



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Shivaani Polley

v

WSP Australia Pty Ltd
(U2023/11030)

COMMISSIONER SIMPSON

BRISBANE, 3 MAY 2024

Application for unfair dismissal remedy – Jurisdictional Objection that the Applicant Resigned – Objection upheld – Application dismissed.

[1] On 9 November 2023, Shivaani Polley (**the Applicant / Ms Polley**) filed a Form F2 application for unfair dismissal remedy against WSP Australia Pty Ltd (**the Respondent**). In its Form F3 response to the application, the Respondent raised a jurisdictional objection that the Applicant had not been dismissed. The matter was set down for hearing of both the jurisdictional and substantive issues by Deputy President Lake on Wednesday 28 and Thursday 29 February 2024. The matter was reallocated to me for hearing on 26 February 2024 as Deputy President Lake was unwell.

[2] It is common ground that the Respondent is not a small business, that the Applicant has met the minimum employment period and that her salary did not exceed the high-income threshold. In any event, the Applicant is covered by a modern award.

[3] The Applicant filed an outline of submissions on 18 January 2024 and filed five witness statements from the Applicant,¹ her husband Robert Polley,² Wayne Glenn³ Deborah Hutchison, and Vivian Furtado. The Respondent objected to the statements of Hutchison and Furtado and I determined not to allow the evidence of those two witnesses to be introduced as I concluded that they were not sufficiently relevant to the matters at issue in the case.

[4] The Respondent filed an outline of submissions on 15 February 2024 and filed five witness statements from Lachlan Gray,⁴ Birgitte Crowley,⁵ Scott Benjamin,⁶ and Rowan Dick⁷. A statement was filed by Alicia Jaeschke who was the subject of an Order to Attend issued by the Commission prior to the hearing. Ms Jaeschke was the employee of the Respondent who conducted an investigation for the Respondent into Ms Polley's complaints. Ms Jaeschke provided a medical certificate indicating that she was unwell and therefore unable to give evidence on the listed hearing dates. After the conclusion of the evidence the Respondent subsequently advised that it was content to withdraw its reliance on the statement of Ms Jaeschke and rely on the evidence already before the Commission. On that basis, Ms Polley's representatives advised they did not press for cross examination of Ms Jaeschke and I subsequently rescinded the order requiring Ms Jaeschke to attend.

[5] At the hearing, Ms Polley and the Respondent were granted leave to be represented, Ms Polley by Mr C Watters of Counsel instructed by Work Rights Australia, and the Respondent by Mr M Sant, a Partner from HFW.

BACKGROUND

[6] Ms Polley was employed for 13 years by the Respondent, 10 of those in a full-time capacity. Ms Polley was employed as a Senior Principal Engineer by the Respondent. Ms Polley asserted in submissions that her employment was terminated pursuant to the provisions of section 386(1)(b) of the *Fair Work Act 2009* whereby she resigned from her employment but was forced to do so because of the conduct of the Respondent employer.

[7] It was submitted for the Applicant that she was one of the last remaining female engineers, having resisted a male dominated and ‘boys club’ culture, attitude, and mentality for several years. Ms Polley asserted that one Technical Director in particular, Mr Scott Benjamin, has harassed, bullied, ‘putdown’ and engaged in passive-aggressive misogynistic behaviour toward her since 2020. It is submitted for Ms Polley that she repeatedly challenged Mr Benjamin about his conduct, taking him to task and calling him out whenever appropriate - all to no avail. It was submitted that given Ms Polley’s role as a senior principal engineer and length of service with the Respondent, Ms Polley was required to work closely with Mr Benjamin on several major projects. It was submitted that Mr Benjamin’s behaviour over time created a working environment wherein Ms Polley no longer felt psychologically safe.

[8] It was submitted for Ms Polley that these matters came to a head on 1 September 2023 when attending a major client briefing in Melbourne as the senior principal engineer (and the only woman in the room), Ms Polley was asked by Mr Benjamin to ‘get the coffees’. Ms Polley made a formal complaint to the Respondent concerning this and related earlier behaviours, including advice that she no longer felt safe working with Mr Benjamin. This culminated in a workplace investigation which Ms Polley submitted made no adverse findings against Mr Benjamin, and which did not address any of Ms Polley’s complaints. Ms Polley submitted that during a subsequent HR meeting she was told that she would have to continue to work with Mr Benjamin. Consequently, it is argued Ms Polley was forced to submit her written notice of resignation on 20 October 2023. Ms Polley provided three months’ notice of resignation and her last day of employment was 24 January 2024.

[9] It was submitted for Ms Polley that she suffered workplace bullying, harassment, passive-aggressive behaviours, being spoken down to and related misogyny from Mr Benjamin for almost 4 years. Further that throughout that period she continued to work with Mr Benjamin, called him out on his behaviour where appropriate, made informal complaints about Mr Benjamin’s conduct seeking intervention, and explained to the Respondent’s executives that she would have to resign if the situation did not improve. It was submitted that ultimately, when Mr Benjamin’s conduct deteriorated to sexual harassment on 1 September 2023, and the Respondent failed to protect Ms Polley’s psychological safety, Ms Polley was left with no alternative but to resign her position.

[10] The Respondent submitted that in early September 2023, Ms Polley made a complaint about Mr Benjamin, and in summary the complaint alleged that Mr Benjamin had bullied the

Applicant over an extended period. The Respondent submitted that the trigger for the complaint was an incident that occurred on 1 September 2023, where Mr Benjamin asked Ms Polley to 'get the coffees' for those attending a client workshop.

[11] The Respondent submitted that over the period 14 September to 18 October 2023, Ms Jaeschke (the Respondent's HR Business Partner for the part of the business in which Ms Polley and Mr Benjamin worked), conducted a fair, thorough and impartial investigation into the complaint. The Respondent submitted that during the investigation, Mr Benjamin was stood aside from the project that Ms Polley and he were scheduled to work on (the WA C-ITS project) to ensure that there was appropriate separation of Ms Polley and Mr Benjamin. The Respondent submitted that the investigation concluded that the alleged bullying of Ms Polley could not be substantiated, however despite this conclusion, Ms Jaeschke concluded that the way the team was functioning, and several organisational challenges were creating some psychological safety risks that needed to be addressed.

[12] The Respondent submitted that Ms Jaeschke made several recommendations including: (1) leadership work together to improve project governance, role clarity and team design; (2) mediation be attempted between Ms Polley and Mr Benjamin to improve their working relationship; and (3) getting Mr Benjamin '360 feedback' feedback with a focus on work style and organisation. On 18 October 2023, Ms Jaeschke informed Ms Polley that the investigation had been concluded and arranged a meeting with her on 20 October 2023 for the purposes of outlining the outcome of the investigation.

[13] On 20 October 2023, Ms Jaeschke, Mr Rowan Dick (the senior executive for the part of the business in which the Applicant and Mr Benjamin worked), Ms Polley and Mr Robert Polley (the Applicant's partner and support person) attended a meeting. The Respondent submitted that at this meeting, Ms Jaeschke informed Ms Polley of the outcome of the investigation, specifically that Ms Polley's allegations against Mr Benjamin were not able to be substantiated being consistent with bullying and harassment and that the incident on 1 September 2023 where Ms Polley was asked to 'get the coffees' was not due to any gender bias but that Mr Benjamin had acknowledged that it was wrong to have asked her and he was apologetic towards Ms Polley for making the request and the impact it had on her. The Respondent submitted that Ms Jaeschke also informed Ms Polley that action needed to be taken around project governance, team design, and role clarity immediately to make the workplace safe and that attempts at mediation and rebuilding the relationship between Ms Polley and Mr Benjamin should be explored.

[14] The Respondent submitted that Ms Jaeschke also informed Ms Polley that she wanted to give her some time to digest the information and have another discussion with her in the following week where they could explore next steps. The Respondent also submitted that Ms Jaeschke also informed Ms Polley that if Ms Polley was unhappy with the outcome of the investigation, she could request a review.

[15] The Respondent submitted that within 2 hours of the meeting ending, Ms Polley sent an email to the Respondent tendering her resignation and alleging that because of the bullying of Mr Benjamin she no longer felt psychologically safe to work at the Respondent. The Respondent said Ms Polley gave more than 3 months' notice of her resignation, nominating 24 January 2024 as her last day of work, and Ms Polley was only required to give 2 months' notice under her contract of employment. The Respondent said it sought to have Ms Polley withdraw

her resignation and attempted to meet with her to discuss the investigation outcome and the planned steps to facilitate a mediation process to try and rebuild the working relationship between Ms Polley and Mr Benjamin, however, all of the Respondent's efforts were resisted by Ms Polley and were to no avail.

[16] The Respondent said that Ms Polley worked as normal during her notice period and despite the conclusions of the investigation, Mr Benjamin was not reinstated to the project that Ms Polley was working on, and which Mr Benjamin was stood aside from during the investigation (the WA C-ITS project).

EVIDENCE

[17] Ms Polley provided with her witness statement a table of events which was submitted with her original complaint about Mr Benjamin. These are referred to in the chronology of events as set out below in the body of this decision. Ms Polley was asked during cross examination whether that apart from incidents referred to in her evidence she would describe her interactions with Mr Benjamin as collegiate. Ms Polley agreed saying she tried her best to get along with him.

[18] Mr Benjamin said as a Technical Director his duties include providing technical direction to the ITS team and coordinating the global capabilities of the Respondent in the ITS and future mobility space so that the ITS team in Australia is drawing on, and contributing to, ITS teams in other countries throughout the Respondent's global network. Mr Benjamin said he reports to Mr Dick, National Executive of the Planning and Mobility team and he is based in the Melbourne office of the Respondent. Mr Benjamin said Ms Polley was employed as a Senior Principal ITS Engineer and sat within the Queensland ITS team. Mr Benjamin said he has worked with Ms Polley since May 2014. He said Ms Polley did not report to him, however, they worked together on client projects and pitches, and Ms Polley was based in the Sunshine Coast office of the Respondent.

[19] Mr Benjamin said as Technical Director, he works across various client projects nationally, and also performs various roles on projects including technical expert, technical reviewer, or project director. He said when he performs the role of project director, he is ultimately responsible for project outcomes and positive client engagement on projects. He said as a technical expert, he is responsible for the early engagement and direction of a project. He said he also considers the broad approach and key elements required to get the outcome sought including consideration of processes needed to deliver projects. He said as a technical reviewer, he reviews projects as a whole, the processes taken and outcomes sought and the validity of the technical approach taken, as well as checking designs against standards and specifications.

[20] Mr Benjamin said Ms Polley is an experienced ITS Engineer and worked on client projects as a technical lead. He said on a project this involved working with the project manager, seeking input and direction from the project director and potentially a technical expert to develop and run the project from a technical perspective. He said ITS Engineers manage a range of other technical staff and inputs, they also have client interactions to ensure that the Respondent has captured the clients' needs and can produce outcomes that meet their needs. He said Ms Polley also performed the role of project manager on projects.

[21] Mr Benjamin said in recent years, when Ms Polley and he worked on the same projects, she would generally perform the role of technical lead on the project, and he would perform the role of technical expert, technical reviewer or project director.

[22] Mr Gray described Ms Polley as very skilled, very proficient, and very professional and part of her role was providing technical advice and support to Mr Benjamin. Mr Gray's evidence included that he first became aware in 2020 through conversations with Ms Polley that she was frustrated with Mr Benjamin, and Mr Gray said it seemed like normal working frustrations that you have with somebody that you're working with. Mr Gray said the specific issues were around communication and emails, getting things at the last minute, things not being particularly clear, and that she was doing a lot of the grunt work for bidding and tendering works and then perhaps not being included on the actual bids. Mr Gray said Mr Benjamin could be a bit unstructured and a bit disorganised at times with his communication, and Ms Polley wasn't alone with some of those frustrations.

[23] Mr Gray said Mr Benjamin can provide things a bit last minute and he is a bit of a bigger picture, blue sky thinker, and sometimes when it comes to actually the nuts and bolts of implementing that plan, there can be a few little gaps. Mr Gray said when working with different personalities, at times there's people that are really good at all the little details and others that are a bit bigger picture, and Mr Benjamin is one of those 'bigger picture guys', which is great. Mr Gray said Mr Benjamin has a lot of skills at that, but it can lead to some stresses if something's been missed or there's little bits and pieces that haven't quite been covered off. Mr Gray said he had some empathy with Ms Polley from his experience, and what he had seen.

[24] Mr Gray agreed that one of the issues Ms Polley had was being named and her skills being nominated on projects, and then once the projects were won, she was removed from the project. Mr Gray said there are a lot of reasons why some of that stuff gets moved around and he wasn't aware of any specific intent at that point of Mr Benjamin to remove Ms Polley because of any sinister intent. Mr Gray said he wasn't close enough to the discussions on some of these projects to understand exactly the specific reasons.

COVID Packages

[25] Ms Polley agreed that during COVID shutdowns in Melbourne, she sent care packages to Mr Benjamin.

Excluding or withholding work Commonwealth Government CITS Strategy

[26] Ms Polley said she worked a lot of hours to produce a remarkable bid for the Commonwealth Government CITS strategic advice piece. Ms Polley said she produced the bulk of the bid, with assistance from Mr Alderson, and Mr Benjamin provided leadership in enabling partnership with Deloitte. Ms Polley said during this period she felt sick and had to take time off. Ms Polley said she asked for the bid work to be taken over, however, when she returned from two days leave, no work had been done. Ms Polley said she worked late nights and unpaid over the weekend to produce the bid. Ms Polley said the bid was completed on 14 October 2020 and the Respondent won the job, however on 21 January 2021 she was taken off the job when she enquired when she should start work and no reason was given.

[27] Ms Polley said she was later called in to help when the first deliverable was not to the expected standard and this continued throughout the project, and through the project she was not invited to client meetings and the client was unaware she was working on the project. Ms Polley said she instigated a one-on-one conversation with Mr Benjamin about this.

[28] It was put to Mr Benjamin during his oral evidence that Ms Polley's CV qualifications, experience, and name were used for the bid, however when it was won, she was removed from the bid, and then when things started going badly she was brought back to fix it. Mr Benjamin disagreed. He said Ms Polley was part of the bid and she was named in the bid, and she did act in a role on the project. Mr Benjamin said there were four parts to the project: Deliverable 1, 2, 3 and 4, and she had a role, as a technical lead in Deliverable 1. Mr Benjamin said all the elements of every project are important, but in this case, only Deliverable 4 was to be published and shared with other organisations and was of significant importance to this client. Mr Benjamin said D1, D2 and D3 were all foundation documents supporting D4. He said Ms Polley had a role in D1 and was part of that project team in D1, and she did reviews on D1, and took part in early internal meetings in D2. He said D2 onwards was led significantly by the economics team. Mr Benjamin agreed Ms Polley was brought back in respect of D4, probably in a review role as well. He said her name was on the published document. Mr Benjamin rejected the proposition that Ms Polley was used to win the work and then removed.

Main Roads Western Australia Master Plan.

[29] Ms Polley said that after a successful engagement with Main Roads Western Australia (MRWA) on the Master Plan, she took the initiative to suggest that they use the remaining project funds to visit the client and undertake some business development. Ms Polley said the client outlined three key concerns and further work for the Respondent. Ms Polley said she took the initiative to scope the next project, however she said Mr Benjamin was not enthusiastic and she could not understand why. Ms Polley said she prepared a presentation and Mr Benjamin advised her not to send it and did not give a clear reason why. Ms Polley said she showed the presentation to Mr Gray who at the time was the Team Manager of the Queensland ITS team and he saw no risks in sending it. Ms Polley said she then sent an email to Mr Benjamin and local representatives that she would send it at a specific time and they were welcome to add reviews or comments. Ms Polley said Mr Benjamin's comments were minor and the Respondent had since won the work. Ms Polley said she instigated a one-on-one conversation with Mr Benjamin about this.

[30] Mr Benjamin said in about October 2021, he was working on a pitch for the Western Australia Masterplan with Ms Polley and Mark Fowler, Regional Executive for the Western Australia Advisory team. He said the pitch was being priced on the basis that strategy development work would be performed by Ms Polley and another team member, Julien Marr, Principal ITS Engineer, on the basis of a 60/40 split of the work (60% Ms Polley and 40% Mr Marr). He said about this time, there had been a number of redundancies implemented within the Respondent's Advisory business, and Mr Marr raised with him, his concern that he may be made redundant given his low work utilisation levels. Mr Benjamin said he and Ms Polley had a fifteen-minute call about Mr Marr's situation, and during this call, he suggested that they flip the allocated work on this project from the proposed 60/40 split in favour of Ms Polley towards a 40/60 split in favour of Mr Marr to assist with Mr Marr's future utilisation. Mr Benjamin said

Ms Polley said that she was "okay" with this change, and after speaking with Ms Polley the pitch was updated to reflect this change.

[31] Mr Benjamin said a couple of weeks later, Ms Polley called him and said that he had switched Mr Marr and her on the project allocation without telling her. Mr Benjamin said he tried to explain that they had discussed this in the call and Ms Polley called him a "liar" and abruptly ended the call. Mr Benjamin said a day or two later, without any notice, Ms Polley joined him to a group call with Mr Simon Latham, Queensland Regional Executive for the Planning and Mobility team. Mr Benjamin said Ms Polley was speaking like he was not on the call and spoke to Mr Latham and said he was a "liar" and made a number of complaints about him that made no sense to him.

[32] Mr Benjamin was asked during his oral evidence about his claim that when Ms Polley spoke to Mr Latham about this, she called him a liar. Mr Benjamin said he was invited into a Teams meeting and he could see there were two participants, Ms Polley and Mr Latham. He said there may have been other people in the room, but they invited him to a Teams meeting. He said Ms Polley did make the statement that he was a liar. Mr Benjamin said he responded at the time by saying *'I'm confused with what you're talking about.'* Mr Benjamin said he didn't really understand the context, and he sensed Ms Polley was upset and he asked them to clarify what they wanted him to talk about, and he got off the phone fairly quickly. He said he was pretty confused by that call.

[33] Ms Polley said in her evidence that she escalated the matter to Mr Latham, and Mr Gray, and they later included the Section Executive, Mr Dick. Mr Dick said in his statement that he routinely travels to the Respondent's offices across Australia and during one of these visits in late 2021 or early 2022 he met with Ms Polley while he was travelling in the Brisbane office, and during this meeting Ms Polley raised concerns about Mr Benjamin's performance. Mr Dick said he no longer recalled the specifics of the concerns however Ms Polley was frustrated with Mr Benjamin.

[34] Mr Dick was asked what he did about Ms Polley's concerns and he said when he returned to the Melbourne office, he spoke to Mr Benjamin about the frustrations to hear his side of the events and it was a different side to what he heard from Ms Polley and that he didn't see any issues with his performance or any issues around clients that needed questioning. Mr Dick said he did not recall if he contacted Ms Polley about the issue after speaking to Mr Benjamin. He accepted it may have been the case that no feedback was provided.

[35] It was put to Ms Crowley that Mr Benjamin's response during the investigation concerning the West Australia IS strategy referred to among other things, Julien Marr, and Mr Benjamin was not responding to the matter that Ms Polley was complaining about. Ms Crowley responded that she did not know. It was put to Ms Crowley that Ms Polley's original complaint (concerning being excluded or withholding work) was not investigated. Ms Crowley agreed that was a matter for Ms Jaeschke, and agreed with the proposition that if the matter was not investigated it would be unfair to both parties.

[36] Mr Benjamin accepted that the issue in connection with Mr Marr was not the subject of a complaint from Ms Polley.

Impossible Timelines to finish tasks - iMove Motorcycle Rider VRU Use Case Bid

[37] Ms Polley said the iMove Motorcycle Rider VRU Use Case Bid was sprung on her and a junior resource with no warning. Ms Polley said the bid was received on 12 August 2022, but she was not advised until during the resource planning meeting on 29 August 2022. Ms Polley said during this period she was busy delivering on multiple other projects and was fatigued, which was well known to the team.

[38] Ms Polley said that Ms Jessica Tong and herself were given 2 days to pull the bid together. Ms Polley gave evidence that she said at the time this would be impossible to do effectively and they should “no go” this. Ms Polley said that she would be unable to work the weekend as she had other plans and had been doing a lot of overtime. Ms Polley said she worked on her day off. Ms Polley said Ms Tong told her that she was expected to be the technical PM for the work, and so she told Mr Benjamin it was unlikely she would be able to commit to working on the job if won as she was resourced for another project at the same time. Ms Polley said Mr Benjamin still wanted her to use her CV and for her to be on the project organisational chart. Ms Polley said she told Mr Benjamin she felt uncomfortable about doing this and Mr Benjamin said that she should be able to fit it in.

[39] Ms Polley said that during a conversation with Ms Tong on Friday morning, Ms Tong mentioned that she had been advised Ms Polley was only on the bid as second choice because Mr Alderson had been seconded. Ms Polley said during the course of the next few days Mr Benjamin was missing in action at critical times and could not be reached for assistance with decisions and missed a key meeting with project partners. Ms Polley said she stepped in at short notice at these times, impacting her own projects and family.

[40] It was put to Mr Benjamin that this work was given to Ms Polley to supervise, manage, and prepare this bid very late in the piece. Mr Benjamin disagreed. Mr Benjamin said he wasn't aware of Ms Polley working on the long weekend, and the work, initially, was for himself and Ms Tong. Mr Benjamin said he thought Ms Tong must have reached out to Ms Polley at some point through the process and whether Ms Polley suggested she help, or Ms Tong suggested Ms Polley help her, but one way or the other Ms Polley did come in and help and he appreciated that help. Mr Benjamin said he would never push people to work on weekends, days off, or late at nights. He said he explained to everyone on this project, that they had worked closely with this partner a number of times successfully before, and the idea here was the Respondent pitch something, in the limited amount of time they had.

[41] Mr Benjamin said he made Ms Tong aware of the opportunity as soon as possible and it may have been a day or two later that Ms Tong shared that knowledge with Ms Polley. He said Ms Polley said Ms Tong needed the help, which he accepted, but said he did make clear “don't go crazy.” Mr Benjamin said he certainly would not push people to work late at night and not on a day off or over a weekend, or a long weekend, so if Ms Polley did, that's unfortunate, however he would not push her to work those hours as that is just not appropriate and not something he would do.

[42] Mr Benjamin was asked how else the work was going to get done. Mr Benjamin said he would do the best he could, and he was willing to stay up late at night himself, and said he did on this project. He said this was an EOI (Expression of Interest), and they could get another

bite at the cherry, which does happen in consulting. Mr Benjamin said in this case, maybe a week was a bit short, but you do the best you can.

[43] It was put to Mr Benjamin that Ms Polley raised the question of the resourcing and timeline with him. Mr Benjamin said it was very reasonable to ask was it worth it and he said he would have said something like, 'I think it's very likely'. Mr Benjamin said you can look back on that and say, 'Gee, that's a waste of time', but that's what happens as a consultant. Mr Benjamin agreed that the Respondent did not win that bid. Mr Benjamin said that he could not recall if he was absent for some client meetings.

18 August 2022 breakfast meeting at the Brisbane ITS Australia Summit

[44] Ms Polley said she initiated face-to-face conversations with Mr Benjamin when they were in the same city attending conferences and provided the example of the ITS Summit in Brisbane in August 2022 when she raised the issue of Mr Benjamin excluding her from projects, and the impact that had on the delivery of the C-ITS Deployment Models (Federal Government work) as one example.

[45] Mr Gray said on 18 August 2022, at a breakfast meeting during the ITS Australia Summit held in Brisbane, he observed an uncomfortable interaction between Ms Polley and Mr Benjamin. He said Mr Simon Latham, Regional Executive – Planning and Mobility for Queensland, Mr Benjamin, Ms Polley and himself attended this meeting. Mr Gray said both himself and Mr Latham were late arriving to this meeting, and it commenced without them. Mr Gray said at this meeting, Ms Polley voiced a number of criticisms about the Respondent's ITS advisory practice, which were principally directed at Mr Benjamin's professional work. Mr Gray said the manner in which Ms Polley raised these criticisms was very direct. In his oral evidence Mr Gray described the way Ms Polley raised the issues was "pretty full on." Mr Gray said he did not recall any yelling and shouting. Mr Gray said what made him uncomfortable was how direct Ms Polley was with her language to Mr Benjamin, there was no beating around the bush, and it was very uncomfortable to listen to.

[46] Mr Benjamin said he was running about ten minutes late to the breakfast and texted Ms Polley to advise her of this. He said Mr Gray was also running late and arrived after him and Mr Latham was running even further behind. Mr Benjamin said when he arrived at breakfast, Ms Polley was already there. He said upon his arrival, he told Ms Polley that he was not in a good state of mind because of an incident that happened overnight where the police were at his house and his wife was alone with their two young kids as there was an incident with their neighbour and the police were asking his wife for assistance.

[47] Mr Benjamin said in response, Ms Polley did not acknowledge what he just said or express any concern and instead she began to berate him for being late to breakfast and said words to the effect of "*this is a disgrace and shows a lack of respect*". Mr Benjamin said Ms Polley was speaking to him in a terse and aggressive tone. He said Ms Polley then started to discuss the ITS advisory business describing it as a "*mess*" and started to directly criticise him. Mr Benjamin said when Mr Gray and Mr Latham arrived, Ms Polley continued the discussion but she then dialled back her tone.

[48] Mr Benjamin was asked about being late for the meeting and he said he had been up late the previous night and early that morning. He said he was on the phone to his wife as their

neighbour had a complex mental state and health issues and had been at their door late that night and his wife was still stressed that morning. Mr Benjamin said the person passed away and the police were trying to get his wife to access the neighbour's house and climb in through the window to see if she could see him. Mr Benjamin said it was very stressful and he wanted to be with his wife, and he texted Ms Polley that morning and said, 'I'm sorry, things are not going well'. Mr Benjamin said he tried to explain that to Ms Polley when he arrived at their meeting, and he apologised to Ms Polley for running late.

[49] In his oral evidence Mr Benjamin described Ms Polley as being abrupt, stressed, and aggressive. Mr Benjamin agreed that he raised the issue with Mr Dick. Mr Benjamin said Mr Dick asked him to consider what was going on, where people were at, and his own state of mind at the time. Mr Benjamin said perhaps he was stressed and not seeing things clearly. Mr Benjamin said at the end of a busy week maybe Ms Polley was stressed and Mr Dick encouraged him to consider that perhaps he was taking this the wrong way however he didn't really recall much of that specific discussion.

[50] Mr Benjamin said Mr Gray and Mr Latham were part of that breakfast meeting and Mr Benjamin said he made them aware that he was a bit confused by that discussion and it didn't make sense to him. Mr Benjamin said a lot of the short-comings of their work he didn't agree with. Mr Benjamin said he took it to be a criticism of the range of people in their team and that just didn't feel right for him. Mr Benjamin said he felt that was strange and he did try to follow up with them. Mr Benjamin said part of the problem they (the criticisms) reflected to him was Ms Polley's concern with structure and not having an ITS leader in place, and that was a role that was vacant at the time that was later filled by Mr Gray.

[51] Mr Dick said shortly after the Brisbane Summit he was informed by Mr Benjamin of the incident which occurred at a breakfast meeting at the conference. Mr Dick said Mr Benjamin informed him that Ms Polley had, in an aggressive tone, confronted him about being late for the breakfast meeting, his working behaviours and performance on projects. Mr Dick said that Mr Benjamin informed him that Mr Latham and Mr Gray also attended the meeting but arrived after Mr Benjamin, and after they arrived, Ms Polley moderated her tone.

[52] Mr Dick said shortly afterwards he discussed the matter with Mr Latham, and he could not confirm exactly what Ms Polley said to Mr Benjamin. Mr Dick said Mr Latham said it was likely Ms Polley was tired from attending the conference and may not have been herself at the breakfast meeting. Mr Dick said there was no formal complaint from Mr Benjamin. Mr Dick accepted that as Mr Latham was late, he didn't really understand or participate in the exchange.

[53] Mr Dick said for a range of reasons including to improve collaboration and consistency across the national ITS team and to help improve working relationships with the team including between Mr Benjamin and Ms Polley he decided to create a new role within the Respondent's national ITS team, the role of National ITS Coordinator. Mr Gray was subsequently appointed to the role in March 2023.

Work Trip to Perth November 2022 and subsequent meeting with Lachlan Gray and Wayne Glenn

[54] Ms Polley agreed that Mr Benjamin and herself went on a work trip in November 2022 to Perth. Ms Polley agreed that Mr Benjamin and herself went to dinner together and had a relatively late night and had breakfast the next morning. Ms Polley said that after this trip to Western Australia to see the client, she told Mr Gray and Mr Wayne Glenn that she had prepared a strategy and had discussed the strategy with Mr Benjamin and with Mr Gray, and when they got there (to Western Australia) Mr Benjamin refused to let her talk to the clients at all. Ms Polley said every time she went to talk to the client about what they were going to do Mr Benjamin absolutely shut her down. Ms Polley said Mr Benjamin would not let her get in a word and she was not allowed to have a professional opinion.

[55] Ms Polley said that when they got back, she said to Mr Gray that this needed to be resolved, and the problem was getting worse, and asked if he could resolve it because she couldn't continue to do this. Ms Polley said Mr Gray and Mr Glenn were present. Mr Gray recalled the meeting, and he believed Ms Polley and himself were in a meeting room on the Sunshine Coast and Mr Glenn was on Teams although it was two years ago, and his recollection was vague.

[56] Mr Gray said Ms Polley was upset and he thought a bit disillusioned about the ongoing problems that she had with Mr Benjamin. Mr Gray clarified he thought Ms Polley was dissatisfied and was expressing her concerns and her dissatisfaction and annoyance. Mr Gray said Ms Polley was tossing up leaving, and she wanted to know whether she should stick around or whether she should resign. Mr Gray appeared to accept that Ms Polley indicated that if the issues with Mr Benjamin were not addressed by April (2023) she was leaving. Mr Gray said he interpreted the discussion as more of a talk through, or catchup, or chat between three colleagues that had worked together for a long time. Mr Gray said they discussed a range of things with her about her value to the team, about how they could support her, and that they didn't want her to resign. Mr Gray agreed that he said he would try to intervene or think about some way to help. Mr Gray said his intention was to help the situation.

[57] Mr Benjamin's evidence was this trip was only a business development discussion, and an early discussion with a client to understand their needs and then from there they would be able to make a better pitch. It was put to Mr Benjamin that Ms Polley was not allowed to present the presentation she had prepared for the client. Mr Benjamin responded that Ms Polley had produced some great material, and it was provided later to the client. He said however the process they go through with their clients is they see what they need and where they're at. Mr Benjamin said that at that particular meeting he called a 'CITS discussion', the client wanted a discussion, and they wanted to understand what was happening nationally. Mr Benjamin said they understood the Respondent had knowledge, collectively with Ms Polley and himself and Mark Howard and Leigh Dawson. Mr Benjamin said they discussed their future needs, knowing that they might need something in three to six months. Mr Benjamin said he suggested to Ms Polley not to send a large document outlining an approach and a specific set of resources to deliver a project when they hadn't yet heard the client requirements. Mr Benjamin said this was a very typical approach for the Respondent with very wide-ranging open discussions to begin with. It was put to Mr Benjamin that Ms Polley was about to commence a PowerPoint presentation and Mr Benjamin said to her, 'No, Shiv, we're not going to do that'. Mr Benjamin said he didn't think he would have put it that way, and he would have said, 'No, let's wait'.

9 March 2023 Meeting between the Ms Polley and Mr Gray

[58] Mr Gray said that on 9 March 2023, he arranged a meeting with Ms Polley to see how she was as he was concerned about her workload, and he wanted to follow up about how she was feeling about working with Mr Benjamin. Mr Gray said at this meeting, he developed a plan with her to address some of these matters. He said that specifically, he asked Ms Polley to: (1) pause or pull back on the Key account manager role for DTMR and to say no to any other extra non-project or non-essential work for the next month; (2) focus on resetting her work life balance; and (3) participate in a discussion, facilitated by him, with Mr Benjamin to try and reset their working relationship using an upcoming project (PDI Framework project) where he would use a management tool to try and get greater clarity about their roles.

[59] Mr Gray explained in his oral evidence the HR Framework was called the GRIP (goals, roles, interpersonal and processes) model which involved defining the goals, roles, interpersonal relationship rules, and then the processes agreed to work under. Mr Gray said the idea was to pilot this on a project and allow the two to work successfully together underneath this framework, and then use that as a stepping stone to rebuilding their interpersonal relationship so they can work together in the future. Mr Gray said after the meeting his impression was that the two of them seemed to be a bit happier and there was a bit of buy-in to at least keep an open mind and try and ‘have a crack at it.’ Mr Gray added that at this time Ms Polley looked very fatigued and he was worried that she was working too much and looked a bit burnt out.

16 March 2023 follow up meeting

[60] Mr Gray said on 16 March 2023, he had a follow up meeting with Ms Polley to see what progress had been made on the plan he developed.

30 March 2023 meeting with Mr Gray, Ms Polley and Mr Benjamin

[61] Mr Gray said on 30 March 2023, he had a meeting with Ms Polley and Mr Benjamin, and at this meeting he used the GRIP model in connection with the PDI Framework project to try and reset the working relationship between Ms Polley and Mr Benjamin. Mr Gray said he believed that this approach would address some of her frustrations by providing them with a structured framework to work within on the project. Mr Gray said that from his observation of Ms Polley and Mr Benjamin's interactions on the PDI Framework project following the meeting, their relationship remained tense, however, there were no significant issues to prevent them working together on projects. Mr Gray said he observed that Ms Polley was more positive about working on projects which involved Mr Benjamin after this meeting.

[62] Mr Benjamin said whilst he acknowledged that there was some tension in their working relationship, he considered Ms Polley a critical and highly valuable member of the ITS team, and he enjoyed working with her. He said their conversations were almost always positive in nature. Mr Benjamin said he participated in two meetings with Ms Polley, facilitated by Mr Gray, relating to projects that Ms Polley and he were to work on. He said at these meetings, Mr Gray used a model to work through the respective roles on the projects and the project objectives. He said the first meeting was held on 30 March 2023 and related to the PDI Framework project, and he found these meetings very helpful and they assisted Ms Polley and

himself have a better understanding of their respective roles on the projects and the project objectives.

[63] Mr Benjamin was asked whether he was aware that Ms Polley was making noises about his behaviour and about their working relationship such that she was going to resign. Mr Benjamin said he was aware, because Mr Gray had called the meeting, that they needed to improve that working relationship around projects and they were going to pick up this first meeting around those projects. He said he was aware that naturally she must be concerned about the way they were working together around projects, but he wasn't aware she had threatened to or tendered her resignation.

Text messages November 2022 to October 2023

[64] Ms Polley was shown a document setting out text messages exchanged between herself and Mr Benjamin from November 2022 to October 2023. The text messages are generally collegiate and friendly in nature. Ms Polley said in regard to the text messages that in order to maintain a working relationship with Mr Benjamin and to try and resolve the issues she has always taken as positive and as professional an approach as possible.

Retirement of Wayne Glenn July 2023

[65] Ms Polley agreed that in July of 2023 she reached out to Mr Benjamin for anecdotes about Mr Glenn to use about his upcoming retirement. Ms Polley said Mr Benjamin is in Melbourne and he often isn't included in the work in Queensland, so she always seeks to include him as with any other team member who is not locally based.

23 August 2023 meeting with Mr Gray, Ms Polley and Mr Benjamin

[66] Mr Gray said on 23 August 2023, he had another meeting with Ms Polley and Mr Benjamin. He said at this meeting, he again used the GRIP model in connection with the WA C-ITS strategy project to try and support the working relationship between Ms Polley and Mr Benjamin. Mr Gray said Ms Polley and Mr Benjamin did not end up working on this project together because of subsequent events. Mr Benjamin also referred to this meeting held on 23 August 2023 and relating to the WA - C-ITS Strategy project.

Melbourne ITS Industry Conference 28 to 31 August 2023

[67] Mr Benjamin said that in the week commencing 28 August 2023, there was an ITS industry conference in Melbourne at the Melbourne Conference Centre from 28 August 2023 to 31 August 2023. This was an industry conference where both Ms Polley and Mr Benjamin were speakers. Mr Benjamin said that given that Mr Nigel Nielsen, Digital Transport Systems Lead, (who was based in Queensland) was going to be in Melbourne for the ITS Summit, Mr David Alderson and Mr Benjamin decided that it would be a good idea to arrange a workshop with the Department of Transport and Planning (DTP) to discuss the newly awarded DTP CITS project, in person as they were both key resources working on this project. Mr Benjamin said the workshop was scheduled for 2.5 hours on 1 September 2023.

[68] Mr Benjamin said in the days immediately before the workshop, Mr Alderson and he discussed the catering arrangements for the workshop, and Mr Benjamin said he suggested that he would arrive early and bring fruit, muffins, plates and cutlery. Mr Benjamin said Mr Alderson and himself had a conversation where he said words to the following effect "*I will ask Motasem or Shivaani to get the coffees on the day*".

Coffee Incident 1 September 2023

[69] Mr Benjamin said he was sick with a bad head cold during the week of the ITS Summit and did not attend the first day of the conference, and he said he was not 100% on the day of the workshop and did not feel well. Mr Benjamin said the workshop was held at DTP's offices in a meeting room immediately above the entry level of 1 Spring Street, Melbourne, and there is a coffee shop on the ground floor in the lobby. Mr Benjamin said the members of the ITS team working on the DTP C-ITS project were Mr Alderson, Mr Nielsen and himself.

[70] Mr Benjamin said the people in attendance at the workshop from the Respondent were Mr Alderson, Mr Nielsen, Ms Polley, Mr Motasem Meqdad, Senior ITS Engineer, and himself. He said there were about eight people present from DTP including Mr Nick Collins who was the project manager for DTP for the DTP C-ITS project. Mr Benjamin said despite not working on the DTP C-ITS project, both Ms Polley and Mr Meqdad were invited to, and attended, the workshop. Mr Benjamin said Ms Polley attended the workshop because she had asked Mr Alderson if she could attend as it would assist her work on other projects including the upcoming C-ITS project in Western Australia. Mr Benjamin said he thought this was a good idea. Mr Benjamin said this request also prompted him to invite Mr Meqdad, who was based in the Respondent's Perth office and was also in Melbourne for the ITS Summit.

[71] Mr Benjamin said Ms Polley had no planned role in the workshop and was present as an observer, for knowledge sharing purposes and to ensure general alignment of the approach taken on other projects she worked on including the upcoming C-ITS project in Western Australia.

[72] He said Mr Meqdad was invited to the workshop because he was also going to be working on the upcoming C-ITS project in Western Australia and the workshop would be helpful for the work that he was about to undertake on this project, and Mr Meqdad also had no planned role in the workshop.

[73] Mr Benjamin said Mr Alderson, Mr Nielsen and himself had the key roles in the workshop, and Mr Benjamin was to lead the workshop. He said Mr Alderson and Mr Nielsen had been working on the deployment of the CAVI central system over the past few years, and this was highly relevant because DTP were going to consider adopting this system for use in the DTP C-ITS project. Mr Benjamin said he was the project director for the DTP C-ITS project. He said to keep people focused during the workshop, in discussions with Mr Collins in planning and preparing for the workshop, Mr Collins suggested that they arrange for catering for the workshop as there were difficulties with him being able to arrange the catering given internal DTP issues. Mr Benjamin said Mr Alderson and himself agreed that they would organise cake and coffees to be made available at the workshop.

[74] Ms Polley gave oral evidence that there were 9 people in the room at the time of the coffee incident that occurred in Melbourne, and several on the Teams call as well. Ms Polley said in her statement that she was the only female present. Ms Polley agreed it was a client workshop. Four people were the Respondent's representatives and there were five or more clients in the room. Ms Polley said herself, Mr Alderson, Mr Nielson and Mr Benjamin were in the room. Ms Polley said contrary to Mr Alderson's statement, Mr Glenn was not there. Ms Polley said that the workshop was concerning a specific type of technology that the Respondent was deploying, which is the Cooperative Intelligent Transportation Systems.

[75] Ms Polley agreed that it was Mr Alderson, Mr Nielsen and Mr Benjamin who were working on the project. Ms Polley said she was there because of her previous experience in the beginning phases of CITS in Queensland, and also because she was working on other projects which required her to be across what was happening in that particular architecture because they were doing national harmonisation. Ms Polley agreed she was in Melbourne at the time for an industry summit, and said she had planned to book flights to return to Brisbane on the Wednesday night or Thursday morning depending on availability however said Mr Alderson asked her to remain to attend the workshop which was on a Friday, which was a day of the week she did not normally work.

[76] Ms Polley was asked who organised the workshop and she said Mr Alderson. It was put to her that Mr Benjamin organised the workshop and she said she did not know. Ms Polley agreed she was not asked to make a presentation at the workshop, however said she was there to answer questions that might arise. Ms Polley said she understood the workshop was for an hour and half however she left after approximately one hour as she had to catch the only flight to the Sunshine Coast. It was put to Ms Polley that she was not required to be at the workshop, and she responded that Mr Alderson did require her to attend.

[77] It was put to Ms Polley that there was a coffee shop in the reception lobby area of the building where the meeting occurred. Ms Polley said she didn't go past it because she entered the building through the side entrance. Ms Polley agreed she travelled to the meeting in a taxi and said Mr Nielsen and Mr Alderson were also in that taxi. It was put to Ms Polley that they were running a bit late for the meeting, and she said they were a bit rushed, but she didn't think they were late. Ms Polley said Mr Meqdad was not in the taxi and she did not know who he was. Ms Polley said she believed Mr Benjamin was already at the venue for the meeting at that time.

[78] Ms Polley agreed that when she arrived at the conference room where the meeting was held that she did see some refreshments such as fruit, and muffins and plates. Ms Polley said she did not know how the refreshments came to be there. Ms Polley said that she started to set up and Mr Benjamin turned to her and said, 'Can you go and get the coffees?' Ms Polley agreed that before that Mr Benjamin had said he was taking coffee orders, and he asked her whether she was wanting a coffee, and she said yes. Ms Polley said she was perplexed by this as the Respondent had been trying to 'woo' this client for many years, and as far as she was aware they were there to put their best foot forward, and she didn't really think that the 'coffee thing' was what they were there for. It was put to Ms Polley that she had said in her complaint to Human Resources that Mr Benjamin was putting together a coffee order list and she replied "*I guess, yes.*"

[79] Mr Benjamin said on the morning of the workshop he called Mr Alderson from the workshop venue. He said that during the call, Mr Alderson informed him that he and the other Respondent attendees were getting in a taxi on the way to the workshop venue. Mr Benjamin said he assumed that Mr Alderson was with Ms Polley, Mr Nielson and Mr Meqdad. Mr Benjamin said he was concerned that Mr Alderson and the others would be late to the workshop because the location of the workshop venue can be difficult to find. He said while on the call with Mr Alderson he provided him with directions on getting to the venue, and they also had a conversation with words to the following effect:

Mr Benjamin: *"Have you asked Motasem or Shivaani about getting the coffees?"*

Mr Alderson: *"I need to sort it."*

[80] Mr Benjamin said he was not sure what Mr Alderson meant by that comment but assumed that Mr Alderson was going to ask Mr Meqdad or Ms Polley to get the coffees for the workshop and would deal with the matter while he was in the taxi with them. Mr Benjamin said when Mr Alderson and Ms Polley arrived, he saw that Mr Meqdad was not with them, and none of them knew where Mr Meqdad was, and they all assumed that he was running late. Mr Benjamin said without any prior notice, Mr Meqdad eventually connected to the workshop online via Microsoft Teams, and some representatives from the client also joined the workshop online. Mr Benjamin said he had brought the fruit, muffins, plates and napkins to the workshop, as planned.

[81] In her written statement and her oral evidence Ms Polley claimed that Mr Benjamin 'instructed' her to get the coffees. Ms Polley was referred to the words she wrote in her Human Resources complaint which were *"You right to get the coffees?"* Ms Polley said she replied *"Ohhh-kayyyy"*. Ms Polley said in her complaint that both Mr Alderson and Mr Neilson looked uncomfortable and looked away. Ms Polley said she felt intensely embarrassed and focused on her laptop. Ms Polley said in her complaint she didn't understand how the mechanics of getting the coffee was going to work given she was there for a purpose. Ms Polley said in her oral evidence that she looked at Mr Benjamin to indicate that it was not okay.

[82] Ms Polley agreed that a few moments later Mr Benjamin said to her that she could use his credit card to get the coffees, and that he said she wouldn't need a PIN, and could just tap. Ms Polley said Mr Benjamin accepted in his own statement that she said to him she was not comfortable. It was put to Ms Polley that Mr Benjamin just thought she was not comfortable using the credit card and Ms Polley responded that she could not speak for him. It was put to Ms Polley that Mr Benjamin then said again *'You're right to get the coffees? And that Ms Polley said no. Ms Polley replied that she said, 'I'm uncomfortable.'*

[83] Ms Polley said in her witness statement that she found Mr Benjamin's "instruction" to be publicly humiliating, and significantly aggravated by the pre-existing bullying that Mr Benjamin had perpetrated against her. Ms Polley said Mr Benjamin then got up and said, *'Well, I'll get them, then.'* And then the client, who had read the situation by then, got up and said, *'I'll help you'*, and ran out the door. It was put to Ms Polley that Mr Benjamin was away for approximately 10 minutes. Ms Polley believed it was a longer period. Ms Polley was asked where Mr Benjamin got the coffees from, and her evidence was she did not know but noted that he said in his statement that it was downstairs.

[84] Ms Polley was asked why she believed Mr Benjamin was in breach of the sexual harassment and sex-based discrimination guidelines when he asked her to get the coffees. Ms Polley said there's an example in the sex-based harassment training which specifically says that asking women to do gender-based tasks, such as getting food or cleaning up, is considered an example of sexual harassment. Ms Polley said Scott Benjamin had been bullying her at that stage for about three years, and she believed that as the only woman in the room being asked to get the coffees it was probably a gender-based statement.

[85] Ms Polley was asked how she knew he asked because of her gender. Ms Polley said she was the second-most senior person in the room, equivalent in seniority to the clients that were there, and there were other people there who were junior, and he did not ask them to get the coffees. It was put to Ms Polley that Mr Benjamin asked her to get the coffees because she didn't have an active role to play, and wasn't leading a conversation in that workshop. Ms Polley said her role in these things is often not to present; it's often to guide the client towards what the Respondent is trying to achieve with them, and that's the role of the senior principal engineer generally within the Respondent.

[86] It was put to Ms Polley that Mr Benjamin said that he didn't intend to upset her and cause her any offence by asking her to get the coffees. Ms Polley did not accept that. It was put to Ms Polley that Mr Benjamin tried to reach out to her and apologise after the incident. Ms Polley said he sent her an email and he called and left a message. Ms Polley said in both of those he said 'if he had offended her, that he wanted to apologise, but there were mitigating circumstances. Ms Polley said that she did not feel that it was a genuine form of contrition, and she felt that he was making excuses because he hadn't been 'smart', in his own words. Ms Polley agreed that she did not engage with Mr Benjamin's attempts to apologise, however said she had been bullied for three years, and was terrified to engage with him anymore because she didn't know what other type of gender-based harassment or other harassment he was going to perpetrate upon her next.

[87] Ms Polley said that Mr Benjamin could have made an Uber eats order for the coffees. Ms Polley was referred to her witness statement where she said as follows: *'Had I left to source the eight coffees I would have effectively missed the entire meeting. I note I was scheduled to only attend for one hour.'* Ms Polley said in her oral evidence that was because she did not know where the coffee shops were. It was put to her that Mr Benjamin did not take that long, and she said that they had already started by the time they got back.

[88] Mr Benjamin said about 15 minutes before the scheduled start of the workshop, after Ms Polley, Mr Alderson and Mr Nielsen arrived, he went around the room and started to make a list of coffee orders for those people present. Mr Benjamin said as the workshop was scheduled to start shortly, and Mr Meqdad had not arrived and it was not clear to him if Mr Alderson had asked Ms Polley or Mr Meqdad to get the coffees, and Mr Alderson was occupied talking to people in the room, Mr Benjamin turned to Ms Polley who was sitting next to him and they had a conversation with words to the following effect:

Mr Benjamin: *"I have started making this list, could you help us grab the coffees before the meeting starts?"*

Ms Polley: *"Yes."*

[89] Mr Benjamin said a few minutes later, more people from DTP started coming in and he started to talk to some of them. He said about 5 minutes before the scheduled start of the workshop, he turned to Ms Polley again and they had a conversation with words to the following effect:

Mr Benjamin: "*Use my card.*" [As he handed his credit card to Ms Polley]

Ms Polley: "*I'm a bit uncomfortable with that.*"

Mr Benjamin: "*Don't worry, just tap the card. You shouldn't need the pin.*"

Mr Benjamin said it was nearly 9am, close to the scheduled start time for the workshop, Ms Polley and he were speaking quietly, and they had a conversation with words to the following effect:

Mr Benjamin: "*Are you still OK to go grab the coffees?*"

Ms Polley: "*No, I'm uncomfortable.*"

[90] Mr Benjamin said he was confused by Ms Polley's response and thought that she was concerned about using his credit card to buy the coffees. Mr Benjamin said given Ms Polley's response, he stood up, spoke to Mr Collins, who was sitting to his right, two people away (on the other side of Ms Polley) and said words to the following effect to him "*Nick, I have to go grab the coffees before we start. Can you get on the intros?*" Mr Benjamin said he then walked towards the door and Mr Collins said words to the following effect "*I'll come with you to get the coffees. We can delay the start of the meeting.*"

[91] Mr Benjamin said Mr Collins and himself then left the room and went to buy the coffees from the coffee shop in the building lobby. He said they returned with the coffees in hand, five to ten minutes later, and then distributed the coffees and started the workshop. Mr Benjamin said at the time of giving Ms Polley her coffee, he apologised to Ms Polley as rather than getting lactose free milk as she had requested, he got oat milk. He said Ms Polley said words to the effect of "*that's fine*".

[92] Mr Benjamin said he did not observe anything unusual in Ms Polley's interaction with him at that time or during the workshop more generally. He said Ms Polley attended the workshop for about 60 to 80 minutes as she needed to catch a plane. As Ms Polley was leaving the room, the workshop was still in progress, and as she was leaving Mr Benjamin claimed he said to words to the effect to her "*thanks Shiv, catch up soon*".

4 September 2023 Meeting with Ms Polley, Mr Gray and Mr Dick

[93] Ms Polley agreed that on 4 September 2023 she had a meeting with Mr Dick and Mr Gray and the meeting was called by her. Ms Polley said that at the meeting she told them that she was psychologically unsafe to work with Mr Benjamin, and she needed to be separated from him on projects because of the lack of psychological safety. Ms Polley's evidence was she said if they were not willing to do that, she was going to have to resign because she couldn't continue to work with Mr Benjamin.

[94] It was put to Ms Polley during her evidence that the coffee incident on 1 September changed her position, because up until that moment she was working with Mr Benjamin. Ms

Polley responded that she had already told the Respondent that she was psychologically unsafe to work with him in November of the previous year, and that she would be finishing up, and as was supported by Mr Glenn's statement, she would be finishing up in April 2023 if they didn't do something to fix the problem. Ms Polley said she had minimised the number of projects she was working on with him.

[95] Ms Polley was asked about her evidence that in the meeting with Mr Dick and Mr Gray that they directed her to make a HR complaint. Ms Polley said they said that she should talk to HR, and they offered her no other options. Ms Polley was also asked about her statement that they told her that a HR finding would give them more leverage. Ms Polley said during her oral evidence that she said she did not wish to make a HR complaint because she knew that once a HR complaint is made, if it is not substantiated for the complainant that that person is bullied out of the business, as has happened to others. Ms Polley's evidence was she said she was extremely uncomfortable with making a HR complaint, and she didn't understand why they could not deal with the matter as empowered managers. Ms Polley said Mr Gray then said, 'If you make the complaint, it gives us more leverage.'

[96] It was put to Ms Polley that Mr Dick and Mr Gray dispute that they said that to her, and further that in her witness statement she did not refer to telling them that she didn't want to make a HR complaint. Ms Polley accepted that, but said she did say that. It was put to Ms Polley that Mr Dick and Mr Gray said that they suggested to her that she speak to HR about her concerns about Mr Benjamin. Ms Polley responded that if they suggested it to her, what were their other suggestions and what other options were there. Ms Polley maintained that as no other option was given to her, then it's a direction.

[97] Mr Gray said on 4 September 2023, he had a meeting with Mr Dick and Ms Polley, and at this meeting Ms Polley raised concerns about an incident which had occurred at a client workshop held on 1 September 2023, where Mr Benjamin had asked her to get coffees for people attending the workshop. Mr Gray said Ms Polley stated that she felt disrespected by Mr Benjamin and that she was not prepared to work with him anymore. Mr Gray said at no time, did either Mr Dick or himself 'direct' Ms Polley as she claimed, to make a 'HR complaint'. Mr Gray said Mr Dick and himself suggested that Ms Polley reach out to the HR team to discuss the situation and understand her options for dealing with the situation.

[98] Mr Gray said at no time, did either Mr Dick or himself say to Ms Polley as she claimed that 'a HR finding would give...[us]... more leverage' in dealing with Mr Benjamin. Mr Gray said in his oral evidence that he was suggesting to Ms Polley that she go to HR but there was never a direction to do that and that Mr Dick also said that she should go to HR as 'that was the obvious route to take it.' Mr Gray said Ms Polley was not being directed to go to HR but it was being recommended. Mr Dick corroborated this and said that he had not spoken to Mr Benjamin ahead of this meeting so was not aware of his account of the incident at the time of meeting Ms Polley. Mr Dick said contrary to the evidence of Ms Polley neither himself or Mr Gray directed Ms Polley to make a HR complaint, and neither did they inform Ms Polley that a 'HR finding' would give them more 'leverage' against Mr Benjamin as alleged by Ms Polley. Mr Dick said at the meeting Mr Gray and himself suggested Ms Polley speak to the HR team given the serious concerns she had raised about being disrespected by Mr Benjamin. During his oral evidence Mr Dick continued to reject the claim that Ms Polley was told that going to HR would give Mr Dick and Mr Gray more leverage.

11 September 2023 Preliminary Meeting with Ms Jaeschke

[99] Ms Polley agreed that she met with Ms Jaeschke on 11 September 2023, and it appeared following that meeting Ms Jaeschke sent Ms Polley a copy of the Discrimination Harassment and Workplace Bullying Guideline.

[100] Ms Birgitte Crowley gave evidence that she is currently employed by the Respondent in the position of HR Business Partner Lead for the Transport, Advisory and Water and Property and Buildings teams of the Respondent. Ms Crowley said Ms Jaeschke was the HR Business Partner responsible for the Advisory business and the Rail, Maritime and Freight business between 3 April 2023 and 17 November 2023, and Ms Jaeschke reported to her.

[101] On 11 September at 4.45pm Mr Benjamin sent an email to Ms Polley as follows:

“Hi Shiv

It would be great to chat if you have 5-10 min today / tomorrow at any point.

I want to apologise for what I did on Friday 1st in the lead up to the meeting with DTP regarding coffee orders. I also want to apologise for any distress this has caused you. I would prefer to do this on the phone if it’s OK with you.

I would also be keen to chat to you about context / what had happened in the lead up to our discussion if this is of interest.

Best Regards

Scott Benjamin....”

12 September 2023

[102] At 7.37am on 12 September Ms Polley sent an email responding to Mr Benjamin’s email as follows:

“Scott

I’ve received your email and phone message, however, I am not comfortable communicating with you at this time.

Shivanni Polley”

[103] Ms Crowley said on 12 September 2023, after receiving a verbal report from Ms Jaeschke, Ms Jaeschke shared with her a copy of the complaint she had received from Ms Polley about the conduct of Mr Benjamin towards her. Ms Crowley said on 12 September 2023, she emailed Ms Polley to acknowledge receipt of her complaint and inform her that Ms Jaeschke would be in touch with her soon to determine next steps. Ms Crowley said that Ms Jaeschke conducted the investigation into the complaint, and whilst she did not have direct involvement in the investigation, she did have oversight over the investigation process as Ms Jaeschke provided her with regular updates about her progress.

Meeting between Ms Polley and Ms Swan-Brown

[104] Ms Polley said that she was very reluctant and felt that Ms Jaeschke was not of a substantial enough maturity to handle the practised bullying that Mr Benjamin was perpetrating, and felt that it needed somebody more senior, and Ms Avia Swan-Brown was suggested as the person who would be more senior to do that investigation. Ms Polley said she then met with Ms Swan-Brown and after meeting with Ms Swan-Brown, she agreed to put in the complaint.

18 September 2023 Lodgement of Complaint

[105] Ms Polley said she put in the submission on 18 September and then she was told on 19 September that Ms Swan-Brown had to go away for personal reasons, and so Ms Jaeschke would be taking over the investigation.

20 and 21 September 2023 Interview with Mr Benjamin

[106] Mr Benjamin said he met Ms Jaeschke to be interviewed in Melbourne in the office in Collins Street, and he was surprised by the length and depth of Ms Polley's apparent grievances or commentary about behaviours over a long period of time, and he remembered two incidents but the wide-ranging other complaints was the surprising aspect. Mr Benjamin said there were issues around projects and the way that projects were set up or resourced, and they had two meetings with Mr Gray about how better to deal with the process of bidding and winning, and doing the project work. Mr Benjamin said this is a positive thing to be doing but not directed at him and his behaviours.

[107] Mr Benjamin agreed that when he had his meeting with Ms Jaeschke, he requested to provide a written statement in response to the claims being made and that was agreed by Ms Jaeschke, and he did provide a written statement of approximately eight pages. The document was subsequently produced, and it was 12 pages in length. Mr Benjamin said his understanding of the process was Ms Jaeschke asked him a series of questions which he responded to verbally over probably four hours. He said there were two meetings of approximately two hours each on two consecutive days on 20 and 21 September 2023. He said he took some brief notes during those conversations, and this was his more coherent statement of what he had said to her verbally. Mr Benjamin said both Ms Jaeschke and he were taking notes.

[108] Mr Dick said Ms Jaeschke gave him regular updates about the progress of the investigation and Mr Benjamin was asked to stop working on the WA- C-ITS project during the investigation to minimise any contact between Mr Benjamin and Ms Polley until Ms Polley's complaint was resolved. Mr Dick said Mr Benjamin agreed to this request and did not work on the project.

26 September 2023 further meeting with Ms Jaeschke

[109] Ms Polley agreed a further meeting occurred with Ms Jaeschke on 26 September, and included her partner Mr Robert Polley. Mr Polley agreed she provided a comprehensive dossier of material in respect of her complaint. Ms Polley said Ms Jaeschke met with her once to discuss her complaint and she asked very general questions. Ms Polley said Ms Jaeschke clearly seemed out of her depth, and said several times that there was just so much information to look through. Ms Polley said Ms Jaeschke also stated at the meeting on 26 September words

to the effect that she uses the example of getting coffee as the only woman in the room in training that she delivers on gender-based harassment.

Communications from 11 October to 18 October 2023 between Ms Jaeschke, Ms Crowley and Ms Dalzotto regarding Investigation

[110] Ms Crowley said on 11 October 2023, Ms Jaeschke shared with her a memo she had prepared summarising her conclusions and recommendations together with supporting documents. Ms Crowley provided with her statement a copy of the memo and a copy of the issue analysis spreadsheet Ms Jaeschke shared with her. Ms Crowley said over the next few days, she reviewed the documents shared with her by Ms Jaeschke and had a discussion with Ms Jaeschke about the materials and her conclusions and recommendations. Ms Crowley said after reviewing the documents and speaking to Ms Jaeschke she was satisfied with Ms Jaeschke's conclusions and recommendations and asked Ms Jaeschke to share the documents with Ms Dalzotto, who is Head of HR Business Partnering for the Respondent, for her review and feedback. Ms Crowley also reports to Ms Dalzotto. On 18 October 2023, Ms Dalzotto emailed Ms Jaeschke copying in Ms Crowley confirming that she agreed with Ms Jaeschke's conclusions.

[111] Ms Crowley was asked during her oral evidence whether in fact Mr Benjamin was interviewed. Ms Crowley answered yes, and that Ms Jaeschke informed her that she spoke with him. Ms Crowley was referred to the analysis spreadsheet Ms Jaeschke had produced, and one of the responses from Mr Benjamin to Ms Polley's allegations and he refers to the West Australia IS strategy and to Julien Marr. It was put to Ms Crowley that was not the matter that Ms Polley was complaining about, and the wrong matter was investigated, or at least responded to. Ms Crowley was unable to assist in clarifying this issue. It was put to Ms Crowley that a mistake like that affects the outcome of the investigation. Ms Crowley said it was possible.

18 October 2023

[112] Ms Polley said on 18 October, Ms Jaeschke contacted her and asked her if she was available for a meeting the next day, being 19 September and Ms Polley said no, because she was travelling and had limited internet access, and so Ms Jaeschke said she would set it up for the 20 October. Ms Polley agreed Ms Jaeschke sent her a Teams meeting invite for 20 October. Ms Polley agreed the Teams invite did not include Mr Dick.

[113] Mr Dick said Ms Jaeschke's investigation was concluded on 18 October and she determined that Ms Polley's complaint had not been substantiated, however several recommendations were made by Ms Jaeschke including:

- (a) Mr Gray and he work together to improve project governance, role clarity and team design;
- (b) Mediation between Mr Benjamin and Ms Polley be attempted to improve their working relationship;
- (c) Explore getting Mr Benjamin '360 feedback' with a focus on work style and organisation; and
- (d) Putting in place a development plan for Ms Polley to ensure that she was working on projects that supported her professional development and job satisfaction.

19 October 2023

[114] Ms Crowley said on 19 October 2023, Ms Jaeschke informed her that she planned to organise a meeting with Ms Polley to provide her with the outcome of the investigation and she had prepared a script for this meeting which she shared with Ms Crowley on the screen during their discussion. Ms Crowley said she was comfortable with Ms Jaeschke's approach to the meeting and Ms Crowley said she suggested that Ms Jaeschke invite a senior executive from the business to the meeting. Ms Polley accepted that on 19 October Ms Jaeschke sent her an email advising Mr Dick wanted to attend the meeting and asked if she was okay with that, however she said she did not see that email as she was travelling and was not aware Mr Dick was going to attend.

[115] Ms Crowley was asked during cross examination why she thought Mr Dick should attend. Ms Crowley confirmed that she believed he should attend as a senior representative of the business. It was put to Ms Crowley that Mr Benjamin had his boss present during the outcomes meeting, however there is no senior executive appointed in support of Ms Polley. Ms Crowley agreed but said Mr Dick is the leader for the planning and mobility business, in which both Mr Benjamin and Ms Polley are employees. It was put to Ms Crowley that Mr Dick had a conflict of interest in attending and Ms Crowley did not agree, responding that it was in Mr Dick's interest to ensure that they have the best outcomes and relationships, and it would be in his interest to ensure that that happens.

[116] Mr Dick said that he was asked to attend the meeting by Ms Jaeschke a day or two before as a witness. Mr Dick rejected the proposition that he had a conflict of interest in attending the meeting because Mr Benjamin reported to him. It was put to Mr Dick that it was his idea to attend the meeting and he reiterated that Ms Jaeschke had asked him to attend as a witness.

20 October 2023 Meeting and Resignation

[117] Ms Polley agreed that on 20 October she attended a meeting with Mr Dick and Ms Jaeschke, and her partner Mr Polley. Ms Polley said she spoke with Ms Jaeschke for about five or 10 minutes before Mr Dick entered the meeting (by Teams) as he was late. Mr Polley confirmed in his oral evidence that the reference in his written notes of the meeting recorded Mr Dick being between 2 and 5 minutes late. Both Mr and Ms Polley said Ms Jaeschke read from a script at times, and she ad-libbed at times. Ms Polley agreed that Ms Jaeschke explained that the outcome of the investigation was that the allegations that she had made about bullying and harassment, had not been substantiated, and that the incident on 1 September 2023 was not due to gender bias, and also that on reflect Mr Benjamin had acknowledged that asking her to get the coffees was wrong and he was apologetic. Mr Polley said he remembered Ms Jaeschke saying that there had been mitigating circumstances and an allegation of bullying had not been upheld in relation to the 1 September incident.

[118] Ms Polley said in her witness statement that at the end of the meeting, in complete disregard for her statement that she would have to resign if she was required to continue working with Mr Benjamin, Ms Jaeschke responded by saying "*You will have to continue working with Scott*". Ms Polley said Mr Dick nodded and remained silent; clearly endorsing

this statement. Ms Polley said she felt victimised at this point, and it confirmed what she described as the retaliation that she feared which left her no option but to resign her position, and she subsequently prepared and submitted her resignation.

[119] Ms Polley said she did not recall Ms Jaeschke saying that as part of the investigation she had identified that there needed to be some changes to the team, to address safety issues. It was put to Ms Polley that Ms Jaeschke said to her that as part of those measures, they wanted her or they'd like her to be involved in some kind of process to try and restore her relationship with Mr Benjamin. Ms Polley said she believed her words were that she directed Ms Polley to work with Mr Benjamin. Ms Polley said that Ms Jaeschke said she would be required to work with Mr Benjamin for practicality reasons. It was put to Ms Polley that Ms Jaeschke and Mr Dick denied saying that. Ms Polley said during her oral evidence that they said that she would have had to continue to work with Mr Benjamin, and she believed the words were "*would be required to*". Ms Polley also referred to what she said in her email of 22 October 2023. Ms Polley repeated in re-examination that she said in her email of 22 October that Ms Jaeschke said that she would be forced to work with Mr Benjamin which then forced her to resign.

[120] Mr Polley agreed that Ms Jaeschke had referred to some containment measures to provide safety for her, however said those discussions were limited and words were used like, 'It will be all right.' It was put to Mr Polley that measures around project governance, team design work, management roles, and clarity to support safety in the team were discussed. Mr Polley's evidence was to the effect that he didn't recall that however could not be sure that they were not discussed. It was put to Mr Polley that a suggestion was made there'd be a further meeting to discuss some form of mediation that could happen between Ms Polley and Mr Benjamin. Mr Polley said the meeting being from last year, that he recalled an email that there would be facilitated mediation, but he didn't know if that was said in the meeting or not.

[121] Ms Polley accepted that reading from a script Ms Jaeschke said she wanted to give Ms Polley time to digest the conversation and the information that she had shared with Ms Polley and said that she wanted to have a meeting with Ms Polley the following week. It was put to Ms Polley that Ms Jaeschke also told her that if she was not happy with the outcome of the investigation, there was a review process within the Respondent. Ms Polley said Ms Jaeschke said that she would be limited to two weeks, knowing that she was travelling during that time for client work. Ms Polley did accept there was a review process, and it was explained. Mr Polley accepted that Ms Jaeschke said to her in the meeting that if she was dissatisfied with the outcome of the investigations, she could request a review of the investigation.

[122] Mr Dick said during the meeting Ms Jaeschke read from a pre-prepared script, and outlined the investigation conclusions which were that Ms Polley's allegations against Mr Benjamin could not be substantiated as being consistent with bullying and harassment. Mr Dick said Ms Jaeschke confirmed that Mr Benjamin asking her to get coffees at the workshop on 1 September 2023 was not due to gender bias but that Mr Benjamin had acknowledged that it was the wrong thing to have done and he was apologetic toward Ms Polley for making the request and the impact on her.

[123] Mr Dick said Ms Jaeschke also outlined some of the recommendations including the action needed to be taken around project governance, team design, and role clarity immediately

to make the workplace safe and that attempts at mediation and rebuilding the relationship between Ms Polley and Mr Benjamin should be explored.

[124] Mr Dick said after Ms Jaeschke finished reading the script, Ms Polley appeared visibly upset with the outcome and mentioned she was flabbergasted and rejected the findings. Mr Dick said Ms Polley said she required an experienced person to investigate the matter and started asking a number of questions.

[125] Ms Polley said that Mr Dick, being Mr Benjamin's line manager, was at the meeting to intimidate her with his behaviour. Ms Polley said she had been in meetings with Mr Dick before, and typically he will sit back, and you can see his full torso in that meeting. Ms Polley said in this meeting he leaned forward, stared down the camera and made himself as big as he possibly could whilst he stared down the camera and said nothing. Ms Polley said he did not introduce himself to her and her support person, and he very obviously was there to try and intimidate her. In her evidence Ms Polley posed the rhetorical question, why was he there, referring to Mr Dick.

[126] It was put to Ms Polley that Mr Dick said he was a minute late. Ms Polley said the meeting started on time and they managed to have quite a lot of conversation prior to Mr Dick attending. Ms Polley was referred to her partner Mr Polley's notes of the meeting that appear to record that Mr Dick arrived approximately five minutes late. Ms Polley accepted in her oral evidence that being late of itself was not victimisation and people can be late.

[127] Mr Polley was asked about his evidence that Mr Dick was at the meeting to intimidate Ms Polley and he said he believed that. Mr Polley referred to a timeline where she wasn't allowed to know that Mr Dick was coming to the meeting, and that he didn't introduce himself to Mr Polley, although from his notes he wasn't sure if Mr Dick said his name was Rowan or he just said 'Hi', but he didn't introduce himself in as much to say his role. Mr Polley said Ms Polley obviously knew his role. Mr Polley said Mr Dick wore a short-sleeved Polo shirt and had his elbows on the desk and was leaning forward into the camera and stared at the camera for the entire time in a way that Mr Polley thought he was making his body as broad as he could, and he didn't respond to any questions.

[128] Mr Polley accepted that an email was sent to Ms Polley the day before the meeting at about 12 o'clock saying 'Rowan wants to attend. Is that okay with you?' Mr Polley said the email was sent at a time when it was known that Ms Polley was travelling and as such would likely not get it.

[129] Mr Polley said it was not the short-sleeved polo shirt, but his body language was different from everyone else in this room, in that it was for intimidation and that was his interpretation.

[130] Mr Dick agreed in his oral evidence that he did not introduce himself when he arrived at the meeting and said that looking back he should have done that, but he was of the view that everyone in the meeting already knew who he was and why he was there, but conceded it was a mistake not to introduce himself.

[131] Ms Polley said she asked three questions at the meeting which she believed Ms Jaeschke had five to six weeks to think about. The first of those questions was why this was not classed as gender-based harassment when it was clearly an example given in the training literature. The second was, why was Mr Nielsen, who was in that meeting (on 1 September 2023) and not a line manager, not interviewed about the meeting and about what happened in that meeting. The third was how are they going to keep her psychologically safe.

[132] Mr Dick said that given Ms Polley was clearly upset, he did not consider it appropriate to engage in any further discussion with Ms Polley at that point in time about the investigation outcome or attempt to answer her questions and Ms Jaeschke then closed the meeting. Mr Dick said in his statement that neither himself or Ms Jaeschke 'instructed' Ms Polley that she would continue to work with Mr Benjamin at this meeting. Mr Dick said it is not true that he said 'nothing' during the meeting, although he acknowledged he did not say very much during the meeting for the reasons concerning Ms Polley being clearly upset. Mr Dick said he did not 'stare down the camera' nor did he seek to intimidate Ms Polley at this meeting. His oral evidence was consistent with his witness statement on these issues.

[133] Ms Polley was provided a letter from Ms Jaeschke concerning the findings of the investigation which reads as follows:

“Dear Shivaani

We write in reference to your allegations against Scott Benjamin. The allegations were in relation to behaviours consistent with bullying and harassment. Thank you for your participation and patience as we undertook the investigation into your complaint. As discussed with you, after you initiated your formal complaint on 11 September 2023, it was determined that I would investigate your complaint as per below:

- We would meet to discuss the complaint, where you talked through the allegations and provided further information about your complaint.
- I would interview Scott Benjamin to give him an opportunity to respond to the allegations.
- I would interview potential witnesses including Lachlan Gray, Jessica Tong and David Alderson
- I would present the evidence separately to both Brigitte Crowley, HR Business Partner Lead and Maree Dalzotto, Head of HR Business Partnering, who would review the information and determine the outcome.

I can confirm that the investigation process has now concluded.

The outcome of the investigation is that the allegations were not able to be substantiated in relation to them being consistent with bullying and harassment behaviours. It is based on the evidence gathered that this conclusion has been reached.

If you are dissatisfied with the outcome, you may request in writing a further review to the manager of the business unit. The request must advise of the steps you have taken to date, outcomes and why you seek a review of the previous decisions/outcomes. The

written request must occur within a reasonable period of time and no later than 14 days after receiving notification of the earlier outcome.

WSP takes victimisation seriously and I would like to re-iterate that, as the person making the complaint, there will not be any retaliation against you because you have made a complaint. We also ask that this matter continues to be treated confidentially. Please refer to Rowan Dick or myself or Birgitte Crowley should you have any questions or concerns in relation to this.

We encourage you to contact the EAP should you want access to external support...”

[134] At 10.39am on 20 October 2023 the Applicant sent an email to representatives of the Respondent as follows:

“Please see my resignation letter attached.

Due to bullying inflicted on me by Scott Benjamin I no longer feel psychologically safe to work at WSP.

However, I note the need for resourcing on existing projects and will work to complete my current commitment to the WA C-ITS Strategy. As such my last day of work will be January 24th 2024.

Thanks.”

[135] Ms Polley’s resignation letter reads as follows:

“20 October 2023

To David Alderson,

I would like to tender my resignation from the position of Senior Principal Systems Engineer at WSP QLD. My last day of work will be January 24th 2024.

In tendering my resignation I would like to raise the issue of consistent bullying I have experienced at the hands of Scott Benjamin, which has been ineffectively investigated by a junior resource. I have been placed in a psychologically unsafe and hostile work environment and cannot continue to produce my best work in this environment.

Sincerely,

Shivaani Polley..”

[136] Ms Polley accepted that she had tendered her written resignation within two hours of the meeting on 20 October. Ms Crowley said on 20 October 2023, Ms Jaeschke forwarded her an email from Ms Polley that had been shared with Ms Jaeschke by Mr Dick, in which she resigned from her employment.

[137] Ms Polley was asked whether she considered any alternatives to resigning at that point in time, and she responded “What were my alternatives?...” Ms Polley went on to say that there were no alternatives, and that she was terrified, and did not want to be pushed into a room with her bully.

[138] Ms Polley was asked about her choosing her last day of work three months later, as Ms Polley remained in employment with the Respondent until 24 January 2024. Ms Polley said she had made a commitment to finish a project for a client in Western Australia and the client had taken a significant risk in giving that work to the Respondent, and it was her professional responsibility to ensure that that was finished. It was put to Ms Polley that she didn’t feel she needed to leave straight away, and she felt she could keep working. Ms Polley replied that she assumed that she would be kept away from Mr Benjamin. Ms Polley was asked why she assumed that, and she responded because he had been kept away from that project. Ms Polley said she had asked for him to be removed from that project and he had been removed from that project for that duration.

[139] Mr Polley also agreed that Ms Polley had resigned within a couple of hours of the meeting. He said that he and Ms Polley discussed it. Mr Polley said Ms Polley was of the opinion that resignation was necessary straight away, and they had a similar conversation before, and other options had been explored. Mr Polley said Ms Polley was of the belief that there hadn't been any sort of reasonable investigation and his own interpretation of the way that the meeting was held was that he absolutely agreed. Mr Polley said Ms Polley had asked for a description of the mitigating circumstances and two people in the meeting had just stared at the computer, and he thought that was an unreasonable behaviour. Mr Polley said Ms Polley knew of multiple people who had been bullied – in their opinion – in retaliation for raising a HR complaint, and he interpreted particularly Mr Dick in that meeting to be intimidation, and he believed that was in retaliation for making the HR complaint.

[140] Mr Polley was asked whether they discussed an alternative to resignation in those conversations with Ms Polley and he didn’t recall a discussion on an alternative to resignation. Mr Polley was asked why Ms Polley could not have sought a review of the investigation. Mr Polley said Ms Polley feared retaliation in response to a HR complaint was real and it was supported by, in his opinion, the behaviour of Mr Dick. Mr Polley said he was not aware that Ms Polley could have approached a safety regulator if she thought this place was unsafe for her to keep working, or could have made an application for a stop bullying order to the Fair Work Commission.

[141] Ms Polley was asked during cross examination why she could not have used the review process that had been suggested to her if she was unhappy with the outcome of the investigation. Ms Polley said the investigation was clearly not fair, it was very obvious from the start, and she could give examples of why. Ms Polley also said she was terrified she would be put into a room with Mr Benjamin and made to mediate. It was put to Ms Polley that the review process was to undertake a review of the investigation. Ms Polley said she couldn't be sure that that was going to be fair.

[142] It was put to Ms Polley that didn't she want to give that a go? Ms Polley responded as follows⁸:

“It's not that I didn't want to give it a go. It's that this was such a farce that the review process could only find, but what was the review process going to entail? Nothing was explained. I was away on site for two weeks immediately after. I did send an email on the 22 October to clarify a number of items, most of which remain substantially unanswered.”

[143] In response to a question from me, Ms Polley indicated that she didn't understand that the review process would entail a review of the investigation. Ms Polley said the one-page letter that came through didn't explain anything. Ms Polley was then referred to a paragraph in the letter she referred to which stated as follows:

“If you are dissatisfied with the outcome, you may request in writing a further review to the manager of the business unit. The request must advise of the steps you have taken to date, outcomes and why you seek a review of the previous decisions/outcomes. The written request must occur within a reasonable period of time and no later than after 14 days after receiving notification of the earlier outcome.”

[144] It was put to Ms Polley that she says she didn't understand that. Ms Polley said it was provided with other information not covered in the letter and her email of 22 October asked for clarification. Ms Polley accepted that she had resigned by that stage. It was put to Ms Polley that she could have participated in the meeting to have a conversation about a potential mediation process with Mr Benjamin. Ms Polley said no psychological safety evaluation had been done and no psychological safety plan had been produced, and how could she be comfortable or confident that she was going to be psychologically safe.

[145] It was put to Ms Polley that she could have refused to work with Mr Benjamin. Ms Polley responded that was not an alternative, and the Respondent needed to provide a safe workplace so that she could do her work. Ms Polley said she had already said that on 4 September 2023. It was put to Ms Polley that couldn't she have just maintained that position. Ms Polley said she was not going to withhold labour and she deserved a safe work environment. Mr Dick accepted during his oral evidence that the option of separating Ms Polley and Mr Benjamin was not offered to her as an option by the Respondent. He said later in his evidence that he didn't think separation was a practical option in terms of the clients requirements and the different skill sets that Mr Benjamin and Ms Polley and complement each other to provide the best outcome for clients.

[146] It was put to Ms Polley that she could have taken personal leave as she had about 30 days of personal leave accrued, while she worked through what she might do. Ms Polley said she did take some sick leave as she had been unwell, however also said she didn't take sick leave because she was trying to avoid Mr Benjamin. It was put to Ms Polley that she could have made a complaint to the Fair Work Commission regarding bullying or complained to the Work Health and Safety Regulator about what was happening to her, and that it was an unsafe work environment. Ms Polley's evidence was to the effect that said she was not aware that she could have at the time.

22 October 2023 email to Mr Dick

[147] On 22 October 2023 at 12:09pm Ms Polley sent an email to Mr Dick, copying in Mr Scott Ney and Ms Rebecca Schulkins, rejecting the findings of the investigation and stating the investigation was inadequate. Ms Polley requested in summary that the letter she had received from HR dated 20 October 2023 be reissued with corrections and further information provided, justification for not complying with the Respondent's own guidelines, and a correct recording of what was discussed at the meeting on 20 October as well as a copy of her HR file and all notes and matters relating to the dismissal. Ms Polley said the erroneous content, and abject failure to identify evidence, and the complete the disregard for her complaint prompted her to write this email requiring amendment to the "so called" investigation summary.

23 October 2023

[148] Ms Crowley said on 23 October 2023, Scott Ney, Director of Advisory, sent her an email, forwarding an email from Ms Polley to Mr Dick, in which Ms Polley raised a number of issues in respect of the investigation and asked a number of questions.

24 October 2023

[149] Mr Dick said that on 24 October Mr Latham emailed Ms Polley and he was copied into the email. The email read as follows:

"Hey Shivanni,

We obviously spoke last Friday and I thought I would give it a day or two before formally responding.

Myself and the team would be absolutely devastated if you were to resign. The leadership, energy and heart you bring would leave a huge void. The relationships and friendships you and the team have forged have created a unique high performing ITS team culture.

To this end, I can't accept your resignation until we have explored every single possibility to keep you with the business. Last week we spoke of a plan and actions – I am committed to defining and establishing this with you if you are open to it and I am committed to building an inclusive, respectful and safe culture with you and the Queensland team.

We still have much to achieve together and as a team and the opportunities within the business and market are significant. ITS and ITS advisory has gathered fantastic momentum over the past 12 months thanks to your efforts and the business is listening and ready to invest.

There is a pathway for progression and a team ready to support you here in Queensland and interstate.

Lets keep the conversation moving and get this plan in place.

Regards"

26 October response from Mr Ney

[150] Ms Crowley said on 26 October 2023, Mr Ney sent an email to Ms Polley copying her in, which responded to some of Ms Polley's questions and confirmed that the Respondent would be providing a detailed response to Ms Polley's questions relating to the investigation.

1 November 2023 further detail provided

[151] Ms Crowley said on 1 November 2023, Mr Ney sent an email to Ms Polley copying her in, attaching a letter providing Ms Polley with further detail about the investigation conclusions and the rationale for them.

3 November 2023

[152] Ms Crowley said on 3 November 2023, she sent an email to Ms Polley letting her know that she was sending her a meeting invite to catch up with her to discuss the next steps foreshadowed in the letter sent by Mr Ney. Ms Crowley said the next steps included trying to work up a plan with Ms Polley, to restore the working relationship between her and Mr Benjamin which would entail exploring the possibility of a facilitated mediation process. Ms Crowley said she then sent Ms Polley a meeting invitation for a meeting on 8 November 2023.

5 November 2023 Ms Polley tentatively accepts invitation

[153] Ms Crowley said on 5 November 2023, Ms Polley tentatively accepted this meeting invitation and asked for further information about the agenda of the meeting and a list of attendees at the meeting.

8 November 2023

[154] Ms Crowley said on 8 November 2023, she replied to Ms Polley's email and confirmed that the agenda of the meeting was to work out next steps of how Ms Polley and Mr Benjamin could work together. Ms Crowley said she confirmed that the conversation would be between Ms Polley and herself. Ms Crowley said on the same day Ms Polley declined this meeting invitation stating that she declined the meeting due to a lack of agenda and notice of attendees.

Ms Polley worked out the notice period

[155] Mr Dick said in his statement that the Respondent's efforts to try and get Ms Polley to withdraw her resignation were to no avail. Mr Dick said Ms Polley gave a period of about 3 months' notice of her resignation and this was greater than the period of notice she was required to give under her contract of employment. Mr Dick said Ms Polley was not asked by anyone at the Respondent to provide a longer notice period, nor was she required to work on any project until 24 January 2024.

[156] Mr Dick rejected Ms Polley's evidence that the Respondent had a rolling program of redundancies, or to remove females from technical roles, or to make Ms Polley's role redundant, and the position has not been made redundant.

CLOSING SUBMISSIONS

[157] It was submitted for Ms Polley that her employment was terminated pursuant to the provisions of section 386(1)(b) of the Act whereby she resigned from her employment but was forced to do so because of the conduct of the Respondent employer.

[158] It was submitted that Ms Polley was encouraged (if not directed) to lodge a formal complaint with the Respondent's HR department, and the Respondent mismanaged an inquiry into her complaint, failed to meet its statutory obligations, failed to recognise the extent of the health & safety risk to her, and directed her to continue to work and mediate with her bully, such that she had no alternative but to resign her position. Ms Polley conceded that to prove her case she must show 'on the balance of probabilities' that the Respondent's conduct was such that she was forced to resign, and that she had no other reasonable alternative available to her other than resignation. Ms Polley submitted this position is proved by the unique features of this case, including her several warnings to the Respondent that she would have to resign if Mr Benjamin's behaviours were not addressed.

[159] It was submitted that the Respondent's witnesses accepted that Ms Polley did make disclosures about Mr Benjamin's conduct on several occasions, including to Mr Dick in late 2021 or early 2022, to Mr Benjamin himself, Mr Gray and Mr Latham on 18 August 2022 at the breakfast meeting in Brisbane, to Mr Gray and Mr Glenn on 28 November 2022 including her intent to resign.

[160] In relation to the 20 October meeting and the claim that Ms Polley would have to continue working with Mr Benjamin, Ms Polley relies on there being no evidence from Ms Jaeschke, Mr Dick saying different wording was used and he didn't take notes, and Mr Polley having taken notes that she would have to continue working with Mr Benjamin 'for practical reasons', and her written response of 22 October.

[161] Ms Polley also submitted that the requirement for "systematic" repeated unreasonable behaviour to prove workplace bullying is a higher bar than the definition at law.

[162] Ms Polley contends that the Respondent failed to abide by its own workplace policies and procedures by not ensuring that a risk assessment and a risk plan was completed, once notified of the risk to her psychological safety. It is submitted that while the Respondent claims Ms Polley failed to pursue a WH&S complaint as an alternative to resignation, so too did the Respondent fail in its statutory obligations to Ms Polley under the provisions of Section 19 of the *Work Health & Safety Act (Qld) 2011* to provide and maintain a safe workplace for her.

[163] It is submitted for Ms Polley that the Respondent failed to manage the complaints made by her and to deal with them in any meaningful way and when the 1 September 2023 "coffee incident" derailed Mr Gray's attempts to address the issues, all hope of a reconciliation was lost.

[164] It is submitted that Ms Polley did everything within her power to maintain a professional working relationship with Mr Benjamin over a period of 3 years however when it became too much she reached out to others, including Mr Benjamin himself, to express her frustration and

on at least two occasions identified her preparedness to resign if something was not done to remedy her complaints and ultimately the Respondent failed to listen, failed to adequately investigate and address her concerns, and failed to secure a psychologically safe workplace for the Applicant, she resigned. On that basis it was submitted that a constructive dismissal of Ms Polley did occur in this case.

[165] The Respondent submitted that despite Ms Polley's case that she was the casualty of a misogynistic workplace culture, the evidence demonstrates Ms Polley was treated with respect and dignity and offered understanding and support in dealing with her deteriorating working relationship with Mr Benjamin.

[166] The Respondent submitted over several years Ms Polley became frustrated with Mr Benjamin, and the Respondent took reasonable and proportionate measures to support their working relationship. The coffee incident on 1 September 2023, which Ms Polley interpreted as an act of gender-based discrimination and bullying by Mr Benjamin, was a trigger that led to an unfortunate chain of events ending with Ms Polley's resignation.

[167] The Respondent submitted that Mr Benjamin was unaware of the extent of Ms Polley's frustrations with him at the time of the coffee incident. The evidence was Mr Benjamin and Mr Alderson had discussed Mr Alderson asking Mr Meqdad or Ms Polley to get the coffees for the workshop, and Mr Benjamin asked Ms Polley before the workshop commenced "*could you help us grab the coffees before the meeting starts?*" The Applicant responded "*yes*", and few minutes later, once Mr Benjamin had completed collecting the coffee orders, he turned to Ms Polley and handed her his credit card and said "*use my credit card*". Ms Polley responded she was "*a bit uncomfortable*" to which Mr Benjamin responded "*Don't worry just tap the card. You shouldn't need the pin*". A few minutes later, Ms Polley then told Mr Benjamin that she was "*uncomfortable*" to get the coffees.

[168] Ms Polley characterised Mr Benjamin's request to get the coffees as an "*instruction*" and the Respondent submitted Ms Polley's evidence on this matter framing Mr Benjamin's request as an "*instruction*" was self-serving and sought to exaggerate the seriousness of the incident, and Ms Polley's evidence that she considered it would take one hour to get the coffees is another exaggeration designed to heighten the seriousness of this incident. The Respondent pointed to Ms Polley contradicting her witness statement saying it would take her at least half an hour and later conceded it would take more than 10 minutes. The Respondent submitted Ms Polley's claim that Mr Benjamin breached the company's sexual harassment and sex-based discrimination guidelines simply because she was the only woman in the room is another exaggeration designed to heighten the seriousness of the incident.

[169] The Respondent submitted Mr Benjamin did not ask Ms Polley to get the coffees because of her gender or to upset, disrespect or humiliate her. Mr Benjamin went and purchased the coffees himself and when he later became aware that Ms Polley was upset about being asked to get the coffees, he immediately took steps to contact her to apologise and explain the situation however Ms Polley rejected his attempts to apologise. The Respondent submitted during cross examination Mr Benjamin's evidence in connection with the coffee incident was not challenged.

[170] The Respondent submitted Ms Polley's oral evidence concerning her meeting with Mr Gray and Mr Dick on 4 September was contradictory, her witness statement saying she was

‘directed’ to make a HR complaint and her oral evidence saying that Mr Gray and Mr Dick said she “*should talk to HR.*” The Respondent submitted that Ms Polley tried to explain this contradiction by stating that where no other options were offered to her that the suggestion she speak to HR was a “*direction*”. The Respondent submitted that this is another example of Ms Polley exaggerating the situation in a self-serving fashion to seek to apportion blame to Mr Dick and Mr Gray for her decision to resign on 20 October 2023 following her disappointment with the outcome of the investigation into her complaint about Mr Benjamin.

[171] The Respondent submitted Ms Polley proceeded to make her complaint without being coerced or forced to do so. The Respondent submitted the complaint was the first time Ms Polley had described Mr Benjamin's conduct as bullying.

[172] The Respondent submitted Ms Jaeschke interviewed Mr Benjamin, Mr Gray, Mr Alderson and Ms Tong and also asked questions of Mr Dick, and met with Ms Polley to obtain further information from her. Mr Benjamin was asked to stop working on the project with Ms Polley.

[173] The investigation concluded that Ms Polley’s complaint of bullying had not been substantiated in line with the definition of bullying in the company's discrimination, harassment and workplace bullying guidelines. The Respondent acknowledges that the definition of bullying contained in the company's discrimination, harassment and workplace bullying guidelines is different to that contained in the *Fair Work Act 2009 (Cth)* as it included the word “*systematic*” in describing the required conduct, the Respondent submitted that the inclusion of the word “*systematic*” did not affect the investigation findings having regard to the rationale for those findings as detailed in the issue analysis spreadsheet and the letter dated 1 November 2023.

[174] The Respondent acknowledged that some persons identified in Ms Polley’s complaint as witnesses were not interviewed by Ms Jaeschke, however, the Respondent submitted that this did not affect the investigation findings. As to Mr Nielsen in respect of the coffee incident on 1 September 2023, whilst he was present at the client workshop, Ms Jaeschke had obtained the accounts of Ms Polley, Mr Benjamin and Mr Alderson and there was no substantive dispute about what had occurred during the coffee incident. As to Mark Fowler and Leigh Dawson in respect of the BD visit in November 2022 to Perth, Ms Jaeschke had interviewed Mr Benjamin and Mr Gray and came to the view that the incident related to a difference in professional opinion on what the client wanted rather than an instance of bullying and Ms Polley ultimately sent the material she was seeking to send to the client. In these circumstances, there was no need for Mr Fowler or Mr Dawson to be interviewed. The Respondent submitted that this did not affect the investigation findings.

[175] The Respondent also acknowledged that there may be some confusion over the first row of the issue analysis spreadsheet and whether the accounts of Mr Benjamin and witnesses and the analysis recorded in the spreadsheet deals with a separate matter to the one raised by the Ms Polley in her complaint. However, the Respondent submitted that it is clear from the evidence of Mr Benjamin and the written response he provided in relation to the complaint that the matter raised by Ms Polley in the complaint was in fact considered by Ms Jaeschke. The Respondent submitted that this did not affect the investigation findings.

[176] The Respondent acknowledged that Ms Jaeschke was not called to give evidence by the Respondent and that she may have been able to shed further light on some of these matters. However it submitted given the efforts made by the Respondent to make her available (i.e. the obtaining of an Order to Attend), the fact that she was unfit to give evidence and stressed by the requirement to give evidence which was going to make further compulsion of her to attend challenging, and that she was no longer an employee of the Respondent, no adverse inference should be drawn that her evidence would not assist the Respondent's case. The Respondent submitted it has provided a sufficient explanation as to why Ms Jaeschke was not ultimately made available.

[177] The Respondent submitted that Ms Polley gave evidence that Ms Jaeschke "*directed*" her to work with Mr Benjamin or told her that she was "*required to work*" with Mr Benjamin. The Respondent submitted that Ms Polley's evidence on this matter should not be accepted for the following reasons:

1. Such a direction is not contained in the prepared script which Ms Jaeschke read from and is not consistent with the account of the meeting given by Mr Dick. What was proposed was that mediation be attempted between the Applicant and Mr Benjamin to rebuild their relationship and the Applicant has sought to take out of context any discussion during the meeting about her working with Mr Benjamin.
2. Ms Polley exaggerated elements of her account of the meeting when she gave evidence that Mr Dick was about 5 to 10 minutes late for the meeting.
3. Ms Polley's attempts to describe Mr Dick's mere presence and demeanor in the meeting as acts of intimidation and victimisation were not credible.
4. Ms Polley gave evidence that she considered a "*suggestion*" a "*direction*" or "*instruction*" which is further reason why her account should not be accepted.
5. Ms Polley was in an emotional state after hearing the news that her complaint against Mr Benjamin had not been substantiated which would have affected her capacity to comprehend the nuance or subtlety of what was being discussed during the meeting.

[178] The Respondent submitted at the time Ms Polley resigned she had several options open to her rather than resigning including invoking the review process. The Respondent submitted in light of the evidence, Ms Polley's claim that she did not understand that she could utilise the review process should not be accepted as it contradicts her initial evidence on this matter and is not credible. The Respondent also submitted that Ms Polley could have participated in the mediation process to attempt to rebuild the working relationship.

[179] The Respondent submitted Ms Polley's evidence that she was "*terrified*" to participate in such a process is not credible given that less than 12 months before Ms Polley went on a work trip to Perth with Mr Benjamin, and had dinner with him alone (having a late night) and breakfast with him the next morning again alone.

[180] The Respondent submitted Ms Polley could have refused to work on the same projects as Mr Benjamin and her reason for not seeing this as an option does not offer an adequate explanation for why this was not an available option for her and not credible.

[181] The Respondent submitted Ms Polley could have absented herself from the workplace on the basis that she believed it was unsafe for her to be at work.

[182] The Respondent submitted Ms Polley could have made an application to the Commission for a stop bullying order and/or raised a complaint with the work health and safety regulator.

CONSIDERATION

[183] In assessing whether Ms Polley's resignation was 'forced', it is necessary to consider the conduct of the Respondent Ms Polley alleges 'forced' the resignation, whether the purported conduct was engaged in by the Respondent with the intention of bringing Ms Polley's employment to an end, or whether the termination of Ms Polley's employment was the probable result of the purported conduct such that Ms Polley had no effective or real choice but to resign.

[184] I agree with the Respondent's submission that it appears in relation to whether the conduct of the Respondent forced Ms Polley to resign, that the relevant conduct of the Respondent was the failure of the Respondent's investigation to conclude that Mr Benjamin engaged in bullying coupled with the alleged 'instruction' given by the Respondent (Ms Jaeschke and Mr Dick) that Ms Polley was required to continue to work with Mr Benjamin.

[185] I make the general observation that having considered all the evidence, I am not inclined to accept certain claims in the evidence of Ms Polley over that of other witnesses where they are in conflict, as there are a number of instances where it appears Ms Polley has exaggerated, misinterpreted or not recalled specific events which tends to lower the weight that her evidence should be afforded.

[186] Ms Jaeschke concluded that the alleged bullying of Ms Polley could not be substantiated, however she considered that the way the team was functioning, and several organisational challenges, were creating some psychological safety risks that needed to be addressed. Ms Jaeschke then made several recommendations. The evidence does not support a conclusion that the investigation conclusions were made with the intention of ending Ms Polley's employment. The evidence supports the conclusion that the conclusions in Ms Jaeschke's report were on balance correct, and the allegations of bullying could not be substantiated. It is notable that the complaints made by Ms Polley prior to the coffee incident did not describe Mr Benjamin's conduct as bullying, and tended more to reflect frustrations with how Mr Benjamin did his job, and its impact on her.

[187] The evidence on balance does not support the conclusion that by Mr Benjamin asking Ms Polley if she would get coffee for the attendees at the meeting that he engaged in an act of gender-based discrimination and bullying. The evidence was that Mr Benjamin and Mr Alderson had discussed Mr Alderson asking Mr Meqdad or Ms Polley to get the coffees for the workshop and Mr Alderson did not do this as he said he was going to. Mr Meqdad could not subsequently be asked as he was attending the meeting online. Mr Benjamin had already organised the other catering needs for the meeting and the fact was that of the Respondent's staff at the meeting, Ms Polley was the only one in physical attendance who was not making a presentation. Whilst it is a fact that Ms Polley was the only woman in the meeting, and it is understandable she may have formed the impression that Mr Benjamin was asking her to get the coffees because of her gender, she was not aware at the time of the context of why he was asking her, and the evidence supports the conclusion it was not because of her gender. It seems

that Ms Polley had formed a view based on an example in the sex-based harassment training concerning asking women to do gender-based tasks, such as getting food or cleaning up as constituting sexual harassment, that therefore Mr Benjamin must have engaged in gender-based harassment or discrimination. It is of course necessary to consider the context and reason for the request and that the request must be because of the person's gender.

[188] I also do not accept Ms Polley's claim that Mr Benjamin instructed her to get the coffees. On the evidence it was clearly a request and not a direction and Ms Polley's attempt to characterise it as an instruction was not correct. Ms Polley's claim that it would take one hour to get the coffees is also not credible and her evidence changed on this issue. Ultimately Mr Benjamin purchased the coffees himself and apologised to Ms Polley when he became aware the request had upset her.

[189] I accept that it was Ms Jaeschke that asked Mr Dick to attend the meeting on 20 October, on the advice of Ms Crowley, and Mr Dick did not attend on his own initiative. This is consistent with the evidence of Ms Crowley and Mr Dick who were both clear and on the point. The evidence also does not establish that Mr Dick attended the meeting on 20 October to intimidate Ms Polley as she claimed, and the explanation given by Ms Crowley and Mr Dick for his attendance is more plausible and reasonable. The Respondent's rejection of Ms Polley's resignation and attempts to persuade her to remain with the Respondent undermines the suggestion that Mr Dick was present at the meeting for the purpose of attempting to intimidate her.

[190] I am also not satisfied Ms Polley was given an 'instruction' that she was required to continue to work with Mr Benjamin. Ms Polley claimed that during the meeting on 20 October Ms Jaeschke said that she would be forced to work with Mr Benjamin which then forced her to resign. The evidence does not support the conclusion that those words were said to Ms Polley, and Ms Polley's evidence on this issue is less likely to be accurate. It is far more probable that the proposition being put to her was that she was being asked to consider engaging in mediation with Mr Benjamin. She was not being directed to do so as she appeared to believe. The reasons set out above in the Respondent's submissions are a compelling basis not to accept Ms Polley's claim that she was told by Ms Jaeschke on 20 October that she was being "*directed*" or "*required to work*" with Mr Benjamin and that Ms Polley has taken out of context the discussion to support her case of being 'forced' resignation.

[191] The evidence also indicates Ms Polley's recollection of what was said at the meeting on this issue was unclear. Ms Polley also said during her oral evidence that she did not recall in the course of the 20 October meeting Ms Jaeschke reading the measures the Respondent proposed to take flowing from the investigation. The evidence clearly weighs in favour of the conclusion that Ms Jaeschke did take Ms Polley through these matters at the meeting and this also tends to throw doubt on Ms Polley's version of the discussion.

[192] I am also satisfied Ms Jaeschke informed Ms Polley that if she was unhappy with the outcome of the investigation, she could request a review. Ms Polley in her evidence appeared to accept that Ms Jaeschke said to her in the meeting that if she was dissatisfied with the outcome of the investigations, she could request a review of the investigation. However later in her evidence, Ms Polley indicated that she didn't understand that the review process would entail a review of the investigation. I find this hard to accept as it is inconsistent with the pre-

prepared script, and the letter provided to her stated clearly that if she was dissatisfied with the outcome, she may request in writing a further review within 14 days after receiving notification of the outcome of the investigation. Ms Polley is clearly a highly intelligent and educated person. It is most unlikely that Ms Polley did not properly understand that the review mechanism was a review of the investigation conducted by Ms Jaeschke. It is more likely the case that Ms Polley had formed the subjective opinion that the review would not lead to a different result and was therefore not worth engaging with despite it being an option open to her.

[193] It appears to me that the Respondent was attempting to take steps to address Ms Polley's psychological safety, and to attempt to try and rebuild the working relationship between Ms Polley and Mr Benjamin. The evidence supports the conclusion that the Respondent regarded Ms Polley highly, and the Respondent attempting to not accept her resignation demonstrates the Respondent was trying to retain her as an employee, and not trying to force her to resign.

[194] Assessing whether the probable result of the investigation conclusions was that Ms Polley had no effective or real choice but to resign is an objective assessment. I am inclined to accept, having observed Ms Polley give her evidence, that she had reached the subjective opinion that she had no effective or real choice but to resign, and that she genuinely held that belief. However, as the Respondent has submitted, Ms Polley's subjective opinion on the matter is not the test. To succeed Ms Polley needs to demonstrate that she had no real or effective choice left but to resign. I agree with the Respondent that Ms Polley had a range of options open to her rather than resignation including invoking the review process, exploring the offer of what mediation may look like, advising the Respondent she would not work on projects with Mr Benjamin, taking personal leave until her concerns regarding working with Mr Benjamin were addressed or seeking stop bullying orders from the Commission or complaining with the work health and safety regulator.

[195] It has been submitted for Ms Polley that the bar to making out a case of bullying under the Respondent's policy was higher than under relevant legislation. Nothing turns on this issue as the evidence does not support a conclusion that Mr Benjamin engaged in bullying under the policy or as defined under the *Fair Work Act 2009*. I am also of the view that there is more than sufficient evidence to determine this matter without having the benefit of the evidence of Ms Jaeschke and the fact that she did not give evidence would not have affected the outcome.

[196] Ms Jaeschke reached a conclusion that Mr Benjamin's behaviour does not appear consistent with systematic bullying but it would appear that his disorganised approach/style creates a stressful environment and puts pressure on team members. The picture that emerges from the evidence is that of a growing sense of frustration on the part of Ms Polley about the way Mr Benjamin worked. It is my impression that Ms Polley and Mr Benjamin's personalities clashed, and Ms Polley found working with Mr Benjamin extremely difficult and stressful. However, that does not support her claim that Mr Benjamin was harassing or bullying her. In forming that view I have also taken into account all of the evidence concerning the various events described above that occurred prior to the incident of 1 September 2023. That evidence does not support a conclusion that Mr Benjamin had bullied or harassed Ms Polley over a number of years or at all prior to the coffee incident.

[197] The fact of Ms Polley electing to remain in the employment of the Respondent until 24 January 2024, when this was approximately one month longer than the notice period in her employment contract also undermines her claim that she had no other option then to resign on 20 October. One would have thought if the situation was as bad as Ms Polley claimed, she would not have elected to remain employed for a month longer than her contractual notice period at her own volition.

[198] I agree with the Respondent's submission that none of its actions in connection with these events were unreasonable, and that it took Ms Polley's complaint seriously and its investigation reached a conclusion that on balance was correct, and it then went about putting in place measures flowing from the investigations recommendations that were appropriate. I agree with the Respondent's argument that it was Ms Polley's disappointment and disagreement with the outcome of the investigation and the prospect of having to continue to work with Mr Benjamin that caused her to resign, however Ms Polley had other alternatives open to her.

[199] I accept this is not a case of a 'forced' resignation. I am satisfied that Ms Polley's resignation was an exercise of her choice and on that basis the Commission does not have jurisdiction to deal with the application and it is dismissed. An order to that effect will be issued separately and concurrently with this decision.



COMMISSIONER

Appearances:

Mr C Watters of Counsel instructed by Work Rights Australia for the Applicant.

Mr M Sant of HFW for the Respondent.

Hearing details:

2024
Brisbane
28 and 29 February

Final written submissions:

18 March 2024

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¹ Exhibit 1.

² Exhibit 3.

³ Exhibit 4.

⁴ Exhibit 5.

⁵ Exhibit 6.

⁶ Exhibit 7.

⁷ Exhibit 9.

⁸ Transcript PN 339.