



Public Service and Other Legislation (Civil Liability) Amendment Bill 2013

Report No. 37
Finance and Administration Committee
February 2014

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Chair	Mr Steve Davies MP, Member for Capalaba
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Staff	Ms Deborah Jeffrey, Research Director Dr Maggie Lilith, Principal Research Officer Ms Lynette Whelan, Executive Assistant Ms Debbie Mohi, Executive Assistant
Technical Scrutiny Secretariat	Ms Renée Easten, Research Director (to 25 November 2013) Mr Peter Rogers, Research Director (from 25 November 2013) Ms Marissa Ker, Principal Research Officer (to 20 December 2013) Mr Karl Holden, Principal Research Officer Ms Tamara Vitale, Executive Assistant Ms Dianne Christian, Executive Assistant (from 25 November 2013)
Contact details	Finance and Administration Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7576
Fax	+61 7 3406 7500
Email	fac@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/fac

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Abbreviations

CEO	Chief Executive Officer
Cwlth	Commonwealth
DPC`	Department of the Premier and Cabinet
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the <i>Legislative Standards Act 1992</i>
OQPC	Office of the Queensland Parliamentary Counsel
PSC	Public Service Commission
QPS	Queensland Police Service
QPSOA	Queensland Protective Security Officer's Association
QPU	Queensland Police Union of Employees
SLC	former Scrutiny of Legislation Committee

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
the Bill	<i>Public Service and Other Legislation (Civil Liability) Amendment Bill 2013</i>
the Committee	Finance and Administration Committee
the department	Public Service Commission

Chair's Foreword

This report presents a summary of the Committee's examination of *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013*.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland.

The Bill is an omnibus Bill amending a number of Acts. The Committee has recommended that the Bill be passed. The Committee has made two additional recommendations regarding review of the proposed operation of the legislation.

On behalf of the Committee, I would like to thank those that took the time to provide submissions, who met with the Committee and provided additional information during the course of this inquiry.

I also wish to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee and the secretariat for their hard work and support.



Steve Davies MP
Chair

February 2014

Recommendations

Standing Order 132 states that a portfolio committee report on a bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for explanatory notes.

The Committee has made the following recommendations:

Recommendation 1 **3**

The Committee recommends that the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013* be passed.

Recommendation 2 **15**

The Committee recommends that a review of the effectiveness of the proposed changes be undertaken after a period of not more than five years.

Recommendation 3 **15**

The Committee recommends that the Public Service Commission facilitate a centralised data collation system to ensure a valid assessment of the effectiveness of the proposed changes can be undertaken.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 18 May 2012.¹ The Committee's primary areas of responsibility are:

- Premier and Cabinet; and
- Treasury and Trade.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

- a) determine whether to recommend that the Bill be passed;
- b) may recommend amendments to the Bill; and
- c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the Bill by any of the following methods:

- a) calling for and receiving submissions about a bill;
- b) holding hearings and taking evidence from witnesses;
- c) engaging expert or technical assistance and advice; and
- d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Premier, the Hon Campbell Newman MP, introduced the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013* to the Legislative Assembly on 19 November 2013. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Monday 3 February 2014.

¹ *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing.

The Committee also considered expert advice on the Bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 20 November 2013. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Tuesday 14 January 2014. The Committee received five submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

1.5 Public briefing

The Committee held a public briefing on the Bill with officers from the Public Service Commission (PSC) and the Queensland Police Service (QPS) on Monday 2 December 2013. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

1.6 Public hearing

The Committee held a public hearing on the Bill with representatives from organisations who provided submissions and with officers from the PSC and the QPS on Tuesday 28 January 2014. A list of representatives at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

1.7 Policy objectives of the Public Service and Other Legislation (Civil Liability) Amendment Bill 2013

The objective of the Bill, as outlined in the explanatory notes, is to support State and Queensland Police Service employees to perform their roles, to make decisions independently, and to innovate and improve service delivery without the concern of being sued and the accompanying financial risk, by providing an enhanced protection from civil liability.

The Bill will achieve its objective of providing greater certainty for State employees by amending the *Public Service Act 2008* by inserting new provisions providing:

1. protection from civil liability for State employees for engaging in, or as a result of engaging in, conduct in an official capacity
2. preservation of the rights of potential claimants by transferring civil liability of State employees to the State
3. for the State to have a right to recover financial contributions from State employees who have engaged in conduct other than in good faith, and with gross negligence.

The Bill will achieve its objective of providing certainty regarding liability for police officers and other members of the QPS by amending the *Police Service Administration Act 1990*:

1. by amending existing provisions to provide officers, recruits, staff members and volunteers with immunity from civil liability for engaging in, or as a result of engaging in, conduct in an official capacity
2. by preserving of the rights of potential claimants by transferring civil liability of QPS employees to the State
3. by amending the recovery provision such that the State may recover a contribution from an officer, recruit or staff member only where they have engaged in conduct other than in good faith, and with gross negligence.

The PSC advised that one of the rationales for the Bill is that there are currently 300 plus immunity provisions contained on the statute books with varying tests or applications and seven different indemnity guidelines that require employees to apply for assistance. The amendments provide a consistent standard and the existing provisions will be reviewed with a view to repealing any provisions that become redundant as a result of the proposed amendments.²

Pursuant to Standing Order 132(1)(a), the Committee recommends that the Bill be passed.

Recommendation 1

The Committee recommends that the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013* be passed.

² Ms Holm, Transcript 28 January 2014: 2

2 Examination of the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013 – Preliminary*

2.1 Preliminary

The Bill amends the *Public Service Act 2008* and the *Police Service Administration Act 1990*. The department advised that the key points of difference are that the Public Service Act applies to state employees but does not include volunteers, while the Police Service Administration Act applies to employees of the QPS and volunteers who are assisting police in their duties. Whilst the Bill provides for immunity from civil liability for state employees and QPS employees, it does not provide for criminal immunity. The immunity applies to conduct or the result of conduct engaged in an official capacity and transfers liability from the employee to the state or if the employee is engaged by a body corporate, to that body corporate. The Bill proposes a right of recovery if the employee's conduct was other than in good faith and with gross negligence.³

The Queensland Police Commissioned Officers' Union provided a submission to the inquiry advising that they have considered the contents of the Bill and that they fully support the amendments to provide immunity from civil liability for members of the QPS namely officers, recruits, staff members and volunteers. They advised that this has been a long overdue protection.⁴

The Queensland Protective Security Officer's Association (QPSOA) also supported the Bill as in their view it will afford greater protection to State and Queensland Police Service employees who act lawfully and in good faith and to make decisions without fear or favour. They considered that the Bill will protect their members from civil liability whilst at the same time protect the rights of the public.⁵

The Queensland Police Union of Employees (QPU) also supported the Bill whilst advocating that protection from criminal liability should also be included.⁶ This issue is outside the scope of the Bill and was not considered any further by the Committee. The QPU advised that they support the Bill because there have been cases where significant damages have been awarded against police where they have been acting in good faith in the execution of their duty even though they have been cleared by various investigative bodies.⁷

2.2 Stakeholder consultation

The explanatory notes state that consultation external to government has not occurred in relation to the Bill as it relates to the state's arrangements for providing legal assistance to its employees. The PSC confirmed, at the departmental briefing, that there has not been public consultation because it relates to the state's arrangements for providing legal assistance to employees and the major stakeholder was employees.⁸

The Committee was advised that the PSC undertook engagement with public sector employees during 2013 and one of the strong themes that arose was that the risk of litigation was impacting on the way employees were doing their job.⁹

³ Ms Holm, Transcript 28 January 2014: 2

⁴ Submission 1: 1

⁵ Submission 3: 1

⁶ Submission 5: 1

⁷ Mr Sycz, Transcript 28 January 2014: 6

⁸ Ms Holm, Transcript 2 December 2013: 5

⁹ Ms Holm, Transcript 2 December 2013: 3

The PSC advised that the current indemnity provisions have been constructed so that any state protection can be reviewed and tested before permission is given rather than upfront immunity. They noted that their observation, based on feedback from employees, has been that the question mark at the beginning rather than a green light of protection from the outset is impacting on the way services are delivered and that employees have a hesitation and therefore innovation is being stifled.¹⁰

The Committee sought clarification of circumstances where a public service employee may be hindered in performing their duties because of a fear of being sued. The PSC advised examples included employees who have regular and close engagement with members of the public and the potential for something to go wrong even though the person is working appropriately and fulfilling their responsibilities.¹¹ The QPS provided an example of where officers in good faith take out and execute a search warrant on particular premises and as a result of incorrect data might end up at the wrong house and then in the course of executing the search warrant they have to detain people who turn out to not be the people they are looking for.¹² The QPS provided a further example of those who would be covered under the Police Service Administration Act of non-police personnel. They advised of a civilian staff member who is a watch-house keeper who has been granted additional powers to assist police officers to do certain roles. They may need to utilise and exercise some force with a member of the public who has come into the watch-house.¹³

With regard to the lack of community consultation, the Committee asked how the community will know about the new process. The PSC advised that the proposed process will actually be easier for the public as there will be no need to track down the individual's name or which entity they work for.¹⁴

The Committee sought statistical information regarding the number of instances where public sector employees have been sued for performing their duties under the existing indemnity arrangements. The PSC advised that:

*...there were 104 requests for indemnification made by public servants in the 2012-13 financial year (excluding requests by doctors) referred to Crown Law for advice, and 40 claims made against Queensland Police Service employees in the 2013 year to date.*¹⁵

The Committee sought further clarification of these statistics and was advised:

...there are currently seven different indemnity guidelines/policies operating within the public sector. Each policy has variations in its application and administration, including as to whether (and from whom) legal advice is required before a grant of indemnity is approved.

As a consequence of the current arrangements, data on the granting of indemnities is not captured centrally, with different arrangements in place depending on the applicable guideline/policy and the cohort to which it applies.

¹⁰ Ms Holm, Transcript 2 December 2013: 2

¹¹ Ms Holm, Transcript 2 December 2013: 3

¹² Deputy Commission Barnett, Transcript 2 December 2013: 3

¹³ Ms Bradley, Transcript 2 December 2013: 3

¹⁴ Ms Holm, Transcript 2 December 2013: 5

¹⁵ Correspondence from PSC to FAC, received 18 December 2013: 2

For example, under the Guideline for the Grant of Indemnities and Legal Assistance to State Employees ('the State Guideline'), a chief executive is responsible for determining whether indemnity should be granted. The guideline requires that before making this decision, the chief executive obtain advice from Crown Law. As a result, Crown Law captures data on the number of requests made under this guideline, but does not hold data on the chief executive's decision (i.e. whether the indemnity was granted or not) nor on the outcome of the claim giving rise to the indemnity request. Requests for indemnification made under other guidelines/policies that do not require Crown Law advice to be obtained, are not included within the data capture by Crown Law, which formed the basis of the PSC's previous advice.¹⁶

A copy the additional statistical information is contained in Appendix D.

2.3 Estimated Cost of Government Implementation

The explanatory notes state that the Bill does not impose any implementation costs to the government. An indemnity type scheme already operates within Queensland and the proposed establishment of a legislated system of immunity is not anticipated to increase costs.

2.4 Consistency with legislation of other jurisdictions

The explanatory notes state that the Bill is not uniform with or complementary to legislation of the Commonwealth or another state.

2.5 Commencement

The Bill provides that the Act will commence on a date to be fixed by proclamation.

¹⁶ Correspondence from PSC to FAC, received 30 January 2014: 1

3 Examination of the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013 – Amendments to Public Service Act 2008 – Clauses 3 – 11*

The Bill amends various sections of the *Public Service Act 2008* as identified below.

3.1 Clause 4 – Amendment of long title

Clause 3 proposes to amend the long title of the Public Service Act to reflect that the new provisions to be inserted have coverage for public service employees and other persons involved in the public sector. This is reflected in the amendments to be under clause 8 of the bill.

3.2 Clause 5 – Amendment of section 13 (Act does not apply to particular offices and employment)

Existing section 13 sets out the offices to which the Act does not apply. Clause 5 inserts new section 13(4) which provides that section 13 does not limit the application of the new provisions being inserted in the bill.

Existing section 13 sets out that the Act does not apply to the following:

- if appointments to the office are made by the Governor alone;
- if the salary for the office is provided for under the *Judicial Remuneration Act 2007*, the *District Court of Queensland Act 1967* or the *Magistrates Act 1991*;
- if the office is a particular office established by an Act that expressly provides for the appointment of the holder of an office mentioned in the dot point above;
- if the office is honorary;
- the employment of a person as associate to a Supreme Court judge, District Court judge or commissioner under the *Industrial Relations Act 1999*.

Whilst section 13 sets out who the Act will not apply to, the Committee was assured that the provisions provide comprehensive coverage of public sector employees, including teachers, firemen, ambulance drivers, medical staff at hospitals etcetera.¹⁷

3.3 Clause 8 – Insertion of proposed sections 26A, 26B and 26C

Clauses 6 and 7 insert new divisional headings in Part 3 of the Act to assist in supporting a structure for the new provisions to be inserted by clause 8.

Clause 8 inserts three new sections, under new Chapter 1, Part 3, Division 3, in the Act – sections 26A, 26B and 26C. Proposed section 26A provides that the main purpose of the division is to support the management and employment principles and the work performance and personal conduct principles.

The major amendments to the Act are contained in proposed sections 26B and 26C.

¹⁷ Ms Holm, Transcript 2 December 2013: 2

3.3.1 Proposed section 26B

Proposed section 26B sets out to whom Chapter 1, Part 3, Division 3 will apply and collectively defines them as ‘State Employees’. Proposed section 26B is as follows:

26B Application of div 3

- (1) This division applies to each of the following—
 - (a) a public service employee;
 - (b) a ministerial staff member within the meaning of the *Ministerial and Other Office Holder Staff Act 2010*;
 - (c) a person mentioned in section 13(2);
 - (d) a person appointed under an Act (other than this Act) if the appointment involves the person acting for or representing the State;
 - (e) a person who is not a public service employee but who is a member or employee of a government entity that represents the State;
 - (f) a person (other than a public service employee) to whom a function or power of a person mentioned in paragraph (a), (d) or (e) is delegated under an Act;
 - (g) another person prescribed by regulation as a State employee.
- (2) Also, this division applies to a person who was a person of the type mentioned in subsection (1) at the time the person engaged in conduct in an official capacity.
- (3) Despite subsections (1) and (2), this division does not apply to the following—
 - (a) a person who is the holder of an office mentioned in section 13(1);
 - (b) a person to whom the *Police Service Administration Act 1990*, section 10.5 applies;
 - (c) a person employed in or appointed by—
 - (i) a GOC; or
 - (ii) a subsidiary of a GOC under the Corporations Act; or
 - (iii) a government entity within the meaning of the *Government Owned Corporations Act 1993* declared by regulation under that Act to be a subsidiary of a GOC; or
 - (iv) a government company within the meaning of the *Government Owned Corporations Act 1993*, section 2;
 - (d) another person prescribed by regulation as a person who is not a State employee, including a person to whom this division would otherwise apply because of subsection (1)(d), (e) or (f).
- (4) A person to whom this division applies is a **State employee**.

The explanatory notes identify that ‘State employee’ is defined to include public service employees employed under the Public Service Act as well as employees of entities that represent the State. This is intended to cover employees of entities such as Hospital and Health Services and Ambulance and Fire Services. For the purposes of the provision State employees can also include persons to whom powers or functions are delegated under an Act.

The explanatory notes also detail that the section specifies persons who are excluded from the definition of ‘State employee’. This includes persons covered by section 10.5 of the Police Service Administration Act, appointees of the Governor alone and members or employees of Government Owned Corporations (GOCs) and their subsidiaries and government companies. The section also provides that other persons can be prescribed by regulation as either being or not being ‘State employees’. The PSC advised the Committee that there are currently no persons identified to be prescribed as a ‘State employee’ via regulation.¹⁸

¹⁸ Correspondence from PSC to FAC, received 18 December 2013: 2

They advised that the regulation making power is there to make sure that anyone who is deserving or requires the level of protection offered by the Bill, to have that apply to that group of employees should the operative provisions of the Bill not extend to them. If there was a case put forward that a particular group needed protection then this would be considered by government. Government would then make a regulation in its normal way with the minister responsible for the Bill taking something to Governor-in-Council.¹⁹

Proposed section 26B(2) specifies that the section will apply to persons who were state employees at the time they engaged in conduct in an official capacity, even if they have since ceased to be a state employee.

The PSC confirmed that the proposed provisions relate only to employees and do not include volunteers.²⁰ The PSC also confirmed that contractors would not be covered under the legislation but the legislation does cover people who are exercising delegations on behalf of the state. So it is primarily focused on employees of government departments, of entities which represent the state and it also covers people who are on the management boards of these entities.²¹ The PSC confirmed that the key to understanding to whom the proposed amendments apply is if the person is a member of a body that represents the state. It does not apply to contractors as contractors are not employees. The terms of the contract sets out what they are to do and how they are to do it and it is a very different relationship to a relationship with employees. The department did, however, confirm that contract teachers, for instance, would be covered because they are a temporary employee.²²

3.3.2 Proposed section 26C

Proposed section 26B provides that:

- a State employee does not incur civil liability for engaging in, or as the result of engaging in, conduct in an official capacity, transferring this liability instead to the State (or if they are a member or employee of a body corporate, to that body corporate);
- where a State employee is found to have engaged in conduct other than in good faith, and with gross negligence, the State can seek a contribution from the State employee. The amount of the contribution is an amount found to be just and equitable by a court in the circumstances. This provision means that where a State employee fails to meet the standard of conduct expected of them, they can be financially liable, for example in relation to costs incurred in responding to a claim and/or orders made as a result of proceedings;
- the section also includes definitions of civil liability, conduct, engaging in conduct in an official capacity and of State employee.

¹⁹ Mr Reed, Transcript 28 January 2014: 6

²⁰ Ms Holm, Transcript 2 December 2013: 4

²¹ Mr Reed, Transcript 2 December 2013: 4

²² Mr Reed, Transcript 28 January 2014: 5-6

Proposed section 26B is as follows:

26C Civil liability of State employee for engaging in conduct in official capacity

- (1) A State employee does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity.
- (2) If subsection (1) prevents liability attaching to a State employee, the liability attaches instead as follows—
 - (a) if paragraph (b) does not apply—to the State;
 - (b) if, at the time the State employee engaged in the conduct, the person did so as a member of a body corporate or the governing body of a body corporate, or as a person who was employed by, appointed by or a delegate of, a body corporate—the body corporate.
- (3) If liability attaches to the State under subsection (2)(a), the State may recover contribution from the State employee but only if the conduct was engaged in—
 - (a) other than in good faith; and
 - (b) with gross negligence.
- (4) If liability attaches to a body corporate under subsection (2)(b), the body corporate may recover contribution from the State employee but only if the conduct was engaged in—
 - (a) other than in good faith; and
 - (b) with gross negligence.
- (5) In a proceeding under subsection (3) or (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) In this section—

civil liability, of a State employee for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the State employee because of—

- (a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or
- (b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or
- (c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or result, unless the proceeding was for an offence by the State employee.

Examples of types of liability—

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to rectify damage to a building or to publish an apology in a newspaper.

conduct means an act or an omission to perform an act.

engage in conduct in an official capacity means engage in conduct as part of, or otherwise in connection with, a person's role as a State employee, including, for example, engaging in conduct under or purportedly under an Act.

Example of a State employee engaging in conduct in an official capacity—

A State employee makes a decision in relation to an application for a licence.

State employee see section 26B(4).

The explanatory notes identify that the definition of civil liability is defined by reference to liability to pay amounts and may encompass direct costs such as compensation or financial settlements as well as liability because of an obligation to do something that involves payments of an amount, such as rectifying damage to property.

The explanatory notes also identify that the immunity will be broad enough to cover complaints to bodies like the Anti-Discrimination Commission of Queensland and the Health Quality Complaints Commission, and defamation proceedings. The provisions will not preclude an employee being named in proceedings or prevent a court or tribunal making orders or issuing injunctions about specific conduct by employees, such as orders to cease contraventions of an Act.

The Anti-Discrimination Commission of Queensland advised the Committee that:

The effect of the Bill is to transfer the civil liability of public and police service employees to the State for engaging in, or as a result of engaging in, conduct in an official capacity, while providing a right for the State to recover financial contributions from those employees who have engaged in conduct other than in good faith and with gross negligence. Conduct is defined to include both acts and omissions, and engaging in conduct is defined to mean conduct that is part of, or otherwise connected with, the person's role as a State employee. As such, this transfer of liability has the potential to impact the complaint handling processes of both the Commission and the tribunal.

In the 2012 - 2013 reporting period, approximately 20% of complaints accepted by the Commission involved the State of Queensland. Whilst the majority of all accepted complaints arise in the work area, other jurisdictional areas relevant to the State include education, the provision of goods and services, the administration of State laws and programs, and access to public places and buildings. The majority of complaints of reprisal under the PID Act involve the State. Complaints against the State are made by workers (including former workers) as well as by members of the public.

The State will be a respondent to complaints where it is alleged the State has primary liability (e.g. discrimination in a policy or requirement) and / or vicarious liability for the conduct of an employee or other agent (e.g. sexual harassment by an employee or agent). The majority of accepted complaints involving the State include individual public or police service employees as respondents.

The government's current prescribed procedure for State employees to obtain legal assistance or indemnity necessitates the departmental decision-maker obtaining advice from Crown Law. The time taken to complete this process can interfere with the statutory expectation that the Commission conduct a conciliation conference within 6 weeks of notifying the acceptance of a complaint. Where a decision has not been made before the date set for the conciliation conference, the respondents will usually request the conference take place at a later time. Changes to scheduled dates and arrangements for conciliation conferences can often cause distress and lead to further polarisation of the parties.

Accordingly, the transfer of civil liability to the State as provided for in the Bill is likely to overcome this negative aspect, and aid timeliness in the Commission's complaint handling process.²³

The proposed amendments allow that any liability will attach to the State in lieu of the individual employee. The PSC confirmed that there is no possibility that the provisions would squash any right of recovery from a member of the community if they currently have the right to sue. The proposed amendments simply replace the name of the individual employee with the name of the State. It does not prevent the litigant from using the employee's name at the outset if they are not aware of how these provisions work. That would be attended to after the proceedings have started.²⁴

²³ Submission 2: 2

²⁴ Ms Holm, Transcript 2 December 2013: 2

The Anti-Discrimination Commission advised the Committee that outcomes of conciliation complaints at the Commission is not confined to the payment of money and can include, for example, apology, statement of regret, individuals or organisations to do something or stop doing something, undertaking training, future behaviour and review or implementation of policies and procedures. They noted that, for these reasons, the Bill is unlikely to change the practice of complainants pursuing their complaints against, and naming as respondents, individual public and police service employees. Nor will the transfer of liability render the vicarious liability provisions of the *Anti-Discrimination Act 1991* and the *Public Interest Disclosure Act 2010* nugatory.²⁵

Proposed section 26C allows the State the right to recover contribution from an employee if they have engaged in conduct in other than good faith and with gross negligence. The PSC confirmed that both limbs of the test would have to be satisfied so that the employee failed both limbs. They also confirmed that the legal definitions of those terms would apply. The PSC explained that this recovery could be either by negotiated settlement or formal proceedings.²⁶

The Committee asked the PSC whether the requirement that both limbs be satisfied is a high or low level test. The PSC advised that:

*...the term good faith is a term that is often used in the legal context... and ...it is defined and given the meaning through case law. The ordinary legal meaning relates to there being honesty or an absence of malice or ulterior motive in terms of the good faith. Gross negligence is perhaps a more regularly defined legal term. The sorts of legal phrases that are attached to that are grave, serious or significant departure from the standard of care which a reasonable person would have observed in all the circumstances or what you might describe as conduct that is worse than negligent but not actually reckless. So by all accounts if you are performing your role with all the information that you have available to you, then you would be covered, yes.*²⁷

The QPSOA advised the Committee that initially they had some concerns about the right of the State to recover financial contributions from an employee, however, the provisions 'conduct other than in good faith and with gross negligence' provide reassurance that their members can have confidence in the wording of the Bill.²⁸ They explained that it is possible that an officer could act in good faith but with gross negligence. They believe that the nature of the work they do and how quickly actions occur, they felt the two limb test to be appropriate and a comfort to their members.²⁹

The Bar Association of Queensland whilst generally supportive of the Bill, argued that that it is fundamentally important not to diminish the effect which the sanction of potential liability has to deter misconduct by state employees and police officers. They submitted that the ability of the State or the Crown to recover contribution from the state employee or police officers should not be limited in the way presently drafted. They considered that the wider the State's ability to recover contribution from the wrongdoing state employee or police offers the more effective will be that deterrent effect.³⁰

²⁵ Submission 2: 3

²⁶ Ms Holm, Transcript 2 December 2013: 3

²⁷ Ms Holm, Transcript 2 December 2013: 4

²⁸ Submission 3: 1

²⁹ Mr Wilkinson, Transcript 28 January 2014: 9

³⁰ Submission 4: 1

The Bar Association advised that there is no sound policy reason for wishing to prevent the State or the Crown from recovering contribution, or indeed full indemnity from an employee who has acted in good faith but grossly negligently or if an employee has acted other than in good faith even if not grossly negligently.³¹

They consider that the Bill, as presently drafted, will limit the ability of the State or the Crown to recover contribution from a state employee or police officer in a way that will water down considerably the discouragement or deterrence of inappropriate conduct.³² They advised that potential personal liability is a constraint on future negligent conduct and that a right of contribution ought to extend to circumstances where the employee is either acting other than in good faith or acting grossly negligently.³³ They advised that:

*...an employee would have pause to think whether they are acting in good faith and pause separately to think whether they are acting grossly negligently and not really take a rather robust view that they are acting in good faith no matter how grossly negligent.*³⁴

The Bar Association's concern is that civil liability, on a broader scale, exists in order to compensate litigants and to change behaviour. The Bar Association stated that:

*If you make the right contribution so limited you are diminishing the changing of behaviour component. You are still giving the litigant compensation because the state is liable, but the state has only a very narrow scope to seek indemnity or contribution from its wrong-doing employees.*³⁵

The PSC responded that the intent of the Bill is to provide employees with a high level of assurance and certainty regarding their protection from civil liability and the combining of both limbs of the test helps achieve this.³⁶

The PSC also confirmed that the Public Service Act and the Public Sector Ethics Act are very clear about required public service employees' standards of conduct. The scheme that is set up in the Bill does not prevent management action or disciplinary action being taken against an employee and that action could include termination of services, particularly if there is a pattern of behaviour that is no longer acceptable to the employer. They consider that there are very clear signals, guides and information to staff about what the expected standards of conduct are.³⁷

The QPS submitted that police officers in particular go about their duties fully aware of the range of criminal, civil and disciplinary sanctions that can fall upon them if they make errors of judgement to the requisite standard. They noted that whilst the Bill will provide police and unsworn officers with a degree of protection if they are acting appropriately, they do not consider that this will be at the front of mind when it comes to decision making. What will be front of mind is the training that they have received in relation operational, use of force, codes of conduct and their responsibilities to uphold and carry out the law.³⁸

³¹ Submission 4: 1

³² Submission 4: 1

³³ Mr Doyle, Transcript 28 January 2014: 3

³⁴ Mr Doyle, Transcript 28 January 2014: 3

³⁵ Mr Doyle, Transcript 28 January 2014: 8

³⁶ Correspondence from PSC to FAC dated 20 January 2014: 1

³⁷ Ms Holm, Transcript 28 January 2014: 4

³⁸ Deputy Commissioner Barnett, Transcript 28 January 2014:

The Bar Association also highlighted their concern that it should be made clear that the right of contribution is not limited to a portion of the total claim, but can extend to the whole of it if circumstances warrant it.³⁹

The PSC noted that the existence of both limbs is not a pre-requisite for other action being taken in respect of the employee, including management or disciplinary action. The PSC also noted that the Bill provides that the amount of recovery is that found to be just and equitable in the circumstances, which enables an appropriate amount of recovery to be determined having regard to the particulars of the case.⁴⁰

The Bar Association also highlighted their concern that appropriate protection of employees who become liable for payments whilst engaged in conduct in an official capacity is not complete unless such employees are also provided, be it by statute or administrative means, with adequate legal representation funded by the State to defied claims made against them.⁴¹

The PSC advised the Committee that it is proposed that a policy addressing the provisions of legal assistance will be issued to support the operation of the legislative amendments. They consider that inclusion of this information in a policy is appropriate as it allows for greater flexibility in considering the particular matters in dispute and how representation and/or support is best provided to the parties.⁴²

The PSC advised that a review of the legislation, once it has been in operation for a period of time, is not contemplated by the Act. They advised that this activity could be undertaken at an administrative level without it needing to be in legislation.⁴³

3.3.3 Committee comments

The Committee considers that an assessment and review of the effectiveness of the proposed changes should be undertaken after a reasonable period of time in operation. This review should include an examination of the both the quantum of claims in terms of numbers and amounts and the quantum of recoveries made from employees.

³⁹ Mr Doyle, Transcript 28 January 2014: 3

⁴⁰ Correspondence from PSC to FAC dated 20 January 2014: 2

⁴¹ Submission 4: 2

⁴² Correspondence from PSC to FAC dated 20 January 2014: 2

⁴³ Ms Holm, Transcript 28 January 2014: 11

The Committee notes its concern about the difficulty the PSC has had in capturing the statistical information requested by the Committee regarding the current indemnity arrangements. The Committee considers that this information needs to be collated centrally to enable an accurate assessment of the effectiveness of the proposed changes over time.

Recommendation 2

The Committee recommends that a review of the effectiveness of the proposed changes be undertaken after a period of not more than five years.

Recommendation 3

The Committee recommends that the Public Service Commission facilitate a centralised data collation system to ensure a valid assessment of the effectiveness of the proposed changes can be undertaken.

3.4 Clause 9 – Omission of section 88 (Protection of commission officials from liability) and Clause 10 – Omission of section 214A (Protection of appeals officials from liability)

Clauses 9 and 10 omit existing provisions relating to commission officials (section 88) and appeals officials (section 214A) who will be covered by the immunity provisions being introduced.

3.5 Clause 11 – Insertion of new Chapter 9, Part 11

Clauses 11 inserts a new part 11. The part includes three sections as follows:

- definitions (proposed section 286)
- transitional arrangements (proposed section 287) and
- arrangements regarding the relationship between the new Chapter 1, Part 3, Division provisions and provisions in other Acts that provide immunity for civil liability.

The transitional arrangements provide that the new provisions will not apply to conduct occurring prior to the commencement of the provisions, with the exception of where conduct which occurred prior to the commencement of the provisions, forms part of a course of conduct with conduct that occurred or occurs after the commencement of the provisions. In this case the new provisions will apply. The provisions being omitted in clauses 9 and 10 would continue to apply to pre-existing conduct despite their repeal.

Proposed section 288 provides that where a person would be civilly liable under an immunity provision in another Act but would not be civilly liable under the new provisions, the Public Service Act provision will apply. This will have the effect that where the new provision affords a person a higher level of protection than an alternative immunity provision, the Public Service Act provision will prevail.

4 Examination of the *Public Service and Other Legislation (Civil Liability) Amendment Bill 2013 – Amendments to Police Service Administration Act 1990 – Clauses 12 – 14*

The Bill replaces existing sections 10.5 and 10.6 of the *Police Service Administration Act 1990* and inserts a new section 10.5. It also inserts new Division 6 which provide for transitional arrangements as a result of the Bill.

4.1 Clause 13 – Replacement of sections 10.5 and 10.6

Clause 13 replaces the existing sections 10.5 and 10.6 with a new section 10.5. The new section provides immunity provisions, which relate to a police officer, staff member, recruit or QPS volunteer, are proposed to operate on the same terms as the immunity provisions proposed for the Public Service Act.

Proposed section 26B is as follows:

10.5 Civil liability of police officers and others for engaging in conduct in official capacity

- (1) This division applies to each of the following—
 - (a) an officer
 - (b) a staff member;
 - (c) a recruit;
 - (d) a volunteer;
 - (e) a person who, at the time the person engaged in conduct in an official capacity, was a person mentioned in any of paragraphs (a) to (d).
- (2) A person to whom this section applies does not incur civil liability for engaging, or the result of engaging, in conduct in an official capacity.
- (3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the Crown.
- (4) If liability attaches to the Crown under subsection (2)(a), the State may recover contribution from the State employee but only if the conduct was engaged in—
 - (a) other than in good faith; and
 - (b) with gross negligence.

Note for subsection (4) —

There is to be no contribution from a volunteer or former volunteer.

- (5) In a proceeding under subsection (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) In this section—

civil liability, of a person to whom this section applies for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the State employee because of—

- (a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or
- (b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or
- (c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or result, unless the proceeding was for an offence by the State employee.

Examples of types of liability—

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to rectify damage to a building or to publish an apology in a newspaper.

conduct means an act or an omission to perform an act.

engage in conduct in an official capacity means by a person to whom this section applies, means engage in conduct as part of, or otherwise in connection with, the person's role as an officer, a staff member, a recruit or a volunteer (as is applicable), including, for example, engaging in conduct under or purportedly under an Act.

volunteer means a person appointed by the commissioner to perform duties for the service on an unpaid voluntary basis on conditions decided by the commissioner.

The explanatory notes identify that a definition of volunteer, consistent with the current Police Service Administration Act, is included.

The QPS confirmed that they have quite a large number of volunteers under the 'volunteering in police' program. These are people who are with QPS under a free contract of service providing community contact at police counters. Whilst they are subject to different risks than other staff members, there are examples of discrimination type complaints. The QPS noted that the provisions are broad enough to cover these sorts of complaints.⁴⁴

4.2 Clause 14 – Insertion of new Part 11, Division 6 (sections 11.12 – 11.14)

Clause 14 inserts a new part 11. The part includes three sections as follows:

- definitions (proposed section 11.2)
- transitional arrangements (proposed section 11.13) and
- arrangements regarding the relationship between the new section 10.5 provisions and other civil liability provisions in the Police Service Administration Act and other Acts.

These provisions operate on the same basis as those contained in the amendments to the Public Service Act.

⁴⁴ Ms Bradley, Transcript 2 December 2013: 4

5 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill’s consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee’s examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

The explanatory notes state that the Bill is generally consistent with fundamental legislative principles. It does confer immunity from a proceeding but there is adequate justification for this immunity (s4(3)(h) of the *Legislative Standards Act 1992*).

The explanatory notes state that the immunity from civil liability for State and QPS employees is considered justified because the State, as an employer, should ensure that an employee is not be exposed to liability and the accompanying financial risk, for carrying out his or her duties. This risk has the potential to stifle innovation and inhibit changes in practices leading to improvements in service delivery in the public sector.

The explanatory notes state that a clear statement that State and QPS employees will be supported will lay a strong foundation for better engagement with risk in the public sector, leading to better service delivery outcomes for the people of Queensland.

The explanatory notes assert that the inclusion of a right of action for the State to recover a contribution from the employee, where the employee has engaged in conduct other than in good faith, and with gross negligence, ensures an appropriate balance is maintained in supporting employees but ensuring they remain accountable for their actions. The immunity only relates to an employee – it does not extend to the State itself and it does not alter the position that the State may be vicariously liable for the actions of its employees. It is noted that the amendments will apply equally and consistently across the public service.

5.1. Immunity from proceedings – Section 4(3)(h) *Legislative Standards Act 1992* – Does the bill confer immunity from proceeding or prosecution without adequate justification?

Clause 8 of the Bill inserts new sections 26A, 26B and 26C into the Public Service Act to provide that the following persons do not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity:

- a public service employee;
- a ministerial staff member;
- a person employed as an associate to a Supreme Court judge, District Court judge or a commissioner under the *Industrial Relations Act 1999*;
- a person appointed under an Act (other than the PSA) to act or represent the State;
- a person who is not a public service employee, but who is a member or employee of a government entity that represents the State (e.g. Hospital and Health Services and Ambulance and Fire Services);
- a person (other than a public service employee) who is delegated a function or power of a public service employee, a person appointed to act or represent the State, or a person who is a member or is employed by a government entity; or
- another person prescribed by regulation.

Clause 8 provides that any civil liability is instead transferred to the State.

The immunity from civil liability at new sections 26B and 26C of the Public Service Act does not apply to: a person appointed solely by the Governor; a QPS officer, staff member, recruit or volunteer; a person employed or appointed by a Government Owned Corporation; or another person prescribed by a regulation.

Clause 13 replaces existing sections 10.5 and 10.6 of the Police Service Administration Act to provide that a QPS officer, staff member, recruit or volunteer does not incur civil liability for engaging in, or as the result of engaging in, conduct in an official capacity. Instead, any civil liability is transferred to the State.

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. The Office of the Queensland Parliamentary Counsel has stated that the basis for this FLP is that persons who commit a wrong when acting without authority should not be granted immunity.⁴⁵

Clauses 8 and 13 raise potential FLP issues, as they provide civil liability immunity to persons when acting in an official capacity.

The Explanatory Notes state that the immunity is justified *because the State, as an employer, should ensure that an employee is not exposed to liability and the accompanying financial risk, for carrying out his or her duties*. The Explanatory Notes also provide that:

A clear statement that State and QPS employees will be supported will lay a strong foundation for better engagement with risks in the public sector, leading to better service delivery outcomes for the people of Queensland.

The former Scrutiny of Legislation Committee (SLC) expressed the view that if protection is needed for persons administering Queensland legislation, the preferred provision is to provide immunity for actions done honestly and without negligence. Where immunity is granted to an individual, liability is usually shifted to the State. It is noted that clauses 8 and 13 provide for full immunity for actions of State employees and QPS officers, staff, recruits and volunteers in their official capacity. There is no requirement of an absence of negligence (i.e. failure to take proper care) and dishonesty.

5.1.1 Committee comments

It is considered that, on balance, the justification provided in the explanatory notes for the granting of civil liability immunity to State and QPS officers, staff members, recruits and volunteers is adequate.

It is also noted that attaching civil liability to the State ensures that an aggrieved person has an avenue for legal redress, and therefore the rights and liberties of an aggrieved person are not considered to be adversely impacted by the Bill.

The absence of a requirement that the person not have acted negligently or dishonestly is unusual. Most provisions offering immunity to officers in public sector roles require that they have acted honestly and without negligence. The Bill provides for a scheme for the State to recover a contribution from an employee where the employee has engaged in conduct other than in good faith, and with gross negligence. However, this approach has not been usual practice.

⁴⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, January 2008: 64

5.2 Rights and liberties of individuals – Section 4(2)(a) *Legislative Standards Act 1992* – Does the bill have sufficient regard to the rights and liberties of individuals?
Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992* – Is the bill unambiguous and drafted in a sufficiently clear and precise way?

Clauses 8 and 13 provide that where liability attaches to the State or a body corporate, the State or body corporate may recover a contribution from the State employee or QPS officer, staff member or recruit, if the conduct which led to the liability attaching to the State or body corporate was engaged in other than in good faith and with gross negligence (see proposed section 26C(3)). It should be noted that the recovery mechanism does not apply to QPS volunteers.

The Bill provides that the amount of contribution is the amount found by the court to be just and equitable in the circumstances. The explanatory notes state that these provisions ensure:

an appropriate balance is maintained in supporting employees but ensuring they remain accountable for their actions.

While it is clear from the Bill that the courts will determine the contribution to be made by an employee, it is not clear from the explanatory notes or the Bill who will determine whether an employee has acted other than in good faith and with gross negligence.

Given the potential adverse impact that the recovery of a contribution may have on an employee's rights and liberties, the Committee sought clarification from the PSC about how the recovery mechanism in the Bill is intended to operate. In particular, the Committee wished to clarify who will determine whether an employee has acted other than in good faith and with gross negligence, and what factors will be taken into account when reaching this decision.

The PSC advised that the right of recovery only arises if liability transfers to the State (or body corporate) in respect of a claim arising out of conduct engaged in, in an official capacity. The responsibility for assessing whether an employee has engaged in conduct that is other than in good faith, and with gross negligence, lies with the employing agency, having regard to all the information before it. Should the employee accept the agency's assessment an agreement could be reached in respect of the quantum of recovery. If, however, the employee does not accept this assessment (or the proposed quantum), the right of recovery (and quantum) would be determined through applicable judicial proceedings. Avenues for judicial appeal would also apply.⁴⁶

The PSC advised that the Bill provides that the amount of recovery is that which is found to be just and equitable in the circumstances. That means that there is an independent assessment by a court on what is appropriate. It is not the employer determining what is appropriate. The appropriate amount is determined by the particulars of the case and the provision allows for flexibility.⁴⁷

The PSC also confirmed that the employee's participation in any recovery process is a requirement and their immunity is really conditional upon and requires their participation in the process. Whilst there are no specific provisions that require it, matters could not be settled without the employee's participation. They confirmed that it would be difficult to see where the employee's voice was not able to be conveyed.⁴⁸

⁴⁶ Correspondence from PSC to FAC, received 18 December 2013: 1

⁴⁷ Ms Holm, Transcript 28 January 2014: 6

⁴⁸ Ms Holm, Transcript 28 January 2014: 3-4

The PSC confirmed that the decision whether to proceed with recovery action would sit with the Chief Executive Officer (CEO) of the employee's agency but subjectivity would come into play because departments have different sets of responsibilities and individual circumstances would be considered.⁴⁹

5.3 Immunity from proceedings – Section 4(3)(g) *Legislative Standards Act 1992* – Does the bill adversely affect rights and liberties, or impose obligations retrospectively?

Section 4(3)(g) of the *Legislative Standards Act* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

Clause 11 inserts new section 287 into the *Public Service Act* to make transitional provisions in relation to the commencement of amendments in the Bill. Clause 14 inserts very similar transitional provisions into the *Police Service Administration Act* (new section 11.13).

The transitional provisions in clauses 11 and 14 have retrospective effect in the following circumstances. New section 287(3) of the *Public Service Act* and new section 11.13 of the *Police Service Administration Act* provide that if an employee engaged in conduct in an official capacity after the commencement of the relevant sections, and the conduct is part of a course of action which includes conduct before the commencement of the relevant sections, the Acts (as amended by the Bill) will apply to all the conduct in the course of action. In other words, certain conduct before the commencement of the Bill will be covered by the Bill's new civil liability provisions.

5.3.1 Committee comments

The retrospective nature of the transitional provisions at clauses 11 and 14 was considered by the Committee. It noted that the retrospective effect may be beneficial to State and QPS employees as they may benefit from greater protection from civil liability provided by the Bill. It is also noted that the retrospective effect of clauses 11 and 14 should not adversely impact an aggrieved person's right to seek legal redress against the State.

5.4 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the Bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the Bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

However, further information about the mechanism for recovering a contribution from State employees or QPS officers, staff or recruits would have assisted in gaining an understanding of the provisions included in clauses 8 and 13 of the Bill.

⁴⁹ Ms Holm, Transcript 28 January 2014: 10

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	The Queensland Police Commissioned Officers' Union
2	Anti-Discrimination Commission Queensland
3	Queensland Protective Security Officer's Association
4	Bar Association of Queensland
5	Queensland Police Union of Employees

**Appendix B – Officers appearing on behalf of the department at public departmental briefing –
Monday 2 December 2013**

Witnesses
Ms Katie Holm, Executive Director, Legislation and Policy, Public Service Commission
Mr David Reed, Director, Legislation and Policy Team, Public Service Commission
Ms Vivienne Van Der Laak, Manager, Legislation and Policy Team, Public Service Commission
Deputy Commissioner Ross Barnett, Queensland Police Service
Ms Kate Bradley, Executive Director, Legal Division, Queensland Police Service
Mr Greg Obst, Assistant Queensland Police Service Solicitor, Queensland Police Service

Appendix C – Witnesses appearing at public hearing – Tuesday 28 January 2014

Witnesses
Ms Katie Holm, Executive Director, Legislation and Policy, Public Service Commission
Mr David Reed, Director, Legislation and Policy Team, Public Service Commission
Ms Vivienne Van Der Laak, Manager, Legislation and Policy Team, Public Service Commission
Deputy Commissioner Ross Barnett, Queensland Police Service
Inspector Simon James, Legislation Development Unit, Public Safety Business Agency
Mr Shane Doyle QC, Vice President, Bar Association of Queensland
Mr Denis Sycz, Assistant General Secretary, Queensland Police Union
Mr Calvin Gnech, Legal Practice Director, QPU Legal Group, Queensland Police Union
Mr Bruce Wilkinson, Advocate, Queensland Protective Security Officers Association

Appendix D – Additional statistical information provided by the Public Service Commission dated 30 January 2014 and 31 January 2014

As your correspondence notes, the PSC previously advised that 104 requests for indemnity were referred to Crown Law for advice during the 2012-13 financial year. This figure:

- did not include the 40 claims (giving rise to indemnification requests) made against police officers in the 2013 calendar year (to 17 December 2013), which are managed under a separate process;*
- did not include requests for indemnification made by doctors. At present Queensland Health medical practitioners are covered by a different indemnity policy to other public servants. There is no requirement under the Indemnity for Queensland Health Medical Practitioners Policy for Crown Law advice to be sought (and hence was not captured in this data set);*
- did not differentiate between indemnification requests that were supported or otherwise, and as such potentially includes matters where recovery could be sought under the proposed recovery provisions in the Bill.*

The PSC has obtained further data from the Department of the Premier and Cabinet (DPC) on the number of claims where a state employee has requested indemnity under the State Guideline (noting again that this is not an exhaustive list, for example, it does not include claims made against police officers). Agencies reported to DPC 115 claims during the 2012-13 financial year and a further two (2) occasions where requests for indemnification were declined.

Queensland Health has advised that 24 indemnity requests were made to the department during the 2012-13 financial year, noting this figure includes requests made under either the State Guideline and the Indemnity for Queensland Health Staff and Other Employees Human Resources Policy (the PSC notes that some of these requests will form part of the figures reported by Crown Law). Of these 24 requests, Queensland Health advises that two (2) were declined, which the PSC understands are additional to the refusals reported by DPC.

The figure provided by Queensland Health does not include requests made directly to (and determined) by individual Health and Hospital Services, and unfortunately such data cannot be collated in the reporting timeframe nominated by the Committee.

At present where indemnity is granted, representation of public servants is generally provided by Crown Law, and the State (through the applicable department) meets the cost of legal fees and any settlement/judgment; as such the PSC has not been able to obtain data on the quantum of reimbursements to employees during the 2012-13 financial year. The Department of the Premier and Cabinet advises that the total cost of insured claims reported to it by agencies for that period was \$4.67M.

....further information has been collated and provided by the Queensland Police Service who have advised:

- The QPS had 42 claims for the 2013 calendar year*
- A total of \$808,100 was paid in relation to matters settled and finalised during the 2012-13 financial year, excluding legal fees. Note that this figure relates to matters managed by the Queensland Government Insurance Fund on behalf of the QPS only.*
- During the 2012-13 financial year 2 applications for support were rejected.*