

[2021] FWC 4507

The attached document replaces the document previously issued with the above code on 27 July 2021.

The name of the Employer has been amended.

Associate to COMMISSIONER HUNT

Dated 6 August 2021





# DECISION

*Fair Work Act 2009*

s.789FC—Application for an order to stop bullying

**Tao (Selina) Qu**

v

**MONARDS GOLD COAST PTY. LTD.; Tak Wing Wong**

(AB2021/289)

COMMISSIONER HUNT

BRISBANE, 27 JULY 2021

*Application for an FWC order to stop bullying – findings made by Commission relevant to contested facts – repeated unreasonable behaviour by person named to applicant – applicant bullied at work – discretion exercised to issue orders.*

[1] On 27 May 2021, Ms Tao (Selina) Qu made an application pursuant to s.789FC of the *Fair Work Act 2009* (the Act) to the Fair Work Commission (the Commission) for an order to stop bullying. Ms Qu’s employer is MONARDS GOLD COAST PTY. LTD. (Monards). Ms Qu sought for the Commission make an order to stop bullying to be made against Mr Tak Wing Wong.

[2] Ms Qu seeks a remedy in response to alleged workplace bullying pursuant to Part 6-4B of the Act. It is not in dispute that Ms Qu is an eligible worker to bring a claim under this jurisdiction.

[3] The application was listed for a telephone conference on 23 June 2021. It was agreed at the conference that the matter should be listed for hearing as soon as possible. Ms Qu has not been at work since 21 May 2021. She has made a workers compensation claim and is awaiting Workcover’s decision whether it accepts or rejects her claim.

[4] Monards is a high-end jewellery and watch store. Ms Qu and Mr Wong work at Monards’ Surfers Paradise store with one to two other employees. The store is open Monday to Saturday. I considered it necessary to list the hearing on Sunday, 11 July 2021 to ensure the store was appropriately staffed and did not require it to close while Mr Wong attended the hearing.

[5] The matter was heard by way of video hearing via Microsoft Teams. Ms Qu appeared on her own behalf, giving evidence in support of her application. Mr Wong appeared and gave evidence. Ms Patricia Chiu, Director of Monards, and located in Melbourne appeared and gave evidence. Ms Chiu’s son, Mr Bernard Fung is a manager of Monards, based in

Melbourne. He did not appear or give evidence but is referred to in the evidence before the Commission.

### **Relevant legislation**

[6] A worker who reasonably believes that he or she has been bullied at work may apply to the Commission for an order to stop bullying. Section 789FC of the Act provides:

#### **“Application for an FWC order to stop bullying**

(1) A worker who reasonably believes that he or she has been bullied at work may apply to the FWC for an order under section 789FF.

(2) For the purposes of this Part, worker has the same meaning as in the Work Health and Safety Act 2011, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the Work Health and Safety Act 2011, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

(3) The application must be accompanied by any fee prescribed by the regulations.

(4) The regulations may prescribe:

(a) a fee for making an application to the FWC under this section; and

(b) a method for indexing the fee; and

(c) the circumstances in which all or part of the fee may be waived or refunded.”

[7] Section 789FD of the Act sets out when a worker has been bullied at work, as below:

#### **“When is a worker bullied at work?**

(1) A worker is bullied at work if:

(a) while the worker is at work in a constitutionally-covered business:

(i) an individual; or

(ii) a group of individuals;

repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and

(b) that behaviour creates a risk to health and safety.

(2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

(3) If a person conducts a business or undertaking (within the meaning of the Work Health and Safety Act 2011) and either:

(a) the person is:

(i) a constitutional corporation; or

(ii) the Commonwealth; or

(iii) a Commonwealth authority; or

(iv) a body corporate incorporated in a Territory; or

(b) the business or undertaking is conducted principally in a Territory or Commonwealth place;

then the business or undertaking is a constitutionally-covered business.”

**[8]** The circumstances in which the Commission may make orders to stop bullying are set out in s.789FF of the Act, as produced below:

**“FWC may make orders to stop bullying**

(1) If:

(a) a worker has made an application under section 789FC; and

(b) the FWC is satisfied that:

(i) the worker has been bullied at work by an individual or a group of individuals; and

(ii) there is a risk that the worker will continue to be bullied at work by the individual or group;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.

(2) In considering the terms of an order, the FWC must take into account:

(a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body--those outcomes; and

(b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes--that procedure; and

(c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes--those outcomes; and

(d) any matters that the FWC considers relevant.”

### **Evidence of the parties**

[9] It is convenient to detail the evidence of the parties relevant to particular alleged incidents. By way of background, Ms Qu has worked at the Monards’ Surfers Paradise store since February 2018 as the Supervisor. Prior to February 2018, I understand she was a sales assistant. The store has been without a more senior manager until Mr Wong commenced working at the store around March 2020 as the team leader. Ms Qu reports to Mr Wong.

[10] The team members at the store use an application on their personal mobile phones called ‘Slack’. Mr Fung is included on the Gold Coast Monards’ group Slack chats. It is not clear if Ms Chiu is included in the group Slack chats. With regular communication on the Slack application, the team members regularly have their phones with them or on their person, even while serving customers.

[11] I consider it convenient to make findings relevant to whether Mr Wong has behaved unreasonably towards Ms Qu following the evidence of each incident or day. However, before each specific incident nominated by Ms Qu is explored, it is appropriate to note that three staff members of Monards prepared a joint letter to Mr Fung on 16 September 2020, complaining about Mr Wong. The letter is reproduced below:

“RE : Complaint against boutiques manger Wing Tak Wong

Dear Bernard,

I am writing this letter to report the conflict that has arisen between Wing Tak Wong and the Gold Coast sales team (Selina, Liliya and River). There have been several incidents in the last few months, and we feel that it is time to present a formal complaint.

I would like to report the occurrences on records as follows:

Selina

Date: 11/09/2020

Selina was dealing client's deposit for Blancpain watches, Wing asked her to stop sending messages and started to do the housekeeping. Meanwhile, all watches are already set up, carpet vacuumed, and another staff was doing window clearing . Wing did not set up a good modelling as he was previously typing on his Wechat in the office for almost half hour.

Because he continues to do this, Selina was unable to focus on her job and she might lost customers. She has felt harassed and belittled by Wing and have suffered from stress and anxiety.

Liliya

Date: 31/07/2020

Wing seek Liliya's assistances for setting up time machine but she didn't know how to operate the machine and asked Wing to find Selina on the floor. Wing was yelling at Liliya and asked her to "SHUT UP" when she explained herself.

Date: 15/08/2020

Wing finger pointed on Liliya's nose for blaming she was being late for work. He asked Liliya to say "sorry "which she did . Wing still could not settle and kept on harassment by physical assaulting Liliya by stepping closer to her body and pointed on her nose. That is humiliation behaviour in workplace.

For no matter what reason, Wing told Selina and Liliya to work for The Hourglass because their pay and incentives are higher than Monards.

Wing constantly encourages Selina and Liliya to work for The Hourglasses Brisbane repeatedly for better growth in this industry, and he will help to refer them. That is quite uncomfortable and unwelcome for them to work continuously at Monards.

River

Date : 08/06/2020

Wing suddenly said to me "maybe you are rich, you don't need to work" during meeting. Immediately, I replied him "NO, I'm not. I need this job". That was embarrassing and verbal harassment for offensive jokes and derogatory judgment related to personal characteristics.

Date: 15/09/2020

Wing started to yell at me and pointed me to ask me "SH UT U P" when I express myself. I replied "talk like a manger and use the polite words to me". I was not treated fairly under reasonable circumstances. In the past 3 years, Selina is responsible for counting all office stationery and reporting to Lingling directly for ordering. I already offered Wing that I will start to do the job and complete the task latest by the next day, only because I want to complete the tasks correctly. The task's due date is end of the September.

Date: 24/03/2020

Wing chose customers to serve and sometimes does not even OPEN the door for customer and let them wait by door.

There are European customer during COVID-19 Period, he said he won't get closer to them because they might carry corona virus. I helped the customers in IWC counters and walked them out of the store.

We love working here, and we know that this is a company that holds true to employee wellbeing and rights. As such, I trust that you will handle this matter amicably.

We try to bring the issue to your attention. It is, therefore, my wish that you try to find out what the problem is and act on it in the best way possible.

Gold Coast tea m needs to have a good team leader primarily, who is respectful, helpful, reliable, and delivering fair approach to the team, so that we can work together in order to reach the common goal .

If you have further questions about anything, please conduct a group meeting with us.

We are looking forward to a positive response.

Thankyou!

Yours Sincerely,  
River  
Selina  
Liliya”

**[12]** On 16 September 2020, Mr Fung replied to all three employees as follows:

“Dear River, Selina and Liliya,

Should you have a complaint please submit this individually, rather than collectively.”

**[13]** On 19 September 2020, Mr Fung sent a further email:

“Dear River, Dear Selina, Dear Liliya,

We take this matter seriously. Given the confidential nature of each individual’s complaint, please lodge this separately.

If I do not hear back individually I will assume the situation does not require further assistance.”

**[14]** It is noted that Ms Qu wrote comprehensive emails to either Mr Fung or Ms Chiu on the following dates, complaining about Mr Wong’s conduct, providing specific alleged instances of bullying:

- 9 November 2020
- 18 November 2020
- 11 May 2021
- 16 May 2021

**[15]** Mr Wong had the following to say prior to giving specific evidence relevant to each alleged incident:

“When I first started here I noticed the level of customer service and professionalism among the team needed major improvement and changes. The upkeep of the shop, the telephone etiquette, the greetings to clients and other operational matters require some attention to bring the shop to the next level.

As the now second-in-charge staff member, it is also an expectation that Selina would set herself as a good example for the rest of the team. When mistakes and under



performance occurred, I would talk to her directly and I think openness is the best approach, but I think Selina does not appreciate it and takes it very personally.

In the beginning of our Manager / second in charge relationship, I would consult with Selina and expressed my expectation to her as a role model to the team, since she was the senior staff before me. I however often received uncooperative and dismissive attitude from her. Not until an incident on 14/05/21 that I realized her animosity towards me stem from the fact that she was not promoted to the Manager position but instead the position went to me as a new employee. When she said "You took my job, I am not happy with Bernard and I don't like you", it really finally came home to me.

The team members except me are all Mandarin Chinese native speaker. I do however speak on a conversational level. When I first started here, we would communicate in Chinese but after about a couple months I received a directive from business owner Patricia to inform the team not to speak among ourselves in Chinese. English is the official language in Australia and we must respect that. I followed this directive, but the rest of the team was not welcoming to this new change. I would often still hear Chinese language spoken among the 3 team members and had to correct Selina and the rest. I tolerated this behaviour for several months but eventually had to send an official email to the team to follow this procedure, among others. I sense that since the implementation of this policy, Selina and the rest of the team have been reluctant to engage in conversations with me.

After reading Selina's application for anti-bullying behaviour against me, I hold the view that many of these allegations are presumptive and taken personally, I noticed many points she made in this application involve accusations of me making her depressed, upset, uncomfortable as well as picking on her. She mentioned in a great deal about her personal feelings. She also accuses me of following her around, staring at her. I hereby strongly deny these accusations."

**[16]** Further, Mr Wong said the following instances of poor conduct of Ms Qu had not been addressed in her material to the Commission:

(a) On 11 September 2020, Mr Wong asked Ms Qu to focus on preparation of the opening of the shop instead of engaging in her personal mobile phone, even it is customer related unless urgent. Ms Qu responded, "*What did you do then, you were on the phone!*" in an argumentative manner. Mr Wong replied that he was communicating with Management/Mr Fung on the phone and exchanging messages. Mr Wong informed her that she should not speak to him in such a contemptuous manner.

(b) On 6 November 2020, Mr Wong noticed Ms Qu was browsing on her personal phone for news instead of checking the stock condition as requested to the whole team in the morning meeting. Before he mentioned anything, Ms Qu muttered that a watch had been lost in transit on the way to a customer. As Mr Wong tried to find out more details, Mr Qu became irritated and walked away unwilling to elaborate. He questioned what the reason was that Ling Ling from another store was aware of this, but as the manager of this shop, he was kept away from knowing of such an important issue for three days. Ms Qu stated that he did not need to know as she would handle it and it's up to her when to tell him. She said, "You are not experienced, there's no need

to tell you." Mr Wong informed her she needed to report any such immediately from now on. Ms Qu responded that it is up to her to handle the situation.

(c) On 19 November 2020 while requesting River to finish the end of day counting as one of the pages was incomplete, Ms Qu abruptly interjected, "*You can do it too!*"

(d) On 25 March 2021, Ms Qu requested annual leave for four consecutive Saturdays. Mr Wong was reluctant to approve the leave and he informed her he would need to seek approval from senior management for such a special request. Ms Qu threatened not to come to work anyway, approved or not.

### **Specific allegations of bullying**

#### *Mr Wong suggesting Ms Qu work for competitor*

[17] Ms Qu's evidence is that from around May 2020, Mr Wong began suggesting that she should work for Hourglass, a competitor of Monards, as their pay and incentives are higher than Monards. Mr Wong had come from Hourglass to work at Monards. Ms Qu replied that she did not want to leave her job and she enjoyed working at Monards.

[18] Ms Qu stated that Mr Wong suggested it to her many times which made her feel unwanted.

[19] Mr Wong's evidence is that he had never suggested to Ms Qu that she leave her job at Monards, and he did not suggest so on the many occasions as alleged by her. He stated that he shared industry information with the team, including Ms Qu over a casual chat during work, and she is incorrect to assert that he wants her to work somewhere else.

[20] In reply evidence, Ms Qu stated that in July 2020, the director of Hourglass visited the Monards store. Ms Qu was in the back office at the time. Mr Wong asked her to come out and meet the Hourglass director. Ms Qu's evidence is that Mr Wong asked the director if he had any vacancies and suggested that Ms Qu could go work for him.

[21] Ms Qu stated that she was very embarrassed. She did not want to work for the competitor, and in any event, the store is in Brisbane and she does not wish to work in Brisbane. Her evidence is that Mr Wong said he could be her referee.

[22] Ms Chiu had the following to say in written evidence:

"This statement seems to be that they were in casual talking sharing our industry secrets. I will not comment on this."

[23] In oral evidence given during the hearing, Ms Qu said that Mr Wong's suggestion that she work for Hourglass instead of Monards made her feel very unwelcome. Mr Wong's oral evidence is that he held a good relationship with Mr Chen of Hourglass. He said he did nothing further than introduce Ms Qu to Mr Chen when he visited the store. He said to Mr Chen, "*This is Selina, my Assistant. I have a lot to learn from her.*" He denied saying that Ms Qu could work for Mr Chen.

[24] On the balance of probabilities, I find that Mr Wong did suggest to Ms Qu on numerous occasions she should or could work for Hourglass instead of Monards. I accept Ms Qu's evidence that Mr Wong introduced her to Mr Chen and suggested that she could work for Mr Chen at Hourglass.

[25] I find that Mr Wong behaved unreasonably towards Ms Qu, by making suggestion she should work for a competitor. I accept Ms Qu's evidence that this made her feel unwelcome and reasonably gave her the impression that Mr Wong did not want her working for Monards.

*Mr Wong now doing time sheets for employees*

[26] On 24 September 2020, Ms Qu received a phone call from Monards' accountant, Joyce. Ms Qu had always facilitated the time sheets for staff at the store. Ms Qu explained step by step how the timesheets are to be done. Joyce then told her that Mr Wong would be doing this in the future. Ms Qu passed on the message to Mr Wong who then laughed and said, "*Bernard does not believe in you anymore.*"

[27] Ms Qu was humiliated. She was confused as to why her normal task was taken from her and then made to feel worse when Mr Wong reacted the way that he did.

[28] Mr Wong stated that Joyce did instruct him to do the timesheets in future. He denied laughing at Ms Qu and making the statement attributed to him.

[29] In reply evidence, Ms Qu said that Mr Wong did in fact make the statement. She said, "*[he] did make such comment, otherwise I would not remember exactly what he said. He was laughing at me when I was feeling upset. He even said to me he wins 100% trust from boss Patricia and Bernard, and I didn't.*"

[30] Ms Chiu noted that by September 2020, Mr Wong had passed his probationary period. She decided she wanted Mr Wong to take up more responsibilities in the store. She considers that she has adequately explained to Ms Qu that Mr Wong is the team leader, and these are now his responsibilities.

[31] I find that Monards' decision to require Mr Wong instead of Ms Qu to facilitate the time sheets for staff at the store was a reasonable business decision, noting that Mr Wong was now the store manager and it reasonably fits within his responsibilities.

[32] On the balance of probabilities, I find that Mr Wong did laugh and say to Ms Qu, "*Bernard does not believe in you anymore.*" Ms Qu reported this conduct to Mr Fung by email in November 2020, and nothing was done about it. I consider that it is not a recent fabrication of Ms Qu. I consider it was a course of conduct engaged in by Mr Wong to ensure Ms Qu understood that he was in charge, Ms Qu was subordinate to him, and Ms Qu understood that Mr Wong was trusted by Ms Chiu and Mr Fung.

*Mr Wong following Ms Qu around the store*

[33] Ms Qu stated that she noticed from 25 September 2020, Mr Wong was following her everywhere around the store. She said it was continuous; when she was talking to clients on the phone, sending emails, unpacking new goods, or in the back office. She described it as him almost staring at her. She felt uncomfortable and called in sick.

[34] Mr Wong denied following or staring at Ms Qu. He said as the team leader of the store he has a responsibility to monitor the staff's work performance in a reasonable way, such as asking for updates on tasks in order to provide feedback and suggestion to improve.

[35] In reply evidence, Ms Qu said that Mr Wong did follow her around the store. She considered that he was half a metre away from her when she made calls, listening to her conversations. She felt intimidated and harassed. Ms Qu suggested that if Mr Wong was monitoring her work performance to provide feedback, why did he not provide feedback?

[36] Ms Chiu stated that she has explained to Ms Qu that part of Mr Wong's role is to ensure the stock is kept in locked display cabinets while open for trading. If Mr Wong is walking around the store, performing this task, Ms Chiu considers this to be acceptable. A store in Melbourne had \$600,000 of stock go missing as a display cabinet door was not locked.

[37] Ms Qu responded to Ms Chiu's evidence, noting she had no objection to Mr Wong ensuring display cabinets are locked. She objects, however, to Mr Wong following her closely and watching everything she does. She considers it interferes with her personal space and makes her feel scared.

[38] In oral evidence, Ms Qu stated that she phoned Mr Fung to complain about Mr Wong. Mr Fung did not believe Ms Qu. Mr Wong stated that he was never informed of this allegation or of any allegation (including the emails sent by Ms Qu) until the anti-bullying application was made. Ms Qu stated that on her return to work from being on personal leave, Mr Wong stopped following her around.

[39] I have viewed footage of the store. There is room enough for employees to have some personal space away from other employees. There are many mirrors, as one would expect in a jewellery store. It would be difficult not to be able to look at another employee in the store either directly or via mirrors.

[40] Having weighed up Ms Qu's evidence that she took personal leave on account of Mr Wong following her around everywhere, the fact that she reported her concerns to Mr Fung, and her evidence that this stopped on her return, I am satisfied that Mr Wong did follow Ms Qu around the store unnecessarily for a period of around one week in September 2020. I am satisfied that he stopped this behaviour after her return to work.

*Ms Qu's customer with the strap too small*

[41] Ms Qu stated that one of her clients was due to pick up a watch on 19 November 2020. Instead, on 17 November 2020, Mr Wong rang the client and changed the pickup date without telling Ms Qu. It is her evidence that he purposefully changed the date to a day when she was not in the store.

[42] She said that she only discovered this when the client sent her a message which read, "Thank you for ordering my watch Selina, I really like it but strap is bit small." It is Ms Qu's evidence that she wanted to build the relationship with the client in the store.

[43] Ms Qu asked Mr Wong why he did not inform her, but her evidence is that he refused to answer her.

[44] Mr Wong responded that Ms Qu's evidence "shows total arrogance." He said that no one is trying to take clients away from Ms Qu. He noted that a client is a free individual who should not be perceived as Ms Qu's client, or his client, for that matter. He stated that clients are not an object, but a person who has the consumer right to contact whomever they wish to interact with or build a relationship upon.

[45] Mr Wong stated that Ms Qu was off work on that particular day and the client rang the shop and expressed his intention to collect the watch on that day.

[46] Mr Wong noted that Ms Qu sent the following message in the Slack group discussion:

“@Wing  
Did you contact my JLC client? I've already booked with him this thursday (19<sup>th</sup>). I did follow up. Your attitude is very aggressive. [cry face emoji]”

[47] Mr Wong considered the message in the group chat was derogatory, containing personal commentary within the group chat, which included Mr Wong's subordinates and senior management. He considered that Ms Qu was suggesting to the others in the group chat that he was trying to interfere with her client. He stated that he was totally taken aback by Ms Qu's disrespectful and unprofessional behaviour. He put the following in evidence:

“I question her motive on this. Did she think I didn't have feelings too? Wasn't she trying to use such presumptive and belittling comment to humiliate me? Was I being bullied? I would also question, if she received the message from this client regarding the "short strap", why was I not informed? Why wouldn't she work with me to assist this client as it should be? I was never notified of such incident but instead humiliated by her pugnacious behaviour.”

[48] In reply evidence, Ms Qu said that the text message from the client reads as follows:

“thank you for ordering the watch. I loved the blue strap (always wanted the blue one) unfortunately it's a lot smaller than the one on the watch and I don't think it's large enough to fit my wrist”.

[49] Ms Qu called the client, informing him that the strap was just an extra gift from Monards' brand manager and there was no cost for that. Her evidence is that during the telephone conversation with the client, he said it was Mr Wong who had telephoned him. Ms Qu considered that Mr Wong had purposefully changed the day to a day when she was not at work. It is her view that Mr Wong wanted to take this sale to reach his target; that is why she sent the group message, asking him why he was being so aggressive.

[50] Her evidence is that on her next day at work she asked him why he had called the client to change the day, to which he admitted that he had called because Ms Qu had not put a note on the watch, so he didn't know the client had followed up with Ms Qu as to a pickup date.

[51] Ms Qu stated that she wanted to further discuss this with Mr Wong, however he raised his palm up and gave her a “stop” sign.

[52] Ms Chiu stated in written evidence that she has seen Mr Wong’s response and notes he denies initiating the contact with Ms Qu’s client.

[53] In oral evidence, Mr Wong said he did not directly contact the client, rather, the client called the shop at around 10:25am, saying he wanted to come in that day. Mr Wong agreed the client could come in that day and collect the watch. Mr Wong noted that the sale is still attributed to Ms Qu, and no commission is earned on the sale. Ms Qu is expected to sell eight watches per month.

[54] In oral evidence, Ms Chiu stated that she does not consider that Mr Wong “pinched” Ms Qu’s client. In reply, Ms Qu suggested that Mr Wong wanted to meet the client because the client makes high-end purchases.

[55] It is difficult to determine, without hearing the evidence of the client, if the client contacted the store, or Mr Wong contacted the client. Ms Qu’s evidence that Mr Wong admitted he contacted the client is persuasive. Mr Wong’s evidence that the client rang the store and wanted to pick up his watch is equally persuasive. I do not consider it material to Ms Qu’s employment whether the client collected the watch on a day Ms Qu was not at work. While Mr Wong might not have appreciated the interest that Ms Qu had in finalising the client’s purchase with him, even if Mr Wong did call the client because Ms Qu did not put a note on the watch, I am not satisfied that Mr Wong acted unreasonably towards Ms Qu. I do not consider it was a deliberate act to cut Ms Qu out of the transaction.

[56] However, I am very concerned with Mr Wong’s act of putting his hand up to give to Ms Qu a “stop” sign when she sought to further discuss this issue with him. I accept Ms Qu’s evidence that he did behave in this manner. Ms Qu was entitled to fully understand the matter being discussed between them, and Mr Wong’s act of finishing the conversation by raising his hand showed great contempt towards Ms Qu. I am satisfied Mr Wong behaved unreasonably towards Ms Qu.

*Ms Qu spoke to Mr Fung about Mr Wong’s behaviour*

[57] Ms Qu stated that she spoke with Mr Fung on 20 November 2020, informing him of Mr Wong following her around the store in September 2020. Mr Fung responded that Mr Wong is the team leader, and she is to listen to him. She told him how she was feeling, and Mr Fung said that it was her problem. She felt that she had no support from Mr Fung, and she was treated unfairly. She felt depressed and considered that they wanted her to leave her job.

[58] Mr Wong’s evidence is that he does not know of any conversation between Ms Qu and Mr Fung. After speaking with Mr Fung following this application having been made, Mr Wong is aware that there was a conversation between Ms Qu and Mr Fung.

[59] In oral evidence given during the hearing, Ms Qu stated when she raised this matter with Mr Fung, she told him that she felt she was “extra” to the store’s needs. Mr Fung said to her that he didn’t agree with her using the word “harassed” and it is too big a word to use. Mr Fung said to her that she is using the wrong word to describe the issues between her and Mr Wong.

[60] Ms Chiu stated in written evidence that having reviewed footage from November 2020, she could see that Ms Qu was responding to client messages on her phone before the store was open. She considers it appropriate to prepare the store for opening, do 30 minutes of housekeeping, and only then should clients be messaged.

[61] Further, Ms Chiu stated that she often only saw Mr Wong on the sales floor, with Ms Qu and other staff in the backroom. The company policy is to always have two people on the sales floor.

[62] There is no finding to make on this issue relevant to Mr Wong other than to acknowledge that Ms Qu felt extremely let down by Mr Fung's inaction.

*Ms Qu felt ignored at work*

[63] Ms Qu stated that from January 2021, Mr Wong commenced ignoring her at work. She considered that he would not talk to her and would only text her through the Slack group chat. She considered that he was picking her up on every little thing that she did.

[64] Mr Wong's evidence is that he speaks to all of the team members regarding work and the operation of the company. Besides verbal communication, Mr Wong likes to use the Slack application. He stated that it is common at the workplace to use such an application to share information in a more accurate and contemporaneous fashion. He does not understand how Ms Qu perceived his conduct as ignoring her and picking on every little thing she did. He suggested that Ms Qu has a tendency to get upset and depressed. He suggested that if he was not speaking to her from January 2021, how could he then be accused of other matters following that date?

[65] Ms Qu stated that Mr Wong was picking on her, targeting her, and also blamed her for using her mobile phone. She is not aware of a mobile phone policy, and stated that the use of mobile phones at work is encouraged because it allows the staff members to communicate with other team members in other stores.

[66] Without specificity in relation to the allegations it is not appropriate to make a finding on this issue.

*No longer permitted to interview and hire staff*

[67] Ms Qu stated that she considered it one of her duties and responsibilities, supported within her employment contract, to interview and hire staff. However, when a new employee was hired in February 2021, she was excluded from the process. She felt isolated and considered she had been demoted.

[68] Mr Wong stated that he was directly instructed by senior management to hire new staff. He noted his contract includes it as one of his responsibilities; he followed that directive. He conducted interviews and hired the new employee. He described Ms Qu's concerns as arrogant and self-serving if she thinks he should report to her whatever he does as her superior.

[69] In reply evidence, Ms Qu stated that she didn't suggest that she should have been the one to interview and hire the new employee, but she should not have been excluded.

[70] Ms Chiu's evidence is that she instructed Mr Wong to hire new staff and it is not a requirement of Ms Qu's role.

[71] I am satisfied that Ms Chiu wishes for Mr Wong to interview new staff and it is no longer necessary to include Ms Qu in this function. I consider this to be a reasonable management requirement and does not constitute bullying of Ms Qu. Mr Wong's evidence to the Commission that Ms Qu's concerns with respect to this issue are arrogant and self-serving is unnecessarily aggressive. I do not consider it is the language one might use if he is attempting to demonstrate that he does not engage in unreasonable behaviour towards his subordinate employee.

*The request for a bottle of water*

[72] On 15 February 2021, Ms Qu was standing next to Mr Wong as he served a client. Mr Wong sent a message in Slack, saying he wanted Ms Qu to get the client a bottle of water. He did not verbalise the request.

[73] Ms Qu did not check her phone. Mr Wong approached her and asked her to check her phone and read the message. She looked at her phone and read the message. She was shocked that he did not verbalise his request. She became upset and depressed.

[74] Mr Wong's evidence is that the Slack group chat is a way to communicate within the team. He stated:

“If certain situation does not allow us to communicate verbally, such as while serving customers, we should use it as a tool to get things done. I believe in this instance I might be serving a client, or some clients are in the shop that did not allow me to walk away. To not interrupt or be impolite while engaging with them, it is appropriate to use the group chat.”

[75] In reply evidence, Ms Qu noted that if Mr Wong did not think it the right time to verbalise the request for a bottle of water, how is it that he could approach her and ask her to check her phone. She inquired, what is the difference between asking her to check her phone and asking her to get a bottle of water? She considers that he does not like her and doesn't even want to talk to her. She stated that he ignores her.

[76] Ms Chiu's written evidence is that perhaps Mr Wong was unable to speak to Ms Qu on this occasion. She suggested that staff should have voluntarily offered the client a bottle of water. She wants team members to work as a team.

[77] In oral evidence, Mr Wong said that he thought the client had left the store when he approached Ms Qu and asked her if she had looked at her phone. After hearing my preliminary views on this issue during the hearing, where I suggested to Mr Wong it was entirely inappropriate to message Ms Qu when he could have verbally requested water for the client, Mr Wong said that he would learn from this and communicate less in the Slack app.



[78] Ms Qu noted that she has been told by Mr Wong to judge clients when they walk into the store and only give water to certain clients.

[79] Mr Wong's over-reliance on the Slack app is unsuitable, unreasonable and unfathomable. He has given evidence to the Commission that the store is a small store, and he can overhear conversations his staff have on the phone. There is not a single reason why he couldn't have politely and verbally requested Ms Qu obtain a bottle of water for the client.

[80] It is extraordinary that he took his time and attention away from the client to use his phone to request a bottle of water, and then approached Ms Qu later to see if she had looked at her phone to have read the request. It is important Mr Wong understands how inappropriate and disappointing this behaviour is. I am pleased he has stated to the Commission that he now has a deeper understanding of this behaviour.

*Request through Slack to tidy up counter*

[81] Ms Qu stated that on 26 March 2021, she was serving a client. Mr Wong interrupted the conversation, and she felt that he wanted the sale, so she left Mr Wong to serve the client. Mr Wong served the client until the end and did not tidy up the counter. He did not talk to Ms Qu, but instead sent a group message through Slack telling her he wanted her to tidy up the area.

[82] She considered that he only did that so that Mr Fung would see the comments. If he had wanted her to tidy up the counter after he had served the client, she considers that he should have verbally requested she do so.

[83] Mr Wong's evidence is that the client is known to him. He considers it is natural to say hello or greet someone you know. He said that Ms Qu walked away while he conversed with the client. He considers she left the counter untidy.

[84] He noticed that she had left a valuable watch in the office, not secure in the safe or drawer where it should be, and then departed for lunch. He considers it is his duty to remind her in the group chat.

[85] In reply evidence, Ms Qu stated that she was not complaining that Mr Wong wanted to take a potential sale, but rather, it was he who left the counter untidy. She considers he should be the person who tidies the counter up, or alternatively, he could ask her to tidy it up if he requests it orally. She objects to Mr Wong taking a photo, naming her in the group chat and making out that it was her mess.

[86] Ms Qu denied that the watch in the office was in an unsafe place. She stated that the back door to the office is always locked by her and others.

[87] Ms Chiu stated in written evidence that she is comfortable for team members to use the Slack application. She stated that it is a normal form of communication in the Melbourne store, for example:

- Please go to post office

- Please help me to bring the watch to MTS , the service center
- Please send request to Peter for the stock, I am busy with another customer, urgent

[88] In oral evidence, Mr Wong stated that even if he was the one who made the mess on the counter, he expects staff to tidy it up even if they didn't make the mess. He said that he felt compelled to take a photo and put it on the group chat because it was important. He also sent a message about security.

[89] I consider it inappropriate for Mr Wong to have informed Ms Qu through the Slack app that he expected her to tidy up the counter, his mess or her mess. It was available for him to verbally discuss this issue. I accept Ms Qu's concern that she considers that Mr Wong was attempting to humiliate her by sending it in the group chat, including to senior management. I find that Mr Wong acted unreasonably towards Ms Qu by taking a photo and sending it in the Slack app.

*Mont Blanc pricing and warning threatened*

[90] Ms Qu stated that on 15 April 2021, while she was in the middle of doing new goods received in the back office, Mr Wong told her to do a price change on Mont Blanc watches immediately. She told him she would do so once she finished the goods received. He told her to have another employee, River, do the goods received and asked her to do the price change immediately.

[91] Ms Qu was confused as he had previously emailed her to tell her that she should do goods received, so she sought clarification of her duty. It is her evidence Mr Wong then changed the subject, laughed at her, and told her he was giving her a final warning because she did not tidy up the Omega counter after she did stock transfer last week. Ms Qu asked him, "*When was it, where is the evidence? I did not do that.*" She requested he check the store camera. She was very upset and felt picked on.

[92] Mr Wong's evidence is that price change is one of the most important and urgent tasks. Ms Qu did some price change duties for Mont Blanc pens in the morning, however, it was not done correctly and required urgent attention. Mr Wong instructed Ms Qu to double-check and complete the task. Her response was, "*I will do it when I have time.*" Mr Wong explained to her the urgency of the matter and offered to assign another staff member to assist. She maintained that she would only do it when she has time.

[93] Mr Wong denied that he laughed at her. Regarding tidiness, he stated that it is an ongoing issue. He said that he sent an email on 26 March 2021 as a final reminder to the entire team. He stated that he "*merely*" gave her another final reminder to keep the shop clean and tidy that day.

[94] He stated that Ms Qu responded, screaming, "*You took my job! I am not happy with Bernard. I don't like you!*" Mr Wong stated that he felt threatened and went into the back office. He stated that River observed the conduct. It is noted Mr Wong did not seek for River to give evidence to the Commission.

[95] In reply evidence, Ms Qu noted that when Ms Chiu investigated this, she only spoke with Mr Wong and not with River. She considers the investigation to be unfair. Ms Qu

objects to Mr Wong requiring her to change the price. She noted that she had announced that morning she had an appointment that day at 1pm. She noted that she had informed a client of an old price two days earlier, and Mr Wong had approved selling the item at the lower price.

[96] Ms Qu explained all of the tasks involved in the goods received process. When Mr Wong requested that she do the Mont Blanc price change, she told him that she didn't think she'd be done in five minutes and she doesn't have two brains. She said that she needed to do one task at a time. She considers that she should have been permitted to finish the first task.

[97] Ms Chiu stated in written evidence that on 14 April 2021, she discovered all stores were using older Mont Blanc pricing, not increasing it as had been directed. She instructed all stores to take urgent action to ensure the higher prices were in place the following day.

[98] The Surfers Paradise store received seven Omega watches at 1:30pm on 15 April 2021. Ms Qu's role is to insert the details into the computer system. Ms Chiu had a conversation with Ms Qu and asked her; when was she asked by Mr Wong to change the prices on 21 Mont Blanc watches? Ms Qu responded that she couldn't recall. Ms Chiu asked Ms Qu; how long had it taken for her to enter the Omega watches onto the computer system? She could not recall. Ms Chiu prompted her; 15 minutes, 30 minutes, one hour? Ms Qu did not respond.

[99] It is Ms Chiu's evidence that it only takes about five minutes to log Omega products into the computer system. Ms Chiu ponders if Ms Qu intentionally did not update the pricing on Mount Blanc products.

[100] In oral evidence, Mr Wong conceded that he told Ms Qu that she was to receive a warning for having not tidied up counter mess. He conceded that it was at least one week after the counter mess had not been tidied up.

[101] I find it incredibly unfortunate that Mr Wong decided to issue to Ms Qu a warning for not tidying up a counter which had been messed up some days earlier by either himself or Ms Qu, or some other staff member. If he had wanted his subordinate staff to tidy it up, he could have simply verbally requested they do so, not communicate it on the Slack app so that senior management became aware of the online request. If Mr Wong had indicated that it was his mess and he would appreciate it if one of the staff could tidy it up, it would certainly provide more context to somebody reading the Slack message.

[102] Warnings should not just be issued without an employee having had an opportunity to discuss the matter.

[103] I am satisfied Mr Wong behaved unreasonably towards Ms Qu by informing her on 15 April 2021 she was receiving a warning.

[104] I find Ms Qu acted unreasonably towards Mr Wong by not doing new goods received as she was reasonably directed to do so. Mr Wong's request for her to perform this task was not unreasonable. I accept Mr Wong's evidence that Ms Qu screamed at him, "*You took my job! I am not happy with Bernard. I don't like you!*" Ms Qu should, having regard to my acceptance of Mr Wong's evidence on this issue, ensure she doesn't engage in similar conduct in her employment.

*Withdrawal of warning and another warning immediately given*

[105] The following day, on 16 April 2021, a staff meeting was conducted in the morning. Mr Wong said that he would withdraw the untidiness warning to Ms Qu, but instead he would give her another final warning as she was pushing a particular display cabinet too hard. Ms Qu responded that she did not know the cabinet was not in the correct position, and if it needed special care, she would be gentle. She stated at the meeting that it was unfair to be given a final warning as it was the first time, and she did not damage it.

[106] Mr Wong's evidence is that he had given clear instructions via email on 26 March 2021 to all employees informing them not to close the cabinet door too forcefully. The door had had a small malfunction for some months, however it did not require an urgent repair. He stated that the door needed to be lifted a little when closing it to avoid further damage.

[107] Mr Wong had asked River to show Ms Qu how to close the cabinet without damaging it. He heard Ms Qu close the cabinet door in a way that a loud noise was heard from the back office. He was under the impression she had deliberately forcefully closed it because she had been warned about the untidiness issue the day before.

[108] In reply evidence, Ms Qu stated that Mr Wong's action of issuing to her a final warning was impacting upon her mental health. She considered that he was being unprofessional and inappropriate. She does not know how hard she pushed the cabinet, and noted she had worked for 4.5 years and never damaged anything. She stated that she is worried to now touch anything in the store out of fear of being warned.

[109] In oral evidence, Mr Wong stated that on 16 April 2021, he informed Ms Qu that he would withdraw the warning that he issued to her the day before. He did so because he had put to Liliya that she too had not cleaned the mess, and when she didn't respond, he considered that both Ms Qu and Liliya were denying it, so nobody would receive a warning.

[110] Mr Wong agreed that following having informed Ms Qu that the warning issued on 15 April 2021 was now withdrawn, he told her that she would be receiving a warning for making too loud a noise when closing the cabinet display. Where Ms Qu stated that he had said it was a final warning, Mr Wong stated that he couldn't remember if he said it was a final warning as opposed to a warning. He said that he didn't think to follow it up with a written warning.

[111] Mr Wong's action of withdrawing the warning on 16 April 2021 and then issuing a final warning for Ms Qu's actions of allegedly closing a display cabinet too loudly is a calculated act to intimidate, scare and shock Ms Qu. I consider that Mr Wong acted unreasonably by issuing and then withdrawing the warning, and then issuing again a warning to Ms Qu for matters which did not warrant the issue of a warning. There was no valid reason to issue to Ms Qu either warning, nor was there any procedural fairness afforded to Ms Qu.

*Late lunch break*

[112] Ms Qu stated that on 1 May 2021, Mr Wong allocated her to check the brands on corresponding warranty cards, wanting her to report to him by the end of the day. She commenced her shift at 11am, and she was performing that task until 4pm. She was hungry,

so she decided to take her lunch break. Mr Wong insisted she serve a client. She informed him that she was very hungry, and he was free, so she asked if he could serve the client instead. He responded, "OK".

[113] When she returned from her break, Mr Wong blamed her for taking her break which resulted in a loss of a sale. Her evidence is that she did not understand, and asked him a question, to which he responded, "*Shut up, you are not allowed to say a word in front of me.*"

[114] Mr Wong's evidence is he was due for an appointment with a client in ten minutes, while another prospective client walked into the store. He requested Ms Qu attend to the walk-in. He agreed that Ms Qu said she was taking he lunch break, and he responded, "OK."

[115] On her return Mr Wong reminded Ms Qu to take her lunch earlier to prevent loss of sales. He denied saying, "*Shut up, you are not allowed to say a word in front of me.*"

[116] In reply evidence, Ms Qu stated that when Mr Wong told her to shut up, she replied, "*You are so rude, unbelievable.*"

[117] In written evidence, Ms Chiu suggested that staff going for lunch at 4:00pm is a bit late. She spoke with Mr Wong and ascertained that staff are not requesting their lunch break, they are declaring when they will take their lunch break. She has now implemented a system where employees are designated a lunch break. Ms Chiu said that she "*trusts*" that Mr Wong did not say to Ms Qu, "*Shut up, you are not allowed to say a word in front of me.*"

[118] I find that despite it being a very late lunch break, Ms Qu was both entitled to the unpaid meal break and that it was authorised by Mr Wong when he responded, "OK".

[119] I find that Mr Wong did say to her, "*Shut up, you are not allowed to say a word in front of me.*" I consider he did so because he was frustrated as he had a client scheduled for a particular time, and Ms Qu's absence left him exposed to serving a walk-in potential client. I find this comment made by Mr Wong to be extremely rude. He behaved unreasonably towards Ms Qu.

#### *Performance Improvement Plan*

[120] On 6 May 2021, Ms Qu had a meeting with Mr Wong where he issued to her a performance improvement plan. The plan stated that it ran from 7 May 2021 until 18 June 2021, with an interim review on 4 June 2021. It stated the following:

"Performance Improvement Objective:

1. Follow instructions in a timely manner.
2. Handle with care of the shop's properties. E.g watches and jellewlery (sic) as well as shop fitouts.

Required outcomes

- Follow instruction as required. E.g. process price adjustment in a timely manner. Serve customer in a prioritized manner.

- Complete stock transfer and receiving in a timely manner as required. Photos taken and sent without exceptions.
- Complete stock pricing paperwork, labelling or on computer system neatly and accurately.
- Close and open shop's showcases, cabinets with care. Do not forcefully handle them.

.....  
.....

Consequences: If you fail to meet the required outcomes by the review date, without a reasonable excuse, you will be given a final written warning.”

[121] Ms Qu asked Mr Wong for clarification, specifically what she had done to deserve the plan. She said that Mr Wong responded, “*I will provide you with constructive feedback, however your feedback is not considered as feedback.*” Ms Qu said that she was upset and depressed as to why her feedback would not be considered feedback.

[122] Mr Wong's evidence is that during the meeting he clearly explained to Ms Qu that she had not been following certain procedures and attention was needed. He explained to her point by point, referring to the plan's document. He said that he obtained her understanding and she signed and dated the plan. The next day he tried to give her the meeting record but then she refused to acknowledge it and said to Mr Wong she needed to take a look first. He agreed and was waiting for three days without receiving any response.

[123] He then instead typed it up and sent it to her as an email. She replied to the email by saying she had consulted a lawyer. Noting a lawyer was now involved, Mr Wong replied to her to let the lawyer contact him instead, but no further response received from her.

[124] In reply evidence, Ms Qu stated that when Mr Wong said that her feedback would not be considered feedback, she considered that she was being denied, in advance, the opportunity to provide feedback regarding the plan. He had his pen there and she signed the form.

[125] On 10 May 2021, Mr Wong sent the following email directly to Ms Qu only:

“Dear Selina,

Thank you for your attendance at the meeting 06/05 last Thursday . Please find the meeting record below.

06/05/2021

Re: Record of meeting with Selina Qu regarding work performance and care of company property

Today at 17:20, I met with Selina Qu.

During the meeting I expressed my concern about her work performance in particular incidents involving price change, following instructions in a timely manner and

handling of the shop's fit outs. I advised her not to repeat these mistakes again and care must be taken when it comes to company properties.

Selina said in response that she would comply and be careful.

In order to assist Selina to improve on the issues, I have set up a Performance Improvement Plan for her and explained to her how she will be supported.

At the end of the meeting I asked her to sign and date the Performance Improvement Plan form. A copy was given to her to keep. I also asked if she needed anymore clarification to which she said no. I advised her our next meeting date is 04/06/21 to review her progress.

Should you need any clarification please let me know. Thank you.

Best regards,”

**[126]** On 11 May 2021, Ms Qu responded directly to Mr Wong’s email of 10 May 2021 as follows:

“Dear Wing

After seeking advice from a lawyer today. There are few matters that need to be clarified and explained.

The minutes of the meeting are incomplete. The report says "Selina does not need anymore clarification", this is incorrect. I do need clarification for what things I did wrong, what mistakes I have made and what I need to improve.

Please list them in detail, (date, time, what's the incident, how many times that I repeat making the same mistakes).

Thank you.

Sincerely,”

**[127]** On 13 May 2021, Mr Wong then replied to Ms Qu’s email of 11 May 2021, now also copied to Ms Chiu and Mr Fung:

“Dear Selina,

Your response on the "Clarification" is incorrect. I have gone through the Performance Improvement Plan point by point with you together. At the time I asked you if you understood and if there's anything unclear and you said no.

The form I gave you is Performance Improvement Plan which is to help you find a way to improve your work performance. The areas that are unsatisfactory and need to improve have been clearly listed in writing on the form. I have also mentioned the specific dates and incidents that prompted the need for your improvement. You have also dated and signed the form.

Since you have engaged a lawyer for this matter, you are welcome to instruct them to correspond with me.

Best regards,”

**[128]** On 14 May 2021, Ms Qu sent the following reply to Mr Wong’s email of 13 May 2021, also now copied to Ms Chiu and Mr Fung:

“Dear Wing

According to your email about my response on the Clarification of my mistakes. That's absolutely not true. You didn't mention the mistakes during the meeting.

Your email asked "Should you need any clarification please let me know." I do need clarification from you. Please clarify and explain in detail.( Date, time, what's the incident, how many times that I repeat making the same mistakes).

Thank you so much.

Kind regards,”

**[129]** Ms Chiu’s written evidence relevant to a performance improvement plan for Ms Qu is that Ms Chiu and Mr Wong decided on 6 May 2021 to put a plan in place to improve Ms Qu’s performance. Ms Chiu considers the performance improvement plan to be clear and simple and she does not understand why Ms Qu required clarification.

**[130]** In oral evidence, Mr Wong denied that he had said to Ms Qu that her feedback would not be considered. Ms Qu stated that the performance improvement plan does not detail any specific mistakes or acts or omissions, and she does not consider it was warranted.

**[131]** In oral evidence Ms Chiu stated that she was of the view that if Ms Qu was not following instructions, Mr Wong could issue to her a first warning. Ms Chiu was not able to provide specific errors or omissions of Ms Qu, and relied on whatever she was told by Mr Wong.

**[132]** I am satisfied that the issuing of the performance improvement plan was not warranted. Ms Qu could have been informed, in writing, of the high priority given to price adjustments, stock transfers and completion of stock pricing paperwork. I do not consider it was necessary to issue to her a performance improvement plan with a threat of a final written warning.

**[133]** I consider Mr Wong acted unreasonably towards Ms Qu by issuing to her a performance improvement plan. I note that Mr Wong had the backing of Ms Chiu in this activity. I consider that Ms Chiu had failed to adequately address Ms Qu’s long-standing concerns regarding Mr Wong. Any legitimate concerns Ms Chiu might have had relevant to the four bullet points within the performance improvement plan could have been addressed in a meeting between Ms Chiu, Mr Wong and Ms Qu to discuss with clarity the expectations Ms Chiu had.



*Failure to respond to greeting*

[134] On 13 May 2021, Ms Qu commenced her shift. She said to Mr Wong, “*Good morning.*” He did not reply. She repeated the greeting, and again, he did not reply. She felt upset and uncomfortable.

[135] On 14 May 2021, Ms Qu greeted Mr Wong, “*Good morning.*” She repeated it a few more times until he finally responded, “*I heard it.*”

[136] Later, a staff meeting was held. Mr Wong stated, “*Selina, you should improve your etiquette.*” Ms Qu was upset. She has never received any complaints about her service before and she was the top salesperson in the store in the past four years.

[137] Mr Wong’s evidence is that greeting somebody at work or choosing not to greet them is a personal choice. He does not consider it a prerequisite. He stated that he does, however, greet his colleagues. If he did not respond for a day or two, he does not understand how it can constitute bullying.

[138] It is Mr Wong’s evidence that on 14 May 2021, Ms Qu walked very close to him and put her face in front of his and yelled out, “*Good morning.*” He considered her behaviour to be rude, aggressive and humiliating. He did not wish to take her behaviour personally and responded, “*I heard it.*”

[139] On the same day, Mr Wong was going through a PowerPoint presentation at the team training. He was discussing telephone etiquette and clients’ welcome when they enter the store. His evidence is that he was pointing out things that the team can be aware of and improve. He does not consider any of the feedback to have been personal. He does not recall if a specific team member was mentioned. He considers that all of the team members have some strengths and weaknesses with it comes to customer service. He wants all of the team members to improve.

[140] In reply evidence, Ms Qu stated that Mr Wong greeted other employees in the store, but at that time was ignoring her. She considers it to be disrespectful. She wondered why he could reply, “*I heard it*” rather than, “*Good morning.*”

[141] Ms Chiu’s written evidence is that she has concerns and worries with Ms Qu’s “*extreme behaviour*”. She sent a message to the Slack chat group on 19 May 2021 as follows:

“Good morning Goldcoast Team

If morning greetings have become an issue and created an unpleasant atmosphere within the team, we can omit that and it is not a prerequisite. This is purely personal choice to greet your colleagues.

I kindly request all team member to put personal difference aside, put on a sunny, friendly and smiling face to start of the day.

Please remember we all work together as a team and to be respectful of each other.

I hope moving forward the team can work together in a respectful and harmonious environment.”

[142] In oral evidence, Ms Qu stated that during the PowerPoint presentation, Mr Wong was mentioning her name only and she felt singled out. Mr Wong replied that if he singled her out, he did not mean to.

[143] Having regard to the relatively small size of the store, and the small number of staff who work within it, in relatively close proximity to each other on most days of the week, it is beyond ridiculous for Mr Wong to ignore Ms Qu’s morning greeting. I informed Mr Wong during the hearing that if a person walks into a workspace and there are 20 workmates, I wouldn’t consider it necessary for that person to personally greet all 20 colleagues. That person might simply shout out a “*Good morning*”, “*Morning*” or “*Hello*” broadly across those within earshot.

[144] Mr Wong and Ms Qu spend many hours with each other every day at work. They cannot ignore each other. They effectively have to look at each other for almost all of those hours each day, either directly or through mirrors within the store. To ignore Ms Qu’s simple morning greeting on 13 May 2021 is disappointing; to do it the next day and then state, “*I heard it*” is unforgivable.

[145] Whether Mr Wong was upset if he considered Ms Qu had her face too close to his, he ought to have taken into account that he had repeatedly ignored her that morning. Mr Wong had caused her reaction of despair and then obscenely said to her that he had heard it instead of responding, “*Good morning*”, “*Morning*” or “*Hello*”.

[146] I find Ms Chiu’s act of sending the Slack message on 19 May 2021 to be a complete failure to meet her duty of care. She had an employee crying out for assistance, and she then suggested that morning greetings had become an issue and created an unpleasant atmosphere within the team. She endorsed Mr Wong’s continued refusal to greet Ms Qu if that is what he chose to do.

[147] I accept that it would have been extremely hurtful for Ms Qu to read Ms Chiu’s message and know that she had been abandoned by her employer. How could two to three employees working together in a small area, without pleasantries, without decent courtesy, constitute an unpleasant atmosphere? Ms Chiu failed Ms Qu and endorsed Mr Wong’s inappropriate, rude and unreasonable behaviour towards Ms Qu.

#### *Required to wrap watches*

[148] On 15 May 2021, Mr Wong instructed Ms Qu that he wanted her to wrap watches, and he would give her three hours to do it. He told her that she didn’t need to serve clients, nor answer the phone, just wrap watches. She felt that it was unfair because she works in the retail industry and needs to serve clients to have an opportunity to “*close the deal*”. She followed Mr Wong’s instruction.

[149] Mr Wong stated that wrapping watches is part of every staff member’s duty. On this day he assigned this task to Ms Qu. Other days some other staff may do the same. He stated that it is not unfair and is a less stressful task.

[150] In reply evidence, Ms Qu considered that she was being picked on. Further, she dislikes when Mr Wong uses her name, Selina, as he calls it several times each day. She has said to him not to use her name repeatedly.

[151] Ms Chiu's written evidence is that she is satisfied Mr Wong has appropriately delegated this task to Ms Qu.

[152] I do not consider the delegation of watch wrapping to Ms Qu to be unreasonable. It needs to be done by somebody in the team; if not her, who? It is not a task which is beneath her. If Mr Wong requires her to perform this task, it is a reasonable management direction given in a reasonable manner.

[153] Having heard Mr Wong call Ms Qu by her first name, Selina, repeatedly throughout the hearing and in the video evidence before the Commission, I consider that Mr Wong probably does overuse Ms Qu's first name, especially as there are so few employees in the store. It should be reasonably clear who he is speaking to without having to commence his sentence with "Selina", if Ms Qu does take objection to it being overused.

[154] I am of the view that Mr Wong's inflection does sound to me as though he is calling her name from a place of superiority, akin to the way a teacher or parent might scold a misbehaving child. It is said almost with an expectation of some criticism to follow. However, it is a very difficult habit to alter, and there would be numerous times throughout a workday where Mr Wong would validly need to commence the sentence using Ms Qu's first name. It might be something Mr Wong could be conscious of, reducing the overuse of Ms Qu's first name, however I am not satisfied Mr Wong deliberately overuses her name as a behaviour to act unreasonably towards her.

#### *Incentive not paid to Ms Qu*

[155] On 19 May 2021, Mr Wong received an incentive payment of \$500 for being a google review winner for February 2021. Ms Qu was the winner in January 2021, but she has not received her payment.

[156] In March and April 2021, Ms Qu asked Mr Wong to chase up her payment, however he told her that the company can cancel any incentive at any time, and she should chase it up. She felt unsupported.

[157] Mr Wong's evidence is that he did try and chase up the payment for Ms Qu. Mr Wong provided a screen-capture of a message he had sent to Mr Fung on 1 March 2021 which read:

"Bernard, Selina said she's yet to receive the \$500 incentive from[...]"

along with a later message he had sent to Mr Fung on 11 March 2021 which read:

"Bernard, Ling Ling and Suet Suet didn't mention anything about this. Would Selina and I still be getting the Google review incentives?"

[158] Mr Wong noted that it is not his decision if Ms Qu is paid the incentive and he informed her so.

**[159]** Ms Chiu's written evidence is that in March 2021, Ms Qu caused damage to an Omega watch that belongs to a client. The watch retails at \$12,875. The quotation for the repair from Omega is \$3,500. Ms Chiu retained the \$500 incentive payment to Ms Qu as part of the cost recovery.

**[160]** In reply evidence, Ms Qu stated that she was not aware of Ms Chiu's position on this matter and had not earlier been informed of this position. She said Ms Chiu's response now makes her feel stressed, and she is afraid to touch the stock for fear of damaging it. She wonders; what is insurance for?

**[161]** I am satisfied that Mr Wong has not engaged in any unreasonable behaviour towards Ms Qu on this issue. He has properly raised her concerns with Ms Chiu. I consider that Ms Chiu has acted unreasonably by withholding from Ms Qu her incentive payment on account of alleged damage caused by Ms Qu to a watch. I made clear to Ms Chiu my strong sentiments on this during the hearing, and I encourage Ms Chiu to reassess her position and pay to Ms Qu the payment of \$500.

*21 May 2021*

**[162]** On 21 May 2021, Ms Qu's evidence is that Mr Wong said to her that she has not been following his instruction. She asked; when had that occurred? He responded, "*Everyone needs to be on the sales floor at 10:31am.*" She replied, "*I was on the sales floor at 10:31am.*"

**[163]** She considers that he was following her around and watching her.

**[164]** Mr Wong called an immediate staff meeting where Ms Qu considers that Mr Wong was acting unreasonably towards her. Her evidence is that he pointed his finger towards her, which she considered to be rude behaviour. She asked him not to point his finger towards her, to which he explained he was pointing at the ceiling. She said to him, "*I saw you pointing at me.*" Mr Wong asked Ms Qu to stop.

**[165]** Ms Qu stated that she had a really bad headache and became dizzy, so she held onto his arm for help as he was on her right-hand side. He pushed her away and said, "*You harassed me!*" He said to Liliya, "*Selina harassed me*" and started laughing at Ms Qu.

**[166]** Ms Qu stated that later she asked him to get her a glass of water, but he did not help. She said that she became so upset she fainted in the store and an ambulance was required.

**[167]** She suffers from insomnia, high blood pressure, anxiety and depression. She has been diagnosed by a psychologist with severe depression. She no longer enjoys her life, has lost interest in her family, and is not able to attend to her child as she would like to.

**[168]** Mr Wong's evidence is that on this day, he is likely to have said to staff, "*All staff should be on the sales floor by 10:31am and start working.*" Mr Wong stated that while Ms Qu was on the floor by 10:31am, she was standing and looking at her mobile phone. He walked up to her and reminded her to please start working. He stated that she very reluctantly walked toward a cupboard where he was headed to, as he was obtaining glass cleaner. He is dismayed that Ms Qu describes this as following her around.

[169] At the morning team meeting he reminded everybody to observe the start time and start working, and not to be on their mobile phone. He considers that Ms Qu took this direction personally.

[170] Regarding his finger pointing, Mr Wong described his use of his hands when he talks. He denied pointing his finger at Ms Qu and used, as an explanation, his pointing of his finger to the ceiling. He stated that Ms Qu abruptly yelled in a loud voice, “*You stop talking*”, and reached across the counter to grab his arm. He was standing opposite her and a counter was in the way. He denies that he was standing near her right-hand side.

[171] He denies that he was laughing at anybody, and when she grabbed his forearm tightly, he was in pain. He considers that he was being threatened because she was behaving erratically. He was scared that she might hit him. He warned her that this may be harassment and had to wriggle his arm away from her. Only after this did she then say she was not well.

[172] Noting this abnormal behaviour, Mr Wong asked her to sit down. He offered for her to go home and take a sick day from work. He also immediately asked her if she needed an ambulance, and she did not respond. She then sat down and yelled out for a glass of water. Liliya was near the water tap so she brought it to her without him asking. He again asked her how she was and if an ambulance was needed. She then said she’s OK.

[173] Mr Wong left her and returned to work on his computer. When he walked into the back office that’s when he realised she was lying on the floor and Liliya was on the phone speaking with paramedics. Liliya did not inform him immediately that Ms Qu was on the floor. He stated that he was not aware of it until he walked in the office.

[174] In reply evidence, Ms Qu said that she was looking at her mobile phone that morning as it is company policy to have the mobile phone available and to look at the Slack group chat and check emails. She said she was on the phone for no longer than 30 seconds, checking emails. She noted, if she is not to use her mobile phone, why does Mr Wong keep sending messages to the group chat instead of speaking to her personally?

[175] Ms Qu stated that Mr Wong already had glass cleaner and a cloth in his hand when she went to the cupboard. She stated that he was following her around very closely, staring at her. She felt it was inappropriate and she felt scared and tormented. She told him, “*Don’t follow me, I don’t feel comfortable.*”

[176] In written evidence, Ms Chiu noted that she had been told that Ms Qu went to hospital following a morning meeting. She understands that a fundamental question had been asked of employees, “*Do you know how a mechanical watch works?*” After Ms Qu felt dizzy the meeting was called off.

[177] Following the conference on 23 June 2021, the parties agreed it would be necessary for the Commission to view the video footage of 21 May 2021 where Ms Qu fainted. Due to technological difficulties, the first occasion I could view the footage was 19 July 2021, approximately one week following the hearing.

[178] During the hearing, Mr Wong and Ms Chiu gave an account of their observation of the footage which they had watched numerous times. Ms Qu had not viewed the footage. She was, at the time of the incident on 21 May 2021, having a medical episode.

[179] During the hearing, Ms Qu described her actions as falling onto Mr Wong, otherwise she would have fainted at the counter.

[180] On 20 July 2021, the following correspondence was sent from my chambers to the parties:

“Dear Parties,

The Commissioner advises she has viewed the footage of 21 May 2021. As stated at the hearing on 11 July 2021, the Commissioner wishes to describe her observation of the footage, noting the Applicant has not yet had the opportunity to view the footage:

“Commissioner’s observations:

1. From between 10:37am and 10:39am, Mr Wong is removing the black sheets from the display cabinets.
2. At around 10:40am, the windows to the street are still covered. Ms Qu walks to a display cabinet near the front of the store and is engrossed in her mobile phone, putting it near her face to read it.
3. Mr Wong is busy cleaning the display cabinets with spray. He approaches Ms Qu and asks her not to be on her mobile phone. Ms Qu says she is reading emails.
4. Ms Qu claps her hands together and says, “*No problem.*” She walks to the cupboard, Mr Wong following, chastising her about being ready by 10:30am. Ms Qu says, “*Stop following me.*” Mr Wong replied, “*I’m not following you, come on!*”
5. At approximately 11:11am, Mr Wong calls a team meeting with Ms Qu and Liliya. He informs Ms Qu and Liliya that there will be specialisation of cleaning per watch brand. He will email the details to their personal email accounts. He gives basic cleaning instructions, how to and where to clean glass. The instructions appear to be very basic and potentially condescending.
6. Until around 11:17am, Mr Wong gives instruction and chastises regarding price tags. Until 11:20am, Mr Wong provides instruction about specialising in knowledge of each brand. Once brand specialisation is achieved, team members are to share knowledge with colleague. Ask each other questions. He informs the women they do not have adequate knowledge at this time.
7. At 11:20am Mr Wong takes a brief phone call.
8. At approximately 11:21am, Mr Wong politely asks Ms Qu if she can describe how a mechanical watch works. Ms Qu’s answer is not audible. Mr Wong responds, “*Thank you for trying...*” Mr Wong takes a further phone call at around 11:21am. Ms Qu and Liliya stand patiently, without speaking to each other for around three minutes.

9. At 11:24am Mr Wong returns from his phone call and invites the women to speak to clients on the phone in the manner that he does.

10. At 11:25am Mr Wong politely asks Liliya if she can describe how a mechanical watch works.

11. By 11:27:30am it appeared Mr Wong was wrapping up the meeting. He asked, *"Anything else?"*

12. At 11:28am, Mr Wong said words to the effect, *"Selina, my clear instruction this morning was that at 11:31am we need to start working."* Ms Qu responded, *"Yes, I start working."* Ms Qu was argumentative, saying that she had started working. Mr Wong responded to the effect if she was reading a particular email she should say so, otherwise she should commence working. This discussion went around and around. Mr Wong said he didn't want to have to tell her to stop talking back to him.

13. By 11:30am, both Mr Wong and Ms Qu raised their voices. Ms Qu said, *"Stop pointing to me like that."* Ms Qu repeatedly said that Mr Wong was pointing his fingers at her which made her feel upset. Mr Wong said, *"Maybe you go home then?"* Ms Qu responded, *"You make me upset. Why do I go home. You can't do that to me. You can't do that to your staff."* Mr Wong responded, *"I don't do nothing."* Ms Qu stated, *"You say you point to me, you point to the ceiling, that's unbelievable."* Mr Wong responded, *"Even if I point to you, that's normal."*

14. Ms Qu launches herself at Mr Wong, with inaudible language, but also saying *"You can't do that"*. Mr Wong said, *"Please, please don't touch me. Don't touch me. You harass me. Don't touch me."* Where she holds him on his arm is not visible due to Ms Qu's body in the way. Mr Wong is clearly held for a period of up to 10 seconds by Ms Qu.

15. Ms Qu takes a seat and says, *"I feel bad and you don't want to help me."* Mr Wong said, *"I help you, I'm sending you home but you say you don't need to. You are [bad]?. You are not well. Shall we call the ambulance again?"*

16. Mr Wong said going home is not a suggestion, he wants her to go home. He told her she is affecting the team. Ms Qu responded, *"Because of you. You can't do that to your staff."* Mr Wong responded, *"I don't know what you're talking about."*

17. Mr Wong walked away and the conversation continued with Mr Wong informing her that she squeezed his arm. Ms Qu responded, *"Because I'm not feeling well."*

18. At 11:32am, Mr Wong said to Ms Qu, *"Selina, have a break. After your break you'll be going home."*

Following this incident, shortly thereafter, Ms Qu walks near a doorway, drops a cup of water and falls to the ground, leaning against the wall. Liliya comes to her assistance. Ms Qu is largely unresponsive until the paramedics arrive at time, however when she is repositioned by Liliya, Ms Qu is observed to pull her blouse down so as not to expose her abdomen.

After being observed by the paramedics, Ms Qu is, I understand, taken to hospital.”

The Commissioner proposes to include her above preliminary view in the decision she is currently drafting and which she anticipates will soon be released. The Commissioner advises that she will note that the Applicant appeared to be having a medical episode on 21 May 2021 which may explain some of the Applicant’s conduct.

If the Applicant wishes to provide any views relevant to the incident on 21 May 2021, and considers it necessary to view the footage of the incident, the Applicant will need to attend in-person the Commission’s premises in Brisbane. A staff member of the Commission will sit with the Applicant while she views the footage and the Applicant will not be permitted to copy or record the footage. The Applicant is to advise by no later than **4:00pm Wednesday, 21 July 2021** if she wishes to view the footage and provide views to the Commission prior to any decision of the anti-bullying application being issued by the Commissioner.”

**[181]** On 21 July 2021, Ms Qu corresponded with my chambers to advise that she was unable to attend in Brisbane and did not think it was necessary that she view the footage. She stated that she awaited the Commission’s decision. The parties were accordingly advised that the decision was reserved.

**[182]** I confirm my preliminary view in the correspondence sent to the parties on 20 July 2021. I do not consider Mr Wong’s conduct to be unreasonable towards Ms Qu, apart from what I consider to be condescending instruction on how to clean glass cabinets.

**[183]** Mr Wong was correct to admonish Ms Qu relevant to her start time. It was around 10:40am and she was engrossed in her mobile phone while Mr Wong was busy preparing the store for opening. Ms Wong appeared to be shirking her responsibilities, whether she was reading a work email or not. I accept she could have read an email on her phone at a later time, and her attention was required to ensure the store was ready for opening.

**[184]** I do not accept that Mr Wong unreasonably followed her to the storage cabinet. He was informing her that she needs to be ready to work. I consider she spoke unreasonably towards him by suggesting he was following her.

**[185]** I do not accept that Mr Wong was pointing at Ms Qu during the discussion. While some of the footage is not visible due to bodies in the way as the footage of their conversation is visible through a mirrored reflection, Mr Wong had used his hands freely throughout the long discussion.

**[186]** Ms Qu was the first to state that she was upset, to which Mr Wong suggested she go home. I do not consider his suggestion was unreasonable given Ms Qu had worked herself up into quite an emotional state. Ms Qu would have required some time off work, whether it be



for the rest of the day or a break, to then be in a position to stand for some hours and serve clients.

[187] I consider that Mr Wong’s suggestion that she go home was met with Ms Qu then having a medical episode. She launched at Mr Wong in a manner of aggression and frustration, not out of fear of falling to the ground. I consider she held onto Mr Wong unnecessarily long as she screamed at him, “*You can’t do that.*” Mr Wong did not laugh at Ms Qu during this episode. Ms Qu’s conduct on the day, during the medical episode would have, I accept, been unexpected by Mr Wong. He would not have expected to have been physically grabbed by Ms Qu.

### Consideration

[188] In order to make final orders in an anti-bullying application, there are two requirements under s.789FF(1)(b) of the Act. The Commission must first find that Ms Qu has been bullied at work by an individual or a group of individuals, and secondly, that there is a risk that Ms Qu will continue to be bullied at work by the individual or group concerned.

[189] Once these two requirements have been satisfied, s.789FF confers on the Commission a broad, discretionary power to make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent an employee from being bullied at work.

[190] There is no dispute that the employer is a constitutionally-covered business, and it is also accepted by the parties in this case that the alleged conduct, if it occurred, took place whilst Ms Qu was at work.

[191] The application of s.789FD has been discussed in various decisions of the Commission where it has been held that the terms of s.789FD are to be applied objectively and that s.789FD(2) ‘*reasonable management action carried out in a reasonable manner*’ is not so much an ‘exclusion’ but a qualification which reinforces that bullying conduct must of itself be unreasonable.<sup>1</sup> It also emphasises the right of management to take reasonable management action in the workplace.<sup>2</sup>

[192] Mr Wong raised a jurisdictional objection, asserting that any action taken by him was reasonable management action taken in a reasonable manner.

[193] In *Mac v Bank of Queensland Ltd*,<sup>3</sup> Hatcher VP provided the following examples of conduct “*which one might expect to find in a course of repeated unreasonable behaviour that constituted bullying at work*” as including:

“... intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.”<sup>4</sup>

[194] In *Edwards v E S Trading Co (Discounts) Pty Ltd (t/as E & S Kitchen, Bathroom Laundry)*,<sup>5</sup> an employee’s genuinely held belief that she was being bullied at work was insufficient to enliven the Commission’s jurisdiction. The conduct must not only be perceived

as being bullying, but that belief “*must be reasonable in the sense that it is able to be supported or justified on an objective basis.*”

**[195]** In *Ms SB*, Hampton C observed that:

“whether management action is reasonable requires an objective assessment of the action in the context of the circumstances and knowledge of those involved at the time”.<sup>6</sup>

**[196]** The Commissioner also relevantly stated:

“The test is whether the management action was reasonable, not whether it could have been undertaken in a manner that was “more reasonable” or “more acceptable”. In general terms this is likely to mean that:

- management actions do not need to be perfect or ideal to be considered reasonable;
- a course of action may still be “reasonable action” even if particular steps are not;
- to be considered reasonable, the action must also be lawful and not be “irrational, absurd or ridiculous”;
- any “unreasonableness” must arise from the actual management action in question, rather than the applicant’s perception of it; and
- consideration may be given as to whether the management action involved a significant departure from established policies or procedures, and if so, whether the departure was reasonable in the circumstances.”<sup>7</sup>

**[197]** I have determined that on numerous occasions, but not in every instance as alleged by Ms Qu, Mr Wong repeatedly behaved unreasonably towards Ms Qu. I am satisfied that the behaviour engaged in by Mr Wong to Ms Qu creates a risk to Ms Qu’s health and safety.

**[198]** In the instances where I have found Mr Wong behaved unreasonably towards Ms Qu, I am satisfied that it was not reasonable management action carried out in a reasonable manner.

**[199]** I am satisfied that if an order is not made, Ms Qu will be at risk of continuing to be being bullied at work by Mr Wong.

**[200]** In considering the terms of an order the Commission may make I am required to take into account:

- Any outcomes arising out of an investigation that is being has been undertaken by another person or body.
- Any procedure available to the worker to resolve grievances or disputes.
- Any outcomes arising out of any procedure available to the worker to resolve grievances or disputes.

[201] I consider that Ms Qu has been let down by her employer. No bullying policy or procedure exists. Ms Qu had complained about Mr Wong’s behaviour for a considerable period of time. No action was taken to address the concerns Ms Qu had, nor the concerns raised by other employees.

[202] Commissioner Williams said the following in an anti-bullying decision involving *Ms Jennifer Watts* [2018] FWC 1455:

“[140] It is to be remembered that the legislative scheme is not directed at punishing those who may have behaved unreasonably in the past nor is it to compensate someone who has endured such bullying instead it is directed at preventing Ms Watts from being bullied at work in the future.”

[203] The order I have issued, PR732164, in conjunction with this decision is necessary to ensure Mr Wong does not continue to bully Ms Qu at work.



COMMISSIONER

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<PR732163>

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<sup>1</sup> *Mac v Bank of Queensland Ltd* [2015] FWC 774 at [95].

<sup>2</sup> *GC* [2015] FWC 6988 at [47], [52]; and *Amie Mac v Bank of Queensland Limited and others* [2015] FWC 744 at [48], [88].

<sup>3</sup> [2015] FWC 744.

<sup>4</sup> *Ibid* at [99].

<sup>5</sup> [2016] FWC 8223 at [61].

<sup>6</sup> [2014] FWC 2104 at [49].

<sup>7</sup> *Ibid* at [51].