

Our Ref: Ferrara - BNE5415593:LY

Private and Confidential

9 March 2023

Reece Storme Ferrara

Sent by email to: <Reece.Storme@protonmail.com>

Dear Reece Ferrara

COMPLAINT BY: REECE STORME FERRARA
AGAINST: SNR CONSTABLE JUSTIN DICKINSON, SNR CONSTABLE
KYLE JORDAN, SNR CONSTABLE SCOTT HILL, STATE OF
QUEENSLAND (QUEENSLAND POLICE SERVICE)

I refer to this complaint and previous correspondence regarding this matter.

I have delegation under section 244 of the *Anti-Discrimination Act 1991* to exercise the powers, duties and functions under section 140 of the *Anti-Discrimination Act 1991* (**AD Act**).

The Respondents have requested the complaint is stayed pursuant to section 140 of the AD Act, until proceedings before the Magistrate's Court, specifically, a charge of Obstruct Police Officer under the *Police Powers and Responsibilities Act 2000* (Qld) have concluded.

I have decided not to stay the complaint for the reasons set out below.

The complaint

The complaint alleges impairment discrimination in the area of State Laws and Programs under the AD Act and limitation of Human Rights of humane treatment when deprived of liberty, recognition and equality before the law, right to liberty and security of person and protection from torture and cruel, inhuman or degrading treatment.

The allegations are that on 4 October 2021:

- Following the loss of recent employment the Complainant began to experience some issues with his mental health;
- The Complainant was stopped at about the QLD/NSW border and directed to return to NSW;

- During discussions with the Respondents, he disclosed he had a negative history with the Victorian Police, had a history of Post-Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD) and was currently experiencing suicidal thoughts;
- The Complainant consented to being taken to hospital and an ambulance was called;
- When the ambulance arrived, the Complainant informed the Respondents that he did not want to be touched;
- Individual Respondent Snr Constable Justin Dickinson grabbed the Complainant's arm and he began to pull away;
- Individual Respondents Snr Constable Kyle Jordan and Snr Constable Scott Hill approached the Complainant and pushed him back to his car;
- The Complainant lost his balance and fell to the ground and his head was pushed to the bitumen;
- The Complainant was taken to a police "caged" van and was left in there for 20 - 30 minutes before being taken to hospital;
- The Complainant was then charged with assaulting/obstructing police under the *Police Powers and Responsibilities Act (2000)* (the PPRA).

Submissions

The organisational Respondent, State of Queensland (Queensland Police Service) (QPS), has submitted that the charge of Obstruct Police Officer under the PPRA is still proceeding before the courts and is inextricably intertwined with the Complainant's QHRC Complaint.

QPS states that the capacity of all named Respondents to fully participate in the conference and to meaningfully conciliate with the Complainant will be compromised if the conference were to proceed prior to a final resolution of the court matter.

The Complainant has provided extensive material to the Commission and submits that the material events that are the subject of his Complaint to the QHRC and the charge before the Magistrates Court are different. The comprehensive submissions by the Complainant as they relate to the Complaint before the QHRC include:

- Further details and specifics regarding his personal and family circumstances;
- Further details and specifics regarding his disabilities, including circumstances surrounding, and diagnosis of, his PTSD, ADHD and history of suicidality;
- Further details regarding the events that occurred on 4 October 2021 including images and transcription from police worn body cameras;
- Concerns regarding the QHRC's delay in dealing with the Complaint following the Complainant's initial lodgement on 4 January 2022 and related statutory obligations; and
- Concerns regarding a phone call the Complainant had with a conciliator regarding the Complaint on 30 January 2023.

The Complainant's submissions cover a number of topics beyond the summary above. This decision seeks to address s140 considerations only and for this reason has focussed on those submissions related to the issue of whether there are concurrent

proceedings in a court or tribunal in relation to the act or omission the subject of the complaint.¹

Discussion

The relevant charge before the Magistrates Court relating to the events which are the subject of the Complaint is s790 (1)(b) of the PPRA:

Part 1 Offences

790 Offence to assault or obstruct police officer

(1) A person must not—

- (a) assault a police officer in the performance of the officer's duties; or
- (b) obstruct a police officer in the performance of the officer's duties.

Maximum penalty—

- (a) if the assault or obstruction happens within licensed premises, or in the vicinity of licensed premises—60 penalty units or 12 months imprisonment; or
- (b) otherwise—40 penalty units or 6 months imprisonment.

The Magistrates Court will be examining the conduct of the Complainant in regards to the Respondents under the PPRA – my understanding is this will involve examining what powers were exercised, whether or not they were lawful and whether or not the Complainant contravened the PPRA in his actions in regards to the altercation on 4 October 2021

Although the some of the issues to be determined by the Magistrates Court may overlap with or be relevant to the complaint, the Magistrates Court will not be deciding whether the Respondents discriminated against the complainant in contravention of the AD Act nor whether they unnecessarily limited the Complainant's Human Rights under the HR Act.

I am therefore of the view that there are not concurrent proceedings in a court or tribunal in relation to the act or omission the subject of the complaint and the discretion in section 140 is not enlivened.

I acknowledge the delay experienced by the parties due to the QHRC's backlog. We have experienced an increase in complaint numbers since the commencement of the Human Rights Act 2019 and associated with the Covid-19 pandemic. On behalf of the Commission I apologise for this delay.

¹ *Anti-Discrimination Act 1991* (Qld), s140 (1)(a).

Human Rights

The Commission is a public entity under the HR Act and is obliged, under section 58(1) of that Act, to act and make decisions in a way that is compatible with human rights, and to give proper consideration to relevant human rights when making certain decisions.

As I have decided that the Commission's discretion under section 140 has not been enlivened, I do not have discretion to stay the complaint. This decision does not affect or limit the human rights of any individuals and is therefore compatible with human rights

Next Steps

The complaint will be referred to a conciliator and the parties will be informed of a date for conciliation.

If you have any questions, please call Lucy Yan on 1300 130 670 or (07) 3021 9118.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. Hackett', is written over a horizontal line.

**Delegate of the Queensland Human Rights Commissioner
Brisbane Office**