

Queensland Police Union of Employees

217 North Quay, Brisbane, Qld 4000. Telephone (07) 3259 1900

ABN 75 781 631 327

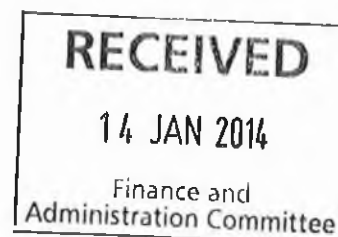


Fax: (07) 3259 1994
Email: ileavers@qpu.asn.au

Mr Steve Davies MP
Chair
Financial and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

14 January 2014

Dear Mr Chairperson



Re: Inquiry Into the *Public Service and other Legislation (Civil Liability) Amendment Bill 2013*

I write on behalf of the Queensland Police Union of Employees (QPUE), which represents over 11,000 sworn and unsworn officers throughout Queensland. I thank you for the opportunity to be heard on this very important and sensitive issue for the QPUE.

The QPUE has long advocated for legislative protections for officers (sworn and unsworn) in circumstances where they undertake their duties in good faith and without gross negligence. The QPUE welcomes the *Public Service and other Legislation (Civil Liability) Amendment Bill 2013*. Legislation of this nature is far too long overdue.

Our only criticism of the Bill is that it is restricted to civil liability, the QPUE position is that officers (sworn and unsworn) should also be protected criminally when they are conducting their duties in good faith and without gross negligence.

We note the comments of Premier Campbell Newman's explanatory speech from the 19th November 2013 where he stated:

Police perform a critical role in ensuring safe communities across Queensland. In the often highly complex situations they respond to, and despite performing their roles professionally and in good faith, the nature of their business means there are occasional incidents that cause injury to people or damage to property. The potential consequences that flow to the individual officer as a result of these unfortunate occurrences — the threat of civil liability — place unnecessary pressure on officers and has the potential to impact decision making, especially in high pressure, operational situations. This can ultimately reduce the level of service that police are willing and able to provide to our community.

These comments from the Premier are the exact reason why police officers need this legislative protection, not only from civil proceedings, but criminal as well. I have attached the QPUE 'white paper' on this issue – ***'Protecting those who Protect Us'***.

I am available on 3259 1900 should you wish to discuss this matter further otherwise please contact Mr Calvin Gnech, the principal lawyer of the Queensland Police Union Legal Group.

Yours Faithfully

A handwritten signature in blue ink, appearing to read 'Leavers', with a long horizontal flourish extending to the right.

Ian Leavers
General President & C.E.O.



BRIEFING PAPER

**PROTECTING THOSE WHO
PROTECT US**

The Case for the Abolition of Private Prosecutions in this State

and

*the Introduction of a Statutory Defence to Protect Police against the Civil and
Criminal Consequences of acts done in Good Faith*

PROTECTING THOSE WHO PROTECT US

A Briefing Paper from the Queensland Police Union of Employees

1. Introduction

- [1] At a time when we are focussed on the question of how to better protect our police officers in the field, the answer is not solely confined to considerations of police numbers and other resources. Rather, we also need to give proper consideration to the legal environment in which we call upon our police to work.
- [2] In recent years, police officers have been beset by prosecutions for simple offences brought by private individuals and, in each case in which that has occurred, the prosecution has ensued despite both the CMC and the Director of Public Prosecutions ruling that the officer had no case to answer.
- [3] Further, the legislative protection extended to police officers for acts committed in the course of their duties is quite unsatisfactory. Although we expect police to keep us safe and maintain order in often the most dangerous of situations, if police officers make an error of judgement in the execution of their duties, we leave them exposed to criminal prosecutions as well as civil liability.
- [4] Simply, it is time for the community to rally behind police to protect them when they are out doing their job – and this can only be achieved through proper legislative safeguards.

2. Private Prosecutions

- [5] The right of individuals to launch private prosecutions has no place in a modern society. Such a right has been abolished in Western Australia, and Queensland should follow suit.
- [6] The historical justification for the right on the part of citizens to commence a prosecution is rooted in notions that such a right was necessary as a check on the exercise (or non-exercise) of the powers of the State – if the State omitted to act, the individual might.

PROTECTING THOSE WHO PROTECT US

A Briefing Paper from the Queensland Police Union of Employees

- [7] But such a justification can no longer be sustained. Why? Because the system already has adequate safeguards to ensure that any police officer who should be prosecuted is in fact prosecuted. Indeed, those safeguards exist on no less than three separate levels.
- [8] First, the QPS provides a system of rigorous internal oversight. Secondly, anything the QPS might overlook will quickly be pounced on by the CMC. Thirdly, the Director of Public Prosecutions in Queensland has an over-arching responsibility to make sure that criminal offences are prosecuted in all appropriate cases.
- [9] These safeguards are not mere matters of policy – they are enshrined in Statute. Moreover, they work. Save for one case, there hasn't been a successful private prosecution against a police officer in the State for decades.
- [10] Of course, the reason for this is clear - in any case where the conduct of a police officer is properly the subject of a prosecution, the oversight and review provided by the QPS, the CMC and the DPP ensures that a prosecution with respect to that conduct will be inevitable.
- [11] True it is that in Queensland – as in all other States and Territories of Australia – the Attorney-General may elect to put an end to a privately commenced prosecution for an indictable offence, but no such power exists with respect to prosecutions for simple offences. And so, such prosecutions continue to be brought, however unsuccessfully.
- [12] But lack of success has not inhibited the individuals (or their lawyers) who continue to launch private prosecutions. Across the State these are commenced at a rate, on average, of ten per year and, when they do, they stall careers, cause untold distress and result in monumental legal bills for the officers involved. Indeed, private prosecutions rarely offer anything to defray those costs because the “prosecutor” usually does not have the means to make good a costs order on dismissal of the complaint.

PROTECTING THOSE WHO PROTECT US

A Briefing Paper from the Queensland Police Union of Employees

- [13] The QPUE therefore seeks an amendment to the *Justices Act 1886* to make it clear that a prosecution against a police officer for a simple offence (and which is alleged to have been committed in the course of that officer's duties) may only be commenced by the Director of Public Prosecutions (Qld).

3. The Good Faith Defence

- [14] Police officers are regularly confronted with dangerous or life-threatening situations. They require immediate assessment and response for the protection of the public. In such circumstances, an error of judgement, overreaction or unintended oversight should not result in the officer concerned being liable to criminal or civil consequences – and yet they currently do.
- [15] Police officers ought to be provided with legislative support and comfort that follows from the knowledge that a spontaneous action to a dangerous situation will not render them liable for criminal or civil litigation. What the QPUE proposes is that the *Police Service Administration Act 1990* be amended to provide a defence to police officers in all such cases.
- [16] Such a defence is entirely warranted when regard is had to the unique nature of a police officer's duties. No other group in the community, with the exception of the defence force, is so deliberately put in harm's way on such a regular basis. No other group is expected to make operational decisions under such pressure, or in such circumstances.
- [17] Police officers should not be expected to respond to situations in the field with the constant threat of legal proceedings hanging over their heads. Provided they act in good faith and without gross negligence, they should be immune from liability with respect to any act carried out, or omission made, in the performance of their duties.

PROTECTING THOSE WHO PROTECT US

A Briefing Paper from the Queensland Police Union of Employees

- [18] That is not to say that the QPUE advocates blanket immunity – far from it. Police officers who do not act in good faith in the execution of their duties will not have the benefit of the protection any more than officers who have approached their task in a grossly negligent way can expect to be immune from the consequences.
- [19] Of course, the existence of protective legislation in appropriate circumstances is uncontroversial. Judicial officers in this State have long enjoyed the protection offered by the provisions of s. 30 of the *Criminal Code*:
- “Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by the judicial officer in the exercise of the officer's judicial functions, although the act done is in excess of the officer's judicial authority, or although the officer is bound to do the act omitted to be done.”
- [20] Additionally, the above protection has been extended by the Parliament to administrative functions or powers conferred on judicial officers under various Statutes.¹
- [21] The need for the above protections is obvious and it is the QPUE's submission that the necessity for similar legislation for the protection of police officers is equally obvious, although necessarily different in content to that required by judicial officers.
- [22] Unfortunately, the legislative approach in the case of police officers has been piecemeal. Only limited protection against civil or criminal liability is afforded to officers in the field,² and no provision extends protection to acts or omissions in the course of an officer's duties that are free of bad faith and gross negligence.
- [23] In short, police officers should be supported in the field through the knowledge that their spontaneous action to a dangerous situation will not render them liable for criminal or civil litigation.

¹ Section 27AA of the *Supreme Court of Queensland Act 1991*; Section 28AA of the *District Court of Queensland Act 1967*; Section 21A of the *Magistrates Court Act 1991*.

² See: Sections 38, 122, 128B, 225, 228, 258, 259, 260, 262 and 301 of the *Police Powers and Responsibilities Act 2000*; Sections 10.2R, 10.2V and 10.5 of the *Police Service Administration Act 1990*; Section 536 of the *Mental Health Act 2000*

PROTECTING THOSE WHO PROTECT US

A Briefing Paper from the Queensland Police Union of Employees

4. The Draft Provision

[24] The QPUE therefore proposes the following amendment to the *Police Service Administration Act 1990*:

“10.5A Protection from liability for acts or omissions in the course of duty

- (1) This section applies to an officer, staff member, recruit or volunteer, acting, or purporting to act, in the execution of duty as an officer, a staff member, recruit or volunteer.
- (2) The officer, staff member, recruit or volunteer is not liable, civilly, criminally or under an administrative process, for anything done or omitted to be done in good faith and without gross negligence when acting, or purporting to act, in the execution of duty as an officer, a staff member, recruit or volunteer.”