

Queensland Government Indemnity Guideline

Background

Public officers should, when acting within the scope of their duties and functions, be entitled to protection from the State in relation to legal proceedings taken against them. This protection ensures that if public officers are involved in proceedings they can rely on the State to provide them with an indemnity.

The *Public Service Act 2008* provides that no civil liability attaches to a public service employee in relation to their official powers and functions – liability instead attaches to the State. The provisions also state that if an employee works for a body corporate, then civil liability will attach to that entity. In addition, there is other legislation that may provide immunity to other public officers.

Despite these provisions, public officers may still require legal assistance and other support during the course of proceedings. Other categories of public officers, not employed under the *Public Service Act 2008*, may also require an indemnity. These other public officers would include Ministerial staff and volunteers.

Subject to the Public Service Act, this guideline sets out the circumstances in which all public officers will be provided with an indemnity.

What is an indemnity?

An indemnity is any combination of:

- an undertaking to pay any damages or costs awarded against the public officer or agreed to as part of a negotiated settlement;
- the payment of reasonable legal costs incurred by the public officer before an indemnity arrangement is in place; or
- the provision, at the cost of the State, of legal representation and advice by the Crown Solicitor or another approved legal representative.

How are grants of assistance made?

The State will provide an indemnity to a public officer in relation to proceedings that arise out of or relate to the officer's duties or functions. Such an indemnity takes effect when:

- the officer has notified their employing entity about the proceeding in accordance with the employing entity's procedures; and
- the officer has signed an undertaking in a form acceptable to their employing entity.

The State retains the right to withdraw its indemnity (and/or seek reimbursement for costs of the indemnity) where the public officer has not acted in good faith and without gross negligence. Advice from the Crown Solicitor should be sought before withdrawing assistance.

Costs of an indemnity (including the payment of any compensation or damages) will not be met if a public officer is found guilty in a criminal proceeding or found to have engaged in misconduct of a kind that would warrant the public officer's dismissal. The State will seek reimbursement of any legal costs or damages in these circumstances.

The public officer will be required to sign an undertaking in relation to the indemnity (see Schedule 1). The undertaking will set the conditions for the grant of the indemnity and the costs of the indemnity may not be met until after the undertaking is signed. The State will also be able to seek reimbursement and/or withdraw assistance if the public officer has not acted in good faith and without gross negligence, or does not cooperate with the State in dealing with the proceeding.

Where the indemnity relates to criminal proceedings, a public officer, through their employing entity, will be required to get written approval upon application to the Director-General of the Department of the Premier and Cabinet. The Director-General of the Department of the Premier and Cabinet must seek legal advice and be satisfied that:

- the conduct relates to the persons duties or functions; and
- the person was acting in good faith and without gross negligence.

What sort of proceedings will the indemnity cover?

The State will provide an indemnity to a public officer in respect of the following proceedings:

- **civil proceeding:** which includes, but is not limited to, any claim, action or legal proceedings (including concerns notices under the *Defamation Act 2005*) taken against a public officer in any court or tribunal or other forum of any State, Territory or the Commonwealth, including complaints under the *Anti- Discrimination Act 1991* and proceedings before professional regulatory bodies concerning the conduct of employees.

However, the State will not provide an indemnity to a public officer if the State has commenced a civil proceeding against the public officer.

- **inquiry or investigation:** which includes, but is not limited to, an inquiry or investigation by -
 - an entity established or appointed under Queensland legislation*;
 - a parliamentary committee of any State, Territory or Commonwealth Parliament;
 - an investigation by a coroner of any State or Territory , including an inquest; or
 - any other State, Commonwealth or Territory body with investigatory or inquiry powers under a State, Commonwealth or Territory Act.
 - a police service, professional body or other entity responsible for investigating offences by or complaints against a public officer.

*However, this does not include internal departmental investigations or inquiries, for example, matters referred to the department by the Crime and Misconduct Commission or matters arising from a complaint to human resources.

- **criminal proceedings:** which includes a criminal charge for a criminal offence made against a public officer, including a charge made pursuant to a private complaint or private prosecution.

Initiating proceedings

The State will not provide legal assistance to a public officer to initiate or continue legal proceedings (including an action for defamation) unless:

- (a) an indemnity arrangement is already in place in relation to a civil proceeding, inquiry or investigation or criminal proceeding arising from or relating to the public officer's duties and functions;
- (b) the separate legal proceedings directly relate to or arise from that arrangement; and
- (c) written approval has first been obtained from the Attorney-General (or the Premier if the matter involves the Attorney-General).

Who is covered by the guideline?

This guideline applies to public officers. A public officer includes:

- a state employee which means a person employed or formerly employed by the State and includes –
 - an officer, employee or appointee under the *Public Service Act 2008* (Qld);
 - a Judge's associate appointed under the *District Court of Queensland Act 1967* or the *Supreme Court of Queensland Act 1991*;
 - a public officer or person acting for or representing the Crown;
 - an employee or member of a board, corporate body, authority or other entity acting for or representing the Crown;
 - a bailiff (other than bailiffs working for private remuneration);
 - health service employees.
- a volunteer (any person who works without payment (other than out-of-pocket expenses) and acts under the direction and supervision of the State); and
- Ministerial staff (persons employed under the *Ministerial and Other Office Holder Staff Act 2010*).

To remove any doubt, the guideline does not apply to members, officers or employees of Queensland Bulk Water Supply Authority and Queensland Rail Transit Authority and their subsidiaries as these entities do not represent the Crown.

A public officer does not include employees of, or appointments made to:

- government-owned corporations and their subsidiaries;
- government-owned companies – “government company means a corporation incorporated under the Corporations Act all the stock shares in the capital of which is or are beneficially owned by the State.”

A public officer does not include a person covered by s26B(3)(d) of the *Public Service Act 2008*.

How is assistance provided?

As soon as a public officer becomes aware of their involvement in any proceedings they should inform their employing entity, unit or office. The public officer must provide their employing entity with a signed undertaking. The undertaking must be in a form acceptable to the employing entity and provide all necessary information to ensure an indemnity arrangement can be put in to place. At a minimum, the undertaking should provide the details contained in the template undertaking at Schedule 1 of this guideline.

Once an indemnity is in place, the public officer's employing entity will determine how the legal assistance will be provided and any decisions must be consistent with the government's tied work guidelines.

Reporting arrangements

A public officer's employing entity, unit or office must ensure that processes are in place to be notified of requests for indemnities and legal assistance.

They must also have processes to record, monitor and authorise the payment of costs of the indemnity, and provide six-monthly reports to the Commission Chief Executive of the Public Service Commission on any indemnities provided. This information should include the number of matters where immunity and/or indemnity has been provided, the type of each matter (i.e. anti-discrimination complaint, police investigation), the costs of each matter, the number of recovery proceedings (and amounts recovered) under section 26C of the *Public Service Act 2008* and the number of indemnities refused by the department (if any).

Reporting arrangements existing prior to commencement of this guideline will cease.

Commencement and transitional arrangements

This guideline commences on 31 March 2014, and subject to the following paragraph, applies to conduct whenever it occurred.

A public officer who has made an application under an existing indemnity guideline prior to 31 March 2014 will not receive an indemnity or legal assistance through this guideline, regardless of what stage their application is at – and the previous guideline applicable to that officer applies to their application. To avoid doubt, if an application for an indemnity or legal assistance has been determined under a previous guideline, they will not receive an indemnity or legal assistance through this guideline for the same proceeding.

Schedule 1 Grant for an indemnity

FROM: Name:
Position:
Department or entity or office:
Position at the time of the incident:
Department at the time of the incident:
Address:
Telephone:
Email:
Include brief details of assigned duties and functions:
If applicable, include details of legal representatives:

TO: Responsible person in persons employing entity:
Position:
Department or entity:
Address:

Details of matter

This grant of assistance is in relation to the following matter/s.

Civil proceeding

Details of Civil Proceeding:
Date served or received:

Inquiry or investigation

Name of investigative agency:
Details of inquiry or investigation:
Date served or received:

Inquiry or investigation relating to a criminal investigation / inquiry:

Name of investigative agency:
Details of inquiry or investigation:
Date served or received:

Defend a criminal charge

Details of charges:
Date charged:

Undertakings

1. I have acted in good faith and without gross negligence, and endeavoured to carry out my duties and functions.
2. I have not been convicted of a criminal offence nor had a finding of official misconduct against me in relation to this matter.
3. I am / am not aware of any criminal, official misconduct or disciplinary proceedings being brought against me in relation to this matter. *Include details if applicable.*
4. I have attached a statement in support of this grant setting out all relevant facts and demonstrating that I have acted in good faith and without gross negligence.
5. I have attached a copy of any relevant documents (e.g. claim, application, subpoena, notice, and summons).
6. I agree to provide any further information requested by the employing entity/office or unit and to keep it informed of any change in circumstances which may affect my application.
7. I agree that any indemnity I receive will be subject to any terms and conditions placed on the grant as set out in the Queensland Government Indemnity Guideline.
8. I acknowledge that the State can take recovery action against me where I have not acted in good faith and without gross negligence.

Signature of public officer: _____

Date: _____