

**APPEAL AGAINST A DECISION OF THE COMMISSIONER OF POLICE TO TAKE
REMOVAL ACTION
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2020 WAIRC 00859

CORAM : CHIEF COMMISSIONER P E SCOTT
SENIOR COMMISSIONER S J KENNER
COMMISSIONER D J MATTHEWS

HEARD : MONDAY, 24 FEBRUARY 2020

DELIVERED : THURSDAY, 22 OCTOBER 2020

FILE NO. : APPL 42 OF 2016

BETWEEN : ADIB ABDENNABI
Appellant

AND

THE COMMISSIONER OF POLICE WA POLICE
Respondent

CatchWords : Industrial law (WA) – Appeal pursuant to s 33P of *Police Act 1892* – Loss of confidence by Commissioner of Police – Removal of Police Officer – Officer acquitted of criminal offence of stealing – Whether removal harsh, oppressive, or unfair – Officer lied and was deceptive to employer and detectives – Secondary employment – Obligations and responsibilities as police officer – Commercial interests above duty – Conflict of interest – Undermining integrity of WA Police – Public interest – Police officer’s association with suspected criminal – Open for Commissioner of Police to conclude officer was guilty of wrongdoing alleged of him – Commissioner of Police entitled to lose confidence in officer as member of WA Police – Removal not harsh, oppressive, or unfair – Appeal dismissed

Legislation : *Criminal Investigation Act 2006* s 6, s 42
Industrial Relations Act 1979 (WA)
Police Act 1892 (WA) s 8, s 33
Surveillance Devices Act 1998 (WA) s 7(1)

Result : Appeal dismissed

Representation:

Counsel:

Appellant : Mr R Yates (of counsel)
Respondent : Ms C Chapman (of counsel)

Case(s) referred to in reasons:

AM v Commissioner of Police [2009] WAIRC 01285; (2009) 90 WAIG 276

Carlyon v Commissioner of Police [2004] WAIRC 11966; (2004) 85 WAIG 706

McGrath v Commissioner of Police [2005] WAIRC 1989; (2005) 85 WAIG 2006

The Honourable Minister of Police v Western Australia Police Union of Workers
[2000] WAIRC 01174; (2000) 81 WAIG 356

*Undercliffe Nursing Home v The Federated Miscellaneous Workers Union of Australia,
Hospital, Services and Miscellaneous, WA Branch* (1985) 65 WAIG 385

Reasons for Decision

The Western Australian Industrial Relations Commission:

- 1 Adib Abdennabi was a Senior Constable with WA Police until 23 June 2016 when the Commissioner of Police lost confidence in him pursuant to s 33 of the *Police Act 1892* (WA) and he was removed from WA Police. All of the Commissioner's reasons for losing confidence arise from Mr Abdennabi undertaking secondary employment while being a serving officer.
- 2 Mr Abdennabi appeals against his removal, pursuant to s 33P of the *Police Act*. His grounds of appeal are that his removal was harsh, oppressive or unfair because:
 - (1) it was not reasonably open on the material before the Commissioner to have concluded that Mr Abdennabi was guilty of the wrongdoing alleged of him, in part or in whole; and
 - (2) it was not reasonably open to the Commissioner to have removed him for any alleged wrongdoing that is provable against him, based on the material before the Commissioner, and thus the removal was not justified to maintain the proper functioning of the Police Force.
- 3 The Commissioner's reasons for removal were reformulated following the WAIRC agreeing to receive new evidence from Mr Abdennabi. The new evidence related to two trials before the District Court of Western Australia of criminal charges against Mr Abdennabi, as well as a statement by Mr Abdennabi. The reformulated reasons are contained in a letter to Mr Abdennabi from the Commissioner dated 26 November 2019. The letter attaches a memorandum (the Memorandum) to the Commissioner from Inspector Mulligan setting out the background to the loss of confidence, with 74 attachments, including photographs, discs containing video recordings and transcripts of interviews and of proceedings in the District Court. Where we refer to Attachments in these Reasons, they are the attachments to the Memorandum. On the basis of his analysis of the materials, Inspector Mulligan recommended to the Commissioner that he not revoke the removal action he had previously decided on, prior to the new evidence and the reformulated grounds. The Commissioner accepted and acted on the recommendation.

The Commissioner's reasons

- 4 The reasons the Commissioner says he lost confidence in Mr Abdennabi, as reformulated, were that:
 - (A) In November 2015, December 2015 and/or February 2016, Mr Abdennabi lied to detectives and was deceptive when they questioned him in relation to the alleged theft of bakery equipment.
 - (B) In April 2015, Mr Abdennabi removed a dough flattener from 35 Adrian Street, Welshpool without legal entitlement to do so.
 - (C) In February 2016, Mr Abdennabi disobeyed a lawful order issued by Superintendent Massam on 20 January 2016 by continuing to perform secondary employment after being advised his approval to do so had been rescinded.

- (D) On a number of occasions in 2015 and 2016, whilst on duty and in police uniform, Mr Abdennabi used his mobile telephone, or attended business premises in Perth and Northbridge to conduct aspects of his secondary employment, contrary to Secondary Employment Policy HR – 12.
- (E) During a managerial interview on 26 February 2016, Mr Abdennabi lied to internal investigators.
- (F) From or about 2013 to 2014, Mr Abdennabi associated with Mr Zreik despite knowing, or having reason to suspect, that Mr Zreik engaged in criminal behaviour.

Background

- 5 The Memorandum and other documents set out the background. It includes that Mr Abdennabi joined WA Police in June 2008, having previously been with the London Metropolitan Police for approximately four years. Following his graduation and a three-month period at Perth Police Station, he was transferred to State Security Investigation Group (SSIG) where he spent three years as a field intelligence officer.
- 6 In November 2011, Mr Abdennabi was transferred out of SSIG to a patrol/enquiry officer position at Cannington Police Station.
- 7 In August 2012, while at Cannington Police Station, Mr Abdennabi sought approval to commence secondary employment with Extreme Renos Pty Ltd, a painting and decorating company of which he was the director. This application was approved on 22 August 2012.
- 8 In April 2013, Mr Abdenabbi, as a director of a second company, Carthage Catering Pty Ltd, signed a lease to operate a bakery, Carthage Bakery, at 35 Adrian Street, Welshpool. Mr Abdennabi then made an application for secondary employment in respect of work at the bakery. However, this was not approved by his District Officer due to Mr Abdennabi actively seeking a transfer or actually being transferred at the time. According to the policy dealing with personnel engaging in secondary employment (HR – 12 Secondary Employment), secondary employment is monitored by the officer's officer in charge or manager (HR – 1200.11) and existing approvals expire when the officer is transferred or promoted (HR – 1200.06). The officer is not permitted to commence secondary employment until they are formally advised that it has been approved (HR – 1200.06).
- 9 In July 2013, Mr Abdennabi sought permission to be released from district tenure in order to apply for a part-time position at Bayswater Police Station, stating his desire to undertake university studies. He was transferred to Bayswater Police Station on 5 August 2013.
- 10 On 10 October 2013, Mr Abdennabi was involved in an incident at the Welshpool bakery when an associate, Mr Zreik, threatened Mr Abdennabi with a knife and damaged property. This incident is said to have drawn attention to the fact that Mr Abdennabi did not have permission for secondary employment at the bakery. On 17 November 2013, he submitted a renewal application for secondary employment at both Carthage Bakery and Extreme Renos. In relation to the bakery operation, Mr Abdennabi said in this application:

My Wife and I have leased 35 Adrian Street Welshpool and opened a shop selling middle eastern grocery and fresh Lebanese bread.

My wife will operate the shop and conduct the daily running of the business. I will assist her with ordering and stacking shelves on weekly leave days.

The Bakery side of the business is subcontracted to Peace Lebanese Bakery to produce flat Lebanese bread

We are in the process of preparing a lunch bar on the premises. Once the work is complete the lunch bar will be subcontracted.

(Attachment 12)

- 11 This application was rejected on the basis that Mr Abdennabi was not coping with the pressures of his employment and study commitments, and had taken a significant amount of sick leave.
- 12 Between 17 November 2013 and February 2015, Mr Abdennabi was on extended annual leave and paid and unpaid parental leave. During this time, he was transferred from Bayswater Police Station and placed in Temporary Holdings.
- 13 On 26 November 2013, Mr Abdennabi lodged a grievance against the refusal of his secondary employment application. On 22 January 2014, the decision was reversed, and he was granted approval to resume his secondary employment.
- 14 In February 2015, Mr Abdennabi resumed work and commenced in a part-time position at Perth Police Station.
- 15 On 10 April 2015, Carthage Bakery's lease of the Welshpool premises ended, and Mr Abdennabi moved the bakery to Unit 1, 22 Beale Way, Rockingham.
- 16 On 27 June 2015, Mr Abdennabi submitted a renewal application for secondary employment at Carthage Bakery in Rockingham, some two and a half months after the move to the new premises. Importantly, this application specified that Mr Abdennabi's role was to collect orders at the end of the day and pass them on to the production manager. He said:

Since April 2013, my wife and I operated a flat bread bakery at 35 Adrian Street Welshpool. In April 2015 we relocated the business to 1/22 Beale way Rockingham.

My wife and I operate business with the assistance of contractors to produce the bread and deliver it to some small retailers.

My Role is to collect the bread orders at the end of every day and produce an order sheet that I pass to the production manager. During the days that am on Police duty, My wife do this task that takes ½ hour.

This year we decided to sell the business. We currently in discussions with two different interested parties from Sydney.

(Attachment 18)

Allegations relating to vacating Welshpool premises

- 17 On 16 July 2015 and 28 October 2015, Mr Jamal Fahd Hishmeh made statements to WA Police and was interviewed by Detective Sergeant Surman of Kensington Detectives (Attachment 15). He alleged that on vacating the Welshpool premises, Mr Abdennabi had stolen plant and equipment including a dough flattening machine. Mr Hishmeh said he was the owner of the Welshpool premises and he gave his version of the arrangement he entered into with Mr Abdennabi for Mr Abdennabi to lease the Welshpool premises.
- 18 Mr David Ainslee Lamb had also made a statement to police (Attachment 17). He said he was the director of MLV Commercial and Industrial Real Estate. Mr Lamb stated that he prepared a lease for the Welshpool premises. The period of the lease was for 24 months to 31 March

2015, if not renewed. Mr Lamb said that there were problems regarding the payment of the rent and there were unapproved modifications to the premises.

- 19 Mr Lamb said that at the expiry of the lease, the tenant failed to vacate as required. On 8 April 2015, he attended the premises along with another person for the purpose of locking the tenant out as he was in breach of the contract. He had a discussion with Mr Abdennabi and it was agreed that the lock out would be deferred until Friday, 10 April 2015 at 3 pm. However, on Thursday, 9 April 2015, Mr Lamb attended the premises to undertake an inspection to draft a list of items for the tenant to fix.
- 20 At this inspection, Mr Lamb took photographs. He said that the premises were in a very poor state and there was an enormous amount of work required by the tenant to make good the premises. The next day, when he returned to take control of the premises, the premises were in a worse state than the previous day.
- 21 On 10 November 2015, a search warrant was executed at Unit 1, 22 Beale Way, Rockingham and a list of 30 items to be searched for was attached, along with photographs of a range of items including a dough flattener and associated equipment, including custom-made steps (Attachment 21).
- 22 The officer in charge of the execution of the warrant was Detective Sergeant Surman. Detective Sergeant Surman interviewed Mr Abdennabi at the scene, and the interview and the search were video recorded and transcribed (Attachment 22).
- 23 Detective Sergeant Surman clarified to Mr Abdennabi that the allegation against him was of stealing and that it related to the premises at Adrian Street, Welshpool. Mr Abdennabi indicated that he had a lease at those premises for nine years. However, after almost two years, the landlord, Mr Hishmeh, asked him to leave and there was a dispute between Mr Abdennabi and Mr Hishmeh. Mr Abdennabi said that he had invested money and did not get the return on the investment. He said '[s]o the day I left Adrian Street, I did not go back again. And the day I left I took anything and anything I took, everything, it's mine. Okay. Everything. Any screw I removed from there it's mine, or I have claim over it' (ts 8). He said that he removed any items that he had made or repaired or any parts he had purchased. He said there was a dispute between he and his landlord over the lease and that it should be a lease dispute not a criminal matter. Detective Sergeant Surman went through the list of the items in the search warrant and indicated that there were 30 items in total and that they would now go inside the Rockingham premises, and they would film the premises.
- 24 Detective Sergeant Surman and Mr Abdennabi discussed a number of items on the premises, in particular number 10 on the list, the dough flattener and associated equipment including custom-made steps. Detective Sergeant Surman said about this equipment that it '[a]ppears to be the steps and the machine here. What can you tell me about the steps and the machine?' Mr Abdennabi said:

The steps I got out of the rubbish in, um, from the skip that he had. He [threw] everything into the skip and I got these, um, these, these ones. And that wasn't actually the steps that he's talking about. Um, they were, these were in the shop, in the shop. It had things like sort of a display thing. Ah, I took this off the, the, off the rubbish, off the skip, it was a metal skip. And this flattener I purchased this flattener from Adelaide.
- 25 Mr Abdennabi said he bought it from a business called Flat Bread Bakery or something like that, that the man's name was Eddie, that the price was \$24,000 and that he was paying for it by instalments. He still owed \$16,000 to \$18,000. He said he had a receipt for the purchase;

that he had signed a document for the instalment arrangements; that he had receipts for the transport because he had to ship it across and he could prove that the one before them was not Mr Hishmeh's dough flattener, '[u]m, he gave his flattener to [indistinct] bakery.' Mr Abdennabi then said:

He had a flattener but he's left, I think he's [indistinct] In fact a lot of stuff he's sort of 'cause of him that he's making insurance claim and that's what I thought. I didn't think he is, ah, claiming that I, I stole the stuff. ... I didn't want him to do insurance fraud, ah, based, based on items that he's claiming that are, are, that are stolen or damaged or whatever. I put my name forward they say that, I'm waiting for them to basically contact me when they, at the stage when they need the, for the investigation' (ts 17).

- 26 They continued the inspection of the premises and of particular items.
- 27 On 17 December 2015, Mr Abdennabi was interviewed by Detective Sergeant Surman and another officer at Kensington Police Station. The interview was recorded and transcribed (Attachment 34). At page 3 of the transcript of the interview, Detective Sergeant Surman informed Mr Abdennabi that he was going to discuss an allegation of damage and stealing that had occurred leading up to 10 April 2015, in relation to Mr Abdennabi's lease of the Welshpool premises. Mr Abdennabi confirmed that he had leased the premises from 'roughly April 2013 until 10 April 2015' (ts 4).
- 28 Mr Abdennabi went on to explain how he became involved in leasing the premises from Jamal, who we take to be Mr Jamal Hishmeh. Mr Abdennabi said that he had taken on the equipment that was already there from the owner of the business. He said the equipment was not in a good condition and that the previous operator had wrecked the equipment. He said that the previous operator had a partner, Mohammed Zreik, who knew how to operate the equipment. He was informed that he should get Mr Zreik to fix up the equipment or to show him how it works (ts 7). He met Mr Zreik, who told him that the machinery was old and was worth nothing. Mr Zreik could take over the machinery and make it work and he would help Mr Abdennabi and bake for him.
- 29 Mr Abdennabi said his wife would run the grocery shop and Mr Zreik would bake on the premises. Mr Zreik had a product brand called Peace Lebanese Bakery and Mr Abdennabi wanted to use his own brand of Carthage Bread, so they agreed to produce under both brands.
- 30 According to Mr Abdennabi, Jamal Hishmeh took most of his belongings and equipment but left others behind. Mr Abdennabi then outlined in detail what we understand to be Mr Hishmeh continuing to occupy part of the premises without Mr Abdennabi's agreement and that they had a falling out. However, he also described how the previous owner had vacated the premises but left some things including some frames, which he said Mr Abdennabi could use. We understand the frames are part of the dough making equipment. Some equipment was put into a skip bin. Mr Abdennabi also made reference to some crates being stored at Saidoun Bakery.
- 31 At page 12, Mr Abdennabi said '[s]o, just to show you now he's claiming – he's sold to somebody else and now he's claiming them from that – he's claiming that I took them or stole them or damaged them or whatever'.
- 32 The interview then covered specific items set out in the search warrant. At pages 45 and 46 of the transcript of the interview, they discussed the bakery equipment including the dough flattener marked in photographs F1 and F2. Detective Sergeant Surman pointed to one photograph and noted that the dough flattener was located between two proofers in the

photograph taken on 9 April, but that there was nothing in that position in the photograph taken on 10 April. He asked Mr Abdennabi to tell him what happened to that piece of machinery. Mr Abdennabi said '[w]ell I took rollers and stuff that I – I had. I took 'em off. And the rest of it. And for the frame stayed.'

- 33 Later in the same page of transcript, he said that when he took the pieces, in fact 'George did (the work), '[h]e knew what has to be done. And he dismantled the stuff that we put in' (page 46).
- 34 On 23 February 2016, further search warrants were executed by Detective Sergeant Surman at the Rockingham premises, but these warrants included Units 2 and 5 as well as Unit 1 (Attachment 23). Each warrant contained an identical list of items, including photographs. Item number 10 in each warrant was a dough flattener and associated equipment including custom-made steps.
- 35 The search was again video-taped and transcribed (Attachment 24). The search team arrived at the premises before Mr Abdennabi. When Mr Abdennabi arrived, Detective Sergeant Surman informed him, amongst other things, that they also had a search warrant for Unit 5 on this occasion because 'we received information that it's a unit you have access to and store property in' (ts 3). He went on to note that the items listed in the search warrants for Units 1 and 5 were identical because there was a potential that things could have been moved between units.
- 36 Detective Sergeant Surman gave Mr Abdennabi a copy of the search warrants and read through the list of 33 items with him. He noted that they had arrived at 7.15 that morning, knocked on the front door and Fares let them in. They then left the premises and waited outside for Mr Abdennabi to arrive before continuing the search.
- 37 Detective Sergeant Surman asked Mr Abdennabi '[n]ow, do you have access to Unit 5?' Mr Abdennabi's response is initially indistinct and then Mr Abdennabi said, 'I don't at the moment'. Detective Sergeant Surman asked him '[o]kay. Do you have any property that's stored in Unit 5?', to which Mr Abdennabi said '[y]es'. Detective Sergeant Surman asked him why he did not have access to that particular unit at the moment and Mr Abdennabi said, 'I just don't have keys.' He was asked 'where are the keys?' and Mr Abdennabi said '[w]ith the landlord [indistinct]'. Detective Sergeant Surman said that that was okay – that Fares had given him a set of keys when they arrived. Mr Abdennabi then said 'my keys are here.' The video shows that Mr Abdennabi patted his jacket pockets. Detective Sergeant Surman said 'okay. Well, Fares gave me this set of keys that he got off the table inside. Ah, so obviously we've opened Unit 5 and then it's been locked up again, ah, pending your arrival' (ts 6).
- 38 Later in the search of Unit 5, Mr Abdennabi was with Detective Sergeant Surman as he was examining a dough flattener. Detective Sergeant Surman said that it appears to be the same dough flattener as in the photograph attached to the search warrant but that it was not in the same condition because it had been disassembled and moved (ts 13). He asked Mr Abdennabi what he could tell him about that piece of equipment. Mr Abdennabi said:

That some components are mine. The rollers, the rollers of, on it are, are mine. The frame is, ah, is not mine, but I'm holding it against my deposit. I've got a ten thousand dollar deposit [indistinct] oh it's we haven't started [indistinct] they haven't acknowledged that, the fact that I've got deposit on there.

...

There are, the rollers [indistinct] the chrome ones, they're, they're mine [indistinct] the cogs and stuff, ah, the pushers, the, ah, the sensors, they're mine. Um, the, belt [indistinct] the belt. So I just, um, I didn't have time to strip it down and take what's mine, but the, um, I'm holding it on, against my deposit (ts 13).

39 Later in the search, Mr Abdennabi said that he was only given 10 days to vacate the Welshpool premises and that he needed more time than he had (ts 19).

40 Following the search, Mr Abdennabi was arrested and charged with stealing in relation to the allegation made by Mr Hishmeh.

41 On 25 February 2016, Mr Abdennabi was stood down from police duties.

Allegations relating to conducting secondary employment while on duty

42 On Sunday, 17 January 2016, First Class Constable Dale White, who had worked with Mr Abdenabbi, advised Sergeant Matthew Donkin that she believed Mr Abdennabi was conducting secondary employment whilst on duty. Constable White reported that while working with Mr Abdennabi in Northbridge on the night of 15 January 2015, while in uniform and wearing full accoutrements, Mr Abdennabi discussed with a person at a kebab shop that the business owed him money. Constable White also later reported that while on patrol, Mr Abdennabi talked to the operators of shops about his bakery and the bread he produced and offered to supply samples.

43 Sergeant Donkin made enquiries of others who had worked with Mr Abdennabi around that time. Constable Gallo reported that on 9 February 2016, while on patrol with Mr Abdennabi in around July/August 2015, Mr Abdennabi was handed three or four \$50 notes by an employee of a kebab shop they visited.

44 Constable Sawyer reported that when she was working with Mr Abdennabi, he disclosed to her that he was owed money by the owner of a kebab shop.

45 Constable Fraser reported that in the few times he had worked with Mr Abdennabi, Mr Abdennabi had made a few calls regarding his secondary employment, although PC Fraser said that the calls did not interfere with anything they were doing at the time (Attachment 58).

46 On 18 January 2016, Sergeant Donkin submitted a Police Conduct Report to the Superintendent in charge of the Ethical Standards Division into the allegations that Mr Abdennabi was breaching secondary employment guidelines by engaging in secondary employment while on duty (Attachment 19).

47 As a result, on 20 January 2016, District Superintendent Kim Massam wrote to Mr Abdennabi and informed him that his authority to perform secondary employment was withdrawn effective immediately. He noted that Mr Abdennabi's application for secondary employment had identified his wife as a director of Carthage Bakery and that his application submitted on 6 June 2015 had been reviewed in accordance with the Secondary Employment Policy. He noted that there was a current criminal investigation relating to Mr Abdennabi's secondary employment at his previous business bakery address in Welshpool. District Superintendent Massam noted that he placed Mr Abdennabi's application to continue his secondary employment on hold, awaiting the outcome of the criminal investigation 'as I held concerns about the conflict between your secondary employment and your employment with WA Police.' He also noted that it had come to his attention 'that an allegation has been raised recently that while on duty you collected payments from businesses that you supply to as part of your secondary employment. If this allegation is sustained this would represent a

serious breach of the Western Australia Police Code of Conduct and the principles of *HR – 12 Secondary Employment*.’ The letter went on:

In light of this new information your approval to conduct secondary employment is rescinded, effective immediately.

Should you disobey my lawful order and continue to engage in secondary employment I will treat any breach very seriously and again institute further disciplinary interventions.

(Attachment 20)

- 48 On 4 February 2016, Mr Abdennabi wrote to Senior Sergeant Winstone asking that the order be rescinded and he sought permission to resume his secondary employment, citing the effect it was having on him, and that he was in the process of preparing the business for sale. He needed to continue to work in the business. This request was refused on 10 February 2016.
- 49 Between 15 and 24 February 2016, police undertook covert surveillance of Mr Abdennabi and the bakery premises at Rockingham.
- 50 On 26 February 2016, Mr Abdennabi was the subject of a managerial interview by internal investigators. This interview was recorded and transcribed (Attachment 49). In the interview, Mr Abdennabi acknowledged receipt of District Superintendent Massam’s letter of 20 January 2016 (ts 22), and that his request for the decision to be rescinded was rejected. He provided information to Detective Sergeants Garnett and Sainsbury about his attendance at the bakery in the period since the approval was withdrawn on 20 January 2016. At page 88 of the transcript, Mr Abdennabi acknowledged that he had been undertaking work for the bakery, including making deliveries, having initially denied doing so and providing an explanation for why his telephone might have been tracked as it moved through suburbs in the bakery’s truck.
- 51 The internal investigation into Mr Abdennabi’s conduct was completed on 11 April 2016. It recommended Mr Abdennabi be considered for loss of confidence. Inspector Smith from the Police Conduct Review Unit was appointed Review Officer and he completed a Summary of Investigation, in which he concluded that there was sufficient doubt about Mr Abdennabi’s honesty, integrity, performance and conduct to warrant a loss of confidence by the Commissioner. The Commissioner determined that he had lost confidence in Mr Abdennabi and signed a Notice of Intent to Remove. This was served on Mr Abdennabi on 4 May 2016 in respect of the five matters which we set out earlier. Mr Abdennabi was invited to provide a written response to the allegations.
- 52 At the time, Mr Abdennabi was facing criminal charges and advised the Commissioner that while he disputed the allegations, he was not prepared to comprehensively respond on the basis that it may prejudice his defence in his forthcoming criminal trial. The Commissioner considered this response and on 14 June 2016, advised Mr Abdennabi that he maintained his loss of confidence and had written to the Hon. Minister for Police requesting Mr Abdennabi’s removal from WA Police.
- 53 Since Mr Abdennabi’s removal, there were two criminal trials in the District Court of the charges of stealing bakery equipment valued at \$50,000. The first trial, which commenced on 23 April 2018, resulted in the jury being unable to return a verdict and the second trial, which commenced on 5 March 2019, acquitted him.
- 54 Following the acquittal, Mr Abdennabi sought leave to tender new evidence which included a statement made by him on 7 June 2019 in which he set out his personal and professional history, and put his position regarding his conduct and the allegations against him. The

WAIRC granted leave to tender part of that statement as it related to the criminal charges and the trials in District Court (2019 WAIRC 00761). In accordance with s 33R(8), the Commissioner was then entitled to reformulate his reasons, which he did on 26 November 2019, taking account of Inspector Mulligan's Memorandum of 26 November 2019 and the 74 attachments.

- 55 As we noted above, Mr Abdennabi made a statement on 7 June 2019 for the purposes of this appeal. In that part which we received into evidence, he responded to Reason for removal A. Mr Abdennabi denied lying to detectives during the investigation and stood by his answers given in the interview on 23 February 2016 regarding whether he had a key to Unit 5. He noted that this issue was before the jury in the first trial, and the jury was unable to return a verdict. He noted that in the second trial, Prior DCJ made a positive finding that he did not lie. Mr Abdennabi refutes the allegation that he lied in the execution of the search warrant on 10 November 2015. He says that it was clearly demonstrated in the second trial that the dough flattener seized from his premises was not the dough flattener alleged to have been stolen and was therefore not the dough flattener covered by the warrant.

Consideration and conclusions

- 56 The appellant bears the burden of establishing that the decision to take removal action was harsh, oppressive or unfair (*Police Act*, s 33Q(2)).
- 57 In *Carlyon v Commissioner of Police* [2004] WAIRC 11966; (2004) 85 WAIG 706, the WAIRC set out the tests to be applied arising from the terms of the *Police Act*. The WAIRC must also 'examine closely those reasons in terms of substance and the process by which they were formulated' [15]. It must decide whether the reasons are actually made out. It noted that the test is whether the decision of the Commissioner to remove Mr Abdennabi was harsh, oppressive or unfair (s 33Q(2)). It went on to elaborate on that test by reference to the 'fair go all round' test set out in relation to unfair dismissal matters in *Undercliffe Nursing Home v The Federated Miscellaneous Workers Union of Australia, Hospital, Services and Miscellaneous, WA Branch* (1985) 65 WAIG 385. In this case, Brinsden J noted that 'the question to be investigated is not a question as to the respective legal rights of the employer and the employee but a question whether the legal right of the employer has been exercised so harshly or oppressively against the employee as to amount to an abuse of that right?'
- 58 The WAIRC went on to note that s 33Q(4) of the *Police Act* imposes a specific duty on the WAIRC to have regard to the interests of the appellant and the public interest which is taken to include:
- (i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force; and
 - (ii) the special nature of the relationship between the Commissioner of Police and members of the Force.
- 59 It went on to observe:
- 183. This provision ensures that the industrial standard based as it is on an employer/employee relationship is, in the circumstances of this statutory appeal process, particular to the service within the Police Force.
 - 184. The interests of the Appellant and those aspects of public interest which go to the maintenance of public confidence in the Police Force have been identified by the parties in the cases considered here under section 33Q(1) of the Act, or in the reiteration by the WAIRC of legal principles which apply in an appeal.

185. What has not been articulated is the special nature of the relationship between the Commissioner of Police and members of the Police Force under section 33Q(4)(b)(ii) of the Act, which goes to the public interest and how these are to be regarded by the WAIRC in determining the appeal.
186. In our view this provision serves to remind the WAIRC to take into account that the nature of the relationship between the Commissioner of Police and members of the Police Force extends beyond those duties and obligations which are implied in normal employer/employee relationships. It goes beyond the member's duty of honesty, fidelity, obedience and to co-operate and the Commissioner of Police's duty to provide training and a safe work environment. It encompasses the commitment of a member to discharge the requirements of his/her commission whether on duty or off duty and to serve as a member of a disciplinary force. While the very nature of policing assumes that the environment in which members discharge their duties will not always be safe it is the duty of the Commissioner of Police to ensure that members receive appropriate education, training, information and supervision in order for them to make decisions appropriate to the proper discharge of their duties and in the public interest.
187. It is within the context of this relationship between the Commissioner of Police and the Appellant that the WAIRC must, in addition to the other matters cited in the statute, have regard in determining the appeal.
188. We consider that the specific requirements for the WAIRC to have regard to the interest of the Appellant and the public interest which is taken to include those matters set out in section 33Q(4)(b)(ii) of the Act can be accommodated with the industrial notion of a 'fair go all round'.

60 At [207], the WAIRC noted that 'there is an all encompassing requirement for members [of the Police Force] to uphold the highest standards of ethical behaviour.'

61 It is to be borne in mind that the Commissioner's action is not a dismissal but arises where, having regard to the officer's integrity, honesty or conduct, the Commissioner loses confidence in the officer's suitability to remain an officer (*McGrath v Commissioner of Police* [2005] WAIRC 01989; (2005) 85 WAIG 2006, [21]; *The Honourable Minister of Police v Western Australia Police Union of Workers* [2000] WAIRC 01174; (2000) 81 WAIG 356 [111] – [112], [127]).

62 While Mr Abdennabi was entitled to the presumption of innocence in his criminal trial, as noted in *AM v Commissioner of Police* [2009] WAIRC 01285; (2009) 90 WAIG 276 at [50], the issues before the Commissioner were about his integrity and honesty, about lies and deception in interviews, and in his removal of something he had no entitlement to take.

63 This case is all about Mr Abdennabi's conduct arising from his secondary employment. As noted in *Carlyon* at [186], as a police officer, he is required to discharge his commission whether on duty or off duty and to serve as a member of a disciplinary force. In this regard, Mr Abdennabi had a duty of integrity and honesty in his dealings and in how his secondary employment intersected with his responsibilities as a police officer. They are not separate.

64 Section 33Q(4) sets out the issues the WAIRC is required to have regard to in deciding such an appeal. They include:

Without limiting the matters to which the WAIRC is otherwise required or permitted to have regard in determining the appeal, it shall have regard to –

- (a) the interests of the appellant; and

(b) the public interest which is taken to include –

- (i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force; and
- (ii) the special nature of the relationship between the Commissioner of Police and members of the Force.

65 Mr Abdennabi says that the Commissioner's reasons for taking removal action are not soundly based. He also says that, in effect, if there is a reasonable basis for finding wrongdoing against him, based on material before the Commissioner, his removal was not justified for the purpose of maintaining the proper functioning of the Police Force.

66 We conclude, for the following reasons, and without reservations, that Mr Abdennabi subjugated his obligations and responsibilities as a police officer to his secondary employment and his commercial interests. It led him to act contrary to his obligation. His removal was in accordance with the public interest as set out in s 33Q(4)(b).

Consideration of Reason A

67 We have no hesitation in finding that it was open to the Commissioner to conclude that Mr Abdennabi lied or was deceptive as alleged in Reason A. Firstly, on 10 November 2015, Mr Abdennabi claimed he bought his dough flattener from someone in Adelaide, and that Mr Hishmeh sold his dough flattener to another bakery. Everything he took from the Welshpool premises was his, he said.

68 On 17 December 2015, Mr Abdennabi said he took the rollers and left the frame. George had dismantled it.

69 On 23 February 2016, he initially said that some of the components were his, and he identified the rollers, the cogs, the pushers and the sensors and the belt were his. However, he then changed his story from 17 December 2015 to say that to say that he did not have time to strip it down. He took the whole machine. At this point, for the first time, Mr Abdennabi asserted a claim over it as he was holding it against his deposit.

70 There were three conflicting explanations about what happened to Mr Hishmeh's machine – it was given to another bakery, the machine was dismantled and Mr Abdennabi's parts were taken but not the frame, and finally that it was not dismantled – there was not sufficient time, and it was being held against money owing. Not all of those explanations can be true. Further is the explanation that Mr Abdennabi purchased his machine from Adelaide.

71 We have no hesitation in finding that the explanations on 10 November and 17 December were lies. The final explanation came only after it was clear that the photographs from 9 and 10 April disclosed the disappearance of the dough flattener from its place in the Welshpool premises.

72 What is to be made of the findings of the District Court about whether Mr Abdennabi lied to Detective Sergeant Surman at the search on 23 February 2016 when he said he did not have access to Unit 5?

73 We note that in the first District Court trial, the Court did not have the video and transcripts of the search on 23 February 2016 before it. The evidence regarding whether Mr Abdennabi lied when he indicated that he did not have access to Unit 5 was from Detective Sergeant Surman's evidence and it was in the context of past inconsistent statements and whether Mr Abdennabi

deliberately lied. Sweeney DCJ, noted to the jury that Detective Sergeant Surman's evidence on that point was unchallenged in cross-examination. Her Honour pointed out to the jury the distinction between a deliberate lie affecting Mr Abdennabi's credibility and a deliberate lie constituting actual proof of guilt itself (ts 570). If the jury drew an inference that it was proof of guilt, that would support the State's case against Mr Abdennabi. In other words, her Honour left the matter in the jury's hands.

- 74 In the second trial, the transcript of the exchange and an excerpt from the video recording were before the Court (ts 1241 – 1248). Detective Sergeant Surman was cross-examined about what Mr Abdennabi said. Prior DCJ, in the absence of the jury, dealt with the issue of whether the State could submit that Mr Abdennabi's statement to Detective Sergeant Surman that he did not have access to Unit 5 constituted a lie, in particular, such a material lie as to reflect a consciousness of guilt. His Honour was not satisfied that there was sufficient evidence that it was a lie and decided that he would give no direction to the jury as to how they could use it in their deliberations, if they found that what Mr Abdennabi said was a lie (ts 1293).
- 75 Therefore, what was dealt with by two judges of the District Court was whether it was a deliberate lie and if so, was it a matter of credibility generally or proof of guilt of the offence? Sweeney DCJ made no decision, either in Mr Abdennabi's favour or not. Prior DCJ did not direct the jury one way or the other but concluded for his purposes that it was not a lie.
- 76 We find that the conflicting findings of the two judges in their decisions about directions to the jury are not determinative of the issue of whether Mr Abdennabi was deceptive about his access to Unit 5.
- 77 We also note that the issue before the District Court was whether, beyond a reasonable doubt, Mr Abdennabi had stolen the dough flattener that belonged to Mr Hishmeh. The matter before the WAIRC is whether it was reasonably open to the Commissioner to have concluded that Mr Abdennabi lied and was deceptive in the investigation and a different standard of proof applies. The Commissioner had the video evidence and transcript, as well as other evidence that was not before the District Court.
- 78 We have no hesitation in finding that it was open to the Commissioner to conclude that Mr Abdennabi was deceptive when he told Detective Sergeant Surman that he did not have access to Unit 5 and that the keys were with the landlord. In fact, Detective Sergeant Surman had been given the key by Fares, Mr Abdennabi's employee, from the table in Unit 1, the unit under Mr Abdennabi's control. In our view, an inference is clearly open that Mr Abdennabi had moved the machine from Unit 1 where it was last seen, to Unit 5. It was only discovered when, according to Detective Sergeant Surman, information was provided that Mr Abdennabi had access to that unit and had some property in there. Mr Abdennabi's intent appears to have been to attempt to delay the search of Unit 5.
- 79 In those circumstances, we conclude that it was reasonably open for the Commissioner to conclude as he did in Reason A.

Consideration of Reason B

- 80 In the search on 23 February 2016, Mr Abdennabi finally conceded that he had taken the dough flattener from the Welshpool premises, but he claimed he held it against money owed to him.
- 81 Two things lead us to believe this was not a genuinely held belief. Firstly, Mr Abdennabi came to this explanation after a number of concocted stories.

82 The second is that both Sweeney DCJ in the first trial and Prior DCJ in the second trial explained that once Mr Abdennabi's lease expired, he had no right over the machine. It does not require a finding of fraudulent intent for this reason to be soundly based.

83 However, the first reason of the concocted stories brings us clearly to a conclusion that the Commissioner was entitled to reasonably believe that Mr Abdennabi had removed the dough flattener without legal entitlement.

Consideration of Reason C

Secondary employment policy

84 The Western Australia Police policy dealing with a secondary employment by personnel (HR – 12 Secondary Employment) says that '[i]t is the policy of the Western Australia Police (WA Police) that personnel must not engage in any paid secondary employment without the approval of the Commissioner of Police or duly authorised Approving Officer.'

85 The purpose of the policy is set out as including to:

- Ensure that WA Police personnel do not compromise their ability to discharge the function of their public office by involvement in inappropriate secondary employment.
- ...
- Ensure that the involvement of any WA Police personnel in any form of secondary employment does not give rise to a real or perceived conflict of interest between the member's public and private interest.
- Ensure that the involvement in any secondary employment does not detract from the image of the WA Police as an institution of public trust.
- Ensure that all WA Police personnel are aware of their responsibilities in relation to any matter involving an application for secondary employment.
- Provide clear guidelines for determining applications for secondary employment and the conditions and limitations that will apply.

(Attachment 4)

86 The policy sets out a range of high-risk areas where a secondary employment will be approved only in exceptional circumstances. None of the businesses that Mr Abdennabi applied to undertake secondary employment in are listed within those high-risk categories.

87 The policy is quite detailed in terms of the process for approval and includes guidelines for approving officers and other matters.

88 HR – 12.00.04 Principles, sets out the basis of the secondary employment being approved. It states:

The major consideration regarding approval of an application for secondary employment shall be the preservation of the integrity of the WA Police, maintenance of operational capabilities, workplace safety and the avoidance of any real or perceived conflict of interest with police duties and responsibilities.

In every instance, secondary employment will be approved on the following principles:

1. The secondary employment is undertaken in the member's own time.
2. The timing and duration of the secondary employment will not compromise a member's ability to function effectively or interfere with work performance.

Neither the combined total of hours worked nor when the work occurs should render the applicant too fatigued (or otherwise unfit) to complete their rostered shifts and duties. The rostered hours of duty in accord with the relevant industrial agreements have primacy.

3. The secondary employment will not detract from the image of the WA Police as an institution of public trust.
4. Police duty takes precedence over secondary employment.
5. ...
6. WA Police personnel must not wear any part of their uniform or use any WA Police accoutrements, resources or confidential information in the course of undertaking secondary employment.
7. ...
8. ...

Breaches of this policy by members engaged in secondary employment will be viewed seriously and may result in revocation, and/or management or disciplinary action.

89 Clause HR – 12.00.05 Secondary Employment Revocation sets out that:

The Commissioner of Police may revoke any approval for secondary employment at any time when any of the principles are contravened or where, in the opinion of the Commissioner of Police, continuation of that secondary employment is not in the public interest, in the interest of the WA Police or in the interest of the member concerned. Revocations of secondary employment will be monitored and remedial action taken if required.

The office which approved the secondary employment may take necessary interim action including suspension of the approval, pending determination of the revocation process.

- 90 There is an appeal process set up in the policy at HR – 12.00.16 Appeal Process. This provides that any personnel who have had a secondary employment application rejected or an approval rescinded may lodge an appeal through the In-House Grievance System and have the appeal considered by a Determining Officer. There is no provision that enables an officer, having had their application rejected or approval rescinded, to commence or continue in the secondary employment during the course of the appeal process.
- 91 When he was interviewed on 26 February 2016, Mr Abdennabi accepted that his permission to perform secondary employment was rescinded. Not only was it rescinded, but District Superintendent Massam expressly informed him that if he disobeyed the lawful order and continued to engage in secondary employment, District Superintendent Massam would ‘treat any breach very seriously and again institute further disciplinary proceedings.’ It could not have been clearer.
- 92 However, in the interview on 26 February 2016, after obfuscating, attempting to find loopholes in the direction and after it became clear that he had been observed and his phone had been tracked, Mr Abdennabi conceded that he had been undertaking work in the bakery business. However, he attempted to provide mitigating circumstances.
- 93 He now says that there was no contumacy, that is, it was not obstinately or wilfully doing what was prohibited, without reasonable cause or in the belief that it would be excused. He says it

was because he was in financial difficulty and was trying to sell the business, and that he did not understand that he was actually prohibited from doing what he did.

- 94 The excuse of being in financial difficulty may be true. However, with respect to Mr Abdennabi, he chose to attempt to operate a business and to do so, he worked part time as a police officer. The approval for him to undertake secondary employment was rescinded because of the apparent conflict between his work as a police officer and his conduct of the business. Mr Abdennabi chose the business over his police responsibilities.
- 95 When he was interviewed, Mr Abdennabi was dishonest about the work he was actually performing for the business until he came to realise that his phone records were accessible to the Commissioner's investigators. Had he genuinely believed, as he asserted in his new evidence (Appellant's New Evidence, Appellant's Statement, 7 June 2019 [104]), that he thought he was complying with the order, as he understood at the time that it did not prohibit him from doing things that were confined to his home, then two things become apparent. The first is that he was dishonest and evasive in the interview about what work he had been doing until he noted, as we have indicated above, that the investigators had access to his phone records and knew that the phone had been moving about the city and he had been taking and making telephone calls. The second is that he acknowledged making deliveries to a number of suburbs a good distance from the bakery and from his home.
- 96 It may have been hard on Mr Abdennabi to be placed in the situation of having to cease operating the business immediately, but he brought it on himself by his conduct and his choice to treat his responsibility as a police officer as secondary to his business's needs. To be a police officer is not like a normal job. It brings far greater constraints and responsibilities and carries significant powers and authorities.
- 97 Reason C is made out.

Consideration of Reason D

- 98 We have set out earlier, in brief terms, the reports Sergeant Donkin received from other police officers working with Mr Abdennabi were that he was undertaking aspects of his business while on duty and in uniform.
- 99 On one hand, Mr Abdennabi denies the accusations and that he thought he had adequately separated the two potentially conflicting occupations. On the other, he acknowledges that with hindsight, he may have been naïve. He also attempts to defend himself by saying that the owner of one of his clients, Euro Kebabs, has passed away, otherwise he could corroborate his account.
- 100 With respect to Mr Abdennabi's arguments, in our view it was open to the Commissioner to have accepted the accounts given individually by four of his officers, by Constables White, Gallo, Sawyer and Fraser, about Mr Abdennabi's conduct. They included that he discussed with a client that they owed him money and said he would be back to collect it. He spoke to business operators, promoting his products. He appears to have accepted money from a debtor. He used his phone for business purposes while on duty. During those events, he was wearing his uniform and accoutrements and carrying with him the full force of his office.
- 101 Mr Abdennabi did not take sufficient steps to separate the two conflicting interests. He used times when he was on duty to further the interests of the business and this is contrary to the Policy. This had the real prospect of detracting from the image of the WA Police as an institution of public trust. In doing so, he undermined the integrity of the WA Police.

102 In our view, Reason D is made out.

Consideration of Reason E

- 103 Reason E is that during the managerial interview on 26 February 2016, Mr Abdennabi lied to internal investigators. This allegation relates to the interview where his activities on Wednesday, 24 February 2016 in respect of the operation of the business, were under investigation. Mr Abdennabi's initial account at pages 77 – 88 of the transcript was, he apparently conceded, objectively incorrect and that the true position was clarified at pages 88 – 97 of the transcript. At page 89 of the transcript, after being accused of lying, Mr Abdennabi explained that his memory had been refreshed while they were talking and that he had depression and has moments of complete blank out. At page 90, he is said to have explained 'that would have been yesterday' referring to his account of his activities initially given to the investigators.
- 104 Later in the interview, at pages 105 – 106, Mr Abdennabi denied undertaking the work for the bakery, including deliveries and meeting a prospective buyer, but said he was 'doing what needs to be done ...' to provide income for the business. He went on to say that he had to 'offload' the business at a huge loss.
- 105 Mr Abdennabi's intentions and conduct were made quite clear at pages 112 – 114 of the transcript when Detective Sergeant Garnett confirmed and reinforced that Mr Abdennabi had previously had his approval to undertake secondary employment withdrawn and that that related to engaging in any activity associated with the bakery. Mr Abdennabi attempted to have a prospective date put on that directive, however Detective Sergeant Garnett said to him '[y]ou should have cut off all ties on the 20th' (being 20 January 2016) (page 113), to which Mr Abdennabi continued to challenge and quibble.
- 106 Mr Abdennabi also split hairs when answering questions about for whom he was doing the work, including that he was doing work for or 'representing' his wife, when the work was clearly work for the Carthage Bakery business.
- 107 An examination of the remainder of the transcript leads us to draw a conclusion that Mr Abdennabi was far from forthcoming. Each piece of information about his activities that day had to be drawn from him by focussing and re-focussing the questions. In our view, it was clearly open to the Commissioner to conclude that Mr Abdennabi was not truthful about his activities that day, and only conceded when he knew the interviewers already had the answers.

Consideration of Reason F

- 108 There are a number of aspects of this reason. Mr Abdennabi employed Mr Zreik from the commencement of the bakery business in 2013. Mr Abdennabi is said to have known that Mr Zreik had a lengthy and significant criminal record. Mr Abdennabi accessed the Police records in 2013 but says he did not recall that when he became involved with Mr Zreik.

109 The issues in Reason F are:

1. Mr Abdennabi continued to employ Mr Zreik in spite of holding serious suspicions that Mr Zreik was dealing drugs from the bakery's truck. Mr Abdennabi put a tracking device on the truck without Mr Zreik's knowledge, in breach of the *Surveillance Devices Act 1998* (WA).
2. Mr Zreik was charged following an incident at the bakery in which he is said to have threatened to kill Mr Abdennabi with a knife and damaged the walls

of the bakery with a hammer. Mr Zreik was placed on protective bail and prohibited from attending the bakery or contacting or attempting to contact Mr Abdennabi. Mr Abdennabi sought to have the charges withdrawn because they affected his ability to run the business.

3. Mr Abdennabi caused Mr Zreik to breach his bail conditions by contacting him to resolve their dispute.

- 110 Mr Abdennabi says that it is incorrect that he did not take any steps when he began to suspect Mr Zreik. He says that when he was interviewed about the allegation on 25 November 2014, he explained to investigators that he noticed that Mr Zreik would go through more than a tank of fuel in the work truck; that Mr Abdennabi had installed a GPS tracker device on the truck and that the device showed that the truck was making stops at parklands and public toilets all over the metropolitan area. He suspected that these stops were for the purpose of selling drugs and he spoke to Sergeant Smith at Cannington Police Station and gave him a log of the details of the GPS tracker. He assumed the police would investigate and arrest Mr Zreik but that did not happen. Mr Abdennabi says he wanted to get rid of Mr Zreik as an employee, but he did not have a valid reason to do so.
- 111 Mr Abdennabi says that it must be borne in mind that there would have been a conflict of interest for him to have conducted a criminal investigation into Mr Zreik. He says he did what he should have done when a police officer suspects criminal behaviour on the part of an associate and that was to report it to police and not interfere in the police investigation. The allegation was investigated by the Internal Affairs Unit and finalised in 2014. It sustained findings of installing the GPS tracker on a vehicle without the driver's permission and also allowing Mr Zreik to breach a violence restraining order protecting Mr Abdennabi. Mr Abdennabi received a letter of corrective advice.
- 112 Mr Abdennabi says that it is now unfair to allege wrongdoing on his behalf on a basis which was not a sustained finding against him at the time. In any event, he says that such finding is not soundly based because there is no evidence that he did anything but what he should have done in the circumstances. Therefore, Mr Abdennabi says Reason F is not soundly based.
- 113 In our view, the first aspect is made out. In a managerial interview on 25 November 2014, Mr Abdennabi disclosed to detectives that he had installed the tracking device on the truck without Mr Zreik's knowledge (Attachment 74, page 13). He said he did so because he suspected Mr Zreik was dealing drugs. He reported the matter to Cannington Police but continued to employ Mr Zreik. Mr Abdennabi said they turned a blind eye to Mr Zreik's drug habit (page 46), and that he 'didn't want to get rid of him just like that, um, so I had to find a reason' (page 24). We respectfully agree with Inspector Mulligan's conclusion that '[b]y allowing Mr Zreik to continue to work for him, it appears Mr Abdennabi placed the commercial needs of the bakery ahead of his responsibilities as a police officer.' This is reinforced by Mr Abdennabi's motivation relating to the second aspect.
- 114 As to the second aspect, Mr Abdennabi sought out the investigating officer, Detective Constable Ferguson, and wrote to him requesting that the charges against Mr Zreik arising from Mr Zreik threatening him and damaging the premises be withdrawn (Attachment 68). He said that he and Mr Zreik had reconciled and he wished to withdraw his statements in the matter.
- 115 The duty counsel at Perth Magistrates Court, representing Mr Zreik, also wrote to Detective Constable Ferguson. She said that she was aware that Mr Abdennabi, the

complainant, may have contacted him about withdrawing the charges. She explained that ‘the two men are cousins and business partners. They are both directors of the same company and play an active role in running their bakery business together on a daily basis. It is likely that if the charges against Mr Zreik are not withdrawn, there may be a considerable practical and commercial burden placed on Mr Abdennabi’ (Attachment 69).

- 116 Inspector Mulligan concluded that Mr Abdennabi’s conduct in attempting to have serious criminal charges against a man with significant criminal history discontinued was not in the public interest. It was said to have been established that Mr Abdennabi was trying to have Mr Zreik’s charges discontinued so that Mr Zreik could get back to working for him in the bakery. This is said to constitute a conflict of interest and Mr Abdennabi was provided with verbal guidance.
- 117 We agree that this constitutes a serious conflict between Mr Abdennabi’s obligations as a police officer and his business interests. They are not reconcilable.
- 118 As to the allegation of Mr Abdennabi facilitating Mr Zreik breaching bail, this was said to have occurred when Mr Zreik appeared in court on 24 October 2013 and when he was said to have been accompanied by Mr Abdennabi. Mr Zreik advised the magistrate that he and Mr Abdennabi had discussed their relationship and solved everything, despite his bail conditions stipulating that Mr Zreik was not to contact or attempt to contact Mr Abdennabi. This is said to effectively admit a breach of Mr Zreik’s protective bail conditions. However, we are not satisfied that the evidence is clear enough to enable this conclusion.
- 119 The transcript of the hearing in the Magistrates Court on 24 October 2013 does not indicate that Mr Abdennabi accompanied Mr Zreik to the court, as alleged, thereby causing Mr Zreik to breach the protective bail condition (Document 72). The transcript merely records that the accused, Mr Zreik, informed the magistrate that ‘[w]ell, I just want to – the victim’s here’ [the victim being Mr Abdennabi] ... there’s the victim. We had a discussion. We solved everything.’ However, in the interview (Attachment 74, page 41), Mr Abdennabi said that he called the detectives who were investigating and asked them to drop the charges. Notwithstanding that Mr Zreik had threatened to kill him and pulled a knife on him, Mr Abdennabi still wanted him back. Mr Zreik was apparently remorseful and was also necessary to the business. Mr Abdennabi thought he would give him a second chance (Attachment 74, page 43). He did not only go to the detectives, but he went to the Perth Magistrates Court with a letter. He said that he spoke to the prosecutor because the detective told him he could do nothing about it, it was out of his hands, so he went to speak to the prosecutor (page 44).
- 120 In our view, there is more than one possible interpretation of Mr Zreik’s expression ‘[w]e had a discussion’. It may be seen in the context of Mr Abdennabi having approached the prosecutor and Mr Zreik’s counsel to seek that the charges be dropped.
- 121 However, we have no hesitation in finding that the other two issues arising from Mr Abdennabi’s association with Mr Zreik were sufficient to make it open to the Commissioner to conclude that the association was contrary to Mr Abdennabi’s obligation as a police officer.
- 122 In our view, Mr Abdennabi should not have placed himself in a position of having a person who was valuable to his business, undertaking work using the truck, and engaging in activity which he suspected was unlawful. It is true that he could not deal with the matter himself as a police officer and he was correct in his action of reporting it to Cannington Police. However,

that does not mean that he could then turn a blind eye and ignore the fact that he had serious concerns about his employee's activities.

123 It is clear, too, that he was suffering a conflict of interest because if he lost Mr Zreik's services, it would have been detrimental to his business.

124 In our view, Mr Abdennabi again placed his commercial interests above his responsibilities and obligations as a police officer and this is one of the significant issues in the potential for police officers in engaging in secondary employment to have a serious conflict of interest.

125 This reason is made out.

Conclusion regarding grounds 1 and 2

126 In all of the circumstances, we conclude that on the material before the Commissioner of Police, it was open to him to conclude that Mr Abdennabi was guilty of the wrongdoing alleged of him in all but one relatively minor aspect of those reasons.

127 As to ground 2, that it was not reasonably open to the Commissioner to have removed Mr Abdennabi for any alleged wrongdoing that is provable against him, in our view the history of Mr Abdennabi's conduct as part of the operation of his commercial interests makes clear that he placed those interests above his obligations as a police officer. They caused him to lie and be deceptive to the Commissioner's officers on a number of occasions relating to a number of issues and to engage in activities contrary to his obligations.

128 We have not one moment's hesitation in concluding that there was good reason why the Commissioner would have ceased to have confidence in Mr Abdennabi's integrity, honesty or conduct. His conduct entitled the Commissioner to conclude that it was in the public interest for him to be removed as that conduct would easily erode public confidence in the integrity, honesty and conduct of members of the Police Force. His removal was not harsh, oppressive or unfair.

129 We would dismiss both grounds of appeal.

Concluding comment

130 We note in passing that while the policy dealing with secondary employment places limits and restrictions of such employment, it seems to us that there is something inherently in conflict between carrying out commitments as a sworn police officer 'whether on duty or off duty' and conducting secondary employment or operating a business. They seem to provide many, possibly unforeseen, opportunities for conflict. Yet the policy and processes suggest that it is an entitlement, not an exception.