

[2023] FWC 1993

The attached document replaces the document previously issued with the above code on 10 August 2023.

Rectifying an error by replacing names with de-identified names.

Ebony Algate  
Relief Associate to Commissioner Spencer

Dated 1 September 2023





# DECISION

*Fair Work Act 2009*

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

## Applicant

v

**The Australian Federal Police T/A Australian Federal Police**

(SO2023/17)

COMMISSIONER SPENCER

BRISBANE, 10 AUGUST 2023

*Application for an FWC order to stop bullying – jurisdictional objection - alleged denial of resources – alleged exclusion from ‘clubs’ – alleged exclusion from workplace events – alleged targeted management action – bullying conduct not made out against statutory tests – reasonable management action taken in a reasonable manner – jurisdictional objection upheld - application dismissed.*

[1] A1 (the Applicant) filed a Stop Order bullying application pursuant to section 789FC of the Fair Work Act 2009 (the Act). The Applicant included three named persons in this application who she alleged had engaged in bullying conduct against her: R3, R1 and R2. The Applicant is employed with the Australian Federal Police (“AFP”/the Employer, the Respondent) based in Cairns and commenced in May 2011. Her operational roles have included policing work in the Australian Capital Territory, Cairns Airport Aviation Uniformed Operations, Cairns Crime Operations and, most recently, as DSC in the Cairns Joint Anti Child Exploitation Team (“JACET”).

[2] In September 2020, the Applicant was assigned to the Cairns JACET, working with the Queensland Police Service Officers (“QPS”) as then the sole AFP member. The Applicant is currently working a contract (with secondary work approval from the Respondent) with the Attorney General’s Department. The Applicant is seeking the outcome of this application as it is relevant to her decisions regarding the course she intends to take with her future employment. The Applicant set out the proposed Stop Orders she is now seeking from the Fair Work Commission (the Commission) at hearing in response to the application:

1. Order the Applicant be provided a safe workplace by being provided a position physically located in another Northern Command location
2. Order that any AFP witnesses who have provided evidence in this matter are not to suffer any adverse actions by the named persons as a result of the evidence provided and maintain an ability to contact the Commissioner directly for advice in relation to any actual or perceived breaches of this order.
3. Order that no further disciplinary matters be instigated against the Applicant as a result of making this complaint to the Fair Work Commission and any disciplinary matters

potentially already commenced be immediately ceased and removed from her employment record.

4. Order that the named persons receive management counselling and/or training in relation to the behaviours they subjected the Applicant and others to, so this behaviour is not repeated
5. Order the AFP Professional Reporting Standards provide a written response to the Commission as to their decision not to investigate and O1 to provide a written response to the Commission as to the managerial action outcomes (if any) and associated reasoning.
6. Order that the AFP review their procedures to ensure allegations of bullying are dealt with appropriately and people are not victimised as a result of providing evidence and complaints are handled in line with the AFP's bullying and complaint handling policies.
7. Order that names as part of this matter not be published to protect the identity of the Applicant and other police witnesses.

[3] These Stop Orders that the Applicant sought at hearing, were different to those initially sought and were the subject of conciliation.

### *Suppression of Names*

[4] Parties earlier made submissions to suppress the names of the Applicant, the named persons, the witnesses and some AFP employees who were mentioned during the proceeding. This decision has first been released to the parties in an unredacted version. The context of these applications to suppress names and other matters were made in the first instance by the Applicant in the circumstances of her concerns around her treatment and the privacy of her matter. However, at the time of proceeding to hearing the Applicant had joined the statements of evidence of the grievances of a group of other Constables with her case.

[5] Whilst the normal default position is that hearings would be conducted in public and decisions in such matters would not be redacted,<sup>1</sup> a range of arguments were raised including that the Applicant considered matters connected to her application had become known at the workplace that had added to her distress. The legal representative for the Respondent had also been instructed that there was potential for significantly sensitive operational matters to be discussed during the hearing and the names of officers associated with such to become publicly known and accordingly redaction of the operational matters and the names was warranted. The Respondent also submitted that the suppression Order for the hearing was required as the submissions and hearing did or may disclose the basis on which operational decisions are made and how operational resources are allocated in the AFP. Further, it would involve the consideration of correspondence filed in evidence which identify confidential operations and names of persons who were the subject of investigations.<sup>2</sup> A range of these matters were dealt with in correspondence with the parties.

[6] Following the filing of submissions, a suppression Order was issued to cover:

- (a) the evidence and submissions filed by the parties (the digital court book);
- (b) any documents filed or tabled;
- (c) any transcript of proceedings, and

- (d) any further decisions

[7] The Order also suppressed the public hearing of the matter over the two days in Cairns. Only parties, Respondent instructors, legal representatives, support persons and Commission staff in attendance, and witnesses attending only to give evidence, with the redacted decision and transcript to be released with the consent of the parties.

## RELEVANT LEGISLATION

[8] The application was filed pursuant to section 789FC of the Act. The Respondent had made a jurisdictional objection, pursuant to section 789FD(2) and set out that a range of the named person's conduct was reasonable management action carried out in a reasonable manner. The Applicant refuted this.

### ***"789FD 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 Commonwealth place;
  - (b) The business or undertaking is conducted principally in a Territory or Commonwealth place;  
then the business or undertaking is a ***constitutionally-covered business***

[9] It is not in dispute that the Applicant is a worker, that the conduct alleged predominantly occurred at work or at work related events, and that the Respondent is a constitutionally covered business.

## BACKGROUND

[10] In summary terms the Applicant set out that the background to her bullying application started in March 2021, when she was required to present verbal and written evidence in relation to a bullying complaint raised through an internal complaint by A5 against R1 and N2. Following this, the Applicant set out that she took a year of parental leave after having her first child with her partner, (also, an AFP police officer based in Cairns) A2. The Applicant's partner

is referred to only insofar as various details that relate to him are referred to by the Applicant. This includes alleged conduct taken by the AFP against him that the Applicant argued was due to his association to her.

[11] The Applicant was on parental leave from March 2021 to March 2022. The Applicant stated that the very first event when she experienced different treatment than she had experienced previously, by these named persons, was towards the end of her parental leave when she attended the work Christmas party with her new baby. During that evening, she alleged that when she approached R1, she stated R1 said to her: *“I don’t care about my career anyway”*.<sup>3</sup> She set out that prior to taking parental leave and engaging in giving evidence in A5’s hearing she had a very good relationship with R1. The Applicant stated that in the first days on her return to work she had endeavoured to have coffee with R1 to smooth the tension, but whilst a group coffee meeting did occur, a coffee meeting between just the two of them, as she’d suggested, and then requested in a further email did not eventuate.

[12] In terms of an overview of the matters raised by the Applicant, she had alleged that on returning to the workplace in March 2022, she was subjected to a hostile work environment and bullying conduct from R1, R3 and R2. The Applicant alleged that the behaviour she was subjected to was as a result of speaking up about issues regarding what she saw as a toxic workplace in the Cairns office and giving evidence in A5’s internal bullying complaint hearing. The Applicant alleged that, along with a group of Constables (who she stated had provided witness statements in these proceedings), she was deliberately targeted by this group of managers.

[13] After being subjected to a series of incidents of alleged bullying (which are referred to later), in September 2022, the Applicant submitted an internal complaint to the AFP’s Professional Reporting Standards (“PRS”) in relation to the bullying, to obtain a managerial response to this alleged behaviour. The Applicant stated that she followed up on the PRS complaint application and was advised that it had been referred for management response and further to this the Applicant was advised that O1 was to attend in Cairns for other matters and that she would meet with the Applicant when she was there. The meeting did not occur without explanation. Ultimately the Applicant did not receive an outcome on the PRS complaint and therefore sought an outcome as part of the Orders sought at hearing. The Applicant filed an application for an Order for O1 to attend as a witness in these proceedings so that these questions could be addressed to her. I granted the Applicant’s Order for O1 to attend as a witness. Prior to the hearing, O1 prepared a witness statement. Subsequently, the Applicant stated it was not necessary for O1 to attend the hearing to answer any further questions (in person or by Microsoft Teams). Accordingly, effectively the Order the Applicant was seeking to have on that particular issue of her internal complaint to be addressed, if it remains outstanding, is for want of the Applicant failing to address the range of associated matters with this witness. However, the evidence before the Commission regarding the internal complaint is considered.

[14] In response to the Applicant’s initial submissions, the Respondent produced a table identifying the Applicant’s 39 allegations of bullying that she had set out. That table is provided below to endeavour to set out the allegations in a concise manner in the first instance. The Respondent’s submissions and witness statements address the allegations as set out in that table. In her reply submissions, the Applicant provided her own tables detailing 35 allegations and

the pinpoint references in her witnesses' evidence in relation to the core subject groups of her allegations. The Applicant's tables have not been reproduced in that form, but all of the content has been relied on and referred to and the categories as used by the Applicant to group her core allegations have been applied:

**Respondent "Allegations accepted to be allegations of bullying against the Applicant" – matrix of allegations:<sup>4</sup>**

No	Date	Description	Person named	Applicant Witness Statement reference
1	15 January 2022	Text message from R1 regarding referee report for Sergeant application	R1	[41]
2	March 2022 onwards	Overt hostility in face-to-face interactions	R3	[37]
3	2 March 2022 to 9 March 2022 (first week back in office)	Denied use of AFP vehicle	R1	[48]
4	2 March 2022 onwards	Failure to return greeting or only minor acknowledgment	R1	[49]
5	17 March 2022	Denied inclusion on-call roster for out-of-hours Cairns investigations when other members of the Airport Crime Targeting Team and JACET were included in other offices	R1 and R3	[56]
6	2 March 2022 onwards	Repeatedly denied use of Crime Operations and Operational Delivery Team vehicles	R1 and R2	[77],[81]-[86]
7	31 March 2022	Denied use of Crime Operations Team member for executing JACET warrant	R1	[87]-[88]
8	From 1 April 2022	Active avoidance of and hostility towards applicant	R1	[92]
9	10 June 2022	Applicant's questions ignored and dismissed with hostility	R3	[109]
10	3 August 2022	Negative response to applicant raising objections as to validity of search warrant	R2	[117]
11	4 August 2022	Unreasonable threat of formal reprimand for failure to wear accoutrements in office	R2	[120]-[121], [124]

12	8 September 2022	Verbal interaction with R3 'not fitting of office manager'	R3	[147]
13	23 March 2023	Vexatious CRAMS complaint made against applicant for failure to renew secondary work approval	Unknown – anonymous complaint	[167]
14	5 May 2023	vexatious CRAMS complaint made against applicant for unprofessional and insulting comments	Unknown – anonymous complaint	[170]

**Respondent “Allegations not accepted to be allegations of bullying against the Applicant” – matrix of allegations:**

No	Date	Description	Person named	Applicant Witness Statement reference
1	Undated	Exclusion from 'coffee club'	R3, R1, R2 and others	[22]
2	Undated	Exclusion from 'RSL club'	R3, R1 and others	[22]
3	Around 15 January 2022	Applicant told by A2 that R1 had told the office PRS were investigating partners cheating in sergeant exam	R1	[42]
4	Undated – potentially February 2022	Applicant told about negative reference made to N17 by R1 about applicant returning from maternity leave (incl rolling of eyes) at Cairns Market (Applicant not present)	R1	[44]
5	2 March 2022	Short greeting to the Applicant without stopping to talk to applicant	R1	[47]
6	2 March 2022 to 9 March 2022 (first week back in office)	R1 told Applicant that laptop and associated equipment belonged to Crime Operations - they were purchased to be primarily used by JACET	R1	[48]
7	About a week after starting at QPS office	Decision to provide JACET use of back conference room	R2	[54]
8	23 March 2022	Feedback from other members instigated by R2 that Applicant was insubordinate in sending all-station email re welcoming QPS employees	R2	[58]



9	23-24 July 2022	Failure to refer after-hours calls for JACET matters to JACET, reported to Aviation team.	R1	[57]
10	Approx. 25 March 2022	Spreading of false rumour regarding A5	R1	[65]— [75]
11	Unclear	Spreading of second false rumour regarding A5	R1	[76]
12	From 1 April 2022	Denied viewing of email from R1 referring applicant's complaint email to N8 with allegation of insubordination	N8	[89]-[91]
13	6 May 2022	Applicant told by member of Crime Operations that R1 marked desks for Crime Operations so Applicant could not find desk for A5	R1	[97]
14	8 June 2022	All-station email declaring non-AFP members were not allowed to use the gym	R2	[107]
15	First week of August 2022 (at least)	Exclusion from office morning and afternoon teas (in the context of the allegation this is not a genuine allegation of bullying)	R2	[125]- [126]
16	5 August 2022	Attempt to leave applicant at lunch without saying goodbye	R2 and R1	[128]
17	4 August 2022 to 19 August 2022	Failure to return property to Lotus Glen prison when asked by applicant	R2	[129]
18	10 August 2022 to 8 September 2022	Unreasonable delay in sending evidence to Brisbane for forensics analysis when asked by applicant	R2	[130]
19	26 August 2022 (at least)	Deliberately offering staff to assist with operations on weekends and applicant's days off/withholding of staff when applicant was working	R2	[131]
20	Undated	Failing to assist applicant in timely manner with removing/lodging items in secure storage	R2	[133]
21	12 August 2022 to 17 August 2022	Interference in applicant's chain of command regarding overtime for staff assisting with warrant	R2	[135]
22	Undated	Unjustified denial of use of Operational Delivery Team vehicle	R2	[136]

23	Undated	Spreading of rumours that applicant’s complaint was about N5	R3	[161]
24	Undated	Spreading of rumours regarding disbanding of JACET	Unclear, suggestion rumours consistent with alleged rumour by R1	[161]
25	21 March 2023	Applicant told by A9 that R3 told N12 to look at FWC website	R3	[163]

[15] In response to these Respondent tables, which refer to the acceptance of 14 allegations characterised as bullying,<sup>5</sup> whilst concessions by the respondents were made on some of these allegations, they then set out in their submissions stating that to the extent there are genuine allegations of 'behaviour' which was 'towards' A1, and which could conceivably amount to bullying behaviour, the individual respondents have responded to these allegations in a compelling way, which when considered, leaves no room for a finding of bullying.<sup>6</sup>

[16] It is relevant to note that the Commission only has jurisdiction to deal with the application as raised by the Applicant and the matters which are relevant to the conduct alleged against her. The jurisdiction of the Commission can consider elements of allegations made by the group of Constables as referred to by the Applicant, but these have only been considered where relevant to the consideration of the Applicant’s allegations. However, predominantly this material relates to the circumstances of their individual complaints. Findings are not able to be made in relation to their overall separate allegations which would require individual applications. The Respondent objected to the inclusion of these supporting witness statements on the basis that it was an abuse of process where they each complained of separate bullying conduct against them with no separate applications to the Commission.

[17] It was made clear at the outset, that only the Applicant’s allegations against the named persons that can be assessed in this hearing and decision.

[18] The Applicant, in addressing the significant nature of the work that she was undertaking in the JACET and her commitment to it, but also the impact of the bullying conduct, submitted that whilst she was committed to the work in the JACET, she could not deal with the bullying and “cronyism” she stated she was experiencing. Part of her complaint was that she did not receive a response to the internal complaint. she stated that she considered this had occurred because R3 has close relationships with the named persons as well as the N3 and N4. There was no evidence to support that finding.

[19] The Applicant stated that the bullying she experienced included; isolating her in her role, in the enclosed JACET room at the end of the Cairns office and not extending invitations to staff functions to her and her team, experiencing regular denial to her of AFP operation’s resources, which were required for her work (such as AFP vehicles and other police officers required to assist with her policing work, such as for the service of warrants), denial of access to particular evidence, gossiping about her and A5 and the JACET, and being unreasonably reprimanded for not wearing AFP accoutrements (and threatened with a Complaints Reporting

and Management System (“CRAMS”) notice for such). The Applicant believed that as a result of these behaviours and others that the workplace had become unsafe for her.

[20] She stated her partner A2 is an experienced and well-regarded Detective, who due to his association with her, had also been targeted, by being moved from Cairns Crime Operations to undertake aviation work.<sup>7</sup> The Applicant stated that the impact of this decision on their particular family circumstances has been significant.<sup>8</sup> It should be noted that her partner provided specific reference to not wanting any allegation regarding him being part of the proceedings, or to be construed, or considered in any particular way.<sup>9</sup> No finding on this matter has therefore been made.

[21] The Applicant had also lodged a General Protections application pursuant to section 372 of the Act at the same time that she had filed her bullying application with the Commission. The Applicant, in her applications alleged that both she and her partner A2 were the subject of bullying conduct.<sup>10</sup> The General Protections application was the subject of some detailed discussions when the matter was listed (for the first conference) together with the bullying application. The Applicant resiled from progressing matters on behalf of her partner given that her partner had not filed his own General Protections application, and also in the General Protections application, the Applicant had expressed misgivings about moving forward on his behalf to discuss solutions in a General Protections application, and it was also known that A2 could make his own application to address the conduct directed at him if he elected to do so. The Applicant later set out that her partner had decided that he wasn’t seeking to make a separate application, or to have his particular matters dealt with, as part of the Applicant’s General Protections application. Therefore, the Applicant withdrew from wanting his matter to be considered before the Commission. Any conduct alleged against him is therefore only considered where its impact on the Applicant is argued.

[22] It was explained that in accordance with section 374 of the Act that the Respondent could not be compelled in relation to a section 372 application to attend a General Protections conference. The Respondent’s representatives however, had voluntarily attended the conference and undertaken detailed discussions regarding her and her partner’s situation and the new work role he had been moved to. Parties were focused on endeavouring to resolve all matters between them, and part of the Applicant's case was that she considered that there had been some alleged retribution against her partner. Therefore, the Applicant sought to include the action taken against him in moving him to aviation work; with her application due to its effects on her and her family. The General Protections file was closed after the conciliation conference as the Respondent withdrew consent to continue to attend further conferences on that matter. The Stop Bullying application remained on foot. It was after the conferences in these matters when it was determined that conciliation could not resolve the stop order bullying matter, (on the Orders being sought at the time) that the Respondent sought for the application to be brought on for arbitration. Accordingly, directions were set for the filing of evidence and submissions and dates set for the matter to be heard in Cairns.

[23] The Applicant stated that she had sought particular orders in relation to the PRS complaint she had made. As a result of not receiving a response to her PRS complaint, she followed up and was advised that it had been referred for management response. Further to this the Applicant was advised that O1 was to attend in Cairns for other matters in November 2022 and that she would meet with the Applicant when she was there to discuss her complaint.

However, O1 did not meet with the Applicant on that day and instead they met at another time on 6 February 2023 after the Applicant had made her application to the Commission. The Applicant, in relation to these hearing proceedings, sought and was granted an Order for O1 to attend and give evidence as to why her complaint had been handled in the manner referred to.

[24] In regard to assessing the effect of the alleged bullying conduct on her health and safety, the Applicant stated that because of the alleged conduct she had suffered anxiety, stress and sleep deprivation. The Applicant prior to the hearing provided a relatively recent medical report from her GP that set out that she had developed a PTSD diagnosis.<sup>11</sup> The Applicant stated that on the 12 January 2023, following her internal complaint not being addressed by the AFP's PRS process for 113 days, she lodged an application for an order to Stop Bullying in the Fair Work Commission ('the Commission'). It should be noted that prior to this, the Applicant set out that she had taken steps to try and mediate the difficulties that had arisen with R1 as will be set out below.

[25] It is relevant to emphasise that nowhere throughout the proceedings or in the material was the standard of work or commitment to policing by the Applicant and her partner, criticised by any witness or representative of the AFP. The Applicant included her CV in her submissions which provides her impressive results and set out that she holds a law degree amongst other qualifications.<sup>12</sup> This demonstrated that the Applicant understood the law, and further to these studies worked in an evidentiary based policing job in a focused role of charging and gathering evidence for the prosecution of paedophiles. The Applicant's legal knowledge is relevant to matters of evidence in relation to substantiating the allegations of bullying. This has been taken into account.

### *Permission to appear*

[26] The Respondent sought to be legally represented before the Commission. The Applicant objected to this representation. Further to the filing of submissions, a decision was issued on 25 May 2023<sup>13</sup> and permission was granted pursuant to section 596(2)(a). The decision set out the reasons for the grant of permission for the Respondent to be legally represented. Accordingly, at the hearing, the Applicant was self-represented, with her partner A2, appearing with her as a support person and the Respondent and the persons named were represented by Mr Dan Williams and Mr Callum Young, Lawyers of MinterEllison.

### *Witnesses*

[27] The Applicant provided evidence on her own behalf and provided eight witness statements in support of her application. The Applicant's witnesses were as follows:

- A2
- A3
- A4
- A5
- A6
- A7
- A8
- A9

[28] The Applicant also sought orders to attend on 1 June 2023 (3 weeks before the hearing) for the following people. By direction, the Respondent provided submissions on these on 5 June 2023 and the Applicant provided reply submissions on 12 June 2023:

- O1
- AO1
- AO2
- AO3
- AO4

[29] The Applicant submitted that O1 was required at hearing to provide further information as to why her PRS complaint had been handled in this way as has been referred to. The Applicant's aim predominantly in relation to Order 5, but also in relation to other orders, was to seek O1's views on a range of matters regarding her return to the workplace and the allegations of conduct made throughout these proceedings. O1's position and experience made the provision of the evidence important and afforded the opportunity to the Applicant to raise a series of her concerns with O1 directly. The Respondent objected to these orders. On 14 June 2023 an Order to Attend was issued for O1. It was considered that O1 was aware of the allegations and given her seniority in the organisation, she would be able to assess relevant AFP matters that were put to her by the Applicant in cross-examination.

[30] O1 at the earliest opportunity after being ordered to attend, provided a witness statement on the evening of 19 June 2023 after correspondence being exchanged about her attendance at the hearing. Her statement addressed the matters sought by the Applicant as set out below (which will be addressed later):

- Detail of why my internal complaint was not investigated by Professional Reporting Standards, in particular which head of power under section 40T of the AFP Act 1979 was utilised not to investigate my complaint;
- Detail of her briefing and discussions with N18 in relation to my complaint;
- Detail of how broadly she shared details of my complaint with other AFP management within Northern Command and elsewhere;
- Any management actions undertaken by O1, or the AFP, in relation to my complaint and the named persons;
- Any involvement she had in Aviation Sergeants, and Senior Constables at Cairns Office being briefed of my Fair Work Commission matter during mid-March 2023, as R3 has indicated occurred;
- Any comment she can make about the adverse actions that have continued against me since my complaint and how the fall-out from this Fair Work Commission matter will be addressed in light of the concerns raised during the Cairns Cultural Review/ Focus Groups and the Team leader and acting Team Leader retreat which specifically discussed the FWC matter openly in those forums;
- Any impediments O1 sees on my safe return to the AFP workplace under R3's command or generally;
- Any assurances she can make about my safe return to the AFP workplace;

- What is the AFP doing at the senior management level in response to the high rates of direct bullying behaviour experienced by me and my witnesses and the other 17% of members Northern Command as identified in the 2022 AFP Staff Survey?
- If she remains responsible for the managerial response to my internal complaint, what will be done to prevent future harm to me and my witnesses in this workplace?
- Advise who is accountable for the decision to disband the Cairns JACET in December 2022, as outlined by the Respondents, including when O1 became aware as the manager responsible of Child Protection Operations in Northern Command that the Cairns JACET had been disbanded (O1 told me she had no knowledge of the JACET being disbanded during our meeting in January 2023).
- If she believes the behaviours outlined in my internal complaint are reasonable management action undertaken in a reasonable way, to her standards, articulate this to the Commission.<sup>14</sup>

[31] On the morning of the hearing the Applicant, by correspondence confirmed she would not require O1 for cross examination due to the witness statement being provided. In circumstances where the Applicant sought her attendance and then withdrew from needing to cross examine the witness, it must be noted that the Applicant was provided the opportunity to redress any matters in O1's statement she disagreed with or sought further clarity on and chose not to take it.

[32] The remaining persons sought to attend by Order were determined not to have sufficient relevance to the Applicant's case on the detail submitted by the Applicant. AO4 and AO3 were called as the Applicant alleged they were a part of the 'coffee club' the Applicant claimed to be excluded from.<sup>15</sup> I accept the Respondent's submission that AO4 and AO3' evidence would not be of sufficient relevance to the issues in dispute.<sup>16</sup> It was included in the Applicant's applications for Orders to attend that not each one of those on that list was essential. In addition, I note that these matters raised in the applications for orders could be put to the named persons in cross examination.

[33] AO1 and in the alternative AO2 were requested to be called as AO1 was a part of the decision-making process for the Applicant's PRS complaint and AO2 was provided as the best contact person for PRS complaints while AO1 was on leave.<sup>17</sup> I accept the Respondent's submissions that there was no evidence or suggestion that either of these officers had any opportunity to observe any behaviour by any of the named persons towards the Applicant<sup>18</sup> and that they were being called only to be examined on the AFP's decision to refer the Applicant's PRS complaint to O1 for action after its closure,<sup>19</sup> which was not a decision made by any of the named persons. In addition, O1 was ordered to attend and had greater relevance to the question of the internal complaint.

[34] The three persons named, R1, R2 and R3 provided evidence on behalf of the Respondent.

[35] The Respondent only sought to cross examine the Applicant at the hearing and objected to the inclusion of the eight other witness statements for want of relevance. The Applicant cross examined all three named persons at the hearing.

***Objection to Applicant witnesses and witness statements***

[36] The Respondent objected to the Applicant's supporting witness statements as they submitted that each of the statements had plainly been filed in these proceedings and the evidence in them sought to be placed before the Commission was for an improper or ulterior purpose, namely to place statements of other persons which contained perceptions of their own personal experience of the AFP management or to raise their own allegations, but which have no apparent relevance to the Applicant's allegations of bullying behaviour by any of the named persons towards the Applicant.<sup>20</sup>

[37] The Respondent submitted that the Applicant's reliance on these statements at the highest, could only be broadly categorised as tendency or propensity evidence, to the extent that any of the statements purport to give evidence about their perceptions or experiences with the named persons.<sup>21</sup> In this regard, they submitted that evidence of that nature is only admissible if it is sufficiently relevant to the issues which arises for determination in the matter<sup>22</sup> and that that tendency evidence may lead to unfair inferences being drawn about a person's conduct in a specific situation under consideration in a particular case.<sup>23</sup>

[38] The Applicant submitted that she had provided a detailed table of allegations in her reply submissions, including references to paragraph numbers of relevance linking material in each of her witnesses' statements to corroborate allegations she had made, to directly demonstrate their relevance.<sup>24</sup> The Applicant also outlined the value of the statements as tendency evidence, and or supporting evidence of where resources were available but denied to her, and as evidence of a pattern of behaviour toward the group of Constables she was a part of.<sup>25</sup>

[39] The witness statements of this group in the main, made individual allegations against the AFP and the named persons. The Applicant submitted that a range of the allegations of some of her witnesses (who represented the group of Constables that have been subject to the alleged bullying conduct by the named persons in this matter) were corroborative of the behaviour she alleged.

[40] The parties consented to the witness statements of the Constables being a part of the Commission record and for the determination of these objections to be dealt with in the decision,<sup>26</sup> with the parties agreeing no prejudice would be suffered by this.<sup>27</sup> I considered that it would have been premature to strike out these witness statements prior to a fuller understanding of the Applicant's case, and erring on the side of ensuring on balance that parties could put all relevant material before the Commission. There was an argument that the statements should be assessed as they related to tendency evidence, and evidence about the impact of the conduct on the Cairns workplace. The Commission is not strictly bound by the rules of evidence and the Applicant argued that these statements were an important part of her case. However, I place limited reliance or weight on the ancillary matters or personal grievances raised in the statements which lack direct evidence of the Applicant's allegations, or direct relevance to the matters raised by the Applicant. This determination relates only to the allegations of bullying against the Applicant. Given the Respondent only considered the Applicant's evidence was relevant, and that only the Applicant was called for cross examination, the Respondent was not prejudiced by an alleged abuse of power argument, as they never intended to cross examine the witnesses they objected to.

[41] The Applicant sought to provide additional evidence of her supporting witnesses, in the form of oral evidence at the hearing, in addition to her submissions in reply. This was denied on the basis that the Applicant had not provided supplementary witness statements with her submissions as was the regular course, to refute the Respondent's submissions. The directions had set out the order of the witness evidence, particularly in terms of reply evidence, which the Applicant was referred back to. The additional evidence that the Applicant outlined and sought to bring at the hearing was evidence known to the Applicant and these witnesses at the time she filed their original statements, and at the time the Respondent filed their materials. Therefore, to allow for these witnesses to provide the additional evidence at the hearing, without providing supplementary statements would have been a denial of procedural fairness to the Respondents, particularly in circumstances where the Applicant had made clear that she was seeking to bring these further witnesses approximately two business days prior to the hearing. These witnesses had not been called to be cross-examined by the Respondent.

#### **FURTHER SUMMARY OF APPLICANT'S SUBMISSIONS AND EVIDENCE – INCLUDING THE APPLICANT AND SUPPORTING WITNESS STATEMENTS**

[42] The Applicant submitted that she has been employed by the AFP for approximately 12 years and was currently undertaking a temporary secondment with the Attorney-General's Department until 23 September 2023. She had stated that she had made the decision to accept this alternative work as she could no longer stay at the Cairns workplace, given the conduct towards her and the allegedly hostile workplace. The Applicant's partner, A2 remained at the workplace. The Applicant detailed her history, including that she had moved to Cairns in late 2015, and during the time leading up to her JACET assignment in September 2020, she undertook a role in Crime Operations. The Applicant submitted that R1 was her team leader on the inception of the JACET and then subsequently she was assigned as her administrative team leader (responsible for time recording, leave requests, etc). N2 went on leave whilst the Applicant was on parental leave and was replaced by R3 who is the Applicant's direct manager. R2 held a role which required the Applicant to seek resource approval from him on occasion, but otherwise had little interaction other than on those interactions she alleges were inappropriate.

[43] The Applicant submitted that prior to A5's complaint to PRS, and the Applicant going on parental leave, she did not perceive any hostility in the workplace and was included in station social events and had no issues with being provided AFP operational resources. Once she had returned, the Applicant alleges it became known to her that the evidence she gave in A5's complaint had been shared around the office,<sup>28</sup> including to the named persons. She stated she was then targeted or subjected to bullying behaviour from the named persons, and her health suffered as a result. The Applicant submitted that she suffered PTSD, depression, hypervigilance, sleep disturbance/deprivation, anxiety and was hospitalised for stress-related conditions.<sup>29</sup> Furthermore, she submitted that her hypervigilance was amplified when she found a listening device in a bag in the JACET work area,<sup>30</sup> and heard claims by A5 that she thought her water bottle had been poisoned.<sup>31</sup> The Applicant stated that she held a belief that she would be harmed in some way by or on behalf of the named persons prior to the conciliation conference with the Commission.<sup>32</sup>

[44] The Applicant submitted that she was either individually targeted or targeted as part of a group of workers and can establish bullying under section 789FD of the Act.<sup>33</sup> The groups



were described as a group of members who gave evidence in A5's complaint, and a group of members deliberately excluded from the social groups named the "Coffee club" or "RSL club". The Applicant submitted that this group consisted of herself, A5, A9, A8, N1 and A6.

[45] With regard to the Applicant's PRS complaint in September 2022 in relation to the alleged bullying, the Applicant submitted that on 21 October 2022 PRS advised the Applicant they would not investigate the matter and would refer the complaint to O1 for managerial action. Consistent with the earlier background, the Applicant submitted that she was provided no information about the progress for managerial action. In regard to lodging this complaint, she made submissions about this in the current matter, giving details of how the AFP failed to address the complaint.<sup>34</sup> The latest of which occurred when O1 scheduled to meet the Applicant to discuss the issues, but did not attempt to contact her further.

[46] The Applicant submitted the Commission should reject an argument of "reasonable management action" on the basis that each of the actions were unreasonable and were deliberately perpetrated against the Applicant and the group of workers she is a part of. She stated that the reasonableness of the named persons actions, should be assessed against the policing culture, the requirements of her work, and work environment, where a lack of support can increase risks to health and safety. The Applicant set out her increasing concerns about this conduct, and that increasingly she felt isolated as a result of this conduct. She stated she became hyper vigilant about her own safety. The Applicant also referred to her concern in these circumstances for her young child as well. A4 also noted that he had observed a negative impact of the workplace culture on the Applicant's emotional wellbeing.<sup>35</sup> The Applicant, taking into account the matters she referred to, had become increasingly distressed.

[47] The Applicant also made submissions in relation to the work culture studies performed by a workplace psychologist on the AFP in Cairns. The Applicant submitted that AFP management had conducted a review of the workplace in Cairns and that the findings are inconsistent with the Applicant's experiences and her witnesses.<sup>36</sup> The Applicant believed that her and their witnesses experiences should be trusted over any workplace review, as many workers simply have a fear of speaking up. The Applicant further submitted information from the AFP's 2020 Staff Survey, indicated percentages of the workforce in Cairns were recorded in the report that indicated AFP staff thought the workplace had poor culture, was susceptible to bullying and had leaders who lack integrity.<sup>37</sup> A3 set out that through his visits to this workplace, his perception of the Cairns workplace as "a troubled, unharmonious workplace" which he attributed to personality clashes and failure to set boundaries.<sup>38</sup> He also noted that many people had expressed to him that the workplace stressed them<sup>39</sup> and that it would be beneficial for there to be an acknowledgement by management of the cultural issues.<sup>40</sup>

[48] The following evidence and submissions of the Applicant has been grouped into the various categories of allegations that the Applicant made.

### **Denial of Resources**

[49] The Applicant alleged that she was denied resources for search warrants by R1 on multiple occasions after her return from maternity leave, in contrast to prior to her leave.<sup>41</sup> The Applicant alleged the behaviour was a departure from previous arrangements where Crime Operations staff would always assist with the JACET warrants as the most qualified,

experienced and suitable members to perform this work. This included when A2 was working in the JACET role under Brisbane management while the Applicant was on maternity leave. R1 would allow as many members as she could spare to assist – usually two members but this varied from 1-3 members prior to the Applicant going on maternity leave. The Applicant alleged that resources were denied to her in circumstances where there were resources available from other teams that R1 and R2 were leading.<sup>42</sup> The Applicant also referred to a specific instance when she requested that N1 attend on a warrant with her, which the Applicant submitted was denied<sup>43</sup> without reasonable explanation.

[50] The Applicant stated on 31 March 2022 that she approached R1 and requested if N1 could assist the JACET team. N1 had been temporarily assigned to the Crime Operations Team. The Applicant stated that R1 responded angrily saying that N1 was a Crime Ops asset and could not assist. The Applicant argued with R1 about N1's assignment before R1 stood up and walked into the Crime area near AO4's desk. The Applicant stated that R1 proceeded to engage in conversation with AO4 and said in a vindictive tone "R3 said he is going to issue notices under 40H to do a clear-out of Crime Ops". The Applicant left the room but stated that A2 overheard a further part of the conversation where R1 said R3 was in charge of the Sergeant selections. A2 believed that it was directed at him, as well as the Applicant. The Applicant believed this interaction to mean that R1 was using her relationship with R3 to threaten the Applicant. Section 40H of the *Australian Federal Police Act 1979* (Cth) is a very sweeping power to allow the Commissioner to require members to be moved from one role to another. The Applicant submitted that it's generally only applied to members who are underperforming or their work areas are subject to restructures.<sup>44</sup> No further evidence was presented of 40H notices being used.

[51] A2, in his witness statement, agreed that the Applicant was being denied resources, and set out instances where when he acted in a team leader role and was not aware of any conflicts when the Applicant would seek resources, in contrast to what was notified to her when others were in the role.<sup>45</sup> A9 stated he was aware of the Applicant's difficulty in obtaining resources through conversations with her but was not aware of direct instances he witnessed.<sup>46</sup>

[52] The Applicant set out a table of her vehicle requests spanning from March to September 2022 including notes of when these requests were denied.<sup>47</sup> The Applicant noted that the Crime Operations/ACTT teams were not busy over the period in question and the log books reveal the vehicle was barely used aside from trips to get coffees or lunches, or to go shopping as occurred by AO4 on 4 May 2022 during a day the Applicant received a blanket denial by R1. A5 set out in her witness statement that she had also witnessed and experienced denial of resources.<sup>48</sup> The Applicant submitted that it was unreasonable to expect the Applicant to use her own vehicle for operational activities or hire a vehicle to simply conduct a drive by of a residential address which would take less than an hour which could compromise her safety and personal security and have insurance implications<sup>49</sup> whilst the Crime Operation vehicle would lie unused for most of the day.

[53] The Applicant set out that the denial of resources also included the use of Protections (PORT) members who do not have policing powers and are not qualified as constables assisting during warrants to do basic things like search or arrest people. She set out that it was inappropriate for these officers to be called or deployed for JACET specific matters. The JACET team previously never had to rely on Aviation or members until the hostility commenced on the Applicant's return from maternity leave. Aviation members at least had

policing powers but investigative staff with the training and psychological clearances required to manage sensitive evidence were the usual standard for search warrants within the AFP.<sup>50</sup>

[54] The Applicant also alleged failure to respond to operational requests in a timely manner since her return to work after maternity leave.<sup>51</sup> A9 also supported the Applicant on this matter, stating an instance where he had experienced delayed responses.<sup>52</sup> The Applicant alleged that equipment owned and primarily used by the JACET was incorrectly attributed to the Crime Operations team, which caused issued of deletion and access.<sup>53</sup>

[55] The Applicant went to lengths to describe incidents where she saw R1 bullying A5 and the events leading to A5's complaint about R1 in the AFPs Professional Reporting Standards process.<sup>54</sup> The Applicant referred to the outcome of A5's Complaint resulting in her being transferred with relocation costs covered to Brisbane. The Applicant had similarly sought this outcome.

### **Unreasonable behaviour to Applicant's detriment and efforts to undermine her work area**

[56] The Applicant alleged that the disbanding of the Applicant's work area came after a systematic effort to undermine it and damage the relationship with the Queensland Police Service in Cairns,<sup>55</sup> which was known by management at the time. She submitted that this was at odds with the AFP Corporate Plan goal of "Enhancing partnerships" and core function of "Domestic engagement and cooperation to disrupt crime and keep Australia safe." Child exploitation is also listed as one of only a few priority areas for the Australian Government including working in partnership with state police to achieve this – through the JACET model.<sup>56</sup> The Applicant submitted that this was a decision made locally by R3 for a vindictive purpose. The Applicant at the time this decision was made, had left the operation of this service and was on a secondary work approval with the Attorney General's Department and A5 had also transferred out of the JACET to Brisbane in December 2022.

[57] The Applicant referred to a specific instance where an After-Hours JACET matter was not referred to the JACET team, and instead was handled by untrained Aviation officers.<sup>57</sup> R1, when this was put to her as an instance of bullying by diverting work from the JACET, stated she had no involvement in that decision not to refer the matter to the JACET.<sup>58</sup>

[58] The Applicant stated that she asked to participate in out-of-hours investigations and R1 responded confirming that the Applicant was not able to participate because of funding issues. The Applicant believed this was a "targeted denial" to prevent the benefit of their participation and undermine their team. The Applicant referred to email evidence,<sup>59</sup> whereby R1 used aviation resources rather than notifying the specialist JACET team in circumstances where the Applicant stated she had requested to be notified at all times of all work matters relevant to the assessment by the JACET team. The evidence referred to an incident where a man had been detained at the Cairns airport for allegedly having child abuse material on his phone and although this was the specific domain of the specialised work of the JACET, R1 did not refer the incident to the Applicant nor was her team notified.

[59] The Applicant referred to the lack of a ‘welcome’ from R3 and R1 to the QPS members of the JACET as part of the bullying conduct.<sup>60</sup> The Applicant’s witness A4 also set out that he witnessed this conduct.<sup>61</sup>

[60] The Applicant submitted that R1 spread false rumours about the JACET being a problematic unit.<sup>62</sup> The Applicant rejected R1’s contention in her own witness statement that during a coffee meeting, R1 had attempted to shut down the conversation about rumours of JACET and A5.<sup>63</sup>

[61] The Applicant stated that on her return to work from maternity leave sensing there was an issue she sent an email to R1 on 23 March 2022 wanting to “clear the air” over coffee.

*“Hi R1,*

*I hope you are ok, I am sensing a bit of tension. I wanted to offer you support and also have a chat with you to clear the air. Perhaps we can get out of the office to grab a quick coffee? Let me know if you’d like to do that and when suits you – the QPS guys are coming in after 2 so I am free anytime until then.”<sup>64</sup>*

[62] R1 responded saying she was busy. The Applicant did not hear from them further:

*“Hi A1,*

*Happy to catch up for coffee sometime. I have a bit on today so will see how the rest of the week pans out.*

*Regards  
R1”<sup>65</sup>*

[63] R1 eventually had coffee with the Applicant in a group setting on 25 March 2022, with AO4 and A2, however there was no individual meeting. The Applicant had also sought mediation between herself and R1 and had become frustrated at this process, whereby the mediation facilitator conveyed to her that she would have to convince the other party to agree to the mediation. R1 did not agree to mediation. The Applicant was annoyed by this and sent the following email to the mediation service on 18 August 2022:

*“Hi N14,*

*Thanks for the email.*

*I decided R1 wouldn’t be open to a mediation and had advice not to proceed. I did speak with her and she told me she didn’t want to talk about the issues. She has the support of the local R3 and is good friends with his wife. I heard third hand that R1 got a little bit drunk at AO3’s farewell party and poked R3 in the chest saying “you need to do more to keep me in cairns”. The behaviour is escalating as a clique of R1 supporters are making life hard for me and the other member in my team, A5. R1 and R2 keep telling everyone that our positions are being changed to temporary positions and everyone needed to go on to a term transfer, which is ironic since R1 came to Cairns on a term*

*transfer and is refusing to leave Cairns. It is honestly stressful to walk into work each day and wonder what new thing they have invented to make life hard for us. Last week it was threatening to CRAMS anyone not seen wearing accoutrements (R2, by order of the OIC apparently). A5 has copied this especially with a warning from R2 so far. This week R3 and R2's new game is requiring members who assist with JACET warrants to get overtime or deliberately only offering their assistance on days I am not working (as I am part time). They know we are a team of two and need to rely on others, and we have already had it made clear we aren't to approach R1's team for assistance. It has been such a difficult year to be honest. And A5 and I feel like we have had such limited support and people are hiding behind the hierarchy.*

*I have decided to leave the AFP as a result. I'm negotiating leave without pay as I do love policing, and hope to return to Cairns office when R3 and R1 leave, or Brisbane Office when my family circumstances permit. I was offered an EL1 at AGDs and will take it regardless - my start date is tentatively mid September.*

*I can't keep risking my health and sanity to stay in this situation, as much as I love my job and investigating.*

*I hope something will be done about the bullies at Cairns Office before we have more people leave or injured as a result.*

*Feel free to contact me anytime if you need any more information.*

*Kind regards,  
A1<sup>66</sup>*

**[64]** The Applicant stated that having proposed the mediation and not receiving a response, in conjunction with not receiving a response to her internal complaint regarding a range of alleged bullying conduct, the Applicant obtained leave without pay. The Respondent raised this email with the Applicant at the hearing, putting to the Applicant that this was the Applicant spreading rumours of her own.<sup>67</sup>

**[65]** The Applicant stated that in a conversation, R1 said that the JACET team was moved because A5 was banned from QPS offices. The Applicant responded saying that her ban was a rumour, to which R1 responded saying it was true. The Applicant then asked R1 to not speak about it with anyone else, to which AO4 interjected saying "A5 has brought QPS dislike on herself". The Applicant documented this in her diary.<sup>68</sup> The Applicant stated that she heard the rumour earlier from QPS member N19 and wondered whether R1 had started it to undermine A5 and falsely justify JACET's move to the AFP building. The Applicant asked A7 to escalate her concerns about this to N8 who responded confirming that A5 was never banned and the decision to move JACET was about lack of space. The Applicant further stated that R1 started another rumour regarding QPS no longer working in the AFP building because of A5. The Applicant stated that she knew the second rumour was untrue because it was due to R1 not wanting to take on work that would keep QPS engaged in joint operations, and that this was a cover for R1's failure to maintain relationships with QPS members.<sup>69</sup>

[66] The Applicant submitted that while JACET was still operating, the team was allocated a conference room to work in, instead of the purpose-built room for viewing child abuse material which was set-up in the Investigative wing of the AFP building which would have been most suitable for the JACET's use to limit people's unnecessary exposure to child abuse material.<sup>70</sup> The Applicant stated this was not reasonable and there was no good explanation provided for this decision and that working in that room contributed to the division of the JACET officers. R2 attributed the decision being made to R3,<sup>71</sup> however R3 attributed it to before his commencement as Superintendent and was a decision of N9.<sup>72</sup>

### **Exclusion from on-call roster and workplace events held during work time**

[67] The Applicant approached R1 about participating in the on-call roster to relieve the burden on staff as an experienced Detective able to competently respond to any type of matter that arose out of hours, as is the intention of the on-call capability. The Applicant was denied with the reason given that the on-call roster was funded by Crime Operations and was not available to Brisbane-managed members. She alleged this was differential treatment as A2 participated in the on-call roster while a member of the JACET prior to the Applicant's return from maternity leave as a Brisbane-managed member.<sup>73</sup>

[68] The Applicant submitted that JACET members in other offices, including Brisbane, participate in the on-call roster, with an understanding that she would retain or hand-over any investigations in consultation with the relevant investigative area. A5's statement, as a current member of the Brisbane JACET, confirms this state at odds with R1's statement.<sup>74</sup> Under cross examination R1 stated it was not her decision, but that of N6,<sup>75</sup> and that JACET's exclusion from the roster was under the authority of R3.<sup>76</sup>

[69] The Applicant alleged she was excluded from an invitation to N16's farewell event after lunch, which was scheduled during work hours.<sup>77</sup> The Applicant referred to supporting witness statements to exhibit that the "coffee club" group would have coffee or drinks together to the exclusion of others,<sup>78</sup> however none of those witnesses reference this specific event in their statements.

[70] The Applicant alleged that she and A5 were excluded from the all-staff invitation for the visit of N3 to stop them from discussing the issues of resourcing and bullying in the workplace.<sup>79</sup> She also alleged there were attempts to exclude her from workplace morning teas by R2.<sup>80</sup>

### **Threats of reprimand and inappropriate behaviour (including vexatious complaints)**

[71] The Applicant alleged that a group of AFP members including R1, R3 and R2, actively sought to exclude members of the Cairns Office from social groups that were regularly attended for coffee breaks and end of week drinks. The Applicant alleged that it is "well-known" that this occurred. Nevertheless, the Applicant stated that she was not upset about not being included but had concerns for how it was affecting the workplace.<sup>81</sup> and how decisions were made in these group discussions and how people were discussed. The Applicant was asked whether email invitations were sent to staff in relation to this, and whether there was any direct evidence of specifically impeding her attendance at these events. The Applicant advised that the process of holding the morning teas had become one whereby one of the managers would walk around

the office and invite officers. The Applicant stated that the officers would not attend the JACET offices and subsequently, she and her team were subsequently not invited to these events, however, she would often say the dishes and remaining cake as evidence of a farewell morning tea or on occasion, A2 would come and get her to attend on the basis that he had come to land that she was not receiving these workplace invitations.

[72] The Applicant submitted that she received unreasonable threats of reprimand in the form of CRAMS notices and was targeted for not wearing accoutrements by R2.<sup>82</sup> She submitted this was not reasonable management action as CRAMS process can have serious impacts on a person's options for promotion. She submitted that in itself, a reminder in relation to CO2 obligations is reasonable management action. However, the phrasing of the "reminder" with CO2 compliance in terms of a threat of CRAMS is a serious violation of workplace protocols. The Applicant rejected R2's characterisation of the interactions as "joking."<sup>83</sup> Further, she submitted that she was often starting work early when there were no other Officers around, and therefore she was not able to wear her accoutrements as two people were required to open the armoury.<sup>84</sup>

[73] The Applicant made reference to an email forwarded by R1 to higher management alleging the Applicant's insubordination. This was in relation to the Applicant seeking to meet with R1 and arrange a mediation to mend their working relationship in a private manner.

[74] On 1 April 2022, the Applicant sent an email to R1 as follows:

"R1,

*You haven't yet taken me up on my offer of a coffee chat - and since it is my style to discuss issues with people directly I feel I have to raise this with you in an email.*

*I have perceived your hostility towards me since my return from maternity leave and feel it is unjustified as I have always acted with integrity and treated you with respect. Throughout your time in Cairns I have supported you in your role and I thought also as a fellow female colleague. Without you giving me the chance to speak to you in private you have left me to guess about what the hostility might be about. I had no input into R1's return to the role in the JACET, and have merely done what CPO management have instructed me to do in setting up the JACET at AFP.*

*I understand you must be under a lot of stress with your pending transfer and must have been upset yesterday, based on your reaction to me speaking about N1 being interested in JACET work. But it is the things you said in front of the team yesterday, that I that I can't let go. The talk about R3 issuing notices under 40H can only be seen as Cairns management trying to threaten us and our futures in Cairns. I honestly don't understand what is going on - we have done nothing wrong and only want to get on with our work.*

*I am more resilient than most but please think about the impact your comments have on others. Cairns Crime Ops used to be a highly functioning team with great stakeholder relationships and the office used to be a happy place to work. I'm disappointed that it has come to this.*

*The comments you are making - including about the rumour that A5 isn't allowed to work out of a QPS office - in front of others aren't helpful or conducive to moving on from the issues of last year. With respect, regardless of the outcome of your transfer please consider what your legacy in Cairns will be and try to do what you can as a leader in the AFP to improve the situation. A2 and I also intend to move south one day and you and I will no doubt work together again so I would rather work through this with you now rather than carrying it forward in our careers.*

*I'm saying this to you directly in good faith and would appreciate a direct response from you. I'm available anytime.*

*A1*<sup>85</sup>

[75] The Applicant stated that the intention of the email was to address R1's behaviour towards her, and to arrange a private meeting to resolve it. Later the same day, A7 informed the Applicant that her email had been forwarded on to N8, where R1 alleged that the Applicant had been insubordinate and stepped outside her chain of command.<sup>86</sup> Following this, she stated R1's close colleagues, the members of the "Coffee Club" and "RSL Club" became more hostile towards her.

[76] On 6 May 2022, N8 and N20 had a meeting with the Applicant regarding the email where they suggested the Applicant raise any issues with R3. The Applicant responded stating she was not comfortable doing this as R3 was outside her chain of command, and the Applicant concluded that she would not do so.<sup>87</sup> N8 and N20 also asked the Applicant to help "settle A5 in" by helping set up her workstation.

[77] The Applicant submitted that there was a lack of procedural fairness and the named persons failed to provide evidence of her alleged insubordination to justify the reprimand of her. She submitted that because of this, the Commission should reject an argument of "reasonable management action" on the basis that each of the actions were unreasonable and were deliberately perpetrated against the Applicant and the group of workers she is a part of.

[78] Shortly after the previous incident, the Applicant stated that she was informed that R1 marked all the standing desks with a "Crime Operations" sticker and did this so that the Applicant could not find a desk for A5. She alleged that N8 and N20 must have requested a desk from R3, who then told R1.<sup>88</sup>

[79] The Applicant submitted that R3 behaved unreasonably by informing N12 to look at Commission website for her matter.<sup>89</sup> The Applicant became aware of this from A9 who told her he had heard from N12 that R3 had told him about it.<sup>90</sup> The Applicant rejected R3's explanation in his witness statement and stated it was indicative of unethical conduct displayed by R3 and a willingness to turn others in the workplace against the Applicant and her supporters.<sup>91</sup> The Applicant also alleged that R3 had discussed her matter with others who had no reason to be aware of it. She submitted that this was an attempt to create a hostile workplace for her.<sup>92</sup>

[80] With regard to secondary work applications, the Applicant believed that R2 had put in an anonymous CRAMS complaint about the Applicant which alleged the Applicant failed to



provide a secondary work application for approval in relation to volunteering as an AFL Cairns boundary umpire.<sup>93</sup> She alleged that R2 purposefully went out of his way to access records and make a complaint so that the Applicant was punished. The Applicant submitted that had R2 taken the first step of speaking with the Applicant before passing on the information he alleged is in breach of CO2, he would have learned that the Applicant undertook fewer than the alleged games on a volunteer basis as she was not actively participating in AFL Umpiring at the time since she had been on maternity leave, and the lack of financial incentive for her participation would have meant this would arguably be categorised as community sport under the guideline and would not require secondary work approval.<sup>94</sup> She rejected R2's explanation in his statement. The Applicant stated that this matter was the subject of an internal appeal and did not require the Commission to determine such.

**[81]** The Applicant made reference to another anonymous complaint made against her in relation to a text message. No further submissions on attribution to a named person were made.<sup>95</sup> Given the generalised or incomplete nature of this allegation, no further comment or finding could be made on this matter.

**[82]** The Applicant alleged that R3 was spreading rumours about the Applicant's bullying application, stating that Applicant's complaint was in relation to N5.<sup>96</sup> She submitted that R3's lack of 'decorum' in this regard was evidence of his overt hostility towards her.<sup>97</sup>

**[83]** The Applicant set out several instances that she believed were unreasonable. Firstly, where R3 allegedly ignored and was overtly hostile during N1's morning tea.<sup>98</sup> R3 denied this interaction took place.<sup>99</sup> Secondly, where the Applicant expressed that she hadn't had a good day in passing and R3's response was not supportive nor was she provided any follow up support after this interaction.<sup>100</sup>

**[84]** The Applicant claimed that R1 spoke in a loud voice, discussing that PRS were investigating cheaters in the Sergeant's exam that the Applicant took. The Applicant stated that the manner in which she spoke confirmed for the Applicant that she was talking about her, and it was designed to cause stress.<sup>101</sup> The Applicant stated that R3 was in charge of the selection process for people found suitable in the Sergeant promotion process. The Applicant thinks that R3's relationship with R1 had an influence in the outcome of her application. This caused the Applicant further stress.<sup>102</sup>

**[85]** The Applicant described the behaviour of R1 at the AFP Christmas Party in Cairns in November 2021. The behaviour included "mere[ly]" nodding at the Applicant when she verbally said "hello". In a later interaction the Applicant asked if R1 was okay to, which she responded, "I don't care about my career anyway".<sup>103</sup> The Applicant later understood this to be a reference to the Applicant having given evidence at the hearing into A5's internal complaint of bullying against R1 and that her evidence must have been leaked to R1. On return to work the Applicant viewed R1's distant demeanour as consistent with this.

**[86]** The Applicant stated that she was asked by R1 why the R1 was not included as a reference on the Applicant's Sergeant promotion application. The Applicant responded that it was because R1 had not been her team leader when she made the Sergeant application. R1 said "that is odd". The Applicant alleged this comment by her was designed to cause her stress. This

caused the Applicant to consider if R1 had raised a complaint that had some effect on her application, ultimately being unsuccessful.<sup>104</sup>

[87] The Applicant states she had heard from a QPS member, N17, that N17 had a conversation with R1 outside of work in which the Applicant's return from maternity leave was mentioned. R1 allegedly reacted negatively when speaking of the Applicant's return and the Applicant believes that R1 was trying to get N17 to turn against her.<sup>105</sup> The Applicant did not call N17 as a witness.

[88] The Applicant stated that on 13 May 2022, she was informed by one of their QPS JACET colleagues, N19, that R1 had been hostile towards him by not returning his greeting and "scowling" at him. The Applicant believed this was deliberately done to undermine the JACET team which the Applicant and A5 were a part of.<sup>106</sup>

[89] The Applicant stated that on 8 June 2022, R2 sent an all-station email stating that non-AFP members were not allowed to use the gym. She provided the email as an exhibit. The Applicant stated that the email was targeted at their QPS colleagues in JACET and intended to create a hostile environment for them.<sup>107</sup>

[90] The Applicant describes returning from maternity leave on 2 March 2022 and when she greeted R1, she only said "hi" and kept walking. The Applicant describes this experience as "if the world had shifted under [her] feet." Similar incidents continued to occur.<sup>108</sup>

[91] The Applicant stated that N5 who also worked at the Cairns office would often smirk at the Applicant when the Applicant entered the room, including when R1 was present. She took this as "hostility". The Applicant stated that she was only allowed to speak to R3 via appointment, which was different from before her leave.<sup>109</sup>

## **SUMMARY OF RESPONDENTS SUBMISSIONS AND EVIDENCE**

[92] The Respondents submitted that the AFP by its nature is a hierarchical organisation with legislative lines of command that must be respected by all AFP officers. They state that the named persons were not obliged either in the workplace or under legislation to maintain a social relationship with the Applicant and were entitled to have regard to their relationship as purely professional. The Respondents submitted that the Applicant had an unrealistic expectation of the relationship between each of the named persons all of whom are a superior rank to, and outside the line of command of, the Applicant. They submitted that the Applicant's statement is overwhelmingly comprised of subjective speculations and inferences about the motivation of others, a hostile workplace, and comprises of very few allegations of 'behaviour' which was 'towards' the Applicant. They stated that their working lives only intersected insofar as they shared office premises and AFP assets, but the behaviour of the named persons that the Applicant refers to has very little to do with her.<sup>110</sup>

[93] The Respondents submitted that the evidence provided by the Applicant in the form of written communications suggest that there were professional and friendly modes of communication. But they go further to say that these irrelevant statements provide no assistance to the proceedings and the Applicant's goal is to secure a transfer to Brisbane to suit her needs.<sup>111</sup> They submitted that the Applicant's submissions should not be considered because

the Applicant has not been in the workplace with any of the named persons since September 2022 and that R1 is no longer based in Cairns. As such, the Respondents submitted that the proceedings should be dismissed.<sup>112</sup>

[94] In addressing the alleged bullying, the Respondents make submissions in relation to the denial of resources, failure to wear accoutrements and other allegations that they submit do not amount to bullying behaviour.<sup>113</sup> They refer to the Applicant making 35 allegations of bullying, of which the Respondents submitted is not borne out of the evidence.<sup>114</sup>

### **Summary of Witness Statement of R1**

[95] R1 stated prior to the Applicant's maternity leave period in March 2022 she was the Applicant's supervisor whilst she was working in the Crime Operations team. She considered the Applicant very self-motivated and they had a friendly professional relationship.<sup>115</sup> She recalls that most of the interactions she had with the Applicant involved reviewing search warrants and affidavits, discussing matters, or providing advice in relation to investigations. R1 stated that she believed all interactions were handled professionally within the scope of her role as the Applicant's supervisor and cannot recall any occasion where there was conflict.<sup>116</sup>

[96] In or around August 2020, R1 stated she was subject to a complaint that involved her and N2. The complaint was brought by A5. The outcome of the complaint was that the allegations were found not to be substantiated.<sup>117</sup> R1 stated she had no knowledge of the Applicant's input in the matter.<sup>118</sup> Following this, R1 stated she requested a report on the investigation but did not read it on advice from her psychologist.<sup>119</sup> After the investigation was finalised, the Applicant went on maternity leave and when she returned, R1 stated she did not treat her differently to other members of AFP staff.<sup>120</sup>

[97] Further to this, R1 stated that when the Applicant did return returned from maternity leave, she no longer reported to R1 and in fact reported to A7. She considered the relationship with the Applicant to be only as colleagues working the same building, but in different operations. Because of this, she stated she did not see the Applicant often, sometimes going days without seeing her.<sup>121</sup> The only interactions she had with the Applicant at this point was when there were requests for resources.<sup>122</sup> The Cairns JACET team disbanded in December 2022, however R1 stated she had no involvement in that decision.<sup>123</sup> In addressing the allegations of bullying, R1 stated:

#### *Text message to A1 regarding not receiving a referee report*

[98] R1 stated that the Applicant sent a text message asking why she did not receive a referee report when she applied for promotion to Sergeant. This occurred on 15 January 2022 when the Applicant was on maternity leave. R1 believed that applications for promotion required the Applicant to nominate her most recent supervisor, and R1 believed it was her at that time. When she did not receive the report, she followed up to ensure the required procedures were followed.<sup>124</sup>

#### *Denial of AFP vehicles*

[99] R1 stated that the Crime Operations team is only assigned one vehicle and it was shared between up to 12 people. Any requests for using the vehicle came to R1. There is no strict process for making a request, but R1 stated that she must make an operational consideration when one is required. Because of the limited availability, R1 stated that the Applicant sometimes used her personal vehicle, which is not uncommon.

[100] In response to specific denials, R1 provided that on 29 April 2022 when the Applicant made a request, R1 denied it on the basis of operational requirements, availability and offered the Applicant alternatives. R1 provided email evidence showing as such.<sup>125</sup> On 4 May 2022, R1 stated that a request was denied on the basis of availability and the Applicant was again offered alternatives.<sup>126</sup> She further stated it was later discovered that the Applicant used the vehicle without proper authorisation.<sup>127</sup> On 4 August 2022, R1 stated that the Applicant requested the vehicle at midday but R1 was at a briefing and was unaware of the request until after midday. She apologised and approved the request, albeit after the time the vehicle was required. R1 stated that this was contrary to the Applicant's allegations that she was ignoring the Applicant.<sup>128</sup> On 23 August 2022, R1 stated that a request was made and subsequently granted, as provided in email evidence.<sup>129</sup> R1 concludes that all of the denials were reasonably made, in a courteous manner, and not motivated by animosity towards the Applicant.<sup>130</sup>

#### Failure to return greeting

[101] R1 stated that she does not remember failing to return greetings to the Applicant, and if she did, she would usually respond by saying "Hello" or "Hi". She stated if she seemed less friendly than usual, it was probably because she was distracted.<sup>131</sup>

#### Denial of inclusion on the out-of-hours on-call roster

[102] R1 stated that when she received a request from the Applicant asking to be on the on-call roster, she responded to the Applicant thanking her for the enquiry but that it was not appropriate for her to join the on-call roster for Crime Operations. This was because it was funded by Crime Operations and that it would be impractical to fund a JACET member joining. R1 provided her email response as evidence.<sup>132</sup> The Applicant's direct supervisor R3 was also in agreement with R1.<sup>133</sup> The evidence at hearing of R1 in response to the Applicant stating that she was not provided with the opportunity to be part of this out of hours on-call roster, despite her partner A2 (although he was working as part of the JACET) being allowed to, was that A2 was part of a different reporting line. R1 confirmed that was the case that A2 had been working in Crime Ops, and when they could not find an officer to take up the role in the JACET when the Applicant had taken the secondment, he assisted with that role, and therefore had lost his opportunity when he had been part of the on-call roster in Crime Ops. It was for this reason only that R1 said he had been approved.

#### Allegations that R1 avoided, or was hostile towards, the Applicant

[103] R1 stated that on 31 March 2022 the Applicant asked if N1, a member of the Crime Operations team, could assist the Applicant on a JACET matter. N1 did not have clearance from a psychologist to work on JACET matters. R1 stated that she explained this to the Applicant and denied her request, and believed the matter should have been raised in the Applicant's chain of command first.<sup>134</sup> She believed that although she was courteous in the discussion, the

Applicant continued to argue with her.<sup>135</sup> The Applicant had previously sent an email asking if she could have a discussion over coffee to “clear the air”, and R1 believed that this took place at some point between 23 March 2022 and 1 April 2022.<sup>136</sup> She stated that in that discussion, the Applicant sought to bring up A5 and a rumour that she was banned from QPS offices, but R1 shut that part of the conversation down.<sup>137</sup>

[104] Following the incident on 31 March 2022, R1 stated that she received an email from the Applicant on 1 April 2022 which she thought was inappropriate and unreasonable. In that email, R1 stated that the Applicant speculated about R1’s “stress about her transfer”, which was leading to hostility, and that it was going to have an effect on what her “legacy in Cairns would be”.<sup>138</sup> The Applicant also made mention of a conversation they overheard where R1 mentioned about section 40H notices. She stated that the Applicant had misinterpreted what was said and this was because the Applicant was not privy to the conversation.<sup>139</sup> Because of this, R1 stated that she forwarded the email to N8 to deal with as she did not want to argue with the Applicant. She denied ever acting in a hostile manner with the Applicant.<sup>140</sup>

### Other Allegations

[105] In relation to other allegations, R1 stated:

[106] She denied the allegation that the Applicant was deliberately excluded from the ‘Coffee Club’ or ‘RSL Club’. She stated that it is up to individuals who they wish to socialise with outside of work duties.<sup>141</sup>

[107] In relation to speaking in the office about people cheating on the Sergeant exams on 15 February 2022, R1 was simply repeating allegations that she had heard previously and did not make accusations regarding the Applicant.<sup>142</sup> In relation to seeing N17 at the markets, she denied making negative comments about the Applicant.<sup>143</sup>

[108] In relation to telling the Applicant that a laptop belonged to Crime Operations on 2 March 2022, R1 stated that she never told the Applicant that she could not use a laptop.<sup>144</sup>

[109] In relation to marking desks in May 2022, R1 denied doing this so that A5 could not have a desk. Desks are labelled so they aren’t removed by another team.<sup>145</sup>

[110] In relation to attending the RSL after N16’s farewell, R1 stated that it was not her decision to go to the RSL and that, nevertheless, everyone was invited.<sup>146</sup>

### **Summary of Witness Statement of R2**

[111] R2 stated that he was Acting Sergeant and Team Leader of the Operations Delivery Team (“ODT”) from 12 March 2022 to 31 December 2022. He stated that his duties included rostering staff, administration (including for the Cairns station armoury), emergency planning and liaising with stakeholders within the AFP. The ODT is a separate team from JACET and Crime Operations, and he was not a part of either of those teams.<sup>147</sup>

[112] R2 stated that he did not have a close relationship or significant interaction with the Applicant in his role in ODT. He stated this was due to the fact that the Applicant was not

required to report to R2 and only had interactions with the Applicant when ODT resource requests were made.<sup>148</sup>

**[113]** In regard to the complaint by A5, R2 stated that he was not involved in the investigation and has no knowledge of that Applicant's involvement in the matter. Because of this, R2 believes he did not engage in any bullying behaviour in relation to it.<sup>149</sup> In addressing the allegations of bullying, R2 stated:

*Denying the use of ODT vehicles*

**[114]** R2 stated that the ODT vehicles were primarily used for matters related to Aviation policing and would only grant use of the vehicle if it was not being used by the ODT. R2 stated that even though the Applicant referred to two occasions where he did not respond to the Applicant's request, there have been other times where he did authorise its use.<sup>150</sup> With respect to an allegation on 13 May 2022, R2 does not recall the request being made and stated that he must have missed it because they had finished work for the day. Furthermore, he stated that he could not locate any emails relating to the request but did receive an email relating to storage of evidence after he had finished work.<sup>151</sup> With respect to an allegation on 22 July 2022, R2 stated that he received the email, but does not remember why he did not respond. Whilst this evidence is not convincing it doesn't automatically translate to bullying contact. He stated that it was likely he was preoccupied with other duties, and his failure to respond was inadvertent.<sup>152</sup> With respect to an allegation on 23 August 2022, R2 denied that this was not justified. He stated that the request was in relation to operational team members to assist JACET and that he would not be able to supply a vehicle because one of the vehicles had been in an accident. He stated that he informed the Applicant that she should try to organise a vehicle through the QPS, and that he dealt with all the requests the same way.<sup>153</sup>

*Negative response to A1 raising an issue with a search warrant*

**[115]** In R2's statement, he recalled attending a briefing on 3 August 2022 regarding the execution of a search warrant in relation to illegal fishing. The Applicant and A5 also attended that meeting as the team was short on numbers. In that meeting, the Applicant raised an issue believing that the offences on the warrant he had prepared were not correct. R2 stated that it was not his role to review search warrants, and despite this, researched legislation regarding the offence. R2 stated that he reviewed the research with N21 and determined that it was the incorrect legislation. The Applicant and A5 subsequently apologised and the warrant was executed. R2 stated that this particular interaction was not anything other than professional.<sup>154</sup>

*Threats of reprimand for failing to wear accoutrements*

**[116]** R2 stated that it is a requirement of the Commissioner's Orders on Operation Safety (CO3) that all AFP appointees in uniform were to be kitted out carry their equipment in the approved accoutrements. He also stated that all AFP appointees must report other AFP appointees if they are aware that they are in breach of the orders, which involves making a complaint through CRAMS. On 8 August 2022, R2 stated that he received an email from N13 which contained a reminder of this obligation. He provided evidence of this email.<sup>155</sup> R2 stated that following this email, he went into the Crime Operations area of the office to remind everyone of this obligation, and to ensure fairness, also went to the JACET area to remind the

Applicant and A5. R2 stated he recalled an interaction with the Applicant and A5 where A5 said “*oh you aren’t wearing accoutrements*” to which he replied jokingly “*don’t make me CRAMS you*”. He stated that this was not made as a threat, and nevertheless, it was directed at A5<sup>156</sup> not the Applicant. R2 stated that he received a further email from R3 on 19 August 2022 with a reminder of the accoutrement obligations and had a conversation following this where R2 was asked to ensure AFP appointees were following this. He stated he have not made a complaint through CRAMS about anyone regarding this and he denied ever deliberately targeting the Applicant, including before 8.00am.<sup>157</sup> The Applicant stated that these events caused her concern, and she would wait in the JACET room until A5 arrived, as two parties were required to enter the armoury and sign out the guns. This interaction, on the evidence provided at the hearing, was clearly a compliance reminder, without any vindictiveness and there did not appear to be an endeavour to surreptitiously or disingenuously commence a disciplinary proceeding in relation to the accoutrements.

*Report regarding unauthorised secondary work undertaken by the Applicant*

[117] R2 stated that in March 2023 he learned of the Applicant and her husband, A2, being involved in umpiring AFL games. He stated that at the same time, he learned of other AFP appointees being involved as well. He stated that AFP appointees must not undertake secondary work or volunteering unless they had approval in compliance with the AFP Commissioner’s Orders on Professional Standards (CO2). He stated that he was looking into another matter when they discovered that the Applicant and her partner has not obtained employment approvals for AFL. The Commissioner’s Orders also provided that AFP appointees who are aware of a breach of the orders must report the breach. Because of this, R2 sent an email to N7 advising him of the breach by multiple AFP appointees, including the Applicant and her partner.<sup>158</sup> He stated that he fulfilled his obligations under CO2 and did not pursue the matter further.<sup>159</sup>

[118] It is recognised that the Applicant is particularly aggrieved about this matter and considered that R2 played a greater role in the referral of this matter than he set out in his evidence. The Applicant did not require a determination from the Commission about this secondary work matter, but that a decision from the AFP internal mechanism was awaited. Ultimately, the allegation of bullying relates to the referral of this matter, but that that only becomes an issue, or is inappropriate once the outcome of that referral matter is known. In any event no determination was sought from the Commission on this issue.

*Other allegations*

[119] In relation to other allegations, R2 stated that he was not involved in allocating JACET the use of the back conference.<sup>160</sup> He submitted that he did not believe that the Applicant was excluded from the ‘Coffee Club’ or ‘RSL Club’, and that he would sometimes get coffee with R3 so that he could be briefed on some matters.<sup>161</sup>

[120] He does not recall commenting that the Applicant as insubordinate via an all-staff welcome email on 23 March 2022. He submitted that all-staff emails of this kind require permission from the Superintendent or Detective Inspector.<sup>162</sup>

[121] On 8 June 2022, he sent an all-staff email stating that the gym was for AFP members and in order to use the gym, staff had to complete an induction course. The Respondent set out that the steps were taken to avoid liability issues, and to address COVID-19 precaution requirements.<sup>163</sup>

[122] He denied the allegation that the Applicant was deliberately excluded from AFP events. R2 stated that, although it was not his responsibility, he would sometimes send all staff emails about staff farewells when asked. He would also occasionally speak to people or teams individually regarding the event. He provided evidence of an email that was sent to all staff, including the Applicant, for lunch on 5 August 2022 regarding farewell lunch and drinks for N16.<sup>164</sup> R2 attended lunch on 5 August 2022 and recalled there being a general discussion of attending the RSL afterwards. It was his understanding that no one was excluded from attending.<sup>165</sup> On another occasion, the Applicant emailed R2 asking if she could be forwarded an invitation to a medal ceremony to be held on 25 August 2022 at 11am. In reply, R2 stated that an all-staff email had been sent in relation to this and that the only personal invite was to the medal recipient. The Applicant did not reply further.<sup>166</sup>

[123] In response to the allegation that R2 failed to return property to the Applicant when requested on 4 August 2022, he stated that he was not responsible as Property Officers for the return of property and denied deliberately failing to return it. Property Officers were only responsible for signing property in and out. R2 told the Applicant he could “assist” in returning the property but could not recall why he did not do so, stating that he likely forgot.<sup>167</sup>

[124] In response to the allegation that R2 unreasonably delayed sending evidence to the Applicant, he stated that he was not responsible for the physical transfer of evidence. The only reason he became aware of the request was when he received an email from the Applicant to which he forwarded on to N15, who was trained in the process, asking that she action it. He provided this email as evidence.<sup>168</sup>

[125] He denied intentionally delaying the Applicant in lodging or retrieving items from storage. Any delay was a result of R2’s busy role in the ODT.<sup>169</sup>

[126] In response to the allegation that in August 2022 R2 only offered staff to assist with JACET operations on the days the Applicant was not working, he stated that he was required to change roster arrangements to accommodate requests and needed to give staff at least 5 days’ notice. If notice was given in less than 5 days, overtime was paid. He stated that the Applicant would base her requests on a copy of the roster posted in the Day Room, of which would not reflect any changes made after the day it was posted. Because of the short notice period, he stated it was difficult to provide JACET with the resources, and that any denial was not for any deliberate reason.<sup>170</sup>

[127] In response to the allegation that R2 interfered with the Applicant’s chain of command on 17 August 2022, R2 stated that he sent an email to N10 regarding the process for requesting resources. N10 was acting in A7’s (the Applicant’s supervisor) role, and he stated that the email was sent in an appropriate and professional manner. He provided the email as evidence.<sup>171</sup>



[128] R2 provided an example of an occasion on 9 June 2022 where the Applicant was provided resources and expressed her appreciation.<sup>172</sup> He stated that this occurred on more than one occasion.<sup>173</sup>

[129] R2 also responded to the Applicant's view that Protections Operations ("PORT") members lacked policing powers and training to assist in search warrant matters. He stated that PORT members are highly trained and skilled, and it was entirely appropriate for them to assist in JACET matters.<sup>174</sup>

### **Witness Statement of R3**

[130] R3 stated that although he has known the Applicant for several years, he never had much interaction with the Applicant. He stated that the Applicant had never been under R3's direct supervision, was not in his chain of command, and R3 had no oversight into JACET matters. He stated that the interactions he had with the Applicant were respectful and positive, providing evidence of a text message exchange on 16 September 2022 regarding media attendance at the office.<sup>175</sup> With respect to disbanding the JACET in Cairns, R3 stated he had no involvement.<sup>176</sup>

[131] R3 stated that he had no involvement in A5's complaint and was not privy to any information given in relation to it. Because of this, he denied that he had treated the Applicant adversely in relation to the complaint.<sup>177</sup> In addressing the allegations of bullying, R3 stated:

#### *Overtly hostile to the Applicant in face-to-face interactions*

[132] R3 does not recall having more than three or four face-to-face interactions with the Applicant since March 2022, and considered those interactions to be professional and appropriate. He recalls one occasion where the Applicant came into their office whilst he was in a meeting and had to "wave away" the Applicant. Following this, the Applicant apologised by email for the interruption and R3 replied, also apologising, stating he was in a meeting. He provided evidence of this email.<sup>178</sup>

#### *Denial of inclusion on the on-call roster for out-of-hours investigations*

[133] R3 stated that the on-call roster was funded by Crime Operations and JACET was not within the remit of the Cairns office. He stated that he did not have the responsibility or ability to place the Applicant on the on-call roster and he did not target the Applicant to deny her.<sup>179</sup>

#### *Allegations that R3 ignored the Applicant and dismissed the Applicant with hostility*

[134] R3 stated that he was certain that this interaction did not occur and that he never knowingly 'ignored' the Applicant in any circumstances.<sup>180</sup>

#### *Interaction on 8 September 2022 'not fitting of an office manager'*

[135] R3 stated that he had limited recollection of this interaction but recalled that as they walked past each other on this day that they both said they were having a difficult day. R3 stated that if he had known the Applicant was in genuine distress, he would have inquired about it.<sup>181</sup>

The Applicant also suggested that the interaction was inconsistent with an email that R3 sent a few days later ‘publicly’ wishing the Applicant well in her new role. R3 stated that this response was only sent to the Applicant and not publicly and that his sentiments were genuinely expressed. He provided evidence of this email.<sup>182</sup>

### Other Allegations

[136] In relation to the allegation that on 21 March 2023 R3 had actively encouraged subordinates to look up the Fair Work Commission website, he responded to this allegation that he had mentioned the case generally to N12 when someone had approached him at the Cairns office and indicated that he was looking tired, and that he had stated he was spending quite a bit of time on this Fair Work case.<sup>183</sup>

[137] R3 denied the existence of any ‘Coffee Club’ or ‘RSL Club’ that the Applicant is excluded from. He stated that he would get coffee on rare occasions with many people socially, including stakeholders external to the AFP and internal AFP visitors. In relation to the ‘RSL Club’, R3 states that the RSL has been a destination for drinks outside of work for some time and that this was well known. Nevertheless, he believed that it was up to individuals who they socialise with outside of work.<sup>184</sup>

[138] In relation to the Applicant’s Acting Sergeant application, R3 stated that this position was for substantive Team Leaders, and he had no involvement in the decision to only consider Team Leaders. When the Applicant queried R3 when her application was unsuccessful, R3 replied stating that this was the reason why her application was not considered. He provided evidence of this email.<sup>185</sup> He also denied having any influence on the Applicant’s future promotions.<sup>186</sup>

[139] In relation to the allegation that R3 had spread rumours about the Applicant’s complaint and in relation to R3’s wife, alleged demeanour towards the Applicant, R3 stated that this allegation was untrue. He stated that he had not spread rumours about anything related to this matter and had only stated in conversations that his wife was mentioned in these proceedings.<sup>187</sup>

[140] Whilst R3 denied breaching confidentiality by providing details of the case, it was unnecessary for him to make reference to the case and hearing. However, all of the Applicant’s witnesses were police officers at the Cairns workplace/s who were well aware of the range of the Applicant’s allegations and were actively involved in preparing witness statements in accordance with the directions and were organised to provide evidence at the hearing. Accordingly, provision of evidence and submissions about the Applicant’s case cannot be confidently attributed to R3, given the range of persons, specifically on the Applicant’s witness list who had a clear understanding of the allegations and their evidence in response. all of their witness statements formed part of the case for the applicant and all of those witness statements were marked and tended as part of the case file and would have been available. Are there representative for the respondent witnesses to read as is the usual course in order that they are able to respond to them.

## **CONSIDERATION**

[141] There has been a significant volume of evidence filed by the Applicant and her associated witnesses. This evidence has been carefully considered against the Respondent's evidence and assessed against the legislative tests for bullying conduct and the Respondent's jurisdictional objection of reasonable management action taken in a reasonable manner. Whilst the summary of the allegations and responses has been prepared to endeavour to confirm the assessment of all of those matters, given that there are more than 35 allegations, this summary may not refer to all of the detail or evidence but all of such has been considered.

[142] As set out earlier it was acknowledged that the Applicant has a law degree and had knowledge as part of her policing work and the process she was regularly engaged in, in developing briefs of evidence or preparing matters for court. Accordingly, it must be pointed out that there was an absence of evidence in relation to a number of the allegations in this matter. This was raised at the hearing with the Applicant. In response, the Applicant did concede such to a degree, but stated that the lack of evidence was a product of her police colleagues being aware and practiced at not leaving evidentiary trails such as notes and emails. on the matter of the absence of evidence and correlation of the allegations, the Applicant stated:

*“The other thing that is common in policing is that they have a really strong knowledge of how evidence works, and in relation to the kind of behaviours we're talking about my colleague has said that the kind of things that would usually be in these matters of, like, hostile emails and text messages, they won't occur in this context, because police are clever. They know that anything they send over a technology platform can be subpoenaed or FOI'd, whatever the case may be, and that it might end up before our internal Professional Standards, who have pretty much immediate access to that material. We actually receive training on that, that we have to make sure we're careful in our communications to make sure that we don't put anything in it that could FOI-able, and we need to be really conscious of our dealings with our colleagues in that way. So it's at odds to then say, oh well, that wasn't bullying, because it didn't occur over technology platforms and there's no evidence of it, because people weren't overtly hostile in emails. It occurred in a secretive kind of way because that's the way police operate.”<sup>188</sup>*

(emphasis added)

**789FD(1)(a) bullied at work - while the worker is at work a group of individuals repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member**

[143] The three named persons provided responses to all particularised incidents identified by the Applicant as set out above. In response to the allegation that the Applicant was deliberately denied resources, the Respondents submitted that the evidence provided by R1 and R2 in their witness statements demonstrates that this was never the case.<sup>189</sup> They submitted that any request, including a request to work on an ‘on call roster’, was dealt with appropriately and that on one occasion the Applicant commended the AFP’s support in helping to “build the relationship with JACET”.<sup>190</sup>

[144] As set out, the Applicant grouped her allegations into four broad categories. The aim has been to deal with full range of allegations made by Applicant; however, it must be noted

that a number of the allegations are interrelated or similar and accordingly may not be mentioned individually.

[145] The Respondent at hearing, referred to the case of *Amie Mac v Bank of Queensland Limited*<sup>191</sup> ('Amie Mac'), making several observations. Firstly, the Respondent made reference to paragraphs 88 and 89 of that decision where Vice President Hatcher (as he then was) set out:

*“[88] In Re SB*<sup>192</sup>*, the Commission (Hampton C) discussed the requirement for repeated unreasonable behaviour in the following terms:*

*“[41] Having regard to the approach urged by the authorities, the concept of individuals ‘repeatedly behaving’ unreasonably implies the existence of persistent unreasonable behaviour but might refer to a range of behaviours over time. There is no specific number of incidents required for the behaviour to represent ‘repeatedly’ behaving unreasonably (provided there is more than one occurrence), nor does it appear that the same specific behaviour has to be repeated. What is required is repeated unreasonable behaviour by the individual or individuals towards the applicant worker or a group of workers to which the applicant belongs.*

*[43] ‘Unreasonable behaviour’ should be considered to be behaviour that a reasonable person, having regard to the circumstances, may consider to be unreasonable. That is, the assessment of the behaviour is an objective test having regard to all the relevant circumstances applying at the time.”*

*[89] I respectfully agree with those statements, but I would add three further observations about the interpretation and practical application of the expression “repeatedly behaves unreasonably” in s.789FD(1)(a). First, the expression falls within a definition provision. The function of a legislative definition, as was pointed out by McHugh J in Kelly v R*<sup>193</sup>*, is not to enact substantive law, but to provide aid in construing the statute. A definition provision is therefore not to be interpreted in isolation and thereby given a meaning which negates the evident policy or purpose of a substantive enactment. Part 6-4B has the evident purpose of establishing a mechanism by which the bullying of workers at work may be stopped. In interpreting, and applying, the expression “repeatedly behaves unreasonably” as it appears in s.789FD(1)(a), the concept of repeated unreasonable behaviour is not to be approached in a manner which divorces it from that purpose. The subject matter is bullying at work, and that must be borne steadily in mind in any consideration as to whether particular behaviours are unreasonable for the purpose of s.789FD(1)(a). A consideration of unreasonable behaviour which loses sight of the objective and subject matter of Part 6-4B may lead to the provisions not achieving their intended purposes, or being used for a purpose that was not intended.”*

(emphasis added)

[146] The Respondent submitted that the Applicant’s own subjective perception is largely irrelevant. They submitted that her perceptions may be objectively sustainable as well, but her subjective perceptions are largely irrelevant and that the Commission has to examine the behaviours and then make an objective assessment of them.<sup>194</sup>

[147] With reference to the following quote: “*Unreasonableness is a conclusion which may be applied to a decision which lacks an evident and intelligible justification,*”<sup>195</sup> the Respondent submitted that the persons named, in making decisions for resource allocation of vehicles, desks and office space, had an intelligible justification for the decisions they made which were within their remit to make. As such, those decisions are not reviewable against the standard of unreasonableness.<sup>196</sup> The Respondent submitted, just because a different leader would have made a different decision, as there was an intelligible justification for the decision-maker to make the decision, does not make the decision itself unreasonable.<sup>197</sup>

[148] The Respondent submitted that some allegations had been compellingly denied, and as such could not be substantiated and therefore a finding of unreasonableness made of them:

*“In considering whether there has been unreasonable behaviour by an individual or group of individuals, it will of course be necessary for the Commission to determine whether the alleged behaviour actually occurred. Once the Commission has made the necessary findings of fact about the behaviour, it can then determine whether the behaviour was unreasonable.”*<sup>198</sup>

[149] The Respondent submitted:

*“A1 has suggested that there were decisions which were made which affected her unreasonably, and we of course accept that operational decisions which are unreasonable could in particular circumstances amount to bullying conduct. Mostly these relate to the use of work vehicles and the extent to which she was able to work beyond the JACET team, the on-call roster, et cetera. And there were some limited exchanges, and they are very limited, between her and R2 and R1 in relation to these issues, although there's nothing in relation to R3, and they required response, the interactions and the decisions. And the individual respondents have come to the Commission and they have explained their actions, in some cases inactions, in what we would submit to you is a compelling way and which we say leaves no room for a conclusion that A1 has been bullied by them.”*<sup>199</sup>

[150] The case of *Amie Mac* and its application to the consideration of unreasonableness and substantiation is considered with reference to the broad categories of the allegations below.

[151] The Respondents submitted that they each individually responded in their respective statements as best they could, but note that a significant amount of the allegations related to behaviours not directed towards the Applicant.<sup>200</sup> As such, it was submitted by their representative that there is no basis or evidence for a finding of repeated unreasonable behaviour, there is no risk of further bullying because it did not occur, and the application must be dismissed.<sup>201</sup>

[152] The Applicant made several submissions to link the many instances set out to form a ‘repeated’ pattern of conduct. She submitted that each of the four main categories of her application could be viewed separately and all together as bullying. The Explanatory Memorandum to the Fair Work Amendment Bill 2013 stated:

*“109. ... ‘repeated behaviour’ refers to the persistent nature of the behaviour and can refer to a range of behaviours over time and that ‘unreasonable behaviour’ is behaviour that a reasonable person, having regard to the circumstances may see as unreasonable (in other words it is an objective test). This would include (but is not limited to) behaviour that is victimising, humiliating, intimidating or threatening.”*

[153] The Applicant’s allegations are considered below in relation to unreasonableness and as part of a larger ‘repeated unreasonable’ basis.

### ***Denial of Resources***

[154] It is clearly understood that the Applicant is aggrieved by the outcome of some of the interactions she alleged occurred between the parties. These interactions do not necessarily equate to bullying conduct. The sharing of limited resources across a large operationally active workforce in a policing environment will almost always result in components of that workforce being dissatisfied with the decisions regarding the allocation of resources. It was raised that in times of significant pressure on the Respondent, for example when resources needed to be allocated for the Prime Minister’s visit,<sup>202</sup> operational concessions were required to be made for the provision of vehicles. All three named persons confirmed that compromises were made all the time when determining when and where resources were best utilised.<sup>203</sup> It was the evidence of R3 that there were a range of daily allocation decisions that needed to be made with finite resources to cover all requests.

[155] The Applicant made reference to the case of *Department of Education and Training v Sinclair*<sup>204</sup> to establish that the management action she experienced involved a significant departure from established policies or procedures experienced prior to her parental leave. In her submission, the departure was not reasonable in the circumstances.<sup>205</sup> Though this has been taken into account, there is no substantive evidence that weighs against the finding above, that resources are limited and allocated where needed as much as possible and were not withheld in a punitive manner to affect her ability to discharge her duties.

[156] The Applicant raised that the JACET were purposefully located in a rear room to isolate them from their colleagues when there was a purpose-built room already available in the office complex. She stated that this was justified by the Respondent as the Applicant’s work entailed often viewing disturbing child abuse material and therefore the door is normally kept shut with signage for officers to knock before entering to ensure other employees were not inadvertently exposed to sensitive material. I accept that there may have been a feeling of isolation by the JACET members due to the geographic removal of them from other officers, however this decision appeared to be an operational one not made by any of the persons named.<sup>206</sup> It is recognised that the JACET has since been disbanded, however it is evident that this matter contributed to the perceptions of isolation by the Applicant.

[157] It is evident that there are a broad range of decisions regarding policing work made constantly. This is evident in the decision to relocate A2 to act in an aviation role, and Constables who acted up into Sergeant roles and the persons named who gave evidence on the allocation of resources with various pressures on the best application to requirements. I do not consider that any of those matters regarding the provision of the infrastructure, including the Conference Room the JACET were located in, the matter raised on the use of desks, or the

allocation of vehicles, were indications of bullying conduct. I accept the Respondent's submission, and it was well explained as reasonable management action in providing vehicle and personnel resources in the most optimum way for the service.

[158] With regard to the Applicant's allegations against R2 that he had failed to return property, unreasonably delayed sending evidence or delayed the Applicant accessing storage, I accept R2's evidence that none of these alleged actions were intentional, and he made concessions that he could have forgotten to send the evidence back in one case. There is no evidence that handling property or evidence was a part of his regular duties, though he may have engaged and assisted where he could to expedite matters. I do not find this to be indicative of a vindictive approach on his part to undermine the Applicant's work and is not bullying.

[159] With regard to 'repeated unreasonable' behaviour, I find that none of the incidents outlined above were unreasonable conduct and therefore do not meet the legislative test for bullying conduct. As such they will not be considered with any of the conduct below to form a 'pattern' of conduct against the Applicant.

#### *Unreasonable behaviour and effort to undermine work*

[160] With regard to the disbanding of the JACET, there is insufficient evidence to demonstrate that the decision was taken in direct response to a dislike for the Applicant or her team members. In circumstances where the Applicant exercised her right to take up approved full time alternative secondary employment and A5 was transferred to Brisbane, there were no full-time members of the JACET remaining. Further, recruitment to cover those roles was not yielding suitable candidates to cover the gap other than A2.

[161] There is no evidence before the Commission that the decision was taken to limit the options of the Applicant as alleged.<sup>207</sup> The evidence was that some of the functions were absorbed into the Crime Operations branch, so the function still existed.<sup>208</sup> The decision was clearly taken in circumstances where the Applicant had moved out of a role in the JACET and A5, the other senior member, had relocated to Brisbane. I accept that the Applicant had formed a view that the disbanding of the JACET was in direct contradiction to the AFP-wide goals, however there is no evidence to demonstrate that the decision to disband the JACET was directly attributable to some negative consideration of the Applicant's work or the insufficient work of the JACET.

[162] Regarding the specific instance of an after-hours JACET matter at the airport, which the Applicant was notified of at a later time, the Applicant made compelling submissions that specially trained JACET members should have been called to manage the situation. JACET members were required to have a psychological clearance to be exposed to the child abuse material that was regularly viewed,<sup>209</sup> which the responding officers would not have had. Further, the Applicant set out specific knowledge and skills which could have aided the matter, including how equipment can be assessed and the current technology to do so.<sup>210</sup> The Applicant noted that the lack of expertise by first on scene officers meant that only the phone and not the laptop had been assessed, which she stated might have been an operational loss for the AFP in that situation.<sup>211</sup> The Applicant submitted that this was a deliberate act of R1, after the Applicant had made it clear to R1 and others that she wanted to be notified of any such matters. I share the Applicant's view that it would have been sensible to notify the Applicant and her team due

to their expertise. R1's evidence that had more substantial child abuse material been found, the matter would have been referred to the JACET at that time,<sup>212</sup> was not sufficient to disturb this conclusion. The Applicant's submission that the case could have been used to raise the profile of child protection operations in North Queensland,<sup>213</sup> as was done in a similar case around the same time, is noted and accepted. However, it cannot be concluded that this was a deliberate endeavour to circumvent the Applicant or her team to perform their function due to the isolated nature of the incident. It is understandable that the Applicant views it otherwise, but there is no evidence of this conduct being repeated after she complained of it.

[163] It is recognised that the Applicant links this instance to other instances to form a conclusion of 'repeated' behaviour, but this is a singular incident where the Applicant considered that resources of her unit could have been more appropriately deployed. This is not a situation where no officers involved, but they were untrained in specific JACET matters. It must also be noted that had the Applicant been contacted out of her working hours to attend to this matter, it may have been that there would have been criticism for that decision in the same manner, or also be labelled as targeted behaviour.

[164] With regard to 'repeated unreasonable' behaviour, I find that none of the incidents outlined above meet the legislative test for bullying conduct and have only made a finding of poor judgement in one instance, which was not bullying. As such these instances will not be considered with any of the conduct below to form a 'pattern' of conduct against the Applicant.

#### *Exclusion from on-call roster and workplace events held during work time*

[165] The evidence of R1 was that the Applicant was not placed on the roster due to her operational reporting lines being Brisbane based. The Applicant raised this being in direct contrast with the experience of her partner A2 who put on the on-call roster. R1 set out that this was due to the fact that A2 was a member of Crime Operations, and only on loan to the JACET,<sup>214</sup> in contrast to the Applicant who was substantively allocated to the JACET.<sup>215</sup> I accept the Respondent's submission that this was not a decision R1 could make due to the different substantive reporting lines of the Applicant and her partner, and do not find that it is evidence of exclusion or bullying towards the Applicant.

[166] The Applicant considered that she was not invited to office farewells due to the isolation in the JACET room. Further, it is evident that this isolation added to feelings of estrangement regarding removal from most officers' daily routines of seeing colleagues in the hallways and sharing collegiate interactions. The evidence of R2 was that the events had been broadcast via all staff emails, and therefore there was no reason why the Applicant would not have been invited to most events,<sup>216</sup> and that there was no set practice regarding how the social events were communicated.<sup>217</sup> It seems that the Applicant's experience of isolation could be easily overcome by all staff emails notifying people of events, which did occur on occasion. This is a routine practice in large workforce to foster inclusivity which appears to already have been partially adopted by the AFP. I do not find this behaviour to be repeated or unreasonable.

[167] With regard to 'repeated unreasonable' behaviour, I find that none of the incidents outlined above were unreasonable conduct and therefore do not meet the legislative test for bullying conduct. As such they will not be considered with any of the conduct below to form a 'pattern' of conduct against the Applicant.



***Threats of reprimand and inappropriate behaviour (including vexatious complaints)***

[168] In response to the allegation of threatening the Applicant with formal reprimand or a CRAMS disciplinary outcome for failing to wear accoutrements, the Respondents provided reference to sections 39 and 40 of the *Australian Federal Police Act 1979* (Cth) which requires all AFP appointees to comply with Commissioner’s orders and that they must not disobey or fail to carry out a lawful direction. They made reference to the *Commissioner’s Orders on Operational Safety* (CO3) which provides orders that state that appointees performing duties in uniform must wear an approved accoutrement belt. The Respondent submitted that the Applicant was required to comply with these orders and that R2 reminded her of these requirements. They submitted that this was not a threat of reprimand and in fact constituted reasonable management action taken in a reasonable way.<sup>218</sup>

[169] With regard to the Applicant’s allegation that R2 targeted her for not wearing her accoutrements as required, I prefer R2’s evidence that as part of his role, he spoke to many officers about this requirement.<sup>219</sup> With regard to the specific incident where a CRAMS notice was allegedly threatened against the Applicant and A5, having heard the evidence, I do not share the Applicant’s view that there was any intent to intimidate her and there is no evidence of R2 actively taking steps to impose a disciplinary outcome for any failure to wear the appropriate accoutrements. I accept R2’s evidence in that he had said to the Applicant and A5 “*don’t make me CRAMS you*” as a gentle reminder only. In fact, his evidence was that he had never entered a CRAMS notice for failure to wear accoutrements.<sup>220</sup> The evidence is that operational police officers and appointees are required to wear their accoutrements at all times.<sup>221</sup> This was reinforced in correspondence from N13 in August 2022. R2’s evidence was that it was his role to ensure compliance with that direction and encouraged officers to do so.<sup>222</sup>

[170] The Applicant agreed that it was reasonable for management to remind officers of the requirement, however she alleged it was unreasonable to do so in the manner set out in her evidence. The Applicant did not show that R2’s use of stating that requirement of compliance was unilaterally directed at her and A5. There is no evidence that these compliance measures were not uniformly being applied. If was R2’s endeavour to discipline the Applicant, there were periods of time prior to A5’s arrival where it would be known that the Applicant didn’t have her accoutrements due to access issues. The Applicant set out that she would hide in her office to avoid this occurring. However, I find that if R2 was intent on disciplining the Applicant in this manner, he could have sought her out and there were opportunities for him to achieve that end which he did not pursue. I find that it was reasonable management action for R2 to ensure compliance with CO3.

[171] In response to the Applicant’s allegation that R1 had reported her for insubordination for her 1 April 2022 email,<sup>223</sup> the Respondent’s representative raised concern with the language and tone of that and the email correspondence of 18 August 2022 to Safe Place Case Manager N14.<sup>224</sup> The Respondent’s representative set out that the Applicant’s approach in the August email could be considered an instance of spreading rumours on the Applicant’s part and was inappropriate,<sup>225</sup> and that the April email was harsh.<sup>226</sup> The Applicant agreed that she was not proud of her April email to R1,<sup>227</sup> but disagreed that her August email to Safe Place was spreading rumours due to the alleged truth of R1’s “drunkenness” and that she had shared that information as context to her frustration with conduct in this application in a confidential

manner.<sup>228</sup> I agree with the Respondent that the emails were not appropriate but I do take into account the Applicant's apparent frustration with the lack of progress, her good intentions in trying to organise mediation with R1 and her concession at hearing of the April email's contents. The Applicant's submission that officers are encouraged to raise issues with their managers directly is noted, however as set out, the Applicant conceded that the manner in which she raised the concern in the April email was harsh. Further, I agree that the email was harsh and it was appropriate for R1 to raise this matter as insubordination. This was not unreasonable management action.

**[172]** With regard to R3 informing N12 about the Applicant's matter, I find that while it was not necessary to inform N12, I do not find it to be bullying. In his evidence, R3 indicated that he was wary the Applicant's matter was a topic of conversation and did not directly name her at the time. Perhaps for an officer of this level it would have been more prudent not to respond or provide the detail that he did regarding the proceedings, however it is recognised that as he set out, he was under pressure due to being named in the application.<sup>229</sup> Further, regarding the Applicant's assertion that her matter was being spread around the office, it is prudent to note that the Applicant had approached a group of Constables who had prepared and filed statements in the proceedings. She had also approached other officers who had declined to make statements and made applications for Orders to attend for additional personnel.<sup>230</sup> Therefore, I consider it reasonable to assume that her matter would be somewhat well known in the office due to these factors. There is also no direct evidence apart from that conversation, that R3 was broadcasting the proceedings generally to officers, or encouraging them to view the listings, given the range of people involved. It cannot be made out that R3 could be or was the only source and or that this can be considered bullying.

**[173]** The Applicant made reference to a CRAMS complaint made regarding her alleged unauthorised secondary work for undertaking volunteer AFL boundary umpiring work. It is not within the jurisdiction of the Commission to form a view of that complaint, and it has only been considered to the extent that the Applicant considered it as bullying action taken against her. On the face of the information before the Commission, clearly there were a range of officers at AFL games who were undertaking umpiring duties.<sup>231</sup> Is not such an extension to take the view that people may query, given the knowledge of officers regarding regulations of external and secondary employment, and not unusual that the question may be asked as to whether approval was in place. It is understood that the Applicant had provided information to AFP that she was asked to umpire on short notice on only a couple of occasions while on parental leave and was not receiving any payment.<sup>232</sup> That is as far as the matter can be taken and is a matter for the AFP to determine. To the extent that the Applicant considered it was unreasonable for R2 to make the enquiry,<sup>233</sup> his evidence was that it was an obligation on him to make enquiries and as such he raised it with N7 for guidance.<sup>234</sup> Though R2 stated that had it been anyone else, he would have raised it directly with that person first,<sup>235</sup> in the case of being a named person in the bullying application, he determined the best course was to seek guidance and not be directly involved as if he had approached the Applicant directly he worried it may be seen as further bullying conduct.<sup>236</sup> Whilst it is acknowledged that the Applicant is completely aggrieved by this complaint, it cannot be considered bullying conduct by R2.

**[174]** I will briefly deal with some remaining allegations. Firstly, in relation to the allegation that R1 was telling people that she had heard a rumour that partners were cheating on the Sergeant exam. I accept that R1 did not specifically name the Applicant in her statement in this

regard and note that the reference to ‘partners’ could also include police workplace pairings. I find that in itself it does not appear targeted at the Applicant. Secondly in regard to the Applicant’s Acting Sergeant application, I accept R3’s explanation that certain parameters were placed on applications to reduce the pool of applications.<sup>237</sup> I find this to be reasonable management action. Thirdly, with regard to the alleged exclusion from the ‘Coffee Club’ meetings, I agree with the Respondents’ submission that personal social choices are not unreasonable management action. With regard to the Applicant’s concern that these meetings affected decision making, I find there to be no definitive punitive or negative determinations about the Applicant arising from these group discussions. Fourthly, with regard to the various instances of poor interactions the Applicant has set out, I consider that any workplace may have a level of stress which can impact on interactions. Policing is not exempt, in fact, due to the dangers of the work, is likely exacerbated. I do not consider that the instances where the Applicant believes she has been unfairly brushed off or received a short response, amount to a pattern of conduct that is bullying. Finally, with regard to the alleged spreading of rumours by R3 and that the Applicant had mentioned his wife in the application and that generally there were rumours about the JACET, I do not find there to be sufficient evidence to support a conclusion of these matters. As raised above, in cross examination, the Applicant did not consider that it was ‘spreading rumours’ if you believed the information to be true.<sup>238</sup> I find that there may have been discussion about some aspects of the Applicant’s application as set out above, however there is no evidence of any malicious intent in doing so. Further, workplace operations and interactions are commonly discussed between colleagues, and again, the Applicant has not put forth sufficient evidence to suggest that the intent or manner of these discussions were overtly negative or targeted toward her. The highest her evidence reaches is that she had heard from others, who had heard from others that someone had mentioned her. I do not consider this bullying despite it the effect the Applicant argued that it had on her.

[175] The Applicant made reference to the case of *Georges and Telstra Corporation*<sup>239</sup> regarding the reasonableness of actions taken in an administrative capacity. With reference to the alleged denial of resources, the ‘threats’ of CRAMS for failing to wear accoutrements, investigation into the Applicant’s secondary work approval for AFL umpiring and alleged exclusion from the on-call roster and others I have set out above, I do not consider these unreasonable actions. As set out in the individual findings made, many of these instances are reasonable management action taken in a reasonable way and were not targeted at the Applicant.

#### **789FD(1)(b) that behaviour creates a risk to health and safety**

[176] The Applicant had provided evidence of the effect of the alleged bullying on her health in her submissions and evidence, obtaining a referral to a psychologist in 2023. She submitted a report from her treating GP which outlined the following:

“ ...

*She is currently engaging in psychology session over the past 6 months and has found this to be helpful.*

... ”

*A1 reports having hypervigilant behaviour and paranoid thoughts of having listening devices planted in her home. She has thoughts that there are people following her. She states that she found a listening device in her work area.*

*She does rationalise her thoughts and has good judgement.  
Will you please review this lady regarding possible diagnosis for PTSD/  
anxiety/depression?''<sup>240</sup>*

[177] The Applicant also submitted that she had been hospitalised for a stress related condition during 2022 while working under this leadership team<sup>241</sup> and that she had been experiencing hyper vigilance, some examples of which she outlined at hearing:

*“A good example is whenever I leave my home, I'm constantly looking around for these people whether – because Cairns is such a small place, I always think they're going to be there or do me harm. And the other day A2 accidentally left the door open and I thought they were in my house. You know, I'm just constantly afraid that because there's been so much hostility towards me – I don't know, I just like – these probably not-so-rational thoughts about what they're capable of. But, yes, that's what I'm seeking treatment for, I guess.”<sup>242</sup>*

*“No, I asked for the swipe logs in this because I wanted to see how often they came and went, to see if it was a, you know – when A5 told me they were moving her things around, maybe they were moving her things around, or reading our diaries, which was a real concern. She had litigation matters. She used to lock her diary up every day and I'd just leave mine sitting on the desk, like, you know – she was worried about that. So I wanted to see, maybe there is – maybe they did come in when we weren't there. But I didn't have any method other than like a lay person would have about how to deal with that. It was just thoughts that I had about, they might be entering my work space. Maybe they've let my tyres down in the car park, you know? Maybe they've done something with my brakes, or – you know. I started to have these thoughts and that was part of the reason that I finally went and sought some treatment for it because it's still going. Like I still have these thoughts every time I go out to the car – like check the tyres are all like – check the brakes a few times before I start driving. There was so much hostility, it seemed – when I think how the doctor put it was almost reasonable in my situation that I felt that way.”<sup>243</sup>*

[178] Having dealt with the Applicant through the progression of this application, I am at liberty to make the remark that whilst the Applicant was experienced in stressful scenarios for a person working policing matters and was considered diligent by herself and her colleagues and managers, there is no doubt she had experienced distress and was in that state at the hearing.

[179] Though the Applicant made submissions on her concern with finding a listening device in her workspace and the alleged poisoning of A5's water bottle, for someone clearly engaged in developing intricate and/or complex briefs of evidence to put before the Courts regarding the prosecution of individuals in possession of child abuse material, in comparison many of her allegations have no depth of supporting evidence. I do not discount those matters as they do speak volumes about the level of agitation that the Applicant and A5 were clearly experiencing, however this is noted in making my determinations above.

[180] In considering the effects of the alleged conduct on the Applicant's health, part of the factual matrix is that Applicant was new mother with an infant. The Respondent cross examined

her on this point and its relevance to her application. The Applicant was clear that she did not believe this contributed to her perception of the conduct or the effect on her health:

*“It's coincidental that this behaviour commenced as soon as I returned from maternity leave, and it makes it really clear that there was no intervening conduct by, you know, my experiences about obtaining resources and things like that because it was like night and day. It wasn't like I suddenly just was sleep deprived and then started perceiving everybody was against me. It's entirely not the case. I genuinely experienced hostility, overt hostility from the people named on a daily basis, and it became worse as the time went on, definitely, and started affecting my sleep. It started affecting my mental health. Having a baby's not easy, but I was always able to cope with lack of sleep and things like that. I had worked shift work before. So I didn't feel like that really did affect me in that way, and, yes, I think the only thing that explains it is the bullying that I experienced at work, genuinely, and it definitely got worse as the time went on, as the behaviours continued and got worse and sort of, you know, amplified over time, and even now, subsequently, the management's responses to it made it worse...”<sup>244</sup>*

*“I haven't changed as a person through having a child. If anything it's made me more caring and compassionate to other people's circumstances. I genuinely was very excited about coming back to work and being in a social environment because being on maternity leave is fairly isolating so I really did enjoy the thought of coming back early. I actually came back two months earlier, I think, that I had planned because, yes, I love work. Nothing has changed to me. Everybody changed and the only reasonable reason I see that they could have done that – because nothing else occurred – is this evidence that was shared, that I gave.”<sup>245</sup>*

[181] No inference is drawn on my part that caring for an infant, being a first-time parent and being a new stepmother to older children diminishes the Applicant's experience of the allegations. However, it is noted that the disrupted sleep complained of is regularly a part of a new parent's life and many working parents are balancing these family and work arrangements. These circumstances have been considered in the factual matrix of this case as added layers of pressure. The Applicant also noted that she experienced an anxiety attack in 2018 due to a culmination of some of these personal circumstances and a significant operation at work at the time.<sup>246</sup>

### ***Culture***

[182] This matter relates to application of the Applicant, which includes a range of evidence of other witnesses that the Applicant has endeavoured to join to her application. While the supporting statements have been read and considered, is not an application on behalf of those other Constables. What can be said is that when the witness statements including the comments of A3, viewed together and in conjunction with the Cairns Cultural Review Report, does give rise to a concern that there are workplace cultural issues, that as a result of this matter require some review. However, in the context of the Applicant's application, this has to be taken in consideration with the strong words of R3:

*“I believe everyone is entitled to safe environment in the workplace. I, myself, in the leadership group will ensure that that is maintained through the values of the AFP, so*

I can give you my undertaking that you will have a safe working place, A1, upon your return to that workplace.<sup>247</sup>

(emphasis added)

[183] He went on to state:

*"I have an expectation that – that's the core leadership group, and they're the face of looking after the team members. So, my expectation is that they will work with individuals, as well as a collective, so on a team basis, an overall discussion and a constant discussion, and as you will know, and most people in the room, is that change doesn't happen overnight. This is a two year process. And what I expect any of the team leaders to do, independent discussions with each one of their members. What is it that you would like to see, what is it that makes you want to come to work and be happy, what is it that we can do, within parameters. And that's really what my expectations are, and I'm working through that with the team leaders and the acting team leaders at the moment, to ensure that there is a bit of pressure in this..."*<sup>248</sup>

[184] When asked about the Applicant's return to work and her potential supervisor after the current restructures and that the Applicant feeling unsupported, R3 stated:

*"I'm not sure what that team leader will look like, as to where A1 will be, with all the reviews undertaken, but what I would say is that I'm comfortable in the sense that it is safe working place. I will provide that safe working place, and whatever that team leader looks like or whoever that may be, there's the expectations that they will ensure that they follow the core values of the AFP, inclusive of that every member is entitled to a safe working place. And it's some pretty consistent messaging across that cohort. For one reason or another, if people feel that they're unsafe, obviously a lot of that sits with myself to ensure that I endeavour to ensure that the team leaders and the leadership group own that, including myself. I truly don't want anyone to feel unsafe, I really don't. I'm actually hurt by that inference that you're unsafe, A1, I actually truly am. But I don't want anyone there to feel that they're unsafe in the workplace. And we run a risky job, as it is."*<sup>249</sup>

*"...And I'll use an analogy, police analogy there, and my long time service, probably as that. I would never see a member of the AFP, or any police officer not being backed. I'm – if you've been around a long while, what they call it, you bleed blue. You don't have to love the person. At the end of the day, sometimes policing can be an us and then environment, and you will always support your fellow officers, always. If I ever saw that in a workplace, I – and I never have. In my 35 years, I've never seen that occur."*<sup>250</sup>

(emphasis added)

[185] It provided concern when the Applicant articulately described the daily hypervigilance she was experiencing due to her concerns in the workplace and conduct that she may be subject to and lack of confidence to assist when needed.<sup>251</sup> The evidence of R3 was completely clear and made very emphatically to the Commission that despite any personal tension between colleagues, the collegiate conduct is entrenched in the AFP and would not have left the Applicant isolated as she perceived. However, it is acknowledged that the culture experienced by the Applicant and others and witnessed by A3 does exist. As set out and expanded on below,

management have been made aware of the concerns being raised and are currently undertaking steps to rectify this.

[186] The Applicant made reference to this case *Ferguson v Strautman Australia Pty Ltd*<sup>252</sup> regarding her concerns about being denied support. She submitted that in a policing context, concerns about being denied support or operational resources are amplified due to the need for management support in providing back-up should a dangerous situation be encountered, which could cause a member serious injury or death. The Applicant submitted that she reasonably did not believe she would be provided back up from AFP members if required and this resulted in acute mental stress.<sup>253</sup> As set out above, I have not found compelling evidence of such and on the contrary, I refer to R3's statement above regarding the collegiate conduct of policing that extends beyond any personal sentiments.

### **Matters relevant to the Orders**

[187] The Orders sought at hearing were as follows:

1. Order the Applicant be provided a safe workplace by being provided a position physically located in another Northern Command location
2. Order that any AFP witnesses who have provided evidence in this matter are not to suffer any adverse actions by the named persons as a result of the evidence provided and maintain an ability to contact the Commissioner directly for advice in relation to any actual or perceived breaches of this order.
3. Order that no further disciplinary matters be instigated against the Applicant as a result of making this complaint to the Fair Work Commission and any disciplinary matters potentially already commenced be immediately ceased and removed from her employment record.
4. Order that the named persons receive management counselling and/or training in relation to the behaviours they subjected the Applicant and others to, so this behaviour is not repeated
5. Order the AFP Professional Reporting Standards provide a written response to the Commission as to their decision not to investigate and O1 to provide a written response to the Commission as to the managerial action outcomes (if any) and associated reasoning.
6. Order that the AFP review their procedures to ensure allegations of bullying are dealt with appropriately and people are not victimised as a result of providing evidence and complaints are handled in line with the AFP's bullying and complaint handling policies.
7. Order that names as part of this matter not be published to protect the identity of the Applicant and other police witnesses.

[188] Section 789FF of the Act sets out the Orders that are able to be made:

#### **“789FF 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.”

[189] It is noted that the particulars of the outcomes the Applicant sought at conciliation are different to the Orders sought at hearing. No judgement is made on this, other than to state that some of the matters now sought were not canvassed in prior discussions, and therefore the Respondent has not had the ability to address them out of session with the Applicant prior to hearing.

[190] Considerable time was spent conciliating the matter. This was not undertaken on the basis that the AFP or persons named considered that they were liable, but to try to bring some resolution to the matter. Whilst committed endeavours were made in conciliation by both parties, the Applicant was seeking matters which were outside the jurisdiction of the Commission, and an agreed outcome was not able to be reached at that time. At conciliation the Applicant was definitively seeking Order 1 for relocation as one of the proposed outcomes, but with further specified outcomes in addition to this.

[191] Though I have not found that bullying conduct occurred against the legislative tests and have set out the range of instances where I have found reasonable management action taken in a reasonable way to have occurred, it is relevant to address the Applicant’s Orders given that even without a finding of bullying, a range of these matters are already available to the Applicant. The Orders are addressed in turn.

#### Order 1 – relocation and safe workplace

[192] It is relevant to reference that N11 on behalf of the AFP, (while not appearing as a witness), made diligent efforts to provide a conciliated outcome on a without prejudice basis, without the need to pursue this matter at hearing. It is understood that there are a series of steps to approve relocation and is clear that for every decision that is made, these managers can be held accountable by other officers who similarly want to secure relocated roles. There are also a range of tests, AFP legislation and policy to be complied with. Part of the impediment to the resolution of the matter at conciliation was the reference to outcomes related to a restructure



currently being undertaken in the AFP. Matters may have been able to be resolved however, exacting commitments as to when, where and how a relocation for the Applicant would be executed, could not be provided at the time. N11 indicated that she was not able to promise definitive positions should the Applicant seek relocation, but that the Applicant's application for other roles and the expenses would be considered equitably as with any other application.

[193] At the hearing the Applicant confirmed that she did not feel safe returning to the Cairns workplace.<sup>254</sup> The Applicant set out that despite the fact that R1 was currently assigned to Brisbane and would not have opportunities in Cairns in the future,<sup>255</sup> and that R2 was seconded to the Cairns TAFE and had leave planned in the breaks between semesters,<sup>256</sup> the Applicant was still not persuaded that she would be safe under R3's command.<sup>257</sup>

[194] The Applicant's proposed Order for relocation was, in her submission, a last resort<sup>258</sup> as she did not want to have to move as a result of this matter and continuing to feel unsafe.<sup>259</sup> She rejected the Respondent's submission that it was her motivation for the proceedings to secure a transfer of location to Brisbane because for other reasons it may suit her better.<sup>260</sup> The Applicant referred to feelings that there were rumours about her at the Cairns workplace that she wouldn't be able to dislodge,<sup>261</sup> and that the entire workforce had been poisoned against her.<sup>262</sup> She set out that in order to feel safe, she sought an acknowledgement of what she had been through in the office and that it be set out to all staff and made clear that there were clear orders and expectations about behaviours not continuing.<sup>263</sup> Whilst the reply submissions of the Applicant are taken into account, the Applicant has maintained her Order for relocation. In recognition of this, the matters relevant to returning the Applicant to a safe workplace have been detailed. Allegations regarding rumours in the workplace must be considered in the context of the Applicant having drawn a range of witnesses from that workplace to give their individual bullying complaints as part of these proceedings. Accordingly, those actions have intensified the interest and discussion of this matter at the workplace.

[195] In closing submissions, the Respondent's representative emphasised what I consider to be a genuine undertaking from R3 and the assurances provided by O1 in the circumstances of this matter as set out below:

*“R3's promises to her that he will do whatever was in his power to ensure that she has a safe place of work to return to. She has the additional assurances in the evidence of O1, that there have been – there has been an acceptance by the AFP that probably in the same – like every other workplace that it administers and every other workplace in the country probably of similar size and complexity. The Cairns Operation, in terms of its workplace dynamics is not perfect. There are people who are – there is evidence that workplace interactions are not always as they should be. Although, certainly, those leaders don't draw conclusions about who is at fault. There is evidence that there was a need for some additional support to the office, which is a remote office, to allow them to better understand their obligations, understand the risks associated to psycho-social health, of workplace interactions. And to get feedback through focus groups about what were the concerns on people's minds. And it's pretty plain that some additional work has been done. That shouldn't, of course, be accepted or thought to be a response to any conclusion that A1 has been bullied. But it's simply an intelligent thing to do if you're a workplace with the experience of the Cairns AFP workplace, in that there is objective evidence that some people are distressed by interactions they've had in the workplace*

*and A5's situation and then A1's situation as well. So what we know about that is that some work has been done and, as I have said, we have the assurance of the leader that he will do his best to ensure a safe place of work when she returns.*"<sup>264</sup>

*"The Commission can be assured, in accordance with the promises given by R3 that my client, the AFP, the Australian Federal Police, expresses its support for A1's return. And it will do what it can to facilitate that course, if it's what A1 wants to do."*<sup>265</sup>

[196] Further, O1 in her witness statement set out that there have been a variety of initiatives put in place to improve the culture of the Cairns office,<sup>266</sup> which involved everyone in the Cairns office, and she believed that there was consultation and communication in the workplace about these initiatives which was delivered by N18.<sup>267</sup> She noted that the structural changes made to the Cairns office have resulted in all AFP appointees having the support of a direct supervisor in their office, which guarantees better contact and support<sup>268</sup> and stated that she was confident that N11 and N22 (who replaced her as head of Northern Command) would continue to ensure that the Cairns office is a safe workplace for all members.<sup>269</sup>

[197] O1 also set out that management recognised there had been concerns raised about the way some people were interacting with each other, and that the AFP has sought to enhance the culture of the office through the conduct of the focus groups and other initiatives.<sup>270</sup> Further, her evidence was that the Applicant's complaint had been resolved managerially through the changes implemented as part of the culture enhancing initiatives and the changes made to ensure direct local supervision and support for all appointees based in Cairns.<sup>271</sup> She set out that when the Applicant returned to the workplace, she would also have the same measures as anyone else available to her, including those she has previously utilised, to raise any issues she may have in the future.<sup>272</sup>

[198] I consider this relevant to the Applicant's concern of safety, and even though her supporting witnesses do not have their own applications before the Commission, a range of the matters set out above do go towards addressing their concerns and are relevant to them in addition to the Applicant.

[199] In light of the undertaking from R3 and the evidence of O1 on the currently underway review of the culture of the workplace, I consider that this request for a safe workplace has already partially been met. I find that there is little likelihood of paths crossing between the Applicant and R1 or R2 and therefore there are greatly reduced circumstances for the Applicant to continue to be at risk. The results of the Cairns Cultural Review have been taken into account by the Respondent and current workshops were taking place on psychological safety, in addition to management initiatives set out by R3 in his evidence. This demonstrates a recognition of some issues within the workplace, as the Applicant sought, and a commitment to working towards rectification.

#### Orders 2 and 3 - Adverse Action – Witnesses and Applicant

[200] Additionally, it is not necessary for the Commission to make orders to protect witnesses in this manner. Sections 340 and 341 of the Act prevent recourse against persons exercising their workplace right to participate in a proceeding under a workplace law. The Applicant is able to take any future application she sees fit, however the Commission cannot prevent or

determine any internal matters on foot, where there are internal channels to make complaints or appeal decisions. The Respondent will also be well aware via their HR department, internal legal advisors and Commission representatives, of the impediments to taking adverse action against any parties in this matter.

[201] In addition, in circumstances where the Applicant currently has an internal review in relation to the CRAMS notice on her secondary work approval, it would be improper and outside the jurisdiction of the Commission to cut across this and the Commission has not been asked to make a finding on this appeal.

[202] With regard to Order 3, no bullying application whether successful or not can act as a veil or as an embargo to protect an employee or to prevent any party from the normal rights they hold and can discharge under an ongoing employment contract. In this matter the parties retain their rights and responsibilities on the Applicant resuming her duties in returning to the workplace, and therefore no Order is needed in relation to this.

#### Order 4 - Counselling

[203] The Respondent submitted that Orders 2-7 were not within the jurisdiction of the Commission even if bullying was made out.<sup>273</sup> O1 also set out some initiatives already in place or planned which included facilitated focus groups and workshops dealing with issues such as health and wellbeing and respectful communication as well as training on issues such as psychosocial risk including the types of behaviours which indicates a risk in this regard.<sup>274</sup>

[204] In light of the undertaking from R3, the evidence set out, and the currently underway review of the culture of the workplace, I consider that this request has partially been met already or at least the Respondent referred to steps currently being taken towards the Applicant's desired outcome in this matter.

[205] Whilst no finding of bullying has been made, it is a regular requirement and practice of the Human Resources department for a large workplace to ensure that there is continuous review of the bullying policies and training. Further, it is not within the jurisdiction of the Commission to make any order that would have a pecuniary element to its implementation, in terms of requiring training to be implemented and potential associated external trainer costs. In the current circumstances I do not consider it appropriate to make the Order.

#### Order 5 - PRS Complaint explanation

[206] In her witness statement, O1 set out her involvement with the PRS complaint and notes it was only referred to her to 'resolve managerially' after it was determined that no further action should take place.<sup>275</sup> She was unable to provide further detail on the contents or validity of that decision,<sup>276</sup> but noted she considered that the 'managerial resolution' has been completed.<sup>277</sup>

[207] However, O1's evidence was also that she had formed a clear view that there were two appropriate managerial interventions which were appropriate.<sup>278</sup> Firstly, direct supervision in Cairns so that management would be in a better position to provide direct support and to assist in the resolution of issues and problems (including in relation to resource allocation and

workplace interactions) directly and in real time,<sup>279</sup> and secondly, a variety of initiatives to improve the culture in the Cairns office<sup>280</sup> as set out above under the discussion of Order 1. Further, she stated that otherwise, it was not her role to investigate the matter and she considered the issues were appropriately addressed through the culture enhancing initiatives and the restructure.<sup>281</sup>

[208] If it is that the Applicant had questions associated with that internal review or her PRS complaint which were not satisfactorily answered by O1's statement, as set out above, she had the ability to cross examine the witness, or put further questions arising from it back to the persons named. In circumstances where the Applicant did not require O1's attendance at the hearing, this is a matter that the Applicant did not pursue, and the Commission has to take that into account having ordered attendance.

[209] It is outside of the Commission's jurisdiction to order a further explanation from the Respondent. The Applicant is at liberty to internally appeal the finding of the PRS or make further internal inquiries as she sees fit.

#### Order 6 - Review of procedures for bullying

[210] As set out above in Order 4 and Orders 2 and 3 regarding General Protections provisions, adverse action is not to be taken against any parties involved, and regular reviews of procedures should be undertaken as part of common HR practice. Further, there is nothing in the evidence to suggest that the Applicant's complaint was ignored. The AFP devoted time and resources to the Applicant's complaint, referred the matter to O1 for discussion with the Applicant and undertook the Cairns Cultural Review and associated workshops and changes as set out above.

#### Order 7 - Publication of names

[211] The Applicant agreed that suppression Order alleviated this concern.<sup>282</sup>

### **CONCLUSION**

[212] Taking all of the matters into consideration, I am not satisfied that the Applicant was bullied at work by the three named persons, R1, R2 and R3. The allegations of bullying, as particularised in relation to each of these named persons has not been made out in terms of the legislative tests. It is necessary to say that based on the evidence of R3 whereby he provided significantly confident assurances to the Commission of providing a safe workplace for the Applicant. In addition, it is relevant to set out that whilst it has been concluded on the materials before the Commission that a finding of bullying conduct cannot be made, there is in any event, reduced circumstances for the Applicant to be concerned about any alleged continuing risk of bullying given the movement of two of the named persons away from work at the Cairns Workplace.

[213] In addition, taking their evidentiary responses into account, the conduct of these individuals cannot be concluded to be unreasonable, when considered in the context of the operations, as has been set out in in dealing with the specific matters complained of. I have, however, in considering the range of matters and responses placed before the Commission in this matter, made some comment on the conduct under review. In this regard, I adopt the

concluding comments of then Vice President Hatcher in the matter of *Amie Mac*.<sup>283</sup> Similar to the circumstances in that matter which required the assessment of a volume of allegations with a significant commensurate range of documents and witnesses who were involved:

*“[148]...That conclusion has been reached on the basis that none of the conduct of those individuals alleged to be unreasonable in Ms Mac’s Points of Claim was in fact unreasonable. Although it is not strictly necessary for me to do so, I also find that their conduct constituted reasonable management action carried out in a reasonable manner. That does not, in accordance with the principles I have earlier stated, mean that the relevant conduct was in all respects entirely beyond criticism or constituted the best human resources practice one might expect in a large and sophisticated employer such as BOQ. I have in the course of my reasoning identified some limited shortcomings in this respect. However, this did not reach anywhere near the required level of unreasonableness.*

*[149] In reaching that conclusion, it has not been necessary for me to determine whether all of the pleaded instances of behaviour occurred while Ms Mac was “at work”, although if it was necessary for me to do so, I would have found that many if not all of the instances of behaviour dating after Ms Mac went off work because of illness on 7 March 2014 did not occur “at work”. Nor has it been necessary for me to determine whether all of the pleaded instances of behaviour created a risk to health and safety...”*

**[214]** The necessary satisfaction has not been reached against the statutory tests to conclude that the Applicant was bullied at work as alleged, therefore there is no power to make the Orders sought by her application.

**[215]** It is noted that comments have been made in this decision, on some of the matters that the Applicant raised, whilst not justifying bullying Orders, an optimum response to the advantage of all parties at this workplace in securing the confidence of a safe place of work, would be the continued review of the culture at the workplace. In a matter like this, where there has been a range of individuals come forward to provide evidence about their concerns, related to circumstances at the work further consideration by this employer is warranted. As set out in the decision, it is recognised that the AFP has a significant workforce to manage and balance with significant operating pressures in terms of the services to be offered and the nature of the work undertaken.

**[216]** It is also acknowledged that the Respondent had at the time of the hearing, already commenced to review and respond to matters of culture at the Cairns workplace. It is considered that a prudent outcome would be the continued assessment of the Bullying Policy and associated workforce training around these matters.

**[217]** In all of the facts and circumstances on the reasons set out above, the jurisdictional objection pursuant to section 789FD(2), that the conduct complained of was reasonable management action carried out in a reasonable way, is upheld. On this basis, orders are not made pursuant to section 789FF.

**[218]** The application pursuant to section 789FC is dismissed. I Order accordingly.



COMMISSIONER

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<sup>1</sup> Section 577(1)(c) of the *Fair Work Act 2009*; *Amie Mac v Bank of Queensland Limited* [2015] FWC 774.

<sup>2</sup> Respondent Submissions on Suppression Order at question 2.2, [11].

<sup>3</sup> Witness Statement of A1 at [39].

<sup>4</sup> Email Correspondence dated 16 May 2023.

<sup>5</sup> Correspondence from Applicant dated 18 May 2023.

<sup>6</sup> Respondent's Outline of Submissions at [12].

<sup>7</sup> Applicant's Form F8C, dated 25 January 2023 question 3.1 at [6], [13], [90].

<sup>8</sup> Applicant's Form F8C, dated 25 January 2023 question 3.1 at [7].

<sup>9</sup> Witness Statement of A2 at [17]; Applicant's Form F8C, dated 25 January 2023 question 3.1 at [10].

<sup>10</sup> Applicant's Form F8C, dated 25 January 2023 question 3.3.

<sup>11</sup> Applicant Outline of Submissions at [46]; Witness Statement of A1 at [14].

<sup>12</sup> Witness Statement of A1, Exhibit 1.

<sup>13</sup> [2023] FWC 1227.

<sup>14</sup> Email Correspondence from Applicant dated 15 June 2023.

<sup>15</sup> Form F51 - Application for Order to Attend – AO4; Form F51 - Application for Order to Attend – AO3.

<sup>16</sup> *Day v Drake Trailers Pty Ltd* [2015] FWC 2644 and Respondent Submissions on Orders to Attend at [37]-[39], [44]-[46].

<sup>17</sup> Form F51 - Application for Order to Attend – O1 and AO1 or AO2.

<sup>18</sup> Respondent Submissions on Orders to Attend at [19].

<sup>19</sup> Respondent Submissions on Orders to Attend at [30].

<sup>20</sup> Respondent Submissions objecting to Witness Statements filed by the Applicant at [11].

<sup>21</sup> Respondent Submissions objecting to Witness Statements filed by the Applicant at [14].

<sup>22</sup> Respondent Submissions objecting to Witness Statements filed by the Applicant at [15] with reference to *King v Freshmore (Vic) P/L* Print S4213.

<sup>23</sup> Respondent Submissions objecting to Witness Statements filed by the Applicant at [19] with reference to *Weston v Coal & Allied Mining Services Pty Limited* [2023] FWC 93 at [25].

<sup>24</sup> Applicant response to Respondent Submissions objecting to Witness Statements filed by the Applicant dated 13 July 2023; Applicant response to Respondent Submissions objecting to Witness Statements filed by the Applicant dated 15 June 2023.

<sup>25</sup> Applicant response to Respondent Submissions objecting to Witness Statements filed by the Applicant dated 15 June 2023.

<sup>26</sup> PN38, PN43, PN946.

<sup>27</sup> PN39.

<sup>28</sup> PN2594.

<sup>29</sup> Witness Statement of A1 at [14] and Exhibit 15; PN729, PN731, PN748, PN750, PN757, PN788, PN866.

<sup>30</sup> Applicant Outline of Submissions at [48], Witness Statement of A1, Exhibit 54.

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- <sup>31</sup> Applicant Outline of Submissions at [48], Witness Statement of A1 at [104].
- <sup>32</sup> PN792.
- <sup>33</sup> Applicant Outline of Submissions at [36]-[45].
- <sup>34</sup> Applicant Outline of Submissions at [51]-[65].
- <sup>35</sup> Witness Statement of A4 at page 1.
- <sup>36</sup> Applicant Outline of Submissions at [20]-[27].
- <sup>37</sup> Applicant Outline of Submissions at [25]; Witness Statement of A1, Exhibit 64.
- <sup>38</sup> Witness Statement of A3 at [6].
- <sup>39</sup> Witness Statement of A3at [7].
- <sup>40</sup> Witness Statement of A3at [8].
- <sup>41</sup> Witness Statement of A1 at [77]-[86] and [139].
- <sup>42</sup> Witness Statement of A1 at [131], [135]-[137].
- <sup>43</sup> Witness Statement of A1 at [87]-[88].
- <sup>44</sup> PN170; PN2243.
- <sup>45</sup> Witness Statement of A2 at [15].
- <sup>46</sup> Witness Statement of A9 at [74].
- <sup>47</sup> Witness Statement of A1 at [81].
- <sup>48</sup> Witness Statement of A5 at [32], [34]-[36].
- <sup>49</sup> The Applicant submitted that under section 19 of the AFP National Guideline on AFP vehicles - when a privately owned motor vehicle, used for official purposes, is involved in a collision, the owner/driver of the vehicle is responsible for all costs through their own third-party personal injury and comprehensive insurance. Insurance excess costs are not be paid by the AFP.
- <sup>50</sup> Witness Statement of A1 at [138].
- <sup>51</sup> Witness Statement of A1 at [116], [129]-[133].
- <sup>52</sup> Witness Statement of A9 at [82].
- <sup>53</sup> Witness Statement of A1 at [48], Witness Statement of A5 at [39]-[40].
- <sup>54</sup> Witness Statement of A1 at [26]-[32].
- <sup>55</sup> Witness Statement of A1 at [11], [19]; Witness Statement of A5 at [41]-[49].
- <sup>56</sup> AFP Corporate Plan 2022-2023.
- <sup>57</sup> Witness Statement of A1 at [57] and Exhibit 25.
- <sup>58</sup> PN2069.
- <sup>59</sup> Witness Statement of A1 at [56], Exhibit 24.
- <sup>60</sup> Witness Statement of A1 at [59]-[61], [105]-[106]; Witness Statement of A5 at [41].
- <sup>61</sup> Witness Statement of A4.
- <sup>62</sup> Witness Statement of A1 at [64]-[76]; Witness Statement of A5 at [19]-[20]; Witness Statement of A9 at [66].
- <sup>63</sup> Witness Statement of R1 at [84]; Applicant Submissions in Reply, Table 2, point 12.
- <sup>64</sup> Witness Statement of A1, Exhibit 28.
- <sup>65</sup> Witness Statement of A1, Exhibit 28.
- <sup>66</sup> Witness Statement of A1, Exhibit 9.
- <sup>67</sup> PN617-PN626.
- <sup>68</sup> Witness Statement of A1 at [50], Exhibit 29.
- <sup>69</sup> Witness Statement of A1 at [62]-[76].
- <sup>70</sup> Applicant Submissions in Reply, Table 2, point 13; PN181.
- <sup>71</sup> PN710.
- <sup>72</sup> PN1930.

<sup>73</sup> Witness Statement of A1 at [56]; Witness Statement of A2 at [13]-[14], Exhibits 1 and 2; Witness Statement of A5 at [50].

<sup>74</sup> Witness Statement of R1 at [66]-[71]; Applicant Submissions in Reply, Table 3, point 15.

<sup>75</sup> PN1131.

<sup>76</sup> PN1139, PN1143.

<sup>77</sup> Witness Statement of A1 at [127]-[128].

<sup>78</sup> Witness Statement of A5 at [15]-[17]; Witness Statement of A9 at [71], [81].

<sup>79</sup> Witness Statement of A1 at [143]-[146].

<sup>80</sup> Witness Statement of A1 at [125]-[126], [146]; Witness Statement of A5 at [21].

<sup>81</sup> Witness Statement of A1 at [22]-[24], [128].

<sup>82</sup> Witness Statement of A1 at [118]-[124]; Witness Statement of A5 at [37]

<sup>83</sup> Applicant Submissions in Reply, table 4, allegation 19.

<sup>84</sup> Witness Statement of A1 at [118].

<sup>85</sup> Witness Statement of A1, Exhibit 28

<sup>86</sup> Witness Statement of A7 at [8]-[9]; Witness Statement of A1 at [90].

<sup>87</sup> Witness Statement of A1 at [96].

<sup>88</sup> Witness Statement of A1 at [97].

<sup>89</sup> Witness Statement of A1 at [163].

<sup>90</sup> Witness Statement of A9 at [67].

<sup>91</sup> Applicant Submissions in Reply, Table 4, allegation 21.

<sup>92</sup> Applicant Submissions in Reply, Table 4, allegation 22.

<sup>93</sup> Witness Statement of A1 at [167] and Exhibit 62.

<sup>94</sup> Applicant Submissions in Reply, Table 4, allegation 23.

<sup>95</sup> Witness Statement of A1 at [170].

<sup>96</sup> Witness Statement of A1 at [161].

<sup>97</sup> Applicant Submissions in Reply, Table 4, allegation 25.

<sup>98</sup> Witness Statement of A1 at [108]-[109].

<sup>99</sup> Witness Statement of R3 at [28]-[31].

<sup>100</sup> Witness Statement of A1 at [147], Applicant Submissions in Reply, Table 4, allegation 27.

<sup>101</sup> Witness Statement of A1 at [42].

<sup>102</sup> Witness Statement of A1 at [43].

<sup>103</sup> Witness Statement of A1 at [39].

<sup>104</sup> Witness Statement of A1 at [41].

<sup>105</sup> Witness Statement of A1 at [44].

<sup>106</sup> Witness Statement of A1 at [105]-[106].

<sup>107</sup> Witness Statement of A1 at [107].

<sup>108</sup> Witness Statement of A1 at [46]-[47] and [49].

<sup>109</sup> Witness Statement of A1 at [50]-[51].

<sup>110</sup> Respondents' Outline of Submissions at [2]-[11].

<sup>111</sup> Respondents' Outline of Submissions at [20].

<sup>112</sup> Respondents' Outline of Submissions at [24]-[26], [28]-[29].

<sup>113</sup> Respondents' Outline of Submissions at [35]-[53].

<sup>114</sup> Respondents' Outline of Submissions at [36].

<sup>115</sup> Witness Statement of R1 at [9]-[10].

<sup>116</sup> Witness Statement of R1 at [13]-[15].



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- <sup>117</sup> Witness Statement of R1 at [17]-[19].
- <sup>118</sup> Witness Statement of R1 at [20].
- <sup>119</sup> Witness Statement of R1 at [21]-[25].
- <sup>120</sup> Witness Statement of R1 at [20]-[28].
- <sup>121</sup> Witness Statement of R1 at [33].
- <sup>122</sup> Witness Statement of R1 at [34].
- <sup>123</sup> Witness Statement of R1 at [35].
- <sup>124</sup> Witness Statement of R1 at [37]-[42].
- <sup>125</sup> Witness Statement of R1 at [52], Exhibit 1.
- <sup>126</sup> Witness Statement of R1 at [54], Exhibit 2.
- <sup>127</sup> Witness Statement of R1 at [55].
- <sup>128</sup> Witness Statement of R1 at [56]-[57], Exhibit 3.
- <sup>129</sup> Witness Statement of R1 at [58]-[59], Exhibit 4.
- <sup>130</sup> Witness Statement of R1 at [51]-61].
- <sup>131</sup> Witness Statement of R1 at [62]-[65].
- <sup>132</sup> Witness Statement of R1 at [69], Exhibit 5.
- <sup>133</sup> Witness Statement of R1 at [66]-[72].
- <sup>134</sup> Witness Statement of R1 at [74]-[79].
- <sup>135</sup> Witness Statement of R1 at [80].
- <sup>136</sup> Witness Statement of R1 at [83].
- <sup>137</sup> Witness Statement of R1 at [84].
- <sup>138</sup> Witness Statement of R1 at [81].
- <sup>139</sup> Witness Statement of R1 at [88], Exhibit 6.
- <sup>140</sup> Witness Statement of R1 at [85], [92].
- <sup>141</sup> Witness Statement of R1 at [96]-[98].
- <sup>142</sup> Witness Statement of R1 at [99].
- <sup>143</sup> Witness Statement of R1 at [100].
- <sup>144</sup> Witness Statement of R1 at [101].
- <sup>145</sup> Witness Statement of R1 at [102].
- <sup>146</sup> Witness Statement of R1 at [103].
- <sup>147</sup> Witness Statement of R2 at [1]-[5].
- <sup>148</sup> Witness Statement of R2 at [6]-[9].
- <sup>149</sup> Witness Statement of R2 at [10]-[12].
- <sup>150</sup> Witness Statement of R2 at [15].
- <sup>151</sup> Witness Statement of R2 at [17]-[18].
- <sup>152</sup> Witness Statement of R2 at [19].
- <sup>153</sup> Witness Statement of R2 at [21], [23].
- <sup>154</sup> Witness Statement of R2 at [24]-[30].
- <sup>155</sup> Witness Statement of R2 at [31]-[37], Exhibit 1.
- <sup>156</sup> Witness Statement of R2 at [38]-[40].
- <sup>157</sup> Witness Statement of R2 at [41]-[43].
- <sup>158</sup> Witness Statement of R2 at [89]-[95], Exhibit 7.
- <sup>159</sup> Witness Statement of R2 at [96].
- <sup>160</sup> Witness Statement of R2 at [46].

- <sup>161</sup> Witness Statement of R2 at [47]-[48].
- <sup>162</sup> Witness Statement of R2 at [59]-[50].
- <sup>163</sup> Witness Statement of R2 at [51].
- <sup>164</sup> Witness Statement of R2 at [52]-[54], Exhibit 2.
- <sup>165</sup> Witness Statement of R2 at [55].
- <sup>166</sup> Witness Statement of R2 at [56]-[58], Exhibit 3.
- <sup>167</sup> Witness Statement of R2 at [60]-[65].
- <sup>168</sup> Witness Statement of R2 at [66]-[71], Exhibit 4.
- <sup>169</sup> Witness Statement of R2 at [72].
- <sup>170</sup> Witness Statement of R2 at [73]-[79].
- <sup>171</sup> Witness Statement of R2 at [80]-[84], Exhibit 5
- <sup>172</sup> Witness Statement of R2 at [86], Exhibit 6.
- <sup>173</sup> Witness Statement of R2 at [85].
- <sup>174</sup> Witness Statement of R2 at [87]-[88].
- <sup>175</sup> Witness Statement of R3 at [6]-[11], Exhibit 1.
- <sup>176</sup> Witness Statement of R3 at [12].
- <sup>177</sup> Witness Statement of R3 at [13]-[16].
- <sup>178</sup> Witness Statement of R3 at [18]-[23], Exhibit 2.
- <sup>179</sup> Witness Statement of R3 at [24]-[27].
- <sup>180</sup> Witness Statement of R3 at [28]-[31].
- <sup>181</sup> Witness Statement of R3 at [32]-[34].
- <sup>182</sup> Witness Statement of R3 at [35]-[40], Exhibit 3.
- <sup>183</sup> PN2118, Witness Statement of R3 at [54]-[56].
- <sup>184</sup> Witness Statement of R3 at [42]-[44].
- <sup>185</sup> Witness Statement of R3 at [45]-[49], Exhibit 4.
- <sup>186</sup> Witness Statement of R3 at [50].
- <sup>187</sup> Witness Statement of R3 at [51]-[52].
- <sup>188</sup> PN2570-PN2573.
- <sup>189</sup> Respondents' Outline of Submissions at [38].
- <sup>190</sup> Respondents' Outline of Submissions at [39]-[42].
- <sup>191</sup> [\[2015\] FWC 774](#).
- <sup>192</sup> [\[2014\] FWC 2104](#).
- <sup>193</sup> (2004) 218 CLR 216 at [84] and [103].
- <sup>194</sup> PN2356.
- <sup>195</sup> [\[2015\] FWC 774](#) at [90].
- <sup>196</sup> PN2359.
- <sup>197</sup> PN2362.
- <sup>198</sup> [\[2015\] FWC 774](#) at [92].
- <sup>199</sup> PN2387.
- <sup>200</sup> Respondents' Outline of Submissions at [48]-[49].
- <sup>201</sup> Respondents' Outline of Submissions at [51]-[53].
- <sup>202</sup> PN1996.
- <sup>203</sup> Witness Statement of R1 at [51]-[61], Exhibit 1 and 3; Witness Statement of R2 at [19], [21], [23]; PN1997.
- <sup>204</sup> [2005] NSWCA 465.

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- <sup>205</sup> Applicant's Outline of Submissions at [80]-[81].
- <sup>206</sup> PN1930.
- <sup>207</sup> PN175, PN2244.
- <sup>208</sup> PN185.
- <sup>209</sup> PN1247.
- <sup>210</sup> PN1274.
- <sup>211</sup> PN1273.
- <sup>212</sup> PN1272.
- <sup>213</sup> PN1270.
- <sup>214</sup> PN1198.
- <sup>215</sup> PN1170.
- <sup>216</sup> PN1614.
- <sup>217</sup> PN1617.
- <sup>218</sup> Respondents' Outline of Submissions at [43]-[47].
- <sup>219</sup> PN1488.
- <sup>220</sup> PN1501-1502; Witness Statement of R2 at [41]-[43].
- <sup>221</sup> PN1446.
- <sup>222</sup> PN1470.
- <sup>223</sup> Witness Statement of A1, Exhibit 28.
- <sup>224</sup> Witness Statement of A1, Exhibit 9.
- <sup>225</sup> PN617, PN623.
- <sup>226</sup> PN508, PN525, PN528.
- <sup>227</sup> PN505, PN512, PN517.
- <sup>228</sup> PN617-PN619, PN623.
- <sup>229</sup> PN2117-PN2121.
- <sup>230</sup> PN2493, PN2494, PN2503.
- <sup>231</sup> PN1577.
- <sup>232</sup> PN2279, PN2281.
- <sup>233</sup> PN2295, Applicant Outline of Submissions at [35].
- <sup>234</sup> PN1577.
- <sup>235</sup> PN1582.
- <sup>236</sup> PN1584.
- <sup>237</sup> Witness Statement of R3 at [45]-[49].
- <sup>238</sup> PN617-PN619, PN623.
- <sup>239</sup> [2009] AATA 731.
- <sup>240</sup> Witness Statement of A1, Exhibit 15.
- <sup>241</sup> Witness Statement of A1, Exhibit 16.
- <sup>242</sup> PN757.
- <sup>243</sup> PN788.
- <sup>244</sup> PN888-PN890.
- <sup>245</sup> PN800.
- <sup>246</sup> PN873, PN874, Witness Statement of A1, Exhibit 15.
- <sup>247</sup> PN1803.
- <sup>248</sup> PN1881.

<sup>249</sup> PN1182.

<sup>250</sup> PN1183.

<sup>251</sup> Applicant Submissions in Reply at [19]; PN133.

<sup>252</sup> [2009] VCC 184.

<sup>253</sup> Applicant Outline of Submissions at [74].

<sup>254</sup> PN810-PN811.

<sup>255</sup> PN2487, PN1310.

<sup>256</sup> PN1420, PN1423

<sup>257</sup> PN805, PN2326.

<sup>258</sup> Applicant Submissions in Reply at [15].

<sup>259</sup> PN812.

<sup>260</sup> Applicant Submissions in Reply at [14]; Respondents' Outline of Submissions at [20].

<sup>261</sup> PN810.

<sup>262</sup> PN805.

<sup>263</sup> PN812.

<sup>264</sup> PN2481-PN2484.

<sup>265</sup> PN2518.

<sup>266</sup> Witness Statement of O1 at [32].

<sup>267</sup> Witness Statement of O1 at [33].

<sup>268</sup> Witness Statement of O1 at [43].

<sup>269</sup> Witness Statement of O1 at [45].

<sup>270</sup> Witness Statement of O1 at [47].

<sup>271</sup> Witness Statement of O1 at [51].

<sup>272</sup> Witness Statement of O1 at [52].

<sup>273</sup> PN2532.

<sup>274</sup> Witness Statement of O1 at [34].

<sup>275</sup> Witness Statement of O1 at [7].

<sup>276</sup> Witness Statement of O1 at [9].

<sup>277</sup> Witness Statement of O1 at [54].

<sup>278</sup> Witness Statement of O1 at [26].

<sup>279</sup> Witness Statement of O1 at [29].

<sup>280</sup> Witness Statement of O1 at [32].

<sup>281</sup> Witness Statement of O1 at [36].

<sup>282</sup> PN2322.

<sup>283</sup> [\[2015\] FWC 774](#).