

# MAGISTRATES COURT OF QUEENSLAND

CITATION: *Queensland Police Service v Neuman* [2017] QMC 6

PARTIES: **Queensland Police Service  
(Prosecution)**

v

**David Brendan Neuman  
(Defendant)**

FILE NO/S: MAG-00179873/16(8)

DIVISION: Magistrates Court

PROCEEDING: Criminal

ORIGINATING COURT: Toowoomba

DELIVERED ON: 9 June 2017

DELIVERED AT: Toowoomba

HEARING DATE: 10 April 2017

MAGISTRATE: G Lee

ORDER: **Not Guilty**

CATCHWORDS: *Criminal Law – use of restricted computer – whether without the consent of the controller – whether use was for official police business – whether use was a work-related use*

COUNSEL: Senior Sergeant E.Engwirda for the Prosecution  
Mr S. Zillman of counsel for the Defendant instructed by Gilsehn and Luton for the Defendant

LEGISLATION: The following legislation was cited: *Criminal Code (Qld), section 408E(1)*  
The following case was cited: *Inglis v Pinch* [2016] WASC 30

- [1] David Brendan Neuman (the Defendant) is a Senior Constable of the Queensland Police Service. He is charged with an offence under section 408E(1) of the *Criminal Code (Qld)*<sup>1</sup>:

“That on the 17 December 2015 at Gatton ... in the State of Queensland [he] used a restricted computer without the consent of the Commissioner of the Queensland Police Services its controller.”

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<sup>1</sup> In Chapter 37 (Offences analogous to stealing) of Part 6 (Offences relating to property and contracts).

[2] Section 408E(1) provides:

**“408E Computer hacking and misuse**

(1) A person who uses a restricted computer without the consent of the computer’s controller commits an offence.

Maximum penalty – 2 years imprisonment”

[3] The words “computer”, “restricted computer” and “controller” are defined in section 408E(5). There is no need to consider these further given the issues argued in this case.

[4] The Defendant pleaded not guilty to the charge and a summary trial took place. The Prosecution bears the onus of proving each element of the charge beyond reasonable doubt.

[5] In taking advantage of recent amendments to the *Justices Act 1886*<sup>2</sup>, the parties tendered a schedule of admitted facts together with various police manuals admitted at exhibit 1. This confined the issue to be litigated, namely “without the consent”, requiring only one prosecution witness to be called, Ms QFN.

[6] The Defendant elected to give evidence.

[7] The admissions of fact are as follows:

1. That on the 17 December 2015, the Defendant conducted a computer search on a police computer at the Gatton Police Station.
2. The police computer is a restricted computer for the purposes of section 408E of the *Criminal Code*.
3. That the Commissioner of Police is the controller of the computer for the purposes of section 408E of the *Criminal Code*.
4. There were various documents in force at the relevant time forming part of the Commissioner’s instructions for the use of the restricted computer including the Operational Procedure Manual, the Management Support Manual, the Information Management Manual and the Procedural Guidelines for Professional Conduct. Relevant extracts are attached and incorporated to these admissions.
5. The telephone and computer records for 17 December 2015 reveal that
  - (a) That at 8:51 am, a call of two minutes and 11 seconds duration was made by the [sic] QFN to the Defendant.
  - (b) That at 2:31 pm, QFN sent the Defendant a text in these terms  

‘Are u at work dave its (...) can I check if BQ had a warrant please if so’

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<sup>2</sup> Section 148A was inserted into the *Justices Act 1886* by the *Criminal Law Amendment Act 2017* with effect from 31 March 2017. It is analogous to section 644 *Criminal Code* which applies to indictable offences.

- (c) At 2:50 pm, QFN called 000 regarding a domestic violence complaint against her former partner, BQ.
  - (d) At 3:16:05 pm, the Defendant searched the restricted computer at Gatton Police Station regarding BQ.
  - (e) At 3:16:43 pm, the Defendant sent a text to QFN in these terms:  

‘No warrants that I can see’
6. Police attended QFN’s domestic violence complaint in response to the 000 call arriving at her address at about 3:00 pm.
  7. The attending police saw the text message from the Defendant to QFN and subsequently reported the matter to their supervisor.

**Evidence of QFN**

- [8] At around the age of 16 Ms QFN, who then lived in or about Laidley, commenced a relationship with a man by the name of BQ who was prone to getting into trouble with the law. He was continually in and out of prison. The Defendant would end up charging him on many occasions. This is how she came to know the Defendant who was stationed nearby at Gatton. She is now aged 30.
- [9] Ms QFN’s relationship with Mr BQ was a difficult and violent one. Numerous domestic violence orders were taken out naming Mr BQ as the respondent. Those orders were regularly breached including on 15 December 2011, November 2014, June 2015 and July 2015<sup>3</sup>. On one occasion the defendant attended a callout to Mr BQ’s family and showed them a photo of Ms QFN prior to her meeting Mr BQ and a photo afterwards to demonstrate her marked decline. Mr BQ bashed her from time to time and introduced her to a life of illicit drug use. The Defendant had warned her of these dangers some years ago but those warnings went unheeded<sup>4</sup>.
- [10] In about 2010 Mr BQ was peripherally involved in a murder investigation in which the Defendant took part and which resulted in Mr BQ being prosecuted for attempting to pervert the course of justice<sup>5</sup>.
- [11] After then, Ms QFN would provide information to the Defendant from time to time about Mr BQ. Also, in the context of her violent relationship with Mr BQ, she would message the Defendant if she needed help because he knew their background and history.
- [12] After Ms QFN moved to Gympie about two years before December 2015, she kept in contact with the Defendant about her difficulties with Mr BQ. This was by way of texting him monthly or a little less frequently. Having knowledge of the background and history, she considered him to be a reliable and trustworthy guiding hand as he had genuine concerns for her wellbeing. He was thoroughly professional.

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<sup>3</sup> Transcript 1-10 lines 26-34.

<sup>4</sup> Transcript 1-11 lines 10 – 25.

<sup>5</sup> Transcript 1-10 lines 1 – 8.

- [13] As at 17 December 2015 there was a domestic violence order in force naming Ms QFN as the aggrieved and Mr BQ as the respondent. It was a condition of that order that he was prohibited from approaching within 100 metres of her residence.
- [14] In breach of that order, on the night of the 16 December 2015 he came to her Gympie residence unannounced stating that he loved her. He stayed the night although Ms QFN said she had no choice about it<sup>6</sup>. Also, he wanted to obtain possession of a motor bike which later became a heated topic of dispute.
- [15] In fact, she knew that Mr BQ had been released on parole with a condition that he was not to come within 100 metres of her residence or person. Previously, she had the police collect his belongings so he didn't have to attend there<sup>7</sup>.
- [16] Early the next morning Mr BQ accused her of giving the motor bike away which she denied. He became verbally abusive calling her "putrid" among other derogatory remarks and grabbed her mobile phone checking any incoming and outgoing calls. The verbal abuse continued. Ms QFN left the house for an hour hoping he would be gone when she returned.
- [17] Regrettably, Mr BQ was still there upon her return continuing to accuse her of giving the motor bike away. He again took her mobile phone from her hands to check who she had been in contact with.
- [18] She rang the Defendant in Gatton at 8:51 am to advise that Mr BQ was at her house being threatening and abusive to her. He advised her to ring "000" if necessary. It is clear from her answers in re-examination that she and Mr BQ were in dispute about the motor bike consistent with the view that he was quite agitated to say the least<sup>8</sup>.
- [19] Later on Ms QFN phoned Child Safety to collect her to facilitate contact with her two children. She was collected at about midday and returned at 1:30 pm to find Mr BQ still there. Again he grabbed her mobile phone from her hand to check her calls. He was swearing at her about the motor bike calling her similar names. This time he came at her in a threatening manner with his fists.
- [20] As Mr BQ was on parole, Ms QFN knew that if a warrant was out for his arrest, her safety was assured as he would be returned into custody. At 2:31 pm she sent a text to the Defendant in Gatton asking if there were any warrants out for his arrest.
- [21] Before she received the Defendant's response, and in accordance with the Defendant's earlier advice during the phone call that morning, she called "000" at 2:50 pm. In that call she said Mr BQ was at her residence in breach of a domestic violence order, that he had made threats over the motor bike, and that he had come at her with his fists.
- [22] Knowing that she had made the "000" call, Mr BQ fled the scene before the Gympie police arrived at about 3:00 pm. At 3:16 pm the Defendant, who at that point was not aware that she had called "000", replied with "no warrants that I can see". The Gympie police saw this text and reported the sending of the text to higher authority.

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<sup>6</sup> Transcript 1-11 line 41.

<sup>7</sup> Transcript 1-19 lines 26 – 44.

<sup>8</sup> Transcript 1-17 lines 3 – 24.

**Evidence of the Defendant**

- [23] The Defendant has been a sworn police officer for 30 years. For the last 20 or so years he has served as a detective at the Gatton Police Station.
- [24] In the course of his duties he had come to know Mr BQ. He had arrested him many times for criminal activity. Mr BQ, described as a prominent local criminal,<sup>9</sup> spent time in and out of prison and was heavily into illicit drug use.
- [25] The Defendant was also aware that Mr BQ was in a relationship with Ms QFN. They were of similar age. The Defendant had warned Ms QFN against continuing in a relationship with Mr BQ. Such advice went unheeded. The relationship was a violent one involving actual violence. There were periods when they were not together and then together. It seemed to have reignited around 2010 at the time of the murder investigation mentioned above<sup>10</sup>. Domestic violence orders had been taken out over the years. Some were private applications and others were police applications.
- [26] Although the Defendant had not been involved in investigating instances of domestic violence, Ms QFN had informed him over the years of the nature of her violent relationship with Mr BQ. Ms QFN would ring up out of the blue to say there was trouble<sup>11</sup>. Also, the Defendant had performed many checks on Mr BQ for multifarious reasons over time and all his history is disclosed on QPRIME. The Defendant was aware of ongoing domestic violence breaches involving violence leading up to December 2015.
- [27] In addition, despite the Defendant being arrested by Mr BQ many times, he became a source of information for the Defendant. Ms QFN had also become a source of information in respect of Mr BQ. This became more frequent when they moved to Gympie<sup>12</sup>. In her evidence Ms QFN said that was about two years before December 2015.
- [28] The Defendant recalled a phone call from Ms QFN on the morning of 17 December 2015. He said she was in a “fair tether”, was “upset”, and was complaining that Mr BQ attended at her residence the previous night and that “it went to shit in the morning” threatening and abusing her calling her names such a “putrid dog” over a dispute about a motorbike. The Defendant had investigated a number of complaints about the motor bike<sup>13</sup>. In cross-examination he said Ms QFN was “in an emotional state” and was “pretty upset” during that call and added that she was similarly upset on other occasions when she rang<sup>14</sup>.
- [29] During that phone call, the Defendant advised her to call “000” if there was any further trouble and to involve the Gympie police as the Defendant was a long way away in Gatton.
- [30] The Defendant recalled receiving a text from Ms QFN at around 2:30 pm 17 December 2015 asking if there were any warrants for Mr BQ. In response, he

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<sup>9</sup> Transcript 1-22 lines 45 – 47; 1-26 lines 29-36.

<sup>10</sup> Transcript 1-26 lines 45-47. 1-27 lines 1-2.

<sup>11</sup> Transcript 1-26 lines 40 -45.

<sup>12</sup> Transcript 1-23 lines 40-41.

<sup>13</sup> Transcript 1-24 lines 5-16.

<sup>14</sup> Transcript 1-28 lines 23-34.

searched QPRIME and saw there were no warrants and replied by text to that effect at 3:16 pm. He was not aware that Ms QFN had dialled “000” before his reply.

- [31] In view of the earlier phone call, his thorough knowledge of the history of this relationship, and the nature of Mr BQ himself, he checked QPRIME because of his concern for her safety<sup>15</sup>. If there were outstanding warrants he would have alerted uniformed police with the view to having him arrested and returned to prison. If that were the case, he said Ms QFN would not have to worry about Mr BQ turning up out of the blue in breach of current orders and perpetrating violence on her<sup>16</sup>.
- [32] The Defendant said that, if there were outstanding warrants, he would not have informed Ms QFN of this. The reason for informing her that there were no warrants was to let her know that there was nothing other than a domestic violence order stopping Mr BQ from coming back and that she needed to be on guard or to get out of the house for her own safety<sup>17</sup>.
- [33] He said the domestic violence legislation is “full on” and is “watched very closely” and that if “you don’t take any action, you get into more trouble than it’s worth”. He said he had no choice but to check for warrants and said “I was damned if I did and damned if I didn’t”<sup>18</sup>. He said he did not regard this as a misuse of the police computer system and that if he did, he would not have done it.
- [34] The Defendant was cross-examined about the frequency of times Ms QFN contacted him in 2010 to 2015. When they went to Gympie, the Defendant said that Ms QFN’s contact increased to “monthly, week- fortnightly ...at the most”<sup>19</sup>. In the couple of months leading up to December 2015, the motor bike issue was a “big deal for them” and it caused angst between them. However, contact was also about domestic issues.
- [35] During cross-examination the Defendant said he did not take any other actions in addition to sending his reply text to Ms QFN. He said that he had reinforced the position during the phone call earlier that day ie call “000” if necessary. As she was far away in Gympie and that he could not respond himself as he was in Gatton, he advised her so that she could take action herself<sup>20</sup>.
- [36] The Defendant was cross-examined about his knowledge of Mr BQ’s whereabouts on that day and why he didn’t take any action on the alleged breach of a domestic violence order given the urgency of the situation. He said that was not his role as a detective. He further said that he had reinforced with Ms QFN during the morning phone call to ring “000” and involve the local Gympie police if necessary. He said that, by telling her there were no warrants, she knew that Mr BQ would not be automatically locked up so could turn up at any time<sup>21</sup>.

### Submissions and Discussion

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<sup>15</sup> Transcript 1-25 line 23.

<sup>16</sup> Transcript 1-24 lines 44-48; 1-25 lines 1-3.

<sup>17</sup> Transcript 1-25 lines 34-40; 1-29 lines 14-23.

<sup>18</sup> Transcript 1-24 lines 4-10.

<sup>19</sup> Transcript 1-27 lines 39-45.

<sup>20</sup> Transcript 1-33 lines 45-47; 1-34 lines 1-2.

<sup>21</sup> Transcript 1-35 lines 5-46; 1-36 lines 1-2.

- [37] The powers, obligations and liabilities of police officers in the Queensland Police Service are derived from a number of sources.
- [38] The functions of the Queensland Police Service provided for in section 2.3 of the *Police Service Administration Act 1990* (PSA) include the preservation of peace and good order, to protect all members of the community in Queensland from unlawful disruption of peace and good order that results or is likely to result from actions of others, and to uphold the law.
- [39] Generally speaking, subject to directions or orders of the Commissioner or superior officer, a police officer may exercise the powers of constable at common law or under any other Act or law<sup>22</sup>. Powers at common law are preserved by section 9 of the *Police Powers and Responsibilities Act 2000* (PPRA) and include those encapsulated above in section 2.3 PSA.
- [40] The purposes of the PPRA include providing for the powers necessary for effective policing and providing consistency in the nature and extent of the powers and responsibilities of police officers<sup>23</sup>. One example is the taking of reasonable steps to prevent a breach of the peace from occurring or continuing where a police officer reasonably suspects there is an imminent likelihood of a breach of the peace or a threatened breach of the peace<sup>24</sup>. A police officer performing a function of the Queensland Police Service outlined above is performing a duty of a police officer<sup>25</sup>.
- [41] Another source of power invested in police officers is the *Domestic and Family Violence Protection Act 2012*. The Defendant made reference to this in evidence<sup>26</sup>. While the Defendant did not formally perform a police function under Part 4 of that Act,<sup>27</sup> given the context of this case with a lengthy history of domestic violence consisting of actual physical violence, it is useful in my view to reflect on its objects in section 3 (1). They include maximising the safety, protection and wellbeing of people who experience domestic violence and to prevent or reduce domestic violence.
- [42] However, police officers are subject to the directions or determinations of the Commissioner and are expected to be familiar with them along with other matters such as the code of conduct for public service agencies under the *Public Sector Ethics Act 1994*<sup>28</sup>. Exhibit 1 contains a number of manuals to that effect to which I shall refer shortly. Also, in dealing with personal information, the activities of the Queensland Police Service are governed by the *Information Privacy Act 2009* with privacy principles and the *Right to Information Act 2009*. Specific provisions were not referred to by the prosecution in submissions although general attention was drawn to the tension between accessibility and confidentiality of citizens' private information held by public agencies such as the Queensland Police Service<sup>29</sup>.
- [43] It was submitted for the Defendant that the gravamen of the charge is the use of the computer and not the subsequent dissemination of information as a result of that use<sup>30</sup>.

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<sup>22</sup> Section 3.2 PSA.

<sup>23</sup> Sections 5 & 7 PPRA.

<sup>24</sup> Section 50 PPRA in Chapter 2 "General enforcement powers".

<sup>25</sup> Section 792 PPRA.

<sup>26</sup> Transcript 1-25 line 4.

<sup>27</sup> Entitled "Police functions and powers".

<sup>28</sup> Regulation 8 *Police Service Administration Regulation 2016*.

<sup>29</sup> Transcript 1-44 lines 1-22; 1-47 lines 8-18.

<sup>30</sup> Transcript 1-39 lines 26-47.

It was submitted that he had no option in the circumstances but to look on QPRIME for a warrant. If there was one he could have alerted Gympie police to go and execute it. The only evidence of non-consent arises from the ICT Strategy and Investment Manual in exhibit 1 which provides at paragraph 4.11.4 entitled *Authorised Use*:

**4.11.4 Authorised Use**

Unless otherwise authorised in this policy, QPS ICT facilities and devices must be used only for official QPS business ...

4.11.4.1 Official QPS business

Official QPS business includes:

- Using ICT facilities and devices for work-related use
- Using the internet to access work-related information ...

[44] Here, it was submitted, there was no improper relationship between the Defendant and Ms QFN or Mr BQ. No improper benefit was derived by Ms QFN or Mr BQ. The Defendant derived no benefit either. The presence or absence of any benefit goes to the question as to whether or not the access was for a police purpose and the absence of a benefit is a factor in favour of concluding that it was for a police purpose<sup>31</sup>. Doing the search was police business because it was directed towards the safety of Ms QFN. If it is police business, there is consent. If it is not police business, there is no consent<sup>32</sup>.

[45] Even if the case was directed to the wrongful dissemination of information, it was submitted the Defendant is still protected when one has regard to the Operational Procedures Manual (OPM) in exhibit 1 at page 69 entitled *Personal information (other than information contained in criminal history records)* relevantly as follows:

Policy

The Information Privacy Act imposes an obligation on members to protect personal information held by the Service from unauthorised access ...

In accordance with these obligations, the personal information of any person held on Service records should not be disclosed to a third party unless:

...

- (iii) disclosure is considered necessary on reasonable grounds to lessen or prevent a serious threat to life, health, safety or welfare of an individual ...

[46] It was submitted that the disclosure was necessary on reasonable grounds to lessen or prevent a serious threat to the life, health, safety or welfare of Ms QFN<sup>33</sup>.

[47] On the other hand, it was submitted for the Prosecution that the release of information is a corollary of the access and that an inference can be drawn as to the purpose for

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<sup>31</sup> Transcript 1-49 lines 21-31.

<sup>32</sup> Transcript 1-43 lines 23-44.

<sup>33</sup> Transcript 1-41 lines 27-44.



which it was accessed in the first place. Persons who may or may not be subject to warrants should not expect that they are being checked for no particular purpose other than for the effective operation of the police service. The Prosecution's case is that the Defendant's purpose of accessing the information was to release it to a person who was not entitled to that information. That is, it was for a private purpose and not for police business<sup>34</sup>.

- [48] The Prosecution sought to cast doubt over the Defendant's evidence that he was concerned for Ms QFN's safety and that the expressed concern was "disingenuous"<sup>35</sup>. It was submitted that during the phone call he simply advised her to ring "000" if necessary and that there was no sense of urgency in her text to the Defendant at 2:31pm. It was further submitted that his response to questions did not support the level of concern to the extent that there was a serious threat to the life, health, safety or welfare of Ms QFN. He did not take any action in respect of a clear breach of a domestic violence order<sup>36</sup>. In those circumstances, it was submitted, the reason for access to QPRIME was not for a police purpose "[or] at least not sufficiently a police purpose" to afford a defence and that the release of the information was simply an exchange between them and not for any particular purpose<sup>37</sup>.
- [49] It was submitted for the Prosecution that the fact there was an absence of benefit or improper relationship between the Defendant and Ms QFN is irrelevant. *Inglis v Pinch* [2016] WASC 30<sup>38</sup>, which was an appeal against sentence imposed by a magistrate upon a plea of guilty for a similar offence, was cited for the proposition that mere innocuous information obtained for a benign purpose which may not have been disclosed to a third party are not mitigating factors. The submission continued that if the information in this case is innocuous and benign, then those matters together with an absence of benefit are irrelevant in determining criminal liability for a charge under section 408E (1). If they were present, they would constitute circumstances of aggravation attracting a more serious charge under either section 408E (2) or (3)<sup>39</sup>.
- [50] The sole issue in this case is whether the Defendant accessed QPRIME without the consent of the Commissioner. The only evidence on this question is, as submitted for the Defendant, in paragraph 4.11.4 of the ICT Strategy and Investment Manual which provides circumstances in which the use is authorised. The relevant circumstance is whether the use was for "Official QPS business" which in turn includes a use which is "work-related".
- [51] The Defendant's case is that his access to QPRIME checking for warrants on Mr BQ was for his concern for Ms QFN's safety. This was in the context of the phone call earlier in the morning and his advice to her about calling "000" in the light of his knowledge of their history. His case is that that access was "work related".

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<sup>34</sup> Transcript 1-44 lines 23-37; 1-47 lines 10-35.

<sup>35</sup> Transcript 1-46 lines 16-17.

<sup>36</sup> Transcript 1-45 lines 1-47; 1-46 lines 1-15.

<sup>37</sup> Transcript 1-47 lines 20-35.

<sup>38</sup> Per Pritchard J. at [31] & [32]. In that case the police officer accessed the restricted computer on three separate dates for three separate reasons. (1) to see if a person of interest had been identified in an investigation where that police officer was the victim of an assault – no one had been identified (2) to check the expiry date of his registration (3) to see if a person of interest had been identified in an investigation regarding an incident at that officer's home involving a trespass and damage – no one had been identified.

<sup>39</sup> Transcript 1-46 lines 25-47; 1-48 lines 1-47; 1-49 lines 1-12.

- [52] In casting doubt over the Defendant's concerns for Ms QFN's safety, the Prosecution points to a number of features including:
- Ms QFN's phone call to the Defendant at 8:51 am was short and that there was an impression that she was relatively safe at that time and that the advice to ring "000" was simply general advice.
  - The wording of the text by Ms QFN at 2:31 pm did not indicate any urgency.
  - The Defendant did not act on what was a clear breach of a domestic violence order.
- [53] However, that is taking too narrow a view. The actions on the day including the wording of the text and the short phone call ought not to be considered in isolation.
- [54] The Defendant has had a lot to do with Mr BQ and Ms QFN over the years and has developed a solid longitudinal knowledge of not only their relationship but also the nature of Mr BQ himself. The Defendant knows that Mr BQ is an unpredictable and violent man who has inflicted actual violence on Ms QFN in the past having breached domestic violence orders. Not only has Ms QFN communicated this to him over the years, but the Defendant has had reason to consult QPRIME on other occasions for various legitimate reasons where all of Mr BQ's activities are there to see. The Defendant knew that Mr BQ was an illicit drug user. Further, the Defendant had investigated a number of complaints about the motor bike which was a topic of bitter dispute for Mr BQ.
- [55] And it is in that light that Ms QFN phones the Defendant at 8:51 am to tell him that Mr BQ turned up unannounced the previous evening in breach of a domestic violence order and also his parole and stayed the night. She was "pretty upset", in a "tether", and in an emotional state during that call. Things went bad the next morning. The Defendant advised her to call "000" if necessary.
- [56] The evidence of the Defendant in this respect is generally supported by the evidence of Ms QFN.
- [57] Ms QFN's actual circumstances due to Mr BQ's presence became dire as she called "000". The fact that Gympie police took only 10 minutes to respond supports the view that she was in immediate need of protection from Mr BQ. Mr BQ fled the scene when he discovered the police were called.
- [58] Of course, the Defendant did not know that things had actually escalated prompting the "000" call at 2:50 pm, only 20 minutes after she had sent the text to him asking about warrants. However, the fact that she was in urgent need of protection supports the view that she was indeed worried for her safety due to BQ's presence and behaviour. I find she had made this abundantly clear to the Defendant during the phone call that morning.
- [59] The Defendant did not, as the Prosecution submit, take any action on the breach of the domestic violence order. It is not clear why the Defendant did not alert Gympie police about Mr BQ's presence in breach not only of the domestic violence order but also in breach of his parole. With the benefit of hindsight perhaps this would have been the more prudent course. On one view, this may support the view contended for by the Prosecution that the access was not work related. However, Ms QFN's

precarious situation required her to call “000”. She had made her predicament clear to the Defendant during the earlier phone call. I find that the Defendant’s advice to call “000” was not benign or routine advice. He was in Gatton and she was in Gympie. When the Defendant sent his text, he did not know that she had called “000”. I find that his state of mind was such that by sending that text, he was informing her to take action to protect herself. As it turned out, she had already done so.

[60] I am not satisfied the Prosecution has proved beyond reasonable doubt that the Defendant’s access to QPRIME was without the consent of the commissioner in that it was not work related and therefore not official business.

[61] The Defendant is not guilty.

[62] The circumstances of this case are somewhat unusual and turn on unique facts. My decision in the circumstances of this case is based on my acceptance of the Defendant’s evidence that he acted on concerns for Ms QFN’s safety and should not be taken as establishing any general rule that a police officer can access QPRIME outside the Commissioner’s determinations and directions.