

# Queensland



## Subordinate Legislation 2001 No. 26

### *Public Service Act 1996*

# **PUBLIC SERVICE AMENDMENT REGULATION (No. 1) 2001**

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**Short title**

1. This regulation may be cited as the *Public Service Amendment Regulation (No. 1) 2001*.

**Regulation amended**

2. This regulation amends the *Public Service Regulation 1997*.

**Replacement of pt 2 div 6**

3. Part 2, division 6—

*omit, insert—*

***‘Division 6—Employee records***

**‘Definitions for div 6**

‘15. In this division—

**“detrimental employee record”** means an employee record about any public service employee that could reasonably be considered to be detrimental to the employee’s interests.

**“employee assistance provider”** means a person with a qualification to provide professional counselling services.

**“employee assistance provider document”** means a document about any public service employee created by an employee assistance provider for the primary purpose of providing a professional counselling service to a public service employee.

**“employee record”** see section 16.

**“misconduct”** see the Act, section 87(2).

**“possession”**, for an employee record, see section 16A.

**“relevant investigation or inquiry”**, for a public service employee, means an investigation or inquiry into—

- (a) an allegation of conduct that, if proved, may make the employee liable to disciplinary action; or

- (b) a grievance involving the employee made under a ruling or industrial determination.

**“Whistleblowers Protection Act document”** means a document that—

- (a) is a public interest disclosure, or record of a public interest disclosure, made under the *Whistleblowers Protection Act 1994*; or
- (b) was brought into existence for that Act’s administration.

**‘Meaning of “employee record”**

**‘16.(1)** Subject to subsection (2), each of the following documents, to the extent it contains information about a public service employee, is an **“employee record”** about the employee—

- (a) a report, correspondence item or other document about the employee’s work performance, work conduct or work history;
- (b) a medical report about the employee;
- (c) a written allegation of misconduct by the employee.

**‘(2)** None of the following documents is an employee record about a public service employee—

- (a) a medical report about the employee indicating disclosure of information in it to the employee might be prejudicial to the employee’s mental or physical health or wellbeing;
- (b) an employee assistance provider document about the employee;
- (c) a Whistleblowers Protection Act document about the employee;
- (d) a document about the employee concerning suspected official misconduct within the meaning of the *Criminal Justice Act 1989*, section 31<sup>1</sup> or its investigation;
- (e) a document about the employee concerning a suspected criminal offence or its investigation;
- (f) a document to which legal professional privilege applies.

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<sup>1</sup> *Criminal Justice Act 1989*, section 31 (Official misconduct)

**‘Meaning of “possession”**

**‘16A.(1)** An employee record is in an entity’s **“possession”** if the entity has the record in its possession or under its control.

**‘(2)** An employee record is also in an entity’s **“possession”** if the record is in the possession, or under the control, of an employee of the entity in the employee’s official capacity.

**‘(3)** For subsection (2)—

- (a) if the entity is the Premier, a person is an employee of the entity if the person is an employee of the department administered by the Premier; or
- (b) if the entity is the chief executive of a department, a person is an employee of the entity if the person is an employee of the department.

**‘Detrimental employee record with employing authority**

**‘16B.(1)** This section applies if a detrimental employee record about a public service employee is in the possession of the employee’s employing authority.

**‘(2)** The employing authority must ensure that—

- (a) within 14 days after the record comes into the employing authority’s possession—
  - (i) the employee is given the opportunity to read the record and to acknowledge having read the record by initialling it; and
  - (ii) the employee is given a copy of the record; and
- (b) if the employee has refused to take the opportunity to read the record or to acknowledge having read the record by initialling it, the refusal is noted on the record; and
- (c) the employee is given the opportunity to respond in writing at any time to the record’s contents; and
- (d) any written response by the employee is attached to the record.

**‘(3)** However, if the employing authority reasonably considers that giving the employee access to the record under subsection (2) would be

likely to prejudice an existing relevant investigation or inquiry, subsection (2) does not apply until the end of whichever of the following periods ends first—

- (a) the period ending when the employing authority no longer reasonably considers that giving the employee access to the record under subsection (2) would be likely to prejudice a relevant investigation or inquiry;
- (b) the period of 6 months after the record comes into the employing authority's possession.

#### **'Detrimental employee record with another chief executive**

**'16C.(1)** This section applies if—

- (a) a detrimental employee record about a public service employee is in the possession of a chief executive of a department; and
- (b) the chief executive is not the employee's employing authority.

**'(2)** The chief executive must promptly give possession of the record to the employee's employing authority.

**'(3)** However, subsection (2) does not apply to a referee's report or other document received for a selection process to fill an employment vacancy in the department.

#### **'Access to employee record**

**'16D.(1)** This section applies if an employee record about a public service employee is in the possession of—

- (a) the employee's employing authority; or
- (b) a chief executive of a department who is not the employee's employing authority.

**'(2)** The employee may, on request—

- (a) inspect the record; or
- (b) take extracts from, or obtain a copy of details in, the record.

**'(3)** The inspection, extract or copy must be given at a time and place convenient to the employing authority or chief executive no later than

21 days after the request.

‘(4) However, if the employing authority or chief executive reasonably considers inspection, taking extracts or obtaining a copy of details by the employee would be likely to prejudice an existing relevant investigation or inquiry, subsection (3) does not apply until whichever of the following periods ends first—

- (a) the period ending when the employing authority or chief executive no longer reasonably considers inspection, taking extracts or obtaining a copy of details would be likely to prejudice a relevant investigation or inquiry;
- (b) the period of 6 months after the employee requests the inspection, extracts or copy.

‘(5) In obtaining the inspection, extract or copy the employee must not remove anything from the record.’.

### **Amendment of sch 1 (Public sector units, their heads and applied provisions and rulings)**

4. Schedule 1, item 8, column 3, after ‘10/98,’—

*insert—*

‘4/99,’.

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#### ENDNOTES

1. Made by the Governor in Council on 5 April 2001.
2. Notified in the gazette on 6 April 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Office of the Public Service Commissioner.