

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Crime and Corruption Commission v Carless & Anor*
[2019] QCAT 50

PARTIES: **CRIME AND CORRUPTION COMMISSION**
(applicant)
v
**ACTING DEPUTY COMMISSIONER MAURICE
CARLESS**

**PLAIN CLOTHES SENIOR CONSTABLE DAMIEN
JAY ANDERSEN**
(respondents)

APPLICATION NO/S: OCR082-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 March 2019

HEARING DATE: 10 October 2018

HEARD AT: Brisbane

DECISION OF: Member Paratz

ORDERS:

1. **The decision of Acting Deputy Commissioner Maurice Carless, made on 19 March 2018, in respect of sanction, is set aside.**
2. **The decision as to sanction is substituted that:**
 - (a) **Plain Clothes Senior Constable Damien Jay Andersen is reduced in paypoint from Senior Constable paypoint 5 to Senior Constable paypoint 1 for a period of 12 months, and**
 - (b) **Plain Clothes Senior Constable Damien Jay Andersen be then returned to the paypoint at which he would then have been if the reduction had not occurred, subject to normal industrial arrangements, and**
 - (c) **Plain Clothes Senior Constable Damien Jay Andersen is to complete the Managerial Strategy as set out in the Notice of Formal Finding dated 19 March 2018.**

CATCHWORDS: POLICE – INTERNAL ADMINISTRATION – DISCIPLINE AND DISMISSAL FOR MISCONDUCT – QUEENSLAND – where a sanction was imposed by an Acting Deputy Commissioner on a police officer for

misconduct – where an application for review of the sanction was made by the Crime And Corruption Commission – where an off duty police officer was removed from licensed premises for harassing patrons, and struggled with security staff and police – whether the sanction was adequate – where the approach towards police discipline was discussed

Police Service Administration Act 1990 (Qld), s 1.4

Austin v Deputy Commissioner Peter Martin [2018] QCAT 120

Crime And Misconduct Commission v Deputy Commissioner Stuart and Anor (No 2) [2012] QCAT 382

Hetherington v Assistant Commissioner of Queensland Police Service [2011] QCAT 82

Mackenzie v Acting Assistant Commissioner Wright [2011] QCATA [24]

APPEARANCES & REPRESENTATION:

Applicant:	J Gorry of Counsel, instructed by the Crime And Corruption Commission
Respondent:	I Fraser (QPS Legal Unit – for Acting Deputy Commissioner Maurice Carless) C Gnech (Queensland Police Union Legal Group – for Plain Clothes Senior Constable Damien Jay Andersen)

REASONS FOR DECISION

- [1] Acting Deputy Commissioner Maurice Carless ('QPS') made a decision on 19 March 2018 imposing a sanction on Plain Clothes Senior Constable Damien Jay Andersen ('the officer') following a disciplinary hearing which proceeded on the papers.
- [2] The Crime and Corruption Commission ('the Commission') filed an Application to review the decision on 3 April 2018. The orders sought by the commission are as follows:
1. The decision of the first respondent as to sanction be set aside pursuant to section 24 (1) (b) of the Queensland Civil and Administrative Tribunal Act 2009; and
 2. The Tribunal substitute the correct and preferable decision.
- [3] The application was heard on 10 October 2018 in the Tribunal. This is the review decision.

The decision of the QPS

[4] The matter that was the subject of the disciplinary hearing was as follows:

That on or about the 31st day of August 2016 at Townsville your conduct did not meet the standard of conduct the community reasonably expects of a police officer in that you, whilst off duty:

- a) behaved in a disorderly manner;
- b) resisted police officers who were lawfully arresting you for a public nuisance offence;
- c) attempted to strike a police officer.

(Section 1.4 of the *Police Service Administration Act* 1990, section 9 (1) (f) of the *Police Service (Discipline) Regulations* 1990 and section 16 of the 2012/33 Standard of Practice)

[5] Particulars of the matter were provided as follows:

In relation to matter 1(a)

- On 30 August 2016 you consumed a number of alcoholic beverages at a work function before proceeding to the Flinders Street Safe Night Out Precinct where you consumed further alcoholic beverages in licensed premises;
- You became intoxicated and your behaviour was of such a nature that you were evicted from the licensed premises by security officers;
- You resisted security officers and then became abusive in a public place;
- You were approached by police and continued to be abusive.

In relation to matter 1(b):

- You were arrested for a public nuisance offence;
- You resisted the police officers as you were being led towards a police van.

In relation to matter 1(c)

- After being placed into a police van it was noticed you had possession of a mobile phone;
- Sgt Turner reached into the van to retrieve the phone and you attempted to kick and head-butt him

[6] Mr Andersen accepted the conduct alleged in matter 1(a), but disputed allegations 1(b) and 1(c).

[7] Acting Deputy Commissioner Carless issued a Notice of Formal Finding in the disciplinary hearing on 19 March 2018 and found that he was reasonably satisfied

that Matter 1 was substantiated in all allegations. He ordered that the following sanction be imposed with immediate effect against Plain Clothes Senior Constable Damien Andersen:

In relation to matter 1 (a) (b) and (c):

I impose a total sanction of 2 penalty units.

After considering the nature of your conduct and the circumstances surrounding the matter, I have also decided it is necessary to direct a managerial strategy to complement this sanction. The managerial strategy is not part of the sanction pursuant to section 6 of the *Police Service (Discipline) Regulation* 1990 and will be imposed separate to this proceeding by virtue of my role as your superior officer. As part of the holistic response to your conduct, I direct you to:

- perform General Duties in Townsville for a period of (8) eight shifts;
- you are to be rostered on both Friday and Saturday nightwork consecutively and perform General Duties in police uniform in the Flinders Street Safe Night Out Precinct;
- this is to be completed within (6) six months under the supervision of the Officer in Charge, Townsville Station;
- upon completion, a report is to be submitted by the officer in charge, Townsville Station, outlining your performance and completion of duties as directed.

Submissions of the commission

[8] The Commission challenges the adequacy of the sanction imposed. Its position is that the sanction is inadequate, and that the appropriate sanction should be as follows:¹

- (a) The Second Respondent be demoted to the rank of Constable 1.6 for a period of 12 months and that he not be eligible for automatic progression to the next paypoint level or rank until the expiration of that period; and
- (b) Managerial strategy as set out in the First Respondent's Notice of Formal Finding (which it is understood the Second Respondent has already completed).

[9] The commission summarised the facts as follows:²

On 30 August 2016, the Second Respondent attended a work function at the Crown Hotel in Townsville where he consumed approximately 10 alcoholic beverages. After the Second Respondent left this function he attended the Flinders Street Night Safe Out Precinct where he attended Cactus Jacks. At this location he consumed more alcoholic drinks including at least one alcoholic shot. After leaving Cactus Jacks the Second Respondent attended the Mad Cow Tavern. At this location the Second Respondent:

¹ Submissions on behalf of the applicant, filed 13 August 2018, para 3.

² Ibid, para 7.

- a) Consumed a further 5 to 6 alcoholic beverages;
- b) A security officer, Matthew Blanch ('Mr Blanch'), was approached by a female patron who advised him (a description of harassment of her, and her friends, by the Second Respondent);
- c) Mr Blanch approached the Second Respondent and observed the Second Respondent grab the same female patron with his hands who had just approached him. The female patron was observed to push the Second Respondent away;
- d) Mr Blanch escorted the Second Respondent out of the venue. As he was doing this the Second Respondent had a verbal altercation with another person and pushed a security guard;
- e) Mr Blanch and two other security officers walked the Second Respondent outside when the Second Respondent began to struggle and called them 'fuck heads';
- f) The Second Respondent continued to struggle and was placed against a pole by the security officers. Police arrived at approximately 1:25am on 31 August 2016. One of the security officers, Nathan Kemp, advised he was head-butted at this point by the Second Respondent and that the Second Respondent was observed to be grabbing the shirt of one of the security officers;
- g) The Second Respondent was then placed under arrest. Whilst being escorted to the police van, the Second Respondent grabbed the fingers of Sergeant Turner, attempted to break free and resisted police officers to such an extent that one of the police officers, Constable Fierer, considered placing handcuffs on the Second Respondent;
- h) Upon arrival at the police van, the Second Respondent refused to enter the van stating 'I'm not going in there'.
- i) The body worn camera shows the Second Respondent resisting police officers despite multiple warnings to stop resisting. The Second Respondent can also be heard calling the police officers 'fuck heads' and telling them 'they are kidding themselves';
- j) Whilst in the police van, the Second Respondent was observed to be using his mobile telephone. Sergeant Turner took the mobile telephone from the Second Respondent. As he was doing this, the Second Respondent attempted to head-butt Sergeant Turner by flinging his head forward with force. The head-butt did not connect, however it was close enough for Sergeant Turner to feel the air on his face;
- k) Constable Fierer then jumped on the Second Respondent to try to control him. As Constable Fierer was attempting to remove himself from the police van, the Second Respondent attempted to kick out at police. During this time, Sergeant Turner has struck the Second Respondent in a preventative fashion in his face with a fist; and
- l) Whilst at the Townsville watchhouse, the Second Respondent, having been there for over 47 minutes, refused the watch officers request to hold up a name board for a banning notice photograph.

[10] The Commission submits that Mr Andersen's conduct was disgraceful and unbecoming of a serving police officer, and that there were aggravating features of his behaviour as follows:³

- (a) it occurred in a Drink Safe Precinct;
- (b) involved multiple assaults on multiple people;
- (c) involved prolonged resistance of people in positions of authority seeking to control his behaviour;
- (d) abusive language was used by the second respondent against police officers and security providers;
- (e) members of the public witnessed the manner in which the Second Respondent behaved both inside the Mad Cow Tavern and outside of the venue. At the time of his arrest, the Second Respondent was identified as a police officer by members of the public. It is submitted that the Second Respondent's conduct erodes the public's confidence not only of the Second Respondent in his role as a police officer, but also of other members of the Queensland Police Service.

[11] The Commission referred to the Tribunal decision in *Hetherington v Assistant Commissioner of Queensland Police Service*⁴ as providing guidance to the correct approach to be taken in this matter.

[12] In *Hetherington* the officer was a Sergeant at paypoint 3.5. The disciplining officer imposed a sanction that Hetherington be demoted to the rank of Senior Constable paypoint 2.8 for a period of 12 months, and not be eligible for automatic progression to the next paypoint level or rank until the expiration of that period. On review, the Tribunal imposed a sanction of demotion to Senior Constable paypoint 2.9 for a period of 12 months.

[13] The Member, the Honourable James Thomas AM QC, referred to a submission on behalf of Mr Hetherington that the appropriate sanction in that matter should be a reprimand or a fine of two penalty points, and said that 'I totally reject his counsel's submission' to that effect.

[14] The facts in *Hetherington* were related by the Tribunal as follows:⁵

[8] The disciplinary investigation revealed that at 3:49 AM on 2 March 2008 the applicant, who was off-duty and in company with another man, attempted to gain entry to the Empire Hotel Fortitude Valley. When told by security personnel, 'Sorry it's after curfew' he produced his police badge, and proceeded to enter the premises, stepping over the queue rope, accompanied by his companion. He went to the public bar and attempted to purchase drinks. A security officer asked him to provide his identification, upon which he again produced his police badge. Upon noting that photo identification did not seem to be located in its normal position, the security employee asked for photo

³ Ibid, para 10.

⁴ [2011] QCAT 82.

⁵ Ibid, [8] - [10].

identification, and when it was not produced, requested staff to call police by radio. The applicant was restrained pending the arrival of police.

[9] A short time later two constables arrived. Having observed the situation one of them requested the applicant to step outside to discuss the matter and placed his hand on him to direct him. The applicant refused, became aggressive and pushed the Constable's hand away. The Constable then scuffled with him and placed him under arrest. In the attempt to handcuff him all three persons went to the ground.

[10] The applicant was escorted from the premises and onto the footpath where a struggle continued with the applicant on the ground. He was taken to the city watchhouse and charged with the offence of obstructing a police officer.

[15] The Commission submits that in many ways the conduct of Mr Andersen can be regarded as being more serious than the conduct of Mr Hetherington, for the following reasons:⁶

- (a) Hetherington's level of violence was less than the Second Respondent's. Hetherington's violence was pushing away a hand of a Constable and a scuffle, whereas the Second Respondent has head-butted, touched, attempted to head-butt and kicked out at, at least three different people;
- (b) No reference is made in the decision that Hetherington continued obstructive behaviour once back at the watchhouse, whereas the Second Respondent refused to be photographed for a banning notice;
- (c) At the time of the behaviour, Hetherington was suffering from an anxiety disorder, depression and alcoholism. Further, it was accepted Hetherington's behaviour was due to his craving for alcohol. There was no evidence before the disciplining officer of any similar medical conditions or reason for the behaviour by the Second Respondent;
- (d) Hetherington did not contest any of the allegations, whereas the Second Respondent contested matters 1(b) and 1(c);
- (e) The behaviour of Hetherington occurred prior to the introduction of Drink Safe Precincts. These precincts were trialled in 2010 in Queensland and were introduced in Townsville in early 2011. It is submitted that the violent behaviour of the curbs that in this precinct is an aggravating feature given the purpose of these precincts is to provide a safe area for members of the public, and the fact that he engaged in this conduct as an (albeit off-duty) police officer. This has substantial capacity to erode public confidence in the police service; and
- (f) Since the decision of Hetherington, there have been significant campaigns against alcohol fuelled violence and binge drinking. It is submitted that the Second Respondent would have been aware of these campaigns.

⁶ Submissions on behalf of the applicant, filed 13 August 2018, para 18.

- [16] The Commission notes a distinction from this matter in that Mr Hetherington made use of his police identification, but submits that was at the lower end of conduct of that nature, as his benefit was limited to gaining entry to licensed premises.
- [17] The Commission submits that Mr Andersen's decision to contest parts of the charges means that he had not demonstrated remorse and a willingness to face up to his obligations, and does not get the benefit of a reduction in the sanction to be imposed that would have been available if he accepted the charge.⁷
- [18] The commission submits that the sanction imposed in this matter does not reflect the serious nature of the conduct engaged in by Mr Andersen, particularly in light of the *Hetherington* decision.
- [19] In a Preliminary Statement of the Issues filed by the Commission on 28 May 2018, it was submitted that the appropriate sanction was in the order of a two paypoint reduction for a period of two years. On the hearing, the Commission sought a greater sanction.
- [20] The Commission explains that the Preliminary Statement was drafted at an early stage of the proceedings, and at a time when it was hoped the matter could be resolved by negotiation, and that such approach would have reflected insight and contribution on Mr Andersen's part, which would have been reflected in the sanction sought.⁸

Submissions of the QPS

- [21] The QPS noted the decision in *Crime and Misconduct Commission v Deputy Commissioner Stuart and Anor (No 2)*⁹ as to the role of the QPS in such matters, and submitted that the submissions of the Commission and Mr Andersen were adequate in covering the QPS' position in relation to the proceedings, and could not add any additional submissions which would assist the Tribunal.¹⁰

Submissions of Mr Andersen

- [22] It was submitted on behalf of Mr Andersen that the Commission had changed its position between the preliminary statement of issues, and the time of filing submissions; that nothing had changed other than the occurrence of a compulsory conference that failed to settle the matter; and that the effect was moving from a two pay level reduction to a demotion in rank which included a pay level reduction, which will cause detriment of tens of thousands of dollars.¹¹
- [23] Mr Andersen addressed the issue of delay, noting that the conduct occurred on 30 August 2016 yet disciplinary proceedings were not commenced until 18 December 2017, some 16 months later, and the decision was not handed down

⁷ Ibid, [10], referring to *McKenzie v Acting Assistant Commissioner Wright* [2011] QCATA 309, [24].

⁸ Ibid, para 8.

⁹ [2012] QCAT 382, [12] - [16].

¹⁰ First respondent's outline of submissions, filed 24 September 2018, [2].

¹¹ Outline of submissions on behalf of the second respondent, filed 21 September 2018, [12], [13].

until 19 March 2018. He submitted that delay had been substantial and unexplained.¹²

- [24] Reference was made to previous matters in which it was held that such delay detracts from the efficacy and fairness of a properly functioning system for police discipline.¹³ Further, it was submitted that there was real detriment caused by the delay:¹⁴

The second respondent transferred to the Major Crime Unit in November 2011. This was a transfer out of uniform policing into the investigative field. Every officer that does obviously do so with the aspiration and commitment to become appointed as a Detective. To become appointed as a Detective, officers go through a tortuous education and performance regime lasting in excess of three years. It is a prestigious appointment amongst police. The second respondent was due to be appointed as a Detective on or soon after 8 March 2017. More than one and a half years on the QPS are still denying the second respondent his appointment as a Detective on the sole basis of this matter. This is an extreme punishment for the second respondent to endure. There remains little clarity as to when the QPS may agree to appoint him. There has been significant financial loss to the second respondent over this time given he has not been able to access the financial rewards that come with appointment as a Detective. Under the current Enterprise Bargaining Agreement the Detectives Allowance is \$2,061 per annum. The financial loss alone suffered by the second respondent in this regard is already approximately \$3,091.

- [25] It was submitted that it is not in dispute that Mr Andersen otherwise had an exemplary 11-year career up until the time of this matter.¹⁵
- [26] It was submitted that the use of a police badge added significantly to the seriousness of the conduct in the *Hetherington* case, and that the two matters could be distinguished as the officer in *Hetherington* was a Sergeant holding an important supervisory position within the police service, overseeing and setting an example for subordinate staff, whereas Mr Andersen was not.¹⁶
- [27] It was submitted that the *Hetherington* decision was handed down in 2010, when the police discipline system was ‘maintaining an archaic and punitive philosophy towards sanctioning officers’ and that since then there have been a ‘complete policy shift towards police discipline by adopting a restorative approach rather than a solely punitive approach’.¹⁷
- [28] It was submitted that the sanction imposed ‘offered rehabilitation, support, mentoring and intensified supervision during the uniform shift component of the sanction’.¹⁸

¹² Outline of submissions on behalf of the second respondent, filed 21 September 2018, [14].

¹³ *Austin v Deputy Commissioner Peter Martin* [2018] QCAT 120.

¹⁴ *Ibid*, [20].

¹⁵ *Ibid*, [21].

¹⁶ *Ibid*, [23].

¹⁷ *Ibid*, [26].

¹⁸ *Ibid*, [29].

[29] It was submitted that the fact that Mr Andersen contested parts of the charge did not support a harsher sanction being imposed; that such a proposition was rejected in *McKenzie v Acting Assistant Commissioner Tony Wright*,¹⁹ and that Mr Andersen had admitted his guilt and apologised for his actions.²⁰

[30] It was submitted that when relevant factors were taken into account, the Tribunal should determine that the sanction imposed was the correct and preferable sanction. These factors were submitted to include:²¹

- 1) Application of a restorative and modern philosophy to police discipline be adopted;
- 2) (he) has paid the \$731 fine attached to the infringement notice;
- 3) (he) has been remorseful for his actions;
- 4) (his) career has been put on hold as a result of unexplained and improper delay;
- 5) (he) has suffered both reputational and financial detriment as a result of being denied his Detective's appointment;
- 6) (he) has completed the eight uniform shifts as directed by the QPS within the sanction;
- 7) (he) otherwise had an unblemished and distinguished 11 year career;
- 8) (he) initiated professional medical assistance after the event to ensure like conduct did not repeat itself. The QPS funded this support via the Early Intervention Treatment Program (EITP).

[31] It was submitted that Mr Andersen was a mature man with an exemplary history, who unfortunately made a number of mistakes on the evening of 30 August 2016 that he extremely regrets, and is remorseful for.²²

Discussion

[32] The finding that Mr Andersen's conduct on 31 August 2016 at Townsville constituted 'misconduct' is not contested. 'Misconduct' is defined in section 1.4 of the *Police Service Administration Act 1990* as follows:

Misconduct means conduct that –

- a) is disgraceful, improper or unbecoming an officer; or
- b) shows unfitness to continue as an officer; or
- c) does not meet the standards of conduct the community reasonably expects of a police officer

¹⁹ [2011] QCATA 309, [24].

²⁰ Op cit, [30].

²¹ Ibid, [31].

²² Ibid, [33].

- [33] The sanction that was imposed did not affect any reduction in rank or paypoint. The sanction was two penalty points and a managerial strategy.
- [34] The requirement in the managerial strategy that Mr Andersen be rostered on both Friday and Saturday nights to perform general duties in uniform in the Flinders Street Safe Night Out Precinct for eight shifts, might be seen as a rehabilitative strategy to raise his awareness of the current situation in those locations, and to reflect upon his behaviour in that location.
- [35] Alternatively, the managerial strategy might be seen as one that imposed inconvenience, and some embarrassment, to Mr Andersen, but did not constitute a sanction of any significance. If seen in that light, then the only effective sanction was the two penalty points.
- [36] Mr Andersen was an experienced officer with an unblemished record. It is difficult to comprehend his behaviour on the evening in question with such a background.
- [37] It is obvious that Mr Andersen had consumed significant quantities of alcohol on the evening which would have grossly impaired his judgement. His blood alcohol reading, when taken at the watchhouse, was .243%,²³ which is an extremely high reading. Responsibility for the consumption of the alcohol, and his management of his consumption, remains with Mr Andersen. Whilst consumption of alcohol might go towards explaining his actions, they do not excuse them, or diminish them.
- [38] There are matters of significant concern in the behaviour exhibited by Mr Andersen that evening. The actions of Mr Andersen in harassing women within the tavern, which led to complaints to the tavern security, are of concern themselves. In addition to the harassment complaints, there was non-cooperation and physical struggling with the security staff, and with police who attended the scene.
- [39] Upon his release from custody at the watchhouse, Mr Andersen was served with an Infringement Notice for the offence of Public Nuisance under the *Summary Offences Act 2005* for the amount of \$731, which was paid, and was issued with a Banning Notice which excluded him from entering the Safe Night Precinct for a period of 10 days.
- [40] Apart from the infringement notice, no charges were brought against Mr Andersen of any form of assault in relation to his actions within the tavern and outside, or of resisting police. It is noted in the findings that he was 'fortunate members of the public choose not to make criminal complaints against you'.²⁴ There may be questions of evidentiary proof involved, but there has to be a strong suggestion that Mr Andersen could well have been exposed to what may have been far greater sanctions than those comprehended by the misconduct proceedings alone.
- [41] The Commission did adopt an altered position as to the appropriate sanction in the course of this matter. I do not place weight upon the change of attitude by the Commission. The preliminary submissions, and final submissions, are only submissions in any event. It is the role of the Tribunal to form its own view, which

²³ Findings and Reasons of disciplinary hearing, p 6.

²⁴ Findings and Reasons of disciplinary hearing, p 10.

is assisted by, and made in consideration of, submissions from the parties, but is not in any way bound by them.

- [42] There are six paypoints in the rank of Constable, commencing at paypoint 1 and rising to paypoint 6. There is then an increase in rank to Senior Constable, which has paypoints rising from 1 to 10. Mr Andersen was a Senior Constable at paypoint 5.
- [43] The sanction sought by the Commission would reduce Mr Andersen to the top paypoint of Constable. It constitutes a reduction of five paypoints, and a reduction in rank.
- [44] A schedule handed up at the hearing indicates that, as at 1 July 2018, the annual salary of a Senior Constable paypoint 5 was \$82,450; that of a Senior Constable paypoint 3 was \$78,787; that of a Senior Constable paypoint 1 was \$75,281; and that of a Constable paypoint 6 was \$73,199.
- [45] A sanction may constitute a demotion, which results in both a monetary reduction and a reduction of rank; or a monetary reduction within the same rank.
- [46] There are many similarities between this matter and *Hetherington*. In each case alcoholism was a relevant factor, and the officer had a very good service record prior to the events. Mr Hetherington was involved in a physical confrontation with police who were called to a hotel where he had been restrained by security staff. The penalty that was sought on behalf of Mr Hetherington on his behalf was a reprimand or a fine of two penalty units, which is similar to the sanction imposed in this matter. The sanction imposed on Mr Hetherington by the Tribunal was that he be demoted from Sergeant 3.5 to the rank of Senior Constable at paypoint level 2.9 for a period of 12 months.
- [47] There are however, distinctions between this matter and *Hetherington*, in that an aggravating factor in *Hetherington* was that Mr Hetherington produced his police identification to gain access to the hotel, and Mr Hetherington was a Sergeant in a supervisory position. Both of those factors are not present in this matter.
- [48] Therefore, the sanction in *Hetherington*, which involved a reduction in rank, with a significant reduction in paypoints, whilst indicative, cannot be mechanically applied to this matter.
- [49] Whilst Mr Andersen was off duty, and in plain clothes, his position as a police officer is relevant in consideration of the significance of the events. Mr Anderson did not identify himself as a police officer, or seek to gain benefit from his position, but he was identified by members of the public as a police officer. Constable Armstrong, one of the officers who attended the scene, described the identification:²⁵

a – Uh, what was Damien doing at that time? When they first grabbed him?

b – um, I wasn't really looking at them. I saw them grab onto his arms and then I sort of looked out cos I could hear people yelling he's a cop and I didn't want more people to come into the situation and make it worse. I was sort of

²⁵ Section 21(2) QCAT Act material, Part B, p 66.

more looking out I wasn't looking at the Sergeant or Constable. There was, there was a lot of people around. I didn't want the situation to get worse with more people.

- [50] I consider that the public would view such behaviour by a person, who has the training and standing of a police officer, as being wholly unacceptable; and that such conduct does reflect adversely both upon the individual and upon the police service, particularly where the person is identified at the time as a police officer.
- [51] The conduct involved being heavily intoxicated in a public place, creating a public nuisance, and engaging in physical struggles with security staff and police. That conduct must be viewed seriously, and must attract an appropriate sanction.
- [52] The financial sanction that was imposed was two penalty units. The value of a penalty unit has been \$130.55 from 1 July 2018. The current value of the financial sanction is therefore \$261.10.
- [53] Whilst I draw distinctions between this matter and *Hetherington*, the matters have some commonality, and it is notable that the Tribunal in *Hetherington* totally rejected the suggestion of a fine of two penalty units.²⁶
- [54] I consider that the original sanction imposed was highly inadequate, and did not reflect the seriousness of the conduct.
- [55] I appreciate the factors in mitigation submitted on behalf of Mr Andersen, particularly his prior exemplary record and his expressions of remorse.
- [56] It is also significant that there has been a considerable time-span in the bringing of the disciplinary proceedings, and in the conduct of this review. The effect of the time-span is that these matters have been hanging over Mr Andersen's head for about two and half years now, and his progression within the police force to a position as Detective has been 'put on hold' by these proceedings.
- [57] The events occurred on 31 August 2016. The investigation report is dated 5 May 2017. The formal hearing was conducted on 18 January 2018. The decision was dated 9 March 2018.
- [58] The investigation report was therefore not completed until about eight months had elapsed, and the disciplinary proceedings were not heard until a further eight months had elapsed (making 16 months in total).
- [59] At the time of the disciplinary hearing, it was submitted for Mr Andersen that the 'process' and delay had been 'punishment of itself irrespective of any action that might be contemplated by the prescribed officer',²⁷ and that he was remorseful and had suffered sleeplessness and anxiety as a result of the incident and the proceedings.²⁸

88. The subject member fully appreciates that he has acted contrary to Queensland Police Service Values and unequivocally pledges that a similar

²⁶ *Hetherington v Asst Commissioner of Queensland Police Service* [2011] QCAT 82, [34].

²⁷ Section 21(2) QCAT Act material, p 19, [17].

²⁸ Section 21(2) QCAT Act material, p 33, [88] – [91].

incident will not occur at any future time. Furthermore, through his willingness to seek counselling and reflect on what occurred the subject member has acquired a greater insight in terms of the expectations and responsibilities associated with being a Plain Clothes Senior Constable in the Queensland Police Service.

89. The subject member's remorse and grave concern about the potential outcome of this aberration has resulted in many sleepless nights and a heightened state of anxiety. Despite this he has continued to work diligently and commit himself to his duties as a police officer.

90. The subject member submits that the conduct which now sees him before the prescribed officer was a 'one-off' and will never be repeated.

91. This is unfortunately a 'one-off' aberration during an unblemished career. A career that has seen Plain Clothes Senior Constable Andersen make a significant contribution to the Queensland community.

- [60] The position put by the Commission in the Preliminary Statement of Issues was that the appropriate sanction was in the order of a two paypoint reduction for a period of two years. The financial effect of such a reduction, based upon the schedule referred to earlier, would be a reduction of \$3,663 per annum. The total over two years would therefore be \$7,326.
- [61] The financial effect of a reduction of six paypoints for one year, as proposed by the Commission at the hearing, would be a reduction of \$9,251.
- [62] Mr Andersen has notionally suffered a loss of income due to delay in his progression to be a Detective, which it was submitted was already approximately \$3,091 at the date of the Tribunal hearing.
- [63] I have regard to the submission that the QPS is moving to a restorative philosophy as to police discipline, rather than a punitive approach, and I accept that Mr Andersen has experienced embarrassment and upset as a result of his actions, that he has expressed remorse, and has given an assurance the incident was an aberration that will not be repeated.
- [64] A significant penalty is nevertheless required, as I have previously discussed. In assessing the extent of that penalty, I take into account the mitigating factors of a prior exemplary record, remorse, and the time-span that these proceedings have taken.
- [65] Mr Anderson has demonstrated his ability to act as a Senior Constable, both before and after the event, and he was not in a supervisory position as in *Hetherington*. A demotion to Constable not only affects his rank, but necessarily involves a reduction of five paypoints. A sanction within the same rank to the lowest paypoint of Senior Constable paypoint 1 would achieve a significant sanction without a demotion.
- [66] The Commission initially suggested that there be a two paypoint reduction from Senior Constable paypoint 5 to paypoint 3 for two years. The notional total penalty of a two paypoint reduction for two years (if the loss of income of approximately \$3,091 as a Detective is added to the loss of salary of \$7,326) amounts to approximately \$10,417.

- [67] The notional total financial effect of a four paypoint reduction from Senior Constable Paypoint 5 to Senior Constable paypoint 1 for one year (if the loss of income of approximately \$3,091 as a Detective is added to the loss of salary of \$7,169) amounts to approximately \$10,260.
- [68] The monetary result between a two paypoint reduction from Senior Constable paypoint 5 to paypoint 3 for two years, and a four paypoint reduction from Senior Constable paypoint 5 to Senior Constable paypoint 1 for one year, is therefore very similar.
- [69] A paypoint reduction for one year, rather than two years, would bring this matter to a more timely conclusion, which would be desirable having regard to the time which has already passed in this matter.
- [70] The decision in *Hetherington* resulted in a demotion in rank, and a 6 paypoint reduction for 12 months. As I have discussed, I consider this matter to be similar to *Hetherington*, but there are distinguishing considerations, and mitigating factors to take into account.
- [71] I consider that a four paypoint reduction for one year, without a demotion, would represent a balance that has regard to the decision in *Hetherington*, whilst recognising the considerations that distinguish this matter from *Hetherington*, and takes into account the mitigating factors.
- [72] In a previous un-published matter in the Tribunal in May 2018 (identities withheld) the Tribunal ordered a reduction in paypoint for a period of one year, and that the officer should be returned to the paypoint at which he would then have been if the reduction had not occurred, subject to normal industrial arrangements, in order to avoid a compounding penalty. I will adopt a similar formula, to also avoid a compounding effect, as discussed in that matter.
- [73] I set aside the decision of the Acting Deputy Commissioner as to sanction made on 19 March 2018 and substitute a decision that Mr Andersen:
- (a) be reduced in paypoint from Senior Constable paypoint 5 to Senior Constable paypoint 1 for a period of twelve months, and
 - (b) be then returned to the paypoint at which he would then have been if the reduction had not occurred, subject to normal industrial arrangements, and
 - (c) is to complete the Managerial Strategy as set out in the Notice of Formal Finding dated 19 March 2018.
- [74] In the course of the Tribunal hearing, there was discussion as to the effect of the proceedings upon Mr Andersen's progression to appointment as a Detective. The disciplinary hearing had been advised that his appointment had been held in abeyance subject to the outcome of the matter.²⁹ I was advised that this remains the current position.

²⁹ Letter from Detective acting Inspector Walker, s 21(2) QCAT Act material, p 45.

[75] I do not intend that the sanction which I have imposed should act as an impediment to consideration of Mr Andersen's progression to appointment as a Detective, and intend that such consideration should now be able to resume.