



TASMANIAN INDUSTRIAL COMMISSION

CITATION: [2026] TASIC 39 - T15217 of 2025 – Daniel John Saunders v Commissioner of Police

PARTIES: Daniel John Saunders (Applicant)

Commissioner of Police (Respondent)

SUBJECT: Industrial Relations Act 1984, s 29(1) application for hearing of an industrial dispute

FILE NO: T15217 of 2025

HEARING DATE(S): 7 November 2025

HEARING LOCATION: Tasmanian Industrial Commission, Hobart

DATE REASONS ISSUED: 22 July 2026

COMMISSIONER: Commissioner T Abey

CATCHWORDS: Unfair dismissal – extension of time to file application – exceptional circumstances - extension granted

DANIEL JOHN SAUNDERS V COMMISSIONER OF POLICE

REASONS FOR DECISION

HOBART, 22 JULY 2026

Background

[1] On 27 May 2025 Daniel John Saunders (the Applicant) lodged an application pursuant to s 29(1A) of the *Industrial Relations Act 1984* (the Act) alleging that he had been unfairly terminated by the Commissioner of Police (the Respondent).

[2] Mr Saunders was appointed as a Trainee Constable on 2 October 2023. This involved training at the Police Academy which he completed in May 2024.

[3] On 3 May 2024, the Applicant was appointed as a non-commissioned Police Officer under s 12 of the *Police Service Act 2003* (Police Act). Mr Saunders was placed on probation under s 33 of the Police Act for a period of 12 months ending on 3 May 2025. This period of employment included a number of formal *Probation Assessments*.

[4] On 16 April 2025, Mr Saunders met with his supervising Inspector, at which time he was presented with two documents. The first document, titled *Provisional Report*, related to an internal investigation, which relevantly provided for Commander's counselling and continued professional development. The second document was what turned out to be the final Probation Assessment. This document concluded as follows: ¹

Based on this information Constable Saunders' suitability to be passed from probation cannot be supported.

[5] By letter dated 30 April 2025 Commissioner Adams said that:²

On the basis of the information before me, I am of the view that you are unsuitable to be confirmed in your appointment as Constable and as a result, pursuant to section 33 (4) of the *Police Service Act 2003*, I have determined to refuse to confirm your appointment.

[6] The relevant date of termination is 2 May 2025.

[7] The application was lodged on 27 May 2025, which is outside the 21-day time limit prescribed by s 29(1B) of the Act. This section provides for this period to be extended if a Commissioner considers there to be "exceptional circumstances".

Earlier hearing

[8] This matter was heard by Barclay, P on 7 November 2025. Witness evidence was taken from the Applicant and Acting Inspector Danny Jackson. The matter to be determined was confined to the preliminary "out of time" question. At the conclusion of the hearing, the

¹ Exhibit A2 Annexure B.

² Exhibit A2 Annexure C.

parties were invited to submit further written submissions, which both parties subsequently provided.

[9] On 1 July 2026, the Commission wrote to the parties advising that the file was to be reallocated. Further, the parties were asked to advise how they wish their matter to proceed, specifically:

1. Would the Applicant confirm whether or not they wish the matter to proceed to finality, or in the alternative, withdraw the application?
2. In the event that the Applicant wishes to continue the matter, does either party wish to provide further submissions or oral evidence?
3. In the event that the answer to point two above is 'no', the matter will be determined on the material before the Commission.

[10] In correspondence dated 2 July 2025, the Applicant advised that he wished for the matter to proceed to finality and did not wish to make further submissions. Similarly, the Respondent advised of its agreement to finalise the matter on the material before the Commission.

[11] I have read the file in its entirety and now proceed to consider the application to extend the time for lodgement.

The authorities

[12] The approach of the Commission to extension of time applications is found in *Izard v R G Simons as Trustee for R G Simons Family Trust*.³ After reviewing the leading authorities the Commission concluded that the relevant matters for consideration are:⁴

- The length of the delay.
- The explanation for the delay.
- The prejudice to the applicant if the extension of time is not granted.
- The prejudice to the respondent if the extension of time is granted.
- Action taken by the applicant to contest the termination, other than applying under the Act.
- Any relevant conduct of the respondent.
- The nature and circumstances of any representative error.
- The applicant's prospect of success at the substantive hearing.

[13] Further, the Commission found that these considerations are underpinned by the following principles:⁵

- *Prima facie* the time limits should be complied with. There is public interest in the prompt institution and prosecution of litigation before the Commission.

³ T11310 of 2004.

⁴ Ibid [30].

⁵ Ibid [31].

- Ignorance of the law is no excuse.
- The onus rests on the applicant to demonstrate sufficient reason to justify an extension.
- Each case must be considered on its own facts and circumstance.
- The mere absence of prejudice to the respondent is an insufficient basis to grant an extension of time.
- The discretion to allow out of time applications is directed towards ensuring that justice is afforded to both parties.
- Considerations of fairness as between the applicant and other persons in a like position are relevant to the exercise of discretion.

[14] There is no definition of *exceptional circumstances* in the Act. I am guided however by the Full Bench observations in *Nulty v Blue Star Pacific Pty Ltd*.⁶

The expression 'exceptional circumstances' has its ordinary meaning and requires consideration of all the circumstances. To be exceptional, circumstances must be out of the ordinary course, or unusual, or special, or uncommon but need not be unique, or unprecedented, or very rare. Circumstances will not be exceptional if they are regularly, or routinely, or normally encountered. Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors, or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional. It is not correct to construe 'exceptional circumstances' as being only some unexpected occurrence, although frequently it will be. Nor is it correct to construe the plural 'circumstances' as if it were only a singular occurrence, even though it can be a one-off situation. The ordinary and natural meaning of 'exceptional circumstances' includes a combination of factors which, when viewed together, may reasonably be seen as producing a situation which is out of the ordinary course, unusual, special, or uncommon.

Applying these principles, I turn now to the evidence.

Length of delay

[15] The 21 days expired on Friday, 23 July. The application was lodged on Tuesday, 27 July. Considering there was an intervening weekend, the delay was relatively short.

Explanation for the delay

[16] The evidence of Mr Saunders is as follows:⁷

Upon receiving this news, I was stunned. After being promised additional guidance and support during the second half of my probationary period, I had been sacked. The contents of the letter left me in no doubt that my employment had been terminated by the Commissioner. At the time of receiving the letter from the Commissioner of Police on 2 May 2025, I had not been contacted by any officer who had been given responsibility to investigate my complaint about biased and racist behaviour demonstrated by my supervisor. The only information I had been provided was by my Acting Inspector, who acknowledged that my complaint had been received and would

⁶ [2011] FWA FB 975.

⁷ Exhibit A1.

be investigated. To this date, I have not been contacted by anyone in relation to my complaint.

All these matters, including the worry associated with my partner's pregnancy, were going through my head while I was talking to the Police Association of Tasmania ("PAT") and trying to figure out what I was going to do. Because I believed I had been mistreated, I decided I wanted to challenge the Commissioner's decision and sought their advice on how to go about it.

The advice I received was to make an application for legal assistance through the PAT which I did on 14 May 2025. Under the PAT Rules, all applications need to be considered by a committee that subsequently referred the application to the full Executive of the PAT. The Executive Board met and considered the application on Thursday 22 May 2025, where the application was approved. The representation from the PAT outlined that the appropriate avenue for review was before the Police Review Board, and they would connect me with a lawyer to assist. I was also advised that there were thirty days from the date of termination to lodge the application.

In the process of preparing the application for the Police Review Board, the question of jurisdiction was raised. Preliminary legal advice was obtained on **27 May 2025** that advised that if the Police Review Board determined the Board had no jurisdiction to conduct a review, then the *Industrial Relations Act 1984*, pursuant to section 89 of the *Police Service Act 2003*, would apply.

As a result, I immediately then made application to the Tasmanian Industrial Commission on Tuesday 27 May 2025 for a hearing to determine the industrial matter. I am aware that the 21 days from the date of termination meant that the application had to be made by Friday 23 May 2025 and by lodging the application on Tuesday 27 May 2025, the application was late by one working day.

There was a lot of discussion with representatives of the PAT over the course of the events that commenced with receiving the initial reports on 16 April 2025, and culminated in the Commissioner's decision on 2 May 2025 to terminate my employment. The initial advice provided to me was that the matter would need to be determined by the Police Review Board and that the application in that forum was required by 2 June 2025. As I was appointed as a "Non-commissioned police officer" pursuant to section 12 of the *Police Service Act 2003*, it made sense to me that any appeal regarding the termination of my employment would be dealt with under the provisions available under the same Act. As a result, I accepted the advice provided and did not make an application to the Tasmanian Industrial Commission at that time.

Then there was a lot of confusion regarding the question of jurisdiction that arose while compiling the application to the Police Review Board as I believe the issue of "not confirming appointment" as a form of employment termination for the purposes of section 54(1) of the *Police Service Act 2003*, had not arisen since the inception of the Act. I believed that I had taken reasonable means to challenge the decision and resolve the issue and once aware that the jurisdictional argument was apparent, I immediately filed an application with the Tasmanian Industrial Commission. While I know the

application fell outside of the prescribed time limit, the distress I felt with having my employment terminated, together with the stress caused by the unresolved racism complaint I made to Tasmania Police about my supervisor and the need to care for my heavily pregnant partner, meant that I accepted the initial representation from the PAT. Once I became aware that I should make application to the Tasmanian Industrial Commission, I did so by the quickest means available.

[17] Whilst I am sympathetic to Mr Saunders' personal circumstances in relation to the care of his wife, that, in itself, does not amount to exceptional circumstances. However, I do accept that his evidence relating to his interaction with the Police Association of Tasmania (PAT), amounts to a reasonable explanation of the delay.

Prejudice to the applicant if the extension of time is not granted

[18] There is little doubt that Mr Saunders suffered a financial loss because of his loss of employment. However, this would likely be the case in most cases of involuntary termination and does not amount to an exceptional circumstance.

Prejudice to the respondent if the extension of time is granted

[19] There is no evidence of any specific prejudice to Respondent should the application for extension be granted. However, it is well settled that the mere absence of prejudice to the Respondent is an insufficient basis to grant an extension of time.

Action taken by the Applicant to contest the termination, other than applying under the Act

[20] On 16 April, being the same day, the Applicant was presented with the final *Probation Assessment* recommending that his probation not be confirmed, Mr Saunders wrote to the Officer in Charge, Southern District, outlining reasons why he should not be terminated at the conclusion of the probation period.⁸

The nature and circumstance of any representational error

[21] It is probably unfair to describe the actions of PAT as representational error. Possibly a better description would be understandable representational confusion. The jurisdiction for hearing a matter of this nature is far from clear. In fact, I am advised that it has never been tested and determined. PAT quite reasonably acted on the assumption that the correct jurisdiction was the *Police Review Board* established under the *Police Service Act 2003*. I understand that the time limit under the Police Act is 30 days. Similarly, Mr Saunders was entitled to accept this position on face value. As soon as the alternate legal advice was made available, the Applicant took immediate steps to lodge the application with the Tasmanian Industrial Commission (TIC). I am satisfied that Mr Saunders was wholly engaged throughout this process.

The applicant's prospect of success at the substantive hearing

[22] It is not necessary or desirable to fully canvas the evidence with the view of finding whether or not the application had sufficient merit to prevail at a substantive hearing. Rather, the question is to make a preliminary finding that the application is not devoid of merit.

⁸ Exhibit R4.

[23] The position of the parties can be summarised as follows:

Respondent contentions

[24] During the probationary period a significant number of behavioural and performance shortcomings were identified under the following broad headings:

- Excessive use of force
- Inappropriate interaction with members of the public.
- Misuse or inappropriate use of police issue equipment.
- Failure to follow directions.

[25] The incidents and/or behavioural shortcomings were identified at the time and dealt with informally with appropriate feedback from supervisors.

[26] Regular Probation Assessments formalised the corrective behaviour necessary to address shortcomings. This included a formal Performance Development Plan.

[27] The Applicant was aware that his future employment was in jeopardy if performance and behaviour did not improve.

Applicant's contentions

[28] Mr Saunders acknowledged that there were behavioural and performance shortcomings over the probation period. He contends however that:

- Incidents in the first part of his probation were only dealt with informally without appropriate documentation.
- Promised training and development was not provided.
- There was conflict between Mr Saunders and his immediate supervisor. The applicant further asserts that this led to bias against him which negatively impacted on the Probation Assessments.
- There was inadequate consideration given to the favourable elements of the Probation Assessments
- There is an apparent inconsistency between an internal investigation report which recommended counselling and continued professional development, and the final Probation Assessment recommending that probation not be confirmed. Both documents were handed to Mr Saunders at the same time.

[29] The evidence of Acting Inspector Jackson is that it is very unusual for someone to not be confirmed at the end of probation.⁹ This provides some context for the present application.

[30] Without making any findings, I conclude that the application is not devoid of merit and the Applicant has an arguable case.

⁹ Transcript p43, l26

Outcome

[31] Considering the above circumstances, I find that there are exceptional circumstances which justify an extension of time. Pursuant to s 29(1B) of the Act, I grant an extension of time until 27 July 2025.

The Future

[32] Absent any issue as to jurisdiction, the Commission would be able to consider the merit contentions and make a finding on the material in the file. However, that is not the case. Clearly there is uncertainty concerning jurisdiction which needs to be settled. Relevantly the Police Act states at s 89:

- (1) The *Industrial Relations Act 1984* applies in respect of non-commissioned police officers, other than special constables, and inspectors in relation to an industrial matter within the meaning of that Act except –
 - (a) any matter which is reviewable or has been determined by the Police Review Board; or
 - (b) any act or omission of the Commissioner in respect of a particular non-commissioned police officer or a particular inspector under –
 - (i) section 34; or
 - (ii) sections 38 and 40; or
 - (iii) Part 3; or
 - (c) any act or omission under Divisions 3 and 4 of Part 2.
- (2) The *Industrial Relations Act 1984* applies in respect of trainees and junior constables in relation to an industrial matter within the meaning of that Act except –
 - (a) any matter which is reviewable or has been determined by the Police Review Board; or
 - (b) any act or omission of the Commissioner in respect of a particular trainee or a particular junior constable under –
 - (i) section 15; or
 - (ii) sections 38 and 40; or
 - (iii) Part 3.

[33] The issue of jurisdiction was not addressed in proceedings before Barclay P on 7 November 2025 although it may well have been discussed in earlier conciliation proceedings. In the *Outline of Submissions for the Applicant to Extend Time*, Mr Arnold stated:¹⁰

Both parties are in agreeance that if exceptional circumstances apply, the matter should be adjourned in order for the Police Review Board to determine jurisdiction.

¹⁰ [20]

[34] In order that the Commission can efficiently manage the file, the parties are to advise the Commission of their intentions in respect of the jurisdiction issue by no later than 4:00 pm on Wednesday, 29 July 2026. This reflects the position we are in. The delay in bringing this matter to finality has been both inordinate and regrettable. The Commission wishes to avoid any unnecessary addition to this delay.



T J Abey
Commissioner