



## Police Legislation Amendment (Civil Liability) Bill.

### Second Reading

**Mr JOHN WATKINS** (Ryde—Minister for Police) [12.30 p.m.]: I move:

That this bill be now read a second time.

Our police need and deserve the community's full support in tackling crime and making the community safe. They need to know that in carrying out their challenging duties—in a fair and impartial manner—they will not be subject to spurious claims that will put them and their families at risk. They need to know that if a criminal tries to abuse the system to escape justice, the system will back them up. That is why the Police Legislation Amendment (Civil Liability) Bill is so important. It will provide protection against legal claims for police and swing the balance back in their favour. This bill continues the reforms brought forward under the Civil Liability Act 2002 and the Civil Liability Amendment (Personal Responsibility) Act 2002.

The bill strikes the necessary balance. It protects police from personal legal claims, while still ensuring officers who have engaged in serious and wilful misconduct can be held accountable. The bill is governed by a fundamental principle: no police officer should ever fear that their home or other personal assets are at risk simply because they have done their job. In November last year the Australasian Centre for Policing Research published a paper entitled "Issues in Civil Litigation Against Police". It found the incidence and nature of civil litigation by members of the public against police are growing issues of concern. Although New South Wales has laws to prevent individual police and other public officers from being personally liable for damages arising from their acts or omissions, the Government believes these additional measures are needed.

There is no organisation with greater responsibility for the protection of persons or property than NSW Police. In 2002-03, 44 of the 186 police tort claims involved claims against individual officers as well as the Crown, with a total of 82 officers being individually sued. Clearly, some of these claims against individual officers are lodged as revenge for the entirely appropriate apprehension of criminals. Although individual officers may not be personally liable to pay damages at the end of civil proceedings, joining them as a defendant is a significant cause of stress—often over an extended period of time. That is why the NSW Police Family Alliance has had serious concerns that stress extends to officers' families and to the community at large.

I turn to the detail of the bill. The most significant provisions are in schedule 2 to the bill, which amends the Law Reform (Vicarious Liability) Act. Items [1] to [4] of schedule 2 are machinery provisions that make that Act easier to read and interpret. Item [5] of the schedule inserts into the Act a new part 4 to deal with legal proceedings for the torts of police officers. A new section 9B is the central provision of the bill. Section 9B (1) provides that, subject to specified exceptions, a person cannot directly sue a police officer for a police tort claim. Section 9B (2) provides that in such cases the plaintiff can only sue the Crown. Section 9E (f) makes it clear that this restriction does not apply where the plaintiff is suing the police officer for something the officer did in a personal capacity. The practical effect of subsections (1) to (3) of section 9B is to prevent an individual officer from being directly sued, unless the vicarious liability of the Crown is ultimately an issue in dispute.

Section 9B (4) provides important safeguards for plaintiffs. If the Crown files a defence that makes vicarious liability an issue the plaintiff will be able to amend its statement of claim. Section 9C requires the court, where practicable, to make an initial determination on the issue of vicarious liability where the Crown contends it would not be vicariously liable in the event of the tort being established. Section 9D requires the court, subject to the exceptions at section 9E, to strike out the claim against any individual officer where the Crown concedes it would be vicariously liable if the tort were established, or where the court makes an initial determination that the Crown would be so liable. As sections 9C and 9D apply to cases brought against individual officers in their personal capacity, where the issue of vicarious liability is subsequently raised, section 9 makes it clear that the new part 4 of the Act extends to all claims made against police officers, whether or not acting in a personal or official capacity.

New guidelines and educational material will be developed to support the efficient and transparent management of police tort claims, with officers being made aware of the circumstances in which they may claim privilege and the circumstances in which their admissions can be used in other proceedings. The Police Association will be fully consulted in developing this material. Schedule 1 to the bill also amends the Employees Liability Act 1991 to make it clear that police are employees for the purposes of that Act. Section 9G applies the new provisions to torts committed before the commencement of the section. As plaintiffs' rights of recovery are not affected by the bill, and the provisions are of benefit to all parties, this retrospective application is appropriate. We do not want a situation where these beneficial reforms do not apply to claims for past events that may be made years in the future.

Section 9A makes it clear that the provisions apply to persons who were police officers at the time of the alleged tort, as

civil claims may be made well after the event and an officer has ceased service. Section 213 limits the personal liability of NSW Police for good faith acts or omissions in its exercise of a function conferred or imposed by any Act or law with respect to the protection of persons from injury or death or property from damage. The necessity for this bill was made very clear to me just last week when I visited the Bega police station and there met a young police officer who for five years had been in fear arising from ongoing civil action in which she had been named. Thankfully, the proceedings were recently resolved positively. However, she spoke of five years of concern for herself and her family—five years of experiencing fear of losing her house and other assets. She and her colleagues are very appreciative of this legislation.

I take the opportunity to thank the Police Association for its efforts in drawing these problems to my attention and working with the Government and the force to progress these reforms. I draw the attention of the House to the presence in the gallery of the Police Association President, Ian Ball, and secretary, Peter Remfrey. I thank them for their attendance. I pay special tribute to Ian Ball, Peter Remfrey and former president Phil Tunchon for their work to bring the bill to this stage. This bill is a message to our record number of police: From now on, vexatious complainants will not be able to sue you; they will have to sue me. I commend the bill to the House

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