

**DISTRICT COURT OF QUEENSLAND**

**REGISTRY:** Brisbane  
**NUMBER:** 3653 of 2023

Plaintiff: **SIMON HICKEY**

AND

First Defendant: **NICHOLAS PERRIMAN**

AND

Second Defendant: **JUSTIN ZUANETTI**

AND

Third Defendant: **QUEENSLAND POLICE SERVICE**

**DEFENDANT'S OUTLINE OF ARGUMENT**

[for the hearing listed: 14 March 2024]

**Material**

<u>No.</u>	<u>Document</u>	<u>eCourts</u>	<u>Date Filed</u>
1.	Claim, and Statement of Claim.	1	11.12.2023
2.	Defence.	2	15.02.2024
3.	Plaintiff's Application.	4	04.03.2024
4.	Affidavit of Paul Lack.		12.03.2024

**Relevant Cases and Legislation**

- *Uniform Civil Procedure Rules 1999 (Qld)* (“**UCPR**”) – rr. 69, 74, 375, and 377.
- *Police Service Administration Act 1990 (Qld)* (“**PSAA**”), ss. 2.3, 10.3, and 10.5.
- *Shorten v Bell-Gallie & Anor* [2014] QCA 57.
- *Wood v State of Queensland* [2023] QSC 221.

**The application**

1. By his Application filed 4 March 2024 (the **Application**), the Plaintiff applies for leave to amend his Claim and Statement of Claim, to:

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Outline of Submissions

Filed on behalf of the defendant

Per Paul Lack  
LT5/POL048/5366/LAP

GR Cooper  
CROWN SOLICITOR  
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- (a) Change the Third Defendant from the Queensland Police Service<sup>1</sup> to ‘The State of Queensland’.<sup>2</sup>
    - (i). Subject to below submissions, the Defendant does not oppose this aspect of the Plaintiff’s Application.<sup>3</sup>
  - (b) Change the ‘sequence’ of the named Defendants, indicating that he seeks to make: the First Defendant the ‘State of Queensland’; the Second Defendant ‘Nicholas Perriman’ (who was previously the First Defendant); and the Third Defendant ‘Jusin [sic] Zuanetti’ (previously the Second Defendant).
    - (i). Subject to below submissions, the Defendant opposes this aspect of the Plaintiff’s Application.
    - (ii). On 11 March 2024,<sup>4</sup> the Plaintiff’s position has changed, and he now agrees to remove the First and Second Defendants (individual police officers) as Defendants.<sup>5</sup>
      - A. The Defendant does not oppose the Plaintiff’s change in position in this regard.
  - (c) Add ‘exemplary damages’.
    - (i). Not opposed.
  - (d) Amend the Statement of Claim as to ‘numerical order’ (paragraph numbers) and seeks to plead a cause of action for ‘misfeasance in public office’.
    - (i). Not opposed.
2. The Defendant’s position in regard to the ‘proper defendant’ for the proceeding is clearly stated at paragraph 1 of its Defence filed 15 February 2024.<sup>6</sup> It appears that the Plaintiff has accepted the State’s position in this regard and will seek to amend the Claim and Statement of Claim to that affect.

### Relevant Law – r. 69

3. The Plaintiff is seeking the removal and substitution of a party per r. 69(1) of the UCPR, which relevantly states:

**“69 Including, substituting or removing party**

- (1) The court may at any stage of a proceeding order that—

<sup>1</sup> Which is not a legal entity capable of suing or being sued in name (per. 2.1 of the *Police Service Administration Act 1990* (Qld) (“PSAA”)); and see:

<sup>2</sup> Although not stated in the Application, rr. 69 and 377 of the UCPR apply.

<sup>3</sup> Court document 2, Defence at paragraphs 1(a) to 1(f).

<sup>4</sup> Affidavit of Paul Lack, dated 12.03.2024, exhibit PAL-4.

<sup>5</sup> In light of the statutory immunity per s. 10.5 of the PSAA; See recent decision of at *Wood v State of Queensland* [2023] QSC 221, per Kelly J at [22] to [26] and the citations referred therein.

<sup>6</sup> Court document 2.

(a) a person who has been improperly or unnecessarily included as a party, or who has ceased to be an appropriate or necessary party, be removed from the proceeding;

...

(3) If the court makes an order including or substituting a party, the court may give directions about the future conduct of the proceeding.”

### **Applying the relevant law to this Application.**

4. The Defendant does not oppose removing the Queensland Police Service (QPS) as a party from the proceedings, as the QPS is not a legal entity, and the proper defendant is the State of Queensland.
5. Additionally, both ‘Nicholas Perriman’ and ‘Justin Zuanetti’ (individual police officers) ought to be removed as parties from this proceeding due to the statutory immunity afforded to both police officers per ss. 10.3(1), 10.5(2) and 10.5(3) of the PSAA, because neither police officer can incur any civil liability for engaging, or the result of engaging, in conduct in an official capacity, and any civil liability determined by a court, instead attaches to the Crown (State of Queensland), and not the individual officers.<sup>7</sup> Therefore, their inclusion as parties to this proceeding is unnecessary.
6. The Plaintiff in an email to Crown Law dated 11 March 2024<sup>8</sup> agrees to removing the First and Second Defendants.

### **Orders Sought**

7. Per the ‘Draft Order’.
8. The Plaintiff pay the Defendant’s costs of and incidental to the Application.

P Van Grinsven  
Counsel for the Defendant  
12 March 2024

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<sup>7</sup> *Wood v State of Queensland* [2023] QSC 221, per Kelly J at [23] stating in regard to s. 10.5 of the PSAA, ‘The provision provides a statutory immunity from civil liability to individual police officers for their conduct in an official capacity and transfers liability to the State. Civil liability extends to liability of any type for the payment of an amount because of a claim in tort or another form of action in relation to the conduct. In the present case. Officers Egan and Lee have the benefit of the statutory immunity and no basis has been established for their joinder to the proceeding.’ [citations omitted]; see also *McEwan v The Commissioner of Taxation of the Australian Taxation Office* [2022] QSC 81 per Martin SJA at [56] to [57], where the tenth defendant was a police officer employed in the Queensland Police Service. His application for removal as a party was successful on the basis that he was protected from incurring any civil liability in the circumstances by reason of s10.5 of the *Police Service Administration Act 1990* (Qld).

<sup>8</sup> Affidavit of Paul Lack, dated 12.03.2024, exhibit PAL-4.