



# Indemnity for Queensland Health Employees and Other Persons

## Human Resources Policy

Effective Date: July 2012

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ATTACHMENT ONE      Public Service Commission Guideline for the grant of indemnities and legal assistance to state employees

ATTACHMENT TWO      Summary - Application of indemnity arrangements and decision makers for Hospital and Health Services

## 1 PURPOSE

To outline the arrangements for indemnity for employees engaged under the *Hospital and Health Boards Act 2011* and other persons performing or formerly performing a duty or function for Queensland Health.

## 2 APPLICATION

### **Application of the Public Service Commission Guideline for the grant of indemnities and legal assistance to state employees**

The Public Service Commission Guideline for the grant of indemnities and legal assistance to state employees (PSC guideline) applies to Queensland Health. When there is any inconsistency between the PSC guideline and this policy, this policy prevails.

### **Application in Queensland Health**

This policy applies to employees engaged under the *Hospital and Health Boards Act 2011* and other persons performing duties and functions on behalf of Queensland Health, including under the direction of a Hospital and Health Service.

### **Example**

Nurses and allied health professionals providing clinical services to interstate hospitals/staff as directed by Queensland Health, or by a Hospital and Health Service, for example:

- providing clinical advice regarding the treatment of interstate patients.
- undertaking retrieval services.

Other persons includes (but is not limited to):

- members of official committees
- members of unincorporated hospital auxiliaries
- administrators
- investigators engaged under Part 9 of the *Hospital and Health Boards Act 2011*
- volunteers (refer Volunteers HR Policy B12 or any replacement policy dealing with substantially the same subject matter)
- persons undertaking a health profession re-entry program.

### **Example**

Members of ethics committees based in public health facilities assessing research for a private hospital or general practitioner, as requested by the authorised delegate. Reference is also to be made to the Research Management Policy, or any replacement document dealing with substantially the same subject matter.

### **Collaborative Work Agreements with the Mater Public Hospital**

This policy continues to apply to Queensland Health employees participating in secondments under approved collaborative work agreements with Mater Misericordiae Health Services Brisbane Limited (the Mater).

### **Application in Hospital and Health Services**

This policy applies to persons engaged under the *Hospital and Health Boards Act 2011*, other persons performing duties and functions on behalf of a Hospital and Health Service, and employees of a prescribed Hospital and Health Service.

Reference is to be made to the Summary - Application of indemnity arrangements and decision makers for Hospital and Health Services (Attachment 2).

Where Queensland Health is referenced in this policy, it is taken to mean Hospital and Health Services, in the context of application to Hospital and Health Services.

### **Persons excluded**

This policy does not apply to:

- medical practitioners engaged by Queensland Health to undertake the treatment of patients or to perform associated clinical services (refer Indemnity for Queensland Health Medical Practitioners HR Policy I2)
- employees engaged under the *Public Service Act 2008* (refer PSC guideline)
- independent contractors or consultants providing services to Queensland Health, although it is possible to specifically provide for indemnity in the contract for services.

## **3 GUIDELINES**

Guidelines may not be developed.

## **4 DELEGATION**

The 'delegate' is as listed in the Queensland Health Human Resource Delegations Manual as amended from time to time.

## **5 REFERENCES**

- *Hospital and Health Boards Act 2011*
- *Judicial Review Act 1991*
- *Commissions of Inquiry Act 1950*
- *Crime and Misconduct Act 2001*
- *Public Sector Ethics Act 1994*
- *Personal Injuries Proceedings Act 2002*

- *Supreme Court of Queensland Act 1991*- Uniform Civil Procedure Rules 1999
- Volunteers HR Policy B12 (QH-POL-259)
- Indemnity for Queensland Health Medical Practitioners HR Policy I2 (QH-POL-153)
- Research Management Policy (QH-POL-013)
- Public Service Commission Guideline for the grant of indemnities and legal assistance to state employees

## **6 SUPERSEDES**

- IRM3.8-3 Indemnity for Employees and Other Persons (Excluding Medical Practitioners) – Health Service Districts

## **7 POLICY**

When there is any inconsistency between this policy and the PSC guideline, this policy prevails.

### **7.1 Grant of indemnity and/or legal assistance**

The provisions, conditions and entitlements contained in the PSC guideline (refer Attachment one) apply to Queensland Health employees and other persons.

Any replacement guideline dealing with substantially the same subject matter is also applicable to Queensland Health employees and other persons covered by this policy. The replacement guideline issued is applicable from the date of effect of the guideline.

### **7.2 Eligibility**

#### **Civil proceeding**

The State will provide legal assistance and/or an indemnity to an employee or other person in relation to a civil proceeding when:

- the civil proceeding arises from or relates to the person's duties or functions undertaken for, or on behalf of, Queensland Health or a Hospital and Health Service
- the decision maker is satisfied that the person has diligently and conscientiously endeavoured to carry out such duties or functions.

#### **Inquiry or investigation**

The State will provide legal assistance and/or an indemnity to an employee or other person in relation to an appearance before, and/or giving evidence and/or information to, an inquiry or investigation when:

- the purpose of appearing before, and/or giving evidence or information to, the inquiry or investigation relates to the employee's or other person's duties or functions

- the decision maker is satisfied that the employee or other person has diligently and conscientiously endeavoured to carry out his or her duties or functions.

Where an inquest or Coronial inquiry is to be held an employee only need seek separate representation and indemnity if there is a conflict or potential conflict between the employee's interests and that of Queensland Health or the State. Queensland Health is to appoint solicitors to provide separate legal representation after obtaining legal advice regarding any actual or potential conflict of interest.

**Criminal charges and an investigation or an inquiry by a police service or other entity with responsibility for investigating offences in relation to the commission of an offence**

The State will not provide legal assistance to an employee or other person to defend a charge of a criminal offence, including a charge made pursuant to a private complaint or a private prosecution, unless approval in writing has first been obtained from the Director-General of the Department of the Premier and Cabinet.

In deciding whether to grant approval the Director-General of the Department of the Premier and Cabinet is to:

- be satisfied that the charge arises from or relates to the proper discharge of the employee's or other person's duties or functions
- consider the advice from the Director-General, Queensland Health, or his or her delegate, including legal advice on the prospects of a conviction
- obtain an undertaking from the employee or other person that they will reimburse the State if they are found guilty of an offence.

The State will not provide legal assistance to an employee or other person in relation to an investigation or an inquiry by a police service or other entity with responsibility for investigating offences in relation to the commission of an offence by the employee or other person unless approval in writing has first been obtained from the Director-General of the Department of the Premier and Cabinet.

In deciding whether to grant approval the Director-General of the Department of the Premier and Cabinet is to:

- be satisfied that the investigation or inquiry arises from or relates to the proper discharge of the employee's or other person's duties or functions
- consider the advice from the Director-General, Queensland Health, or his or her delegate, on the prospects of the investigation or inquiry resulting in a conviction

- obtain an undertaking from the employee or other person that they will reimburse the State if they are found guilty of an offence.

However, in relation to any investigation or charge relating to the provision of a termination of pregnancy service undertaken on behalf of Queensland Health or a Hospital and Health Service, when an employee or other person (e.g. a nurse or allied health professional) is investigated by a police service or other entity with responsibility for investigating such an offence, or charged with a criminal offence in relation to the termination of a pregnancy, Queensland Health is to appoint and instruct solicitors to provide legal assistance to the employee or other person to respond to the investigation or defend the criminal charge, provided that:

- the investigation or criminal charge arises from or relates to the duties or functions of the employee or other person and
- the decision maker is satisfied that the employee or other person has diligently and conscientiously endeavoured to carry out such duties and functions.

An employee or other person is not entitled to legal assistance to defend a charge of a criminal offence or in relation to an investigation or an inquiry by a police service or other entity with responsibility for investigating offences in relation to the commission of an offence by the employee or other person, or legal assistance may be withdrawn when:

- the employee or other person does not cooperate fully with the legal representatives appointed by Queensland Health to represent the employee or other person or
- the information provided by the employee or other person to support the grant of legal assistance is found to be incorrect or misleading or
- new information emerges which, if known to the decision maker at the time of granting the application for legal assistance would have led to the decision maker deciding not to grant legal assistance.

### **Other exclusions**

This section does not extend to the provision of indemnity and/or legal assistance to an employee or other person:

- when the State has commenced a civil proceeding against the employee or other person that arises out of the circumstances of the application for indemnity and/or legal assistance
- for the purpose of initiating or continuing separate legal proceedings, including an action for defamation, by or on behalf of the employee or other person in relation to a civil proceeding, inquiry or investigation, unless approval in writing has first been obtained from the Attorney-General

- for the purpose of appealing their conviction of a criminal offence.

### **Recovery of costs**

If an employee or other person is found guilty of a criminal offence Queensland Health may in its discretion recover from the employee or other person any amounts which were paid by Queensland Health under this section prior to conviction.

## **8 APPLYING THE POLICY**

### **8.1 Application**

The employee or other person is to advise their line manager and Corporate Counsel, Legal Unit, as soon as they receive any notification of civil proceeding, inquiry or investigation, or criminal proceeding.

An application for an indemnity and/or legal assistance is made by completing the application for an indemnity and/or legal assistance form contained in the PSC guideline (Attachment one) and forwarding it to the decision maker along with the supporting information detailed in section 8.1.1.

The employee or other person is solely responsible for making an application to the decision maker within the following timeframes:

- upon receipt of any notification of civil proceeding, inquiry or investigation - seven working days
- upon receipt of any notification of investigation or inquiry by a police service or other entity with responsibility for investigating offences - two working days
- upon being charged with a criminal offence – two working days.

The decision maker is to deal with the application for indemnity and/or legal assistance in a timely manner having regard to provisions of this policy and the PSC guideline. The decision maker must obtain legal advice from the Crown Solicitor or Senior Deputy Crown Solicitors through Corporate Counsel before making his or her decision. Corporate Counsel will seek approval from the Director-General, Department of the Premier and Cabinet, where required under this policy.

#### **8.1.1 Supporting information**

In addition to the application in the form contained in the PSC Guideline, the applicant for indemnity and/or legal assistance is to provide:

- any relevant documents detailing the claim, e.g. statement of claim or other court or tribunal documents.
- a statement by the applicant setting out with reasonable particularity:
  - the background to the relevant action, treatment or other health service provided

- details of the action, treatment or service provided and the reasoning behind such action, treatment or service
- the likely and actual outcomes of the action, treatment or service
- how their conduct meets the requirements of this policy.
- In relation to a civil proceeding, a statement by the applicant consenting to Queensland Health assuming carriage of the defence to that proceeding and exercising any right of recovery that the applicant may have against another person.
- a statement from a senior officer or peer who is in a position to give an opinion as to the diligence and conscientiousness of the actions taken by the employee or other person from their understanding of the relevant events. This statement is to be more than a simple assertion of diligence and conscientious conduct and is to:
  - identify the source materials examined
  - set out the reasons for the opinion provided
  - confirm the person's employment status at the time of the alleged incident if the applicant is an employee
  - or
  - confirm the person's relationship with Queensland Health if the applicant is an other person.

The provision of these statements is required to enable Queensland Health to obtain legal advice about whether indemnity and/or legal assistance is to be provided and to assist Queensland Health with the preparation of its response to any actual or contemplated litigation, claim, inquiry or investigation, or criminal proceeding. Any person seeking indemnity through Queensland Health is to be aware legal professional privilege is claimed in relation to these statements.

When there is an allegation of professional negligence or misadventure, peer opinion is to be provided by a qualified professional from the same or a complementary profession as the applicant for indemnity. That peer can take into account the appropriate procedure which was to be followed and whether the action, treatment or other health service provided were in accordance with accepted professional or industry standards. The peer is to indicate the basis upon which the opinion has been formed, whether that is from a perusal of departmental records, an interview with the person seeking an indemnity, the contents of documents relating to the civil proceedings inquiry or investigation, or any other basis. It is to be apparent from the peer opinion that reasonable investigations have been undertaken and the issues have been given proper consideration.

### **8.1.2 Legal representation**

Corporate Counsel (or delegate) is to engage the services of Crown Law or a legal firm from the relevant Queensland Health approved panel to act on behalf of Queensland Health and the indemnified person. If the indemnity extends to legal assistance for separate representation, Corporate Counsel (or delegate) can assist the indemnified person to engage an appropriately qualified lawyer but not otherwise be involved in instructing that lawyer.



### 8.1.3 Civil proceedings - consent for defence

It is a condition of indemnity that the employee or person indemnified is to grant written consent to Queensland Health, as part of the supporting information under section 8.1.1, to allow Queensland Health to assume the carriage of the defence to any such action and to exercise any right of recovery that the indemnified person may have against another person.

### 8.2 Interim protection

When the employee or other person needs immediate assistance to protect their rights at law, pending the decision regarding indemnity, Queensland Health may provide interim 'without prejudice' protection (refer HR Delegations Manual). If indemnity is granted, Queensland Health is to formally assume carriage of the defence. If indemnity is not granted, the employee or other person is to seek their own representation.

## 9 DEFINITIONS

<b>Civil proceeding</b>	Includes, but is not limited to, any claim, action or legal proceedings taken against an employee or other person in any court or tribunal or other forum of any State, Territory or the Commonwealth, including complaints under the <i>Anti-Discrimination Act 1991</i> and proceedings before professional regulatory bodies concerning the conduct of employees or other persons covered by this policy.
<b>Collaborative work agreement</b>	For the purposes of this policy, an agreement entered into between Queensland Health and Mater Misericordiae Health Services Brisbane Limited (the Mater) for the secondment of Queensland Health employees to undertake their public health duties at the premises of and for the Mater.  A collaborative work arrangement does not include other forms of arrangements between the Mater and Queensland Health, for example joint appointments, research fellowships, persons engaged to perform wait list surgery for Queensland Health patients under separate agreements (for example Surgery Connect) and other types of contractual arrangements.
<b>Decision maker*</b>	The Director-General of Queensland Health or Deputy Director-General, Corporate Services (or the role at the equivalent level within Queensland Health, however so named, responsible for legal services) or The Premier, or the Premier's delegate, for matters when the person applying for an indemnity and legal

	<p>assistance is the Director-General of Queensland Health.</p> <p>* For Hospital and Health Services refer Attachment two</p>
<b>Employee</b>	<p>A person employed or formerly employed by Queensland Health as an officer, employee or appointee under the <i>Hospital and Health Boards Act 2011</i>.</p>
<b>Indemnity</b>	<p>An undertaking to pay any damages or costs awarded against the person or agreed to as part of a negotiated settlement</p> <p>or</p> <p>at the discretion of the decision maker, the payment of reasonable legal costs incurred by a person before the application for indemnity or legal assistance is made</p> <p>or</p> <p>at the discretion of the decision maker, conditional indemnity when the cost of the person's defence is covered, but the payment of any compensation or damages or recovery of the cost of the person's defence is determined subsequently after due consideration by the decision maker of the final decision of a court, tribunal or commission</p> <p>or</p> <p>at the discretion of the decision maker, interim arrangements for legal representation of the person pending a final decision by the decision maker.</p>
<b>Inquiry or investigation</b>	<p>As defined under the Public Service Commission Guideline for the grant of indemnities and legal assistance to state employees, includes but is not limited to, an inquiry or investigation by:</p> <ul style="list-style-type: none"> <li>• the Crime and Misconduct Commission</li> <li>• a commission under the <i>Commission of Inquiry Act 1950</i></li> <li>• the Anti-Discrimination Commission Queensland</li> <li>• the Ombudsman</li> <li>• the Commission for Children and Young People and Child Guardian</li> <li>• the Auditor-General and the Queensland Audit Office</li> <li>• a parliamentary committee of any State, Territory or Commonwealth Parliament</li> <li>• the Parliamentary Commissioner under the <i>Crime and Misconduct Act 2001</i></li> <li>• an investigation by a coroner of any State or Territory , including an inquest</li> <li>• any other State, Commonwealth or Territory body with investigatory or inquiry powers</li> </ul>

	<p>under a State, Commonwealth or Territory Act.</p> <p>To remove any doubt this does not include a Queensland Health internal inquiry or investigation conducted by, for example, Audit and Operational Review Unit or HR Branch or an investigator appointed under part 9 of the <i>Hospital and Health Boards Act 2011</i>.</p>
<b>Legal assistance</b>	The provision, at the cost of the State, of legal representation and advice by the Crown Solicitor or another approved legal representative.
<b>Other person</b>	<p>A person engaged by Queensland Health performing a function or duty for or on behalf of Queensland Health, including but not limited to:</p> <ul style="list-style-type: none"> <li>• members of official committees and unincorporated hospital auxiliaries</li> <li>• administrators</li> <li>• investigators engaged under Part 9 of the <i>Hospital and Health Boards Act 2011</i>.</li> <li>• volunteers (refer Volunteers HR Policy B12 or any replacement policy dealing with substantially the same subject matter)</li> <li>• persons undertaking a health profession re-entry program.</li> </ul>

**10 HISTORY**

<b>July 2012</b>	<p>Amended to include indemnity arrangements for Hospital and Health Services.</p> <p>Cabinet endorsed policy on 25 June 2012 (Cabinet decision no. 111).</p> <p>Amended Attachment one to include updated PSC Guideline.</p>
<b>December 2009</b>	Final editorial changes made in relation to amendments to the PSC Guideline for the grant of indemnities and legal assistance to state employees approved by the Deputy Premier and Minister for Health.
<b>November 2009</b>	Cabinet approved policy on 23 November 2009 (Cabinet decision no. 9101).
<b>November 2009</b>	Developed as a result of the HR policy consolidation project.

**GUIDELINE FOR THE GRANT OF INDEMNITIES AND LEGAL ASSISTANCE TO  
STATE EMPLOYEES**

**Introduction**

1. This guideline states the principles and practices for determining the grant of legal assistance and/or indemnities to State of Queensland (“State”) employees in relation to civil proceedings, inquiries and investigations and criminal proceedings.
2. This guideline replaces the Crown Acceptance of Legal Liability for Actions of Crown Employees guideline, number M.2, dated 1 February 1989.
3. This guideline commences on 23 November 2009 and applies to all claims for an Indemnity and/or Legal Assistance arising from acts or omissions occurring before, on or after commencement of this guideline.
4. This guideline applies to State Employees not otherwise covered by another policy of indemnity, including:
  - a. the *Indemnity for Queensland Health Medical Practitioners HR Policy I2* (as amended from time to time);
  - b. the *Indemnity for Queensland Health Employees and Other Persons HR Policy I3* (as amended from time to time); and
  - c. Queensland Police Service policy.
5. This guideline may be extended to provide an indemnity and/or legal assistance to a volunteer who acts under the direction and supervision of the State which the Decision Maker considers that the guideline should apply to, with the approval of the Director-General of the Department of the Premier and Cabinet.

**Meaning of terms**

6. In this guideline -

“**Civil Proceeding**” includes, but is not limited to, any claim, action or legal proceedings taken against an employee 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 State Employees.

“**Decision Maker**” means –

- a. the Director-General of the State Employee’s department, or the head of the State Employee’s office, unit or entity, or his or her delegate;

- b. the Director-General of the Department of the Premier and Cabinet where the application relates to an Inquiry or Investigation in relation to the commission of a criminal offence or defending a criminal charge; or
- c. the Premier, or the Premier's delegate, for matters where the person applying for an Indemnity and Legal Assistance is a Director-General or the head of the office, unit or entity.

**“Indemnity”** means –

- a. an undertaking to pay any damages or costs awarded against the State Employee or agreed to as part of a negotiated settlement; or
- b. at the discretion of the Decision Maker, the payment of reasonable legal costs incurred by a State Employee before the application for indemnity and/or legal assistance is made.

**“Inquiry or Investigation”** includes, but is not limited to, an inquiry or investigation by -

- a. the Crime and Misconduct Commission;
- b. a commission under the *Commission of Inquiry Act 1950*;
- c. the Anti-Discrimination Commission Queensland;
- d. the Ombudsman;
- e. the Commission for Children and Young People and Child Guardian;
- f. the Auditor-General and the Queensland Audit Office;
- g. a parliamentary committee of any State, Territory or Commonwealth Parliament;
- h. the Parliamentary Commissioner under the *Crime and Misconduct Act 2001*;
- i. an investigation by a coroner of any State or Territory , including an inquest; or
- j. any other State, Commonwealth or Territory body with investigatory or inquiry powers under a State, Commonwealth or Territory Act.

**“Legal Assistance”** means the provision, at the cost of the State, of legal representation and advice by the Crown Solicitor or another approved legal representative.

**“State Employee”** means a person employed or formerly employed by the State and includes –

- a. an officer, employee or appointee under the *Public Service Act 1996* (Qld);
- b. a person employed in the office of a Minister of the Crown;
- c. a Judge's associate appointed under the *District Court of Queensland Act 1967* or the *Supreme Court of Queensland Act 1991*;
- d. a public officer or person acting for or representing the Crown in the right of the State of Queensland;
- e. an employee or member of a board, corporate body, authority or other entity acting for or representing the Crown in right of the State of Queensland;
- f. a bailiff (other than bailiffs working for private remuneration).

**“Volunteer”** means any person who works without payment (other than out-of-pocket expenses) and acts under the direction and supervision of the State.

## General principles

7. The State will provide Legal Assistance and/or an Indemnity to a State Employee in relation to a Civil Proceeding if –
  - a. the Civil Proceeding arises from or relates to the State Employee's duties or functions; and
  - b. the Decision Maker is satisfied that the State Employee has diligently and conscientiously endeavoured to carry out such duties or functions.
  
8. The State will provide Legal Assistance and/or an Indemnity to a State Employee in relation to an appearance before, and/or giving evidence and/or information to, an Inquiry or Investigation if –
  - a. the purpose of appearing before, and/or giving evidence or information to, the Inquiry or Investigation relates to the State Employee's duties or functions; and
  - b. the Decision Maker is satisfied that the State Employee has diligently and conscientiously endeavoured to carry out his or her duties or functions.
  
9. The State will not provide Legal Assistance and/or an Indemnity to a State Employee if the State has commenced a Civil Proceeding against the State Employee that arises out of the circumstances of the application for Legal Assistance and/or an Indemnity;
  
10. The State will not provide Legal Assistance to a State Employee to defend a charge of a criminal offence made against the State Employee, including a charge made pursuant to a private complaint or a private prosecution unless approval in writing has first been obtained from the Director-General of the Department of the Premier and Cabinet. In deciding whether to grant approval the Director-General of the Department of the Premier and Cabinet must:
  - a. be satisfied that the charge arises from or relates to the proper discharge of the State Employee's duties or functions;
  - b. consider the advice from the Director-General of the relevant Department or head of the State Employee's office, unit or entity or his or her delegate, including legal advice on the prospects of a conviction; and
  - c. obtain an undertaking from the State Employee that the State Employee will reimburse the State if the State Employee is found guilty of an offence (pursuant to paragraphs 30 and 31).

The State will not provide Legal Assistance to a State Employee in relation to an Inquiry or Investigation by a police service or other entity with responsibility for investigating offences in relation to the commission of an offence by the State Employee unless approval in writing has first been obtained from the Director-General of the Department of the Premier and Cabinet. In deciding whether to

11. grant approval the Director-General of the Department of the Premier and Cabinet must:
  - a. be satisfied that the Inquiry or Investigation arises from or relates to the proper discharge of the State Employee's duties or functions;

- b. consider the advice from the Director-General of the relevant Department or head of the State Employee's office, unit or entity or his or her delegate on the prospects of the Inquiry or Investigation resulting in a conviction; and
  - c. obtain an undertaking from the State Employee that the State Employee will reimburse the State if the State Employee is found guilty of an offence (pursuant to paragraphs 30 and 31).
12. A State Employee is not entitled to Legal Assistance under paragraphs 10 and 11 and the Legal Assistance granted may be withdrawn if the Director-General of the Department of the Premier and Cabinet considers that:
- a. the State Employee is not cooperating fully with the legal representatives appointed by the State to represent the employee; or
  - b. the information provided by the State Employee to support the grant of Legal Assistance is found to be incorrect or misleading; or
  - c. new information emerges which, if known to the Director-General at the time of granting the application for Legal Assistance would have led to the Director-General deciding not to grant Legal Assistance.
13. The State will not provide Legal Assistance to a State Employee for the purpose of initiating or continuing separate legal proceedings, including an action for defamation, by or on behalf of the State Employee in relation to a Civil Proceeding, Inquiry or Investigation, unless approval in writing has first been obtained from the Attorney-General.
14. The Crown Solicitor will provide any Legal Assistance granted under this guideline, unless the Crown Solicitor considers it is appropriate for private legal representation to be provided.
15. Where an Indemnity is provided to a State Employee, the State will not claim any contribution from the State Employee.
16. The Decision Maker may confirm in writing that a particular activity relates to the State Employee's duties and functions for the purposes of this guideline.

### **Application**

17. A State Employee's application for Legal Assistance and/or an Indemnity must be in the form set out in Schedule 1 and be addressed to the Decision Maker.
18. An application must be made as soon as reasonably practicable after the State Employee becomes aware of the Civil Proceeding, Inquiry or Investigation or criminal proceeding.

### **Decision**

19. The Decision Maker may decide to grant or refuse an application for Legal Assistance and/or an Indemnity on whatever terms and conditions the Decision Maker considers appropriate.

20. The Decision Maker may delegate his or her responsibilities under this guideline.
21. The Decision Maker must obtain legal advice from the Crown Solicitor, or Senior Deputy Crown Solicitors, before making his or her decision. Private legal advice or in-house legal advice may be obtained if the Crown Solicitor considers it inappropriate that the Crown Solicitor should advise in relation to an application.
22. The Crown Solicitor, or Senior Deputy Crown Solicitors if applicable, may refer the matter to the Solicitor-General for advice at any time.
23. Where the Decision Maker is the Director-General or the head of the State Employee's office, unit or entity, the Decision Maker must consult with the Director-General of the Department of the Premier and Cabinet before acting contrary to the advice of the Crown Solicitor (or Senior Deputy Crown Solicitors, or Solicitor-General, if applicable).
24. A decision to grant Legal Assistance and/or an Indemnity must include a copy of this guideline and state:
  - a. the details of the Legal Assistance and/or an Indemnity to be provided;
  - b. that the grant is subject to the terms and conditions in this guideline;
  - c. the other terms and conditions, if any, as determined by the Decision Maker, to which the grant is subject; and
  - d. that the State through the Employee's department, agency, office, unit or entity, at the time the alleged conduct giving rise to the application arose, will be responsible for the payment of costs arising from the grant.

#### **Payment of costs and reporting**

25. It is a condition of the grant of Legal Assistance and/or an Indemnity that the State Employee (or private legal representatives if acting) must:
  - a. provide itemised invoices for Legal Assistance to the Decision Maker, or their delegate, on a monthly basis, or at other appropriate intervals as set by the Decision Maker; and
  - b. provide the necessary information to the Decision Maker to enable the Decision Maker to provide the reports required in paragraph 27.
26. Where legal assistance is provided by an approved legal representative other than Crown Law, the invoices provided under paragraph 25a must be provided to the Crown Solicitor, for certification that they are reasonable and may be paid.
27. The Decision Maker must provide the Director-General of the Department of the Premier and Cabinet with quarterly reports, on 1 March, 1 June, 1 September and 1 December each year, providing details on all current grants (including approved and refused) setting out the following information, and/or such other or further information as determined by the Premier from time to time:
  - a. a brief overview of the parties and details of the matter;
  - b. the type and status of the matter;
  - c. the potential stages of the matter;



- d. an estimate of the costs of Legal Assistance linked to the potential stages of the matter;
  - e. a current total of costs of Legal Assistance incurred; and
  - f. details of any significant developments.
28. Where the Decision Maker is the Director-General of the Department of the Premier and Cabinet or the Premier, quarterly reports provided under paragraph 27 should be provided by the Director-General of the State Employee's department, or the head of the State Employee's office, unit or entity, or his or her delegate.
29. Any costs of counsel that exceed the Cabinet-approved scale of rates payable to counsel by Crown Law will not be met by the State, unless the Crown Solicitor or the Attorney-General has given written consent prior to counsel being retained.
30. The cost of providing Legal Assistance will not be met by the State if the State Employee is found guilty of an offence in criminal proceedings concerning the matter for which Legal Assistance and/or an Indemnity is sought, or of misconduct of a kind that would warrant the State Employee's dismissal as a result of an Inquiry or Investigation.
31. However, the cost of providing Legal Assistance incurred in the course of an Inquiry or Investigation or criminal proceeding may be met by the State before the Inquiry or Investigation or criminal proceeding is finalised if the State Employee has given an undertaking to reimburse the State for any costs that would not be met in accordance with paragraph 30. The undertaking must be in a form approved by the Crown Solicitor.

### **Settlement of Civil Proceedings**

32. Civil Proceedings against a State Employee in respect of which Legal Assistance and/or an Indemnity has been granted shall not be settled without the prior approval of the Decision Maker.
33. The Decision Maker must obtain the advice of the legal representative acting for the State Employee or Crown Solicitor (or Senior Deputy Crown Solicitor or Solicitor-General if applicable) before approving a settlement in Civil Proceedings.

**SCHEDULE 1**

**APPLICATION FOR AN INDEMNITY AND/OR LEGAL ASSISTANCE**

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

**TO:** Name of Decision Maker:  
Position:  
Department or entity:  
Address:

**Details of matter**

I am applying for an Indemnity and/or Legal Assistance 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 by State Employee**

1. I have diligently and conscientiously 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 my application setting out all relevant facts and demonstrating that my conduct as a State Employee meets the requirements of the Guideline.
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 Decision Maker and to keep the Decision Maker informed of any change in circumstances which may affect my application.

I agree that any grant that I receive of Legal Assistance and/or an Indemnity will be subject to any terms and conditions placed on the grant by the Decision Maker as well as the terms and conditions of the *Guideline for the grant of an indemnity or legal assistance to State Employees.*

Signature of State Employee: \_\_\_\_\_  
Date: \_\_\_\_\_

## Summary - Application of indemnity arrangements and decision makers for Hospital and Health Services

Employment Groups	Employer / Engager / Appointer	Recommended Applicable Policy	Indemnity Provided by	Recommended Decision Maker
1. Chair Hospital and Health Board	Governor in Council / Minister for Health	PSC Guideline for the grant of indemnities and legal assistance to State Employees.	Hospital and Health Service* (via Minister)	Minister for Health (as the Premier's delegate)
2. Members Hospital and Health Board				
3. Administrator (s276 of HHBN Act)				
4. Health Service Chief Executive	Hospital and Health Service	PSC Guideline for the grant of indemnities and legal assistance to State Employees.	Hospital and Health Service*	Chair Hospital and Health Board
5. Health Service Executive	Hospital and Health Service	PSC Guideline for the grant of indemnities and legal assistance to State Employees.	Hospital and Health Service*	Health Service Chief Executive
6. Health Service Employees working for and in a prescribed Hospital and Health Service	Hospital and Health Service	HR Policy I3 Indemnity for Queensland Health Employees and Other Persons	Hospital and Health Service*	Health Service Chief Executive
7. Medical Practitioners working for and in a prescribed Hospital and Health Service	Hospital and Health Service	HR Policy I2 Indemnity for Queensland Health Medical Practitioners	Hospital and Health Service*	Health Service Chief Executive
8. Independent Contractor VMOs and Locum Doctors engaged under a contract	Hospital and Health Service	HR Policy I2 Indemnity for Queensland Health Medical Practitioners through the Contractor VMO Agreement and Locum Agency Agreement	Hospital and Health Service*	Health Service Chief Executive
9. Volunteers engaged by a Hospital and Health Service	Hospital and Health Service	PSC Guideline for the grant of indemnities and legal assistance to State Employees.	Hospital and Health Service*	Health Service Chief Executive
10. Persons engaged under an instrument to perform a specific function:				
10.1 Health Service Auditor, Clinical Reviewer or Health Service Investigator	Hospital and Health Service	<p>Group 4 &amp; 5 employees</p> <ul style="list-style-type: none"> <li>- PSC Guideline for the grant of indemnities and legal assistance to State Employees.</li> </ul> <p>Group 6 employees</p> <ul style="list-style-type: none"> <li>- HR Policy I3 Indemnity for Queensland Health Employees and Other Persons</li> </ul> <p>Group 7 &amp; 8 employees</p> <ul style="list-style-type: none"> <li>- HR Policy I2 Indemnity for Queensland Health Medical Practitioners</li> </ul>	Hospital and Health Service*	Health Service Chief Executive or Chair Hospital and Health Board as applicable, i.e. where it relates to the Health Service Chief Executive

Employment Groups	Employer / Engager / Appointer	Recommended Applicable Policy	Indemnity Provided by	Recommended Decision Maker
		<p>Health service executives and health service employees employed by the Chief Executive (DG), Queensland Health</p> <ul style="list-style-type: none"> <li>- HR Policy I3 Indemnity for Queensland Health Employees and Other Persons</li> </ul> <p>Medical practitioners employed by the Chief Executive (DG), Queensland Health</p> <ul style="list-style-type: none"> <li>- HR Policy I2 Indemnity for Queensland Health Medical Practitioners</li> </ul>	Hospital and Health Service* <b>(for the period of appointment and/or in relation to the function of the appointment)</b>	Health Service Chief Executive
10.2 Authorised person or security officer	Hospital and Health Service	<p>Group 4 &amp; 5 employees</p> <ul style="list-style-type: none"> <li>- PSC Guideline for the grant of indemnities and legal assistance to State Employees.</li> </ul> <p>Group 6 employees</p> <ul style="list-style-type: none"> <li>- HR Policy I3 Indemnity for Queensland Health Employees and Other Persons</li> </ul> <p>Group 7 &amp; 8 employees</p> <ul style="list-style-type: none"> <li>- HR Policy I2 Indemnity for Queensland Health Medical Practitioners</li> </ul>	Hospital and Health Service*	Health Service Chief Executive or Chair Hospital and Health Board as applicable, i.e. where it relates to the Health Service Chief Executive
11. Others not specified elsewhere in accordance with HR Policy I3 Indemnity for Queensland Health Employees and Other Persons, for example: <ul style="list-style-type: none"> <li>- Members of official committees</li> <li>- Members of unincorporated hospital auxiliaries</li> <li>- Persons undertaking a health profession re-entry program</li> </ul>	Hospital and Health Board	<p>Non Medical Practitioner (and not captured in any other group):</p> <ul style="list-style-type: none"> <li>- PSC Guideline for the grant of indemnities and legal assistance to State Employees</li> </ul> <p>Medical Practitioner:</p> <ul style="list-style-type: none"> <li>- HR Policy I2 Indemnity for Queensland Health Medical Practitioners</li> </ul>	Hospital and Health Service*	Health Service Chief Executive or Chair Hospital and Health Board as applicable, i.e. where it relates to the Health Service Chief Executive
12. Contractors engaged through standing offer arrangements (SOAs) or other purchasing arrangements eg. Agency Staff, labour hire etc (excluding medical practitioners captured under HR Policy I2 Indemnity for Queensland Health Medical Practitioners)	Hospital and Health Board	Indemnity the responsibility of the provider.	n/a	n/a

\* Requires Treasurers approval as a type 1 financial arrangement under section 60A of the *Statutory Bodies Financial Arrangements Act 1982*.