



## HIGH COURT OF AUSTRALIA

8 February 2013

### COMMISSIONER OF POLICE v EATON & ANOR

[2013] HCA 2

Today a majority of the High Court allowed an appeal brought by the appellant, the Commissioner of Police of New South Wales, against a decision of the Court of Appeal of the Supreme Court of New South Wales which held that the unfair dismissal regime in the *Industrial Relations Act 1996* (NSW) ("the IR Act") applied to the dismissal of a probationary police officer under the *Police Act 1990* (NSW). The first respondent, Mr Eaton, had applied to the Industrial Relations Commission of New South Wales ("the IR Commission") for a remedy under s 84(1) of the IR Act claiming his dismissal from the New South Wales Police Force was harsh, unreasonable or unjust. He had been employed as a probationary police officer but was dismissed by a delegate of the appellant under s 80(3) of the *Police Act*, which permits the dismissal of a probationary police officer at any time and without reason.

The IR Commission held that the first respondent's dismissal was harsh and unreasonable and unjust, and the appellant was ordered to reinstate him. On appeal, a Full Bench of the IR Commission held that the IR Commission lacked jurisdiction to determine the first respondent's claim and his claim was dismissed. The Full Bench held that a dismissal made pursuant to s 80(3) of the *Police Act* was excluded from review by the IR Commission under the unfair dismissal regime of the IR Act. The first respondent successfully applied to the Court of Appeal for judicial review of the Full Bench's decision. The Court of Appeal held that the IR Commission had jurisdiction and remitted the matter to the Full Bench to be determined according to law.

On appeal by special leave to the High Court, the appellant submitted that the terms of s 80(3) of the *Police Act* were inconsistent with a right to review under the IR Act. The Court, by majority, agreed and allowed the appeal. The majority held that the *Police Act* indicated a legislative intention that a decision made under s 80(3) to dismiss a probationary police officer was not to be subject to review by the IR Commission. This was indicated in several ways including the manner in which s 80(3) was framed, suggesting as it did that the appellant's power to dismiss was unfettered. There was incoherence between reasons not being required by s 80(3) and the matters to be considered by the IR Commission in determining an unfair dismissal claim and, in addition, the relief available under the IR Act was at odds with the appellant's right under s 80(3) to dismiss. The majority also considered that an anomalous position would result if probationary police officers were given greater procedural rights under the IR Act's unfair dismissal regime than confirmed police officers whose unfair dismissal claims are regulated by the *Police Act*.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*