

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Roane-Spray* [2017] QCA 245

PARTIES: **STATE OF QUEENSLAND**
(appellant)
v
MOYRA BRIDGET ROANE-SPRAY
(respondent)

FILE NO/S: Appeal No 387 of 2017
DC No 4097 of 2014

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

ORIGINATING COURT: District Court at Brisbane – [2016] QDC 348 (McGill SC DCJ)

DELIVERED ON: 20 October 2017

DELIVERED AT: Brisbane

HEARING DATE: 4 August 2017

JUDGES: Fraser and Philippides JJA and Bowskill J

ORDERS: **1. The appeal is dismissed.**
2. The appellant pay the respondent's costs of the appeal.

CATCHWORDS: TORTS – NEGLIGENCE – MISCELLANEOUS DEFENCES – where the respondent was injured when one end of a stretcher on which she was being moved by a paramedic collapsed when it was being taken out of the ambulance – where the respondent brought a claim for damages for negligence against the State of Queensland, as the employer of a paramedic, on the basis of vicarious liability – where the trial judge awarded damages to the respondent, rejecting the State of Queensland's reliance upon a statutory defence under s 27 of the *Civil Liability Act* 2003 – whether the protection from civil liability afforded to prescribed entities, including the Queensland Ambulance Service, by s 27 of the *Civil Liability Act* 2003 was available to the State of Queensland – whether it is open to construe the reference to Queensland Ambulance Service as a prescribed entity in schedule 2 to the *Civil Liability Regulation* 2003 as a reference to the State of Queensland

Acts Interpretation Act 1954 (Qld), sch 1
Ambulance Service Act 1991 (Qld), s 3A, s 3B
Civil Liability Act 2003 (Qld), s 27
Civil Liability Regulation 2003 (Qld), sch 2

Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129; [1920] HCA 54, cited
Plaintiff S157/2002 v The Commonwealth (2003) 211 CLR 476; [2003] HCA 2, cited
Pyneboard Pty Ltd v Trade Practices Commission (1983) 152 CLR 328; [1983] HCA 9, cited
Sargood Bros v The Commonwealth (1910) 11 CLR 258; [1910] HCA 45, cited
Smith v Anderson (1880) 15 Ch D 247, cited
State of Queensland v Heraud [2012] 2 Qd R 598; [\[2011\] QCA 297](#), cited
Wise v Perpetual Trustee Co Ltd [1903] AC 139, cited

COUNSEL: R Douglas QC, with C Fitzpatrick, for the appellant
 B Walker SC, with P Rashleigh, for the respondent

SOLICITORS: Crown Law for the appellant
 McInnes Wilson Lawyers for the respondent

- [1] **FRASER JA:** I have had the advantage of reading the reasons for judgment of Bowskill J. I agree with those reasons and with the orders proposed by her Honour.
- [2] **PHILIPPIDES JA:** I agree entirely with the reasons of and orders proposed by Bowskill J.
- [3] **BOWSKILL J:** Ms Roane-Spray was injured in January 2012 when one end of the stretcher on which she was being moved by a paramedic collapsed as it was being taken out of the ambulance. She brought a claim in the District Court for damages for negligence against the State of Queensland, as the employer of the paramedic, on the basis that the State was vicariously liable for the negligence of the paramedic. The trial judge found in favour of Ms Roane-Spray, and awarded her damages for her injuries.
- [4] Among other defences, the State contended it was not liable because it was entitled to the benefit of the protection against civil liability afforded to certain entities performing duties to enhance public safety, in circumstances of emergency, conferred by s 27 of the *Civil Liability Act* 2003 (Qld). The trial judge found that the State is not a prescribed entity for the purposes of s 27 and therefore s 27 does not apply to the vicarious liability of the State for its employee, the paramedic.
- [5] The State appeals against that finding. By notice of contention, Ms Roane-Spray contends that if it is found that the trial judge erred in finding s 27 did not exempt the State from liability, s 27 nevertheless has no application to the facts as found by the trial judge, because the injuries did not occur in circumstances where the paramedic was performing duties to enhance public safety.

Civil Liability Act

- [6] Section 27 is part of chapter 2 (civil liability for harm), part 1 (breach of duty), division 7 (enhancement of public safety) of the *Civil Liability Act* 2003. Sections 25 to 27 provide as follows:

“25 Definition for div 7

In this division –

person in distress includes –

- (a) a person who is injured, apparently injured or at risk of injury; and
- (b) a person who is suffering, or apparently suffering, from an illness.

26 Protection of persons performing duties for entities to enhance public safety

- (1) Civil liability does not attach to a person in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if –
 - (a) the first aid or other aid or assistance is given by the person while performing duties to enhance public safety for an entity prescribed under a regulation that provides services to enhance public safety; and
 - (b) the first aid or other aid or assistance is given in circumstances of emergency; and
 - (c) the act is done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.
- (2) Subsection (1) does not limit or affect the *Law Reform Act 1995*, part 5.¹

27 Protection of prescribed entities performing duties to enhance public safety

- (1) Civil liability does not attach to an entity, prescribed under a regulation, that provides services to enhance public safety in relation to an act done or omitted in the course of rendering first aid or other aid or assistance to a person in distress if –
 - (a) the first aid or other aid or assistance is given by the entity while performing duties to enhance public safety; and
 - (b) the first aid or other aid or assistance is given in circumstances of emergency; and
 - (c) the act is done or omitted in good faith and without reckless disregard for the safety of the person in distress or someone else.
- (2) Subsection (1) does not limit or affect the *Law Reform Act 1995*, part 5.”

[7] Ms Roane-Spray brought her claim against the State of Queensland only, as the employer of the paramedic whose negligence was said to have caused her to be

¹ Part 5 of the *Law Reform Act 1995* contains provisions conferring protection on medical practitioners and nurses who provide voluntary aid in an emergency.

injured. Section 26 was not raised in this case, and it is unnecessary to say anything further about it.

- [8] For s 27, the prescribed entities are set out in schedule 2 to the *Civil Liability Regulation* 2003 and include the Queensland Ambulance Service established under the *Ambulance Service Act* 1991.

Queensland Ambulance Service

- [9] As originally enacted, the provisions of the *Ambulance Service Act* 1991 in relation to the Queensland Ambulance Service were as follows:

“Queensland Ambulance Service

2.4(1) The body of persons consisting of –

- (a) the Commissioner; and
 - (b) all medical, administrative and service officers appointed under section 2.10; and
 - (c) all ambulance officers;
- is to be known as the Queensland Ambulance Service.

- (2) The Queensland Ambulance Service represents and has all the immunities, rights and privileges of the Crown in right of the State.
- (3) A claim or proceeding by or against the Queensland Ambulance Service may be made and enforced by a proceeding by or against the Queensland Ambulance Service in that name.
- (4) The Queensland Ambulance Service is a division of the Bureau of Emergency Services.”

- [10] Following amendments in 1997,² the relevant provisions were as follows:

“3A Establishment of Queensland Ambulance Service

The Queensland Ambulance Service is established.

3B Status of service

The service –

- (a) is a body corporate with perpetual succession; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

3C Service represents the State

- (1) The service represents the State.
- (2) Without limiting subsection (1), the service –
 - (a) has all the privileges and immunities of the State; and
 - (b) is an exempt public authority under the Corporations Law.”

² *Ambulance Service Amendment Act* 1997.

- [11] These sections were further amended in 2001,³ as a result of which, and presently, the character of the Queensland Ambulance Service reverted to its original unincorporated form,⁴ as follows:

“3A Establishment of service

The Queensland Ambulance Service is established.

3B Membership of service

The service consists of –

- (a) the commissioner; and
- (b) ambulance officers, medical officers and other staff members employed under section 13.”

- [12] Significantly, the Queensland Ambulance Service, in its present form (as it was at the time of Ms Roane-Spray’s injury) is not a body corporate, and does not represent the State. It is an unincorporated body, an entity within the meaning of that term in schedule 1 to the *Acts Interpretation Act 1954* (Qld), which consists of the commissioner, ambulance officers, medical officers and other staff members employed under s 13, from time to time. It is in that respect similar to an unincorporated club or association, which is comprised of its members from time to time.⁵
- [13] In so far as it may be necessary, the former position is protected, by s 72 (inserted in 2001) which provides that a reference in an Act or document in existence immediately before the commencement of the *Emergency Services Legislation Amendment Act 2001*, to the Queensland Ambulance Service as it formerly existed is, if the context permits, taken to be a reference to the State. But that provision has no application here.
- [14] It was uncontroversial, both at first instance and on this appeal, that the employer of the paramedic was the State, not the Queensland Ambulance Service.⁶
- [15] On this appeal, the State argues that it is entitled to the protection of s 27 because, in essence, the Queensland Ambulance Service is an emanation of the Crown in right of the State of Queensland.
- [16] The State argues that s 27, and schedule 2 to the *Civil Liability Regulation*, must be construed to read the reference to “Queensland Ambulance Service” in schedule 2 as a reference to the State of Queensland, because it is not possible for a plaintiff in the position of Ms Roane-Spray to sue the “Queensland Ambulance Service”. The State submitted that where “Queensland Ambulance Service” is referred to in schedule 2 that can only be a reference to the “Queensland Ambulance Service in right of the State”.
- [17] There is no such concept as “Queensland Ambulance Service in right of the State”. The concept of the “Crown in right of the State” is a constitutional one, borne of the need to distinguish between the unity, or indivisibility, of the Crown, on the one hand, and the practical circumstance that its legislative, executive and judicial power is exercisable by different agents in different localities.⁷ So, in Australian terms, there

³ *Emergency Services Legislation Amendment Act 2001*.

⁴ Indeed the former corporate entity was dissolved by s 70, inserted in 2001.

⁵ *Smith v Anderson* (1880) 15 Ch D 247 at 273-274; *Wise v Perpetual Trustee Co Ltd* [1903] AC 139 at 149.

⁶ [2016] QDC 348 at [45]; Transcript pp 1-11 and 1-31.

⁷ *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 (the *Engineers’ Case*) at 152 per Knox CJ, Isaacs, Rich and Starke JJ.

is a distinction between the “Crown in right of the Commonwealth”, and the “Crown in right of” each of the States.⁸

- [18] There may be circumstances in which an entity which represents the Crown is regarded as the Crown. So, for example, s 7 of the *Crown Proceedings Act* 1980 (Qld) defines Crown to mean “the Crown in right of the State of Queensland and includes a corporation representing the Crown, constituted by or under any Act or incorporated or registered under the Corporations Act”.
- [19] But in the case of the Queensland Ambulance Service, as the statute under which it is established presently provides, that is an entity, within the meaning of the *Acts Interpretation Act*, being an unincorporated body comprising the persons identified in s 3B, as they may be from time to time. It does not represent the State, and is not an emanation of the State.
- [20] There is no basis that I can discern for reading “Queensland Ambulance Service”, where it appears in schedule 2 to the *Civil Liability Regulation*, as “State of Queensland”.
- [21] As a matter of policy, it may be accepted as being in the public interest to protect an entity such as the Queensland Ambulance Service, comprising as that does the commissioner and ambulance and medical officers, from litigation and liability where it is performing services to enhance public safety. That is the plain effect of s 27, and the inclusion of the Queensland Ambulance Service in the list of prescribed entities. There would need to be very clear language used before s 27 could appropriately be construed as removing the vicarious liability of the State, as an employer, for the negligent acts of its employees.⁹ The device of reading “Queensland Ambulance Service” in schedule 2 to the *Civil Liability Regulation* as a reference to the State of Queensland is not open on a proper construction of the provisions.
- [22] The State’s argument that s 27 would lack utility otherwise is unfounded. There are plainly circumstances in which an unincorporated body such as the Queensland Ambulance Service may be sued, arising from the performance of its functions articulated in s 3D of the Act. It would be a matter for the rules of court to determine how that would be styled in a formal sense. Whether the protection of s 27 would be available, in any such hypothetical scenario, would be a question of law (as to the construction of the prerequisites in s 27) and fact, as to whether the prerequisites, as construed, were met. It may be correct to say that, in the present case, there was no cause of action against the Queensland Ambulance Service itself, but that is explicable by the fact that the claim was brought against the negligent paramedic’s employer, the State, on the basis of vicarious liability. The Queensland Ambulance Service is not the employer, therefore has no vicarious liability.
- [23] For these reasons, the trial judge was correct when he said, at [45] of his Honour’s reasons:

“The defendant [the State] is not an entity listed in Schedule 2 to the Regulation. The short answer to the defence reliance on s 27 is that it does not apply to the liability of [the] State of Queensland in the form

⁸ See also *State of Queensland v Heraud* [2012] 2 Qd R 598 at [29] per Chesterman JA, referring to Dr Hogg’s “Liability of the Crown” (1st edition).

⁹ *Sargood Bros v The Commonwealth* (1910) 11 CLR 258 at 279 per O’Connor J; *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 at 341 per Mason ACJ, Wilson and Dawson JJ; *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at [30] per Gleeson CJ.

of vicarious liability for its employee, the relevant paramedic, and therefore cannot provide a defence.”

- [24] It is therefore unnecessary to address the issue raised by Ms Roane-Spray in her notice of contention, as to the meaning of “duties to enhance public safety” in s 27(1)(a).
- [25] I would order that the appeal be dismissed, with costs.