

SUPREME COURT OF QUEENSLAND

CITATION: *BLD v Commissioner of Police* [2026] QSC 183

PARTIES: **BLD**
(applicant)
v
Commissioner of Police
(respondent)

FILE NO: SC No 43 of 2026

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: Ex Tempore 28 May 2026

DELIVERED AT: Cairns

HEARING DATE: 28 May 2026

JUDGE: Henry J

ORDERS: **1. Application dismissed.**
2. No order as to costs.

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – DECISIONS TO WHICH JUDICIAL REVIEW LEGISLATION APPLIES – DECISIONS UNDER AN ENACTMENT – PARTICULAR CASES – POWERS OF COURTS UNDER JUDICIAL REVIEW LEGISLATION – EXISTENCE OF OTHER REVIEW OR APPEAL RIGHTS – where the applicant brings an application for judicial review of a magistrates decision and review of a police officer’s decision – where the respondent seeks a summary dismissal under s48(1) of the *Judicial Review Act 1991* (Qld) – whether the decisions fall within the scope of the Act

Domestic and Family Violence Protection Act 2012 (Qld), s 164

Judicial Review Act 1991 (Qld), s 4, s 12, s 13, s 20, s 21, s 22, s 31, s 48, sch 2

Bituminous Products Pty Ltd v Department of Main Roads [2005] 2 Qd R 344, cited

Hinchliffe v Commissioner of Police of the Australian Federal Police (2001) 118 FCR 308, cited

Martin v Nalder [2016] WASC 138, cited

Mikitis v Director-General Department of Justice [1999] QSC 329, cited
MJE v Strofield [2021] QSC 126, cited
Spinosa v Crime and Corruption Commission [2020] QSC 321, cited

COUNSEL: Elmore GM for the respondent

SOLICITORS: The applicant appears on her own behalf
 Office of General Counsel of Queensland Police Service for the respondent

- [1] The applicant is aggrieved by a Magistrate’s decision to refuse her application for a domestic violence order against her former partner on 27 March 2026, and a police officer’s decision of around 24 March 2026 to withdraw their police initiated application for a domestic violence order.
- [2] Her application seeks “review” of those decisions in paras 1 and 2 of her application, as well as a review of conduct of her former partner’s lawyer in paras 3 and 4 and review of alleged failures of police in paras 5 and 6 of her application. The Commissioner of Police seeks summary dismissal of the application pursuant to s 48(1) *Judicial Review Act 1991* (Qld), because paras 2 to 6 of the application relate to matters that are not reviewable under the *Judicial Review Act* and para 1 relates to a decision the applicant is entitled to appeal.
- [3] The applicant resists the summary dismissal, emphasising the breadth and gravity of her allegations and her concern for the safety of herself and her children. The difficulty, however, is that even if all her concerns are well-founded, they are no answer to the legal limits of the *Judicial Review Act*. A judicial review is not a roving inquiry by the court into any form of judicial decision-making or into any complaint which citizens may have about the conduct of police or lawyers in connection with litigation or potential litigation. The *Judicial Review Act* places limits upon what matters are reviewable under it.
- [4] The application seeks deployment of the Act to review a decision and or review conduct engaged in for the purposes of making a decision and or review of failure to make a decision pursuant to ss 20, 21 and or 22 of the Act. Depending on how it is read, it is also an application for the provision of reasons both by the relevant Magistrate and by the relevant Police Prosecutor.
- [5] The decision to which ss 20, 21 and 22 relate and indeed a decision to which the section generally relates is “a decision to which this Act applies”. The meaning of that form of words is defined by s 4 of the Act in the following way:
 In this Act—
decision to which this Act applies means—
 - (a) a decision of an administrative character made, proposed to be made, or required to be made, under an enactment (whether or not in the exercise of a discretion); or
 - (b) a decision of an administrative character made, or proposed to be made, by, or by an officer or employee of, the State or a State authority or local government authority under a non-statutory

scheme or program involving funds that are provided or obtained (in whole or part)—

- (i) out of amounts appropriated by Parliament; or
- (ii) from a tax, charge, fee or levy authorised by or under an enactment.

- [6] It is convenient to first consider whether the decision of the Police Prosecutor to withdraw the police initiated domestic violence order application was a decision to which this Act applies. It does not come within the definition in s 4(a) because it is not a decision of an administrative character made or required to be made under an enactment.
- [7] The fact that the decision may relate to litigation and that such litigation is conducted under the rubric of statute, and thus enactments, does not mean the decision-making of the litigant in the course of litigation or in contemplation of the litigation is, therefore, a decision of administrative character under an enactment.
- [8] As to whether it comes within the meaning of s 4(b), even were it to be accepted that it was a decision of an administrative character made by an employee of the State, as police officers are, s 4(b) additionally requires it to have been a decision of administrative character made by an employee of the State ‘under a statutory scheme or program involving funds that are provided or obtained out of amounts appropriated by Parliament or from a tax, charge, fee or levy authorised by or under an enactment’.
- [9] Section 4(b) cannot be read as applying only to a decision of administrative character made by an employee of the State without regard to the later qualifying words ‘under a non-statutory scheme or program’, et cetera. To remove doubt, properly construing s 4(b), those qualifying words do not apply to merely qualify the preceding words, ‘or local government authority’. They are of a generally qualifying character, applying whether the decision was that of an officer or employee of the State, or a State authority, or a local government authority.
- [10] I am fortified in reaching that conclusion by cases such as *Mikitis & Ors v DG, Department of Justice and AG*, a decision of Wilson J in the Brisbane Supreme Court on 3 November 1999 in the matter S9467 of 1999, and *Bituminous Products Proprietary Limited v General Manager (Roads System & Engineering), Department of Main Roads* [2005] 2 Qd R 344. In each such case, the presiding Judge was concerned with decision of employees of the State Government, and whether or not they were decisions under a non-statutory scheme or program involving funds provided or obtained in the manner described in s 4(b) of the *Judicial Review Act*. They would not have needed to consider whether they were decisions by an employee of the State under such a non-statutory scheme or program unless the qualifying reference in s 4(b) to a non-statutory scheme or program related generally, as I have found, to decisions of an administrative character by officers or employees of the State, or a State authority, or a local government authority.
- [11] Applying the preceding interpretation of s 4(b) inevitably has the consequence that the decision of the Police Prosecutor was not caught by sub-s 4(b) of the Act either.
- [12] I am further fortified in reaching the conclusion that the decision of the Police Prosecutor is not amenable to review because, while police-initiated domestic violence order applications are not quite the same as the pursuit of police charges,

they are at least, in the administrative context, similar and it is well-established that the conduct of police investigations, including decisions whether or not to prosecute, are not susceptible to a statutory order of review - see *Hinchliffe v Commissioner of Police of the Australian Federal Police* [2001] 118 FCR 308; *Martin v Nalder* [2016] WASC 138; *MJE v Strofield (Magistrate) & Another* [2021] QSC 126; *Spinosa v Crime and Corruption Commission & Ors* [2020] QSC 321.

- [13] I am further fortified in arriving at that view by the fact that the Act specifically excludes decision making of this kind from the reach of the Act's power to require the giving of reasons for decisions – see s 31 and sch 2 of the Act.
- [14] I turn next to whether the alleged police failures complained of at paras 5 and 6 of the application, come within the reach of the Act. Paragraph 5 complains of a failure to investigate a documented breach of a temporary protection order, as well as other breaches; and para 6 complains of a failure to take a statement from the applicant on the date of the breach report, or conduct any subsequent investigation prior to closing the matter.
- [15] This can only be construed as an application for review of conduct engaged in for the purposes of making a decision – see s 21 of the Act. Necessarily the decision has to be a decision to which this Act applies. The reasons I have already given as to why the decision of the Police Prosecutor to withdraw the police-initiated domestic violence order application is not caught by the Act, apply in the same way to explain why the matters complained of in paras 5 and 6 of the application are not susceptible to review under the Act either.
- [16] Paragraphs 3 and 4 of the application complain of the conduct of the legal representative of the applicant's former partner in allegedly making false representations to the court and making other misrepresentations, and initiating an ex parte hearing without notice to her for the purpose of pressuring the police to withdraw their application. Once again, this is a complaint of conduct which realistically can only come within s 21 of the Act, that is to say, conduct engaged in for the purposes of making a decision to which the Act applies. As already explained, the bare fact that in litigation it is inevitable that its conduct requires resort to what is provided for by statute, does not mean that all conduct of litigation is, therefore, carried out for the purpose of making a decision of an administrative character made under an enactment. The complaint of conduct by the lawyer is not amenable to review under the Act.
- [17] This finally leaves the application to review the decision of the Magistrate to refuse the applicant's application for a temporary protection order, the focus of para 1 of the application. Section 12 *Judicial Review Act* provides the court may dismiss an application under s 20, which the application in para 1 plainly is, because 'adequate provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by the court or another court'. The applicant has a right of appeal to the District Court against the Magistrate's decision – see s 164 *Domestic and Family Violence Protection Act 2012* (Qld).
- [18] Section 13 of the *Judicial Review Act* provides that, if provision is made by a law other than the *Judicial Review Act*, under which the applicant is entitled to seek a review of the matter by another court or a tribunal authority or person, then 'the court must dismiss the application if it is satisfied, having regard to the interests of justice,

that it should do so'. It is obviously in the interests of justice that I should do so. The right of appeal to the District Court enlivens a broader consideration and entitlement to relief in respect of what occurred below than would be available via judicial review. Further, pursuit of the ordinary and expressly provided form of statutory relief – namely, appeal to the District Court – avoids the need to entangle, even if as an inactive party, the presiding judicial officer in a proceeding reviewing his or her own decision.

- [19] Section 48 *Judicial Review Act* allows this Court to dismiss and, in effect, summarily dismiss, an application of the present kind if the court considers it would be inappropriate for the proceeding to continue or inappropriate to grant the application made or if no reasonable basis for the application is disclosed. These reasons explain why the application is legally misconceived, and to the extent that it is not, insofar as the application to review the Magistrate's decision is concerned, why the usual appeal process is preferable to the continuation of the application.
- [20] For these reasons, therefore, my order is: application dismissed.