**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

|  |  |
| --- | --- |
| CITATION: | *Nowak v State of Queensland (Queensland Health)* [2021] QIRC 2 |
| PARTIES: | **Nowak, Malgorzata**  (Appellant)  **v**  **State of Queensland (Queensland Health)**  (Respondent) |
| CASE NO.: | PSA/2020/243 |
| PROCEEDING: | Public Service Appeal - Fair Treatment |
| DELIVERED ON: | 5 January 2021 |
| MEMBER:  HEARD AT: | Merrell DP  On the papers |
| DATES OF WRITTEN SUBMISSIONS: | Respondent's written submissions filed on 16 October 2020 and Appellant's written submissions filed on 30 October 2020 |
| ORDER: | **Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016*, the decision appealed against is confirmed** |
| LEGISLATION: | *Fair Work Act 2009,* s 65  *Industrial Relations Act 2016,* s 27, s 28, s 29, s 261, s 451, s 562B and s 562C  *Public Service Act 2008*, s 194, s 195, s 196, s 197 and s 201 |
| CASES: | *Brandy v Human Rights and Equal Opportunity Commission* [1995] HCA 10; (1995) 183 CLR 245  *Goodall v State of Queensland* (Unreported decision of the Supreme Court of Queensland, Dalton J, 10 October 2018)  *Page v John Thompson and Lesley Dwyer, As Chief Executive Officer, West Moreton Hospital and Health Service* [2014] QSC 252 |

Reasons for Decision

**Introduction**

1. Ms Malgorzata Nowak is currently employed as a Business Manager, Remote Health within the Torres and Cape Hospital and Health Service ('the Health Service'). Ms Nowak's position is based in Cairns and she is employed by the State of Queensland, through Queensland Health. The classification of Ms Nowak's position is AO6.

1. By appeal notice filed on 25 September 2020, Ms Nowak, pursuant to ch 7 of the *Public Service Act 2008* ('the PS Act'), appealed against a decision made by Mr Ian Power, Executive General Manager South, which was provided verbally to Ms Nowak on 21 September 2020.
2. Ms Nowak contends that the decision made by Mr Power was to deny her request for flexible working arrangements. The flexible work arrangements request, made in writing by Ms Nowak on 26 August 2020, was:

* made by her pursuant to s 65 of the *Fair Work Act 2009* and the Queensland Health, Human Resources Policy, Flexible Working Arrangements, Policy Number C5 ('the Policy');
* for her to remain working in the Health Service, but to be physically located in Brisbane and to permanently telecommute; and
* for that arrangement to commence on 1 February 2021 ('Ms Nowak's flexible work arrangements request').

1. The parties exchanged written submissions in accordance with a Directions Order dated 13 October 2020. Pursuant to s 451(1) of the *Industrial Relations Act 2016* ('the IR Act'), no hearing was conducted.
2. Ms Nowak contends there were no reasonable grounds to deny her request.
3. The State of Queensland concedes that a decision was made by Mr Power in relation to Ms Nowak's flexible work arrangements request in that Mr Power's failure to give written notice to Ms Nowak, within 21 days after Queensland Health received her request, was a deemed refusal of her request pursuant to s 29 of the IR Act ('the decision').
4. The State further submits that:

* despite its concession, the decision is not an appellable decision under ch 7, pt 1 of the PS Act because no right of appeal is provided for under ch 7 of the PS Act about a decision under the *Fair Work Act 2009* as that latter Act does not apply to Ms Nowak because she is a state system employee; and
* while the Commission has jurisdiction to hear and decide a dispute about such a request under ch 6 of the IR Act, it does not have jurisdiction to hear an appeal about such a decision under ch 7 of the PS Act and for that reason the appeal ought to be dismissed for want of jurisdiction.

1. The State then submitted that on 21 September 2020, following Ms Nowak's return from leave, Mr Power advised Ms Nowak that her request 'could not be supported' because the Health Service was concerned that it would be unable to provide adequate support to her if such support was needed. No written reasons were able to be given to Ms Nowak in response to her request because she filed her appeal before the written response could be finalised. The State provided fulsome reasons, in its appeal submissions, as to why there were reasonable grounds to refuse Ms Nowak's flexible work arrangements request and, for those reasons, submitted that her appeal ought to be dismissed.
2. In my view, Ms Nowak's appeal is competent in that, in substance, the decision was one she believes is unfair and unreasonable and therefore it is a decision against which an appeal may be made pursuant to s 194(1)(eb) of the PS Act.
3. Having regard to the submissions made by the parties, the decision was one that was fair and reasonable and for that reason, pursuant to s 562C(1)(a) of the IR Act, I confirm the decision.
4. My reasons follow.

**Ms Nowak's public service appeal is competent**

1. The *Public Service and Other Legislation Amendment Act 2020* ('the Amendment Act') commenced operation on 14 September 2020. The Amendment Act amended the IR Act and the PS Act in respect of public service appeals referred to in ch 7, pt 1 of the PS Act. Section 197 of the PS Act now provides that an appeal under ch 7, pt 1 of the PS Act is to be heard and determined under ch 11 of the IR Act by the Queensland Industrial Relations Commission.
2. The State's principal submission is that Ms Nowak's request for flexible work arrangements could only have been made pursuant to s 27 of the IR Act and not pursuant to s 65 of the *Fair Work Act 2009*.
3. However, looking at the substance rather than the form of Ms Nowak's appeal notice and the grounds she refers to in her appeal, it seems to me that Ms Nowak is of the belief that the decision was one that is not fair and reasonable. Section 194(1)(eb) of the PS Act provides that an appeal may be made against a decision a public service employee believes is unfair and unreasonable - referred to as a 'fair treatment decision.' Pursuant to s 196(eb) of the PS Act, a public service employee who is aggrieved by a fair treatment decision may appeal against the decision.
4. There is nothing in s 195 of the PS Act which provides that the decision is one against which an appeal cannot be made. It is the case that certain decisions that are amenable to appeal by virtue of ch 7, pt 1 of the PS Act may also give rise to disputes about industrial matters in respect of which an employee must give written notice to the Registrar under s 261 of the IR Act. Ms Nowak has not given written notice under s 261 of the IR Act. Furthermore, there does not appear to me to be any provision in ch 7 of the PS Act or in ch 11, pt 6, div 4 of the IR Act that would prevent the Commission from hearing and determining, as a public service appeal against a fair treatment decision, a refusal to grant a request for flexible work arrangements.

**The nature of a public service appeal under ch 11, pt 6, div 4 of the IR Act**

1. Section 562B(1) of the IR Act provides that the section applies to a public service appeal made to the Commission. Section 562B(2) provides that the Commission must decide the appeal by reviewing the decision appealed against. Section 562B(3) provides that the purpose of the appeal is to decide whether the decision appealed against was fair and reasonable.
2. Sections 562B(2) and (3) of the IR Act replicate ss 201(1) and (2) of the PS Act, prior to their deletion by the Amendment Act, so as to ensure that the purpose of a public service appeal is to decide whether the decision appealed against was fair and reasonable.[[1]](#footnote-1) Therefore, in my view, the principles applicable under those previous sections of the PS Act, about the nature of such public service appeals, apply to the equivalent provisions under the IR Act.
3. I must decide the appeal by reviewing the decision appealed against.[[2]](#footnote-2) Because the word 'review' has no settled meaning, it must take its meaning from the context in which it appears.[[3]](#footnote-3) An appeal under ch 11, pt 6, div 4 of the IR Act is not by way of rehearing,[[4]](#footnote-4) but involves a review of the decision arrived at and the decision‑making process associated therewith.[[5]](#footnote-5)
4. The stated purpose of such an appeal is to decide whether the decision appealed against was fair and reasonable[[6]](#footnote-6) and the issue for determination is whether the decision appealed against was fair and reasonable.[[7]](#footnote-7)

**Ms Nowak's request for flexible work arrangements and her submissions in support of her appeal**

1. In her request, Ms Nowak relevantly stated:

I would like to request under section 65 of the Fair Work Act 2009 and Qld Health HR Policy C5, to work out a flexible work arrangement that is different to my current working arrangement. Under the Fair Work Act employees who have worked with the same employer for at least 12 months and are 55 year (sic) old or older can request flexible working arrangements. I can confirm that I meet the above requirements. Qld Health supports and encourages the implementation of flexible work practices for the mutual benefit of Qld Health and its employees by boosting the performance and wellbeing of individuals and teams. Due to COVID-19 and a medical condition that prevented me from travelling to the office I have been telecommuting for the last 5 months. During that time there was no single reason for me to travel to the office as I was able to meet all of my requirements of my position from home.

1. In the submissions accompanying her appeal notice, Ms Nowak stated that:

* her current line manager is based in Cairns, however, due to COVID-19 and medical conditions, that prevented her (Ms Nowak) '… to work from the city office we worked together remotely';
* there was no need for her to attend the office during that time and that did not prevent her from fulfilling all the requirements of her position and there '… was also no need for me to travel to the facilities during that time';
* she has no team supporting her in Cairns and she has occupied a desk space in multiple locations within teams not directly working with her;
* due to family reasons and COVID-19, and the possibility of being isolated from her family in the future and potentially affecting her health, she requested a change to her working arrangements to telecommute from Brisbane from 1 February 2021 on a permanent basis '… or until my resignation.'; and
* she has no family in Cairns, her family is based in Brisbane and in the UK, she has a home in Brisbane and will have a dedicated room to set up as an office and there would be no distractions as she lives alone.

1. Ms Nowak's submission is that her request for flexible work arrangements was reasonable because:

* The new working arrangements will not have a financial impact for the employer. On the contrary savings of minimum $7,200 per year for the cost of workstation in Cairns office will be achieved. The employee will cover the cost of relocation and cost of setting up an office in Brisbane and does not intend to request any financial assistance for relocation.
* There will be no need to change the working arrangements of other employees to accommodate the new working arrangements. The employee currently works within geographically dispersed team; no other team members are based in Cairns. New arrangement will have no impact on any team member. The employee does not receive support of any kind from the Corporate Office based in Weipa, there is a very little communication with the corporate office except for email communication regarding financial analysis. The employee does not require any support from the corporate office to be able to fulfil the requirements of the role. The employee collaborates with other teams within HHS (finance, OHS, Infrastructure etc.) at her own initiative when required. All communication is completed electronically, even when working in Cairns office. Face to face contact with any team member including corporate office have been negligible for the past 15 months.
* No change to the working arrangements of other employees nor recruitment of new employees is required.
* The employee has the skills and ability to manage their work role while undertaking a flexible working arrangement. There will be no loss in productivity. The employee has 7 years' experience in the position and acquired higher level skills during secondments enhancing her skills. The employee has over 20 years of experience in senior finance and management roles and has a complete knowledge of the requirements of the position with the ability and capacity to acquire further knowledge if position requirements should change. The employee works autonomously and does not require supervision. The employee was telecommuting on full time basis for 5 months with no requirement to attend Cairns office during that time. Previous Line Manager supports this arrangement and can verify that there was no loss in productivity or efficiency during telecommuting. The employee currently telecommutes three days a week due to lack of office space as a result of social distancing rules.
* The employee has no direct contact with customers and does not have any supervisory responsibilities
* The employee intends to retire from full time employment within the next 5 years. Whilst based in Brisbane the employee intends to seek employment with Brisbane based HHS. Being based in Brisbane will allow the employee to attend interviews in person, therefore increasing her chances. It is highly unlikely that this arrangement will be required long term, it is anticipated that the longest duration will be three years
* During these uncertain times the employee finds it extremely stressful to be separated from her family, which impacts on her health and wellbeing. When the employee was incapacitated due to a fractured shoulder, she was unable to receive any support from her family who were unable to travel due to travel restrictions. This has significantly impacted on the employee's mental health and recovery. It is the position of Queensland Health that employees have access to flexible working arrangements where this is operationally feasible. As a result, where possible, decision makers (delegates) should be looking for reasons to say 'yes', rather than 'no' without grounds, which does not appear to be the situation in this case.
* The employee will travel to TCHHS facility when operationally required or scheduled in advance.

## …

## **Substantiation**

1. My position does not require face-to-face contact with customers and team members. My team members are dispersed geographically, and we come together through the use of technology, e.g. Teams or Skype. Advances in information technology have made it increasingly possible to telecommute.
2. The proposed arrangement does not affect staffing requirements, budget or client service requirement.
3. The proposed arrangement does not impact on the role and workload of other employees.
4. The proposed arrangement does not require role redesign nor use of specialist, non-portable equipment. The cost of setting up an office will be borne by myself.
5. My position does not have any supervisory responsibilities
6. The proposed arrangement will not result in a loss of productivity, it will however increase outcomes, morale and job satisfaction and decrease work stress.

## **Benefits**

1. Enhanced social support and connectedness

2. Maintenance of skills and retention of knowledge

1. Improved health and wellbeing
2. No need for office space and no costs associated with the office space hire to the HHS
3. Reduced carbon footprint through less commuting
4. An environment with less distractions and improved productivity

## **Potential Issues**

This arrangement does not differ substantially from the current and past arrangements therefore no potential issues are perceived.

The following issues may arise; however, these can be easily mitigated.

1. Potential isolation from the wider team - mitigated by regular teams or skype meetings and active communication. I will also have a better social support outside of working hours.
2. Access to training, planning days, performance development processes - Most training can be done online, if not available I have made good professional contacts in Qld health and can source training based in Brisbane. All currently done online, no change.
3. Not meeting role requirements - managed very well in the past, can be mitigated by clear communication regarding deliverables. Regular meetings with the line manager.
4. Lack of support - mitigated by the position reporting line being changed to have access to increased support (see below)
5. ICT issues requiring access to Qld Health internet - through my QLD health contacts I will be able to access a Qld Health facility to attend to these issues.
6. Not having face-to-face contact with the line manager - has never been an issue through the effective use of technology. If contact needed it can be mitigated by travel to Cairns or any other TCHHS facility when required and as agreed between the parties.

## **Employee Skills and Suitability**

As a long-term employee of TCHHS with over 20 years of experience in senior management roles I have skills and ability to manage my work role while undertaking the requested flexible working arrangement, this has been proven by the successful telecommuting arrangement in the last 5 months and working with the geographically dispersed team since 2013.

If any gaps are identified in the future these can be addressed by further training and skills development, not different to the current arrangement.

## **Future developments**

As a result of the Corporate Support Services Plan my position reporting line will change, there will be no other changes to my role description. The future line manager will be based in Weipa, which will require the use of technology to communicate.

**The State's submissions**

1. The State does not dispute that on 21 September 2020, Mr Power informed Ms Nowak that her request for flexible working arrangements could not be supported. The State also submitted that during that discussion, Ms Nowak indicated she wanted to obtain another job in Brisbane, that she would have a better chance of obtaining a position if she lived in Brisbane and that she would be able to get another job in approximately 1 to 2 years.

1. The State then made a number of submissions as to why there are reasonable grounds for the refusal of Ms Nowak's request for flexible working arrangements.

***The Policy***

1. The State submits that the Policy provides that flexible working options are to be considered in an equitable manner for the whole unit and that client service and patient care is not to be compromised as a result of such flexible working arrangements.

***Transition back to the workplace***

1. The State refers to the fact that it has set a direction that up to 50% of employees who had been working remotely during the COVID-19 pandemic should return to the workplace and that current advice to Queensland Government agencies is that they should commence a transitioned return to the workplace using the latest health advice.
2. Consistent with that advice, Ms Nowak's transition back to the workplace is currently a blend of working in the office two days per week and working from home three days per week. The State submitted that this is for a defined period and is subject to regular review. The State also submitted that it supported her telecommuting full-time from 30 March 2020 to 30 June 2020.
3. The State then submits that:

* Ms Nowak's request to work remotely from Brisbane on a permanent basis is not consistent with the State's current direction and advice to public sector agencies regarding a supported transition back to the workplace; and
* approving Ms Nowak's request may also set a precedent which cannot be accommodated in a fair and equitable manner across the Health Service.

***Travel requirements***

1. The State submits that:

* Ms Nowak's position supports nine Southern Sector (Cape York) Primary Health Care Centres ('PHCCs') in that she is required to provide specialised and expert advice on financial, business planning and performance improvement activities to the Directors of Nursing ('DONs') within the PHCCs;
* the key responsibilities set out in Ms Nowak's role description require her to provide advice to staff within the Southern Sector of Cape York on financial management, decision-making processes and operational requirements of the PHCCs;
* Ms Nowak's role is expected to communicate, consult and negotiate with other customer focused support services within the Health Service;
* in order for these key responsibilities to be performed effectively, it is necessary that Ms Nowak travel to the nine remote communities where the PHCCs are located in the Cape York region;
* the Health Service did not believe that Ms Nowak would be able to provide the same level of support to the remote PHCCs in a timely and efficient manner if she was based in Brisbane and not visiting the remote communities in the future;
* as identified in Ms Nowak's role description, her position may require travel across the Torres Strait and Cape York area by light and commercial aircraft and helicopters, as well as long-distance vehicle travel using unsealed roads; and
* while Ms Nowak has not undertaken a significant amount of travel to the PHCCs over the last 15 months, it is still a requirement of her position to do so in order for support to be provided to the DONs within the PHCCs and that budget constraints and COVID‑19 have had an impact on travel arrangements, however, it is expected that with those pressures easing, regular travel will be required in the near future as per operational requirements for the Southern Sector.

***Operational changes***

1. The State submitted that given the significant turnover in the DON positions that are located in the PHCCs, the hands-on support provided by Ms Nowak in her position to the DONs is considered to be a high priority.

***Team requirements***

1. The State:

* did not agree that communication with the Cairns support services has been 'negligible' as submitted by Ms Nowak;
* submitted that this was Ms Nowak's perception due to her current telecommuting arrangement and the reduction of office resources as a result of COVID-19; and
* further submitted that the vast majority of corporate support functions, including human resources, work health and safety, finance, travel services and planning and performance, with whom Ms Nowak interacted on a regular basis, were based in Cairns and that Ms Nowak's presence in the Cairns office was consistent with her role description to 'provide a customer focussed support service and adopt a team approach to functions within the unit' and 'to work independently as the dedicated‑on site finance advisor'.

1. The State contended that Ms Nowak's continued presence working within a Health Service facility will allow her to maintain networks and support structures which was a factor that formed part of the regular review of her current part-time telecommuting arrangement.

***Insufficient levels of support***

1. The State submitted that if Ms Nowak's request was granted, and she was permanently relocated to Brisbane, that would negatively impact on the support the Health Service could provide to her in an effective and efficient manner.
2. The State cited, as examples of support which were more properly provided in person, training and supervision, and submitted that whilst training and supervision may be conducted online, it was often more effective and efficient that the training and supervision be delivered face-to-face.
3. The State acknowledged Ms Nowak's experience in her position and her history with the State, however, submitted that the Health Service had a duty of care to all of its employees to provide adequate support, in particular, where organisational changes across the Health Service may impact upon Ms Nowak's role.
4. The State concluded by submitting that the refusal of the request was made on reasonable grounds.

**Ms Nowak's submissions in reply**

1. Ms Nowak submitted that:

* the Health Service had previously approved requests from staff to work in locations other than the location at which the position was originally based and cites, as an example, that her current temporary line manager is based in Townsville;
* she was telecommuting full-time from 30 March 2020 to 31 August 2020, not 30 June 2020 as submitted by the State;
* her request for flexible working arrangements is based on her family situation and that she telecommuted full-time for five months which did not affect her productivity in a negative way;
* she supports seven Southern Sector PHCCs which are managed by six DONs, not nine as submitted by the State;
* the role description included with the State's submissions is not her role but was the role description '… for the position of temporary Business Analyst.';
* during the time she was telecommuting full-time, she communicated with support services and external parties and has been supporting DONs remotely since October 2013;
* she did not agree that it was necessary for her to travel to the remote communities to be able support the DONs managing the remote facilities because from September 2016 to June 2019 during her absence, the acting Business Manager travelled to two PHCCs, once to support another employee on their road trip and that since her return to her substantive position in July 2019, travel '… was not needed nor supported.';
* the role descriptions provided to her did not contain any reference to travel requirements and differ from the document submitted by the State;
* she '… deems that the travel is not required at a significant level, if at all, for the Appellant to provide the same level of support';
* she has not travelled at all to the PHCCs over the last 16 months and that should she be required to travel to communities in the future, she is '… willing to cover the cost of travel from Brisbane to Cairns for *the agreed number of flights* to eliminate "significant" additional costs on the Respondent';[[8]](#footnote-8)
* the DON positions are now supported by the 'Director of Nursing Southern PHCCs' being a temporary position which is now permanent and that any requirement for her to travel '… was eliminated.';
* her position provides financial management, business planning, data analysis and performance improvement advice using email, Skype, Teams and telephone and predominantly supports the DON Southern PHCCs position, which is occupied by a person who also works remotely;
* face-to-face contact with her geographically dispersed team and corporate services team based in Weipa and Cooktown has been negligible and that her line manager has never contacted her to discuss any issues face-to-face;
* she has not requested support from the Health Service in the past; and
* she cannot remember when she last attended face-to-face mandatory training, that most face-to-face training was selected by her to improve her skills and knowledge, that she will '… ensure that all face-to-face mandatory training required will be completed should the request be granted' and that she agrees to travel to the Cairns office when operationally needed or agreed in advance.

1. Ms Nowak concluded by submitting:
2. There is a strong focus on Work Life Balance across Queensland Health additionally, due to premium desk space in Cairns office where demand exceeds supply other departments are seeking responses from staff on continued working from home arrangements. Therefore, the Appellant's Flexible Working Arrangement Request can be beneficial for the Respondent.
3. The Appellant submits that the Request for Flexible Working Arrangement as requested by the Appellant on 26 August 2020 be granted.

**The decision is fair and reasonable**

1. The State submitted that the Policy had to be read in conjunction with the Queensland Health, Guideline for Flexible working arrangementswhich was annexed to its submissions ('the Guideline').
2. Section 2.1 of the Guideline, 'Examples of flexible work', dealt with telecommuting and relevantly provided:

|  |  |  |
| --- | --- | --- |
| Type | Option | Description |
| … | … | … |
| Where we work | Telecommuting | Telecommuting means working away from the usual or designated work centre, often at home. It can be for short periods or part of a long-term arrangement, and can occur on set days or arranged as the work demands. All the equipment and resources needed to do the job safely should be accessible.  Telecommuting may not be practical if the job requires:   * face-to-face contact with customers, clients or team members * use of specialist, non-portable equipment * direct supervision.   A formal workplace health and safety assessment is required. |

1. In its submissions, one of the main reasons why the State contended it had reasonable grounds to refuse Ms Nowak's request was the travel requirements of her position.
2. Attached to the State's submissions was a role description for the position entitled 'Business Manager.' The position description stated it was created on 11 November 2018 and was for a temporary position for six months with the possibility of an extension. While the classification of the position was AO6 and reported to Mr Power, the location of the position was Weipa and not Cairns which is the present location of Ms Nowak's position. That role description provides, amongst other things, that the position '… may require travel across the Torres Strait and Cape York area via, light and commercial aircraft and helicopters, as well as long distance vehicle travel using unsealed roads.'
3. Ms Nowak disputes that that is the position description for her position and submits, despite the title on the role description annexed to the State's submissions ('Business Manager'), it is for the position of 'Business Analyst' and it is not the role description for her position.
4. Ms Nowak annexes to her submissions a position description for the position of 'Business Manager (Remote Health) which seems to have been drawn in 2013 and a second role description which would appear to be a draft - because information such as the salary, closing date, contact name and organisational chart are missing - for the position of 'Business Manager - Rural & Remote Health'. Ms Nowak submits that the second role description was drawn in May 2019 however, it has no official date. Ms Nowak submits that neither of the role descriptions she has supplied makes any reference to travel.
5. The second role description supplied by Ms Nowak relevantly provides:

# **Your opportunity**

As the Business Manager you will operate across a wide ranging and complex system, supporting a diverse range of services across the Remote Health Cluster of the Torres and Cape Hospital and Health Service with an annual budget of approximately $15M.

This position will provide specialised expert, timely and proactive advice across a broad range of areas including financial management, business planning, operational services and performance improvement.

To be successful in this role, you will have proven experience in financial reporting and management accounting, as well as experience in business performance and human resources management. You will have the ability to provide business focused high level advice to staff across the remote health cluster, in order to improve resource management and ensure budget integrity. You will combine this knowledge with experience in managing the delivery of these services from third parties.

**Your role**

* Fulfil the **responsibilities** of this role in accordance with **QPS values** as outlined above.
* Follow defined service quality standards, occupational health and safety policies and procedures relating to the work being undertaken in order to ensure high quality, safe, services and workplaces.
* Manage the business planning process for the remote cluster including the development and monitoring of key performance indicators and ensure that the appropriate processes, including budgetary controls are in place to meet the targets set.
* Develop facility budgets that align to the organisational strategic direction for Rural & Remote Sector.
* Provide expert financial management and apply knowledge and ability of the facilities by managing the detailed budget process and end of month reporting in conjunction with the HHS Financial Management team; undertaking special research as necessary and assisting the service in monitoring expenditure and assessing financial and non-financial performance trends.
* Use expert and professional financial knowledge and abilities to analyse comprehensive financial data and resource management information and present findings to lead staff within the work units to meet delivery targets within budget and achieving best practice outcomes and organisational objectives.
* Provide leadership, specialist advice and guidance to the Facility Managers to achieve outcomes and efficiency agendas, particularly in regard to restricted resources for the remote health cluster and make sound recommendations to improve efficiencies and create cost savings.
* Monitor performance of external service providers against agreements, ensuring that the effective internal controls are in place so as to provide a high level of assurance to management on the integrity of reported information.
* Maintain an active and supportive working relationship with all Directors of Nursing and Midwifery and advise them in matters pertaining to finance and budgetary management. This includes high level training in Cost centre management report analysis and QH applications.
* Coordinate regular review meetings with cost centre managers to report on an exception basis the budget outcomes of cost centres within their control and manage monthly review meetings and action plans for budget management.
* Participate in decision making processes of the Remote Primary Health Care Centres through representation on various groups, committees and other management teams and forums.
* Develop business case submissions and requests for funding conversant with prioritisation and appropriateness for the facilities and HHS vision and strategic planning process and assist in plan refinement negotiating with beneficial and cost-effective outcomes.
* Provide ethical decision making and identify reasonable solutions in the achievement of organisational goals.
* Ensure the existence of a robust internal controls environment including implementation and review of internal controls and proper segregation of duties.
* Lead operational requirements within the Remote Primary Health Care Centres as determined in consultation with the facility managers and Remote Director of Nursing including: security, OHS, cleaning, housing and supply/procurement.
* Demonstrate a high level of interpersonal skills in communication, consultation and negotiation within the multi-disciplinary management team and across the HHS.
* Drive and support the fulfilment of revenue opportunities for the PHCCs
* Maintain quality control measures, safe work practices to approved level and ensure compliance with all relevant Australian Standards, Acts, Regulations and other directions applicable to services and specific projects.
  + Ensure that the financial capability including the necessary resources, tools and processes are in place to support services and initiate delivery.
  + Proven capability to work independently as the dedicated-on site financial advisor.
* Provide a customer focused support service and adopt a team approach to functions within the unit. Assist with other administrative or financial duties as directed by line manager.
* Comply and utilise procedures, policies, regulations and standards which impact upon the position, including finance and administration, HR, workplace health and safety, equal employment opportunity and anti-discrimination policies.

1. Despite the confusion about what is presently the correct role description for Ms Nowak's position, the State submits that in order for the key responsibilities of Ms Nowak's position to be performed effectively, it is necessary that she travel to the remote communities where the PHCCs are located in the Cape York region. The State did not believe that Ms Nowak would be able to provide the same level of support to the remote PHCCs in a timely and efficient manner if she was based in Brisbane and not visiting the remote communities in future.
2. Further, the State submits that despite the fact Ms Nowak has not undertaken a significant amount of travel to the PHCCs over the last 15 months, it is still a requirement of her position to do so in order for support to be provided to the DONs within the PHCCs. The State submits that with the present restrictions caused by COVID-19 and budget constraints easing, regular travel would be required in the near future having regard to the operational requirements for the Southern Sector.
3. The State contends that should Ms Nowak be based in Brisbane, in order for Ms Nowak to travel to the remote PHCCs, it will be necessary for her to travel from Brisbane to Cairns and then on to a remote PHCC and, therefore, the Brisbane to Cairns and return component of the travel would impose significant additional costs on the State.
4. In my view, irrespective of whether or not Ms Nowak's role description expressly contemplates travel to remote facilities within the geographical area of the Health Service, the clear submission of the State is that it will be a requirement of Ms Nowak's position to undertake such travel in the future.
5. Indeed, it seems to me having regard to the requirements of Ms Nowak's role, as set out in the second role description Ms Nowak supplied, it would be difficult to accept that Ms Nowak, without travel to the locations in which the DONs are physically located, could perform the main requirements of her position. For example, it is reasonable to assume that some travel to a PHCC would be required to maintain:

[A]n active and supportive working relationship with all Directors of Nursing and Midwifery and advise them in matters pertaining to finance and budgetary management. This includes high level training in Cost centre management report analysis and QH applications.

1. There are other reasons why Mr Power's decision is fair and reasonable.
2. First, Ms Nowak's request for flexible working arrangements is not that she telecommute from a location which is a reasonable distance from her ordinary place of work, such that she could attend her ordinary place of work, at short notice, if required. Ms Nowak wishes to telecommute from Brisbane to Cairns.
3. Secondly, it is unreasonable for Ms Nowak to expect that the State would agree to a specified number of times per year in which she would travel from Brisbane to Cairns to perform the duties associated with her position as part of some arrangement whereby she would agree to pay for the travel. It is a matter for the State, not Ms Nowak, to determine the number of times Ms Nowak would be required to travel to a PHCC. Further, it is the responsibility of the State to pay for the travel and accommodation required as part of Ms Nowak's position. It is clear that there would be significant additional cost to the State in paying for the travel from Brisbane to Cairns, and return, should the flexible work arrangement requested by Ms Nowak be approved.
4. Thirdly, in general terms, it is a matter for the State, subject to any applicable law or industrial instrument, to determine how its employees perform the duties of their positions. Ms Nowak's submission was that she deemed that travel was not required, at a significant level, for her to provide the same level of support as required for her position. Despite her experience, that is not a matter for Ms Nowak to decide. It is a matter for the relevant managers in the Health Service to decide.
5. Fourthly, it seems to me to be entirely plausible that, with a significant turnover in DONs located in the PHCCs, the hands-on support provided by Ms Nowak is a high priority for the State. It further seems entirely plausible, having regard to Ms Nowak's position and the duties of that role (as set out in the second role description supplied by Ms Nowak with her submissions), that her role does require her to maintain networks and support structures which may not able to be optimally achieved by Ms Nowak permanently telecommuting from Brisbane.
6. Fifthly, it is not a matter for Ms Nowak to determine, as she has submitted, that she does not require supervision. That is a matter for her employer to decide. The State submits that Ms Nowak's permanent relocation to Brisbane would negatively impact on the support the Health Service could provide to her in an effective and efficient manner. Such a position is fair and reasonable for her employer to take.
7. I acknowledge, as a reason for her desire to telecommute, that Ms Nowak's family is in Brisbane and that she has no family in Cairns. I am sympathetic to that reason for her to telecommute from Brisbane. However, the reasons given by the State to deny Ms Novak's request to telecommute, which in my view are reasonable, outweigh her personal preference to work in Brisbane because of the presence of members of her family.
8. I further acknowledge that due to telecommuting experiences of employers and employees arising out of the impact of COVID-19, it may be the case, that in the future, there is a greater number of telecommuting arrangements entered into between employers and employees. It seems that during the time of the impact of COVID-19, Ms Nowak has successfully telecommuted. However, the State, as Ms Nowak's employer, has embarked upon a transition for her to return to working in the office in Cairns and, for the reasons it has given, wishes her to remain located in Cairns. For those reasons, the fact that Ms Nowak has successfully telecommunicated in 2020, due to the impact of COVID-19, does not outweigh the clear reasons given by the State for Ms Nowak to remain located in Cairns so as to be able to perform the duties of her position.
9. For all these reasons, in my opinion, the decision of Mr Power not to approve the flexible working arrangements sought by Ms Nowak was fair and reasonable. The reasons given for the refusal of Ms Nowak's request are due to operational requirements. The decision was made taking into account relevant considerations and was not arbitrary.

**Conclusion**

1. Pursuant to s 194(1)(eb) of the PS Act, an appeal may be made against a decision a public service employee believes is unfair and unreasonable. Ms Nowak contended that Mr Power's decision was unfair and unreasonable. However, for the reasons I have given, Mr Power's decision was fair and reasonable in that there were reasonable grounds for him to refuse Ms Nowak's flexible work arrangements request to permanently telecommute from Brisbane.
2. I confirm Mr Power's decision.

**Order**

1. I make the following order:

**Pursuant to s 562C(1)(a) of the *Industrial Relations Act 2016*, the decision appealed against is confirmed.**

1. Explanatory Notes, Public Service & Other Legislation Amendment Bill 2020 (Qld), 6. [↑](#footnote-ref-1)
2. *Industrial Relations Act 2016* s 562B(2). [↑](#footnote-ref-2)
3. *Brandy v Human Rights and Equal Opportunity Commission* [1995] HCA 10; (1995) 183 CLR 245, 261 (Mason CJ, Brennan and Toohey JJ). [↑](#footnote-ref-3)
4. In the sense used in the legal categories of appeals - *Goodall v State of Queensland* (Unreported decision of the Supreme Court of Queensland, Dalton J, 10 October 2018), 5. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. *Industrial Relations Act 2016* s 562B(3). [↑](#footnote-ref-6)
7. *Page v John Thompson and Lesley Dwyer, As Chief Executive Officer, West Moreton Hospital and Health Service* [2014] QSC 252, [60] to [61] (Byrne SJA). [↑](#footnote-ref-7)
8. My emphasis. [↑](#footnote-ref-8)