



FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr SW Davies MP (Chair)
Mrs EA Cunningham MP
Mr R Gulley MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP (via teleconference)
Mr MA Stewart MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms D Mohi (Executive Assistant)

PUBLIC HEARING—INQUIRY INTO THE PUBLIC SERVICE AND OTHER LEGISLATION (CIVIL LIABILITY) AMENDMENT BILL 2013

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 28 JANUARY 2014

Brisbane

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Committee met at 3.04 pm

DOYLE, Mr Shane QC, Vice-President, Bar Association of Queensland

HOLM, Ms Katie, Executive Director, Legislation and Policy, Public Service Commission

REED, Mr David, Legislation and Policy, Public Service Commission

VAN DER LAAK, Ms Vivienne, Manager, Legislation and Policy, Public Service Commission

BARNETT, Mr Ross, Deputy Commissioner, Queensland Police Service

JAMES, Inspector Simon, Legislation Development Unit, Public Safety Business Agency, Queensland Police Service

GNECH, Mr Calvin, Legal Practice Director, Queensland Police Union Legal Group

SYCZ, Mr Denis, Assistant General Secretary, Queensland Police Union

WILKINSON, Mr Bruce, Advocate, Queensland Protective Security Officers Association

CHAIR: Good afternoon, ladies and gentlemen. I declare this public hearing of the Finance and Administration Committee inquiry into the Public Service and Other Legislation (Civil Liability) Amendment Bill 2013 open. I am Steve Davies, the chair of the committee and the member for Capalaba. The other members of the committee are: Deputy Chair Mr Curtis Pitt MP, member for Mulgrave—Curtis is here and he is looking like a telephone today, so welcome, Curtis; Mrs Liz Cunningham, member for Gladstone; Mr Reg Gulley, member for Murrumba; Mrs Freya Ostapovitch MP, member for Stretton; and Mr Mark Stewart MP, member for Sunnybank. We also have an apology today from Mr Bruce Flegg, member for Moggill, who could not make it today.

The purpose of this hearing is to receive additional information from the submitters and from the department about the bill, which was referred to the committee on 19 November 2013. This hearing is a formal proceeding of parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence.

Thank you for your assistance here today, and the committee appreciates your assistance. You have previously been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will also be recording the proceedings, and you will be provided with the transcript. This hearing will also be broadcast. In order to assist Hansard, when witnesses are speaking could they please state their name and the agency which they represent. Could I also remind witnesses to speak into the microphone.

I remind all of those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to, or excluded from, the hearing at the discretion of the committee.

I remind committee members that departmental officers are here to provide factual or technical information; they are not here to give opinion about the merits or otherwise of the policy behind the bill or alternative approaches. Any questions about government or opposition policy that the bill seeks to implement should be directed to the responsible minister or shadow minister or left to debate on the floor of the House.

Could I also request that all mobile phones be turned off or switched to 'silent' mode, and I remind you all that no calls are to be taken inside of the hearing room. As you speak, if you could again speak into the microphones and make sure that you do give your name and who you are representing, that would be wonderful. I would like to invite the witnesses to make opening statements, if anyone would like to do that to begin with.

Ms Holm: Might it be helpful if I give an overview first of all?

CHAIR: Sure, that would be wonderful.

Ms Holm: We covered some of these issues when we were here at the hearing just before Christmas, but essentially this is a high-level summary. The bill amends the Public Service Act and the Police Service Administration Act on similar terms, so comments would be generally in relation to both acts, but there are some specific examples that relate to police which my colleagues will deal with.

But 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. The bill provides for immunity from civil liability for state employees and Queensland Police Service employees; it does not provide for criminal immunity. The immunity applies to conduct or the result of conduct engaged in in an official capacity. The bill 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.

One of the rationales for this 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 proposed amendments.

I suppose one other final comment is that the focus of the bill is not about the rights of the claimant, but it is about the rights of the relationship between the employer and the employee in relation to that state employment. We are not looking at affecting the rights of any potential claimants, but simply putting the state in the shoes of the employee so that that protection is provided.

CHAIR: Are there any other statements?

Mr Wilkinson: Yes, good afternoon. My name is Bruce Wilkinson, and I represent the Queensland Protective Security Officers Association. The association's membership is made up of officers from the State Government Protective Security Service which, as of 1 January 2014, is now part of the newly formed Public Safety Business Agency. This agency is under the portfolio of the Hon. Jack Dempsey, Minister for Police, Fire and Emergency Services.

We are glad to have the opportunity to appear at this public hearing. We see this bill as protection of our members from litigation and the positioning of the government to deal with such matters. At the same time, we see this bill as very timely. Under the State Buildings Protective Security Act 1983, senior protective security officers, when on sites declared under this act, are empowered to question, search, detain and hand suspects over to the police when appropriate. This bill, however, extends protection to those senior officers when carrying out duties on non-declared sites as well as providing some protection to the base level officer at the protective security officer rank level.

We believe the G20 summit in November may stretch our security resources to the limit, including our members. This legislation will give them confidence to play their part and carry out their duties.

CHAIR: Thank you very much, Mr Wilkinson.

Mr Sycz: We have to commend the government for the bill as it stands; however, it is our position that it has not gone far enough. We were seeking criminal indemnities as well. To that end it is becoming increasingly litigious out there, and we have 11,500 members who are making split-second decisions in the heat of the moment when the adrenaline is rushing—usually at the behest of the command structure. We have people that have been given certain codes and certain responsibilities to do, but things happen, and in the heat of the moment they have to make these split-second decisions that usually come into play further down the track as life goes on. I mean, it

might take two or three years and we end up in all sorts of courts. We end up before coroner's inquests and those sorts of things when these sorts of things come into play. It has affected a lot of our members, and it still affects a lot of our members even to this day. So I just want to make the observation that we do not think it has gone far enough.

Mr Doyle: We only have three comments about the bill. We are supportive of the notion of the state assuming liability for the various employees identified in the bill. One thing that perhaps could be given consideration to is making it clear that employees who are entitled to having their liability displaced are also afforded legal representation if they are sued, as is likely to occur even if this bill is passed. That can be made clear either in the act itself or by some administrative processes.

There are two comments we make about the extent of the right which the state has to seek contribution from employees. The act contemplates that the state have primary liability but that in certain circumstances it can seek contribution from the employee who is wrongdoing.

CHAIR: Can you speak up a little bit louder for the phone?

Mr Doyle: Yes, certainly. In terms of the right of contribution from the state, we have two comments: one is that it should be made clear that that right of contribution can extend to right of indemnity; that is, it is not limited to a portion of the total claim, but can extend to the whole of it if the circumstances warrant it. Ultimately the question of how much is, by this act, to be determined by a court, and the court should not be constrained to have it only a part of the liability if the circumstances justify it. So the word 'contribution' where it is used should be extended to make it plain that it extends to an indemnity.

The other thing that we have a concern about, which really is a policy matter, as we have said in our written submissions—and I have heard what you have said about raising matters of policy here—the right of contribution is available only where the employee is responsible in two ways: that is both acting other than in good faith and grossly negligent. We have to question whether that is really intended—whether that should be a conjoint requirement or a disparate requirement. If an employee is not acting in good faith, one would have thought, even if not acting grossly negligent, the state should have a right of contribution from that employee. Similarly, if albeit acting in good faith the employee is acting not merely negligently but grossly negligently, again, we think that the state should at least consider whether it should have a right of contribution from that employee.

That is important from the citizen's point of view, because the potential personal liability is a constraint upon future misconduct. So an employee would have to 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. The Bar Association really submits that that would be a constraint upon future negligent conduct. So the right of contribution, we would urge, ought to extend in circumstances where the employee is either acting other than in good faith or acting grossly negligently.

CHAIR: Thank you. Are there any questions? Curtis, are you hearing okay now?

Mr PITT: I am having a fair bit of difficulty hearing the witness statements, unfortunately, but that is technology.

CHAIR: Okay.

Mr PITT: If I miss any statements you have previously made in any of my questions, I apologise in advance.

CHAIR: Curtis, do you have a question, then?

Mr PITT: Yes, if I could ask a first question to Ms Holm. Regarding the public servant whose liability has been transferred to the Crown, will they have any say in the conduct of the matter? We are all aware of situations where an insurance company acting on behalf of an insured in civil actions has settled a matter because it might end up being more financially advantageous to settle rather than to litigate even though the insured person may have a very strong case. In the case of public servants, their professional reputation could be tarnished as a result of the state settling a matter on the basis of negligence or otherwise merely because it is in their financial interests to do so. I am just trying to find out if they will have any say in the conduct of a matter that has been transferred to the Crown.

Ms Holm: There are no specific provisions in the bill that relate to that in that level of detail, but just at a practical level the employee's participation in the process is required. So the employee naturally will be required to provide statements about the incident and various responses to

requests for information and the whole legal process itself. Indeed, their immunity is really conditional upon and requires their participation in the process. So I think it would be difficult to see where the employee's voice was not able to be conveyed

Mr PITT: Great. Thanks very much.

CHAIR: Anyone else?

Mrs CUNNINGHAM: I have a question, if you like, to everybody. At the moment there is a constraint, a control, a guidance for all employees to act reasonably because they are subject to this civil liability. What will there be to ensure that employees of the state pause and think about their responsibilities? What do you see in each of the various areas? I hear what you are saying about police having to make split-second decisions, but what will there be to constrain a person to behave? It is not either/or; that connector is 'and'. It is a very high test for culpability. What will there be to constrain or to help a person to act appropriately? Secondly, what happens where there is a pattern of behaviour, albeit in the Police Service or other areas, where an individual, particularly after this legislation is passed, knows that their liability will be redirected?

Ms Holm: For Public Service employees, that is a very straightforward answer. The Public Service Act is very clear about a Public Service employee's standards of conduct that are required. Section 26 of the Public Service Act sets out the work performance principles and they set a very high standard in terms of the expectations of Public Service employees. It also refers off to the Public Sector Ethics Act, which then sets standards like our code of conduct. So our behaviours and our performance are very clearly articulated through those two pieces of legislation. The Public Sector Ethics Act requires that there is regular training. It puts the responsibility on the CEO of a department to provide employees with that kind of information and guidance so that they are aware and made regularly aware of their responsibilities as a Public Service employee.

The second component to your question talked about patterns of behaviour. The scheme that is set up in this bill does not prevent management action or disciplinary action being taken against the employee. That could include termination of their services if for some reason, for example, there was a pattern of behaviour that was no longer acceptable to the employer, whether that is a department or some other agency. I think there are very clear signals and guides and lots of information to staff about what the expected standard of conduct is.

Mr Wilkinson: If I could add a little bit to your question? I think the most important element of safeguards is training. The nature of the work that these people do makes it very difficult in many cases to stop and think about what they are going to do, because they have to respond almost instantly. Training, therefore, in how they should respond before they get to that point is absolutely vital and I think that is probably the most important ingredient to the safeguards that you are seeking.

Deputy Commissioner Barnett: If I might address the honourable member's question on behalf of the service—and I fully understand the question. I would submit 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. Whilst this would provide police officers and our unsworn officers with a degree of protection if they are acting appropriately I would suggest that that will not be front of mind when it comes to decision making. What will come front of mind is the training that they have received in relation to operational, use of force, codes of conduct, and their responsibilities to uphold and carry out the law. All of those burdens weigh very heavily, I would suggest, on operational police.

The split-second decision making that Mr Sycz spoke about on behalf of the union is very much the reality of life for our members. So I totally understand the question and the concerns that might be held about whether this would give any of our people some sort of an out or a protection or a level of comfort that they do not currently enjoy. I would suggest that police officers are more acutely aware of their responsibilities to uphold the law and act in an ethical way than most, or certainly equally with many other professions and members of the community. This type of legislation merely protects those who are doing the right thing and does not offer any support or encouragement to those who are not doing the right thing, because if they are not acting properly they will not be covered by these provisions. I hope I have answered your question and I am happy to explain further.

CHAIR: I suppose the question I have to ask, Deputy Commissioner, on that issue is Mr Doyle talked about the separating of those two elements: acting ethically and basically the misconduct aspect of it. Where do you guys sit with the break-up of those two elements of the bill?

Deputy Commissioner Barnett: Speaking for myself, I think an appropriate standard is implied in the legislation before the committee—that is that both limbs need to be satisfied—and I think if both limbs are satisfied then I think that people who reach that standard are entitled to the protection that is offered in the bill.

Mr STEWART: I have one question that is probably more of an administrative nature. With the bill as it stands, I am just wondering whether there has been any thought as to whether the individual departments have sufficient record keeping of training that has previously been supplied and whether any sort of research has been done into that, especially with staff members maybe receiving certain ethics training in one department and maybe transferring to other departments and not receiving that in the past. I know that even from the Queensland Police Service point of view I would imagine that the training records would be quite strict but maybe with the other departments I am not sure.

Ms Holm: Yes, I think it is probably fair to say that that sort of record keeping at the moment would be done by individual agencies perhaps differently. The Public Service Commission does not set a standard on that at this point in time. Certainly, in relation to some other supports and improvements that the Public Service Commission is looking at at the moment, there is an avenue for that sort of record keeping to be done not in a particularly onerous way but certainly to help support employees more.

Mr STEWART: And the levels of each of the courses throughout the departments, I dare say, would vary greatly as well?

Ms Holm: I think that there are always generic components that are consistent across the Public Service or indeed the public sector and then each department does style its induction and training around its own individual business.

Mr STEWART: Thank you.

Mr Wilkinson: In answer to your question, government security officers frequently bring with them some training from a variety of backgrounds—other police forces, the Defence Force—but it is not standardised and it probably should be. Furthermore, it occurs to me, keeping in mind the looming G20 summit, if you embarked on a training program for these people you would increase their value and, because it is the G20 summit, you could probably get the federal government to pay for it.

CHAIR: Thank you, Mr Wilkinson. We like those sorts of ideas.

Ms Holm: There is probably one more point that I could add to that theme of questions and that is around performance and performance review. I am sure there is a similar system in the QPS. Employee performance is regularly discussed and supervisors and managers engage with their team in relation to performance and performance standards. So there is monitoring and ongoing training and direction given.

Mr GULLEY: I have a question specifically for Katie Holm. The question is, in essence, who is in and who is out? Can you explain the logic? We have public servants, but within departments we have contractors and then we have contractors of contractors and we have visitors and we have employees and contractors of all different levels per se. If you can walk me through who is in and who is out. The second question is in relation to legal entity. We have government owned corporations and, clearly, corporations that are doing projects for the state. Can you also walk through what is the breadth of cover?

Ms Holm: I am going to call on the assistance of my colleagues to provide that level of detail for you, Mr Gulley.

Mr GULLEY: And the logic of it.

Mr Reed: The proposed section 26B of the bill sets out who the act covers. I will run through those. It covers Public Service employees, ministerial staff, people mentioned in section 13(2), and they are associates of District, Supreme Court and industrial commissioners, a person appointed under an act if the appointment involves the person acting for or representing 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, and a person to whom a function or power is delegated to or another person under regulation. That actually reflects the current coverage of the policies that are in place that provide indemnification and support for Public Service and state employees.

I think the key to understanding that is that it only applies if you are a member of a body that represents the state or an employee that represents the state. It is heavily connected to entities that represent the state. It does not actually apply to contractors. Contractors, for a start, are not

employees. At times people contract with an external party to actually transfer the risk to a third party and very often in standard contract arrangements there is a requirement for contractors to have their own indemnification insurance. The other thing is that contractors come in and they do a particular job, they are employed to do a particular job, and 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 that you have on a day-to-day basis and who undertake a much broader range of duties.

Mr GULLEY: For instance, a contract teacher, what is their legal status?

Mr Reed: A contract teacher is a temporary employee. They are covered because they are an employee. The second part of your question about GOCs, if you could repeat that for me, please?

Mr GULLEY: What is the logic to include or exclude GOCs and other non-government entities that may be, in the public's eyes, the common man's view, a government employee?

Mr Reed: I think part of the answer to that is it that it comes back to whether or not the entity represents the state or not because that is a very significant concept which underpins the protection which is offered. GOCs are a very different type of organisation. They operate in a commercial sphere and part of that commercial operation is to manage their risk on a commercial basis which would include putting in place all the necessary steps to manage that risk and put in place the necessary insurances and to incur the cost of those insurances. It is a very different commercial arrangement. There is nothing to stop those individual organisations adopting a similar level of support for their employees as this bill supports, but it is not something which is imposed by this bill.

Mr GULLEY: You were talking about there are sections which legislate who is in and who is out. You also mentioned the regulation capacity there. Can you walk me through who owns, in layman's terms, that regulation and what is the process to ensure that it is current to make sure that we have always got the right people captured.

Mr Reed: The regulation making power is there to make sure that anyone who is deserving or requires the level of protection offered in 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 that protection that would be considered by government and then government would make a regulation in its normal way with the minister responsible for the bill taking something to Governor in Council.

Mrs OSTAPOVITCH: I have a question for the Public Service Commission. When deciding the quantum of the recovery, could you please advise the committee what factors will be taken into account when reaching a decision about whether an employee has acted other than in good faith and with gross negligence. While you are considering that, could you also let us know how you will calculate the amount of recovery—for instance, will the government's legal costs as well as any payment to litigants be included and can recovery action still be taken if the courts find in favour of the employee?

Ms Holm: Thank you. The bill as currently drafted 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—the government as the employer—determining what is appropriate. In terms of recovery, the appropriate amount of recovery obviously is determined by the particulars of the case and the provision as it is drafted allows for that sort of flexibility, for all sorts of things to be taken into account in the individual circumstances.

CHAIR: My question is to the Queensland Police Union. You mentioned earlier, and I take it into account, criminal indemnity. That is not something that this committee has been empowered to look at. That is outside the scope of this inquiry. Could you advise the committee why in your opinion the existing indemnity arrangements are not sufficient?

Mr Sycz: Because the onus has been placed on the police officer to prove that what happened in the first instance was not lawful. That is the problem. We have instances where police have been cleared by Ethical Standards Command, the CMC—the whole box and dice, everyone who investigates police. Usually after every significant incident there is an investigation. If there is a complaint there is an investigation. After anything there is an investigation. So we have had police cleared by all these different bodies and we are still ending up in court with complaints in front of us. That has still been happening. In those circumstances—not all of them—but in those circumstances we have been left high and dry to look after the member ourselves. There have been significant damages awarded against police where they have been acting in good faith in the execution of their duty. This has become a concern for us.

I first noticed it probably 15 years ago in an incident in Bundaberg. A police officer was working on his own in the watch-house and leg swept a fellow to try to gain control of him. He should not have been working alone in the watch-house on his own for a start. The man almost overpowered him. If it was not for the fact he wrestled him to the ground and then finally handcuffed him that man probably would have escaped and the police officer would have had significant injuries. But the court awarded \$28,000 punitive damages against the police officer and with the order that the QPS were not to pay the damages, the officer was to pay them himself. Those are the sorts of things that have been happening time and time again. It is not in every instance that the Crown or the Police Service will pick up the legal costs for those people, it has been left up to the individual officer or in some cases the police union to look after those people. It is very important to us because if you have been cleared by everybody that has investigated then surely that should be in good faith in the execution of your duty. If they have decided that, it is a no brainer as far as we are concerned.

Mrs CUNNINGHAM: Can I ask a question of Mr Doyle, but anyone else as well? Currently it would be the complainant versus the officer, whether it is a police officer or any other public service officer, it would be those two presumably financially on a similar level in terms of who they could afford to engage to represent them. Now that this is changing and the state will be representing the government employee, the chances are that there will be, I assume, crown law so there will be silks and all sorts of people that will do the representing of the government employee irrespective of who that is and you will have the individual, irrespective of the validity of the complaint, having to engage a legal representative that they can afford. Can you see that there is going to be a disproportionate difference in the ability of an individual to be able to mount a case against the government now that it is the government that they are going to be fighting?

Mr Doyle: There is that possibility, but I would not overstate that. For a lot of the defendants, the state employees we are talking about, they would have been represented, one imagines, by the government anyway. What has happened by this act is to ensure that a litigant who has a good cause of action can recover against the state and have the wherewithal of having it paid by the state. But you are right, there is a degree of disproportion in that, but that has probably always been the case.

Mrs CUNNINGHAM: You see a degree of positiveness?

Mr Doyle: There is a positiveness in the sense that you need not trouble now with the question of whether a particular person who may not be an employee and therefore may not mean that the Crown would otherwise be liable, has the wherewithal to meet a claim because now the state, or the Crown as the case may be, is liable. So you have the certainty, if you like, of a worthwhile defendant.

Mrs CUNNINGHAM: A possibility of a proliferation of cases?

Mr Doyle: Even that is unlikely because there are a number of constraints. If we are talking about personal injury litigation, which I should say is outside my field, there are already a number of constraints upon the capacity of people to sue for personal injuries in this state anyway. So someone who can get over those thresholds will, under this legislation, know they have a worthwhile defendant. They would have that advantage. The disadvantage is that in some instances they will have a better funded defendant than might otherwise have been the case and that is something that you will have to look at. For most of the likely state employees, the likely position anyway would be that the state would have been funding their defence anyway, I expect.

Ms Holm: There are two separate questions about legal representation and then indemnity.

Mr PITT: My question is to Shane Doyle. I could not really hear your answer very well so if you have answered this please move on to something else. The Bar Association has expressed some concern about 10.7 of the current Police Service Administration Act 1990 and suggested that potential amendment to that section to clarify the circumstances in which the discretion to grant legal assistance to bring action against a police officer may be exercised. How would you suggest that that act should be amended and what do you feel should be the matters taken into consideration when exercising discretion?

Mr Doyle: I will try to answer it and tell me if I have answered the right question. The concern we have expressed is with the capacity of the Crown to seek contribution from an employee. Is that the question?

Mr PITT: Yes.

Mr Doyle: Our concern was that the right of contribution is limited to a person who has done two things: acted other than in good faith and grossly negligent. Ultimately it is a question of policy, but it is hard to understand why someone against whom it is found they have acted grossly negligently there should not be a right of contribution even if they have acted in thinking they were doing the right thing—that is, acting in good faith. It is hard to see why they should not be exposed to at least the risk of contribution. In determining how much contribution the court will take into account all the circumstances which will extend to, I imagine, the instantaneous nature of the circumstances in which they had to make their judgments and so on.

But it is difficult to understand why someone who has acted grossly negligently should not be at least exposed to the risk of contribution and not be excused because they were acting as they thought in good faith. Conversely, if someone is negligent but not grossly negligent but was acting in bad faith, this act would not give a right of contribution. It would only give a right of contribution if they were acting in bad faith and grossly negligent. Again, it is difficult to understand why that should be so.

Mr PITT: Having an employee who is found to have engaged in conduct other than in good faith and with gross negligence, do you think requiring both limbs to be satisfied sets a very high bar and do you think it is going to effect the disincentive that is created by the potential for civil liability for public sector employees to ensure that they do act appropriately?

Mr Doyle: That is our concern. Civil liability on a broader scale exists in order to compensate litigants and to change behaviour. If you make the right of contribution so limited in the way this bill does, 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.

In a practical sense, there may not, in many instances, be a lot of difference between acting in bad faith and acting grossly negligently, but the act seems to assume that there is a difference because it requires both. Good faith in that circumstance almost suggests that you believe you are doing the right thing, but you do so negligently or grossly negligently. If the act says that you are only liable for contribution where you both do not act believing you are doing the right thing and grossly negligently, that is setting the bar very high and taking away the effect of disincentive for future conduct.

Mr PITT: Thanks very much for that.

CHAIR: As a follow-up question to Katie Holm, obviously there are other levers that the Public Service can bring as far as disincentives. Obviously you mentioned earlier people can be sacked.

Ms Holm: Absolutely. There is a strong performance framework and clear legislative expectations about the types of conduct and standards of behaviours that are very clearly documented in the act.

CHAIR: Thank you.

Mrs CUNNINGHAM: Following up on that, if I may, you answered the question about patterns of behaviour and the response under the Public Service Act. What about under the Police Service Administration Act in terms of patterns of behaviour? Everybody is entitled to make a mistake, but where a police officer or a security officer continues to demonstrate a particular type of behaviour?

Deputy Commissioner Barnett: The Queensland Police Service's discipline and misconduct process very carefully monitors patterns of behaviour for individual officers. We actually have a monitoring and an early warning type of a process. Let us pick use of force as an example. If an officer has repeated complaints about use of force and making arrests—those sorts of things—that will, after a certain number of incidents, raise a flag. That officer will be identified within his or her command or region for some follow-up consideration, training, observance. In terms of changing behaviour, complaint history also has its place in determining sanction. If and when an officer is found guilty of a disciplinary offence, any previous misconduct or disciplinary history is taken into account in terms of the penalty that might be imposed. I think for both of those arms, an officer is very well aware that his or her conduct to date throughout their service is being closely monitored and is taken into account if and when action is required.

CHAIR: I have a question for Mr Wilkinson. The association outlined what they considered to be the impact of the bill on the members of their association. The committee notes that in your submission you stated initially the association had some concerns regarding the bill, particularly with regards the recovery provisions. Could you please elaborate on these concerns and the reasons that you are now satisfied?

Mr Wilkinson: This is going to run completely contrary to what Mr Doyle has been saying. We were concerned about the recovery provisions, but when we looked at it and we saw that the man or woman had to act other than in good faith and with gross negligence, we felt that they were fairly secure. In expanding on that, in my mind, if a security officer acts in good faith but somebody else—and it is spur-of-the-moment stuff. The police force would know exactly what I am talking about because they have similar circumstances. Some of the stuff is violent and quick and they have to do what they have to do. Somebody else may determine, in fact, that they might have acted in good faith, but they were negligent or grossly negligent. It may turn out in the future, after some consideration, that that is not the case. We believe that, rather than putting the individual through all that stress, there is internal provision right now and will be in the future to deal with disciplinary matters. We feel that we were reassured by those words. We think because of the nature of the work that they do and how quickly things can change, that this ought to be there.

CHAIR: Thank you.

Mrs OSTAPOVITCH: I think we tend to focus a lot on the police force and Corrective Services. Other than the Public Service Commissioner who has a broad umbrella, we do not have anyone here representing doctors and nurses or Queensland Health. I state I have a son who is a doctor who works in Queensland public hospitals at times. It is hard to imagine that any doctor or nurse would be acting not in good faith. There could be gross negligence. We sometimes do get bad nurses and doctors; it is a fact. Or they are tired, they are stressed, they work long hours. There are any kind of extenuating circumstances that might make a doctor or nurse make a wrong call. For example, a young boy was sent home from hospital a week or so ago with terrible asthma and he consequently died and the family was looking to sue. You could not possibly put them into the same category as the police force. No doctor in their right mind would want to see anybody die, let alone a child. This legislation, I see, gives really great protection to healthcare professionals; would that be correct?

Ms Holm: The same protection for other employees, yes, and they are covered by the bill. The other thing that I was thinking that might be helpful for the committee and the other representatives of agencies appearing is some information that I presented at the committee hearing before Christmas. It is just referencing back to the explanatory notes for the bill. It states that the state—

... should ensure that an employee is not exposed to liability and the accompanying financial risk, for carrying out his or her duties.

These are the sorts of things you are referring to.

This risk has the potential to stifle innovation and inhibit changes in practices leading to improvements in service delivery in the public sector. 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.

In 2013, the Public Service Commission undertook extensive consultation with employees. Overcoming risk aversion was a very strong theme in that engagement process. In all of those engagement activities, 20,000 employees participated. There were 22 CEOs, nearly 17,000 responses via a pulse survey, almost 4,000 attendees at 128 employee forums across the state and over 830 attendees at executive forums. Overcoming risk aversion and low-mistake tolerance by fostering workplaces where innovation is encouraged and supported by leaders was a theme identified by 53 per cent of CEOs and at 73 per cent of the employee forums. It is seen by employees, whether it is real or perceived, as being a barrier to their engagement and innovation in their work practices. Hopefully, this bill will go some way into eradicating that perception and allowing people to perform their duties well and to the standards that we expect.

CHAIR: There are a couple of quick questions.

Mr STEWART: This is similar to the topic that you were just mentioning before. For example with the Public Service, if someone was acting above and beyond their position description—they saw a need and they thought they would fill it—would they be covered by that? Also with the Queensland police, would they be covered if they are acting within their duties on, for example, their days off? They are entitled if they see a crime to take some details and follow up with that on a later date. Would they still be covered?

Ms Holm: The QPS might want to answer that first in terms of the off duty.

Deputy Commissioner Barnett: As you know, our officers are effectively on duty 24/7, 365 days a year. When they are off duty in terms of their rostered hours of duty, they simply put themselves back on duty to deal with a particular incident and exercise their responsibilities. If they do, they would be covered.

Ms Holm: I can finish the question from the Public Service employee's point of view. The bill does refer to official capacity. That is where there is a difference in terms of roles. Certainly, if you were conducting and performing duties that were in the theme of what you are doing—I think you referred to going beyond your actual role—a common-sense approach would be taken, provided you are not stepping outside of the work ambit of what your department does. If you are suddenly offering to conduct surgery and you do not actually work for Queensland Health, that is going to be a problem.

Mrs OSTAPOVITCH: I have a quick question on that. Say a police officer performed CPR. He is not a doctor either. Somehow he broke a rib or something like that. He acted in good faith to try to save a life.

Deputy Commissioner Barnett: I guess there is also the added complication of what you would expect an ordinary member of the community to do in such a circumstance, not necessarily because they are a police officer. Any member of the community would try, I would imagine, to help in those circumstances. Specifically for the police, if an off-duty police officer wants to get the protection of this act, he or she must do something to make it clear that they are putting themselves back on duty: identifying themselves, making it clear that they are not acting in the capacity of a private citizen but clearly identifying that they are a police officer and acting in that role.

Mrs CUNNINGHAM: If we can step past, just for this question: an incident has occurred, there has been a case made and all the judicial stuff has been finished with. The department now is going to examine whether they are going to require recompense from the individual. Who is going to make that assessment? It is fine if I am the person that did the action and I say, 'Yep, hand up, I made a blue, I will pay you 20 bucks'. But if I say, 'No, hang on, I don't agree with that assessment. I don't believe I was either negligent and I believe I acted in good faith'. It says that there will be a judicial decision about recovery. Who will make that decision and what is the process?

Ms Holm: It is a separate decision-making process. The decision whether there needs to be a right of recovery would lie with the responsible officer for the department, the chief executive. Any chief executive, in making that decision, would need to have sources of information to inform that decision. It might be taking legal advice on prospects of right of recovery for the sorts of things that Mr Doyle referred to before, in terms of whether the effort that the individual put in and how much they were attempting to do the right thing. So it will be assessed on a case-by-case basis, but the decision would sit with the CEO. The normal course of things would be to seek comment from the employee as to what they think. So it would be decided through a regular process of examining whether there is merit in seeking recovery.

Mrs CUNNINGHAM: Given the number of departments in the state government, including police, there is going to be an element of subjectivity in assessing that. So there is not going to be a checklist. Each CEO will give a different weighting to behaviours. So you are accepting that there is going to be an element of subjectivity?

Ms Holm: I think that is important because each department has a different set of responsibilities. So there might be some common criteria, if you like, or considerations across departments, but it is very important to remember that they each operate in a different operational context. So I think it is too difficult to avoid any level of subjectivity. It would have to be assessed in all of the circumstances of that employee in that operational context.

Mrs CUNNINGHAM: In your answer to the committee you talked about appropriate judicial procedure. Do you mean by that getting legal advice?

Ms Holm: Yes and actual action for recovery through the courts.

Mrs CUNNINGHAM: Can I have one follow-up question?

CHAIR: Yes, quickly.

Mrs CUNNINGHAM: This legislation is going to get passed obviously. Will there be a point of review in 12 months or two years time when this whole piece of legislation will be looked at and 'someone' will say, 'In 24 months we have not recovered a cent off any employee. Why?' Will there be some audit done of this legislation not only on the number of cases—

Ms Holm: The data capture.

Mrs CUNNINGHAM:—and the number of people but whether there were payments made by employees and the circumstances in which they were made? Will there be an audit done?

Ms Holm: That is not contemplated by the act at this point in time. Certainly that sort of activity could be undertaken at an administrative level without it needing to be in legislation.

Mrs CUNNINGHAM: Okay. In a situation where the boss says, 'No, we're going to get money out of you,' and the employee disagrees and says, 'No. I did it in good faith and I was not grossly negligent,' who do they appeal to?

Ms Holm: They have a right to defend that action—that right of recovery. They have a right to defend it certainly through the regular court system. If it is not settled, for instance, and they have a decision against them in terms of they have to contribute or pay in full if that is deemed appropriate, then just like anybody else seeking a review of a court decision they will be able to follow the regular rights of review that the Supreme Court act allows for.

CHAIR: That is already in existence now—

Ms Holm: Yes.

CHAIR:—because that is already happening now.

Ms Holm: Yes, so you do not need to write that into the act because it already exists.

Mrs CUNNINGHAM: Are the police the same?

Deputy Commissioner Barnett: Yes.

CHAIR: Sorry, Liz, we are running out of time. We did ask some questions and you did respond. We are seeking a little bit of clarification. Can I ask for this on notice; is that okay?

Ms Holm: Sure.

CHAIR: We asked for clarification regarding the number of instances where public sector employees were sued under the existing indemnity arrangements. The committee was advised that there were 104 requests for indemnification made by public servants in the 2012-13 financial year, excluding requests by doctors. The committee was further advised that there were 40 claims made against Queensland Police Service employees in the 2013 year to date. We need to further clarify these statistics. Can you please advise on notice whether the 2012-13 figure includes or excludes the police? We are a bit unsure about that. Also, what is meant by 'excluding requests by doctors'? Did all of these instances result from final court verdicts or were these instances referred to crown law prior to this occurring? At what point in the process are cases referred to crown law for advice? How many of these cases resulted in reimbursement to the employee? The information was provided on 18 December 2013, so what is meant by 'the 2013 year to date'? When was the cut-off? The final question is: could you please advise the amount of money reimbursed to employees under the existing process for the 2012-13 financial year? We will give you those questions.

Ms Holm: Thank you, Chair. We will take those on notice.

CHAIR: Thank you very much. The time allocated for this public hearing has expired. If members require any further information, we will contact you. Thank you for your attendance today. The committee appreciates your assistance. It was very informative. I declare this briefing closed. Thank you very much. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001? There being no objection, it is so authorised.

Committee adjourned at 4.05 pm