

Question on Notice
No. 878
Asked on 19 August 2004

MR FOLEY asked the Minister for Police and Corrective Services (MS SPENCE) -

QUESTION:

With reference to a constituent who has a friend who has been fined \$220 for moving a "switched off" mobile phone to the dashboard of her car and was deemed to be driving without due care and attention and to a recent news report that a Judge was let off a \$300 fine when the Director of Public Prosecutions (DPP) decided not to proceed with this case.

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Has anybody else charged with this offence had their case dropped, or is it a case of the DPP or the Queensland Police Service being scared of the Judge?

ANSWER:

All offences for Driving without Due Care and Attention would be dealt with in the Magistrates Courts and therefore not handled by Director of Public Prosecutions. The only exception would be where other related charges of an indictable nature were before the higher courts. In these circumstances, the sentencing Judge could take into account the circumstances of the Driving without Due Care and Attention in their sentence. In such circumstances the summary charge in the Magistrates Court would be withdrawn.

This year, in matters appearing in the Brisbane Central Magistrates Court alone, the Queensland Police Service has discontinued proceedings against 5 persons for charges arising from traffic accidents. The charges involved were 4 charges of driving without due care and attention and 1 charge of failing to give way.

In all cases, the discretion to discontinue prosecution was based on due deliberation of the sufficiency of evidence and the public interest. Decisions were made impartially, without fear or favour, malice or ill-will.

In relation to your constituent, without further detail it is impossible to comment on this particular case. However, if a charge of Driving without Due Care and Attention was sustained, it is likely that there would have been other evidence to substantiate the charge.

It is been held by the Full Court in *Johannesen v. Zeller*, that the words "due care and attention" mean that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances, which circumstances are in part created by the defendant driver".

