

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s. 74 - application for reinstatement*

**Robyn Gayle Cuttiford AND Queensland Police Service**  
(TD/2010/11)

COMMISSIONER FISHER

3 February 2011

Application for reinstatement - Dismissal - Harsh, unjust or unreasonable - Invalid reason - Evidence - General duties police officer - Watchhouse duty - Family responsibilities - Sick leave - Stress and anxiety - Notice of Suspicion - Post traumatic stress disorder - Permanently unable to perform duties of police officer - Current condition precludes employment in any other setting - Applicant notified reason for dismissal - Related to capacity to perform first response policing and any other work - Properly informed re allegations of capacity - Dismissal not harsh, unjust or unreasonable - Procedurally and substantively fair - Not dismissed for invalid reason - Application refused.

DECISION

- [1] This is an application by Robyn Cuttiford (the Applicant) seeking reinstatement to her former position of Police Officer with the Queensland Police Service (QPS). Ms Cuttiford commenced employment with the QPS on 6 October 1997 as a Police Recruit and was sworn as a Police Officer on 24 April 1998. Ms Cuttiford attained the rank of Senior Constable in January 2005 and was dismissed effective 29 January 2010.
- [2] In her Application for Reinstatement Ms Cuttiford contends that her dismissal was harsh, unjust or unreasonable, however, in the written submissions lodged on her behalf it is contended that her dismissal was not only harsh, unjust or unreasonable but for an invalid reason. Although the invalid reason is not expressly identified in those submissions reference is made to Ms Cuttiford being subject to discrimination. When dealing with the submissions about an invalid reason the Queensland Industrial Relations Commission (the Commission) will proceed on the basis that the alleged invalid reason is that of discrimination.

**Evidence**

- [3] Ms Cuttiford was the only witness for her case.

***QPS witnesses***

- [4] The following witnesses provided Affidavits which were tendered into evidence by consent. They were not required for cross-examination.

Glen Charles Allison, Senior Constable of Police, Pine Rivers Watchhouse, previously at Caboolture Watchhouse.

Jason Francis Armgardt, Senior Constable of Police, seconded from a general duties position, Caboolture Police Station to duties within Caboolture District Criminal Investigation Branch from November 2007 until 22 November 2008.

Mark Adrian Hasenkam, Senior Sergeant of Police and Officer in Charge of Caboolture Watchhouse since June 2005.

Gary Thomas McMahon, Manager, Police and Workforce Planning Section of Queensland Police, previously Acting Manager of the Human Resource Management Branch between 10 November 2008 and 10 August 2009.

Colin Robert McVay, Senior Personnel Officer, Promotions and Transfers Unit, Human Resource Management Branch, Queensland Police Service.

Martin John Tanwan, Sergeant of Police and Officer in Charge of Kilcoy Police Station. Sergeant Tanwan relieved as Acting Senior Sergeant, Officer in Charge, Caboolture Police Station for 10 days to 25 October 2008.

Shane Michael Taylor, Senior Constable of Police, Kilcoy Police Station. During 2008 Senior Constable Taylor was stationed at Caboolture Police Station and relieved at the Kilcoy Police Station.

Natalia Weaver, Kawana Waters Police Station, Queensland Police Service previously Administration Officer, Human Resource Section, North Coast Regional Office, Queensland Police Service from August 2008 to 2 October 2009.

- [5] The following witnesses provided an Affidavit and gave oral evidence:

Michael John Brady, Acting Superintendent, previously District Officer, Caboolture Police District.

Paul Bernard Casey, Manager, Human Resource Management Branch, Queensland Police Service.

Janine Donna Hoffmann, Senior Injury Management Consultant, Department of Education and Training, previously Injury Management Coordinator, North Coast Region, Queensland Police Service from 6 August 2007 to 23 June 2010.

Kerry Leigh Hughes, Human Resources Manager, North Coast Region, Maroochydore.

Patrick Joseph O'Loughlin, Acting Inspector, previously Senior Sergeant and Officer in Charge, Caboolture Police Division.

- [6] To understand this matter it is useful to provide some background and context to the work of Ms Cuttiford as well as a chronology of events. Much of the information set out under these headings is drawn from the submissions made on behalf of the QPS.

### **Background and context**

- [7] Ms Cuttiford commenced duty as a general duties Police Officer at the Caboolture Police Station on 30 January 2006. This appointment was a transfer at level from the South Brisbane District Inquiries Office. The transfer was gazetted on 2 December 2005.
- [8] The Caboolture Police Station falls within the Sunshine Coast District of the QPS which is in the North Coast Region of the QPS. When Ms Cuttiford transferred to the Caboolture Police Station Senior Sergeant O'Loughlin was the Officer in Charge, and, apart from when he was on leave, he remained in that position during Ms Cuttiford's tenure at that station.
- [9] During the time Ms Cuttiford was employed at the Caboolture Police Station it operated 24 hours per day, 7 days a week (24/7). Ms Cuttiford initially commenced as a general duties Police Officer performing first response policing on the general duties roster. This continued until November 2006, apart from short periods when she worked at the Morayfield Police Beat. For the times that Ms Cuttiford was employed at the Caboolture Police Station, including the Caboolture Watchhouse where she worked from November 2006 until October 2008, she was paid the 21% Operational Shift Allowance. This allowance is paid to Officers who work on the general duties roster to compensate for working weekends, public holidays and annual leave loading.
- [10] At the Caboolture Police Station officers performing first response policing work in accordance with a teams based matrix roster which is a five week block involving set shifts. There were five teams, each with a Sergeant in charge, one or two Senior Constables, one of whom was second in charge of the team and a number of Constables. During the five week period of the teams based matrix roster, each team would perform the different shifts on the roster.
- [11] The QPS acknowledged that when Ms Cuttiford transferred to the Caboolture Police Station she had particular child care issues concerning her primary school aged son and teenage daughter. The work performed at the Morayfield Police Beat consisted primarily of day shifts and this move assisted, albeit not completely, with her child care responsibilities.

### **Chronology**

30 January 2006	Ms Cuttiford commences duty as a general duties Police Officer at Caboolture Police Station.
November 2006	Ms Cuttiford goes on Watchhouse duty rotation at Caboolture as a general duties Police Officer.
April to July 2008	Ms Cuttiford and Senior Constable Allison are advised by Senior Sergeant O'Loughlin of the requirement to return to general duties from October to December

	2008 or December 2008 to February 2009 due to staff shortages.
August 2008	Senior Sergeant O'Loughlin confirms with Ms Cuttiford that general duties are required from December 2008 to February 2009.
September to October 2008	Ms Cuttiford is advised that general duties are to commence in approximately four weeks.
16 October 2008	Acting Senior Sergeant Tanwan has a discussion with Ms Cuttiford regarding returning to general duties, including Ms Cuttiford's reluctance for family responsibility reasons. Ms Cuttiford advises she is not returning to general duties and informs him that she is seeing a psychologist who had advised her that she could not return to first response police duties.
20 October 2008	Ms Cuttiford produces a letter from Dr Jane Gibbs, Psychologist, which recommended restricted operational duties and that it was detrimental for Ms Cuttiford to work as first response police officer. Dr Gibbs stated that Ms Cuttiford's "symptoms were consistent with the existence of anxiety with panic".
21 October 2008	Acting Senior Sergeant Tanwan advises Ms Cuttiford she is to no longer undertake Watchhouse duties and is to undertake other suitable duties.  Acting Senior Sergeant Tanwan notifies Inspector Brady of the letter from Dr Gibbs. Inspector Brady receives a telephone message to contact Ms Cuttiford. On returning the call Ms Cuttiford queries the reason she is being returned to general duties and informs him of Dr Gibbs' advice. Inspector Brady advises the medical issues need to be worked through and until then she needed to be placed in a safe environment which did not include sending her out as a first response officer. Ms Cuttiford advises that she is not attending work that day and reports sick for her shift on that day.  Inspector Brady emails Janine Hoffmann requesting she seek further information about Ms Cuttiford's condition, including clarification of her restrictions.
22 to 24 October 2008	Ms Cuttiford takes sick leave. The medical certificate states Ms Cuttiford was "unwell medically".  Inspector Brady asks Ms Hoffmann to send a letter to Ms Cuttiford's doctor and have her independently assessed.
28 October 2008	Meeting between Ms Hoffmann and Ms Cuttiford to discuss her (Cuttiford's) situation and needs. Ms Cuttiford signs an "Authorisation to Access Medical Information".
29 October 2008	Meeting to discuss Ms Cuttiford's return to work and medical issues. The attendees were Ms Cuttiford, a representative of the Queensland Police Union of Employees (QPUE), Des Hansson, and representatives of the QPS, namely, Senior Sergeant O'Loughlin and Ms Hoffmann.  Ms Cuttiford is placed on light duties following this meeting.
November 2008	Ms Cuttiford provides medical certificate dated 3 November 2008 indicating that she was "unwell medically" and that she should be on light duties from Monday to Friday 7.00 a.m. - 3.00 p.m., until reviewed on 5 December 2008.
7 November 2008	Ms Cuttiford withdraws the authorisation to access medical information given on 28 October 2008.
17 November 2008	Case conference scheduled with Dr Trudy Honore, the Treating General Practitioner (the TGP), Ms Cuttiford and Inspector Brady and Ms Hoffmann. Ms Cuttiford does not attend and warns the TGP not to discuss her medical information or action would be taken against her.
18 November 2008	Ms Cuttiford goes on sick leave from 18 November 2008 to 2 December 2008 and provides a medical certificate stating she was "medically unwell".
2 December 2008	Ms Cuttiford goes on sick leave from 2 December 2008 to 19 December 2008 and provides a medical certificate stating she was suffering from a "medical condition".

16 December 2008	Ms Cuttiford is given a direction to attend an independent medical examination (IME) pursuant to clause 7.2.4(b) of the <i>Police Service Award – State 2003</i> (the Award).
17 December 2008	Ms Cuttiford goes on sick leave from 17 December 2008 to 18 January 2009 and provides a medical certificate stating she was suffering from "stress and anxiety (ongoing)".
15 January 2009	Ms Cuttiford attends an IME with Dr Prabal Kar, Consultant Psychiatrist.
16 January 2009	Ms Cuttiford goes on sick leave 16 January 2009 to 1 February 2009 and provides a medical certificate stating she was suffering from "stress & anxiety".
2 February 2009	Medical certificate issued by Dr Wilson (because Dr Honore was unavailable) stating that Ms Cuttiford was "suffering from stress and anxiety and will be fit for duty once a position becomes available not involving first response policing &/or returning to Caboolture Police Station". The certificate did not specify a period of absence and was not received by the QPS.
Late February 2009	The QPS receives Dr Kar's report dated 15 January 2009.
Late February 2009	<p>Dr Kar in his report, advises that:</p> <ul style="list-style-type: none"> <li>(a) Ms Cuttiford had no work-related psychiatric condition; and</li> <li>(b) Ms Cuttiford did not have any medical condition but <ul style="list-style-type: none"> <li>(i) she has had stress over being asked to report for frontline duties;</li> <li>(ii) that she was worried about having to do so;</li> <li>(iii) that she feels that the shifts are unsuitable for her childcare responsibilities and family responsibilities;</li> <li>(iv) that Ms Cuttiford felt that that type of work was dangerous;</li> <li>(v) she was worried about what could happen if she would be injured or other harm that she could come to; and</li> <li>(vi) that she was keen to avoid such work.</li> </ul> </li> </ul>
4 March 2009	Ms Cuttiford goes on sick leave as unfit for duty 2 February 2009 to 8 March 2009 and provides an amended medical certificate from Dr Wilson stating she was "suffering from stress and anxiety in her current position at the Caboolture Police Station". The medical certificate, received by the QPS on 4 March 2009, stated that Ms Cuttiford was "fit to return to duty as of 2 February 2009 as long as this duty did not involve first response policing or working within the Caboolture District".
10 March 2009	<p>Case conference held to discuss the IME report from Dr Kar. The attendees were Ms Cuttiford, a QPUE representative, Mr Steve Mahoney and representatives of the QPS, namely, Ms Hoffmann, Ms Hughes and Inspector Brady.</p> <p>Ms Cuttiford is advised of Dr Kar's opinion and indicates her disagreement with it. She states she is entitled to a second IME. The QPS agrees to write to Dr Honore asking the same questions as those posed for the IME. At that time there were no vacancies for placement into a role in accordance with Ms Cuttiford's medical restrictions.</p> <p>An authorisation to access medical information is signed by Ms Cuttiford.</p> <p>Ms Cuttiford goes on sick leave and provides a medical certificate stating she was suffering from "stress/anxiety in position at Caboolture Police Station". The certificate stated that Ms Cuttiford was unfit for work from 9 March 2009 to 10 April 2009 inclusive but was fit for duty during this time if it does not involve first response policing or returning to Caboolture District.</p>
12 March 2009	The QPS provides Ms Cuttiford with a copy of Dr Kar's report through Dr Honore.
23 March 2009	Ms Cuttiford provides a report by Ms Leah Dique, Registered Psychologist to the QPS that reported that:

- (a) the anxiety experienced by Ms Cuttiford has resulted in adjustment disorder with mixed anxiety and depressed mood; and
- (b) proposing a referral to treating psychiatrist for a second opinion.

23 March 2009

Ms Cuttiford provides a report from Dr Honore which:

- (a) stated that Ms Cuttiford was still suffering from major anxiety around work situation and that she (Dr Honore) agreed with the clinical judgement of Ms Dique;
- (b) stated that it was not in the best interest of Ms Cuttiford to return to her previous position;
- (c) stated that she (Dr Honore) was concerned about any plan for immediate full return;
- (d) requested the provision of support upon return to work; and
- (e) stated that due to continued anxiety, it was necessary to medicate Ms Cuttiford so that requirements within workplace can be met.

1 April 2009

Ms Cuttiford is served with a Notice of Suspicion in accordance with s. 8.3 of the *Police Service Administration Act 1990* (PSAA) that by reason of physical or mental infirmity, Ms Cuttiford was unfit for performing her duties as an officer or other duties as may reasonably be directed. The notice details the grounds of the suspicion.

6 April 2009

Ms Cuttiford responds to the Notice of Suspicion rejecting the grounds set out therein.

9 April 2009

Ms Cuttiford goes on sick leave from 9 April 2009 to 11 May 2009 suffering Post Traumatic Stress Disorder (PTSD).

Ms Cuttiford provides the QPS with a report from Dr Anthony Wray, Consultant Psychiatrist dated 9 April 2009. The report advised that Ms Cuttiford was suffering PTSD in the setting of first response policing/general duties but that Ms Cuttiford could work in other operational positions. Dr Wray advised the disorder was treatable and that it was recommended that Ms Cuttiford not be involved in first response policing for a period of at least three months, subject to review.

28 April 2009

Ms Cuttiford provides a further report from Dr Wray dated 15 April 2009. This report stated that Ms Cuttiford's PTSD was related to trauma of first response policing but that Ms Cuttiford was able to work proficiently in other areas. Dr Wray stated that Ms Cuttiford's prognosis would be better if she was removed from first response policing and placed into an alternative police setting.

Approx. 28 April 2009

Dr Honore advised the QPS that she was not completing a report or answering questions similar to those posed to the IME.

11 May 2009

Ms Cuttiford goes on sick leave from 11 May 2009 to 15 June 2009 suffering PTSD as previously stated.

25 May 2009

Notice to Ms Cuttiford to attend a second IME with Dr Quentin Mungomery, Consultant Psychiatrist, on 27 May 2009.

27 May 2009

Ms Cuttiford attends upon Dr Mungomery.

Dr Mungomery, in a written report dated 27 May 2009 reported that:

- (a) Ms Cuttiford should be medically retired;
- (b) Ms Cuttiford would be permanently unable to perform duties of a police officer efficiently;
- (c) Ms Cuttiford would be unable to perform staff member duties at that point in time;
- (d) there was a moderate likelihood with further treatment of Ms Cuttiford performing staff member duties which could be considered within the next three to six months; and
- (e) if industrial matters were unable to be resolved to her satisfaction, that may result in an impairment in her capacity to undertake staff member duties.

On or about 4 June 2009	A copy of Dr Mungomery's first report released to Ms Cuttiford through Dr Honore.
4 June 2009	Ms Cuttiford is advised, based on medical opinion, that the North Coast Region of the QPS was going to refer the matter to the Human Resource Management Branch (the HRMB) of the QPS for consideration of medical retirement.
5 June 2009	Ms Cuttiford's matter is referred from the Region to HRMB for consideration of medical retirement.
13 June 2009	The HRMB receives the Region's referral.
15 June 2009	Ms Cuttiford goes on sick leave from 15 June 2009 to 20 July 2009 suffering from PTSD.
20 July 2009	Ms Cuttiford goes on sick leave from 20 July 2009 to 24 August 2009 suffering from PTSD.
10 August 2009	The HRMB notifies Ms Cuttiford and the Region that the medical retirement process is to commence.
11 August 2009	Confirmation that Ms Cuttiford had received letter dated 28 July 2009 on 10 August 2009.
20 August 2009	Ms Cuttiford's signed authority to release medical information and/or documents concerning disablement is received.  The HRMB sends a letter to Dr Wray seeking further information, namely medical questions for QSuper, including authority to release medical information and/or documents concerning disablement.
24 August 2009	Ms Cuttiford goes on sick leave from 24 August 2009 to 5 October 2009 suffering from PTSD.
5 October 2009	Ms Cuttiford goes on sick leave from 5 October 2009 to 8 January 2010 suffering from PTSD.
8 October 2009	The report of Dr Wray dated 23 September 2009 is received by the HRMB. Dr Wray's opinion was that:
(a)	Ms Cuttiford was permanently unable to perform duties of police officer efficiently; and
(b)	that Ms Cuttiford's current condition precludes employment in any other setting.
16 October 2009	Letter from the QPS to Dr Mungomery seeking further information. The material sent from the HRMB to Dr Mungomery included medical questions for QSuper and Dr Wray's report dated 23 September 2009.
9 November 2009	HRMB receives Dr Mungomery's second report dated 5 November 2009. This report indicated that Ms Cuttiford was permanently unable to perform the duties of a police officer and of a staff member.
13 November 2009	HRMB writes to QSuper seeking advice in relation to payment of superannuation incapacity benefit, should medical retirement take place.  HRMB sends a letter to Ms Cuttiford advising of Dr Mungomery's opinion that incapacity rendered her permanently unfit and incapable of being a police officer and incapable of being a staff member.
26 November 2009	QSuper advice received by the HRMB that Ms Cuttiford was considered permanently unable to carry out duties of her position and that Ms Cuttiford has an entitlement to permanent and partial disability benefit.  The HRMB requests comment from the Region regarding the proposal to retire.

1 December 2009	The Region advises medical retirement is approved.
2 December 2009	Ms Cuttiford receives notification from the Deputy Commissioner of the QPS advising after considering medical opinion, Ms Cuttiford should not continue to be a police officer and calls upon her to retire in accordance with s. 8.3(3) of the PSAA. Ms Cuttiford is provided with an opportunity to accept the call to retire or not.
17 December 2009	Ms Cuttiford's response is received. Ms Cuttiford does not accept the call to retire.
4 January 2010	Ms Cuttiford receives notification of decision to dismiss her from the QPS in accordance with s. 8.3(4) of the PSAA effective as at midnight 29 January 2010.
29 January 2010	Ms Cuttiford emails the Commissioner of the QPS (the Commissioner) requesting intervention e.g. decision be reviewed and investigated. The Commissioner advises that he had considered the information and it is not appropriate for him to intervene.  Ms Cuttiford's employment ends midnight 29 January 2010.

### **Matters to be considered**

- [12] In considering whether a dismissal was harsh, unjust or unreasonable the Commission is obliged by s. 77 of the *Industrial Relations Act 1999* (the Act) to consider a number of matters. The first of these is whether the employee was notified of the reason for the dismissal.

#### ***Notification of reason***

- [13] It is clear that Ms Cuttiford was notified of the reason to dismiss her by means of the letter from the Deputy Commissioner of the QPS advising of the decision to dismiss her from the QPS pursuant to s. 8.3(4) of the PSAA, on the grounds of medical incapacity, effective as at midnight 29 January 2010. That section of the PSAA enables an officer to be dismissed where the officer has been called on to retire and does not do so within the specified time frame. The decision to dismiss Ms Cuttiford was preceded by notification from the QPS on 1 April 2009 that the QPS had a suspicion that by reason of physical or mental infirmity she was unfit for performing duties of a police officer or other duties as may be directed. In addition, Ms Cuttiford was aware that medical opinion had been sought in order to determine her fitness for duty. The medical report received from Dr Mungomery was provided to her through her TGP, Dr Honore. Opinion was also sought from her treating psychiatrist. The letter from the Deputy Commissioner which called upon Ms Cuttiford to retire refers to her examination by Dr Mungomery, his opinion and cites the reason for retirement as medical incapacity. In the circumstances the Commission is satisfied that Ms Cuttiford was notified of the reason to dismiss her.

#### ***What the dismissal related to***

- [14] Section 77(b) of the Act sets out the types of circumstances to which a dismissal can relate. The QPS submits that Ms Cuttiford's dismissal related to her capacity. The Applicant however contends that while capacity is the only circumstance on which the QPS can rely no case for this had been made out. The Applicant submits that Dr Wray's report showed that the Notice of Suspicion could not be sustained.
- [15] The Applicant's contentions are considered more fully later in this decision. For present purposes it is sufficient to record my conclusion that the dismissal related to Ms Cuttiford's capacity. The various medical certificates and reports show that Ms Cuttiford's health was in issue from October 2008. The IMEs conducted by the specialist psychiatrists were directed to ascertaining the nature of her medical condition and her capacity to perform first response policing and/or alternative work.
- [16] Although Dr Kar considered that Ms Cuttiford did not have a medical condition which prevented her from returning to first response policing, Dr Mungomery was of a different opinion. He opined that Ms Cuttiford would be permanently unable to perform the duties of a police officer and unable to perform the work of a staff member at that time. Dr Wray initially considered that a return to first response policing was not suitable for a period and that other duties could be performed. Ultimately, Dr Wray also came to the same view as Dr Mungomery that Ms Cuttiford was unable to perform first response policing or any other work.
- [17] The specialist medical opinions showed that the medical issue concerning Ms Cuttiford revolved around her capacity to perform the work for which she was employed and subsequently to perform work as a staff member. The opinions reached were adverse to Ms Cuttiford on both questions. In these circumstances the Commission is satisfied that the dismissal related to Ms Cuttiford's capacity.

***Whether Ms Cuttiford had been warned about or was given an opportunity to respond to the allegation of capacity***

- [18] In this case s. 77(c)(i), which asks whether the employee had been warned about the capacity, is irrelevant. The relevant provision is s. 77(c)(ii), which is whether Ms Cuttiford was given an opportunity to respond to the allegation of capacity. The Commission is satisfied that Ms Cuttiford was given such an opportunity. This much is evident by the Notice of Suspicion served upon her in April 2009 and her response of 6 April 2009 rejecting the grounds contained in the Notice. Nonetheless, Ms Cuttiford attended upon Dr Mungomery. His written report dated 27 May 2009 was released to Ms Cuttiford through Dr Honore.
- [19] Ms Cuttiford was notified of the decision that the medical retirement process was to commence by the HRMB.
- [20] Dr Wray, her treating psychiatrist, prepared a further report at the request of the HRMB. His report was consistent with the report of Dr Mungomery and advised that Ms Cuttiford was permanently unable to perform the duties of a police officer efficiently and her current condition precluded her from being employed in any other setting. Ms Cuttiford's evidence was that she discussed the implications of this finding with Dr Wray.
- [21] Ms Cuttiford was also given notice of the view of the QPS that she not continue as a police officer and the call upon her to retire her from the QPS. Ms Cuttiford responded with advice that she was not accepting the call to retire.
- [22] The Commission is satisfied that Ms Cuttiford was properly informed at all stages of the allegations of the QPS about her capacity and the reasons for them. Moreover, she was given, and took, the opportunity to respond to those allegations. Accordingly, the Commission is satisfied that the provisions of s. 77(c)(ii) were met.

***Other relevant matters***

- [23] Section 77(d) allows any other matters the Commission considers relevant to be considered. In the written submissions on behalf of the Applicant a number of issues are raised. Although the Commission does not necessarily accept that they are all relevant matters within the meaning of s. 77(d) of the Act they will still be considered under this provision. The issues raised, as the Commission understands them, are, broadly:
- (i) the QPS misunderstood general police duties and failed to consider Ms Cuttiford's personal circumstances;
  - (ii) the QPS acted in a contradictory manner regarding the advice from Dr Gibbs;
  - (iii) no reasonable grounds existed for the QPS to send Ms Cuttiford for an IME;
  - (iv) the Notice of Suspicion was flawed, superficial and pursued unlawfully;
  - (v) the consent given by Ms Cuttiford for the collection of medical information was neither voluntarily given nor fully informed and the QPS exceeded its authority in respect of its use of the medical information obtained;
  - (vi) QPS failed to rehabilitate Ms Cuttiford;
  - (vii) no grounds existed for the QPS to retire Ms Cuttiford for medical reasons; and
  - (viii) the actions of QPS staff contributed to the diagnosis of PTSD and the QPS acted capriciously towards Ms Cuttiford.
- [24] These are now dealt with in turn.
- (i) *The QPS misunderstood general police duties and failed to consider Ms Cuttiford's personal circumstances.*
- [25] The submission made on behalf of the Applicant is that Ms Cuttiford was already performing general duties in the Watchhouse when she was required to return to first response policing on the general duties roster in the Caboolture Police Station. That is, general duties were performed in both settings and this was sufficient to meet her contractual requirements. Moreover, the QPS was aware of the reasons she had been moved to the Watchhouse, that is, because of her family responsibilities, yet these were disregarded.
- [26] In the submission reference is made to various documents which outline the nature of first response policing and general duties. The QPS submits, and I accept, that the documents to which the Applicant referred in submissions were not tendered in evidence in the proceedings and that as a result they cannot be relied on now. However, in its submissions the QPS states that first response policing is one of the types of policing performed on the general duties roster. The evidence is that Ms Cuttiford was performing general duties while working in the Watchhouse. Although Ms Cuttiford would have also been performing general duties in the Caboolture Police Station from late October 2008 the Commission accepts the type of general duties that she was being required to perform there was first response policing. This type of duty is a subset of general duties and was likely to require greater community interface, sometimes in difficult circumstances. To the extent that Ms Cuttiford would have been performing general duties in both locations, the submission of the Applicant is accepted.



- [27] However, the evidence is that for genuine operational reasons, senior constables were required to return to the general duties roster in the Caboolture Police Station. This would require work to be performed in accordance with the teams based matrix roster. Ms Cuttiford was not the only Senior Constable who was required to return to that roster - about three or four were affected. Two of the affected senior constables were working at the Watchhouse: Ms Cuttiford and Senior Constable Allison. According to the evidence of Senior Sergeant O'Loughlin the move back to the Station was for a period of six months and because neither Ms Cuttiford nor Senior Constable Allison wanted to move out of the Watchhouse he suggested both officers perform three months each and left the decision as to who would return first to the officers concerned. Senior Constable Allison agreed to move first but because of an injury sustained in the Watchhouse he was restricted to duties performed in the Station.
- [28] Ms Cuttiford objected to being returned to the Station to perform first response policing. I accept that the QPS was insistent on requiring Ms Cuttiford to return to a general duties position in the Caboolture Police Station. It was after all a position to which Ms Cuttiford had been laterally transferred in 2006. I also accept that Ms Cuttiford was concerned about returning to first response policing after a lengthy period of absence from performing such work. The evidence of Senior Sergeant O'Loughlin was that support was offered to her and Inspector Brady told her that she not return to an "on road" position until she felt comfortable. However, like the QPS, I am satisfied that initially the reason for Ms Cuttiford's reluctance was the move would mean the return to the teams based matrix roster. That roster required rotation through the various shifts over the five week period. Ms Cuttiford's roster in the Watchhouse better met her family responsibilities. I am also satisfied that Ms Hoffmann offered support and assistance to Ms Cuttiford with respect to her family responsibilities.
- [29] There is nothing in the evidence of the witnesses of the QPS that they acted arbitrarily or capriciously with respect to seeking Ms Cuttiford's temporary return to the general duties position in the Caboolture Police Station. The evidence is that the move was undertaken for genuine operational reasons. The evidence also is that the QPS was prepared to accommodate Ms Cuttiford's fears about first response policing for a period to allow her to transition into the role and that support and assistance for her family responsibilities was offered. Accordingly, the Commission does not accept the Applicant's contentions that the QPS misunderstood general police duties and failed to consider Ms Cuttiford's personal circumstances.
- (ii) The QPS acted in a contradictory manner regarding the advice from Dr Gibbs.*
- [30] The Applicant submits that the letter from Dr Gibbs was relied on by the QPS to remove Ms Cuttiford from the Watchhouse, yet, contrarily, was not accepted in respect of her medical condition.
- [31] After being informed of the move from the Watchhouse to the Caboolture Police Station, Ms Cuttiford advised Acting Senior Sergeant Tanwan, who was acting in the position usually occupied by Senior Sergeant O'Loughlin who was on leave, that on advice from her psychologist, she would not be returning to that roster. She produced a letter from Dr Gibbs to that effect. On being advised of that letter Inspector Brady decided it would not be safe for Ms Cuttiford to continue to work in the Watchhouse where officers often work as single officers and arranged that she be placed in the Caboolture Police Station under the direct supervision of the shift supervisor but not being required to perform first response policing. This situation was to continue while the medical issues could be worked through by the QPS, Ms Cuttiford and her doctor. Ms Cuttiford contacted Inspector Brady directly about the decision and he reiterated the need to place her into a safe environment and to work through her medical issues.
- [32] The QPS did not accept that Dr Gibbs' letter was evidence of Ms Cuttiford's medical condition. Under the Award and the QPS Human Resource Management Manual (HRM Manual) medical certification is required for any illness or injury. A letter from a psychologist is not therefore accepted as medical certification. For that reason the QPS sought medical information from Ms Cuttiford's TGP, Dr Honore, and ultimately independent medical advice.
- [33] The Applicant complains that she was not advised that a letter from a psychologist was not considered to be a medical report. I accept that to be the case but given the confusion Ms Cuttiford said she was experiencing about the issue and that she had already shown her readiness to contact Inspector Brady directly it is puzzling that Ms Cuttiford did not seek to clarify the matter herself. The answer was also available in the Award.
- [34] It is the case that the QPS acted on the letter of Dr Gibbs to remove Ms Cuttiford from the Watchhouse, despite Dr Gibbs indicating work in the Watchhouse would constitute suitable duties. However, I am satisfied on the evidence of Inspector Brady that because the medical condition was unspecified such action needed to be taken. The decision to place her in the Caboolture Police Station working under the direct supervision of the shift supervisor was taken to ensure the safety of Ms Cuttiford and the community. In my view given the lack of specificity about the nature of the medical condition it was both necessary and appropriate for the QPS to seek

medical opinion about the limitations of the condition being suffered and later Ms Cuttiford's capacity to work as a police officer given the inherent requirements of the job e.g. to carry a firearm.

*(iii) No reasonable grounds existed for the QPS to send Ms Cuttiford for an IME.*

- [35] The Applicant contends that the QPS had no reasonable grounds to send Ms Cuttiford for an IME pursuant to the Award before 9 April 2009 because at all times she had provided medical certificates covering the periods of absence. It is submitted that Ms Cuttiford had kept the QPS informed with respect to her medical condition such that there was no request by the QPS for a further medical certificate in accordance with clause 7.2.3(b) of the Award. Further, the medical certificates supplied up until that date were correct because her TGP was unaware of the full diagnosis.
- [36] In my view the Applicant's submission about further medical certification misconstrues clause 7.2.3 of the Award. That provision allows an employee to not provide medical certification where an absence does not exceed three consecutive working days. The clause goes on to provide that where an employee is absent for more than an aggregate of six working days without a medical certificate in a calendar year then the Commissioner may require a medical certificate for all sick leave days claimed in that calendar year. As I understand the evidence and the submissions Ms Cuttiford supplied medical certificates covering her periods of absence. It was therefore unnecessary to invoke the provision just quoted. In any event the provision is discretionary.
- [37] Although Ms Cuttiford had provided medical certificates they did not assist the QPS to understand the nature of her condition and how it impacted on her capacity to perform general duties. The medical certificates initially had not stated any condition and subsequently stated "medically unwell" and "suffering from a medical condition (according to her medical records)". It was not until 17 December 2008 that Ms Cuttiford supplied a medical certificate stating that she was suffering from "stress and anxiety (ongoing)". This was almost two months after she had first taken sick leave on being notified of the return to first response policing.
- [38] The HRM Manual provides that the medical certificate is to state the nature of the illness and where a police officer wishes to keep this confidential, a medical certificate is to be provided with the endorsement "medical condition" and the relevant authorised officer verbally advised of the nature of the condition. This information is required to ensure the safety of the officer and others as well as accessing the sick leave bank or workers' compensation.
- [39] Initially the concerns raised by Ms Cuttiford about not returning to first response policing were about her child care and family arrangements not any medical condition. The Commission acknowledges that Ms Cuttiford provided a letter from her psychologist Dr Gibbs on 20 October 2008 advising that "Robyn's symptoms were consistent with anxiety with panic". Reference was also made in the letter about "trauma from the past". However, the advice from the psychologist and from Ms Cuttiford to Acting Senior Sergeant Tanwan was not in accordance with the policy of the QPS which requires medical certification. In those circumstances it is understandable that the QPS would wish to seek medical information about the nature of her condition.
- [40] Reference to an IME is allowed under clause 7.2.4(b) of the Award. That relevant part of the clause provides:
- "Where the Commissioner has reasonable grounds to question the absence of an Employee, the Commissioner may direct the Employee to attend the office of a medical practitioner nominated by the Queensland Police Service at no cost to the Employee."
- [41] In my view the instruction from Inspector Brady to Ms Hoffmann on 22 October 2008 to set up an IME for Ms Cuttiford was premature. It would have been desirable to first try to ascertain the medical information required from Dr Honore before directing Ms Cuttiford to attend for an IME. Only when that failed or inadequate information was released should the QPS have directed her to attend for an IME. As matters transpired an IME was required because of the inadequacy of the medical information available to the QPS and the withdrawal of the authority by Ms Cuttiford. In those circumstances the Commission accepts that the QPS had reasonable grounds to question the absence of Ms Cuttiford so as to direct her to attend for an IME.
- [42] The Applicant also complains that an IME was unnecessary because on or about 31 October 2008 Dr Honore consented to a QPS proposal that Ms Cuttiford would benefit from treatment by a psychologist or psychiatrist of the TGP's choice. The QPS agreed to fund, through its Early Intervention Treatment Program, (EITP), three sessions with a psychologist nominated by Dr Honore, Leah Dique. Because of this it was submitted that the QPS had no reasonable grounds to question the absence of Ms Cuttiford pursuant to the Award.
- [43] In her evidence Ms Hoffmann said she suggested Ms Cuttiford access the program because Ms Cuttiford had advised her that it was stressful for her to arrange child care. Ms Hoffmann considered that Ms Cuttiford required support in this regard and the EITP allows for three treatments at the expense of the QPS for non-work

related conditions. Ms Hoffmann was clear that the program was not offered because Ms Cuttiford was suffering from a medical condition, that is, anxiety.

- [44] In light of this evidence the Commission is satisfied that access to the EITP was offered by the QPS for non-medical reasons. The QPS was still left with the conundrum about Ms Cuttiford's medical certificates. For reasons explained above it became necessary for the QPS to take action to ascertain Ms Cuttiford's medical condition and an IME became the only way this could be achieved.

*(iv) The Notice of Suspicion was flawed, superficial and pursued unlawfully.*

- [45] The Applicant alleges the Notice of Suspicion was flawed and superficial because it failed to address the elements of s. 8.3 of the PSAA. Further, the pursuit of the Notice of Suspicion by the QPS after receipt of Dr Wray's report was unlawful. As it was unclear from the submissions why the Notice of Suspicion was alleged to be flawed and superficial I do not intend to consider that argument.

- [46] The next matter raised is the continued pursuit of the Notice of Suspicion after receipt of Dr Wray's report. Dr Wray had seen Ms Cuttiford three times by the time his report was prepared and as a result had formed an opinion about the nature of her injury and its prognosis. Despite Dr Wray's advice it was submitted that the QPS attempted to have Dr Honore answer questions which should have been referred to Dr Wray. In any event there was no basis in the Award for the questions to be asked and answered.

- [47] The difficulty with this submission is that the QPS had no knowledge that Ms Cuttiford was seeing Dr Wray until his report was received. At the case conference on 10 March 2009, following receipt by the QPS of Dr Kar's report, the issue of a second expert opinion was raised. Ms Cuttiford said that she stated she was entitled to a second opinion and accordingly, independently sought a referral to a psychiatrist, Dr Wray. The QPS understood that Ms Cuttiford said she was seeking a second IME, that is, one arranged by the QPS.

- [48] In circumstances where the QPS did not know that Ms Cuttiford was intending to seek a referral to a psychiatrist and because she did not accept Dr Kar's report, the QPS and Ms Cuttiford agreed at the meeting of 10 March 2009 that the same questions asked of Dr Kar would be sent to Dr Honore. Those questions were sent shortly after the meeting, however, Dr Honore did not respond.

- [49] The Notice of Suspicion was issued and Ms Cuttiford responded to it before the QPS decided to refer Ms Cuttiford to a second IME. Ms Cuttiford rejected the grounds contained in the Notice and stated that she had a medical condition for which she was being treated but a rehabilitation plan was required. A second IME became necessary on receipt of Dr Wray's report which was fundamentally at odds with that of Dr Kar. The purpose of this examination was to enable the QPS to obtain information on a range of matters such as whether Ms Cuttiford could perform particular aspects of her position, including operation of a police vehicle and a firearm as well as to determine the type of assistance that could be provided by the QPS to assist in a return to work. Even had Ms Cuttiford not agreed I accept that the QPS had grounds to seek a second IME given the peculiar circumstances it was facing.

- [50] The second IME was not sought under the Award but under the PSAA. The Award's focus regarding an IME is on managing absence. It was reasonable for the QPS to seek to refer her under the Award to Dr Kar.

- [51] The focus of the PSAA is fitness for duty. The Notice of Suspicion dated 24 March 2009 served upon Ms Cuttiford clearly specifies that a suspicion is held "on reasonable grounds that you ... by reason of physical or mental infirmity are incapable of, or for any other reason pertaining to your health or condition, is unfit for the purpose of; performing the duties of office or any other duties as an officer that the commissioner might reasonably direct you to perform". This wording is taken directly from s. 8.3(1) of the PSAA. The Notice goes on to outline the grounds upon which the suspicion is based and includes reference to her absences, medical certificates, Dr Kar's report as well as advice from Dr Honore and Ms Dique. The Notice states that given the medical opinion it appeared that Ms Cuttiford was unable to return to her substantive position. For that reason a direction to submit to an IME under s. 8.3 of the PSAA was given.

- [52] For the reasons stated above the Commission does not accept the Applicant's contentions regarding the Notice of Suspicion.

*(v) The consent given by Ms Cuttiford for the collection of medical information was neither voluntarily nor fully informed and the QPS exceeded its authority in respect of its use of the medical information obtained.*

- [53] The Applicant contends that the QPS failed to fully inform and misled her with respect to the collection of her medical information. It is also contended that the authorisation given was given specifically to Ms Hoffmann and did not allow other employees of the QPS or medical practitioners access to the information that had been supplied by Ms Cuttiford to the QPS. The Applicant further submits that the QPS breached provisions of the

*Privacy Act 1988* (Cwth) and their own Privacy Collection Statement. The Commission was not provided with the legislation or other evidence sufficient to support this contention with the result I am unable to express a view about arguments touching upon privacy considerations.

- [54] Turning now to the other contentions. On 21 October 2008 Inspector Brady requested Ms Hoffmann to seek further information about Ms Cuttiford's condition including clarification of her restrictions and the following day asked that she send a letter to Ms Cuttiford's doctor and to have her independently assessed. Although he had been informed of Dr Gibbs' letter, Inspector Brady said that further medical information was required as he had no knowledge of Ms Cuttiford's medical condition.
- [55] Ms Hoffmann said that she met with Ms Cuttiford on 28 October 2008 to review her situation and to determine Ms Cuttiford's needs including whether any medical intervention was required. At this meeting Ms Cuttiford signed "An Authorisation to Access Medical Information". This gave Ms Hoffmann, as Injury Management Coordinator and Rehabilitation Coordinator, authority "to discuss with and/or obtain any information relevant to my injury/illness on behalf of the Management of the QPS". In signing the authority Ms Cuttiford acknowledged that "this consent is required to assist with the workplace rehabilitation, management of my absence and my return to work. I also understand that the information relating to my injury/illness will be treated in confidence and will not be used for any other purpose".
- [56] On 7 November 2008 Ms Cuttiford withdrew her authority given on 28 October 2008.
- [57] Despite this withdrawal Ms Hoffmann and Inspector Brady still attended upon Dr Honore on 17 November 2008. Ms Hoffmann said this was because by this time the QPS had received a medical certificate from Dr Honore stating that Ms Cuttiford could only perform work between 7.00 a.m. until 3.00 p.m. and had received advice from another area of the QPS that Ms Cuttiford had inquired about work and indicated she was available to work all shifts. The QPS wanted to meet with Dr Honore to ascertain Ms Cuttiford's needs and her functional capacity in light of the unstated medical condition. According to Ms Hoffmann this is a practice regularly engaged in by the QPS to ensure that the employee's return to the workplace is managed safely for the employee concerned as well as others. She explained that Inspector Brady would not have been present for any discussion concerning Ms Cuttiford's medical condition however he would have been brought in to discuss her functional capacity and matters concerning any rehabilitation back into the workplace. Ms Hoffmann and Inspector Brady explained the purpose of their visit however Dr Honore, on advice from Ms Cuttiford, declined to discuss with them medical matters concerning Ms Cuttiford.
- [58] The Commission finds it curious that the QPS would still seek to meet with Dr Honore in circumstances where the authority to access medical information was withdrawn. However, until the time the authority was withdrawn the Commission is satisfied that the form Ms Cuttiford signed on 28 October 2008 gave the QPS, through Ms Hoffmann, the authority to seek information about her medical condition.
- [59] Ms Cuttiford signed another authority in the same terms on 10 March 2000 in order that the QPS could obtain information from Dr Honore.
- [60] The Commission is satisfied that by signing the authorities Ms Cuttiford gave the QPS the right to access her medical information. There is no evidence to suggest that either authority was signed under duress.
- [61] The Applicant contends that the QPS was not authorised by law or did not have the consent of Ms Cuttiford to release the letter from Dr Gibbs to Dr Kar. Further, this failure led to conflicting reports which added to the stressful situation facing Ms Cuttiford. The QPS has refuted these submissions.
- [62] The Commission accepts the following submissions of the QPS in this regard which were, in summary:
- The Applicant did not call Dr Kar to give evidence. As a result there is no evidence from him that he was inadequately briefed nor could he respond to the contention that conflicting reports added to the stressful situation facing Ms Cuttiford.
  - No other medical evidence was called to the contention that conflicting reports added to the stressful situation facing Ms Cuttiford.
  - Even if the QPS had no authority to release Dr Gibbs' report it had no impact on the decision of the QPS to call upon Ms Cuttiford to retire and its ultimate decision to dismiss her.
- [63] The next proposition is that the authority signed by Ms Cuttiford did not give the QPS permission to forward any information to Dr Mungomery. The evidence is that Dr Mungomery was provided with such information about Ms Cuttiford's condition as held by the QPS. This included the reports from Dr Gibbs and Dr Honore. In addition to allowing Ms Hoffmann on behalf of the Management of the QPS to discuss with and/or obtain any information relevant to Ms Cuttiford's injury or illness the authority also gives permission for any doctor or

health authority to disclose to the Rehabilitation Coordinator "any relevant medical information relating to my illness/injury".

- [64] The Commission is concerned that the first two authorities signed by Ms Cuttiford may not have the effect Ms Hoffmann and Ms Hughes believe. Unlike the authority signed during the medical retirement process, the Authority to Access Medical Information does not give express authority to Ms Hoffmann or the QPS to disclose medical information to other medical practitioners. The Commission however was not provided with sufficient information to express a concluded view. Because Dr Mungomery was not required for cross-examination the Commission cannot be certain of the extent to which he relied on the medical and other information supplied by the QPS in compiling his report. However, I note that in reaching his opinion he interviewed Ms Cuttiford and assessed her using various diagnostic tools. Without then expressing a definitive view it seems reasonably clear that Dr Mungomery reached an independent opinion.
- [65] When Ms Cuttiford was directed to attend for IMEs firstly with Dr Kar and then with Dr Mungomery, she was provided with a letter from the Assistant Commissioner North Coast Region advising that the purpose of the examinations was "to determine your short and long term prognosis and fitness for duty". If that was not clear enough advice was also given for Ms Cuttiford to contact the District Officer, Caboolture Police Station for further information. There is no evidence that Ms Cuttiford took up this offer.
- [66] The Applicant also complains that she was given insufficient information about the Authority to Release Medical Information and/or Documents concerning Disablement forwarded to her on 28 July 2009. That Authority is more expansive than the first two Authorities she signed and makes clear that the medical information may be disclosed to the medical advisors of QPS and used by the QPS in relation to action in accordance with s. 8.3 of the PSAA. The letter accompanying the Authority informed Ms Cuttiford that medical retirement was being considered and the reasons that view had been reached. In light of this the Commission does not accept that Ms Cuttiford was not fully informed or was misled with respect to the collection and use of medical information by the QPS, especially in relation to the medical retirement process.
- [67] There is one other matter relating to medical information which needs to be addressed, although it was not specifically raised by the Applicant in submissions. The QPS discussed Dr Kar's opinion with Ms Cuttiford before his report was released to her through her TGP. This is of real concern given that specialist medical opinion can often be difficult to understand, assimilate and accept. In her evidence Ms Cuttiford expressed concern that the QPS was using the report to direct her back to work but did not specifically remark on the impact of having the meeting before the report was released to her through her TGP. While the Commission was not addressed on the point I consider that this meeting put Ms Cuttiford at a disadvantage.

*(vi) The QPS failed to rehabilitate Ms Cuttiford.*

- [68] The Applicant submits that no rehabilitation was possible until Dr Wray's diagnosis on 9 April 2009. Once that was received the QPS had a duty to rehabilitate Ms Cuttiford. However, the QPS attempted to rehabilitate Ms Cuttiford prior to 9 April 2009 by having her sign the Authorisation to Access Medical Information.
- [69] The Applicant asserts that the purpose of signing the authority was for the purposes of rehabilitation. However, reading of the authority discloses that it is not limited to rehabilitation but is also for "management of my absence and return to work". This gives the QPS scope to develop an approach to manage the injury or illness having regard to the particular case circumstances. Such management is usually conducted in conjunction with the employee's treating medical practitioner(s).
- [70] The Commission acknowledges that no rehabilitation of Ms Cuttiford occurred. The initial focus of the QPS in meeting with Ms Cuttiford and gaining her authority to discuss her medical condition with Dr Honore was to better understand her condition and functional capacity so as to provide meaningful work, if possible, around her limitations. In early November 2008 the QPS sent a number of faxes to Dr Honore seeking clarification of Ms Cuttiford's limitations. No response to the enquiries was received. When Ms Cuttiford then withdrew her authority on 7 November 2008 and in the absence of meaningful medical information the focus of the QPS became one of ascertaining Ms Cuttiford's medical condition and the duties she may be able to perform in order for her, her colleagues and the community to be and remain safe.
- [71] The QPS submitted, and the Commission accepts, that Ms Cuttiford's case took on a different characterisation following on from receipt of Dr Kar's report; Ms Cuttiford's continued sick leave from March 2009; receipt of the report of the registered psychologist, Leah Dique and the receipt of Dr Honore's report dated 23 March 2009. The Commission also considers the matter became more complicated when Dr Wray's report was received. The Applicant contends that at this point the Notice of Suspicion lapsed and the QPS had a duty to rehabilitate Ms Cuttiford. However, the matter is not that straightforward.

- [72] On receipt of that report the QPS had two conflicting specialist medical reports - one indicating that Ms Cuttiford did not have any medical condition and the other opining that she was suffering from PTSD. In those circumstances the QPS took the only realistic course available, that was to seek a further IME. No rehabilitation was capable of being commenced given the polar opposite reports that had been provided. The issue had become whether Ms Cuttiford was fit for work. It was for that reason that the QPS issued Ms Cuttiford with the direction to submit to an IME under the PSAA. Dr Mungomery reported that Ms Cuttiford was permanently unable to perform the duties of a police officer or staff member. Once that report was received the prospect of rehabilitation was sidelined.
- [73] Accordingly, the Commission considers that the fact that no rehabilitation of Ms Cuttiford occurred was not because of any reason designed to harm or otherwise disadvantage Ms Cuttiford. Rather, in the circumstances just described it was not a viable option.
- [74] The Commission also does not accept the submission of the Applicant that the questions posed by the QPS to Drs Kar and Mungomery were designed to facilitate Ms Cuttiford's dismissal rather than her rehabilitation. Having read the questions, as contained in the doctors' reports, the Commission is satisfied that they were designed to elicit information about Ms Cuttiford's medical condition, her prognosis, the nature of the work she could perform and what support would be required to facilitate her return to work
- (vii) No grounds existed for the QPS to retire Ms Cuttiford for medical reasons.*
- [75] This submission cannot be accepted. The QPS was provided with medical reports from two psychiatrists, including Ms Cuttiford's own treating psychiatrist. (For the purposes of this consideration the report of Dr Kar has been disregarded). In his report of 23 September 2009 Dr Wray opined that:
- "14. Mrs. Cuttiford is permanently unable to perform the duties of office as a Police Officer efficiently.
- ...
15. Mrs. Cuttiford's current condition precludes her employment in any other setting ...
- In the light of Mrs. Cuttiford's health issues, she is not able to engage in work at this time."
- [76] Dr Wray considered that Ms Cuttiford could remain incapacitated for work for 2-2½ years.
- [77] It is noted that Ms Cuttiford did not attend upon Dr Mungomery in order for him to prepare his second report. He had information before him including Dr Wray's report, the generic general duty statement and a hazard profile. In answer to a question posed by the QPS about the effect of Ms Cuttiford's condition on her current ability to perform efficiently the duties of a Senior Constable at Caboolture Dr Mungomery said:
- "Based upon the additional collateral information provided (Ms Cuttiford) is considered to remain totally impaired in her capacity to perform efficiently the duties of her office as a police officer as a Senior Constable at Caboolture."
- [78] He also advised that there were no duties as a police officer that Ms Cuttiford could perform at the present time nor would she be able to undertake alternative employment such as a staff member within the QPS at the present time. He also advised that Ms Cuttiford was not capable of undertaking a graduated return to work program nor was she able to undertake work for any other employer, public or private at the current time.
- [79] Given the existence of emphatic reports from two different psychiatrists about Ms Cuttiford's current medical condition and the advice from her treating psychiatrist that she would remain incapacitated for work for a period of 2-2½ years the QPS had sound and cogent reasons to call upon Ms Cuttiford to retire and to make the ultimate decision to dismiss her from the QPS. It is noted however that in the call to retire reliance is only placed on Dr Mungomery's opinion.
- (viii) The actions of QPS staff contributed to the diagnosis of PTSD and the QPS acted capriciously towards Ms Cuttiford.*
- [80] The rather startling submission is made that the actions and the attitude of the QPS added to the breakdown of Ms Cuttiford and contributed to the diagnosis of PTSD. As the QPS submits, and I accept, there is no medical evidence at all supporting this contention and it is rejected.
- [81] The Applicant also contends that the actions of certain officers of the QPS show "the arbitrary and capricious attitude" of the QPS to the issues Ms Cuttiford was facing. Criticisms are made of Inspector Brady, Senior Sergeant O'Loughlin, Acting Senior Sergeant Tanwan, Senior Sergeant Haskenham, Ms Hoffmann and Ms Hughes.

- [82] The Commission does not propose to descend into the detail of the criticisms. Having considered the evidence it is apparent that Ms Cuttiford initially articulated concerns associated with her child care issues as the reason for not wanting to return to the general duties roster and first response policing in particular. Attempts were made by Ms Hoffmann in particular to assist her in addressing her concerns. Even though the letter from Dr Gibbs had been received by the time of the meeting on 29 October 2009 the focus of the meeting was on child care not medical issues. It was thus not surprising when the QPS received medical certificates that did not disclose a medical condition that the QPS, including Inspector Brady and Senior Sergeant O'Loughlin, were suspicious of the reason for her absence and then her continuing absence.
- [83] The Commission accepts that some of the email communications disclosed show that Ms Hoffmann and Ms Hughes in particular were increasingly losing patience with Ms Cuttiford and made intemperate remarks on occasion. The Commission further accepts that certain remarks and views held were not helpful; caution needs to be exercised when committing views to writing. Ultimately, I am not however satisfied that the officers of the QPS acted capriciously towards Ms Cuttiford nor that their personal views had any impact on the decision to dismiss her.

### ***Conclusions about other relevant matters***

- [84] In written submissions, the Applicant advanced various reasons contending the dismissal was harsh, unjust or unreasonable. The Commission has considered these reasons under s. 77(d) of the Act, however, the Commission has not found these reasons to have substance. In my view the most relevant matter is the second report of Dr Wray and to a lesser extent, the second report of Dr Mungomery. In addition, Ms Cuttiford gave evidence that she was aware that the purpose of Dr Wray's report was to facilitate medical retirement. Moreover, she accepted his advice, albeit reluctantly, that medical retirement was the best way to proceed in the circumstances.

### **Invalid reason**

- [85] The Applicant asserts that she was dismissed for an invalid reason. The Commission has inferred from the submissions that the alleged invalid reason is discrimination. In the submissions the Applicant does not detail the grounds against which she alleges she was discriminated.
- [86] Discrimination is an invalid reason under s. 73(2)(m) of the Act and the term is defined in Schedule 5 of the Act as follows:

*"discrimination* means discrimination –

- (a) that would contravene the *Anti-Discrimination Act 1991*; or
- (b) on the basis of sexual preference; or
- (c) on the basis of family responsibilities."

- [87] The Applicant has not identified an attribute listed in the *Anti-Discrimination Act 1991* upon which the discrimination is said to have occurred nor has the Applicant specifically contended that she was discriminated against on the basis of family responsibilities. It seems reasonably clear that Ms Cuttiford's family responsibilities of was the reason she initially articulated as not wanting to return to the general duties roster at the Caboolture Police Station. However, once Ms Cuttiford went on sick leave and provided medical certificates stating she had a medical condition the issue of her family responsibilities faded into the background.

- [88] Although Ms Hoffmann and Ms Hughes had suspicions that Ms Cuttiford's family responsibilities may be the reason for her sick leave the medical reports of Dr Wray and Dr Mungomery and the psychologists' reports show that these suspicions were unfounded. Once the report of Dr Wray was received the actions taken by the QPS proceeded on the basis of a medical condition. Accordingly, given the evidence before the Commission and the submissions made on the point the Commission is satisfied that Ms Cuttiford did not suffer discrimination either on the basis of an attribute or on the basis of her family responsibilities.

### **Conclusion**

- [89] Having considered all of the matters required by s. 77 of the Act the Commission has concluded that the dismissal was not harsh, unjust or unreasonable. The reasons for the various findings made by the Commission under each of the provisions of s. 77 are set out above. Essentially, the Commission has found that the dismissal was both procedurally and substantively fair. Any procedural flaws were overcome by the emphatic reports of Dr Mungomery and Dr Wray. Neither psychiatrist gave evidence and their reports stand unchallenged. The Commission cannot therefore question their opinions or the bases upon which they were formed.

- [90] The QPS was confronted with a report from Ms Cuttiford's treating psychiatrist that she was unfit to perform duties as a police officer or as a staff member. No indication of a time frame in which Ms Cuttiford may become well was provided at that time. Dr Mungomery was of the same opinion. Once those reports were received the QPS was left with no option but to take the action it did.
- [91] The Commission is also not satisfied that Ms Cuttiford was dismissed for an invalid reason. Apart from that argument not being advanced during the hearing there is no evidence upon which the Commission could be satisfied that she was discriminated against.
- [92] The Application is refused.

G.K. FISHER, Commissioner.

*Hearing Details:*

2010 23 August  
27 October  
10 November  
6 & 7 December

*Appearances:*

Mr G. Harris, Family Law Doyle Keyworth & Harris for the Applicant.  
Mr J.W. Merrell, Counsel directly instructed for the Respondent.

*Submissions received:*

2010 24 December - Respondent  
2011 10 January - Applicant  
2011 18 January - Respondent in reply

Released: 3 February 2011