

7 January 2014

Mr Steve Davies MP  
Chair  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000



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Dear Mr Davies

***Re: Public Service and other Legislation (Civil Liability) Amendment Bill 2013***

Thank you for the opportunity to review and make submissions in this Bill.

It is important that, while ensuring that claimants are able to recover from the State or the Crown as the case may be, for the civil wrongs of the state employees or police officers and others ('police officers'), it is also fundamentally important not to diminish the effect which the sanction of potential liability has to deter misconduct by those state employees and police officers. This is a very significant aspect of the common law imposition of civil liability.

Because of this, the Bar Association submits 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. The wider the State's (or the Crown's) ability to recover contribution from the wrongdoing state employee or police officers the more effective will be that deterrent effect.

As presently drawn the Bill (by proposed s 26C of the *Public Service Act* and s10.5 of the *Police Services Administration Act*) provides for a right of contribution, and that right only exists where the state employee or police officer has been guilty of both lack of good faith and gross negligence. There is no sound policy reason for wishing to prevent the State or the Crown as the case may be from recovering contribution, or indeed a full indemnity, from a state employee or police officer who has acted (let it be assumed) in good faith but grossly negligently. Similarly, there is no sound policy reason for wishing to prevent the State or the Crown from recovering contribution or indemnity from a state employee or police officer who has acted other than in good faith even if not grossly negligently, but in a way (for example by negligence) so as to give rise to civil liability in the State or Crown.

The Bill as presently drafted will limit the ability of State or the Crown to recover contribution from a state employee or police officer in a way that will waters down considerably, and it is submitted, inappropriately, the discouragement or deterrence of plainly inappropriate conduct.

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Accordingly, the Bar Association submits that these provisions should be amended-

1. To make it clear that the right of contribution extends to a right of complete indemnity; and
2. So that the right of contribution or indemnity be available to the State of Crown as the case may be if either the state employee or police officer has been guilty of both lack of good faith or gross negligence.

The Bar Association is supportive of provisions which provide appropriate protection for State employees who become liable for payments whilst engaged in conduct in an official capacity but notes that such protection may not be 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.

Given that s 10.7 of the *Police Service Administration Act 1990* is to remain it would appear that there is some statutory provision for legal representation in respect of proceedings against police officers, etc. Section 10.7(1) provided that the Commissioner "may" provide legal representation however does not deal with how that discretion might be exercised. Again, the protections sought to be achieved by the proposed amendments may not be complete unless there is also the provision of adequate legal representation.

Yours faithfully



**Robyn Martin**  
**Chief Executive**