



Queensland

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



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2013

A Bill

for 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

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Public Service and Other
Legislation (Civil Liability) Amendment Act 2013*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

**Part 2 Amendment of Public Service
Act 2008** 8
9

Clause 3 Act amended 10

This part amends the *Public Service Act 2008*. 11

Clause 4 Amendment of long title 12

Long title, after ‘agencies’— 13

insert— 14

, and for other persons involved, 15

**Clause 5 Amendment of s 13 (Act does not apply to particular
offices and employment)** 16
17

Section 13— 18

insert— 19

	(4) This section does not limit the application of chapter 1, part 3, division 3.	1 2
Clause 6	Insertion of new ch 1, pt 3, div 1 hdg	3
	After chapter 1, part 3 heading—	4
	<i>insert—</i>	5
	Division 1 Management and employment	6 7
Clause 7	Insertion of new ch 1, pt 3, div 2 hdg	8
	After section 25—	9
	<i>insert—</i>	10
	Division 2 Work performance and personal conduct	11 12
Clause 8	Insertion of new ch 1, pt 3, div 3	13
	After section 26—	14
	<i>insert—</i>	15
	Division 3 Supporting principles under divisions 1 and 2	16 17
	26A Main purpose of div 3	18
	The main purpose of this division is to support—	19
	(a) the management and employment principles; and	20 21
	(b) the principles mentioned in section 26.	22
	26B Application of div 3	23
	(1) This division applies to each of the following—	24
	(a) a public service employee;	25

[s 8]

- (b) a ministerial staff member within the meaning of the *Ministerial and Other Office Holder Staff Act 2010*; 1
2
3
- (c) a person mentioned in section 13(2); 4
- (d) a person appointed under an Act (other than this Act) if the appointment involves the person acting for or representing the State; 5
6
7
- (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; 8
9
10
11
- (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; 12
13
14
15
- (g) another person prescribed by regulation as a State employee. 16
17
- (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. 18
19
20
21
- (3) Despite subsections (1) and (2), this division does not apply to the following— 22
23
 - (a) a person who is the holder of an office mentioned in section 13(1); 24
25
 - (b) a person to whom the *Police Service Administration Act 1990*, section 10.5 applies; 26
27
28
 - (c) a person employed in or appointed by— 29
 - (i) a GOC; or 30
 - (ii) a subsidiary of a GOC under the Corporations Act; or 31
32
 - (iii) a government entity within the meaning of the *Government Owned* 33
34

-
- 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]

- (b) with gross negligence. 1
- (4) If liability attaches to a body corporate under 2
subsection (2)(b), the body corporate may 3
recover contribution from the State employee but 4
only if the conduct was engaged in— 5
- (a) other than in good faith; and 6
- (b) with gross negligence. 7
- (5) In a proceeding under subsection (3) or (4) to 8
recover contribution, the amount of contribution 9
recoverable is the amount found by the court to 10
be just and equitable in the circumstances. 11
- (6) In this section— 12
- civil liability*, of a State employee for engaging, 13
or for the result of engaging, in conduct in an 14
official capacity, means liability of any type for 15
the payment of an amount by the State employee 16
because of— 17
- (a) a claim based in tort, contract or another 18
form of action in relation to the conduct or 19
result, including, for example, breach of 20
statutory duty or defamation and, for a fatal 21
injury, includes a claim for the deceased’s 22
dependants or estate; or 23
- (b) a complaint made under a law that provides 24
a person may complain about the conduct or 25
result to an entity established under the law, 26
other than a complaint to start criminal 27
proceedings, including, for example, a 28
complaint under the *Justices Act 1886*; or 29
- (c) an order of a court to pay costs relating to a 30
proceeding for an offence against a law in 31
relation to the conduct or result, unless the 32
proceeding was for an offence by the State 33
employee. 34

	<i>Examples of types of liability—</i>	1
	• a liability because of an agreement or an order under the <i>Anti-Discrimination Act 1991</i> or the <i>Australian Human Rights Commission Act 1986</i> (Cwlth) requiring payment of an amount to a complainant (however described) under the Act	2 3 4 5 6
	• 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	7 8 9 10 11 12
	<i>conduct</i> means an act or an omission to perform an act.	13 14
	<i>engage in conduct in an official capacity</i> 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.	15 16 17 18 19
	<i>Example of a State employee engaging in conduct in an official capacity—</i>	20 21
	A State employee makes a decision in relation to an application for a licence.	22 23
	<i>State employee</i> see section 26B(4).	24
Clause 9	Omission of s 88 (Protection of commission officials from liability)	25 26
	Section 88—	27
	<i>omit.</i>	28
Clause 10	Omission of s 214A (Protection of appeals officials from liability)	29 30
	Section 214A—	31
	<i>omit.</i>	32

[s 11]

Clause 11	Insertion of new ch 9, pt 11	1
	After section 285—	2
	<i>insert—</i>	3
	Part 11	4
	Transitional provisions	5
	for Public Service and	6
	Other Legislation (Civil	7
	Liability) Amendment	8
	Act 2013	9
	286 Definitions	10
	In this part—	11
	<i>appeals official</i> see section 214A as in force	12
	immediately before the commencement.	13
	<i>civil liability</i> see section 26C(6).	14
	<i>commencement</i> means the commencement of	15
	this section.	16
	<i>conduct</i> see section 26C(6).	17
	<i>engage in conduct in an official capacity</i> see	18
	section 26C(6).	19
	<i>protection provision</i> means section 88 or 214A	20
	as in force at any time before the commencement.	21
	<i>State employee</i> see section 26B(4).	22
	287 Application of s 26C and continued application	23
	of protection provisions	24
	(1) Section 26C does not apply to conduct, or the	25
	result of conduct, engaged in by a State employee	26
	before the commencement.	27
	(2) If, immediately before the commencement, a	28
	protection provision applied to an act done or an	29
	omission made by a commission official or	30
	appeals official, the protection provision as in	

force at the time the act was done or the omission 1
was made continues to apply in relation to the act 2
or omission. 3

- (3) If a State employee engaged in conduct in an 4
official capacity after the commencement and the 5
conduct is part of a course of conduct that also 6
includes an act done or omission made by the 7
employee before the commencement, section 8
26C applies to all the conduct forming the course 9
of conduct. 10
- (4) Subsections (1) and (2) are subject to subsection 11
(3). 12

**288 Relationship of ch 1, pt 3, div 3 if civil liability 13
dealt with by another Act 14**

- (1) This section applies if— 15
- (a) another Act states a person does not incur 16
civil liability for conduct or the result of 17
conduct (however expressed), including, for 18
example, if the person acts honestly and 19
without negligence; and 20
- (b) the result of the application of the other Act 21
to conduct, or the result of conduct, engaged 22
in by the person after the commencement is 23
that the person would not be protected from 24
civil liability under the other Act for the 25
conduct or result; and 26
- (c) the person is a State employee who would 27
not, under section 26C, incur civil liability 28
for the conduct or the result of the conduct, 29
but the State or a body corporate would be 30
liable in relation to the conduct or result. 31
- (2) Section 26C applies in relation to the conduct, or 32
the result of the conduct, despite the other Act but 33
does not limit the application of the other Act in 34
relation to any other liability of the person. 35

[s 12]

Part 3 **Amendment of Police Service Administration Act 1990** 1
2

Clause 12 Act amended 3

This part amends the *Police Service Administration Act 1990*. 4

Clause 13 Replacement of ss 10.5 and 10.6 5

Sections 10.5 and 10.6— 6

omit, insert— 7

10.5 Civil liability of police officers and others for engaging in conduct in official capacity 8
9

(1) This section applies to each of the following— 10

(a) an officer; 11

(b) a staff member; 12

(c) a recruit; 13

(d) a volunteer; 14

(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). 15
16
17
18

(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. 19
20
21

(3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the Crown. 22
23
24

(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— 25
26
27
28
29
30

-
- (a) other than in good faith; and 1
- (b) with gross negligence. 2
- Note for subsection (4)—* 3
- There is to be no contribution from a volunteer or former 4
volunteer. 5
- (5) In a proceeding under subsection (4) to recover 6
contribution, the amount of contribution 7
recoverable is the amount found by the court to 8
be just and equitable in the circumstances. 9
- (6) In this section— 10
- civil liability*, of a person to whom this section 11
applies for engaging, or for the result of 12
engaging, in conduct in an official capacity, 13
means liability of any type for the payment of an 14
amount by the person because of— 15
- (a) a claim based in tort, contract or another 16
form of action in relation to the conduct or 17
result, including, for example, breach of 18
statutory duty or defamation and, for a fatal 19
injury, includes a claim for the deceased’s 20
dependants or estate; or 21
- (b) a complaint made under a law that provides 22
a person may complain about the conduct or 23
result to an entity established under the law, 24
other than a complaint to start criminal 25
proceedings, including, for example, a 26
complaint under the *Justices Act 1886*; or 27
- (c) an order of a court to pay costs relating to a 28
proceeding for an offence against a law in 29
relation to the conduct or result, unless the 30
proceeding was for an offence by the 31
person. 32
- Examples of types of liability—* 33
- a liability because of an agreement or an order under 34
the *Anti-Discrimination Act 1991* or the *Australian* 35
Human Rights Commission Act 1986 (Cwlth) 36
-

[s 14]

	requiring payment of an amount to a complainant (however described) under the Act	1 2
	• 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	3 4 5 6 7
	<i>conduct</i> means an act or an omission to perform an act.	8 9
	<i>engage in conduct in an official capacity</i> , 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.	10 11 12 13 14 15 16
	<i>volunteer</i> means a person appointed by the commissioner to perform duties for the service on an unpaid voluntary basis on conditions decided by the commissioner.	17 18 19 20
Clause 14	Insertion of new pt 11, div 6	21
	After section 11.11—	22
	<i>insert</i> —	23
	Division 6	24
	Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2013	25 26 27
	11.12 Definitions	28
	In this division—	29
	<i>civil liability</i> see new section 10.5(6).	30
	<i>commencement</i> means the commencement of this section.	31 32
	<i>conduct</i> see new section 10.5(6).	33

engage in conduct in an official capacity see 1
new section 10.5(6). 2

new section 10.5 means section 10.5 as in force 3
immediately after the commencement. 4

previous sections 10.5 and 10.6 means sections 5
10.5 and 10.6 as in force immediately before the 6
commencement. 7

volunteer see new section 10.5(6). 8

**11.13 Application of ss 10.5 and 10.6 to acts and 9
omissions before commencement 10**

(1) If, immediately before the commencement, 11
previous sections 10.5 and 10.6 applied to a tort 12
committed, act done or omission made by an 13
officer, staff member, recruit or volunteer before 14
the commencement, those provisions as in force 15
at the time the tort was committed, act was done 16
or omission was made continue to apply in 17
relation to the tort, act or omission. 18

(2) If an officer, staff member, recruit or volunteer 19
engaged in conduct in an official capacity after 20
the commencement and the conduct is part of a 21
course of conduct that also includes torts 22
committed, acts done or omissions made before 23
the commencement, new section 10.5 applies to 24
all the conduct forming the course of conduct. 25

(3) Subsection (1) is subject to subsection (2). 26

**11.14 Relationship of s 10.5 if civil liability dealt 27
with by another Act or provision of this Act 28**

(1) This section applies if— 29

(a) another Act, or another provision of this Act 30
other than new section 10.5, states a person 31
does not incur civil liability for conduct or 32
the result of conduct (however expressed), 33

[s 14]

- 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.