

[2026] FWC 3240

The attached document replaces the document previously issued with the above code on 25 August 2026.

Minor corrections as follows: correction to the second sentence of paragraph [151], correction to quote in paragraph [153], and correction to paragraph [195] to state: “what Mr Shephard could hear when he was in close proximity...”

Associate to Deputy President Lake

Dated 1 September 2026



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Jessica Stunden

v

The Commonwealth of Australia, as represented by Services Australia
(U2025/13924)

DEPUTY PRESIDENT LAKE

BRISBANE, 25 AUGUST 2026

Application for an unfair dismissal remedy – inappropriate conduct at work – insulting language directed at managers and colleagues – failure to follow lawful and reasonable direction – suicide attempts - where inappropriate conduct continued during suspension and investigation – threatening emails and text messages sent by Applicant during disciplinary process – where Applicant has ADHD and claims adequate supports not provided – claims of flawed investigation process – valid reason – dismissal not harsh – dismissal not unfair – application dismissed

[1] Ms Jessica Stunden (the **Applicant**) made an application to the Fair Work Commission (the **Commission**) on 25 August 2025 seeking a remedy pursuant to s.394 of the Fair Work Act 2009 (the **Act**) stating that she was unfairly dismissed from her employment with The Commonwealth of Australia, as represented by Services Australia (the **Respondent**).

[2] Section 396 of the Act requires satisfaction of four matters before considering the merits. I am satisfied that the Applicant made her application within the 21-day period required by s.394(2) of the Act, earned less than the high-income threshold, is a person protected from unfair dismissal, that her dismissal was not a case of genuine redundancy, and the Small Business Fair Dismissal Code is not applicable as the Respondent has more than 15 employees.

[3] The application was initially allocated to another Member of the Commission, and the parties' submissions and evidence were filed in accordance with the Member's Directions. The hearing before that Member was vacated due to unexpected leave. The matter was subsequently reallocated to me to hear and determine the matter. I allowed the Applicant to file some additional evidence and requested the attendance of the Applicant's psychiatrist at the hearing. The Applicant chose not to have her psychiatrist attend. The hearing was conducted on 13 and 14 April 2026.

[4] At the start of this decision, I want to say that I am sympathetic to the Applicant and hope she gets the support she needs. The Applicant specifically advised my Chambers that she did not wish to be anonymised. The decision contains a number of references to suicide attempts and the Applicant's mental health struggles. I have not made any confidentiality orders in this

matter. There are a number of extracts emails included in this decision as it is necessary to examine the Applicant's communications over time.

Background

[5] The Applicant commenced employment with the Respondent as a Services Officer in July 2022 on a non-ongoing basis. She became an ongoing permanent employee in early 2024. In her role as a Services Officer, she provided members of the public information and support services relating to welfare services.

[6] In mid-2024, the Applicant transferred from the Fortitude Valley Service Centre to the Toowong Service Centre. The reason for the transfer was due to allegedly being bullied by a coworker in the Fortitude Valley office.

[7] In the Toowong office, the Applicant's Team Leader was Mr Brian Blackwood.

October 2024

[8] On 31 October 2024, the Applicant is alleged to have stated to a customer "your 10 minutes is up I'll reassign you." She is alleged to have then raised her voice at the customer and said "your 10 minutes is up!".

[9] In her written response to the allegations on 22 January 2025, the Applicant denied raising her voice at the customer. She said that the customer was not allowing her to explain why his query was taking longer than anticipated. She then went to get the Team Leader, Mr Blackwood. The Applicant said she corrected the customer by stating that she had not said it would take 45 minutes but had said "could take up to 45 minutes". The Applicant then said Mr Blackwood told the customer that the Applicant would provide linking codes to reset the customer's email. In the Applicant's response to the incident recorded on 27 November 2024 following a formal counselling session on 19 November 2024, she said she then told Mr Blackwood, her Team Leader, "I won't be doing that".¹ The Applicant told the customer that she would reassign them. Mr Blackwood then redirected the customer to be served by a different team member. The Applicant said Mr Blackwood had not followed correct procedure, and she said she felt "undermined" by the interaction.

[10] Mr Blackwood recalled the Applicant speaking over the customer and tell him that he was wrong in an increasingly loud voice. Mr Blackwood said the Applicant then interrupted the customer and told them, "your 10 minutes is up, I'll reassign you".

[11] It was explained during the hearing that there was a guide for general enquiries to be triaged in 10 minutes, so that customers could be served in an acceptable period of time.

November 2024

[12] On 5 November 2024, the Applicant was informally counselled by the Service Centre Manager in relation to the incident on 31 October 2024.

¹ Applicant response to record of formal counselling session, 27 November 2024, Digital Hearing Book Volume 2, page 50-53

6 November 2024

[13] On 6 November 2024, the Applicant is alleged to have raised her voice at a customer and then yelled at Mr Blackwood, “stop!”

[14] In the Applicant’s written response to the allegations on 22 January 2025, she admitted to raising her voice at Mr Blackwood.² In relation to the customer, she said he was “incredibly hostile”.³ She said the customer had accused her of generating a false letter. The Applicant then said she needed to leave her desk. The customer asked the Applicant for her name so that he could make a complaint. The Applicant provided her first name. When the customer asked for her last name she said, “that is private information and you are not entitled to it, I’m going to need you to move away from my desk now”. In her written response to the incident, she said she used an “authoritative tone”.⁴ The Applicant said Mr Blackwood then walked towards the customer to which the Applicant states she responded by calling out, “Brian, wait!”. She said she “did not trust him after the way he had mishandled the customer’s aggression towards me on October 31st 2024”.⁵

[15] Mr Blackwood recalled in his witness statement that the Applicant had pointed at a pair of customers, stating “I’m not serving you”. When asked for her surname, the Applicant reportedly loudly said “no, you are not privy to my surname!”. Mr Blackwood said he intervened at that point and spoke to the customer to which the Applicant yelled “no, Brian!”. Mr Blackwood said the Applicant walked away and then returned to yell at the customers and him. Mr Blackwood said that when he returned, “Ms Stunden was on the ground crying, then yelling and screaming at other employees, pacing the office area, then back to crying on the ground.”⁶ Mr Blackwood then said he had a conversation in which he recalled he asked the Applicant if she was okay, to which she said she was not. The Applicant then said that Mr Blackwood had “handled that terribly” and told Mr Blackwood “maybe do [your] job right”.⁷

[16] The Applicant had a discussion with Mr Matt Keogh, Toowong Service Centre Manager and she then took leave between 11 November 2024 and 15 November 2024.

[17] Mr Keogh sent an email to the Applicant on 18 November 2024 summarising the discussion which took place on 11 November 2024:

Hi Jess,

Just confirming our discussion last week on the 11th of November. I completed a return-to-work conversations with you following recent unplanned leave. You told me you were feeling feeling incredibly stressed and struggling to manage your wellbeing. We met for almost hours from 8:30- 10:20am.

² Applicant written response to allegations, Digital Hearing Book Volume 2, page 18

³ Applicant response to record of formal counselling session, 27 November 2024, Digital Hearing Book Volume 2, page 51

⁴ Ibid Page 52

⁵ Ibid

⁶ Brian Blackwood Witness Statement [27]

⁷ Ibid [28]

We talked about the incident where you raised her voice at another team leader on 6th of November 2024, and I explained to you this behaviour is never appropriate and appeared to be a pattern of behaviour that was continuing.

I explained to you that when you speak to people like this it makes people feel unsafe in the workplace. You said this was because of your health issues including ADHD and I encouraged you to consider early intervention support where we could engage an external Provider to support you. On that day you said you didn't want to do this because you were concerned it would be used against you. I encouraged you to reconsider because this would be for us to support you with your health. I did also discuss EAP with you however you declined.

We talked at length about how you feel people are not following processes correctly and believes when you have raised concerns they have not been addressed. I talked about you focusing on what you have in front of you and not involved in other people's interactions. And you need to have confidence we will follow up on any issues you raise. You did raise concerns about feedback you received via the national feedback tool from a colleague in the office. I had not reviewed this feedback but agreed that feedback provided internally at our office would normally not go through the national feedback tool. It would just go via a team leader to review and provide to employees. I advised you I would speak with the staff and team leaders about this.

I did advise you that would need to address your behaviour more formally when she was in a better position to discuss this. I checked how you were feeling about returning to work and you said you wanted to take some leave from work. We agreed on one week's recreation leave from the 11/11/2024 – 15/11/2024.

Counselling session

[18] On 18 November 2024, the Applicant sent a series of emails to Mr Keogh, Toowong Service Centre Manager. The first email alleged that she was being discriminated against because of her disability. She said "I have ADHD, OCD, and CPTSD, conditions that sometimes lead to stress-induced outbursts that are misinterpreted as inappropriate behaviour. These chronic conditions qualify as disabilities under Queensland law, entitling me to an inclusive environment where my conditions are acknowledged and respected."⁸ She went on to allege that management had dismissed her concerns and "respectfully decline[d] further discussion of the November 6 incident" as she said there should not be disciplined when she felt threatened by the male customer's actions. The Applicant then sent a further email stating that one of her coworkers had not made eye contact with her, which made her feel isolated. The Applicant also sent another email reporting that other employees had yelled at each other across the office. She said that "lends credence to my belief that I am being unfairly targeted due to my disability".

⁸ Digital Hearing Book Volume 1, page 37

[19] On 18 November 2024, the Applicant was provided with notice of a formal counselling session which was scheduled for the following day. She was given the opportunity to bring a support person.

[20] On 19 November 2024, the Applicant attended the formal counselling session. The counselling session related to the incidents on 31 October 2024 and 6 November 2024. The meeting was conducted with the Applicant, Mr Matt Keogh, Service Centre Manager at Toowong and a Service Centre Manager from another location who was acting as scribe. In the counselling record, the Applicant denied raising her voice on 31 October 2024 but says she spoke over the customer at times. In relation to the incident on 6 November 2024, the applicant said she felt threatened by the customer and “was concerned he wanted to publicly defame her”.

[21] The counselling notes record the following:

Jess agreed she would stop these incidences of raising her voice and said *"I want to do the correct thing; I feel when I make a fuss about things I am the scapegoat. I feel the tendency immediately respond to the environment and it a reflection on me. I have trouble processing my emotions."*

Matt said *the incident with on the 6th of November was observed by staff and customers. And the intent of this session is that you understand you cannot raise your voice to customers, staff or members of the leadership team. This has an impact on staff and customers.* Jess said she will stop this behaviour and come to the leadership team with concerns." Jess agreed she would remove herself from situations that at heightened.

Matt read out the parts of the APS Code of Conduct he believed this behaviour did not meet:

1. *"behave honestly and with integrity in connection with APS employment;*
2. *act with care and diligence in connection with APS employment;*
3. *when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment;*
4. *when acting in connection with APS employment, comply with all applicable Australian laws.*
5. *comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction;*
6. *at all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS;*
7. *comply with any other conduct requirement that is prescribed by the regulations."*

Matt explained that if there is another incident where Jess raises her voice at customers, staff or members of the leadership group this could result in a Code of Conduct referral. The outcome of that could mean a sanction is applied like a reduction in salary, reduction in classification or could lead to termination of Jess's employment with the Agency.

Jess stated, *"I didn't yell at customers but staff yes that is valid."* Jess went on to talk about the negative experiences she had at Fortitude Valley and indicated that this had impacted her. Matt discussed the fact that Jess had now agreed to engage Early

intervention and noted she was upset following the discussion today and discussed EAP and checked she had external supports after the session.

[22] On 27 November 2024, the Applicant emailed a signed copy of the counselling record with “my amendments to the discussion it refers to”. The Applicant provided a written response to the events on 31 October 2024 and 6 November 2024. She set out a full account of her recollection of 31 October 2024 and 6 November 2024. She stated, among other things:

In response to the record of discussion and formal counselling session which occurred on Tuesday November 19th 2024, there are some points that I believe required clarification and amendment. I acknowledge that due to my ADHD, I speak incredibly fast, so the person tasked with taking notes while I rapidly expressed my thoughts may not have been able to capture every sentence coherently.

I am troubled by the recollection of team leaders, because there are several details that they have incorrectly relayed and I feel that this is a further indication that they were not fully present or supportive of me when I encountered aggressive customers. I also feel that they are attempting to deflect from their failures by placing blame onto me....

As is my prior experience, there is a distinct lack of honesty and accountability in the actions of the management who were present during these occurrences.

I feel that I am being scapegoated and my naturally loud voice is now being mislabeled as 'raising my voice' when I've witnessed similar behaviours in the service centre that could be classified as the same thing. I have accepted that the counselling session was necessary, but I am frustrated by the lack of support which I feel has led me to this point...

28 November 2024

[23] On 28 November 2024, the Applicant is alleged to have told Mr Blackwood, “Someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff”, and “Fuck! people need to not move my shit!”

[24] The Applicant denied “swearing aggressively or inappropriately.”⁹ In her written response to the allegations on 22 January 2025, she said:

I didn't use inappropriate language. When I realised the paperwork I had put on top of my blue folder was missing, I said, more to myself as the office and wait room were quiet at this time, "Oh, where are those forms? What did I do with them? No, I definitely left them here."

When I asked Mr. Blackwood if he had seen these papers, he asked if I had batched them, so I explained that I had it at reception and that someone may have moved it by mistake. He reminded me of the recent visit from the fraud team.

⁹ Digital Hearing Book Volume 1, page 13

In response, I said, "That is valid, but why withhold it from me? Just return it and reprimand me for being a goose." I also inquired in the team chat and checked the shelves around the reception area before asking for access to the shredding bins. Hopefully the CCTV will clarify the whereabouts of this paperwork, as I never did find it.¹⁰

[25] Mr Blackwood recalled the exchange as follows:

Me: No, did you scan it onto the record?
 Ms Stunden: No, someone clearly took it. I hate it when people move my stuff. Why would someone fucking move my stuff?
 Me: It was fraud week last week. Maybe they got put in the orange bins.
 Ms Stunden: Fuck! People need to not move my shit!

[26] Mr Blackwood said the Applicant then began "pacing around the office, yelling, swearing and asking staff whether they had seen or moved her paperwork." The following day, Mr Blackwood reported the incident to HR.

December 2024

[27] From early December 2024, Mr Harry Shephard was acting in the role of Toowong Service Centre Manager. He was the Toowong Service Centre Manager for approximately two weeks while the Applicant was working there.

4 December 2024

[28] On 4 December 2024, the Applicant is alleged to have repeatedly raised her voice at Mr Blackwood. The incident involved the Applicant reassigning a customer to the Woodridge Service Centre.

[29] In the Applicant's written response of 22 January 2025, she states that Mr Blackwood had not been "receptive to my viewpoint"¹¹ The Applicant then said "I did not wish to continue speaking with him if he was going to disregard my perspective."¹² Mr Blackwood then asked the Applicant not to raise her voice at him, to which she said she apologised.

[30] Mr Blackwood recalled the Applicant approaching him in the afternoon to enquire about what the result of the customer's query was after they had been assigned to Woodridge. Mr Blackwood stated that the file had been handed over and that the Applicant needed to put trust in the Service Officers at Woodridge. The Applicant then reportedly stated that "clearly it is not worth me giving feedback". The Applicant and Mr Blackwood proceeded to have an argument about whether the Applicant should have gone back into the record after the matter was sent to Woodridge. Mr Blackwood said they then had the following exchange:

Me: Do you want to go into the room to talk further?

¹⁰ Ibid page 19

¹¹ Digital Hearing Book Volume 2, page 19

¹² Ibid 20

Ms Stunden: [yelling] No! I don't want to, you won't get my side of it.
Me: Lower your voice.
Ms Stunden: I am not having this conversation with you, I am going home!
Me: Okay¹³

[31] The CCTV footage for the incident on 4 December 2024 was later reviewed by Mr Kendall Cini in the course of an investigation into the Applicant's conduct. There is no audio to go along with the CCTV footage. The CCTV footage itself is no longer available, but Mr Cini's summary of the footage is. Mr Cini stated:

- The footage starts with Ms Stunden standing at the other side of Mr Blackwood's desk. Mr Blackwood is seated at his desk looks up to Ms Stunden as they engage in conversation which does not appear to be animated.
- At 1 minute 20 seconds, Ms Stunden returns to her desk, where she remains for the duration of the footage. As Ms Stunden walks away Mr Blackwood is motionless, suggesting that he had not yet disengaged in the conversation. Only when Ms Stunden sits in her chair does Mr Blackwood turn to face his monitor.
- Mr Blackwood's movements during this time are as follows:
 - At 1minute 50 seconds Mr Blackwood engages in conversation with a male colleague,
 - Between 2 minutes 18 seconds and 3minutes 40 seconds he is engaged at his computer (either typing or reading).
 - A female colleague approached Mr Blackwood at 3 minutes 40 seconds and they have a conversation. At 4 minutes 10 seconds, she take his water bottle with her and he engages with his computer.
 - At 6 minutes 36 seconds he takes a piece of paper and puts it in the secure waste bin.
 - At 7minutes 10 seconds returns to his desk and engages with his computer
 - At 8 minutes 27 seconds he looks towards Ms Stunden, locks his computer and walks over to her desk.
 - He engages in conversation at Ms Stundens desk until 9 minutes 56 seconds, at which time he returns to his desk until the footage ends.
- During the conversation both Ms Stunden and Mr Blackwood move their hands quite a bit, but no obvious signs that the conversation is confrontational.

¹³ Brian Blackwood Witness Statement [45]

- At 8 minutes 50 seconds the female colleague returns with Mr Blackwood's water bottle and walks past Ms Stundens desk and does not look towards them.
- There is only 1 other staff member sitting diagonally behind Ms Stunden, but he remains at his desk and does not appear to notice the conversation between Ms Stunden and Mr Blackwood.

12 December 2024

[32] On 12 December 2024, the Applicant allegedly yelled at a colleague, Ms G, in front of customers and staff, "I fucking assigned them" and "don't fucking talk to me". Mr Shephard then then told Mr Shephard that Ms G was "fucking useless" and "can't do their job". Mr Shephard states that the Applicant entered the foetal position and was crying and talking loudly. He said, "Ms Stunden's conduct during this meeting made me feel deeply uncomfortable and concerned for her wellbeing, my own safety and the safety of other employees she had expressed such strong hostility towards".¹⁴

[33] Mr Shephard said that other employees asked if he was okay as they had heard the Applicant yelling at him. Mr Shephard said that the Applicant then gathered her things and left the office. Mr Shephard said the phone rang after the Applicant has left the office. He said he heard Mr Blackwood say the Applicant's name when he answered the phone. Mr Shephard said he could hear the Applicant's voice getting louder as she spoke to Mr Blackwood. Mr Blackwood told Mr Shephard that the Applicant had said she was not okay. Mr Shephard then consulted the region manager, before calling the Applicant. Mr Shephard recalled the conversation as follows:

- (a) I answered Ms Stunden's call and announced myself and Ms Stunden said "what do you want?"
- (b) I told Ms Stunden I was concerned about her safety and wanted to see if there was any way I could assist to ensure she got home safely. Ms Stunden replied with words to the effect of "you can't do anything", "you don't fucking care" and "if you cared, you wouldn't make me work in an environment where I'm surrounded with idiots in the first place".
- (c) I continued to ask questions regarding Ms Stunden's safety but she kept making comments including "you have done this to me", "this is your fault, don't pretend to care" and "I'm at the point where I can't do my job because of this".
- (d) I asked Ms Stunden to slow down and suggested she take some time off work.
- (e) I then asked Ms Stunden what her plans might be over the following days, at which Ms Stunden became very emotional and I could not understand her exact words as she was screaming and crying but I believe she said something along the lines of "what plans? If you mean those kinds of plans, yes, I have been thinking about doing it a lot lately". I was not exactly sure what Ms Stunden meant by this but it appeared she was alluding

¹⁴ Harry Shephard Witness Statement [20]

to committing suicide. I told Ms Stunden I was extremely concerned and that I was considering contacting the police to request a welfare check.

- (f) After a few more back and forth comments, Ms Stunden ended the call stating, "Whatever I am going to get drunk."

[34] Mr Shephard then called the Applicant's emergency contact on file, who told Mr Shephard that they were no longer the Applicant's emergency contact.

[35] Mr Shephard later received two text messages from the Applicant:

2:57PM: This is your fault.
You tell me to come to you and act so affronted when I say that I find people to be untrustworthy, but you end up proving my point. I give you real time examples of legitimate discrepancies, and your response is that I'm fixating on the actions of other people. This is the same psychological manipulation I deal with constantly and of course I'm going to end up in this state because all of you would rather scapegoat the person who is consistently upset for being undermined instead of focusing on the weaknesses in the other staff members. You find justification for their behaviour and penalise me for struggling with it, because it does impact my ability to do my job, which you won't acknowledge. I'm told I'm wrong so often when I know I'm not, case in point with the digital coaching and Brian dismissing my concerns about the YAL recipient that we weren't looking after. I think most people would go off the deep end if this was what they had to endure five days a week and your fake concern doesn't make up for any of it.

3:06PM: There was an incident in my apartment several weeks ago and because I listen to my instincts, I ended up being correct. As usual. A guy asked me to let him into the back of my building, he had a weird vibe so I told him to bugger off. Then I came home to a bunch of police officers searching the car and this on the news:
[Video of TikTok news story detailing crime in Fortitude Valley]
Knives and guns. Don't tell me I'm fixated on trivial details when people are like this and I don't let them take advantage.

[36] Mr Blackwood recalled observing the Applicant yell at her colleague, but he did not recall the exact words. He recalled Mr Shephard speaking with the Applicant in a private interview room afterwards. He said he heard the Applicant inside the room, but could not make out what she was saying. Mr Blackwood said he tried to make contact with the Applicant for a welfare check after she left the office, but he did not recall whether he made contact.

[37] When asked about it later during the course of the investigation, Ms G, whom the Applicant had allegedly yelled at, said, "I have reviewed the questions regarding the incident

on 12 December 2024. However, I am sorry to advise that I am unable to recall the details of that day or any interaction with [the Applicant].”¹⁵

[38] The Applicant put forward a very different version of what occurred on 12 December 2024. She said in her written response to the allegations that she had reported concerns to Mr Shephard the day before regarding colleagues not following processes.¹⁶ The Applicant said that she was experiencing “overstimulation causes by the chaotic environment in the waitroom”. In relation to the incident with Ms G, the Applicant said she explained to Ms G that the customer she was assisting was assigned to her. The Applicant said she then pointed at the FOH system and said “my logon is there, this is the customer, she’s assigned to me. I promise.” The Applicant said she then became overwhelmed and told the customer that she needed a moment. When the Applicant encountered Ms G again, she said, “please don’t interrupt me when I’m with the customers like that, it looks unprofessional and I really don’t appreciate it.”

[39] The Applicant said she spoke to Mr Shephard privately and tried to give her version of events. She said that Mr Shephard appeared angry. The Applicant said she expressed her concern that she felt she was being held to a higher standard than her colleagues. The Applicant said they then discussed a new Medicare protocol. The Applicant said Mr Shephard became annoyed. She then described what occurred as follows:

By this point, Mr. Shephard appeared visibly annoyed while I struggled to hold back tears. I tearfully said, “I think I should just leave, I don’t understand why you’ve turned on me. I just want to be left alone so I can do my job. I don’t like it when other people disrupt my process and it happens often.”

He responded loudly “Don’t raise your voice at me” and stood up suddenly, which triggered my startle response. He then stated, “This is done, you need to figure out what you’re doing for the rest of the day.”

I replied, “I’m going home, I’ve decided already. Why are you so angry with me?” He denied being angry and awkwardly left the room. I was left in disbelief, trying to process what had just occurred. Eventually, I gathered the motivation to leave, took my personal effects, and exited the office.

As I was walking to my car, I realized I could not face returning to work the next day, so I called the attendance line and Mr. Blackwood answered. I am deeply concerned that Mr Blackwood’s recollection of this call is so markedly different from my own.

Miss Stunden: “Hey, it’s Jess, I’m just letting you know I won’t be coming in tomorrow. I don’t even know when I’ll be coming back.”

Mr Blackwood: “Have you left already?”

Miss Stunden: “Obviously.”

¹⁵ Digital Hearing Book Volume 2, page 454

¹⁶ Ibid 20

Mr Blackwood: “Is there anyone we can call?”

Miss Stunden: “No one that I feel like speaking to.”

Mr Blackwood: “Are you ok?”

Miss Stunden: “Oh please, we both know you can’t do empathy. I’ll be ok once I’m at home.”

Mr Blackwood: “Are you going to be all right to get home?”

Miss Stunden: “There’s no alternative, so yes.”

Mr Blackwood: “Thanks, Jess.”

Miss Stunden: “Uh huh, see you.”

The comment regarding Mr Blackwood’s capacity for empathy was not intended as an insult; it stemmed from a conversation between us that occurred when I began working at Toowong. Mr Blackwood revealed to me that he didn’t experience empathy, so my observation was not entirely without merit, given his admission.

During this conversation I was on a public street in the middle of the day, and the last thing I would have done in that moment would have been to scream hysterically and draw attention to myself. Mr Shephard’s claim in his email to HR that he could hear my screaming through the phone is inaccurate and easily disproven. In a similar setting at the Fortitude Valley office, I sat at the same proximity to my team leaders as they took calls from people who had been relegated to customer management arrangements. I could only tell the call had escalated by their reaction—holding the phone away from their ear and asking the person to cease yelling. I was never able to hear the content of those calls.

As I started driving, I turned off the CarPlay because I was feeling sensitive to noise. When I turned it back on, I noticed two missed calls from the same number and called back.

When Harry answered, I didn’t hide my irritation, as it felt like he wouldn’t leave me alone. I didn’t say much during the conversation, as I was frustrated that, despite calling in to inform them I wouldn’t be coming in the next day, I couldn’t get away from him. I answered evasively. When I heard him say the word “plan,” I initially thought he was asking if I had “a plan.” I became upset again when I realized he might have been calling because he was worried for my safety, which made me feel guilty for giving the wrong impression. I calmed myself down so I could continue driving and immediately became more cooperative.

I regret mentioning that I had been thinking about doing something impulsive in the lead-up to this incident, but it was the truth, as it had been on my mind recently. Prior to this, I didn’t believe Harry needed to know, but I wanted him to understand how

anxious I was being in that setting and consistently feeling singled out. We didn't discuss the recent events; the conversation was comprised of awkward silences until I reassured him that I was safe and simply going home to be with my cat. When he mentioned involving the police if I wasn't safe, I responded with, "yes, because the QPS have an impeccable reputation when it comes to dealing with anyone who might have mental health issues." He then heard my car indicator and decided to end the call.

Miss Stunden: "My dear, I have you on CarPlay, it's fine."

Mr Shephard: "Yeah, but it's still not safe. I'll let you go so you can drive."

Miss Stunden: "Valid."

Mr Shephard: "Bye Jess."

[40] The Applicant contests Mr Shephard's version of events on 12 December 2024. She said she would never use the phrase "if you cared, you wouldn't make me work in an environment where I'm surrounded with idiots in the first place" because it contains the wrong preposition (it should be "surrounded by idiots"). The Applicant repeated that claim in the hearing. She said "[t]his wording seems more in line with Mr. Shephard's less formal style of speech."

[41] The Applicant takes issue with Mr Shephard's use of the word "hysterical". I will return to that issue later.

[42] In Mr Cini's summary of the video evidence for 12 December 2024, he first summarises the work station footage, which relates to the allegation that the Applicant told her colleague "I fucking assigned them" and "don't fucking talk to me". At two minutes and twenty-one seconds, Mr Cini notes that the Applicant's colleague comes up to her a second time and that the Applicant "appears to react quite abruptly, using her hands to suggest she does not appreciate [Ms G] approaching her again." The Applicant is then observed saying something to her colleague before the two of them walk away. In relation to the interview room, Mr Cini describes the footage as follows:

- The footage provided commences at 11:45:40am and ends at 12:00:25pm (14 minutes 45 seconds long).
- Mr Shephard enters the room first, followed by Ms Stunden, who is holding a blue tray with a laptop open on top.
- Mr Shephard and Ms Stunden sit on opposite sides of the desk.
- At 9 seconds Mr Shephard sits down, while Ms Stunden stands and is doing most of the talking, and she sits down at 22 seconds.
- Ms Stunden appears to be quite animated and is moving her hands a considerable amount. Mr Shephard is sitting in his chair with his hands interlocked and is leaning forward listening to Ms Stunden.
- At 32 seconds Ms Stunden places the laptop on her lap.

- At 1 minute 3 seconds Ms Stunden holds her hands out and appears to talk in a much more animated manner. I would consider it reasonable to view that at this time her voice has risen sharply and the body language is more aggressive. Mr Shephard responds to this by putting his hands up slightly which appears to be an attempt to calm Ms Stunden down.
- Ms Stunden continues to talk to Mr Shephard in an animated manner, using hand gestures to make her point.
- At 1 minute 31 seconds Ms Stunden puts her hands to her face and appears to be visibly upset. She continues to talk but leans back in her chair, and is not making eye contact with Mr Shephard.
- At 1 minute 45 second Ms Stunden appears to be listing some matters, as she raises her right thumb, then her index finger followed by her middle finger.
- Mr Shephard appears to intervene at this point and puts his right hand on the desk.
- Ms Stundens re-commences talking and makes eye contact again with Mr Shephard. She continues to appear to be in a heightened state as evidence by her arm and hand movements.
- I would describe the conversation that follows to be a difficult conversation due to the emotional state Ms Stunden is in. Mr Shephard appears calm and attempts to talk to Ms Stunden, but Ms Stunden does the vast majority of talking, at times talking over Mr Shepphard.
- At 4 minutes 48 seconds, Ms Stunden removes her glasses and throws them on the blue tray, but the glass fall to the floor. She places her hands to her face and appears to be crying, noting she keeps her hand up and head down this is unable to be confirmed.
- At 5 minutes 15 seconds Mr Shephard stands up while Ms Stunden has her hands to her face. He slides his chair under the desk and stands approximately 1 metre back from the desk and does not appear to be talking.
- At 5 minutes 27 seconds Ms Stunden commences speaking again and leans forward to place her laptop on the desk, then bends over to pick her glasses up off the floor. Once picked up she places them on the desk and puts her hands on her face once more, appearing to wipe tears from her eyes.
- Ms Stunden and Mr Shephard engage in conversation, noting Mr Shephard remains standing in the same position. Ms Stunden still appears to be in a heightened state and does most of the talking, using her hands a lot.
- At 6 minutes 45 seconds Ms Stunden takes a tissue from the tissue box on the desk and wipes her eyes.

- At 7 minutes 20 seconds Mr Shephard commences to do more of the talking and leans forward pointing at the table with his index finger while Ms Stunden is looking at her hands.
- Mr Shephard continues to speak and at 7 minutes 48 seconds Ms Stunden crosses her arms and remains motionless while looking toward Mr Shephard, until he exits the rear door at 8 minutes 11 seconds.
- Ms Stunden remains in this position and appears to begin crying at 10 minutes 58 seconds, albeit she does not change position.
- At 14 minutes 12 seconds, Ms Stunden leans forward and takes another tissue and wipes her eyes.
- At 14 minutes 31 seconds Ms Stunden stands up and exits through the rear interview room door, leaving her laptop and blue tray in the room unattended.

13 December 2024

[43] On 13 December 2024, the Applicant called into the absence line. Mr Shephard answered the call, and recalled he had the following conversation with the Applicant:

Me: How are you going?
Ms Stunden: That's a stupid fucking question
Can you code annual leave for me for the next three weeks?
Me: I don't know if we'll be able to approve that
Ms Stunden: Really? Because I was thinking about killing myself last night. Don't even fucking worry about it mate.

[44] Mr Shephard then sent an email to HR detailing the interaction. Mr Shephard later got approval from the Region Manager for the Applicant to take one week's annual leave. Mr Shephard called the Applicant again and recalled having the following conversation:

Ms Stunden: What do you want?
Me: I'm calling to offer annual leave for next week
Ms Stunden: 1 week isn't enough to get over all the bullshit you have put me through
Me: I know it's not the three weeks that you originally asked for, but it's the best that I can offer at this stage
Ms Stunden: Fine
Me: [I asked Ms Stunden about the comments she made in our previous call that morning]
Ms Stunden: I'm just thinking about it, I obviously don't have plans. I wouldn't do it because my cat wouldn't know what's happening. Haven't you ever heard of suicidal ideation?
Me: Yes I understand that you don't have plans, but I am still extremely concerned that you are thinking about it
Ms Stunden: Stop with your fake fucking concern
Me: I am genuinely concerned. Do I need to call you an ambulance?

Ms Stunden: No, I am fine
Me: I'll organise for Matt to give you a call late next week to check in and see how things are travelling
Ms Stunden: Great, I'll probably get another one of those fucking formal counselling things

[45] The Applicant recalled the conversation as follows:

Miss Stunden: "Hi Harry, it's Jess."
Mr Shephard: "Hey Jess, how are you?"
Miss Stunden: "Oh we have inane questions today do we? Goodie. Anyway, I have three weeks of annual leave and I really don't want to be around any of you, so could I use all of it please?"
Mr Shephard: "I'm not sure we'll be able to do that."

This confused me because I knew we were approaching the RAP and my manager, Mr Keogh had offered me leave if things became too much.

Miss Stunden: "Well, I don't know what to suggest; I've started experiencing thoughts of suicide so the situation is pretty dire."

I said that because I wanted him to understand that psychologically I was not doing well, it wasn't a threat predicated on whether he did what I wanted. I knew if I spoke to Mr Keogh, it would result in a different outcome.

Mr Shephard began to say something but I felt myself becoming overwhelmed again, so I didn't allow him to finish.

Miss Stunden: "Never mind about the leave, I need to rest, sorry for bothering you."

Mr Shephard called me later to inform me they had approved a week of annual leave.

Miss Stunden: Thank you for doing that.
Mr Shephard: Jess do I need to call you an ambulance?
Miss Stunden: You do know there's a difference between suicidal ideation and actually going through with it? I'm currently lying in bed with my cat, who I would never leave because she wouldn't understand. It's scary having these types of thoughts again, which is why I asked for time off.
Mr Shephard: Ok
Miss Stunden: Super. I'm going back to sleep.

Investigation

[46] On 13 December 2024, the Applicant received a letter notifying her that she would be investigated in order to determine if she had breached APS Code of Conduct. The letter states:

As the delegate in relation to determining the commencement of investigations into alleged breaches of the APS Code of Conduct, I wish to advise that formal action has commenced to consider allegations that you have repeatedly engaged in behaviour that represents a failure to treat others with respect and courtesy, and may be considering bullying in nature.

Broadly, it is alleged that between 6 November 2024 and today, 13 December 2024 you have displayed a range of unacceptable behaviours, including:

- Raising your voice at customers, colleagues and members of your leadership team
- Using offensive language and profanity, for example words to the effect of ‘FUCK people need to not move my SHIT!’, and swearing at colleagues, ‘don’t fucking talk to me’
- Stating your colleagues are ‘fucking useless’
- Sending a text message to your Manager, Harry Shephard on 12 December 2024 blaming Harry for your unacceptable workplace behaviour earlier that day, and accusing Harry of ‘psychological manipulation’, as well as suggesting Harry’s concern for you is ‘fake’
- Stating ‘That’s a stupid fucking question’ in response to Harry Shephard asking you how you were going when you called the attendance line on 13 December 2024, along with other profanity, before terminating the call.

[47] The Applicant stated that, “[o]n 17 December 2024, shortly after my removal from the workplace and upon receiving the full scope of the allegations I planned to attempt suicide.”

[48] On 20 December 2024, the Applicant received a letter from Ms Michelle Watson, the appointed suspension delegate. The letter notes that the Applicant would be suspended initially with pay, with that decision to be reviewed at regular intervals of approximately 30 days. The letter included three formal directions:

(1) Formal Direction to remain out of the workplace

You are to remain out of the workplace, unless otherwise instructed. If you need to contact the agency to transact business as an agency customer, please contact the Smart Centre, or use online services in the first instance. If you feel that you have a legitimate need to contact your workplace for any reason, you must contact Ross Hannan, Regional Manager on [phone number redacted] in the first instance.

(2) Formal direction not to discuss or reference the allegations

To protect the interests of all concerned and ensure any investigation process is not prejudiced in any way, I am also formally directing you not to discuss, or make reference to, the allegations and/or any other matters referred to in this letter, directly or indirectly, either in person, through a third party, or via a carriage service (including, but not limited to, phone, text, email and/or social media), with any other person, unless that person is representing you or providing support to you in this process, or has an official role in investigating and/or dealing with matters relating to the allegations.

I acknowledge staff at your office may have information relevant to the investigation of the allegations and you will have the opportunity to provide their names to the relevant investigator during the investigation process.

(3) Formal direction not to make contact with others in the Toowong Service Centre

I am also formally directing you not to contact any Toowong Service Centre staff by any means, directly or indirectly, either in person, through a third party, or via a carriage service (including, but not limited to, phone). This includes Matthew Keogh, Brian Blackwood and Harry Shephard.

[49] On 8 January 2025, the appointed investigator, Mr Kendall Cini wrote to the Applicant providing an initial advice letter. The letter includes five allegations (however the allegation for 12 December 2024 was later separated into two separate allegations):

The allegations referred to me for investigation is that that you have repeatedly engaged in behaviour that, if proven, represents a failure to treat others with respect and courtesy, and may be considered bullying in nature:

- 31 October 2024 – your Team Leader, Brian Blackwood, observed you state to a customer “your 10 minutes is up I’ll reassign you.” and then raised your voice again to the customer “your 10 minutes is up!”
- 6 November 2024 – Mr Blackwood observed you raising your voice at a customer and when he approached you, you yelled at him “Stop!”.
- 28 November 2024 – You told Mr Blackwood (in regards to missing paperwork) “someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff”, and “Fuck! people need to not move my shit!”.
- 4 December 2024 – You repeatedly raised your voice at Mr Blackwood, which was overheard by other staff in the office.
- 12 December 2024 – You told a colleague “I fucking assigned them” and “Don’t fucking talk to me”. You then told the Acting Service Centre Manager, Harry Shephard that the other staff member is “fucking useless”, “can’t do their job” and “I am the only person who knows what they’re doing”. Mr Shephard also reports that you were yelling at him words to the effect “you’re setting me up to fail, you are the ones doing this to me” and “You’ve pushed me to the point where I can’t even fucking do my job”.

[50] The Applicant was provided seven days to respond with a statement or other supporting documents. The Applicant responded the next day seeking an additional 7 days to respond. She also sought access to records for including an attendance record for 3 December 2024, a record of a conversation over Microsoft teams on 4 December and 12 December 2024 and an email from Mr Shephard on 4 December 2024. The Applicant stated that she believed the CCTV footage would assist in the investigation. The Applicant was provided with the requested extension.

[51] On 14 January 2025, Mr Cini provided the requested documents. Mr Cini said he would arrange for the Applicant to view the CCTV footage to the Applicant when it was available. The Applicant replied saying, “it’s not really something I’m interested in viewing”.

[52] On 16 January 2025, the Applicant received a letter confirming that her suspension would continue with pay.

[53] On 16 January 2025, the Respondent discovered that the Applicant had sent text messages to another employee at the Toowong Service Centre (who I will call Ms B), and the Applicant had told Ms B not to say anything about the messages. However, as Ms B not yet consented to the Respondent notifying the Applicant that it was aware of the messages, the allegations were not yet put to the Applicant.

[54] A text message from 14 January 2025 from the Applicant to Ms B shows the Applicant asked Ms B to provide the last name of Ms G who was involved in the allegation regarding 12 December 2024. The Applicant’s messages says: “Girl can you please do me a massive favour? I have no one else to ask and I beg you, don’t say anything.” The message goes on to state that the Applicant needed the information because she is preparing a response to the allegations.

[55] On 22 January 2025, the Applicant provided a written response to the allegations. The Applicant provided her version of events for each of the incidents, which I have referred to above. The Applicant concluded her response by stating:

I acknowledge that there have been several regrettable incidents spanning November-December and I am working to ensure I have the appropriate measures in place to prevent a repeat of these instances. I submit that I have observed similar behaviours in my coworkers— such as the use of inappropriate language, speaking loudly and shouting across the office— that have not resulted in similar consequences.

I respectfully put forward that the severity of my actions may have been appropriately mitigated if accommodations had been in place to assist me with my disability. At the time, I was attempting to manage my symptoms independently, and I now understand that this was not the most prudent decision in light of the outcome.

[56] On 14 February 2025, the Applicant was again informed that her suspension would continue with pay. On 19 March 2025, the Applicant received a further letter advising that the suspension would continue with pay, as the investigation was ongoing.

[57] On 21 March 2025, Ms Watson was advised through the Region Manager that the Applicant had sent further text messages to two employees at Toowong Service Centre. On 24 March 2025, Ms Watson received a copy of text messages the Applicant had sent to Ms B while suspended, in the period between December 2024 and March 2025. The text messages included the following conversation on 20 and 21 March 2025:

20 March 2025

Applicant: [Nickname redacted], I’m not trying to protect my job anymore but please don’t tell anyone I messaged you because I still want these

ingrates to pay me. Has anyone come to the office and interviewed you guys about me yet?

I mean, at this point, their directions can eat a bag of day old dick, because they've done some very illegal things to me in this process. Are they still allowing Brian to be acting manager?

Don't ever go into a room with him to speak privately, engage with him only if there are witnesses. Don't ever challenge him. He was sending emails about me to HR for weeks, I can't wait to tell you all about it, it's so cooked.

Harry is a creep too, watch your ass if you have to work with him again

21 March 2025

Ms B: hey jess to be honest im not sure about anything that's happening. i haven't actually been at work sorry

Applicant: Are you ok?

Ms B: yeah i just had the flu for a few weeks so im all good. i kinda thought this whole thing was over

Applicant: With me? Nah, they're trying to get rid of me

So no one has come to interview you outside of the time when you had the flu? Because it's been months since he should have started investigating.

[Applicant sends video, presumably of her cat]

She purrs almost nonstop, apparent cats do that when they're trying to heal people. So even my cat knows I need to heal ASAP.

Also

My contract won't get renewed because of what they've said and done, so I'll punish them in another way.

I know Harry bought an apartment recently and Brian has no money, so this will really screw them both.

You can't just do harmful shit, make false accusations and think you'll get away with it. Harry is unintelligent and Brian is a narcissist. My legal team said they can't believe how brazen and stupid they've all been, including fucking Ross. I've been deemed unsafe to be in the office with

other people, yet he wanted to meet me at the valley office to collect my stuff. So I'm too 'violent' for the Toowong office but I can go to other offices? I told him I'm not going back to the place I was bullied out of and that he can mail it to me. They've also breached so many laws and legislation. Bitch I can't wait to tell you.

[58] As the Applicant later argued that the text messages were selectively presented, I have included the exchange with Ms B's replies.

[59] On 25 March 2025, the Region Manager informed the Conduct Standards teams that Ms B was comfortable for the agency to rely on the text messages Ms B had provided.

[60] On 31 March 2025, the Acting Director of Conduct Standards asked Mr Cini to consider the text messages as part of the investigation on the basis that they may indicated a failure to comply with two of the Ms Watson's directions on 20 December 2024 (the direction not to discuss or make reference to the allegations and the direction not to make contact with Toowong Service Centre staff by any means). The new information also suggested that the Applicant had failed to treat others with respect and courtesy, and failed to uphold APS values, based on what she said about Mr Shephard and Mr Blackwood in those messages.

[61] On 2 April 2025, Mr Cini attempted to call the Applicant to notify her of the new allegations. However, the Applicant did not answer and emailed saying that she would prefer for all communication to be via email going forward and that she would "not be engaging in verbal conversations regarding this matter." Mr Cini said this email marked the start of a "stark shift in Ms Stunden's tone towards me, from pleasant and courteous to adversarial."¹⁷

[62] On 3 April 2025, Mr Cini sent an initial advice letter advising of the new allegations. That letter states:

SUSPECTED BREACH OF THE APS CODE OF CONDUCT

On 8 January 2025, I wrote to you in relation to a suspected breach of the Australian Public Service (APS) Code of Conduct, as set out in section 13 of the Public Service Act 1999 (the PS Act), and of my role investigating this matter. I provided you with the allegations that you have repeatedly engaged in behaviour that, if proven, represents a failure to treat others with respect and courtesy, and may be considered bullying in nature.

I note you responded to these allegations, and my investigation into these matters is continuing.

I am now writing to you to in regards to information provided to me which suggests you may have failed to comply with formal directions (issued in Michelle Watson's suspension decision letter of 20 December 2024) that you:

¹⁷ Kendall Cini Witness Statement [33]

- not discuss or make reference to, the allegations and/or any other matters referred to in this letter, and
- not make contact with any Toowong Service Centre staff by any means

The information also suggests that you may have failed to treat others with respect and courtesy and without harassment, and/or in a manner that may represent a failure to uphold the APS Values.

Specifically, on Thursday, 20 March 2025, Toowong Service Centre employee [Ms B] received a text message from you, asking a question about whether or not [Ms B] has been interviewed yet (in relation to my investigation), comments about agency leaders (Harry Shephard, Brian Blackwood, Ross Hannan), and disparaging comments about agency employees in more general terms (such as referring to wanting to still be paid by ‘the ingrates’).

It is alleged that such behaviour does not reflect the expectations of an employee of Services Australia (the agency) and has the potential to impact the reputation of the agency and the APS.

If proven, your conduct could be in breach of the following elements of the Code of Conduct as set out in section 13 of the PS Act:

- (3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
- (5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.
- (11) An APS employee must at all times behave in a way that upholds:
 - (a) the APS Values and APS Employment Principles; and
 - (b) the integrity and good reputation of the employee's Agency and the APS.

With respect to element 11(a), I suspect that your conduct (if proven) may be a failure to uphold the APS Value ‘Respectful’ which states:

‘The APS respects all people, including their rights and their heritage.’

Presently, I have reached no conclusions as to whether you have, or have not, breached the Code of Conduct. My conclusion that you may have breached elements 3 and 11 of the Code of Conduct referred to above is based on the allegation and my initial assessment of the evidence presently before me.

Taking action in cases of suspected misconduct is primarily aimed at protecting the integrity of the APS, ensuring a satisfactory standard of public service is maintained, and the reputation of the agency and the APS is not affected adversely in the eyes of the public.

[63] The letter goes on to provide a copy of the text messages and the suspension notice of 20 December 2024 containing the directions. The Applicant was given seven days to respond in writing.

[64] The Applicant replied to Mr Cini's email the next day. She alleged that the "it is clear that the directives are aimed at controlling me and preventing other staff from being made aware of the mistreatment I have endured." The Applicant went on to allege that Ms B had been coerced into providing the messages. The Applicant's email goes on to state that Mr Cini's investigation is being conducted in a biased manner. She said that the text messages with Ms B omitted Ms B's replies which demonstrated that it had been selectively presented. On the same day, the Applicant said in a text message to Ms B, "You betrayed me and now these men win".¹⁸

[65] On 4 April 2025, the Applicant emailed Mr Cini again formally asking him to recuse himself from the investigation. The email states:

Here is my official response to your ill-founded allegations.

This investigation has been obstructed by intentional delays and procedural oversights, directly contravening the standards set by the Australian Public Service Code of Conduct. These failures have not only unnecessarily prolonged the investigation but have also created a situation where I have felt significantly isolated and suppressed.

You recently made the decision to include new allegations from 03.04.2025, based on private messages exchanged on 20.03.2025, shortly after I submitted a comprehensive FOI request on 28.03.2025. The timing of this appears retaliatory and suggests an intent to undermine my position in response to a legitimate pursuit of information.

Your reference to the existence of an 'investigation' is questionable, given the lack of expediency in your undertaking of it. It appears that this delay serves to maintain a stagnant procedure, possibly in the hope that I will react out of frustration or resign. The attempt to engage me in a phone conversation after months of silence on the progress of your findings felt nefarious, especially due to the need for documentation in matters like this.

I firmly believe that you have already recognized the original allegations as false. The continued delay seems to be an attempt to buy time while new accusations are sought. If the FOI reveals that you have maintained an open line of communication with Toowong staff for a significant period, it would further demonstrate your lack of impartiality and diligence in handling this matter.

The inclusion of private text messages between myself and [Ms B] as part of this investigation demonstrates a significant lapse in professional judgment. While I acknowledge sending the messages, I question the validity and appropriateness of using them as evidence. These messages were private and not intended for public consumption, and I believe [Ms B] shared them as a means of self-preservation, given

¹⁸ Digital Hearing Book Volume 2, page 421

the hostile environment created by my abusers and the rumours that are frequently spread amongst members of staff.

I'll remind you that the APS Code of Conduct clearly states that investigations must be conducted promptly and without unreasonable delay. Your ongoing failure to meet these standards has directly impacted my ability to move forward and maintain a fair process. The fact that the restrictive directions remain in place is a direct result of your failure to adhere to a reasonable timeframe. These directions have become less about preserving the integrity of the investigation and more about exerting control over me, as the process has already been compromised due to your mishandling.

Your selective use of evidence and disregard for contextual or exculpatory information further demonstrates a clear bias. Focusing on private messages while ignoring derogatory and discriminatory language used against me in official correspondence further supports my belief that you're taking a specific approach.

If private communications are being scrutinized as part of this investigation, I expect the same standards to be applied to all staff at the Toowong office. It would be fundamentally unjust to single me out while allowing others to discuss the matter without similar repercussions.

The approach of focusing solely on my communication, rather than addressing systemic issues and misconduct by those who made false accusations is evidence of Confirmation Bias. Moreover, your apparent lack of understanding of ADHD and its impact on communication style is evident in how my messages have been interpreted. Sending multiple texts rapidly or changing topics mid-conversation is a characteristic of my neurodivergence, not harassment.

Your lack of attention to detail was apparent from the beginning, particularly when you mistakenly referred to Michelle Watson by a different surname in your first email to me. This calls into question your ability to conduct an accurate and fair investigation, especially one involving a neurodivergent individual.

Due to the clear bias and procedural flaws throughout your handling of this matter, I am formally requesting that you recuse yourself from this investigation. Your failure to remain impartial, your disregard for evidence that contradicts the allegations, and your apparent intent to retaliate have significantly compromised the process.

I have amended my Freedom of Information request to include any discussions or correspondence regarding the acquisition and use of the text messages. Additionally, I have submitted a second complaint to the Australian Public Service Commission, requesting intervention to address your involvement.

I will not be dissuaded or silenced by these tactics. My pursuit of justice and accountability will continue, and I will ensure that all parties are held accountable.

[66] The Applicant's email contains a number of incorrect assertions or assumptions. Firstly, there is no evidence that Mr Cini was aware of the Freedom of Information request until 3 April

2025, when the Applicant mentioned it in an email to him. Ordinarily those requests would be dealt with by a different department, such as the legal department. Secondly, the Applicant seems to assume that she is under investigation for harassment of Ms B via the text messages. But the initial advice letter states: “The information also suggests that you may have failed to treat others with respect and courtesy and without harassment, and/or in a manner that may represent a failure to uphold the APS Values.” In context, this reads as a reference to the Applicant’s disparaging comments about Mr Shephard and Mr Blackwood in the messages. Third, Mr Cini was not referring to Ms Michelle Watson but was referring to the Acting Director of Conduct Standards, Ms Michelle Bethune.

[67] On 4 April 2025 Mr Cini responded confirming he would not be recusing himself. He stated:

Hi Jessica,

I confirm I have received your email and will consider your comments in forming my preliminary findings.

Thank you for letting me know about your FOI request. I was not aware of this request until you told me yesterday.

While there has been some delay to the investigation, this has not been intentional and I am working to expedite the matter. At this stage, I anticipate to be able to write to you with my preliminary findings in the next fortnight.

Please note that in my first email to you I referenced a letter you received from Michelle Bethune, who was the acting Director of Conduct Standards at the time, to advise she had determined that a Code of Conduct investigation will commence. Michelle Watson is the suspension delegate, and this may be the reason as to why you thought I had made a mistake with her surname.

You have requested that I recuse myself and that a new investigator be appointed in this matter. I do not consider this as necessary or appropriate and am satisfied that I have, and will continue to, undertake the investigation in a manner which is independent and unbiased, and which affords you procedural fairness.

Suspension changed to be without pay

[68] On 4 April 2025, Ms Watson emailed the Applicant advising proposing to suspend the Applicant *without* pay and inviting the Applicant to provide comment. The Applicant responded on the same day, stating:

The decision to suspend me without pay would put me in severe financial hardship. You are aware that I have been unable to seek other employment due to the toll this situation has taken on me, both emotionally and mentally. The continuation of the suspension without pay under these circumstances is not only punitive but demonstrates a lack of understanding and care for the real-world impact this has on my livelihood.

Firstly, I would like to express my serious concerns regarding the conduct and integrity of the investigation being conducted by Kendall Cini. The recent inclusion of new allegations dated 20 March 2025, only after I submitted a comprehensive FOI request on 28 March 2025, appears retaliatory and lacks procedural fairness. It raises significant questions about the impartiality and efficiency of the investigation process, particularly given the timing and nature of the new allegations.

Furthermore, I believe that Kendall's ongoing failure to adhere to an expeditious and fair investigation process is not in line with the APS Code of Conduct. The directive to refrain from communicating with colleagues remains in place solely because of the protracted nature of this investigation, which has been unnecessarily delayed. The ongoing restriction of my communication is not about maintaining the integrity of the investigation but rather an attempt to control my actions while Kendall fails to progress the case in a timely manner.

I have made formal complaints to the following governing bodies regarding the mishandling of the investigation, breaches of the APS Code of Conduct, and discrimination based on my disability:

- Australian Public Service Commission (APSC)
- Australian Human Rights Commission (AHRC)
- Office of the Commonwealth Ombudsman
- Office of the Information Commissioner (OAIC)

It is unreasonable for the agency to keep me in a state of uncertainty while simultaneously imposing restrictive directives on who I may communicate with, particularly when these directives are being enforced selectively. This imbalance of power not only perpetuates an environment of intimidation but also highlights a blatant disregard for the APS Code of Conduct. It is unacceptable that I am held to a standard that the agency itself consistently fails to meet.

I also request immediate access to my entire leave balance. I am considering immediate resignation, at which point the agency will no longer have the capacity to control my actions. The directives currently in place hold little merit if the agency itself is not willing to adhere to legislative processes.

I am not willing to wait an entire weekend for your decision. You need to inform me of it today. You are well aware of the level of emotional distress this situation has caused me and there is clear intent from you to ensure complete deterioration. Further antagonising my state of mind by sending a list of numbers I can call is not a welcome response.

[69] On 4 April 2025, Ms Watson responded providing her decision for the Applicant's suspension to be without pay. The letter confirming the decision stated:

On 4 April 2025, I wrote to you and advised that I had subsequently received information that alleges you have failed to comply with the formal directions issued to you on 20 December 2024 and may have also failed to treat others with respect and courtesy and without harassment.

As a result of the additional allegations, I advised you I was now proposing to continue your suspension from duty, however without pay...

Having considered the information currently before me, including your responses, I have decided to continue your suspension from duty, however, without pay, effective immediately and until further notice. This is because I am of the view that:

- your alleged misconduct, if proven, would likely represent a serious breach of the APS Code of Conduct
- the nature of the allegations is very serious and suggest you may have behaved in a manner that is inconsistent with the agency's expectations in regard to employee conduct and behaviour in connection with the workplace
- your alleged actions could reasonably be considered to have compromised the agency's ability to trust and/or have confidence in you adhering to your behavioural expectations; given it is alleged you have failed to comply with formal directions issued to you, and during an active Code of Conduct investigation into allegations of serious misconduct
- your alleged actions present a potential risk to the agency's reputation and public confidence in the agency, given your standing as a public official and agency representative.

In such circumstances, I hold the view that a reassignment of duties or working from home arrangement would not be appropriate. Rather, I consider it is in the agency's interests that you remain temporarily suspended from duty, without pay, while these matters are under investigation. I appreciate the financial impact suspension from duty without pay may have on you and I have not made this decision lightly.

The Services Australia Code of Conduct Manual states:

'Prior to making a decision the delegate must satisfy themselves that the employee has exhausted available annual and long service leave credits. Where leave credits have not been exhausted, it is unlikely that the employee could make a case that suspension be with pay on hardship grounds.'

Where leave credits have been exhausted and the delegate is satisfied that suspension without any pay would cause an employee significant financial hardship, the delegate may determine that the employee receive an amount of pay during the period of suspension, the amount being sufficient for the employee to cover the cost of their essential living requirements.

The delegate will also consider the seriousness of the breach, as a breach may be so serious that the delegate may attach little weight to the issue of financial hardship when reaching their decision.'

[70] The letter goes on to state that the Applicant may access accrued annual leave, but that personal leave will not be approved. The letter states that the suspension decision will be reviewed at intervals of approximately 30 days. The letter summarises the formal directions given on 20 December 2024.

[71] The Applicant sent Ms Watson an email notifying her that she would performing volunteer work for Stephen Bates' office (the Member of Parliament for Brisbane at the time). She said that during a visit to the office, Mr Blackwood had called the office and the Applicant

answered the phone. The Applicant said “it may be necessary to advise all of them to refrain from contacting the MP’s office. I will be there quite often leading up to the election.” Ms Watson replied confirming that she did not consider the Applicant’s volunteer work to be a conflict of interest. Ms Watson said that the agency could not prevent employees of the Toowong Service Centre from contacting the MP’s office in their capacity as private citizens. She said that it would not be a breach of the direction if one of the employees of the Toowong Service Centre called the MP’s office and the Applicant answered and assisted them in accordance with her volunteer role. But the Applicant was still bound by the direction not to discuss the allegations. The Applicant replied with, “You will not tell me how to perform my volunteer role.”

Preliminary findings

[72] On 22 April 2025, Mr Cini sent the Applicant his preliminary findings. The Applicant was given 7 days to respond. The draft investigation report says:

Dear Ms Stunden,

I have previously written to you and informed you that you were suspected of having breached the APS Code of Conduct, as set out in section 13 of the Public Service Act 1999 (the PS Act). I have invited you to comment on the allegations and/or to provide additional information for my consideration.

I have now considered the evidence, including your responses, and have prepared a draft investigation report (see attached) documenting my preliminary findings in regards to the allegations.

Summary of preliminary findings

In short, the preliminary findings of my investigation are as follows:

<u>Allegation</u> You have repeatedly engaged in behaviour that, if proven, represents a failure to treat others with respect and courtesy, and may be considered bullying in nature:	Preliminary view	Section(s) of the APS Code of Conduct breached
1. On 31 October 2024 your Team Leader, Brian Blackwood, observed you state to a customer “your 10 minutes is up I’ll reassign you.” and then raised your voice again to the customer “your 10 minutes is up!”	No finding – addressed in formal counselling on 19 November 2024	N/A

2. On 6 November 2024 Mr Blackwood observed you raising your voice at a customer and when he approached you, you yelled at him “Stop!”.	No finding – addressed in formal counselling on 19 November 2024	N/A
3. On 28 November 2024 you told Mr Blackwood (in regards to missing paperwork) “someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff”, and “Fuck! people need to not move my shit!”	Allegation substantiated	Sections 3 and 11(a&b)
4. On 4 December 2024, you raised your voice at Mr Blackwood, which was overheard by other staff in the office.	Allegation Substantiated	Sections 3 and 11(a&b)
5. On 12 December 2024, you told a colleague “I fucking assigned them” and “Don’t fucking talk to me”. You then told the Acting Service Centre Manager, Harry Shephard that the other staff member is “fucking useless”, “can’t do their job” and “I am the only person who knows what they’re doing”. Mr Shephard also reports that you were yelling at him words to the effect “you’re setting me up to fail, you are the ones doing this to me” and “You’ve pushed me to the point where I can’t even fucking do my job”.	Allegation Substantiated	Sections 3 and 11(a&b)
6. After leaving the office on 12 December 2024, you had phone conversations with Mr Blackwood and Mr Shephard, in which you stated to them: o “No I am not fucking okay” o “No I fucking won’t be” o “You can’t do anything”... “You don’t fucking care”	Allegation Substantiated	Sections 3 and 11(a&b)

o “If you cared, you wouldn’t make me work in an environment where I’m surrounded with idiots in the first place” o “You have done this to me”... “This is your fault, don’t pretend to care”		
7. On 13 December 2024 – You called the absence reporting line and spoke to Mr Shephard, where you stated, “That’s a stupid fucking question” and “Don’t even fucking worry about it mate”, then you terminated the call.	Allegation Substantiated	Sections 3 and 11(a&b)
8. You have failed to comply with formal directions (issued in Michelle Watson’s suspension decision letter of 20 December 2024) that you: • not discuss or make reference to, the allegations and/or any other matters referred to in this letter, and • not make contact with any Toowong Service Centre staff by any means The information also suggests that you may have failed to treat others with respect and courtesy and without harassment, and/or in a manner that may represent a failure to uphold the	Allegation Substantiated	Sections 3 and 11(a&b)

[73] The draft investigation report goes on to explain how Mr Cini reached his preliminary views. He summarised and provided copies of the evidence he relied upon. That included contemporaneous emails sent to HR by Mr Blackwood and Mr Shephard. He summarised the Applicant’s response to the allegations. Mr Cini states that he viewed and assessed the CCTV footage and provided a copy of his summary of the footage. He said that the footage of 4 December 2024 indicated the interactions between Mr Blackwood and the Applicant were “ordinary workplace interactions” in which neither of them were emotive in their body language and where there was no movement from other staff nearby. Mr Cini says that the footage from 12 December 2024 overall suggests that the Applicant was upset and frustrated when her colleague approached her at the counter. Mr Cini also says: “You were also visibly upset and

highly emotive in the interview room with Mr Shephard and he does appear to try to de-escalate your behaviour during the meeting.”¹⁹

[74] Mr Cini says in the report that he sought information from three employees including Mr Blackwood and Mr Shephard.²⁰ The emails from those employees were provided to the Applicant.

[75] Mr Cini states that he is of the view that allegations 1 and 2 were managed in the formal counselling session.

[76] Mr Cini’s preliminary view was that the Applicant raised her voice in front of customers and staff on 28 November 2024 and used words to the effect of “No, someone clearly took it, I hate it when people move my stuff, why would someone FUCKING move my stuff” and “FUCK! people need to not move my shit!”. Mr Cini notes that the Applicant’s Teams messages with Ms B include a reference to a swear jar and to the Applicant swearing at work. He states that he was satisfied that “it is not beyond reason that when faced with a stressful situation in which you felt someone had taken your customer paperwork, which upset you, that you would use the language as described by Mr Blackwood”. Mr Cini stated that there was no evidence which indicated that Mr Blackwood had reason to lie.

[77] Mr Cini acknowledged that the CCTV footage of 4 December 2024 is “limited in its evidence value” as there is no outward display of emotion in that footage. However, he notes that the Applicant’s teams messages of that date demonstrate the frustration she was feeling. He records that the CCTV timeline aligns with Mr Blackwood’s description of events. Mr Cini accepts that the Applicant may have had legitimate concerns related to helping the customer, but said that if she was concerned that Mr Blackwood’s instructions were incorrect, she could have escalated the matter through formal channels, rather than raising her voice at him.

[78] Mr Cini said that the Applicant’s Teams messages throughout the day on 12 December 2024 demonstrate that she was in an agitated state. He said that though the Applicant’s colleague said she did not recall the “I fucking assigned them”...“Don’t fucking talk to me” comments, it did not mean the Applicant had not used those words.²¹ Mr Cini says that the Applicant’s heightened state and the profane language she used with Mr Shephard later in means it is more probable than not that the Applicant did use words similar to “I fucking assigned them” and “Don’t fucking talk to me”.²² Mr Cini said that though Mr Blackwood did not recall his telephone call with the Applicant on 12 December 2024, the Applicant had noted that she did call Mr Blackwood in her response on 22 January 2025. Mr Cini said that “Mr Shephard’s statement at the time, and his subsequent recollection of the phone calls, sufficiently substantiates the allegations.” Mr Cini stated that the CCTV footage of the conversation in the interview room was more consistent with Mr Shephard’s report, also taking into account her Teams messages sent on the day which Mr Cini described as “combative”. Mr Cini noted the Applicant had acknowledged that Mr Shephard was only acting as manager for two weeks. Mr

¹⁹ Digital Hearing Book Volume 2 page 485

²⁰ Ibid 487

²¹ Digital Hearing Book Volume 2 page 499

²² Ibid 499

Cini said that confirmed that Mr Shephard has no material interest in providing false information about the Applicant's behaviour.

[79] In relation to the allegation about the Applicant's behaviour on 13 December 2024, Mr Cini notes that the Mr Shephard provided a summary of the phone call to HR "immediately after the phone call". Mr Cini said that there was no reason to suggest that Mr Shephard would lie. Mr Cini also said that the language used in the phone call was consistent with the previous day's incident.

[80] Mr Cini was satisfied that the directions issued to the Applicant were lawful and reasonable. He stated that the Applicant was required not to contact anyone from the Toowong Service and that the Applicant had breached the directions in her text messages with Ms B. Mr Cini said:

I am not presently satisfied there is any reasonable explanation for your failure to comply with the directions. While I note you state that the directions only remained in place due to the investigation being unreasonably delayed, I do not accept this as an acceptable reason to disregard the directions. Objectively, I am of the view you held a careless indifference to meeting your obligations as opposed to a genuine inability to comply with the directions, as evidence by your statement to [Ms B] "I mean, at this point, their directions can eat a bag of day old dick".

[81] Mr Cini was also satisfied that the Applicant's text messages demonstrated a failure to treat others with courtesy and respect and without harassment.

[82] Mr Cini's found that the Applicant had breached the following sections of the APS Code of Conduct:

(3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.

(5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.

(11) An APS employee must at all times behave in a way that upholds:

- (a) the APS Values and APS Employment Principles; and
- (b) the integrity and good reputation of the employee's Agency and the APS.

[83] Mr Cini noted the Applicant had completed seven relevant training courses during her employment, had access to the Code of Conduct and should have known her obligation to follow the Code of Conduct.

[84] On 22 April 2025, the Applicant replied to Mr Cini's email stating:

Thank you for providing written evidence of your bias. My assumption that you would rely on hearsay was correct and I look forward to discrediting you.

[85] The Applicant responded to the preliminary findings on 23 April 2025 with the following:

I've considered responding to your 'findings', however I've come to the realisation that you are not capable of comprehending said response—let alone reflecting on it with the competence your role demands. Attempting to reason with you has proven futile, as you've repeatedly demonstrated an alarming lack of critical thinking and ethical integrity.

You've fumbled every obligation required of you, needlessly dragging out this investigation while selectively acting on evidence, manipulating timelines, and ignoring basic standards of procedural fairness. What's worse is that you did so under the illusion of authority, mistaking your title for capability. You're not an investigator—you're a perpetrator.

I now request that you do not contact me again. You are complicit in this system of abuse and retaliation and your role in this matter is finished. The sanction delegate possesses the skill and impartiality required to handle what comes next, while I invite numerous governing bodies to scrutinise your negligence.

You've made a serious miscalculation. You targeted someone articulate and unrelenting; a former model who naturally commands attention and is determined to ensure your misconduct endures a public reckoning. You, by contrast, are the embodiment of mediocrity: forgettable, insecure, and wholly unprepared for scrutiny.

Whatever power you think you hold ends here. The underlying theme in all of this is cowardice—specifically from men who view opinionated women as unstable, and who mistake confidence for threat. This was Harry's problem. It was Brian's problem. And it's yours. Each of you made the same prejudiced assumption: that someone with a cognitive disability must be erratic and incapable.

[86] On 30 April 2025, Mr Cini wrote to the Applicant confirming the outcome of the investigation. The outcome was as per the draft investigation report, which I have set out above. The Applicant was advised that the matter would be referred to the Sanction delegate to determine the sanction.

[87] The Applicant states that she attempted suicide on 1 May 2025 as a result of the decision that she had breached the APS Code of Conduct. She sent an email that day to Ms Watson copying in three other employees including Mr Shephard. The subject line of the email is: "You can't terminate a dead girl." The email reads:

I'm letting you know that I've made preparations to end my life—on my parents' property, though no one knows where that is. My phone has started ringing since I've begun making the necessary preparations, so after this, it will be on flight mode. My emergency contact and I no longer speak, so that won't get you very far.

Before you pat yourselves on the back for orchestrating my removal, know this: every document, every piece of evidence of your coordinated misconduct and systemic abuse has already been sent to my psychologist, who has been granted full permission to go public in the event of my death. The APS Code of Conduct might be binding on the living—but I suppose it offers little leverage over a dead woman.

The APSC, Commonwealth Ombudsman, and AHRC have received detailed complaints. Each names you. Every email, every act of negligence, every lie and omission is on record—and a trusted party has access to the multiple FOI requests I've submitted. Nothing will disappear quietly.

You didn't just end a career—you stripped me of everything I had built. You all know the presence I carry and the community support I earned through my volunteer work. That's something else you took from me when your actions prevented the overtime I took on for that specific project, which meant I could no longer afford to continue. The homeless community in Musgrave park went without my contributions for almost six months. You even tainted my time with Stephen Bates' office—Brian, that was me you spoke to on the phone on April 4th. The moment I heard your voice, I couldn't continue. That entire office will come to understand exactly who you are and what you've done. Our MP, who is likely to be re-elected, will know all of your names. I've sent a wad of documents to him as well.

You allow someone like Harry Shephard - with his barely developed prefrontal cortex and emails that read like a Rorschach test from Temu - to be in a position of authority. A man who made sexually inappropriate remarks to me and orchestrated my termination as part of his abuse. That speaks volumes about the standards you uphold and will be made public as well.

You have no integrity. No decency. No moral compass. You will read this and spin it into another bureaucratic deflection, because that's all you know how to do. But unlike you, I have nothing left to lose—and that should terrify you.

You all know what I look like, I'm aware that it has something to do with your unadulterated dislike of me; being pretty and having an opinion terrifies weak people. Michelle if you haven't been made aware, my instagram is public. People are going to hate Services Australia so much more when they learn that you targeted a disabled girl, with a face card that doesn't decline. That is the comfort I'll take with me, as well as the knowledge that I'm about to rock the boat in my wake.

[88] The email was copied to the Region Manager, who arranged for Queensland Police (QPS) to perform a welfare check. The next day QPS confirmed that the Applicant was safe.²³

[89] On 6 May 2025, Ms Watson sent emailed the Applicant with her proposal that the Applicant would continue on unpaid suspension. The Applicant replied with “[y]ou’re a monster” and then sent the below email:

²³ Amie Davies Witness Statement

Dear Michelle,

This is my formal response to your proposal to continue my suspension without pay.

You are fully aware that the 30-day limit imposed by Public Service Regulation 3.10(6) has now passed, and no lawful determination of “exceptional circumstances” has been issued. Your decision to continue withholding my pay is not only procedurally unlawful—it is punitive, retaliatory, and deeply unethical.

I sent a suicide note in a state of acute psychological distress, after enduring prolonged mistreatment and isolation, including sexual harassment by staff you continue to protect. The department ignored it. No one reached out. No one confirmed whether I was even alive. I am only still here because other people—outside this agency—took steps to save my life. Your department did nothing.

You’ve been waiting for an excuse to stop paying me since the beginning, and now you’re using a mental health crisis as your justification. I see right through you. Your actions have left me in financial crisis. The loss of my income means I will lose everything—my housing, my safety, my future. And the way you are moving forward makes it clear: this is the outcome you want. I would not put it past you to issue a sanction to my corpse, and frankly, it now appears you are deliberately trying to ensure that’s what you receive.

Had Services Australia followed proper procedure—when I reported mistreatment, when I asked for support, when I made it clear I was at risk—none of this would be happening. The reputation of the agency would have remained intact, and your name would not be attached to this level of cruelty.

Instead, you’ve escalated a situation that was already critical, and it is now abundantly clear that you have made a grave error in judgment.

[90] The Applicant sent an email to the CEO of the Respondent shortly after:

Dear Mr Hazlehurst,

I am writing to formally advise you of a matter that raises extraordinary concern involving the unlawful continuation of my suspension without pay, deliberate neglect of a suicide disclosure, and sustained retaliation during a prolonged and mismanaged investigation.

I have been suspended since 13 December 2024. Over the past five months, I have received dated internal emails that strongly suggest the investigation has been deliberately prolonged. Despite this, my pay was ceased on 4 April 2025, and now—well beyond the 30-day legal limit—Michelle Watson is attempting to justify continued non-payment without a lawful determination of “exceptional circumstances” under Public Service Regulation 3.10(6).

On 01.05.2025 I sent a suicide note to Services Australia staff, including Conduct Standards. It included disclosures of suicidal intent, sexual harassment by a team leader, and the psychological harm caused by continued workplace mistreatment. There was no response, no acknowledgement, no welfare check. I am only alive because someone outside the agency took steps to intervene. Services Australia did nothing.

Ms Watson has now resumed correspondence as if nothing occurred, proposing to continue my suspension without pay. Her decision shows clear signs of retaliation, and appears to be an attempt to use my mental health crisis as justification for further harm. It is clear she has been waiting for an excuse to revoke my income from the outset, and that she now views my suicide note as convenient.

As a result, I am in severe financial crisis and at risk of losing everything—my housing, my stability, and my life. I would not put it past your department to issue a sanction post-mortem. The pattern of indifference and cruelty is unmistakable.

Had Services Australia followed proper procedure—when I reported mistreatment, when I requested support, when I disclosed risk—none of this would be happening. The reputation of the agency would have remained intact, and Ms Watson’s name would not be attached to this level of cruelty.

Should this not be immediately rectified, please note that I’ve have already escalated this to every external body available and preparing full public disclosure of what I have endured.

[91] Ms Amie Davies, Director of Conduct Standards, called the Applicant after this email was received. She described the conversation as follows in her witness statement:

At 2:41pm on 6 May 2025, Ms Stunden returned my call. I introduced myself and explained that I was calling to check on her wellbeing. The gist of our conversation was as follows:

- (a) Ms Stunden told me she was not okay, was suicidal as she had been suspended since December 2024, alleged she had been sexually harassed by her Team Leader and that the Team Leader had orchestrated ‘all of this’ to get her;
- (b) I asked Ms Stunden where she was and she told me she was at home with her housemate;
- (c) I asked Ms Stunden if she had contacted the Respect team about the alleged sexual harassment and she said “they won’t listen” and did not provide me with any other details;
- (d) Ms Stunden spoke about her view that there were unlawful processes being conducted (in respect of the Investigation and sanction processes) and that it needed to stop. I explained that I was not involved in those processes or decisions and reminded her that she would have an opportunity to respond as part of the process and the right to seek a review, which Ms Stunden told me she did not have the energy to do;

- (e) I attempted to redirect the conversation back to wellbeing supports, at which point Ms Stunden's behaviour changed and she became aggressive and started yelling at me, saying words to the effect of "I don't have any fucking support", "you're complicit in this", "you need to friggen make sure your people are doing the right thing", "what is your name... I'm going to write to the APS Commissioner about you and then you're in trouble" (to which I gave Ms Stunden my full name) and "everybody already hates Services Australia and now they will know about you."
- (f) I found it difficult to interject while Ms Stunden was screaming at me. I asked Ms Stunden if I could provide her with information about mental health and wellbeing supports available to her and Ms Stunden yelled "don't you dare send me a single thing" before terminating the call.

[92] The Applicant then sent text messages to Ms Davies as follows:

3:11pm "If you're aware of everything they're doing, all of which is unlawful, you're complicit. If you aren't planning to compel them to do their job correctly, you're complicit. Your name is going on every complaint and I will speak it publicly; the agency has taken everything from me."

[An image of the Agency's Organisational Structure]

"You're not even on here, you're nobody."

"One of Michelle's staff members, I'd imagine."

"Oh that was a serious misstep on your part. I can't believe how you people behave."

[93] The Applicant sent an email to Ms Watson in the afternoon on 6 May 2025, saying:

I've decided to go through with it. The police can't triangulate my phone and find me, I learned that last time. I've changed my plan too. I bet you're jumping for joy over having destroyed my life.

[94] At 4:45pm on 6 May 2025, Ms Davies received a text message from the Applicant stating, "I'm going to end my life now and your name will be attached to this. Good job!" After the Applicant received this last message she contacted Ross Hannan the Region Manager to ask him to ask QPS to do a welfare check. Ms Davies stated that she was informed the next day that QPS had located the Applicant and transported her by ambulance.

[95] On 6 May 2025, the Applicant made a public Instagram story post with the Title "I'm not dead", which says:

If you want to know who is responsible for me no longer being here it's the following: Harry Shephard, Brian Blackwood, Kendall Cini, Ross Hannan and Michelle Watson. If you ever meet these people, run.

[96] Over 7-8 May 2025, the Applicant sent a number of emails to Ms Watson:

- Advising that the Applicant will not be responding to any further correspondence.
- An email with the subject line “243 people already know your names” and message: “It’s about to get much, much worse.” The email contains a screenshot showing who has viewed the public Instagram story referred to above.
- An email stating the Respondent could not claim “exceptional circumstances” for the review decision being provided after more than 30 days.

[97] On 11 May 2025, the Applicant texted Mr Shephard with a screenshot of a sexual harassment complaint she had made about Mr Shephard:

I'm no longer in denial about who was at the centre of this. I've been hospitalised three times since you decided to dismantle me, and I know you haven't felt a flicker of guilt.

I want you to understand that other women deserve to be protected from men like you.

I will inundate every avenue if necessary. I'm not nearly done, but you will be.

[98] The Applicant later sent Mr Shephard a screenshot of a Commonwealth Ombudsman complaint, saying he was part of that too. The Applicant sent the same screenshot to Mr Blackwood.

[99] On 12 May 2025, Ms Davies emailed the Applicant providing a copy of Ms Watson’s decision to continue the Applicant’s suspension without pay. The email also stated:

For your action – by 5pm Monday 19 May 2025

Noting you have made several recent statements to the agency indicating intent to self-harm, the agency is concerned for your safety and would like to ensure you are accessing supports. Therefore, before you can be provided with the sanction delegate’s preliminary view on sanction, you must take one of the following actions by no later than 5pm Monday 19 May 2025:

1. Provide medical evidence that you are fit to participate in the sanction process.

OR

2. Provide your consent for the agency to release any sanction correspondence to you via your treating medical practitioner. You can provide your consent by replying to this email with the details of your nominated medical practitioner, as follows:

My nominated Medical Practitioner	
Name:	
Practice:	
Address:	
Phone:	
Email:	

Formal directions

The agency is also extremely concerned with the multiple recent emails and text messages that you have sent to several agency staff, and your social media post naming agency staff, all of which are inappropriate and pose a risk to the health and wellbeing of staff members of the agency.

I note you have sent these emails and messages despite formal written directions in place not to discuss or make reference to the allegations with any person who does not have a role in the Code process and not to contact any staff of the Toowong Service Centre by any means.

We all deserve to feel safe and be treated with respect. Given the concerns regarding the impact of your behaviour on others, I am issuing you with the following formal directions, with which you must comply.

FORMAL DIRECTIONS

- You **must not** make any contact with staff of the Toowong Service Centre, by any means.
- You **must not** make any contact with agency staff members Ross Hannan, Matthew Keogh, [redacted], Brian Blackwood, Harry Shephard, [Ms B] and [redacted], by any means.
- You **must** immediately remove your social media post which names agency staff members.
- You **must not** post any further social media posts which names agency staff or which makes reference to workplace matters, including any workplace complaints or grievances you have with the agency or staff of the agency.
- When engaging with the agency, you **must** do so in a respectful and courteous manner.

Should you have a legitimate need to contact your manager, you can do so via [email redacted].

You are legally obligated to comply with these formal directions under section 13(5) of the *Public Service Act 1999*. Failure to comply with a formal direction may represent a breach of the Code of Conduct and may result in further disciplinary action.

Complaint

I acknowledge the complaint you sent to the Conduct Standards positional mailbox on 11 May 2025 about your former acting Service Centre Manager.

Your complaint is currently being assessed.

In your complaint you advise that you had ‘retained detailed supporting evidence’. To support assessment of your complaint can you please provide this documentation to the agency.

Please also provide the names of any witnesses to the alleged incidents. (Note, you must not make any contact with witnesses).

Wellbeing supports

As noted above, the agency is concerned about your safety and wellbeing. I remind you that the Employee Assistance Program (EAP) is available to you for support. The EAP provides free and confidential counselling services and can be accessed by contacting TELUS Health on [phone number redacted] (available 24/7).

I have also attached a flyer with information about additional mental health support services.

If you have any questions regarding the above, please email these to [email redacted].

[100] The Applicant responded to the email by sending screenshots and posting more public Instagram stories, which said:

First post

The agency that ignored harassment, dragged out an investigation for six months, and unlawfully suspended me without pay is now demanding I delete my post.

Apparently naming the people who made me suicidal is more offensive than the fact they still have jobs.

They've weaponised my mental health, punished me for speaking up, and now they're threatening me for not suffering in silence.

You don't get to abuse someone, ignore every rule, and then tell them how to survive it.

I'm not afraid of you. You should be afraid of what happens when the public hears the whole story.

#whistleblower #whistleblowerprotection
#publicinterestdisclosure #speakup #servicesaustralia
#apsintegrity #systemicabuse

Second post

The Merit Protection Commissioner is now involved and these people are about to be exposed. I would love it if the director of the conduct standards department was stood down for misconduct.

#servicesaustralia #sexdiscrimination
#disabilitydiscrimination #workplaceretaliation
#hrfailure #publicserviceabuse #neurodivergentrights
#adhdnotaviolencerisk #sexualharassmentisreal
#believedisabledwomen

Third post

Funny how the agency used to defend would rather weaponise my disability than protect me from abuse. Now I get to relive that trauma every time they refuse to act.

[Screenshot stating “AHRC Complaint Individual Discrimination: Mr Harry Shephard”]

#servicesaustralia #sexdiscrimination #disabilitydiscrimination
#workplaceretaliation #hrfailure #publicserviceabuse
#neurodivergentrights #adhdnotoviolencerisk
#sexualharassmentinreal #believedisabledwomen.
#thisiswhywomendon'treport #hewasprotected #theyletithappen
#whatwasimeanttoto #theyframedme #punishedforspeakingup
#youcallthissupport #fixtheaps #humanrightscomplaint
#demandaccountability #breakthesilence #exposethesystem.
#justiceforworkers #whistleblowerprotectionnow

Fourth post

They ordered me to take my post down so I made a new story and sent a screenshot of it to them. That's the same thing right?
#oops #watchmework

[101] On 15 May 2025, the Applicant applied to the Merit Protection Commissioner (**MPC**) for a review of Mr Cini’s decision of 30 April 2025 which found that the Applicant had breached the APS Code of Conduct.

[102] On 16 May 2025, Ms Davies wrote to the Applicant seeking to confirm how the Applicant’s wished to receive correspondence from the sanction delegate. Ms Davies’ email stated:

Separately, please note that I am awaiting your response to my email of 12 May on how you would like to receive correspondence from the sanction delegate. Options include

1. Provide medical evidence that you are fit to participate in the sanction process.
- OR
2. Provide consent to release the correspondence to you via your medical practitioner.

A third option is also available and will be respected if it is your preference:

3. Confirm that you want to receive the sanction correspondence directly via email to [Applicant’s email address].

[103] The Applicant responded with “No, I won’t comply with either request”. Ms Davies asked if that meant the Applicant preferred option 3 and the Applicant said “Obviously.”

[104] The Applicant sent a series of emails to the Respondent between 18 and 20 May 2025. The emails relate to the review of the Applicant’s suspension of pay on 6 May 2025, which the Applicant argues was unlawful because the review was commenced more than 30 days after the last suspension decision. The Applicant also asserted that the agency was now “panicking” because the Applicant had initiated an MPC review.²⁴ Some emails were sent directly to Ms Davies and some of the CEO of the Agency. The Applicant raised two concerns specifically in her email of 20 May 2025:

1. Timing of Breach Decision During Approved Leave

I am well aware that the suspension delegate is not the breach decision maker. That was never in dispute. My concern was—and remains—the timing. The breach report was finalised while the suspension delegate was on approved leave, and punitive action was initiated immediately upon their return. That pattern raises valid concerns about improper coordination or lack of oversight. Either scenario reflects serious procedural failure.

2. Suspension Without Pay – Breach of Regulatory Safeguards

I was not notified that a new review of my suspension was underway until after the 30-day timeframe mandated by section 3.10(6) of the Public Service Regulations 1999 had expired. This is a clear breach of regulatory obligations. More disturbingly, the decision to suspend me without pay was made in direct response to an email in which I detailed the psychological toll of this process and disclosed suicidal ideation. Your refusal to acknowledge that context speaks volumes.²⁵

[105] On 26 May 2026, Ms Davies emailed the Applicant seeking evidence that the Applicant was medically fit to participate in the sanction process. The email stated:

Dear Jessica

I acknowledge that you have advised that you want to receive the preliminary sanction decision.

It is not the agency’s intention to delay the sanction process, however given your statements of self-harm the agency needs to know that you are medically fit to participate in the process and that it is safe for you to receive the sanction information.

To support you, the agency is willing to pay for the cost of you attending an appointment with your medical provider to obtain evidence that confirms you are fit to participate in the sanction process.

Once you attend the appointment with your medical provider, please provide the agency with the tax invoice/receipt of the appointment and the medical evidence confirming you are fit to participate in the process.

²⁴ Digital Hearing Book Volume 1 page 703

²⁵ Ibid 707

The agency will then reimburse you for the cost of the appointment and the sanction process will proceed.

[106] The Applicant responded with:

Ms Davies,

We've been over this and I'm growing tired of repeating myself.

Your suggestion that I must obtain medical clearance before receiving the preliminary sanction decision is as offensive as it is transparent.

The decline in my mental health, including my suicide attempts, is a direct result of this agency's conduct. The prolonged delays, fabricated allegations, retaliatory removal of income, and sustained psychological abuse have caused irreversible harm. You are not protecting me—you are perpetuating the very damage you caused.

It is both paternalistic and discriminatory to suggest I am fit to be penalised, but somehow too fragile to be informed. If there were genuine concern for my wellbeing, the agency would never have dragged this process out for months, revoked my pay without cause, or left me in financial ruin.

I cannot afford food, medication, or basic living expenses. I am relying on friends to cover rent. My phone is about to be disconnected, my car is on the verge of repossession, and I am facing an Anorexia relapse due to food insecurity. The idea that I could self-fund a GP visit to satisfy this newly fabricated barrier is offensive.

You had no issue delivering a breach finding and ceasing my pay without concern for medical clearance. But now, when it suits the agency to delay accountability, mental health is suddenly a procedural hurdle. The hypocrisy is staggering.

It deeply unwise that you are consistently leaving a paper trail of bias, manipulation, and incompetence—all of which will be used as evidence. This latest stunt only confirms the agency's intent to avoid scrutiny by any means necessary.

If you are genuinely concerned about my wellbeing, reinstate my pay. Otherwise, provide the preliminary sanction decision without further delay. I will not be seeking clearance for harm you created.

[107] Ms Davies responded stating that the agency would pay for the medical appointment directly, so the Applicant did not have to pay and then seek reimbursement later. The Applicant just replied with "That is not happening."

[108] On 3 June 2025, the Applicant was advised of Ms Watson's proposed decision to continue the suspension without pay. The Applicant replied on 4 June 2025 stating:

Watching both of you professionally unravel - while inventing processes that do not exist under the guise of procedural integrity - has been the only redeeming aspect of this

entire ordeal. That I remain employed and am now eligible for legal aid as a direct result of the unlawful financial hardship you inflicted is nothing short of poetic. Actions have consequences, and I suspect yours are only just beginning.

[109] On 11 June 2025, Ms Davies referred the matter to Ms Karissa Stuckings, the independent sanction delegate.

[110] On 13 June 2025, Ms Davies sent the Applicant Ms Watson's suspension decision. The suspension letter states:

Decision

Having considered all of the information before me, including your responses, I have decided to continue your suspension from duty without pay at this time. This is because I am of the view that:

- you have conducted yourself in a manner that constitutes a serious breach of the APS Code of Conduct;
- temporarily suspending you from duty remains in the agency's interests at this time;
- exceptional circumstances continue to exist which warrant continuing your suspension from duty without pay for more than 30 days.

Exceptional circumstances are not defined in the PS Act or PS Regulations, however the Australian Public Service Commission (APSC) provides guidance about what 'exceptional circumstances' might include, in the context of when suspension from duty without remuneration (pay) for more than 30 days can occur. This includes situations where 'a finding has been made of a serious breach of the Code and a sanction is yet to be imposed.'

Furthermore, I am of the view that you have continued to conduct yourself in a manner that lacks respect and courtesy towards other agency staff, by sending harassing and/or threatening messages to staff, despite the formal direction that is in place.

I understand that you are awaiting the sanction process and that the Director, Conduct Standards has written to you regarding this.

Please note that temporarily suspending you from duty is not a punitive measure, rather it protects the interests and reputation of the agency, the public interest, your own interests and the interests of other agency employees.

As such, I remain of the view is in the agency's interests that you remain out of the workplace while the matter of sanction is under consideration. I do not consider a reassignment of duties, or a working from home arrangement to be appropriate in the circumstances.

Further, I hold the view that in accordance with the Public Governance, Performance and Accountability Act 2013, it would not be an appropriate use of Commonwealth

resources for you to be paid while not performing your duties and the matter of sanction in relation to findings of serious misconduct is under consideration.

[111] At the same time as sending the suspension decision, Ms Davies wrote to the Applicant regarding the sanction decision. She proposed a final option, being that the preliminary sanction decision could be delivered to the Applicant in person at the Respondent's CBD office. Ms Davies said in her witness statement that the agency had consulted an external social worker on how to proceed with the sanction process for the Applicant. The social worker had recommended that the Applicant meet with the Respondent's staff in person "with appropriately trained Agency staff present to conduct a risk assessment in respect of Ms Stunden's mental health and to arrange appropriate mental health support as required."²⁶

[112] The Applicant responded as follows:

Email at 4:01pm: You are all predictable at this stage.

Email at 4:14pm: At this stage, the sole priority sustaining me is the knowledge that I will be the architect of each of your professional downfalls. The farcical demand for a medical clearance will disintegrate under the weight of procedural obligation once you are required to perform the duties you've long evaded. The psychological harm I've endured is a foreseeable consequence of your sustained negligence and strategic malfeasance—conduct so deliberate it borders on constructive harm. The only reason I remain housed and functional is due to external support structures beyond your reach, not for lack of effort on your part to orchestrate my collapse. Your theatre of faux compliance and procedural mimicry is embarrassing.

[113] Ms Davies confirmed that the Applicant could bring a support person. The Applicant said that she remained adamant that all correspondence was to be in writing. Ms Davies said that the Applicant would be provided in writing when the Applicant attended the office, to which the Applicant just replied: "No."

[114] Ms Davies subsequently contacted the Respondent's Rehab Case Management team to arrange a fitness for duty assessment. An independent medical examination was scheduled for 17 July 2025.

[115] On 19 June 2025, the Applicant emailed the Conduct Standards team alleging criminality and alleging that Ms Watson and Mr Cini had colluded in order to justify not paying the Applicant. The email ends with "By now, you should realise I don't bluff. If you continue to underestimate me, you will find that the consequences won't be limited to professional discomfort or internal disciplinary action."²⁷

[116] On 28 June 2025, the Applicant emailed the Respondent a letter from her treating psychiatrist, Dr Theo Theodoros. The letter states:

²⁶ Amie Davies Witness Statement

²⁷ Digital Hearing Book Volume 3 page 721

27/06/2025

To Whom it May Concern.

RE: Miss Jessica Stunden [Applicant's date of birth and address redacted]

This letter is completed in my capacity as their treating private psychiatrist. Please see the following support letter for Jessica's Merit Protection Commissioner submission.

Jessica "Jess" has a history of Adult ADHD (Attention Deficit Hyperactivity Disorder), OCD (Obsessive Compulsive Disorder), and a MDD (Major Depressive Disorder) and was managed by her private psychiatrist (Dr. Michael Hagan) who has since retired and transferred her care to me. She is known to me from an initial review on the 06/08/24 where her diagnoses were confirmed as Adult ADHD; MDD; PMDD (Premenstrual Dysphoric Disorder) and OCD.

Adult ADHD is a neurodevelopmental disorder which isn't always well understood and manifests with a variety of behavioural and functional symptoms that may be misinterpreted as intentional inappropriate behaviour.

These include:

- Introspective difficulties. Patients with Adult ADHD can struggle to more objectively understand or regulate sensory input or output which can also be impacted by overly stimulating environments. This includes difficulties regulating vocal tone and volume which may be interpreted as inappropriate or unprofessional.
- Difficulties with attention and working memory. This can result in people with Adult ADHD struggling to listen to and process verbal instructions. To compensate for this, they may repeat verbal instructions/topics, write these down or message these, or verbalise concepts to assist with processing of information. This may be interpreted as maintaining inappropriate boundaries, but is often a key adaptive coping strategy in ADHD for both functioning and regulating emotions.
- Distress tolerance. Patients with Adult ADHD may struggle with affective instability and emotional regulation. Whilst these can improve over time with medication treatment and psychotherapy, they can be challenging to self-regulate, particularly under stressful circumstances.
- Impulsivity. A core symptom of Adult ADHD is impulsivity. Future planning and delayed gratification can be challenging, and worsened in stressful environments lacking in structure.
- Difficulty adjusting to environment change. Patients with Adult ADHD have often had to develop fixed routines to allow them to function without becoming overwhelmed. They can experience significant distress managing sudden and unexpected changes to these routines/patterns. This can make it very challenging for patients with Adult ADHD to adapt to rapid changes in workplace, staff or processes.

From my engagement with Jess since August 2024, she has always presented as a thoughtful, articulate, kind and caring person. I have been very concerned to hear her subjective reports of her mental state worsening and witness such changes objectively which appear to be intrinsically related to changes in her workplace. I'm concerned that from the descriptions Jess has reported of her experiences in the workplace, my knowledge of her mental health and functioning, and my understanding of the Fair Work Act (2009), the Queensland Human Rights Act (2019) and the Disability Discrimination Act (1992), that Jess may be the subject to either intentional or unintentional discrimination. I have encouraged her to seek legal counsel and advice regarding these matters.

I am also concerned from her reports of a workplace investigation into her alleged conduct which appears to be having a clear deleterious impact on her mental health without her reporting provision of appropriate additional supports to assist her mental wellbeing. I am also concerned of the impact of suspension without pay which has further limited her ability to access external supports for her mental health, such as more regular support from myself or other private psychological supports.

I'm unaware of what workplace education has occurred with Jess' line managers and human resources department regarding her disability of Adult ADHD, but I am concerned without either some basic initial psychoeducation or understanding, it would be difficult if not impossible for her to be appropriately supported in the workplace and work to her full potential.

[117] I pause to note that I am unsure why Dr Theodoros included a legal opinion in the above letter. His “understanding of the Fair Work Act (2009)” means nothing. To my knowledge, he is not a lawyer or otherwise a specialist in industrial relations. He is a psychiatrist. Such comments are inappropriate. He especially should not be providing legal advice which he is unqualified to give to the Applicant, who by his own record was experiencing a worsening mental state at the time. In this letter and others set out later in the decision, Dr Theodoros appears to entirely reinforce the Applicant’s subjective beliefs without critically engaging with the possibility that the Applicant might behave one way in front of him at their appointments, and differently with others.

[118] On 2 July 2025, Ms Watson made a decision for pay to be reinstated while the Applicant remained suspended. The letter relevantly states:

I acknowledge your email of 28 June 2025 in which you provided correspondence from Dr Theo Theodoros, Consultant Psychiatrist at Belmont Private Hospital, specifically, that the correspondence advises that the suspension without pay is limiting your ability to access mental health supports.

In light of Dr Theodoros’ letter and your personal circumstances, and in consideration that you have not yet received the Preliminary Sanction letter following the finding you have breached the Code of Conduct, I have decided to change your suspension to with pay, effective immediately.

I note that in regard to the provision of the Preliminary Sanction letter, the agency has offered several options with respect to delivery of the letter, including:

- Asking you to provide medical evidence that you are fit to participate in the sanction process.
- Asking you to provide consent to release the sanction correspondence to you via your medical practitioner.
- The agency offered to pay for the cost of an appointment with your treating practitioner to obtain evidence that you are fit to participate in the sanction process (either by reimbursement or paying the medical practice directly).
- Asking you to attend the Brisbane office to receive the sanction correspondence from a HR officer who can answer any questions you may have and to ensure that supports are available (noting you were also invited to bring a support person).

I have been advised you declined all of the above options.

As noted above, I have made the decision to change your suspension to with pay, from today 1 July 2025. It is important that you note that this decision is pending your attendance at a Fitness for Duty (FFD) assessment that has been scheduled for 17 July 2025. I believe you have been provided with details of the appointment separately. Please note if you do not attend the FFD I may review your suspension with pay.

[119] On 2 July 2025, the Applicant provided a further letter from Dr Theodoros:

02/07/2025

To Whom it May Concern,

RE: Miss Jessica Stunden [Applicant details redacted]

This letter is completed in my capacity as their treating private psychiatrist.

Jessica has provided me with correspondence dated the 01/07/25 indicating that her suspension provisions have been changed to include pay. I am very appreciative of this and believe that it will assist her in accessing appropriate psychiatric supports and reducing further worsening of her physical/mental health.

I believe that with access to her pay and therefore access to psychiatric and psychosocial supports, she is fit to engage with any administrative or employment related processes. In the setting of the distress and adverse impact on her mental health/functioning reported as a result of these employment and human resource processes thus far, I would recommend Jessica either having access to support persons when discussing these matters going forward or having written communication sent to my offices initially (if Jessica consents to this) to allow me to review these and determine the likely distress this may result in and the most appropriate way to communicate this to her (be it by directly forwarding this on to her, or initially reading it to her during a scheduled appointment). I would also recommend Jessica be granted the ability to attend meetings

discussing these matters remotely via videoconference if desired, which may also assist in reducing further distress and challenges from environmental stimuli. I would recommend allowing Jessica to choose which of these communication options would be most beneficial for her.

I would also recommend that she continue to engage with me regularly to allow me to continue to provide psychiatric support to her.

[120] On 4 July 2025, the Applicant said she would not be attending the fitness for duty assessment, which she said was discriminatory and an abuse of process. The Applicant also stated:

I also confirm that I will not be dealing directly with the agency in relation to any proposed sanction decision. All correspondence regarding that matter must be directed to my treating psychiatrist, Dr Theodoros, who will determine when and how that information is communicated to me. I will not be participating in any further discussions with the agency until that process has been followed.

[121] Ms Davies responded confirming that she would arrange for the preliminary sanction letter to be sent to Dr Theodoros. She confirmed that the fitness for duty assessment was cancelled.

Show Cause letter

[122] The Applicant was provided with the preliminary sanction letter prepared by Ms Stuckings on 8 July 2025 (via Dr Theodoros). The letter states:

Background

In summary, the findings made by the Breach Decision Maker, as relevant to my decision on sanction, are summarised as follows:

- On several occasions between 28 November 2024 and 20 March 2025, you failed to treat others with respect and courtesy and without harassment, notably displays of aggressive behaviour including:
 - Raising your voice (yelling) and swearing in front of agency customers and staff
 - Repeatedly yelling and swearing at members of your leadership team
 - Swearing at a colleague 'I fucking assigned them' and 'don't fucking talk to me', and stating to your Team Leader that the colleague is 'fucking useless' and 'can't do their job'
 - Making other inappropriate comments to members of your leadership team including 'if you cared, you wouldn't make me work in an environment where I'm surrounded by idiots in the first place'.
- On 20 March 2025, you failed to comply with formal directions in place that you not discuss the Code of Conduct investigation or contact Toowong

Service Centre staff, by contacting a colleague (via text message) and discussing the investigation.

- You also failed to treat others with respect and courtesy during the above contact, by making comments (via text message) including:
 - *'I still want the ingrates to pay me'*
 - *'Harry is a creep too, watch your ass if you work with him again'*
 - *'Harry is unintelligent and Brian is a narcissist'*
- Your actions were in breach of the agency's *Conduct and Behaviour Policy*, and *Bullying and Harassment Policy*, which require, contrary to your actions in the above instances, that all staff treat customers, colleagues and stakeholders with respect and courtesy at all times; contribute to a positive and inclusive working environment; and ensure their behaviour does not offend, humiliate, intimidate, or harm (or pose a risk to) the health and safety of others.

Based on the above findings, the Breach Decision Maker determined that you breached the following elements of the Code of Conduct:

- (3) *An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.*
- (5) *An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction*
- (11) *An APS employee must at all times behave in a way that upholds:*
 - (a) *the APS Values and APS Employment Principles; and*
 - (b) *the integrity and good reputation of the employee's Agency and the APS.*

In respect to element 11 above, the Breach Decision Maker formed the view that you failed to uphold the APS Values, specifically the *'Ethical'* Value, which states that the APS *'demonstrates leadership, is trustworthy, and acts with integrity, in all that it does'*, and the *'Respectful'* Value, which states that the APS *'respects all people, including their rights and their heritage'*

Reasons for preliminary view on sanction

A sanction is primarily aimed at protecting the integrity of the agency and the APS, and thereby maintaining community confidence in public administration. A sanction is also intended to maintain proper standards of conduct by APS employees, by acting as a deterrent to you and other APS employees from engaging in the same, or similar, conduct in future.

I have considered the nature and seriousness of the misconduct in which you have been found to have engaged. I am of the view that your misconduct is an extremely serious matter, and when considered in totality, is such that termination of employment is an appropriate and proportionate sanction in the circumstances.

The evidence set out in the Report establishes that you have repeatedly failed to treat others with respect and courtesy and without harassment, by displaying what can reasonably be described as aggressive and/or hostile behaviour in, or in connection with, the workplace. This is despite significant agency intervention to address your behaviour, both informally and by way of formal counselling on 19 November 2024. The agency's efforts in this regard, which ought to have served as reinforcement of your behavioural expectations were unsuccessful because you continued to behave in an unacceptable manner (with the first reported incident occurring shortly afterwards, on 28 November 2024), warranting formal disciplinary proceedings.

The agency is committed to providing all staff with safe and respectful workplaces. As an agency (and APS) employee, you are expected to treat others with respect and courtesy at all times, contribute to a positive and inclusive working environment, and ensure that your behaviour does not offend, humiliate, intimidate or pose a risk to the health and safety of others. Yet, the evidence indicates you have failed to act in this manner on repeated occasions.

The behaviour you have repeatedly subjected your leaders and colleagues to, and on occasion in front of agency customers is entirely unacceptable in any context. Further, while you have not denied that the interactions occurred, you have largely denied behaving in the manner reported. As such, you have not acknowledged, or accepted responsibility for your unacceptable behaviour.

Further compounding the seriousness of your misconduct is the fact that during the course of the Code investigation process, you failed to comply with formal directions in place and again failed to treat others with respect and courtesy. Your actions in this regard demonstrate a contemptuous attitude towards the agency's rules, and your behavioural obligations as an employee and public servant. As such, it appears that formal disciplinary action did not deter you from continuing to engage in unacceptable behaviour.

You have fundamentally failed to behave as an APS employee should. In my view, you have demonstrated that you are unwilling to comply with the inherent requirements of the APS Code of Conduct or uphold the APS Values, and as such, the agency cannot have confidence in you meeting your employment obligations in the future.

In forming my preliminary view on an appropriate sanction, I have also considered your personal circumstances, including your reported medical condition, namely Attention Deficit Hyperactivity Disorder (ADHD), which you state was a contributing factor to your behaviour. You further state that you have disabilities that you manage and you believe adverse action is being taken against you because of these. While your personal circumstances are noted, there is no evidence before me to indicate you were unable to comply with the APS Code of Conduct and APS Values, noting that the ability to comply with the Code is an inherent requirement for employment in the APS.

To be clear, my preliminary view that the sanction of termination of your employment is appropriate has been formed on the basis of the extremely serious misconduct you have been found to have engaged in (as explained above) and for no other reason.

You have been employed by the agency since 22 July 2022. During your employment, you have undertaken relevant training in relation to your obligations and responsibilities, and I am satisfied that the agency has been clear in its messaging that all staff are required to comply with the agency's rules and the APS Code of Conduct, and that failure to do so may result in the imposition of a sanction, which could include termination of employment.

In my preliminary view, your actions have eroded the agency's trust and confidence in you as an employee, and the employment relationship has been irreparably damaged.

While the potential impact on you of any sanction imposed are relevant considerations in my decision, in circumstances where the continuation of your employment may be untenable, I consider that the alternative sanctions open to me to impose are unlikely to be appropriate or proportionate in the circumstances.

[123] The Applicant was given 7 days to provide a response to the preliminary sanction letter. She provided a written response on 11 July 2025 and provided a further letter from Dr Theodoros on 23 July 2025 (an extension was granted to the Applicant to provide that letter). The Applicant's written response to the preliminary sanction letter states:

Dear Ms Stuckings,

This letter constitutes my formal response to your correspondence regarding the proposed sanction of termination of employment.

At the time of writing, the breach decision underpinning this proposal remains under review by the Merit Protection Commissioner. Issuing a preliminary sanction view while that review is ongoing is procedurally inappropriate. The agency cannot treat the breach decision as settled until that independent merits review has concluded.

From the outset, it was clear that the agency intended to remove me regardless of evidence. The individuals appointed to manage the investigation, the selective way information was handled, and the refusal to address clear procedural irregularities all pointed to a predetermined outcome. This was never a fair process. It was a managed exit strategy disguised as misconduct proceedings.

The agency has acknowledged that it formed a preliminary sanction view some time ago. Yet the letter was withheld from me until 11 July 2025, despite being dated 18 June. I understand that agencies may choose to delay a sanction during a review, but that does not apply here. The decision had already been made. Withholding it after confirming it was ready was a strategic delay, not a procedural safeguard. It followed my MPC submission and appears to have been timed to retaliate.

Until 11 July 2025, I had not been informed of the identity of the sanction delegate. I was told early on that Mr Cini was the breach delegate and Ms Watson the suspension delegate, but no one informed me who would determine the sanction. That is not a minor oversight. It is a breach of transparency that denied me the ability to assess for conflict

of interest or understand how this decision was being managed. Withholding that information reflects the same pattern of concealment that has characterised this process from the beginning.

The broader investigation was marred by procedural errors, selective enforcement, and a complete failure to uphold the agency's legal obligations. My pay was suspended without justification. My disability was dismissed or distorted depending on which version better supported the agency's position. I was isolated and cut off from internal supports while experiencing a clear mental health crisis caused by this process. Despite that, the agency never paused the investigation, never offered accommodations, and never assessed whether I was even fit to participate.

The process was not led by impartial actors. It was driven by individuals within the same department, many of whom appeared to be working together to engineer a specific outcome. This was not a breakdown in procedure. It was a coordinated effort to remove me quietly. It failed because I refused to accept it.

You attempted to exploit my ADHD without understanding it. You presumed it made me vulnerable and easy to discredit. Instead, it enabled me to recognise what was happening and document your missteps in real time. My ADHD is the reason I held firm to my values, noticed inconsistencies, and resisted the pressure to walk away. The injustice complex you failed to understand is the very thing that allowed me to survive a system that was never designed to support me. What you treated as a liability has been my greatest strength.

The agency's reliance on private messages obtained under coercive circumstances is indefensible. I did not consent to those communications being used, nor were they obtained through a process that respects privacy, consent, or context. The colleague involved stated that she "gave them her phone," but it remains unclear who "them" refers to, and whether that person had a conflict of interest. Once it became apparent that the original allegations would not hold, the agency sought to reframe private remarks into grounds for termination. This was not about misconduct. It was about manufacturing justification for a decision that had already been made.

Calling someone a creep who behaved inappropriately toward me is not misconduct. Referring to a senior manager as an ingrate is not a breach of the APS Code. These remarks were only elevated because they were inconvenient, not because they were genuinely inappropriate. The agency's interpretation of "respect" has been applied selectively and defensively to shield poor management, not to uphold a genuine cultural value.

I reject entirely the suggestion that termination is a proportionate or lawful response. The actions of this agency have not been guided by policy, evidence, or integrity. They have been guided by fear of accountability. At every turn, I flagged breaches. I warned that the process was compromised. And rather than course-correct, the agency doubled down.

This behaviour is not unique. The speed, confidence, and consistency with which these decisions were made suggest this is not the first time such a process has been used. The internal culture appears reliant on misusing misconduct frameworks to manage out employees who do not conform, while protecting those who create harm. The fact that this was done so openly, and so incompetently, suggests the department is accustomed to getting away with it.

Mr Blackwood's conduct further underscores that point. The moment Mr Keough was away from the office, Mr Blackwood began contacting HR behind his back and sending emails that undermined his authority. This was not only unprofessional, it was mutinous. Mr Keough was still the manager of that office, and his absence did not entitle others to override him. Mr Blackwood's behaviour was a clear attempt to escalate the matter through alternative channels without transparency or accountability.

Mr Shephard took it even further, using his personal connections to expedite my removal based on claims that were never substantiated. He had access to the correspondence about me, which made it easier for him to shape his narrative around existing internal assumptions. At any time, he could have aligned his account with Mr Blackwood's, and there is no way to rule out collusion. Ultimately, no one corroborated Mr Shephard's story-but instead of dismissing it, the agency treated it as decisive. That is not how evidence works. That is not how procedural fairness works.

There is no longer any path forward that will end positively for this department. I will ensure that every individual responsible is held accountable and that the systems enabling this conduct are subjected to scrutiny. My ADHD has been instrumental in exposing procedural corruption and institutional abuse. I did not need to manipulate the narrative. I simply applied pressure and observed the reaction. The fact that you still fail to see neurodivergence as a strength speaks to how far behind this department is. The public service is changing, and there are thousands of neurodivergent people who will not accept this treatment quietly. Once this conduct becomes public, the consequences will extend far beyond this case.

This is my formal response to the proposed sanction. I will be escalating this matter to the Australian Public Service Commission and the Australian Human Rights Commission. I will also be pursuing action under the Fair Work Act where permitted by my Enterprise Agreement. Unless the agency can demonstrate a lawful and procedurally valid reason to continue, I will not be engaging further.

[124] Dr Theodoros' letter of 23 July 2025 states:

This letter is completed in my capacity as their treating private psychiatrist. I have reviewed the preliminary sanction proposal and had time to initially verbally discuss this with Jessica and then forward her a written copy of the correspondence. I have also had the opportunity to read Jessica's response to this letter.

Having completed 14 years of undergraduate and postgraduate tertiary and medical specialty training to obtain my qualifications where I have had the privilege of assessing, meeting, and supporting thousands of patients, and working a current role where I

support hundreds of patients, I still express my concern with the current human resources processes that are taking place against Jessica. I am intrinsically aware of Jessica's psychiatric diagnoses and mental health struggles as her treating psychiatrist. Despite this, even when discussing the potentially distressing content of the preliminary sanction proposal, she has demonstrated calm and appropriate behaviour which appears diametrically opposed to the allegations in this correspondence. This does increasingly make me question the veracity of the evidence being used to instigate these proceedings, and also the psychological support provided to Jessica in the workplace for her disability. I continue to not identify signs, symptoms or behaviours of an individual without the capacity to succeed and thrive in this role when offered appropriate supports for their disability and mental health.

Termination

[125] On 24 July 2025, the matter was referred to Mr Patrick Geary as independent sanction delegate to decide on the final sanction. On 28 July 2025, Mr Geary finalised his decision, which was for the Applicant's employment to be terminated. Ms Davies provided the sanction letter to Dr Theodoros, but he was on leave. The decision was made for the termination to take effect from 4 August 2025, to allow time for it to be communicated to the Applicant.

[126] On 29 July 2025, the MPC issued its review of the breach decision and recommended that the breach decision be upheld.

[127] Dr Theodoros replied to Ms Davies on 5 August 2025 stating that the Applicant needed to consent each time to communication being provided through her psychiatrist. Ms Davies wrote to the Applicant saying:

Dear Jessica

I am writing to advise you that the sanction delegate finalised their sanction decision letter and provided it to Dr Theodoros on 28 July 2025 to facilitate delivery of the outcome to you.

Dr Theodoros emailed me just now to advise that he needs your consent each time to allow him to access the document in order to provide it to you.

Can you please make contact with Dr Theodoros to obtain the sanction outcome.

[128] The Applicant was informed of the termination of her employment through Dr Theodoros. She later claimed that the termination letter was "unlawfully" sent to her psychiatrist without her consent.

[129] The termination letter states:

Your response

On 11 July 2025, you submitted 3 written responses to the preliminary sanction, which is summarised as follows:

- You raised procedural concerns about the investigation process, and your suspension from duty.
- You have sought a review of the breach determination from the Merit Protection Commissioner (MPC), and you consider issuing a preliminary sanction view while that review is underway is procedurally inappropriate.
- You believe the agency attempted to exploit your ADHD without understanding it.
- You reject the suggestion that termination of your employment is a proportionate or lawful sanction.
- You will be escalating this matter to the Australian Public Service Commission and the Australian Human Rights Commission and will also be pursuing action under the Fair Work Act.
- You consider that the tone of the preliminary sanction letter reads as a chastisement, not a measured consideration of the facts. The framing attempts to recast your refusal to tolerate misconduct as a character flaw and disregards the broader office culture, in which authority is frequently misused, and casts you as the problem for refusing to submit to coercive, discriminatory, or retaliatory behaviour; none of which has been acknowledged in the investigation process.

On 23 July 2025, you provided a letter from Dr Theodoros, which is summarised as follows:

- The letter is completed in his capacity as your treating private psychiatrist.
- He has reviewed the preliminary sanction letter and has read your response to the letter.
- Based on his experience, Dr Theodoros expresses concern with the current human resources processes that are taking place against you.
- Despite being aware of your diagnoses and mental health struggles, when discussing the potentially distressing content of the preliminary sanction proposal, you demonstrated calm and appropriate behaviour which appears diametrically opposed to the allegations in this correspondence.
- He believes you have the capacity to succeed and thrive in this role when offered appropriate supports for your disability and mental health.

You also provided commentary disputing the findings made by the Breach Decision Maker. Please note that my role as Sanction Delegate is to impose a sanction I consider proportionate to the nature of the breach that has been determined. The agency's investigation of these matters has been finalised, and a breach of the Code was determined on 30 April 2025. Accordingly, I have considered your submissions to the extent that they are relevant to the matter of sanction.

Consideration of your response

I have considered your response, in line with Ms Stuckings' preliminary view on sanction. As an independent Sanction Delegate, I am required to impose a sanction I consider to be appropriate and proportionate to the investigation findings made by the Breach Decision Maker (the breach determination).

I acknowledge you have requested the MPC review the breach determination. While I note the MPC process is still underway, I also note the breach determination letter issued to you on 30 April 2025 advised you that an application to the MPC will not prevent any sanction applied from taking effect.

Further, I have reviewed the investigation material including the Final Investigation Report and am satisfied that the investigation has been conducted in accordance with the relevant procedures set out in the Public Service Act 1999 and the agency's section 15(3) procedures, which apply in these matters, and am satisfied that the analysis and factual findings, as outlined in the report, provides an accurate and objective assessment based on logically probative evidence.

I have also given consideration to the letter provided by Dr Theodoros. While his comments are noted, there is no evidence before me to indicate you were unable to comply with the APS Code of Conduct and APS Values, noting that the ability to comply with the Code is an inherent requirement for employment in the APS.

Sanction Decision

As outlined in the Final Investigation Report and Ms Stuckings' earlier letter, it has been determined that on multiple occasions over a period spanning several months, you failed to treat others with respect and courtesy and without harassment; and displayed aggressive behaviours which included raising your voice and swearing at colleagues and members of your leadership team. You also failed to comply with formal directions in place during the Code of Conduct investigation, by contacting a colleague and discussing the investigation; and when doing so, again failed to treat others with respect and courtesy.

Such behaviour is entirely unacceptable, and inconsistent with the agency's commitment to provide all staff with a safe and respectful working environment. It is also incompatible with the inherent requirements of the APS Code of Conduct and APS Values. I consider that your responses in this matter demonstrates a lack of remorse, that you do not accept responsibility for your behaviour or the impact it has on the workplace and the health and safety of others, and that you are unwilling to change your behaviour moving forward.

Having considered your response and all the facts of this matter, I am of the view that the agency can no longer have trust and confidence in you; the employment relationship has been irreparably damaged, and it is no longer appropriate for you to remain employed by the agency and the APS.

I have decided that your employment with Services Australia is to be terminated, effective **4 August 2025**.

Procedural history and the hearing

[130] Before considering the factors under s.387 of the Act, I wish to make brief comments on the history of this matter and regarding what occurred in the hearing.

[131] As I said above, the matter was originally allocated to another Member of the Commission and was reallocated prior to the hearing being conducted. The Member made a decision allowing Mr Shephard to attend the hearing via Microsoft Teams and made an order requiring Ms Watson to attend the hearing to give evidence. I agree with both of those decisions. Mr Shephard requested to attend the hearing virtually as he did not want to be in the same room as the Applicant, having concerns for his psychological and physical safety. He referred specifically to the Applicant's text message to him stating, "I will inundate every avenue if necessary. I'm not nearly done, but you will be." The Applicant's last text message to Mr Shephard before that started off with the Applicant saying, "Knives and guns." I consider it was objectively reasonable for Mr Shephard to be concerned for his wellbeing and it was appropriate to allow him to attend virtually. It was also appropriate to order Ms Watson to provide evidence. As the suspension delegate, she was involved in the disciplinary process from the start and received many emails from the Applicant, some of which are set out in the background.

[132] After the matter was allocated to my Chambers, I reviewed the submissions and evidence and invited Dr Theodoros to attend the hearing as I considered he could give evidence relevant to my consideration of s.387(a) and s.387(h). My Chambers explained that the Commission does not provide conduct money for witnesses, that if he did attend, a report would not be required and if he did attend, we would limit his evidence to an hour. I considered that this course of action was reasonable as the Applicant should not be expected to pay for an expert report from her own psychiatrist. It was also not reasonable – or possible through an order of the Commission, in my view – to require the Respondent to pay for Dr Theodoros' attendance. To allow Dr Theodoros enough context to understand the proceedings without asking him to read a long document, I said he could read the Form F3 from the Respondent, which summarised their allegations in eight pages.

[133] The Applicant initially agreed for Dr Theodoros to attend. My Chambers confirmed the dates of 13 and 14 April 2026 for the hearing. The Applicant provided a three-hour window when Dr Theodoros may be available on 13 April 2026. My Chambers provided my preference for the time for Dr Theodoros to give evidence two and a half weeks before the hearing. However, the Applicant later said that his availability had changed to a two-hour window. My Chambers confirmed that the new window of availability would also work for the Commission. The Applicant then said Dr Theodoros would no longer be attending due to his schedule having changed, despite having confirmed that he was available to attend 45 minutes earlier. The Applicant said, "I am not in a position to incur the \$900 witness fee given the current scheduling difficulties."

[134] The Applicant was generally respectful towards the Commission during the proceedings.

[135] The Applicant stated during the hearing that she felt overwhelmed by the volume of materials due to her ADHD. She said in the hearing:

PN1459 MS STUNDEN: Like, I got given it – I got sent it on Friday, and I've had a couple of days to go through it, and it's just more than I can actually comprehend, and I have a medical certificate that was sent wherein I stated that it's difficult for someone with a disability that – the cognitive

disability – I can point you to the number of that particular medical certificate where it's actually hard for me to deal with voluminous²⁸ materials.

PN1460 THE DEPUTY PRESIDENT: To be fair, you did send in voluminous²⁹ materials.

PN1461 MS STUNDEN: I understand that, I understand that.

[136] The medical certificate the Applicant referred to was not provided. I note I corrected the record later in the hearing. The Applicant was sent the Digital Hearing Book links two weeks before the hearing, not three days before. I observe without comment that the Applicant provided over 1,000 pages of material. The Respondent also provided extensive materials (theirs was over 1,300 pages). However, a reason why the Respondent's materials were so extensive is because each of the witnesses annexed the documents they referred to, which meant large documents like the *APS Handling Misconduct Guide* were included multiple times. In the case of the Handling Misconduct Guide, Mr Cini, Ms Watson and Ms Davies, all referred to that document in their witness statements.

[137] I note, because this is not necessarily evident in the transcript, that at one point during the second day of the hearing, the Applicant started sobbing loudly and extensively. The Applicant indicated that she did not want to continue with the matter. The Respondent's counsel suggested that the Applicant was not in a state to make that decision right then. I agreed and adjourned to allow the Applicant to speak to her support person who was with her and decide what she wished to do. The Applicant indicated after the adjournment that she wished to continue but did not want to cross-examine the Respondent's witnesses. I asked the Applicant if she understood the effect of that decision would be that she would not have the opportunity to challenge those witnesses' evidence through cross-examination. She confirmed she understood. The hearing proceeded without cross-examination of the Respondent's witnesses. However, I asked questions of those witnesses to test their evidence, to assist both parties.

Comments on the reliability of the witnesses

[138] The Applicant across as an unreliable narrator when telling her side of the story. In her testimony and in some of her correspondence, she denied things which a reasonable person would consider objectively true. For example, she said that it was *not* disrespectful to call her manager a creep.³⁰ She said it was *not* disrespectful to say "Harry is unintelligent and Brian is a narcissist".³¹ She said it was *not* insulting to say that Mr Shephard had a "barely developed pre-frontal cortex". All of those comments are objectively disrespectful.

[139] I consider the Applicant's repeated and consistent use of ad hominem attacks undermined her credibility. An ad hominem attack suggests that the Applicant has no legitimate basis to criticise the Respondent, so she resorts to insults instead. For example, instead of

²⁸ The transcript at PN1459 states "volumous". I have corrected this to "voluminous" in this extract.

²⁹ The transcript at PN1460 states "volumous". I have corrected this to "voluminous" in this extract.

³⁰ Transcript PN829

³¹ Ibid PN836

providing further evidence or the names of witnesses who should be interviewed to rebut the conclusions made in the preliminary breach report, the Applicant chose to respond with choice words like: “You, by contrast, are the embodiment of mediocrity: forgettable, insecure, and wholly unprepared for scrutiny.”

[140] As for the other witnesses, I consider that Mr Shephard gave clear answers, and generally presented as a reliable witness. Mr Blackwood’s was an honest witness but his recollection was vague at times. I consider that Mr Cini and Ms Watson appeared to be reliable witnesses. I consider that Ms Davies was the most impressive witness. Mr Geary, despite being ultimately the one to decide to terminate the Applicant’s employment, had less interactions with the Applicant than any of the other witnesses. I consider his evidence on what he took into account in making the decision to dismiss the Applicant is useful.

Was the dismissal harsh, unjust or unreasonable?

[141] Section 387 of the Act provides the criteria and considerations the Commission must take into account when deciding if the dismissal was harsh, unjust or unreasonable. As required by the Act, I consider the following:

(a) whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees);

[142] A valid reason for dismissal should be “sound, defensible or well founded” and should not be “capricious, fanciful, spiteful or prejudiced.”³² As summarised by Deputy President Asbury in *Smith v Bank of Queensland Ltd* a “dismissal must be a justifiable response to the relevant conduct or issue of capacity”.³³ The Commission must consider the entire factual matrix in determining whether an employee’s termination was for a valid reason.³⁴

[143] The reasons for dismissal relied on by the Respondent in the termination were as follows:

As outlined in the Final Investigation Report and Ms Stuckings’ earlier letter, it has been determined that on multiple occasions over a period spanning several months, you failed to treat others with respect and courtesy and without harassment; and displayed aggressive behaviours which included raising your voice and swearing at colleagues and members of your leadership team. You also failed to comply with formal directions in place during the Code of Conduct investigation, by contacting a colleague and discussing the investigation; and when doing so, again failed to treat others with respect and courtesy.

[144] The termination letter refers to Mr Cini’s breach decision in which allegations 3 to 8 from the two initial advice letters were substantiated as breaches of the Code of Conduct. Those allegations are:

³² *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.

³³ [2021] FWC 4 at 118.

³⁴ *Commonwealth of Australia (Australian Taxation Office) t/a Australian Taxation Office v Shamir* [2016] FWCFCB 4185, [46], citing *Allied Express Transport Pty Ltd v Anderson* (1998) 81 IR 410, 413.

- **Allegation 3: 28 November 2024** – You told Mr Blackwood (in regards to missing paperwork) “someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff”, and “Fuck! people need to not move my shit!”.
- **Allegation 4: 4 December 2024** – You repeatedly raised your voice at Mr Blackwood, which was overheard by other staff in the office.
- **Allegation 5: 12 December 2024 (1)** – You told a colleague “I fucking assigned them” and “Don’t fucking talk to me”. You then told the Acting Service Centre Manager, Harry Shephard that the other staff member is “fucking useless”, “can’t do their job” and “I am the only person who knows what they’re doing”. Mr Shephard also reports that you were yelling at him words to the effect “you’re setting me up to fail, you are the ones doing this to me” and “You’ve pushed me to the point where I can’t even fucking do my job”.
- **Allegation 6: 12 December 2024 (2)** - After leaving the office you had phone conversations with Mr Blackwood and Mr Shephard, in which you stated to them:
 - • “No I am not fucking okay”
 - • “No I fucking won’t be”
 - • “You can’t do anything”... “You don’t fucking care”
 - • “If you cared, you wouldn’t make me work in an environment where I’m surrounded with idiots in the first place”
- **Allegation 7 - 13 December 2024** – You called the absence reporting line and spoke to Mr Shephard, where you stated, “That’s a stupid fucking question” and “Don’t even fucking worry about it mate”, then you terminated the call.
- **Allegation 8 - 20 March 2025** - you have failed to comply with formal directions (issued in Michelle Watson’s suspension decision letter of 20 December 2024) that you:
 - not discuss or make reference to, the allegations and/or any other
 - matters referred to in this letter, and
 - not make contact with any Toowong Service Centre staff by any means
 - The information also suggests that you may have failed to treat others with
 - respect and courtesy and without harassment, and/or in a manner that may
 - represent a failure to uphold the APS Values.
 - Specifically, on Thursday, 20 March 2025, Toowong Service Centre employee
 - [Ms B] received a text message from you, asking a question about
 - whether or not [Ms B] has been interviewed yet (in relation to my
 - investigation), comments about agency leaders (Harry Shephard, Brian
 - Blackwood, Ross Hannan), and disparaging comments about agency
 - employees in more general terms (such as referring to wanting to still be paid
 - by ‘the ingrates’).

[145] Technically, the reasons for dismissal relied on by the Respondent in these proceedings are slightly different to what is set out above. In the Respondent’s submissions, in addition to the conduct set out above, the Respondent also relies on the incidents on 31 October 2024 and

6 November 2024, for which the Applicant attended a formal counselling session. Those incidents did not form part of the breach decision, as Mr Cini considered they had been adequately addressed in counselling.

[146] I note the Applicant suggested in the hearing that the *Briginshaw* standard applied to Mr Cini's investigation. It was not clear if she was arguing that the Commission should also apply the principles in *Briginshaw*. I respectfully do not consider the *Briginshaw* applies to the conduct alleged in allegations 1 to 8. Although the Respondent relies on serious misconduct, they allege a pattern of behaviour which amounts to serious misconduct. None of the conduct alleged is criminal. To contrast, it would be appropriate to apply the *Briginshaw* standard if the Applicant was involved in a physical altercation at work, as that may be assault. It would also be serious misconduct that creates a risk to health and safety. But if the Applicant engages in a number of behaviours over a period of time which create a risk to health and safety, it adds up to serious misconduct, but no individual incident is subject to the *Briginshaw* standard. If I am wrong, and the Commission should apply the *Briginshaw* standard wherever serious misconduct is alleged, even if it is alleged based on multiple incidents, then I am nevertheless satisfied that there is enough evidence to reach a state of reasonable satisfaction that the conduct I have listed in paragraph [208] occurred. The *Briginshaw* standard does not establish a higher standard of proof. Rather, the principle is that the evidence needed to reach the requisite state of satisfaction is linked to the inherent unlikelihood of the conduct in question.

[147] On reading the material, I considered that the Applicant's communications in May 2025, which contain inappropriate messages including some messages which appear threatening, may constitute a valid reason for dismissal, either on its own or combination with the other conduct. This conduct is not specifically relied on by the Respondent as a reason for dismissal. Consistent with the obligation to act judicially, I told the Applicant in the hearing would consider her communications in May 2025 when looking at whether there is a valid reason.³⁵ The Applicant was given an opportunity to respond in the hearing and in closing submissions. She said those communications were sent after a suicide attempt, explaining the state she was in.

[148] My findings in respect of the allegations are as follows:

Allegation 1 - 31 October 2024 - Team Leader, Brian Blackwood, observed you state to a customer "your 10 minutes is up I'll reassign you." and then raised your voice again to the customer "your 10 minutes is up!"

[149] I find that the Applicant did tell the customer she would reassign them in a loud voice. She said that the interaction was "challenging" for her. In her response to the formal counselling record,³⁶ she admits the following:

- That she likely spoke over the customer
- That she told the customer "I will reassign you"
- That Mr Blackwood told the Applicant not to raise her voice after the interaction.

³⁵ Transcript PN261; PN440; PN447

³⁶ Digital Hearing Book Volume 1 page 50

[150] The Applicant notes that she sometimes has difficulty with vocal modulation in stressful situations (a submission I will consider below). Given she states how the customer was frustrating her, and given her own account indicates Mr Blackwood told her not to raise her voice, then I find that she did speak to the customer in a loud voice. I also find that she did speak over them, as she said in her response that that was likely. The notes of the formal counselling session state “Jess agreed the incident had become heated and she should have stood back while Brian had taken over the interaction”.

[151] In the hearing the Applicant said that they were supposed to keep to 10 minutes but not tell customers that they only have ten minutes. She has consistently denied that she said that the 10 minutes was up.

[152] Mr Blackwood said in the hearing he was at his desk which was next to where this interaction took place.³⁷ Mr Blackwood recalled the Applicant saying “your 10 minutes is up!” after which the customer was reassigned. This is not an incident where an email was sent to HR on the same day detailing the incident (at least, no email has been provided to me).

[153] On balance, I find the Applicant did loudly speak over the customer and tell them she would reassign them but the evidence does not clearly establish whether she referred to 10 minutes when she did so. In any event, the Applicant was counselled on the incident and told that an incident involving raising her voice at “customers, staff or members of the leadership group this could result in a Code of Conduct referral”. The counselling notes state: “Jess has acknowledged it is not appropriate to raise her voice at staff, customers or leadership. Jess has acknowledged that the examples discussed were not appropriate behaviours.”

Allegation 2 – 6 November 2024 - Mr Blackwood observed you raising your voice at a customer and when he approached you, you yelled at him “Stop!”.

[154] On 11 November 2024, the Applicant sent an email to the managers in the Toowong office referencing the incident. She said:

There was nothing wrong with me pushing back, the fact that I felt compelled to leave instead of the threat being removed led to me feeling very unsafe... That’s the other side of this; I’m made to look incompetent, when I’m actually doing my job correctly and not allowing disrespect.

[155] In her written response following the counselling session, the Applicant including the following:

- The Applicant said the customer was “incredibly hostile”
- The customer asked the Applicant for her full name and the Applicant said that was private information which the Applicant said the customer was not entitled to it
- The Applicant said “that is private information and you are not entitled to it, I’m going to need you to move away from my desk now”
- The Applicant said she used a “more authoritative tone” with the customer

³⁷ Transcript PN1975

- As Mr Blackwood walked towards the customer, the Applicant called out “Brian, wait!”

[156] In her written response to the allegations on 22 January 2025, the Applicant admitted:

- That she raised her voice at Mr Blackwood³⁸
- That the Applicant felt “threatened” by the customer requesting the Applicant’s surname and requested that he move away from her desk
- When Mr Blackwood started to walk towards the customer, the Applicant called out “Brian, wait.”
- That the Service Centre manager spoke to the Applicant afterwards and ‘emphasised the importance of not “shouting across the office.”’

[157] In the hearing the Applicant was cross-examined regarding this incident. She said she did not speak to the customer loudly. She said she did not recall yelling at Mr Blackwood.

[158] Mr Blackwood said in the hearing that he was sitting at his desk between three and five metres away when the interaction between the Applicant and the customer took place. Mr Blackwood said he could clearly hear the Applicant said “I’m not serving you”. Mr Blackwood recalled the Applicant yelling “No, Brian”, then walking to the back of house before returning to yell at him and the customers again.

[159] I find that the Applicant did raise her voice at the customer and then yelled at Mr Blackwood, “Brian, wait”. The Applicant’s account of the incident states that she was told afterwards not to yell across the room, which suggested that she did yell at Mr Blackwood. I prefer Mr Blackwood’s evidence of the incident noting he was nearby and the Applicant’s references to “pushing back” against the customer and using a “more authoritative tone” are not inconsistent with the Applicant raising her voice, intentionally or not.

Allegation 3 - 28 November 2024 – You told Mr Blackwood (in regards to missing paperwork) “someone clearly took it, I hate it when people move my stuff, why would someone fucking move my stuff”, and “Fuck! people need to not move my shit!”.

[160] In her written response on 28 November 2024, the Applicant denied using inappropriate language. The Applicant says she there is no evidence to suggest she swore aggressively or inappropriately. The Respondent referred to a Teams chat in which the Applicant referred to starting a swear jar. I note the Applicant’s text message to Ms B on 16 December 2024 in which she said, “Brian and Harry complained about me swearing (some of it is exaggerated).”³⁹ That clearly implies that not all of it is exaggerated.

[161] Mr Blackwood sent an email to HR complaining about the Applicant’s behaviour on 29 November 2024, the day after. Though the Applicant suggested that accounts produced hours after the event cannot be considered contemporaneous, But Mr Blackwood’s account is clearly more contemporaneous than the Applicant’s which was provided over a month later. As I have stated below, I do not find that Mr Blackwood fabricated claims about the Applicant.

³⁸ Digital Hearing Book Volume 2 page 18

³⁹ Digital Hearing Book Volume 1 page 395

[162] Noting the contemporaneous report by Mr Blackwood, and the findings I have made regarding the Applicant's credibility, I prefer Mr Blackwood's account and find that the Applicant used words to the effect of "someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff", and "Fuck! people need to not move my shit!".

Allegation 4: 4 December 2024 – You repeatedly raised your voice at Mr Blackwood, which was overheard by other staff in the office.

[163] Mr Cini states that the CCTV evidence is of limited value in relation to this allegation. In this record of the CCTV footage, he states that the interactions between the Applicant and Mr Blackwood appeared to be "ordinary workplace interactions." He observes that there was no movement from staff nearby. This is an interesting detail. As the Applicant observes in her closing submissions, it would be strange for staff nearby to not react in some way if the Applicant had been yelling at Mr Blackwood in front of them.

[164] However, I also note that Mr Blackwood sent an email to HR soon afterwards stating what had happened. The Applicant also notes in her response on 22 January 2025 that Mr Blackwood told her not to raise her voice at him and the Applicant subsequently apologised.

[165] My finding in relation to Allegation 4 is that the Applicant raised her voice at Mr Blackwood on at least one occasion. I consider Mr Blackwood asking the Applicant not to raise her voice demonstrates this is likely what occurred. However, I do not consider the evidence clearly demonstrates that it occurred "repeatedly" especially given the CCTV record.

Allegation 5: 12 December 2024 (1) – You told a colleague "I fucking assigned them" and "Don't fucking talk to me". You then told the Acting Service Centre Manager, Harry Shephard that the other staff member is "fucking useless", "can't do their job" and "I am the only person who knows what they're doing". Mr Shephard also reports that you were yelling at him words to the effect "you're setting me up to fail, you are the ones doing this to me" and "You've pushed me to the point where I can't even fucking do my job".

[166] Ms G stated that she did not recall the incident when she was asked by Mr Cini. However, that does not necessarily mean that it did not occur. It may just mean that she did not want to be involved (I note she also did not appear as a witness in this matter).

[167] In Mr Shephard's email to HR on 12 December 2024, he reports Mr Blackwood hearing the words "I fucking assigned them"... "Don't fucking talk to me". Mr Shephard stated that Mr Blackwood immediately reported those words to him. Mr Blackwood later said in his witness statement that the Applicant yelled at her colleague in front of customers, but did not recall exactly what was said by the Applicant. Mr Shephard's account is consistent in some respects with the Applicant's. He reports that the Applicant said, "Don't interrupt me, it's unprofessional" as well as "I need a moment", both of which are quite similar to words the Applicant recalled she said. I prefer Mr Shephard's account of events, noting it is supported with an email soon after the event. It is also supported by the description of the CCTV footage. I also note that Mr Shephard's desire to have a private meeting with the Applicant soon after is consistent with the Applicant's language reported to him having been serious.

[168] In relation to the “fucking useless”, “can’t do their job” and “I am the only person who knows what they’re doing” comments, I find that it is likely the Applicant used words to that effect. Those words are consistent with the Applicant’s demonstrated belief that her colleagues did not follow processes correctly and general antipathy towards some other staff members. For example, in the Applicant’s text message she sent to Mr Shephard later that day says:

“I’m going to end up in this state because all of you would rather scapegoat the person who is consistently upset for being undermined instead of focusing on the weaknesses in the other staff members. You find justification for their behaviour and penalise me for struggling with it...”

[169] Also, an email from 18 November 2024 notes that the Applicant “talked at length about how you feel people are not following processes correctly and believes when you have raised concerns they have not been addressed.”⁴⁰ She recall having another “detailed conversation” with Ms Shephard about other staff on 11 December 2024.

[170] A Teams message from 11 December 2024 demonstrates the Applicant complaining about the colleague in question.⁴¹ Mr Shephard states the Applicant used in the interview room. I prefer Mr Shephard’s account of what the Applicant stated in this meeting, as he sent a contemporaneous email to HR. I note as well the Applicant’s text message to Ms B on 16 December 2024 in which she said “some” of the swearing was exaggerated.⁴²

[171] I also consider it likely that the that the Applicant said “you’re setting me up to fail, you are the ones doing this to me” and “You’ve pushed me to the point where I can’t even fucking do my job”. That is consistent with the kind of language used in the Applicant’s text message to Mr Shephard later that day.

Allegation 6

12 December 2024 (2) - After leaving the office you had phone conversations with Mr Blackwood and Mr Shephard, in which you stated to them:

- “No I am not fucking okay”
- “No I fucking won’t be”
- “You can’t do anything”... “You don’t fucking care”
- “If you cared, you wouldn’t make me work in an environment where I’m surrounded with idiots in the first place”

[172] Mr Blackwood recalled trying to contact the Applicant after she had left the office, but did not recall whether he made contact. The words attributed to the Applicant were reported by Mr Blackwood to Mr Shephard who then emailed HR in the afternoon that day. Given the words allegedly used by the Applicant were from a “recap” of the conversation which Mr Shephard received second-hand from Mr Blackwood, I am not confident that those are the exact words used by the Applicant. However, it seems clear from the account of all the witnesses that the Applicant was frustrated.

⁴⁰ Digital Hearing Book volume 1 page 41

⁴¹ Digital Hearing Book Volume 2 page 559

⁴² Digital Hearing Book Volume 1 page 395

[173] I consider it more likely than not that the Applicant used words to that effect of “You can’t do anything”... “You don’t fucking care” when on the phone with Mr Shephard. That would be consistent with the tenor of the text message she sent a couple of hours later, which included “I think most people would go off the deep end if this was what they had to endure five days a week and your fake concern doesn't make up for any of it.”

[174] The Applicant contests that she would use the word, “If you cared, you wouldn’t make me work in an environment where I’m surrounded with idiots in the first place”. She argued that it was not consistent with her documented style of communication, as the wrong preposition was used. The Applicant said in her closing submissions:

Ms Willoughby unknowingly used the correct phrase ‘surrounded by idiots’ and I had to point out that this was not consistent with the phrase Mr Shephard claimed I had used. (13.04.2026 Transcript p55 PN584). This also forms part of a broader pattern in which my language was mischaracterised, amplified, or reframed to imply aggression.

[175] But the Applicant’s communication is not demonstrated to be entirely free of grammatical errors. It is also more likely that she would make a grammatical error while upset or stressed. I prefer Mr Shephard’s account of events, noting I find him to be a more reliable witness than the Applicant and noting he took contemporaneous notes of the phone call.

Allegation 7

13 December 2024 – You called the absence reporting line and spoke to Mr Shephard, where you stated, “That’s a stupid fucking question” and “Don’t even fucking worry about it mate”, then you terminated the call.

[176] I note Mr Shephard took notes of the two calls he had with the Applicant on 13 December 2024. Mr Shephard emailed HR with his account of the phone calls soon after they occurred. The Applicant referred to “inane questions” instead of a “stupid fucking question”. She said used the words “sorry for bothering you” and notes she “didn’t allow him to finish” which I take to mean she hung up. I prefer Mr Shephard’s recollection and I consider it likely the Applicant used the words attributed in allegation 7, given Mr Shephard took contemporaneous notes of the conversation. I also note that the Applicant says she apologised to Mr Shephard for the phone call later “for suggesting that his worry came from an insincere place”. If it had really happened the way she described it, then I am not sure why she would apologise for that.

Allegation 8

20 March 2025 - you have failed to comply with formal directions (issued in Michelle Watson’s suspension decision letter of 20 December 2024) that you:

- not discuss or make reference to, the allegations and/or any other matters referred to in this letter, and*
 - not make contact with any Toowong Service Centre staff by any means*
- The information also suggests that you may have failed to treat others with respect and courtesy and without harassment, and/or in a manner that may represent a failure to uphold the APS Values.*

[177] It is first necessary to consider whether the directions issued to the Applicant were lawful and reasonable. The Applicant argued in the hearing that the directions issued were unreasonable. She said it was unreasonable “because it was not something that I was - I was not in a place where I could actually comprehend what was happening.” She also noted that she “wasn't allowed to talk to anybody that, in the office, that might actually support my version of what happened.”

[178] I am satisfied that the first direction set out above, which was not to discuss or make reference to the allegations “and/or any other matters referred to in this letter” was lawful and reasonable. That is a standard direction which is issued by employers during an investigation, to preserve the integrity of the investigation.

[179] The second direction is wider. It prevents the Applicant from talking to the Toowong Centre Staff “by any means”. That includes discussions about things not related to the investigation. In circumstances where the Respondent had reasonable grounds to believe the Applicant posed a risk to its employees health and safety, I do not consider the direction was unreasonable. In relation to the Applicant’s argument that she was not capable of comprehending what was happening at the time, I do not accept that. The Applicant’s following messages show she was perfectly aware that she was breaching a direction:

- The Applicant’s message to Ms B on 14 January 2025 to ask for the last name of Ms G: “Girl can you please do me a massive favour? I have no one else to ask and I beg you, don't say anything...”
- The Applicant’s message on 20 March 2025: “I'm not trying to protect my job anymore but please don't tell anyone I messaged you because I still want these ingrates to pay me.”
- The Applicant’s message on 20 March 2025: “I mean, at this point, their directions can eat a bag of day old dick, because they've done some very illegal things to me in this process.”

[180] I also do not accept that the reason the Applicant breached the directions is because she had been cut off from support while the investigation was, in her view, deliberately dragged out. The Applicant breached the directions just over three weeks after they had been issued. On 14 January 2025, she asked Ms B for information in order to prepare her response to the allegations. That was a clear breach of the directions and it occurred only 6 days into the investigation, while the Applicant was still suspended on pay. That demonstrates a wilful disregard for the Respondent’s directions.

[181] I accept that the content of the Applicant’s messages on 20 March and 21 March 2025 demonstrates a failure to “treat others with respect and courtesy and without harassment”. The following comments are flagrantly disrespectful and insulting:

- “I still want these ingrates to pay me”
- “[T]heir directions can eat a bag of day old dick”
- “Harry is a creep”
- “I now Harry bought an apartment recently and Brian has no money, so this will really screw them both”
- “Harry is unintelligent and Brian is a narcissist”

[182] I consider that the conduct set out in allegation 8 is substantiated.

Sexual Harassment complaint

[183] The Applicant alleged that she was sexually harassed by Mr Shephard. This is relevant to whether there is a valid reason for dismissal, as for example, the Applicant would argue that it is not disrespectful to call Mr Shephard a creep if he sexually harassed the Applicant. She also alleges that her complaint was not dismissed and not taken seriously.

[184] The Applicant lodged a complaint against Ms Shephard on 11 May 2025 with nine allegations. The allegations related to alleged sexual harassment and alleged abuse of power. I note the sexual harassment complaint was reviewed in what I consider was an overly narrow manner. One of the complaints was dismissed on the basis that the Applicant gave an incorrect date. The other was dismissed on the basis of a dictionary definition. Mr Shephard was not asked to respond to the complaints at the time. In the hearing, I asked him about each of the allegations and whether the conduct occurred.

[185] The definition of sexual harassment under s 28A of the *Sex Discrimination Act 1984* is:

28A Meaning of sexual harassment

(1) For the purposes of this Act, a person sexually harasses another person (the person harassed) if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed; in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

(1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- (b) the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- (c) any disability of the person harassed;
- (d) any other relevant circumstance.

(2) In this section: conduct of a sexual nature includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

[186] My findings in relation to each of the allegations are set out below. I note in making these findings that the Applicant provided little evidence specifically addressing the sexual harassment allegations:

1. *Mr Shephard would engage in one-on-one meetings with me in private rooms under the guise of operational necessity.*

[187] There is no evidence that these meetings were not conducted because of operational necessity. Mr Shephard's evidence was that he used private meetings to deliver feedback to staff. Mr Shephard said that the meeting on 12 December 2024 was held to address a behavioural concern. There was also a meeting on 11 December 2024. Mr Shephard said that meeting was in relation to the Applicant saying she wanted to leave early. The Applicant said, "Mr Shephard's own material demonstrates a level of focus on me that is disproportionate to his limited period of supervision. There were multiple one on one interactions within a very short timeframe". However, another way of looking at it is that the Applicant's behaviour was disproportionately inappropriate and required feedback to be given on a regular basis. The evidence demonstrates that there were concerns about inappropriate behaviour by the Applicant in early December 2024, in the context of formal counselling having already occurred for similar behaviour.

2. *Mr Shephard would frequently stare at me in a manner that was improper, causing me to feel uncomfortable.*

[188] Mr Shephard denied staring at the Applicant in the hearing. He said he did not stare at anyone. Other than just asserting that Mr Shephard stared at her, the Applicant did not provide any further evidence, dates or witnesses in relation in this allegation. On the evidence before me, I would not be able to find that this occurred.

3. *On 8 December 2024, after I submitted a standard request for a linking code due to system issues, Mr Shephard responded with, "What are you going to do for me?"—a sexually suggestive and entirely inappropriate remark.*

[189] In the hearing Mr Shephard said, "I completely deny that allegation. I – I have never and would never say anything of the sort." The Applicant's allegation was dismissed on the basis that 8 December 2024 was a Sunday and neither Mr Shephard nor the Applicant were working on that day. Even accepting that it was probably a typo and the Applicant intended to say 9 December 2024, there was no further context or evidence provided for the allegation. On the evidence before me, I would not be able to find that this occurred.

4. *On 9 December 2024, after Ms Stunden casually mentioned discomfort caused by SPF and lip balm, Mr Shephard stated, "Oh you have a sticky face," in a suggestive tone.*

[190] In the hearing, I asked Mr Shephard about this and he said, "[S]he said to me, 'Oh, my face is all sticky from whatever I've used, does it look suspicious?'," and my reply was, 'No comment'." I note if Mr Shephard's evidence was accepted, then it seems that the Applicant made an inappropriate comment, not Mr Shephard. In the Applicant's closing submissions, she said that Mr Shephard's account had shifted and he was now seeking to recast the interaction

as having been initiated by her. On a whole, I do not consider there is sufficient evidence to be satisfied that either Applicant or Mr Shephard's version of events took place.

5. *Mr Shephard retaliated by positioning himself as a key witness in the internal complaint that led to my suspension. Despite having only been in the office for two weeks, he made multiple false and damaging claims. For instance, he alleged that I swore at [Ms G] and in front of customers on 12 December 2024—an accusation [Ms G] has formally denied, confirming in writing that she has no recollection of such an incident.*

[191] Ms G did not formally deny the allegation, she said she did not recall it. That is fundamentally different to a denial. I have not found that Mr Shephard made false allegations about the Applicant. There is no clear motivation to establish why he would be motivated to lie about the Applicant.

6. *On 12 December 2024, Mr Shephard pulled me into a private room. During this interaction, he stood up and pointed forcefully at the desk while I remained seated. This behaviour was physically intimidating and clearly intended to assert dominance and control.*

[192] Mr Cini's record of the CCTV footage says:

- At 4 minutes 48 seconds, Ms Stunden removes her glasses and throws them on the blue tray, but the glass fall to the floor. She places her hands to her face and appears to be crying, noting she keeps her hand up and head down this is unable to be confirmed.
- At 5 minutes 15 seconds Mr Shephard stands up while Ms Stunden has her hands to her face. He slides his chair under the desk and stands approximately 1 metre back from the desk and does not appear to be talking.
- At 5 minutes 27 seconds Ms Stunden commences speaking again and leans forward to place her laptop on the desk, then bends over to pick her glasses up off the floor. Once picked up she places them on the desk and puts her hands on her face once more, appearing to wipe tears from her eyes.
- Ms Stunden and Mr Shephard engage in conversation, noting Mr Shephard remains standing in the same position. Ms Stunden still appears to be in a heightened state and does most of the talking, using her hands a lot.
- At 6 minutes 45 seconds Ms Stunden takes a tissue from the tissue box on the desk and wipes her eyes.
- At 7 minutes 20 seconds Mr Shephard commences to do more of the talking and leans forward pointing at the table with his index finger while Ms Stunden is looking at her hands.

- Mr Shephard continues to speak and at 7 minutes 48 seconds Ms Stunden crosses her arms and remains motionless while looking toward Mr Shephard, until he exits the rear door at 8 minutes 11 seconds.

[193] The record of the CCTV footage indicates that Mr Shepherd did stand up and point at the desk. It does not indicate that he did so forcefully and the Commission does not have a copy of the footage to review. While standing up and pointing at the desk is perhaps an assertive gesture, I am unable to conclude that it is “physical intimidating”. Mr Shephard’s email of 12 December 2024 says that after he pushed his chair back, he told the Applicant the conversation was not productive and suggested that the Applicant take the rest of the day off. Mr Cini’s record of the CCTV footage states that the Applicant and Mr Shephard were sitting at opposite sides of the table initially, and then Mr Shephard moved back, one metre away from the desk.

7. *Mr Shephard contacted me again later that day without operational justification. He subsequently alleged that I made suicidal threats during my call with Mr Blackwood. Mr Shephard’s reengagement despite my clear withdrawal, and his decision to then fabricate the nature of that interaction to justify disciplinary action, constitutes harassment and an abuse of power. He also contacted my emergency contact without legitimate cause, breaching my privacy.*

[194] I do not consider that the call was made without operational justification. In the Applicant’s account of the call with Mr Blackwood she said he asked, “Is there anyone we can call?” and asked if the Applicant was okay and asked if she was okay getting home. That would suggest that the Applicant has made comments which were of some concern. I do not consider that Mr Shephard harassed the Applicant by calling her to ask if she was safe. The Applicant had displayed unpredictable behaviour and had said she would leave home early. It was not a breach of privacy to call the Applicant’s emergency contact. That was the appropriate action for Mr Shephard to take. In the Applicant’s account of the call, she said she thought his question about plans (i.e. plans over the upcoming days) was a reference to a plan for the Applicant to attempt suicide. She said, “I regret mentioning that I had been thinking about doing something impulsive in the lead-up to this incident, but it was the truth, as it had been on my mind recently.” I consider it likely based on this comment that the Applicant did mention thoughts of suicide to Mr Shephard. It was appropriate for him to contact her emergency contact after that comment, coupled with her behaviour that day.

8. *Mr Shephard also falsely claimed that he could hear my voice during the call I made to the attendance line— Services Australia’s phone systems are secure, and voicemails or call routing announcements are not audible to other staff suggesting he was able to determine my mental state from it. This is blatantly untrue.*

[195] The Applicant provided information on the phone model to the Commission as supposed evidence that it would have been impossible for Mr Shephard to hear her voice. But I do not consider that evidence is of much assistance. She said: “The technical specifications of Cisco 9951 demonstrate that this device utilizes a directional, noise-cancelling voice circuit specifically engineered to prevent the capture of ambient sound.”⁴³ But noise cancelling would only be relevant to what Mr Blackwood heard while on the phone with the Applicant, not what

⁴³ Digital Hearing book volume 1 page 942

Mr Shephard could hear when he was in close proximity to Mr Blackwood while Mr Blackwood took the phone call. There is no evidence to substantiate the Applicant's claim that it was "impossible" for Mr Shephard to hear the phone call. Mr Shephard does not claim to have heard any particular words used by the Applicant. Rather he just says he could heard her voice increasing in volume.

9. *Mr Shephard described me as "hysterical"—a gendered and derogatory term historically used to discredit women for displaying emotion.*

[196] I accept that "hysterical" is a word with a gendered connotation. Men are not often referred to as "hysterical". This complaint was found not be substantiated on the basis that:

In the evidence that Ms Stunden has provided Mr Shephard has both times used the noun form of the word which is used, and has been used, to name the state of emotion the Ms Stunden was experiencing and he was hearing at the time. He has not used the term adjective form of the word 'hysterical' as described by Ms Stunden therefore, this allegation has not been substantiated.

[197] I consider that is an overly narrow approach. It does not engage with the Applicant's complaint about the word. I agree that hysterical or hysterics was not the best choice of words (to be clear, Mr Shephard used that word in an email to HR, he did not say it to the Applicant directly). However, I do not consider that using the word hysterics or hysterical amounts to sexual harassment. It was not conduct of a sexual nature.

[198] On a whole, I consider that the evidence does not support the view that the Applicant's complaints against Mr Shephard were unreasonably dismissed. The respect assessment could have engaged more with the substance of the complaints, rather focussing on some incorrect details. But I do not consider that there was sufficient evidence to support the view that Mr Shephard sexually harassed the Applicant or retaliated against her. On that basis, the finding that the allegations were not substantiated was appropriate.

Conclusion on valid reason

[199] A general theme of the Applicant's submissions was that her ADHD caused others to either "misinterpret" her actions or "scapegoat" her. She said she was terminated for being "opinionated". She said in an email on 1 May 2025: "You all know what I look like, I'm aware that it has something to do with your unadulterated dislike of me; being pretty and having an opinion terrifies weak people". But you can be opinionated without disrespecting and denigrating others. An ADHD diagnosis, or feeling overstimulated, is not a licence to verbally abuse others at work without consequence.

[200] I find that the Applicant was offered accommodations to assist in her regulating her ADHD. She was able to step away and do breathing exercises when she became overwhelmed. On 9 December 2024, Mr Shephard wrote to the Applicant on Teams, demonstrating the accommodations afforded to her:

Applicant:	can I move? everyone is being loud
Mr Shephard:	yeah of course!
...	

Applicant: my blood is boiling
Mr Shephard: Take a breather after you finish with that one Jess
I am more than happy for you to sit in a quiet spot for CI

[201] The Applicant requested to work from home in November 2024 as an accommodation but later withdrew that request. She said in the hearing that she was “coerced” into withdrawing it but there is absolutely no evidence to support that claim.

[202] In addition to the accommodations above, the evidence demonstrates that the Applicant was offered mental health supports. An email from Mr Keogh on 11 November 2024 demonstrates that the Respondent offered to engage an external provider for early intervention support for the Applicant. The Applicant declined, and also declined to discuss EAP. When Ms Davies spoke to the Applicant on 6 May 2025 and tried to talk about mental health supports, the Applicant said “don’t you dare send me a single thing”.

[203] The Applicant refers to vocal modulation as a sign of ADHD, and said the allegations that related to her yelling need to be considered in that context. This submission does not engage with the issue of what the Applicant said while she raised her voice. On 6 November 2024, the Applicant raised her voice at Mr Blackwood, in front of customers, and told him to stop. While the raised voice is a concern, the content of what the Applicant said was also disrespectful and insubordinate and it was said in front of a customer. The Applicant could have raised her concerns privately. The same is true for the incidents on 28 November and 12 December 2024. The allegations relate to yelling, but also what the Applicant said when she was yelling. The Applicant appears to believe that as long as she is “correct”, it does not matter how disrespectful she is to her colleagues.

[204] Even if I accepted that the Applicant’s conduct was caused by her ADHD, I accept the Respondent’s submission that being able to comply with the APS Code of Conduct is an inherent requirement of the role. The Applicant’s ADHD *might* explain her behaviour, but it does not erase the effect that behaviour has on others. The Respondent has a duty of care to provide a safe workplace for its employees, including by addressing risks to their psychological safety.

[205] The Applicant contested the submission that the Applicant poses a risk to health and safety. The Applicant said there is no evidence she is a safety risk. In that regard, she referred to the fact that after she was suspended the Region Manager asked her to attend another service centre to collect her things. She said that is inconsistent with the argument that the Applicant was a safety risk. I consider this an obtuse argument by the Applicant. The Respondent was not necessarily referring to safety in a physical sense, they were referring to psychosocial safety for their employees. There is evidence that the Applicant’s behaviour had an impact on the psychological safety of the Respondent’s employees. For example, Ms Watson and Mr Cini made work health and safety complaints about the Applicant. Mr Shephard provided a witness statement to the Commission stating: “The thought of being in the same room as Ms Stunden causes me considerable distress. Revisiting the interactions outlined in this statement has been extremely triggering for me and has adversely impacted my wellbeing.” It was stated in emails that the employees at Toowong Service Centre felt uncomfortable with the Applicant contacting them after she was suspended (though I note that evidence should be given less weight as it was reported by the Region Manager, rather than the employees directly).

[206] I note finally that the Applicant referred to Mr Shephard and Mr Blackwood also swearing at work. But I do not consider that helpful to the Applicant's argument as the examples she gave of them swearing was in a different context. For example, Mr Blackwood is alleged to have said "fucking oath" to express agreement and Mr Shephard is alleged to have said "what the fuck" when laughing at a joke. The Applicant used swear words to denigrate others, as is evident by her "fucking useless" comment. She also swore to express anger and frustration for example when she said, "Fuck! people need to not move my shit!". That is quite different to the examples of Mr Blackwood and Mr Shephard swearing.

[207] I consider that the Applicant's conduct in failing to comply with a lawful and reasonable direction amounts to a valid reason for dismissal. The Applicant's text messages indicate that she understood she was doing the wrong thing. She explicitly demonstrates wilful disregard for the directions issued to her when she says, "their directions can eat a bag of day old dick". This was a breach of element 12 of the APS Code of Conduct.

[208] In addition to breaching the lawful and reasonable directions issued to her, she engaged in inappropriate behaviour, which was disrespectful, in breach of the APS Code of Conduct, including:

- On 31 October 2024, the Applicant spoke loudly over the customer and told them she would reassign them
- On 6 November 2024, the Applicant raised her voice at a customer and then yelled at Mr Blackwood, "Brian, wait"
- On 28 November 2024, the Applicant used words to the effect of, "someone clearly took it, I hate it when people move my stuff, why would someone Fucking move my stuff", and "Fuck! people need to not move my shit!"
- On 4 December 2024, the Applicant raised her voice at Mr Blackwood
- On 12 December 2024, the Applicant used words to the effect of "I fucking assigned them"... "Don't fucking talk to me" when speaking to a colleague. She then yelled at Mr Shephard, describing her colleague with words to the effect of, "fucking useless", "can't do their job" and "I am the only person who knows what they're doing". She also used words to the effect, "you're setting me up to fail, you are the ones doing this to me" and "You've pushed me to the point where I can't even fucking do my job".
- On 12 December 2024, the Applicant spoke to Mr Shephard on the phone and used words to the effect of:
 - "No I am not fucking okay"
 - "No I fucking won't be"
 - You can't do anything"... "You don't fucking care"
 - "If you cared, you wouldn't make me work in an environment where I'm surrounded with idiots in the first place"
- On 13 December 2024, the Applicant spoke to Mr Shephard on the phone and used words to the effect of, "That's a stupid fucking question" and "Don't even fucking worry about it mate" and then hung up.

[209] I find that there was a valid reason for dismissal based on the breach of the lawful and reasonable direction. When considered with the inappropriate behaviour described above, which the Respondent relied on as a reason for dismissal, there is a strong valid reason.

[210] In addition, the Applicant was directly cross-examined on comments she made in May 2025, including:

- Her email on 1 May 2025 when she stated: “But unlike you, I have nothing left to lose-and that should terrify you.”
- Her text message to Mr Shephard on 11 May 2025 where she said “I will inundate every avenue if necessary. I'm not nearly done, but you will be.”

[211] Under cross-examination, she admitted that both of those comments could be interpreted as threatening. I consider the text message to Mr Shephard in particular could be read as a death threat, as it refers to Mr Shephard being “done”. Those communications posed a real risk to health and safety. While there is a valid reason for the dismissal in any event, the Applicant’s communications above further support the conclusion that trust and confidence has been lost. The Applicant said those communications were sent after suicide attempts, explaining the state she was in. However, I consider that she significantly downplayed the seriousness of the communications (a matter referred to later under s.387(h)), describing the things she said as “very off colour”. It was not just off colour, they were threatening and disturbing comments. I consider the Applicant demonstrated only superficial insight into the impact those comments might have had on the people receiving them.

[212] The valid reason for dismissal weighs against the dismissal being unfair.

(b) whether the person was notified of that reason; and (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and

[213] While I have found above that the Respondent’s reasons for dismissal in the termination letter are different to what is relied on by the Respondent in their submissions, I am satisfied that the Applicant was given an opportunity to respond to the reasons for dismissal relied on by the Respondent. The Applicant was given an initial advice letter on 8 January 2025 which outlined allegations 1 to 7. The Applicant was given seven days to respond. She was later granted an extension, meaning she had 14 days to respond in total.

[214] On 3 April 2025, the Applicant was sent a further initial advice letter which included allegation 8, in relation to the breach of the directions. She was given 7 days to respond in writing.

[215] I am satisfied that the Applicant was given an opportunity to respond. Even though she was later told that allegations 1 and 2 had been dealt with in counselling and did not form part of the breach notice, she nevertheless had an opportunity to respond to those allegations, and did so. This weighs against the dismissal being unfair.

(d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to the dismissal; and

[216] This factor is neutral. The Applicant complains that she was not offered the opportunity to bring a support person to the informal meeting she had with Mr Shephard on 12 December

2024. I would not consider that the 12 December 2024 was a discussion “relating to the dismissal”. It was not a show cause meeting, or a meeting to deliver a termination outcome. It was a feedback meeting. In any event, even if it was a dismissal-related discussion, there was no evidence that the Applicant asked for a support person. Section 387(d) requires the Commission to consider whether there was an *unreasonable refusal*, not whether the Applicant should have been proactively offered a support person. There is no evidence that the Respondent unreasonably refused for the Applicant to have a support person present. In the formal counselling session on 19 November 2024, the Applicant was offered a support person. She was also offered to bring a support person to the later aborted meeting where the Respondent had planned to present the preliminary sanction letter in person.

(e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal; and

[217] The Applicant was terminated for serious misconduct rather than unsatisfactory performance. This factor is neutral.

(f) the degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal; and

[218] The Respondent is a large employer. This factor is neutral.

(g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and

[219] The Respondent has dedicated human resources personnel. This factor is neutral.

(h) any other matters that the FWC considers relevant.

Investigation process and timing

[220] The Applicant raised issues with the investigation. Those concerns included the length of time the investigation took, as well as concerns about collusion and coercion. I will deal with the latter concerns first. There is no evidence of collusion between Mr Blackwood and Mr Shephard. The Applicant said in her response the preliminary sanction letter:

At any time, [Mr Shephard] could have aligned his account with Mr Blackwood's, and there is no way to rule out collusion. Ultimately, no one corroborated Mr Shephard's story-but instead of dismissing it, the agency treated it as decisive. That is not how evidence works. That is not how procedural fairness works.

[221] I have no reasonable basis to suspect collusion between Mr Shephard and Mr Blackwood. I note the Applicant also referred in the hearing to Mr Cini not applying the *Briginshaw* standard. For reasons stated above, I do not agree that the principles in *Briginshaw* apply here. The Applicant notes that Mr Cini did not interview the witnesses in question. I agree that I would recommend that employers should interview witnesses privately soon after

an incident. However, in this case, there were reports to HR soon after each incident which outlined Mr Blackwood and Mr Shephard's account of what occurred. Also, there is something to be said for the fact that documentary evidence such as CCTV footage tends to be more reliable than people's memories. Although the Applicant was not formally interviewed, she was given the opportunity to respond in writing to the allegations and provide her account. I note the Applicant was also given the opportunity to provide names of witnesses who should be interviewed. I cannot see anywhere in the material that she did so. Ultimately, though interviewing the relevant parties may have been preferable, I find no unfairness in the Respondent not interviewing the relevant parties.

[222] I note the Applicant says that Mr Cini "did not consider alternative explanations consistent with disability, distress or workplace dynamics." I do not agree with this assessment. Mr Cini's considered the Applicant's response to the allegations. He quotes it extensively in the breach report. Just because he did not prefer the Applicant's account of what occurred does not mean he did not consider it. The Applicant also states that "The draft and final reports are materially identical." She said she was denied a "genuine opportunity to respond". The report are probably largely the same because instead of taking the opportunity to respond to the findings critically, the Applicant replied with ad hominem attacks.

[223] A bigger issue is the length of time the investigation took. It commenced on 8 January 2025, and the draft preliminary breach report was provided on 22 April 2025, approximately four months later. This is a long period of time. I note that Mr Cini explained in the hearing that there were difficulties which extended the time taken for the investigation to be completed, including staffing and periods of leave within the Conduct Standards team. He also said that it took a while to obtain the CCTV footage, which took 5 weeks to obtain. He also said that he was preparing reports for other matters at the same time. A lengthy investigation obviously impacts upon the Applicant. An employee should not be left waiting for a long period of time to find out the outcome of the investigation. However, I consider the Commission should also not be encouraging employers to complete rushed or perfunctory investigations. Mr Cini's report is detailed and applies forensic judgment in weighing up various pieces of evidence. I also note that before the investigation concluded, an additional allegation was added relating to the breach of a direction. That allegation was not able to be put to the Applicant straight away, as Ms B had not yet provided consent for the Applicant to know that Ms B had told management about the text messages. Ultimately, I do not consider that investigation process was unduly long, particularly when the additional allegation is considered.

[224] I note the Applicant alleged that Ms B was coerced into providing her phone to the Respondent so they could view her messages. But there is simply no evidence to support that claim. There is also no evidence that Mr Cini coordinated the timing of his final breach report to align with Ms Watson's suspension decision.

Merit protection commission review

[225] The Applicant says it was unfair for the Respondent to not wait until the outcome of the MPC review before imposing a sanction. I do not consider that was unfair in circumstances where the MPC is a different body, performing an administrative law function.

Suspension without pay

[226] Another issue raised by the Applicant is the fact that from 4 April 2025 to 1 July 2025, the Applicant was suspended without pay. I accept that the agency is able to suspend an employee without pay under the legislation and regulations. The Applicant's argument that the suspension without pay repudiated her employment contract is flawed in that regard. Section 28 of the *Public Service Act 1999* (Cth) states:

The regulations may make provision in relation to the suspension from duties of APS employees, with or without remuneration

[227] Section 14 of the *Public Service Regulations 2023* states:

14 Suspension from duties

(1) This section is made for the purposes of section 28 of the Act

(2) An Agency Head may suspend an APS employee employed in the Agency from duties if the Agency Head believes on reasonable grounds that:

- (a) the employee has, or may have, breached the Code of Conduct; and
- (b) the employee's suspension is in the public, or the Agency's, interest.

(3) The suspension may be with remuneration.

(4) If the suspension is to be without remuneration, the period without remuneration must not be more than 30 days unless exceptional circumstances apply.

(5) The Agency Head must review the suspension at reasonable intervals.

(6) The Agency Head must immediately end the suspension if the Agency Head no longer believes on reasonable grounds that:

- (a) the APS employee has, or may have, breached the Code of Conduct; or
- (b) the employee's suspension is in the public, or the Agency's, interest.

(7) The Agency Head must immediately end the suspension if a sanction has been imposed on the APS employee for the relevant breach of the Code of Conduct.

(8) In exercising powers under this section, the Agency Head must have due regard to procedural fairness unless the Agency Head is satisfied, on reasonable grounds, that this would not be appropriate in the particular circumstances

[228] In making the suspension decision, Ms Watson was acting with delegated authority of the Agency Head. Though the Applicant at one point questioned the delegations, she has not provided any evidence that Ms Watson was not acting with delegated authority.

[229] The *Handling Misconduct Guide* contains guidance for decision makers regarding suspensions without pay:

7.18. Factors to consider in deciding whether to suspend with or without remuneration may include:

- the seriousness of the alleged misconduct—suspension without remuneration would usually be appropriate in cases where the sanction imposed might be termination of employment if the alleged misconduct is determined to be a breach of the Code
- the agency's obligations under s.15 of the PGPA Act with respect to the proper use and management of public resources. In the circumstances of the case, decision-makers should consider whether it is appropriate for the suspended employee to be remunerated if they are not working
- the estimated duration of the misconduct action
- the likely financial hardship, if any, for the employee:
 - The decision-maker can balance the seriousness of the alleged breach against the severity of the financial impact of the suspension. In some circumstances, the hardship imposed may be disproportionate to the alleged misconduct. In others, the alleged misconduct may be so serious that it outweighs claims of hardship.
 - While the onus is on the person under investigation to substantiate a claim of hardship by providing persuasive evidence to support their case, a decision-maker should give them reasonable opportunity to provide information about the nature of the hardship. For example, where the person claims that their bank would take possession of their house, the decision-maker might seek a statement to this effect from the bank, and/or a signed statutory declaration from the person under investigation.

7.19. If the suspension is to be without remuneration, the period without remuneration must not be more than 30 days unless exceptional circumstances apply (s.14(4))

- 'Exceptional circumstances' are not defined in the legislation, but could include:
 - where a strong prima facie case of serious misconduct is apparent
 - where a finding has been made of a serious breach of the Code and a sanction is yet to be imposed—any delay between a determination and imposing a sanction should be minimised
 - where the person under investigation has been charged with a criminal offence and is waiting to have the charge heard and determined
 - where the person under investigation has appealed against a criminal conviction and is waiting to have the appeal heard.
 - A suspension, with or without remuneration, must be reviewed at reasonable intervals (s.14(5))

7.20. A review of suspension under s.14 is not a review of the original suspension decision. It is a fresh decision as to whether the person under investigation should remain suspended, having regard to the risks posed by the person's presence in the workplace and whether suspension remains the most effective way to mitigate these risks.

7.21. Agency guidance to employees should draw a clear distinction between the right to have a suspension from duty reviewed at regular intervals (s.14(5) of the PS Regulations) and the review of action provisions in s.33 of the PS Act.

- Review of suspension under s.14(5) has a prospective effect. It examines whether a suspension from duty is to continue from the time of the review decision. It does not involve a reconsideration of the original decision to suspend the person under investigation.
- By contrast, a review of action under s.33 of the PS Act involves re-examination of the original decision.
- It is good practice to advise the person under investigation of their right to seek a review, under s.33 of the PS Act, of the decision to suspend.

[230] The decision to suspend the Applicant without pay was made following the allegations regarding the text messages being put to the Applicant. The Applicant argues that this decision was harsh. I note she stated that because of her loss of income, she was not able to take her medication consistently. She suggests that that contributed to her behaviour in May 2025. Suspension without pay is a serious step. It is a serious step because it is effectively instituting a punishment or a financial consequence on the employee. My concern is that the decision to suspend the Applicant without pay on 4 April 2025 was made before the determination that the Applicant had breached the Code of Conduct. That is effectively punishing the Applicant before determining what she did wrong. In saying that, the *Handling Misconduct* guide makes clear that the factors that may be taken into account in determining whether exceptional circumstances exist may include the seriousness of the allegation, the length of the misconduct and the financial circumstances of the Applicant. As the remuneration is a public resource, another factor includes the need for responsible use of public funds. The decision whether to suspend without pay is ultimately discretionary. Ms Watson appears to have made that decision appropriately by weighing up relevant factors, including the seriousness of the conduct and the evidence of a breach of the agency's direction. Though I would normally intuitively say that suspending someone without pay before an investigation outcome is reached is harsh, the Act and regulations allow for it and the decision-maker weighed up relevant factors appropriately. I consider that the Applicant's wilful disregard for the Respondent's directions also goes some way towards a conclusion that the decision was *not* harsh. The Applicant's threatening behaviour towards the Respondent's employees also means it is not harsh, in my view. Ultimately, though I understand the suspension without pay placed the Applicant in a difficult situation, I do not consider it was harsh.

[231] The Applicant states that the suspension of pay decision on 12 May 2025 was unlawful. She alleges that because the review decision was initiated more than 30 days after the last review. The Applicant referred to the old regulations when making that argument. I consider the Applicant's argument is wrong. She is conflating two different sections of the regulations. Section 14(4) of the *PS Regulations* establishes that a suspension without remuneration of more than 30 days requires exceptional circumstances. Section 14(5) requires that the decision be reviewed at reasonable intervals. The Applicant appears to argue that the *PS Regulations* require the review to be conducted every 30 days. But the regulations do not say that. It says "reasonable intervals", which is not defined. The Applicant said she obtained legal advice to say that Ms Watson's decision on 12 May 2025 was unlawful but she did not explain the basis of that advice. I would consider a period of 30 days, more or less, to be a reasonable interval. The review

commenced on 6 May 2025, 32 days after the last suspension decision. It was longer than 30 days because of Ms Watson's leave. I do not consider that the failure to review the suspension decision within 30 days was harsh in the circumstances.

Medical evidence

[232] I note the Applicant told my Chambers that she did not her case to be viewed according to a "psychiatric narrative". I have not viewed the Applicant's case with any sort of "narrative" in mind. Rather, I have taken the Applicant's material which appears before me, as well as the Applicant's evidence in the hearing, and considered that. Within that material, there are over 60 references to the Applicant's ADHD and over 60 references to the Applicant's suicide attempts as well as number of references to the Applicant's mental state generally.

[233] I note the Applicant referred at several points to being unwell. In the hearing she referred three times to being unable to comprehend what was happening. She said that referring to the direction on 20 December 2024.

[234] I note Dr Theodoros' letter of 26 June 2025 describes the symptoms and manifestations of Adult ADHD as follows:

These include:

- Introspective difficulties. Patients with Adult ADHD can struggle to more objectively understand or regulate sensory input or output which can also be impacted by overly stimulating environments. This includes difficulties regulating vocal tone and volume which may be interpreted as inappropriate or unprofessional.
- Difficulties with attention and working memory. This can result in people with Adult ADHD struggling to listen to and process verbal instructions. To compensate for this, they may repeat verbal instructions/topics, write these down or message these, or verbalise concepts to assist with processing of information. This may be interpreted as maintaining inappropriate boundaries, but is often a key adaptive coping strategy in ADHD for both functioning and regulating emotions.
- Distress tolerance. Patients with Adult ADHD may struggle with affective instability and emotional regulation. Whilst these can improve over time with medication treatment and psychotherapy, they can be challenging to self-regulate, particularly under stressful circumstances.
- Impulsivity. A core symptom of Adult ADHD is impulsivity. Future planning and delayed gratification can be challenging, and worsened in stressful environments lacking in structure.
- Difficulty adjusting to environment change. Patients with Adult ADHD have often had to develop fixed routines to allow them to function without becoming overwhelmed. They can experience significant distress managing sudden and unexpected changes to these routines/patterns. This can make it very challenging for patients with Adult ADHD to adapt to rapid changes in workplace, staff or processes.

[235] Dr Theodoros' letter of 2 July 2025 states:

I believe that with access to her pay and therefore access to psychiatric and psychosocial supports, she is fit to engage with any administrative or employment related processes. In the setting of the distress and adverse impact on her mental health/functioning reported as a result of these employment and human resource processes thus far, I would recommend Jessica either having access to support persons when discussing these matters going forward or having written communication sent to my offices initially (if Jessica consents to this) to allow me to review these and determine the likely distress this may result in and the most appropriate way to communicate this to her (be it by directly forwarding this on to her, or initially reading it to her during a scheduled appointment). I would also recommend Jessica be granted the ability to attend meetings discussing these matters remotely via videoconference if desired, which may also assist in reducing further distress and challenges from environmental stimuli. I would recommend allowing Jessica to choose which of these communication options would be most beneficial for her.

(emphasis added)

[236] Dr Theodoros' letter 23 July 2025 states:

I continue to not identify signs, symptoms or behaviours of an individual without the capacity to succeed and thrive in this role when offered appropriate supports for their disability and mental health.

[237] Dr Theodoros does not state that the Applicant lacks capacity. He said that with appropriate supports, she was "she is fit to engage with any administrative or employment related processes." He does not state that she is incapable of complying with the APS Code of Conduct. Some of the Applicant's "raised voice" issues *may* be explained by vocal modulation issues, but as I said earlier that does not exculpate the Applicant from consequences for what she said when she raised her voice. While it is also possible that some of the inappropriate conduct may be explained by distress intolerance, the evidence shows that the Applicant had supports in place to regulate her emotions, including taking five minutes to herself and doing breathing exercises. As I said earlier, an ADHD diagnosis is not a licence to verbally abuse people without consequences. The Applicant understood that she was required to follow the Code of Conduct and, when given appropriate support, it was ultimately her responsibility to manage her behaviour to do so. If she cannot follow the APS Code of Conduct, then she cannot meet the inherent requirements of the role. That is not harsh. It is the bare minimum for an employer to expect that an employee will treat others with respect.

Dismissal letter sent to psychiatrist

[238] The Applicant argues that it was harsh for her termination letter to be sent directly to her psychiatrist. She said that consent was not provided for that to occur. But Ms Davies emailed the Applicant on 5 August 2025 stating:

I am writing to advise you that the sanction delegate finalised their sanction decision letter and provided it to Dr Theodoros on 28 July 2025 to facilitate delivery of the outcome to you.

Dr Theodoros emailed me just now to advise that he needs your consent each time to allow him to access the document in order to provide it to you.

Can you please make contact with Dr Theodoros to obtain the sanction outcome.

[239] If the Applicant wanted the outcome to be sent directly to her, she could have stated that. In providing the sanction outcome directly to the Applicant's psychiatrist, the Respondent was following the recommendations of Dr Theodoros, to assist the Applicant in the process. It was not harsh to send the letter to the Applicant's psychiatrist.

Insight

[240] It is relevant to note that I consider the Applicant demonstrated only superficial insight into the effects of her behaviour on others. As I said earlier, she downplayed the seriousness of her conduct, including sending a text message which could be read a death threat, but referring to "off colour comments".

[241] I find the dismissal was not harsh.

Conclusion

[242] The Applicant's dismissal was not harsh, unjust or unreasonable.

[243] This Application is dismissed. I Order accordingly.



DEPUTY PRESIDENT

Appearances:

J Stunden for herself

P Willoughby of counsel

Hearing details:

13 and 14 April 2026

Final written submissions:

30 April 2026

7 May 2026

Printed by authority of the Commonwealth Government Printer

<PR813629>