



Queensland

# **Public Service and Other Legislation (Civil Liability) Amendment Act 2014**

**Act No. 2 of 2014**





## Queensland

# Public Service and Other Legislation (Civil Liability) Amendment Act 2014

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	4
2	Commencement . . . . .	4
<b>Part 2</b>	<b>Amendment of Public Service Act 2008</b>	
3	Act amended . . . . .	4
4	Amendment of long title . . . . .	4
5	Amendment of s 13 (Act does not apply to particular offices and employment) . . . . .	4
6	Insertion of new ch 1, pt 3, div 1 hdg . . . . .	5
7	Insertion of new ch 1, pt 3, div 2 hdg . . . . .	5
8	Insertion of new ch 1, pt 3, div 3 . . . . .	5
	Division 3      Supporting principles under divisions 1 and 2	
	26A      Main purpose of div 3 . . . . .	5
	26B      Application of div 3 . . . . .	5
	26C      Civil liability of State employee for engaging in conduct in official capacity . . . . .	7
9	Omission of s 88 (Protection of commission officials from liability)	9
10	Omission of s 214A (Protection of appeals officials from liability)	9
11	Insertion of new ch 9, pt 11 . . . . .	10
	Part 11      Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014	
	286      Definitions . . . . .	10
	287      Application of s 26C and continued application of protection provisions . . . . .	10
	288      Relationship of ch 1, pt 3, div 3 if civil liability dealt with by another Act . . . . .	11

Contents

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<b>Part 3</b>	<b>Amendment of Police Service Administration Act 1990</b>	
12	Act amended . . . . .	12
13	Replacement of ss 10.5 and 10.6. . . . .	12
	10.5 Civil liability of police officers and others for engaging in conduct in official capacity . . . . .	12
14	Insertion of new pt 11, div 6 . . . . .	14
	Division 6 Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014	
	11.12 Definitions. . . . .	14
	11.13 Application of ss 10.5 and 10.6 to acts and omissions before commencement. . . . .	15
	11.14 Relationship of s 10.5 if civil liability dealt with by another Act or provision of this Act. . . . .	15



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## **Public Service and Other Legislation (Civil Liability) Amendment Act 2014**

**Act No. 2 of 2014**

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**An Act to amend the Public Service Act 2008 and the Police Service Administration Act 1990 to provide for protection of public service employees, police officers and other persons in particular circumstances relating to engaging in conduct in an official capacity**

**[Assented to 19 February 2014]**

[s 1]

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## **The Parliament of Queensland enacts—**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Public Service and Other Legislation (Civil Liability) Amendment Act 2014*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **Part 2 Amendment of Public Service Act 2008**

#### **3 Act amended**

This part amends the *Public Service Act 2008*.

#### **4 Amendment of long title**

Long title, after ‘agencies’—  
*insert—*

**, and for other persons involved,**

#### **5 Amendment of s 13 (Act does not apply to particular offices and employment)**

Section 13—  
*insert—*

- (4) This section does not limit the application of chapter 1, part 3, division 3.

**6 Insertion of new ch 1, pt 3, div 1 hdg**

After chapter 1, part 3 heading—

*insert—*

**Division 1 Management and  
employment**

**7 Insertion of new ch 1, pt 3, div 2 hdg**

After section 25—

*insert—*

**Division 2 Work performance and  
personal conduct**

**8 Insertion of new ch 1, pt 3, div 3**

After section 26—

*insert—*

**Division 3 Supporting principles  
under divisions 1 and 2**

**26A Main purpose of div 3**

The main purpose of this division is to support—

- (a) the management and employment principles; and
- (b) the principles mentioned in section 26.

**26B Application of div 3**

- (1) This division applies to each of the following—
- (a) a public service employee;

[s 8]

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- (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*



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*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***.

### **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

[s 8]

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- (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.

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*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).

**9 Omission of s 88 (Protection of commission officials from liability)**

Section 88—

*omit.*

**10 Omission of s 214A (Protection of appeals officials from liability)**

Section 214A—

*omit.*

[s 11]

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## 11 Insertion of new ch 9, pt 11

After section 285—

*insert—*

### **Part 11**

## **Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014**

### **286 Definitions**

In this part—

*appeals official* see section 214A as in force immediately before the commencement.

*civil liability* see section 26C(6).

*commencement* means the commencement of this section.

*conduct* see section 26C(6).

*engage in conduct in an official capacity* see section 26C(6).

*protection provision* means section 88 or 214A as in force at any time before the commencement.

*State employee* see section 26B(4).

### **287 Application of s 26C and continued application of protection provisions**

- (1) Section 26C does not apply to conduct, or the result of conduct, engaged in by a State employee before the commencement.
- (2) If, immediately before the commencement, a protection provision applied to an act done or an omission made by a commission official or appeals official, the protection provision as in

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force at the time the act was done or the omission was made continues to apply in relation to the act or omission.

- (3) If a State employee engaged in conduct in an official capacity after the commencement and the conduct is part of a course of conduct that also includes an act done or omission made by the employee before the commencement, section 26C applies to all the conduct forming the course of conduct.
- (4) Subsections (1) and (2) are subject to subsection (3).

**288 Relationship of ch 1, pt 3, div 3 if civil liability dealt with by another Act**

- (1) This section applies if—
  - (a) another Act states a person does not incur civil liability for conduct or the result of conduct (however expressed), including, for example, if the person acts honestly and without negligence; and
  - (b) the result of the application of the other Act to conduct, or the result of conduct, engaged in by the person after the commencement is that the person would not be protected from civil liability under the other Act for the conduct or result; and
  - (c) the person is a State employee who would not, under section 26C, incur civil liability for the conduct or the result of the conduct, but the State or a body corporate would be liable in relation to the conduct or result.
- (2) Section 26C applies in relation to the conduct, or the result of the conduct, despite the other Act but does not limit the application of the other Act in relation to any other liability of the person.

[s 12]

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## **Part 3**                                       **Amendment of Police Service Administration Act 1990**

### **12 Act amended**

This part amends the *Police Service Administration Act 1990*.

### **13 Replacement of ss 10.5 and 10.6**

Sections 10.5 and 10.6—

*omit, insert—*

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

- (1) This section 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 (3), the Crown may recover contribution from the officer, staff member or recruit or former officer, staff member or recruit who engaged in the conduct, 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 person 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 person.

*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)

[s 14]

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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 publish an apology in a newspaper

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

**engage in conduct in an official capacity**, 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.

## 14 Insertion of new pt 11, div 6

After section 11.11—

*insert—*

### **Division 6**                      **Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014**

#### **11.12 Definitions**

In this division—

**civil liability** see new section 10.5(6).

**commencement** means the commencement of this section.

**conduct** see new section 10.5(6).



*engage in conduct in an official capacity* see new section 10.5(6).

*new section 10.5* means section 10.5 as in force immediately after the commencement.

*previous sections 10.5 and 10.6* means sections 10.5 and 10.6 as in force immediately before the commencement.

*volunteer* see new section 10.5(6).

### **11.13 Application of ss 10.5 and 10.6 to acts and omissions before commencement**

- (1) If, immediately before the commencement, previous sections 10.5 and 10.6 applied to a tort committed, act done or omission made by an officer, staff member, recruit or volunteer before the commencement, those provisions as in force at the time the tort was committed, act was done or omission was made continue to apply in relation to the tort, act or omission.
- (2) If an officer, staff member, recruit or volunteer engaged in conduct in an official capacity after the commencement and the conduct is part of a course of conduct that also includes torts committed, acts done or omissions made before the commencement, new section 10.5 applies to all the conduct forming the course of conduct.
- (3) Subsection (1) is subject to subsection (2).

### **11.14 Relationship of s 10.5 if civil liability dealt with by another Act or provision of this Act**

- (1) This section applies if—
  - (a) another Act, or another provision of this Act other than new section 10.5, states a person does not incur civil liability for conduct or the result of conduct (however expressed),

[s 14]

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- including, for example, if the person acts honestly and without negligence; and
- (b) the result of the application of the other Act or other provision to conduct, or the result of conduct, engaged in by the person after the commencement is that the person would not be protected from civil liability under the other Act or other provision for the conduct or result; and
  - (c) the person would not, under new section 10.5, incur civil liability for the conduct or the result of the conduct but the Crown would be liable in relation to the conduct or result.
- (2) New section 10.5 applies in relation to the conduct, or the result of the conduct, despite the other Act or other provision but does not limit the application of the other Act or other provision in relation to any other liability of the person.

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