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113

DEPARTMENT OF JUSTICE

Brisbane, 21st June, 1982

CIRCULAR INSTRUCTION NO. 19/82

Dear Sir,

Re: Legal Liability of Crown Employees

The Secretary, Department of the Public Service Board has advised as follows:-

"On 3rd June, 1975, Cabinet issued a Statement of Policy in relation to the Crown accepting responsibility for claims against officers who have diligently and conscientiously endeavoured to carry out their duties.

On 7th March, 1978 a Code was adopted by Cabinet which included guidelines for reimbursement of legal expenses and a Committee was established to review individual claims and advise Cabinet accordingly.

Certain misgivings have since been expressed by employees that the latter decision may have overridden the policy enunciated in 1975. There was also some confusion as to whether the policy applied to all Crown employees or only to persons coming within the ambit of the Public Service Act.

With a view to allaying these concerns, Cabinet has recently issued a comprehensive Statement of Policy; also stating clearly that this policy is to apply to all persons (save members of the Police Force for whom a separate Code has been adopted) in the "employment of the Crown" as defined in Section 3 of the Public Service Act, whether or not such persons are within the Public Service as defined in that Act.

It, as is anticipated, Crown employees take advantage of the policy decision and refer matters to the Permanent Head where any claim is made against them by virtue of anything done in the course of their duties, it is unlikely that situations should arise where the employee would be personally out of pocket as the Crown would undertake the full responsibility both as to the costs of defence and as to any award of damages. The Crown would not, of course, accept responsibility where the action arises out of something not related to the performance of duties.

The Statement of Policy is attached."

Would you please bring the contents hereof to the notice of all officers under your control.

Yours faithfully,

Debra Solinger

H. Atkinson

H. ATKINSON
For Under Secretary.

QCPCI 3(e)
Date: 14.3.2013
Exhibit number: 341

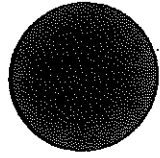


112

STATEMENT OF POLICY

Crown Acceptance of Legal Liability for
actions of Crown employees

1. It is recognized that many Crown employees have difficult and delicate duties and functions and that in the diligent carrying out of them they are exposed to claims for damages.
2. It is not desirable that such employees should be restricted in the carrying out of their duties and functions by any fear that they may have to make payment out of their own pockets in respect of any claim arising out of the due performance of these duties and functions.
3. The Crown will accept full and sole responsibility for all claims, including the cost of defending or settling them, in cases where the Crown employee concerned has diligently and conscientiously endeavoured to carry out his duties.
4. Where the Crown pays any money in settlement of any claim which has arisen as the result of a Crown employee endeavouring to carry out his duties in a conscientious and diligent manner, the Crown will not seek to exercise any claim for contribution from such employee.
5. The Crown does not accept any liability for any act of one of its employees which act is not related to or connected with his/her employment.
6. The Crown will indemnify any officer who, as a consequence of the carrying out of his duties, has been the subject of a claim for defamation. The Crown Solicitor will undertake the defence of the matter in such circumstances. Each action for defamation is to be looked at in the light of its own particular facts in order to determine what was said or done can be properly related to the performance of the duties by the employee concerned.
7. Employees who wish to undertake personal actions including ones for defamation against other persons do so on their own behalf, at their own cost and at their own risk of loss or gain.
8. If an employee is required to give evidence before any public tribunal and wishes to be represented in respect thereof, the application should be submitted through the Permanent Head to the Solicitor-General who will recommend whether legal assistance will be provided by the Crown Solicitor at Government expense or whether the employee should seek his own legal advice with the question of reimbursement of costs to be considered upon application to the Permanent Head when the case is finalised.



9. Where an Inquest is to be held and an employee of the Crown has a real interest in having legal representation at such Inquest that employee may request legal assistance through the Permanent Head. The Permanent Head shall refer the matter to the Solicitor-General with his recommendation and the Solicitor-General, if he considers it appropriate, shall arrange for legal representation either by the Crown Solicitor or through other alternative sources at the expense of the Crown.

10. Where an employee has received notice of any claim for civil damages against that employee in respect of anything which that employee considers to have arisen by virtue of the performance of his duties as an employee of the Crown, the matter is to be submitted through the Permanent Head to the Solicitor-General who will determine whether the claim is one properly related to the performance of duties and whether the Crown should undertake the defence and accept full responsibility.

11. Where a claim is made against any employee, and the claim is one where the Crown could also be liable, the matter is to be referred to the Permanent Head. No such claim may be settled by the employee concerned except with the approval of the Permanent Head, who, in this regard, shall be guided by the advice of the Solicitor-General.

12. This policy applies to persons who are in the "employment of the Crown" as that term is defined in Section 3 of the Public Service Act 1922-1978 whether or not such persons are technically within the Public Service as defined in that Act. The policy does not apply to members of the Police Force.

GUIDELINES

1. It is recognized that Ministers of the Crown have difficult and delicate duties and functions and that in the diligent carrying out of them they are exposed to claims for damages.
2. Such duties and responsibilities include the making of public utterances in relation to matters of Government policy and frequently in areas of considerable controversy.
3. Ministers of the Crown are servants of the Crown and when discharging their duties and responsibilities should be indemnified by the Crown in the same way as ordinary Crown servants.
4. Where any claim for defamation or other personal type of action arises by virtue of something said or done by the Minister in the exercise of his duties and responsibilities, the Crown should undertake his defence and the Crown Solicitor act for him in respect thereof.
5. In respect of any costs or damages awarded against the Minister, the Crown should pay such costs and damages.
6. Each case to be looked at in the light of its own particular facts in order to determine what was said or done can be properly related to the performance of Ministerial duties and functions.
7. Ministers who wish to undertake personal actions against other persons do so on their own behalf, at their own cost and at their own risk of loss or gain.