




Speech By
Curtis Pitt

MEMBER FOR MULGRAVE

Record of Proceedings, 12 February 2014

**PUBLIC SERVICE AND OTHER LEGISLATION (CIVIL LIABILITY) AMENDMENT
BILL**

 **Mr PITT** (Mulgrave—ALP) (3.35 pm): I rise today to contribute to the debate on the Public Service and Other Legislation (Civil Liability) Amendment Bill 2013. Broadly speaking, this legislation is supported by the opposition. We will not be opposing the passage of the bill. There are some points of clarification that I will be seeking from the government throughout the debate and I trust that those questions will be addressed accordingly in the government's reply.

As has been outlined in the introduction of this legislation, the fundamental element of this bill is to protect individual employees from the risk of personal civil liability for conduct undertaken by public servants and police officers in carrying out their official duties. There is a range of protections already in place across a wide range of public sector areas. This legislation introduces a new centralised protection against the personal liability of employees across the Queensland public sector. This purpose is carried out through effectively transferring the liability of individual employees to the state of Queensland.

Changes to the Public Service Act 2008 provide protection from civil liability for state employees engaging in, or as a result of engaging in, conduct in an official capacity. The rights of potential victims, or possible future claimants, are preserved by transferring the civil liability from an individual employee or employees to the state of Queensland. To encourage employees to act appropriately and to ensure the state has some ability for cost recovery in appropriate circumstances, the state maintains an ability to recover financial contributions from an employee if an employee engages in conduct other than in good faith and with gross negligence.

Similar changes are made to the Police Service Administration Act to strengthen protection to: provide officers, recruits, staff members and other members of the QPS with immunity from civil liability for engaging in, or as a result of engaging in, conduct in an official capacity; preserve the rights of potential victims or claimants by transferring liability from individual employees to the state; and amend recovery provisions to provide the state with the avenue to recover damages when an employee or employees engage in conduct other than in good faith and with gross negligence.

As I outlined at the start of my contribution, the opposition is broadly supportive of this approach. One benefit of the changes was highlighted by the Anti-Discrimination Commission in Queensland. The submission from the commission outlined that this legislation could improve the timeliness of the complaints mechanism that is undertaken through the commission's authority. The commission submitted—

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.

Providing the ability for members of the Queensland public to lodge complaints with an appropriate body and to have those complaints dealt with genuinely and in a timely manner is a real strength of our system. If these changes assist the commission in the important work that it undertakes, that then is an additional bonus of this legislation. However, as I indicated at the start of my contribution, there are some issues about which I seek clarification from the government.

The avenue for recovery for contributions from those responsible employees requires both limbs of the test to be met—that is, for the state to recover contributions from an employee, they must have engaged in conduct that was both other than in good faith and with gross negligence. That could be a very high bar for the state to be able to recover some contributions. This point was discussed at the December committee hearing and was raised in the submission of the Bar Association of Queensland. The Bar Association's submission stated—

As presently drawn the Bill (by proposed s 26C of the *Public Service Act* and s 10.5 of the *Police Service 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.

I seek clarification from the government in reply about what analysis has been undertaken for what sort of conduct would meet both limbs of the test. Has the government considered whether there is conduct that one might naturally assume would be covered under the purposes of the legislation that would actually fall beyond the realm of the test? It was made clear by the department in the December briefing that the legislation covers the wide variety of employees that make up the public sector, including health workers, teachers, ambulance officers and firefighters, amongst others. In relation to health workers, it was unclear in the hearing if the existing provisions for employees who may have to deal with issues of conscience regarding particular elements of health care would still apply. I ask the government to please clarify whether this legislation would interact with those existing provisions or whether the new test imposed by this legislation regarding the definitions under the contribution recovery provisions might affect expectations placed on employees.

I also note that contractors and public servants employed by GOCs are not covered under this legislation. I make that point because, with the explicit intention of the government to outsource large chunks of services, including in the provision of health care, we will need to consider the impact of any changed employment status of our state employees. There was also a concern raised in the January committee hearing that individual employees at the centre of any claims could risk being excluded from the process. Because the state would negotiate as the liable party, the situation could arise where the state would settle a case for financial purposes and administrative expediency. That may be the prudent and well intentioned action to take, but there could be significant side effects for an employee, including those who believe they have a strong case in defence of any allegations against their actions. This could clearly have implications for the professional reputation of those employees. The department gave assurances that any employees at the centre of a claim would be central to the progression of the matter, including the opportunity to present their side of the matter and discuss the circumstances of the claim. I seek confirmation from the government that individuals at the centre of any allegations will be afforded natural justice, be given the opportunity to present their evidence and that the settlement between the state and claimants should not unfairly impact on the reputation or employment status of individual employees, with appropriate natural justice being afforded. As I said at the outset, the opposition will not be opposing this bill. I commend the bill to the House.