

DECISION

Victoria Police Act 2013

s.146 (1)(h) – Review of decision to make a directed transfer (GDAC)

Applicant: Constable J. Griffiths 44561	A138/2020
--	------------------

Mr C. Enright – Deputy President (Review)

18 December 2020

Hearing date: 11 December 2020

Applicant’s representative: Mr S. Pavlis, The Police Association

Chief Commissioner’s representative: Senior Sergeant M. Chapman 30041

Summary

Application to review directed TRANSFER — s.146(1)(h) of the Victoria Police Act 2013 — Decision to transfer made under section 35 (“reasonably necessary to do so for the provision of policing services”) following the General Duties Allocation Committee process (GDAC) — public interest in ensuring policing services are provided across the State —GDAC process is fair and transparent — desirable to apply a fair and consistent approach to assessing grounds of hardship or special circumstances which ensures policing services are provided to all communities — relevance of spouse’s diagnosed clinical anxiety during pregnancy and childbirth – impact of COVID-19 on spouse’s support network – specialist medical advice about the risks disruption to medical services would cause to spouse’s fragile mental health and medical treatment for newborn baby - separating applicant from his spouse and newborn baby carries risks - Board concludes transfer was harsh, unjust or unreasonable and sets aside decision to transfer – published decision excludes certain private information (s.154A(2)).

Order

The decision to transfer the applicant to Stawell is set aside under s.153(3)(a) and in substitution for that decision, a decision is made to not transfer the applicant to Stawell.

Reasons for Decision

1. The applicant applied to the Police Registration and Services Board (the Board) for a review under s.146(1)(h) of the Victoria Police Act 2013 (the Act) of a decision to direct his transfer under s.35. The applicant was directed to transfer from the Williamstown Police Station to the Stawell Police Station as part of the General Duties Allocation Committee (GDAC) process.

The Act and the GDAC process

2. This decision resulted from the process to place Constables after their confirmation as police officers through the GDAC Process, which was agreed between Victoria Police and The Police Association (TPA) and set out in the applicable Enterprise Agreement as well as Victoria Police policy documents, being the Victoria Police Manual (VPM) provisions at 306-4 and documents provided to police recruits and Constables upon their confirmation. Those instructions set out the role of the GDAC, which was negotiated and agreed in the current and in previous Enterprise Agreements. Instruction 306-4 provides a means of filling Priority (urgent) and Special Category (difficult to fill) positions through the deployment of newly confirmed Constables.
3. Section 149 of the Act provides for a special fast-track hearing of reviews of directed transfers. The file is to be lodged with the Board within two business days of the application for review being filed, and the matter is to be heard and determined within a further five business days.
4. It is relevant to observe here that no additional document is to be lodged unless leave is given (s.149(2)) because the issue arose for consideration during the review hearing while the applicant's TPA representative was making submissions relating to medical evidence about the applicant's wife. While I will later refer in some detail to the medical evidence in this review, it relevantly emerged during the hearing that a Dr BH had written a brief letter dated 15 October 2020 and a slightly expanded version of that letter (with some additional comment) dated 26 November 2020 (I will refer to these as the 'first' and 'second' letters). The first letter had been lodged with Victoria Police as part of the applicant's application for exemption on 27 October 2020 (which was rejected on 18 November 2020) and the second letter was provided to Victoria Police and the Board when the applicant lodged his application for review on 27 November 2020.
5. During the hearing, the TPA representative Mr Pavlis referred to the contents of the second letter although when he did so, I had only conducted a preliminary review of the first letter because it had been part of the earlier exemption application. Mr Pavlis at that point did not press any application under s.149(2) to seek to lodge the second letter and was content to confine his submissions to the first letter.
6. Following the hearing and as part of my analysis of all of the materials, it became apparent that the second letter had been prepared six weeks after the first and was essentially updating Dr BH's observations about an evolving medical condition, relevant to the applicant's wife.

7. I formed a preliminary view that while the second letter contained a highly relevant medical opinion, it did not represent new facts or circumstances in a new document requiring an application to be made under s.149(2). However, as a matter of procedural fairness, I invited submissions from TPA and Victoria Police. Each of the parties agreed that the second letter did not represent new facts or circumstances. In opposing admission of the second letter, Victoria Police submitted that; Mr Pavlis had been asked during the hearing if he wished to have the document admitted and he had declined; the Board should only admit documents that were available to the decision maker unless exceptional circumstances exist; and that exceptional circumstances '*do not exist for the introduction of this document*'.
8. In response and in addition to making comments about the Victoria Police submission, TPA not surprisingly adopted my preliminary observation that '*The amended letter appears to include facts and an opinion which appear highly relevant to the consideration of the matter*' and submitted that the document should be accepted and considered.
9. It is clear that the letter in question was prepared subsequent to the decision to transfer the applicant and so it could not have been part of the exemption application. Further, while the letter was a slightly expanded version of and contained some of the same information as was in the first letter, it provided updated information about an evolving and changing medical condition referred to in this review and so was highly relevant. It was exceptional because the medical circumstances of the applicant's wife could have changed remarkably in the six-week period between the first and second letters and therefore it was important for a proper consideration of the applicant's interests (s.151) to allow evidence of that changing and evolving condition. The second letter was the only available and reliable source of that information.
10. Although it is not entirely clear that s.149(2) applied to the second letter, because Victoria Police opposed its admission, I have taken the approach that the exceptional circumstances test did apply. Having carefully considered the competing submissions made by Victoria Police and TPA, I am satisfied that there are exceptional circumstances which justify the lodgement of a further document. I gave leave for the lodging of the second letter dated 26 November 2020 and I will take it into account for the purposes of this review.
11. The Board's powers on review are set out in s.153 of the Act. The Board must affirm the decision to transfer unless satisfied it is "harsh, unjust or unreasonable". The Board must have regard to the public interest and as I have indicated earlier, the interests of the applicant (s.151).

Publication of the decision and exclusion of information

12. The Board must publish a statement of reasons for its decision on a review unless it is satisfied that publication would not be in the public interest (s.154A). The Board may exclude information from a published statement of reasons if it considers the exclusion to be in the public interest.
13. I am satisfied that it would be in the public interest to publish the reasons for my decision, including the identity of the applicant while excluding certain highly personal information relied

upon by the applicant to ground his application. This is because the reasons for my decision in this matter are able to be adequately explained without specific reference to the detail of some of the highly personal information which I am satisfied has the potential to negatively impact upon the privacy of the applicant and his family.

14. Accordingly, the Board will publish this decision on the Board's website while excluding certain private information.

The review hearing

15. The Board was constituted by me as the Deputy President (Review) under s.148(2)(b). The Chief Commissioner was represented at the hearing by Senior Sergeant Mark Chapman while the applicant was represented by Mr Stratos Pavlis of TPA. I conducted the review in the Board's hearing room in a COVID-19 safe working environment.

16. Mr Pavlis confirmed that there were no technical or process issues relevant to the timeline of events and attachments presented by Victoria Police (the file relating to the decision) to be raised during the review and it is convenient here to set out some of the GDAC particulars and timeline of events in this matter.

- The applicant is a member of Squad 9 of 2018-19. He resides in Western Region Division 1 and is currently a member of Williamstown Uniform (North West Metro Region Division 2).
- Squad 9 of 2018-19 consisted of 26 members, commenced the Ballot and Confirmation Process on 22 July 2020 and were confirmed on 22 November 2020;
- A Confirmation Handbook, outlining the Ballot and Confirmation Process and highlighting relevant dates, was distributed to all members of Squad 9 of 2018-19, inclusive of the applicant, in July 2020;
- On 7 September 2020, Squad 9 of 2018-19 was allocated three Special Category positions available for ballot, including Stawell uniform;
- On 25 September 2020, Squad 9 of 2018-19 was allocated 7 metropolitan Priority Positions open to expression of interest to remove any successful member from the ballot;
- The applicant unsuccessfully applied for all 7 Priority Positions which were all filled by other candidates;
- On 12 October 2020, notification was forwarded to members of Squad 9 of 2018-19, who were either unsuccessful in gaining or who did not apply for a metropolitan Priority Position, inviting them to submit a ballot exemption outlining any exceptional circumstances which they believed would prevent them from relocation to a country location;

- On 27 October 2020 Constable Griffiths submitted a ballot exemption for review by the General Duties Allocation Committee however on 18 November 2020, he was advised that the GDAC had considered his exemption request and the circumstances within it were 'not deemed exceptional enough to be exempt from the ballot;
- Of the three Special Category positions allocated to Squad 9 of 2018-19, two positions, including Stawell remained unfilled and were therefore included in the ballot for Squad 9 of 2018-19;
- Of the 26 members in Squad 9 of 2018-19, 10 members had obtained positions at country locations, 7 were successful in gaining a metropolitan Priority Position, two members had their confirmation extended and a further one offered an extra Priority Position to be exempt from the ballot due to exceptional circumstances;
- This resulted in 5 members being eligible for the ballot of Squad 9 of 2018-19.

The ballot

17. On 24 November 2020, the ballot for Squad 9 of 2018-19 took place and as a result, Constable Griffiths was randomly selected for a directed transfer to the Special Category position at Stawell uniform.

The applicant's case

18. The applicant is 27 years of age and has been in a long-standing relationship with his wife who I shall refer to as "M". M is 25 years of age and has lived in the same regional city all of her life. M was diagnosed with clinical anxiety 4 years ago, is on prescribed medication and regularly attends appointments with trusted health professionals to address her mental health issues. M has a long history with a range of health services in reasonably close proximity to where she lives and both M and the applicant enjoy the support networks of their immediate families, who all live within reasonable distance of the couple. Prior to the COVID-19 pandemic, M relied on a particularly close bond with her family network to support her clinical anxiety and would engage with that network at least 3 – 4 times per week.

19. The applicant submitted his application to join Victoria Police in January 2018 and at that time M did not have ongoing employment although the couple discussed and agreed to the potential requirement for him to locate to country Victoria as a condition of accepting the privilege of becoming a Victorian Police Officer. About a month later and in February 2018, M commenced as a physical education teacher at a school in regional Victoria specialising in educating students with intellectual disabilities.

20. In January 2020, the applicant and M were married and while they did not expect to start a family so early in their married life, in early 2020 M fell pregnant. The expected delivery of the couple's first baby was to be on or around 10 December 2020 (which turned out to be a couple of weeks after the scheduled GDAC ballot). In April 2020, they moved into a house they had built in a suburb of a regional city.

21. Although the couple were happy with the news, as things developed it emerged that M's pre-existing mental health issue was being negatively impacted by the pregnancy. M intended to rely on the close bonds with her immediate family for continued support regarding her mental health and the pregnancy although she increasingly struggled without their physical support in the context of the COVID-19 restrictions. It is relevant to note here TPA submission that during the COVID-19 restrictions, M experienced the 'flavour' of what it would be like without the physical support of her family network and as a result, she became more concerned about the prospect that the applicant could be transferred to a regional Victorian location and consequently away from both of their family networks.

What has changed since the applicant initially agreed to be transferred if required?

22. There is no dispute that the applicant and M were fully aware of the potential transfer under the GDAC process. However, it was submitted by TPA that the most significant change that occurred after the applicant agreed to participating in the GDAC process was the timing of the pregnancy and birth of the couple's son on 5 December 2020.

23. A significant part of the applicant's case related to M's condition during her pregnancy and the complications that arose during it. I note here that on 6 October 2020 and whilst 35 weeks pregnant, M had a fall at her workplace and as a result she was taken to hospital. A diagnosis of 'polyhydramnios' was made which required close monitoring by an obstetrician at the High-Risk Pregnancy Care Clinic. I will refer to that clinic further below but in any event, the submission made by TPA was that the fall further impacted on M's mental and physical health.

The medical evidence

24. In his exemption application, the applicant provided a range of medical evidence. Firstly, he provided a letter from M's long standing local medical practice (letter from Dr BH dated 15 October 2020). That letter included the following:

*'M is currently 32 weeks pregnant. She has been diagnosed with clinical anxiety during the last four years **requiring ongoing medication and family support**. She is also requiring significant support and frequent antenatal review to monitor her health and that of her unborn baby. I believe it would be best for her mental health to continue residing in the ... region where family support is available in the foreseeable future during this pregnancy, birth and the need for support with a new baby. This care will best be given by health professionals who know her well in the ... region.'* [emphasis added by the Board].

25. A further letter was provided in the exemption application from a Dr J who is an Obstetric Registrar at a High-Risk Pregnancy Care Clinic. That letter included the following;

'M is a current patient of our maternity service with an estimated date of delivery of 10/12/2020. Her pregnancy care has been through the high-risk pregnancy care clinic due to a number of complicating factors.

*Perhaps most importantly however, M has a history of anxiety which understandably has been exacerbated by the above obstetric risks, not to mention the inherent stressors that many of our women and their families facing delivery and childbirth during this time. M has been well linked in with supports at our service **and I think to disrupt this would be to destabilise her very fragile mental state.***

For all of the above reasons **I would strongly recommend that M and Josh continue the remainder of their pregnancy care and at least neonatal follow up in close proximity to ...Hospital...** [emphasis added by the Board]

26. As I have earlier referred to, an additional letter was then prepared by Doctor BH dated 26 November 2020 which was 6 weeks after his previous letter referred to above. After repeating some of the same information as was in the previous letter, he added:

*'She is now 38 weeks gestation and is booked to have her baby induced next Friday Dec 5th 2020. She has a long history of anxiety requiring medication and counselling. **She will require an enormous amount of support from her partner, family and myself to cope with the birth of her first baby and at least during the first year afterwards. Her anxiety symptoms have increased during the last two months such that medication will be needed postnatally.** Her symptoms are such that she finds change is extremely difficult to cope with. **I therefore strongly believe that being forced to relocate with her husband... to Stawell in January next year would be extremely detrimental to her mental health and thus also detrimental to the health of her new born baby and partner.**'* [emphasis added by the Board].

27. There is nothing equivocal about these statements from medical practitioners. There is no apparent reason to suppose that the Board should not accept the medical advice from Dr J or Dr BH. These are among, if not the most, serious implications to potentially flow from a compulsory transfer that have emerged before me in any previous GDAC review.

28. As events unfolded, medical professionals determined that it was appropriate for M to be induced into child-birth on 5 December 2020 and it was of course pleasing to hear the applicant's submission that the couple's baby son was safely delivered on that day and that M and the baby were released from hospital on 9 December 2020 to return home. Consistent with the medical evidence I have referred to above, TPA submitted that both M and the baby are required to return to hospital over the next 6 weeks for further observations and tests, including an ultra-sound and that follow up visits from mid-wives are being planned at the family home.

29. It was submitted on behalf of the applicant that (putting the success or otherwise of this application before the Board to one side) there are probably only two options available in these circumstances. One option is for the applicant and his wife to accept the compulsory transfer and re-locate with their new-born baby to Stawell. The other option is for the applicant to re-locate to Stawell while his wife remains in close proximity to the medical and family support described above.

30. It was further submitted that there are inherent and serious problems with both of these options to the extent that the decision to compulsorily transfer the applicant meets the threshold of 'harsh, unjust and unreasonable' in s.153 of the Act. That is because at this critical time, it would be just as harsh, unjust and unreasonable for Victoria Police to require M to relocate with the applicant to Stawell and risk her own mental health, as well as the health of her new-born baby and the applicant as it would be to compulsorily transfer the applicant to a location 2 hours and 40 minutes drive away from his wife, new baby and support network.

31. During the review hearing, it emerged in evidence that M has already made a decision that she is not prepared to expose herself and her baby (who was by that stage 6 days old) to the risks identified by the medical specialists and therefore the first option identified by TPA has been taken off the table. In these particular circumstances, it is not open to the Board, in my view, to seek to look behind decisions individuals make about the health and safety of their families and I accept that M's decision not to re-locate has been made in the best interests of her whole family.
32. However, it was submitted that M's decision not to relocate to Stawell was made not only on the basis of the medical advice which has been provided, but also having regard to her experience and understanding of the difficulties she had in coping during the COVID-19 pandemic when physical access to her support network was restricted. The submission was that in the context of her mental health issues and a new baby, it would be reasonable for M to want to increase the level at which she would be reaching out for support from her network and a re-location to Stawell in all of those circumstances did not bode well.

M's employment

33. I have earlier indicated that in February 2018, M commenced as a physical education teacher at a school in regional Victoria specialising in educating students with intellectual disabilities. As part of his application for exemption, the applicant provided a letter from M's employer dated 22 October 2020 from the Principal Mr P. That letter included the following;

*'Please accept this letter as an expression of our concern should M be required to relocate where remaining employed at our school will become untenable... Our school due to its rurality and specialisation (special education for students with intellectual disabilities) is deemed as a 'hard to staff' school according to the Department of Education. M's position as a Physical Education teacher is also a 'hard to staff' position. **Should M be required to relocate due to her husband's position elsewhere, a significant void would be created at our school which would be extraordinarily difficult to fill, ultimately having a significant negative impact on the programs and students of our school.**' [emphasis added by the Board]*

34. Victoria Police did not seek to challenge the contents of Principal P's letter although relevant contextual information emerged during the hearing that M did not intend returning to the school until the commencement of the 2022 term and regardless, a replacement teacher would need to be found for the entire 2021 school year.
35. It was submitted by TPA that since she commenced teaching in January 2018, M has only worked in the special education stream, that her skills will be required at the school when she returns from maternity leave and a decision that would remove her from that school would create a void and a detriment to the school. Mr Pavlis referred me to the Board's previous decision of [A111/2019] and made some parity type submissions by drawing on what he described as similarities between that case and the matter before me. I carefully reviewed [A111/2019] and considered the submissions made on this point while also noting the unequivocal evidence from the applicant that M had no intention of relocating to Stawell and that she fully intended to return to her teaching role in 2022.

Issues relevant to the applicant

36. It was submitted that while the issues I have referred to above are relevant to M and the newborn baby and comprise the substantial grounds of the applicant's case, there are a number of other relevant issues the Board should consider.
37. Firstly, mental health issues can impact on any person and are becoming increasingly the focus of support from employers to their employees. It was submitted that the applicant has experienced mental health issues of his own and in March 2020 sought medical advice and assistance with them. The applicant himself submitted that he was struggling with the burden of being responsible for increasing M's levels of anxiety and he feels responsible for putting his family through an additional stressful period.
38. It was also submitted that in addition to the other issues identified, a financial burden would become implicit in a compulsory relocation option which required the applicant to transfer to Stawell while M remains in proximity to medical and family support. While the applicant acted on TPA advice not to raise the financial issue before the GDAC, he submitted here that an additional financial burden would also emerge in the circumstance of having to sell the new family home prior to residing in it for 12 months and the associated capital gains tax which would be imposed.
39. While these are not unforeseeable issues, I allowed the applicant to make the submissions and took them into account.
40. The applicant readily conceded that at the time of joining Victoria Police he knew he could be required to be transferred anywhere in the State although he again re-iterated that he and M were not expecting to start a family so early in the marriage. The applicant described his knowledge of the GDAC process as 'very in-depth' and attached copies of emails to his exemption application describing written inquiries he made in August and September 2020 about other Special Category country stations such as Daylesford and Cobden. Ultimately these were not able to be progressed because of the on-call requirements of those stations and the distance of his residence from them but he submitted that he was not afraid to travel long distances and that he was demonstrating how seriously he was exploring options to remain within a reasonable distance of his residence.
41. In the end, it was the applicant's submission in the hearing that timing has everything to do with his application, including that his son was then 6 days old. In summary and as he put it, '*the timing [of a compulsory transfer] could not have been worse.*'

Submissions and response by Victoria Police

42. Senior Sergeant Chapman made submissions on behalf of Victoria Police, including by referring to the fair, open and transparent nature of the GDAC system, and that the applicant had entered into a written agreement acknowledging and agreeing to his potential relocation to regional Victoria. He submitted that it is abundantly clear throughout the 14 different points of relevant

notification that Victoria Police extensively informs newly appointed officers on multiple occasions and continues to emphasise and re-emphasise the potential for regional location at many communication points with those officers. None of that was disputed by the applicant.

43. Senior Sergeant Chapman:

- Identified Stawell as a 24-hour station with a gazetted staffing structure comprising 1 Senior Sergeant, 7 Sergeants and 32 other ranks and that the current strength is presently 1 Senior Sergeant, 7 Sergeants and 23 other ranks (which is 8.7 other ranks below its gazetted strength);
- Advised the steps taken by the local management to induct new members and that the biggest concern is the ability of the management team to provide adequate policing services in an upcoming potential fire and flood season;
- Detailed the location of policing units and services in and around Stawell which would provide learning and secondment opportunities which are not otherwise available to members working in locations closer to Melbourne;
- Provided advice about the availability and cost of potential rental housing in and within travelling distance of Stawell;
- Explained the process associated with various members of the applicant's squad being appointed to other positions in the lead up to the ballot;
- Acknowledged that the applicant had unsuccessfully applied for all of the available Priority Positions, had made unsuccessful inquiries about further positions and had applied for an exemption;
- Made detailed submissions about the infrastructure and nature of the Stawell township, its relative population, schools, location and access to Melbourne via road, rail and bus (including relevant travel times) etc.
- Made particular reference to the operation of 3 regional hospitals in Stawell and the nearby townships of Horsham and Ararat as well as the operation of an obstetric care facility at Ararat Hospital;
- Also made reference to the operation of Grampians Community Health in Stawell which provides support services relating to family violence, counselling, education, drug & maternity health;
- Made reference to the operation of the Skene Street School in Stawell which is a special education facility and that he had engaged with the Principal of that school who advised that regular relief teaching for 2 – 3 days per week is currently available in the context of a relief teacher having taken an ongoing teaching role. Further, that the Skene Street School operates in partnership with other special education schools, including the particular school where M is employed;

- Described the flexible working arrangements provided by the Stawell management team catering for members' parenting & family responsibilities, including part time, 10 hour shifts and fixed rostering;
- Advised about the eligibility for ATO remote area dispensation;
- Submitted that pregnancy is not an unusual or completely unexpected circumstance and that in the context of the 14 points of notification provided to the applicant relevant to the ballot process, he (the applicant) understood at all relevant times the possibility of a country posting;
- Submitted that because the applicant's wife was diagnosed with clinical anxiety 4 years ago, it was a known circumstance at the time the applicant joined and that there are numerous psychological and psychiatric services available in Stawell and the surrounding areas as referred to above;
- Submitted that there are potential employment opportunities available to M in Stawell within the special education stream and particularly at the Skene Street School;
- Explained that as a result of a Victoria Police resourcing review, 10 extra 'other rank' positions had been created at Stawell and 6 of those 10 positions have thus far been filled (the position relevant to this review is one of the 4 unfilled of the 10 extra positions);
- Referred the Board to its previous decision in [A16/2020] and submitted that there were elements of that decision not dissimilar to this review because in that case, the applicant's wife was suffering some mental health issues, had ongoing employment which she was concerned about if she had to move to the country and the couple had an infant child;
- Submitted that there are significant benefits to transferring members referred to in that '*not dissimilar*' case, and the decision to transfer the applicant was found to be not harsh, unjust or unreasonable while specifically acknowledging [among other things and at paragraph 13 of that decision] that '*relocation results in a challenging and stressful period for any individual and family, especially if it comes on top of other major life changes like having a baby or starting a new work role.*'
- Also referred the Board to its previous decision in [A90/2019] and in particular, the reference at paragraph 15 to the fact that the exemption process is '*intended to address changed circumstances, which were not reasonably foreseeable when the police officer applied to join Victoria Police and which are not within their personal control...*'. He further submitted that the circumstances the applicant is facing, including M's pregnancy, the more recent birth of her son, and her mental health issues were either known or reasonably foreseeable at the time the applicant joined Victoria Police.'

44. I drew Senior Sergeant Chapman's attention to the letter authored by Dr J who is an Obstetric Registrar at a High-Risk Pregnancy Care Clinic and to which I referred in paragraph 25 above including and in particular, to the medical opinion that disrupting M's links to her current support services would be to '*de-stabilise her very fragile mental state*'. I asked Senior Sergeant Chapman whether Victoria Police accepted the medical evidence submitted by the applicant and if so, how it would respond to the opinion provided.
45. Senior Sergeant Chapman submitted that Victoria Police accepted the medical evidence provided in this case but also submitted that there are mental health, including psychological and psychiatric services available in and around Stawell as well as specialist obstetric services. Further, he submitted that people change medical providers all the time and find equally suitable services available at other locations.
46. Senior Sergeant Chapman also submitted that much of the concern expressed in this case by the applicant and M related to her anxiety about the pending birth of the couple's baby which has now been successfully delivered and at home. The implication of that submission is that the express concerns have been largely remediated and while that no doubt is true about the actual delivery and return to home, it is contrary to the balance of the medical evidence relating to postnatal care.
47. Finally, he submitted that he had intended to refer the Board (as had TPA) to its previous decision in [A111/2019] in so far as it related to the employment circumstance of the applicant's wife but having regard to the evidence in this case about M's decision not to relocate to Stawell, conceded that submission would not take the case much further.

The Board's considerations

48. The Board has indicated in a range of previous relevant decisions that there is of course a strong public interest in favour of the need to fill vacancies in hard to fill locations, in order to provide an appropriate policing service to the entire community, in all parts of Victoria. The GDAC process is a well thought out and fair process, which balances the community's need for policing services with newly recruited police officers' needs and interests. Recruits enter Victoria Police fully informed of, and agreeing to, an initial period of service at a location determined by this process.
49. The process provides opportunities for some individuals to either apply for or secure the certainty of a metropolitan placement if this is important to them. In this case, the applicant unsuccessfully applied for all of the available Priority Positions and also made inquiries about other Priority Positions which emerged outside of his squad's process.
50. The Board's attention in this matter has been drawn to its previous decision in [A90/2019] published on 19 August 2019 and its discussion about the relevance of applicants' applying for Priority Positions. In this particular case, there appears to have been little more, if anything, the applicant could have done to pursue that avenue.

51. The Board's attention was also drawn to **[A16/2020]** although it is clear that this case is significantly different (and almost unique) because, among other things, the couple's child in **[A16/2020]** was about 15 months old at the time of the hearing while in this case, the baby was the couple's first child and was 6 days old at the time of the hearing. The applicant conceded during the hearing that things may well be entirely different if his son was about a year old when the directed transfer was to commence and I accepted that submission.
52. On behalf of the applicant, TPA submitted that there were similarities in the Board's previous decision of **[A111/2019]**.
53. No two cases are ever identical although I carefully reviewed each of the Board's previous decisions which were referred to me, as well as the particular submissions made with respect to each of them. While there are arguable similarities in the referred matters and I was assisted by reviewing them, each of the referred cases is distinguishable from the unique circumstances of this application.
54. It is abundantly clear that the exemption process is intended to address changed circumstances, which were not reasonably foreseeable when the police officer applied to join Victoria Police and which are not within their personal control. While Victoria Police submitted that pregnancy is not an unusual or completely unexpected circumstance, the applicant's evidence was that neither he or M were expecting to start a family so early in their married life. Whether or not the pregnancy was expected or foreseeable, the reality now is that it occurred and the couple delivered a baby son on 5 December 2020. That reality and more relevantly its timing, is now at the heart of the matter.

Interests which must be taken into account

55. Section 151 of the Act imposes a statutory obligation on the Board to have regard to the public interest and the interests of the applicant.
56. It is acknowledged that compulsory service in a location away from personal support networks places demands on newly confirmed constables, particularly if they are required to move a long way from their family and friends. In this case, the applicant believes that a directed transfer to Stawell will disrupt the medical and familial support and assistance which is critical to the mental and physical safety and well-being of each member of his family.
57. Having been made aware of the applicant's circumstances, Senior Sergeant Chapman accepted the medical evidence about the risks referred to above but submitted, among other things, that they are capable of remediation by the availability of appropriate medical and mental health services, including psychological and psychiatric services, in and within proximity to Stawell. Further, that specialist obstetric services are available and accessible from Stawell and that it is not unusual for people to change medical providers and find equally suitable health services available at other locations.

58. Senior Sergeant Chapman also submitted that much of the concern expressed in this case by the applicant and M related to her anxiety about the pending birth of the couple's baby which has now been successfully delivered and at home.

59. In turning to the public interest, Senior Sergeant Chapman identified the current shortage of 8.7 other ranks at Stawell and the local management concerns about providing adequate policing resources, including in the context of an upcoming potential fire and flood season.

Conclusion

60. The question to be asked is not whether the Board would have made the same decision as was made in this case but whether the decision which has been made is harsh, unjust or unreasonable. As I have indicated earlier, the applicant did everything he could have to remove himself from the ballot process by applying for all of the available positions, making inquiries about other Priority Positions and applying for an exemption.

61. Victoria Police is charged with the responsibility of delivering essential policing services to every Victorian community, including and relevantly the Stawell community and it is in the public interest that as far as possible, newly appointed police members play their integral role in delivering those essential policing services.

62. It is important for the Board to be clear that pregnancy or child-birth, even at or around the time of a directed transfer, is not an unforeseeable or exceptional circumstance. I re-iterate previous observations made by the Board that directed transfers will often require finding a new home, friends, work, childcare and schools and indeed medical or mental health support services. People can and very often do change health service providers for a range of legitimate reasons.

63. The Board wishes to make it clear it considers that the equivalent high standards of education and health care and support services being delivered across all areas of metropolitan, rural and regional Victoria are of course equally accessible to the families of members who are compulsorily transferred.

64. The Board must affirm the decision unless satisfied it is harsh, unjust or unreasonable. Having very carefully considered all of the relevant facts and circumstances, I was persuaded that the almost unique timing and combination of the events and circumstances (in other words the 'interests of the applicant') weigh in favour of setting aside the decision because it is harsh, unjust or unreasonable.

65. The relevant facts and circumstances which weigh in favour of setting aside the decision include that;

- M was diagnosed with clinical anxiety 4 years ago, is on prescribed medication and regularly attends appointments with local and trusted health professionals to address her mental health issues;

- M has a long history with a range of health services in proximity to where she lives and both M and the applicant enjoy the support networks of their immediate families, who all live within reasonable distance of the couple;
- Prior to the COVID-19 pandemic, M was relying on a particularly close bond with her family network to support her clinical anxiety and was engaging with that network at least 3 – 4 times per week;
- While they were not expecting to commence a family so soon after being married in January 2020, M fell pregnant in early 2020 and her pre-existing mental health issue subsequently became negatively impacted by what was a complicated pregnancy. During the COVID-19 physical restrictions, M experienced how difficult coping would be without the physical support of her support network;
- The unchallenged medical opinions focusing on the consistency of treatment, including that;
 - (i) disruption from her current health professionals would *'destabilise her very fragile mental health;*
 - (ii) *'being forced to relocate with her husband... to Stawell in January next year would be extremely detrimental to her mental health and thus also detrimental to the health of her new-born baby and partner; and*
 - (iii) *M will require what is described by her doctors as 'an enormous amount of support from her partner, family [and her current doctor] to cope with the birth of her first baby and at least during the first year afterwards. Her anxiety symptoms have increased during the last two months such that medication will be needed postnatally.'*
- Were M to be required to relocate to Stawell, a significant void would be created at her school which would be *'extraordinarily difficult to fill, ultimately having a significant negative impact on the programs and students...'* **Note:** M's decision not to relocate to Stawell has been referred to throughout this decision.
- The significantly negative implications of requiring the applicant to re-locate to Stawell and potentially be separated from his wife and new-born son by a 2 hour and 40 min each way drive; and
- The potentially negative financial impact of requiring a young family in all of these circumstances to operate two separate residences.

66. Pursuant to the provisions of s.154A of the Act, the Board will publish these reasons on its website in four (4) day's time. Further submissions may be made regarding further redaction of information from these reasons and should be made promptly.

67. I thank the parties for the assistance given to the Board in this review. I also wish the applicant and his family well in their futures.

Mr C. Enright

Deputy President (Review)

Police Registration and Services Board