

Palaszczuk government faced internal revolt over Palm Island appeal

Exclusive: Decision to challenge federal court ruling that police racially discriminated against Indigenous residents blindsided senior Labor ministers



Lex Wotton, the former Palm Island councillor who spearheaded the class action, said the Queensland government's decision to appeal the discrimination ruling was a 'kick in the face'. Photograph: Cameron Laird/AAP

By Joshua Robertson
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The Palaszczuk government faced internal revolt over the idea of challenging the federal court's landmark ruling that police racially discriminated against Palm Island's Indigenous residents, Guardian Australia can reveal.

The challenge blindsided senior ministers when it proceeded. Key government figures, including the Indigenous partnerships minister, Curtis Pitt, were not aware a decision had even been made to go ahead with the appeal when it was filed with the federal court registry on 17 January.

The fate of the government's appeal, filed at the direction of the attorney general, Yvette D'Ath, now rests again with the cabinet, which will decide whether to continue the legal action.

The cabinet is expected to make a fresh decision after considering further legal advice to be received from the former solicitor-general Walter Sofronoff.

The federal court ruled last month that police unlawfully discriminated against the island's Indigenous residents during a death in custody investigation and their handling of subsequent riots in 2004.

Guardian Australia understands the proposal to appeal the ruling met widespread opposition in government when it was raised before Christmas by the police minister, Mark Ryan, in response to a police submission.

One Palaszczuk government figure told Guardian Australia: "This is not what we stand for."

Guardian Australia understands Leeanne Enoch, Queensland's first Indigenous cabinet minister, and Jackie Trad, the deputy premier and nominated government champion for Palm Island, were also not informed of the decision.

The decision leaves the government facing a broader political backlash from the Indigenous community, after sharp criticism from Palm Island leaders, as well as federal Labor colleagues.

The federal member of Herbert, Cathy O'Toole, said the "unfair and unjust" move by the Queensland government had reopened wounds in a community seeking closure after the trauma of a 2004 death in custody and a response by police that a federal court justice described as racist.

O'Toole's stand, which echoes that of Indigenous state Labor MP turned independent Billy Gordon, is backed by federal opposition leader, Bill Shorten, and key Indigenous federal Labor figures.

Pitt, in a text message to the Indigenous academic and activist Gracelyn Smallwood after the appeal was revealed by media, said: "I don't know anything about this decision, Gracelyn."

Pitt later texted Smallwood to say he had "asked some questions about how this decision was arrived at".

Stewart Levitt, the lawyer who acted in the Palm Island class action, said it was "a sad state of affairs when the Indigenous affairs minister is not consulted about a decision which has such a profound effect on the morale and dignity of Indigenous Queenslanders".

Levitt said the class action was "not a normal case" because it involved discrimination towards an entire community and Indigenous people were stakeholders who should have been consulted.

The state had "no prospect of recovering its millions of dollars in costs from the Indigenous people of Palm Island" even if its appeal did succeed, he said.

Levitt questioned why the state would fund continuing action when it could be spending money to improve conditions in what was “a third-world suburb of a first-world city in Townsville”.

Sofronoff, one the state’s preeminent barristers, has been engaged for further advice on the state’s prospects of success in overturning Justice Debbie Mortimer’s decision.

It is understood the advice will be presented to cabinet for a decision about whether to go ahead.

D’Ath said it was “not appropriate for cabinet ministers to discuss cabinet deliberations or comment on suggestions about cabinet discussions”.

“We do not comment on legal advice, the state is pursuing its legal interest before the courts, and as such, it would not be appropriate to comment further,” she said.

D’Ath told the Courier-Mail last week that “any decisions I made on that were made in consultation with the premier, and of course the Queensland police service, which is the respondent on this matter”.

Her spokeswoman on Monday told Guardian Australia: “The attorney general received advice and is continuing to receive advice on this matter.”

Levitt said it was appropriate D’Ath faced questions about a possible conflict of interest given references in her maiden parliamentary speech to her police officer husband of 25 years, and her acknowledgment and praise of “all of the serving police officers in Queensland ... and their families”.

D’Ath said: “There was no conflict of interest.”

Guardian Australia has been told D’Ath had previously sought advice from the state integrity commissioner about declaring her relationship, and was told it was relevant only when a government decision related directly to his employment.

The appeal leaves the government facing a political backlash from the Indigenous community at the coming state election over what Lex Wotton, the former Palm Island councillor who spearheaded the class action, said was a “kick in the face”.

Wotton, who was awarded \$220,000 in damages along with his family, said “30 pieces of silver cannot wash away the trauma which police caused to blacks on Palm Island 12 years ago”.

Mortimer’s ruling opens the way for up to 100 more Palm Island residents to apply for damages claims of \$50,000 to \$150,000, according to Wotton’s lawyer, Stewart Levitt.

Wotton said: “We are going to take immediate steps to ensure that Indigenous people who are eligible to vote are immediately enrolled, so that they can influence the outcome of the next election against the state government.”

“Indigenous people who vote – and not enough of us have done – traditionally support Labor, but Palm Islanders are angry with the government now.

“This could cost Labor its majority.”

Wotton said the community would back a “decent independent” in the “swing” seat of Townsville, which contains Palm Island, and is currently held by Labor MP Scott Stewart.

Levitt said the appeal “shatters Indigenous people’s newfound glimmer of faith in the judicial system”.