort of people back at command performing the day to day tasks of the unit in order to make sure that those essential services continue to operate.

PN360

So that's operational duties. Dealing with non-operational duties – I've already spoken about classroom teaching. As a significant portion of the duties of the position and noting that it's a teaching educational division, a major difficulty that arises in respect of Senior Sergeant Salter, which is that she is unable to be allocated complex or protracted files for investigation, so this is a non-operational duty that Commander McAlpine gives evidence about being essential to the role of a senior supervisor. If I can take the Commission to court book 184?

PN361

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN362

MR GAROZZO: Paragraph 54, Commander McAlpine says:

PN363

Further, to accommodate this limitation (and this is the limitation identified by the PMO that Senior Sergeant cannot deal with certain prohibited deems) PCET management have been required to re-allocate files and investigations away from Senior Sergeant Salter. That increases the workload required to be managed by others within her work unit.

PN364

Commander McAlpine reconfirmed that this morning.

PN365

Whilst Senior Sergeant Salter is able to manage day-to-day portfolio tasks in line with her modified duties she is not able to manage files of a more complex or protracted nature that may deal with content that she is limited from considering and that that increases resourcing pressures on other senior supervisors within the key PCET program.

PN366

Now, it took a little while in questioning with Senior Sergeant Salter this morning, maybe due to I think lack of clarity in the questioning, but eventually we got there: it is a fundamental requirement of the position of Senior Supervisor to be able to perform investigations of that kind. Senior Sergeant Salter did accept that, consistent with the evidence of Commander McAlpine. Paragraph 55, Commander McAlpine says:

PN367

Senior Sergeant Salter is also required, as part of the special requirements of her position, to provide supervision, leadership and oversee OHS requirements.

PN368

Commander McAlpine says these are day to day duties required of a senior supervisor in Senior Sergeant Salter's position. Given her limitations, on exposure to certain content she is not able to handle any training materials regarding operational details relating to a range of operational fields, which can include but not limited to transport accidents, et cetera. These are the matters that were dealt with in the PMO report. Senior Sergeant Salter cannot use these materials as a

part of research, analysis and policy development, which is a key requirement of her position description.

PN369

Finally, in relation to non-operational matters, Commander McAlpine refers to the ranking of D, that is unsafe to perform the duties in the PMO advice in respect of mental and psychological functioning, meaning that Senior Sergeant Salter is unable to safely or effectively perform the task of managing incidents - and I detailed this before - involving significant conflict and aggressive people and dealing with emotional distress. And Commander McAlpine expresses a concern that in day to day issues from lower-ranking members, Senior Sergeant Salter may not be fully equipped or able to deal with those situations and Senior Sergeant Salter has given evidence in reply or in her supplementary statement to the effect that she does deal with probationary constables who might be stressed or exhibiting a certain level of distress or instability.

PN370

It doesn't again really answer the concern about what happens when we're dealing with a significant level of emotional distress such as to call into question this inability to manage incidents of that kind, as the PMO has called into question. Excuse me - as the PMO has advised that Senior Sergeant Salter cannot do. Now, in response to these concerns about the limitation on her duties, in her statement - and again to some degree in the witness box this morning - Senior Sergeant Salter expresses a point of view that I submit is somewhat unsatisfactory, with respect, which is that - and if I can take the Commission to court book 79 - excuse me, 78, and paragraph 21.

PN371

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN372

MR GAROZZO: Senior Sergeant Salter says: 'Assistance Commissioner Casey' - so this is when the issue of inability to accommodate medical restrictions first came up:

PN373

Assistant Commissioner Casey also questioned my capacity with other day to day requirements of my senior sergeant position, being exposure to and interaction with all manner of operational issues, events and training materials. Whilst the PMO final advice recommends that my exposure to family violence, sexual assault and child exploitation matters should be avoided it does not direct that I be exempt from exposure to these themes and/or reports or inquiries of the same nature.

PN374

Then over the page on 79 at paragraph 25 Senior Sergeant Salter says that:

PN375

Whilst I respect this is Commissioner Casey highlighting his concern regarding operational themes and so on, my treaters are aware of the exposure I do have and the concession by all is that these themes, reports, incidents,

investigations are part of daily policing anywhere in our organisation and I wouldn't be signed off to work in Victoria Police if it wasn't armed with the tools to manage this work and exposure.

PN376

There's a number of issues with that. Firstly, it's contrary to the only medical evidence which is before the Commission, which is the PMO's report or PMO's final advice, in which it is said that the only reason – the only way that Senior Sergeant Salter can continue to work is if she is not exposed to the themes that are identified in the advice. So it's contrary to the medical evidence. She's got permanent limitations but ability to perform non-operational duties where those themes are not encountered. But moreover, it's unsatisfactory, as I said before, in Victoria Police's view for it to be expected to sit back and allow Senior Sergeant Salter to manage exposure to these themes on her own.

PN377

Victoria Police obviously has a duty of care to Senior Sergeant Salter and statutory responsibilities in that regard in relation to her safety at work and it refuses to approach this matter on the basis that Senior Sergeant Salter will perform whatever duties come at her in the course of her position and she can just – she has the tools to manage the potentially very significant consequences that could flow from exacerbation of her mental injury. I probably don't need to take the Commission to it but that sentiment is stated by Commander McAlpine at paragraph 53 of her statement on page 184 of the court book. Perhaps I'll just briefly read it out:

PN378

The PMO advice clearly states that Senior Sergeant Salter should not be exposed to this content. Victoria Police considers that in doing so, it (by which I assume she means that if that were to occur) this may risk an aggravation of her workplace injury and so will not allocate Senior Sergeant Salter work or tasks that contradict clear PMO advice, despite her assertion that she is not restricted in considering this content and can manage this.

PN379

So where does that leave things? Senior Sergeant Salter is performing modified duties as can be seen from the reply statement, where Senior Sergeant Salter fleshes out what she is doing on a day to day basis. Those modified duties are not insubstantial. Victoria Police doesn't mean to suggest that they are. There is no suggestion that she's not contributing in a meaningful way and Senior Sergeant Salter has evidently performed her modified duties well since she has returned to work and she deserves credit for that. The issue is, is that – and the nub of this dispute – is that there are key, significant operational and non-operational duties of the position that Senior Sergeant Salter is simply unable to perform on the basis of the medical evidence, as I've just gone through.

PN380

And as Commander McAlpine has stressed again this morning, while those limitations have been filled in since Senior Sergeant Salter's return to work, by utilising the resourcing of others within the command, for a number of years all the while in the hope that things may improve, this has not been able to occur. So

we are where we are and Victoria Police is in a position where it has to carry through its decision that the limitation, the medical limitations identified in the PMO's report, can be accommodated no longer. Final point I'll make is in relation to the assessment by Victoria Police. To a large extent I've already covered it so I'll be brief but Commander McAlpine is the person with responsibility for making this decision. She has 28 years of policing experience, having commenced as a constable in 1996 and working her way through the position of commander.

PN381

She is second in charge of people development command below Assistant Commissioner Kevin Casey. A summary of her experience is provided in a variety of operational and non-operational contexts over those 28 years in paragraph I think 4 in court book page 170 and 171. Commander McAlpine's experience, in my submission, makes her an eminently qualified person to make an assessment of the operational and non-operational requirements of the senior supervisor position and to determine whether it is reasonably practicable to accommodate Senior Sergeant Salter's medical limitations in that position. The Commission has heard from her this morning. She was, as one might expect, a highly credible witness. In my submission her evidence is thoughtful and measured and she demonstrated that she had really given a lot of thought to the position, knows the situation well and the details of what Senior Sergeant Salter can and cannot perform and where that leaves her in terms of being able to fulfil the duties of the position.

PN382

What Commander McAlpine has given is a realistic assessment of what this role and this workplace and this organisation requires in terms of the position of senior supervisor and her determination has been on behalf of Victoria Police that Senior Sergeant Salter cannot continue to be accommodated in the position. I submit that the Commission should accept that evidence. Now, I'll conclude – I won't go back to the authorities about managerial prerogative and such as the XPT case. They're all included in the written submission. What is clear from the authorities is the Commission should only interfere with an exercise of managerial prerogative where the exercise is unjust or unreasonable. Here in my submission that's clearly not the case.

PN383

There is a logical and rational basis and an intelligible justification for the decision. There has been no – and I don't understand it to be suggested that there has been – any procedural unfairness to the applicant in arriving at that decision. So the Commission should decline to intervene in that decision. For those reasons the question posed for determination should be answered if necessary yes – that is Senior Sergeant Salter may be redeployed from the senior supervisor position and the application should be dismissed. Thank you, Deputy President.

PN384

DEPUTY PRESIDENT GOSTENCNIK: Yes, thank you, Mr Garozzo.

PN385

MS MORRIS: Just a couple of matters, if I may, Deputy President.

PN386

DEPUTY PRESIDENT GOSTENCNIK: Yes, Ms Morris.

PN387

MS MORRIS: It's not disputed at this time that Senior Sergeant Salter is non-operational. The reasonableness of Victoria Police's assessment and making reasonable adjustments to accommodate Senior Sergeant Salter needs to be viewed in the context of the PMO advice and the steps taken by Victoria Police to support Senior Sergeant Salter. I'll take you to the PMO report, which I'm reading at page 23 – I understand it does appear numerous times throughout the court book. Part 5:

PN388

Support regarding balancing work and study commitments as negotiated with the member. For the PMO final advice is to support the member in negotiating those work and study commitments.

PN389

DEPUTY PRESIDENT GOSTENCNIK: The same extract appears at 212 - - -

PN390

MS MORRIS: Yes.

PN391

DEPUTY PRESIDENT GOSTENCNIK: - - - which is where I'm at.

PN392

MS MORRIS: Thank you. We ask the Commission to consider what steps were taken to facilitate Senior Sergeant Salter completing those mandatory requirements, whether it is of her own fault that they haven't been completed or what steps were taken by Victoria Police to facilitate those requirements. Further in relation to the allocation of investigation files, there are restrictions around content only. It's stated that Senior Sergeant Salter cannot undertake complex or protracted files. We just wish to clarify that that's not across the board. It is just in relation to the content only.

PN393

You've heard evidence that Senior Sergeant Salter remains willing to engage in the qualification courses and make herself available. In that context she will be able to support operational emergencies, as is stated in backfilling positions that are essential training but also in the alternative that Commander McAlpine conceded that there were roles within state policing operation centres that involved administration and the running of the operations without being on the front line. Unless there are any other matters that you wish me to address you on, Deputy President?

PN394

DEPUTY PRESIDENT GOSTENCNIK: You were going to say something about jurisdiction.

PN395

MS MORRIS: We rely on the written submissions that we've provided but also as I've stated, that the fact that Senior Sergeant Salter is non-operational and has medical restrictions is not in dispute.

PN396

DEPUTY PRESIDENT GOSTENCNIK: The issue of whether or not she can be redeployed is in dispute.

PN397

MS MORRIS: So - - -

PN398

DEPUTY PRESIDENT GOSTENCNIK: The ordinary meaning of, 'redeploy', is to transfer either personnel or equipment, is it not?

PN399

MS MORRIS: At this juncture of the process, the question for arbitration is whether she can be accommodated and if not whether she can be redeployed. So the redeployment process as per the VPMs and the enterprise agreement, is not a transfer in itself. It is at the end of that redeployment process it may be but at this juncture it is not. So in terms of jurisdiction, it is not a question of medical capacity or transfer. It is a question of accommodation in her current position and whether she can be placed in the redeployment process.

PN400

DEPUTY PRESIDENT GOSTENCNIK: Well, that might be your question but it's not the question that I posed. The issue for determination in this arbitration, amongst other things, is whether or not the question as posed is one that falls within my jurisdiction.

PN401

MS MORRIS: Sorry, can you just repeat that?

PN402

DEPUTY PRESIDENT GOSTENCNIK: The question you posed is not the question I posed. The question posed for arbitration is – just bear with me – set out in paragraph 5.4 of your submissions: in substance, whether Victoria Police is able to redeploy Senior Sergeant Salter to an alternative position. That's the issue and it's that issue which Vic Pol says by reason of section 5(2), paragraph (b) of the Fair Work Commonwealth Powers Act is a matter excluded from the referral and therefore is not a matter capable of arising under an enterprise agreement so I'm not able to determine the matter by arbitration because it's – to the extent that the agreement purports to regulate that subject matter, it's not a matter that can lawfully be included in an enterprise agreement.

PN403

So I note the question that you pose but that's not the question that's the question for arbitration.

PN404

MS MORRIS: The PFA's position is that only if reasonable adjustments can't be made.

PN405

DEPUTY PRESIDENT GOSTENCNIK: Yes, all right.

PN406

MS MORRIS: Thank you.

PN407

DEPUTY PRESIDENT GOSTENCNIK: Mr Garozzo, is there anything arising out of that?

PN408

MR GAROZZO: Well, just one final thing, perhaps, in relation to – just by way of reply – to the jurisdictional issue, just to assist the Commission: I suppose it's important to note the wording of section 5(2)(b) of the Fair Work Commonwealth Powers Act, which is not just a matter about transfers but a matter pertaining to transfer from place to place or position or to position or physical or mental fitness, which does seem to expand that somewhat. Nothing further, Deputy President.

PN409

DEPUTY PRESIDENT GOSTENCNIK: Yes, thank you. All right, well, let me ask the parties this, and you shouldn't take from what I'm going to say that I have a concluded view about the jurisdictional issue because I don't, but in the event that I conclude that the Commission has no jurisdiction to deal with the dispute or the disputed question, would the parties nonetheless be assisted if I were to express my opinion as to the matter as though I had jurisdiction? I mean, I will obviously do that if I find that I have jurisdiction but in the event that I don't?

PN410

MR GAROZZO: Yes.

PN411

MS MORRIS: Thank you.

PN412

DEPUTY PRESIDENT GOSTENCNIK: All right, well, thank you both for your helpful written and oral submissions. I'll reserve my decision and we're adjourned. Thank you, have a good day.

ADJOURNED INDEFINITELY

[11.56 AM]

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