

SECOND READING SPEECH

Justices Amendment (Complaint Validation) Bill 2009

In 2003 the Rules Committee of the Magistrates Court made Rules in relation to the laying of complaints against alleged offenders.

The Rules purported to permit the making of complaints in the name of a Department or public instrumentality in which the person who initiated the complaint was employed.

Tasmania Police have been issuing some complaints in the name of the Department of Police and Emergency Management (and until 2006 the Department of Police and Public Safety) since the Rules came into effect in January 2004.

On 27 May 2009 a decision was handed down in the Magistrates Court which held that the Rule allowing the making of complaints in the name of a Department [Justices Rule 6(3)(b)] was ultra vires, thus invalidating any complaints made in terms which the Rule had purported to authorise.

Not all complaints during this period have been issued in the name of the Department as there have been differing practices between regions but in the Southern Region complaints have been issued in that way and those which have not yet been finalised before the courts are therefore open to potential challenge.

More recently the bulk of complaints in the South have been validly made in the name of an individual police officer rather

than in the name of the Department but this still leaves several thousand outstanding complaints which are defective and need to be validated.

Some of these complaints may be able to be validly reissued in the name of a particular police officer, there are many others which may be held to be invalid and the cases dismissed solely for that technical reason.

Mr Speaker complaints can only be reissued if the time for instituting proceedings has not expired which is a relatively short 6 months from the date of the offence in most cases and many complaints that are yet to be dealt with have been issued well prior to that date.

While in some other circumstances it is possible to have a complaint amended when it comes before the court, the decision of the Deputy Chief Magistrate on 27 May was to the effect that the complaint issued in the name of DPEM was a nullity and as such could not be amended on application by the prosecution to remedy the defect.

The Magistrate also noted that the police officer who had signed the complaint on behalf of the Department of Police and Emergency Management was not in fact an employee of the Department and therefore even if Rule 6(3)(b) were not ultra vires the complaint would still have been defective as the complaint must be made by a public officer on behalf of the Department in which the public officer is employed.

Police officers are appointed by the Commissioner of Police under the Police Service Act and are not departmental employees employed under the State Service Act.

I understand that there are approximately 5000 complaints that are at risk unless this validation Bill is passed, preferably as soon as possible.

These are not complaints in relation to minor traffic matters, which are generally dealt with by way of infringement notice, but complaints that cover the whole range of criminal offences dealt with in the Court of Petty Sessions, including drink driving, stealing and assault.

It would be very unfortunate if a person who has committed an offence were to avoid facing the consequences because of such a technicality.

This Bill retrospectively validates complaints made in the name of a Department and also complaints issued by police officers on behalf of the Department of Police and Emergency Management or Department of Police and Public Safety, even though, as sworn police officer, they are not employed in that Department.

The Bill provides that a complaint issued in the name of a Department in reliance on rule 6(3)(b) is taken to have been validly made by the public officer who signed the complaint, and that public officer is taken to be the complainant.

The Bill further provides that the validation applies whether or not the proceedings on the complaint have been finally determined so that convicted offenders will not be able to challenge their conviction on the basis that the original complaint was defective. The only exception is that validation will not apply to a complaint that has already been dismissed by a Court.

Validation will also apply whether or not the public officer who made the complaint on behalf of a Department was employed in that Department to cover the situation with police officers that I have already described.

The Magistrates Rules Committee proposes to repeal the offending rule relating to the laying of complaints by Departments.

This will mean that future complaints will be laid by an individual as was the practice prior to 2004.

CLAUSE NOTES

Justices Amendment (Complaints Validation) Bill 2009

Clause 1: Short Title

Clause 2: Commencement on Royal Assent

Clause 3: Principal Act

Clause 4: Section 27 amended by:

- Inserting a new subsection (4) which provides that where a complaint has been made in purported reliance on Rule 6(3)(b) of the *Justices Rules* the complaint is taken to be validly made by the public officer who signed it and that public officer is taken to be the complainant. The complaint need not be sworn before a justice.
- Inserting a new subsection (5) which provides that subsection (4) will apply to a complaint whether or not the complaint has been finally determined (except for those referred to in subsection (6)) and whether or not the public officer who made the complaint on behalf of an agency, Department or instrumentality was employed in that agency, Department or instrumentality. This will address the issuing of the complaints on behalf of the Department of Police and Emergency Management or its

predecessor by a police officer who was not employed in that Department.

- Inserting a new subsection (6) to preserve the outcome for any complaint dismissed by a court on the basis that the complainant is not a person with legal capacity to bring the complaint.

FACT SHEET

Justices Amendment (Complaints Validation) Bill 2009

On 27 May 2009 a decision was handed down in the Magistrates Court which held that the Rule allowing the making of complaints in the name of a Department [Justices Rule 6(3)(b)] was ultra vires, thus invalidating complaints made in terms purported to be authorised by the Rule.

Tasmania Police had been issuing some complaints in the name of the Department of Police and Emergency Management (and until 2006 the Department of Police and Public Safety) since the Rules came into effect in January 2004.

This Bill retrospectively validates complaints made in the name of a Department and also complaints issued by police officers on behalf of the Department of Police and Emergency Management or Department of Police and Public Safety, even though they are not employed in that Department. Complaints which have already been dismissed by a Court will not be validated by the legislation.