



Queensland

Public Service and Other Legislation Amendment Act 2012

Act No. 22 of 2012



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Act No. 22 of 2012

An Act to amend the Public Interest Disclosure Act 2010, the Public Sector Ethics Act 1994, the Public Service Act 2008, the Industrial Relations Act 1999 and the Industrial Relations (Tribunals) Rules 2011 for particular purposes

[Assented to 29 August 2012]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Public Service and Other Legislation Amendment Act 2012*.

2 Commencement

Parts 2, 3 and 4 commence on 1 January 2013.

Part 2 Amendment of Public Service Act 2008

3 Act amended

This part amends the *Public Service Act 2008*.

3A Amendment of s 23 (Application of Act to public service offices declared under a regulation)

Section 23(3)—
omit.

3B Amendment of s 53 (Rulings by commission chief executive)

Section 53, after paragraph (b)—
insert—

‘(baa)the remuneration and conditions of employment of public service employees other than persons mentioned in paragraph (b)(i) or (ii); or’.

4 Amendment of s 78 (Staff generally subject to direction by commission chief executive)

Section 78(2)—

omit.

5 Omission of s 88E (Staff members to help appeals officers)

Section 88E—

omit.

6 Amendment of s 197 (Starting an appeal)

(1) Section 197(1) and (2), ‘commission chief executive’—

omit, insert—

‘industrial registrar’.

(2) Section 197(3), ‘commission chief executive’—

omit, insert—

‘appeals officer’.

7 Amendment of s 198 (Notice by commission chief executive of appeal)

(1) Section 198, heading, ‘commission chief executive’—

omit, insert—

‘**industrial registrar**’.

(2) Section 198(1) and (2), ‘commission chief executive’—

omit, insert—

‘industrial registrar’.

[s 8]

- (3) Section 198(1)(b), ‘to hear and decide the appeal’—
omit.

8 Amendment of s 206 (Withdrawing an appeal)

- (1) Section 206(1) and (3), ‘commission chief executive’—
omit, insert—
‘industrial registrar’.
- (2) Section 206(2), ‘commission chief executive’—
omit, insert—
‘appeals officer’.

9 Amendment of s 208 (Decision on appeal)

- (1) Section 208(4)—
insert—
‘(ab) the industrial registrar; and’.
- (2) Section 208(4)(ab) to (b)—
renumber as section 208(b) to (c).

10 Amendment of s 218C (Report on appeals)

Section 218C(1), ‘started, decided or withdrawn’—
omit, insert—
‘started, lapsed, withdrawn or decided’.

11 Amendment of sch 4 (Dictionary)

Schedule 4—
insert—

‘*industrial registrar* means the person appointed under the *Industrial Relations Act 1999*, section 297.’.

Part 3 **Amendment of Public Interest Disclosure Act 2010**

12 Act amended

This part amends the *Public Interest Disclosure Act 2010*.

13 Amendment of s 47 (Relocation of public service employee)

Section 47(3), ‘the appeals officer of the Public Service Commission (the *appeals officer*)’—

omit, insert—

‘an appeals officer appointed under the *Public Service Act 2008*, section 88A (the *appeals officer*)’.

14 Amendment of s 58 (Who is the oversight agency)

Section 58, ‘Public Service Commission’—

omit, insert—

‘Office of the Ombudsman’.

15 Amendment of s 60 (Standards)

Section 60(11), editor’s note—

omit, insert—

‘*Editor’s note—*

The oversight agency’s website is <www.ombudsman.qld.gov.au>.’.

16 Amendment of s 61 (Annual report)

Section 61—

insert—

‘(4) The oversight agency may comply with this section by including the information necessary for a report under

[s 17]

subsection (1) in the report mentioned in the *Ombudsman Act 2001*, section 87.’.

17 Amendment of s 62 (Review of Act)

Section 62(4), after ‘Minister’—

insert—

‘and the Speaker’.

18 Amendment of s 63 (Application of chapter to Crime and Misconduct Commission and ombudsman)

(1) Section 63, heading, ‘and ombudsman’—

omit.

(2) Section 63(1)(a)—

omit, insert—

‘(a) gives the oversight agency the power to review or monitor the way in which the Crime and Misconduct Commission exercises its functions under the *Crime and Misconduct Act 2001*; or’.

(3) Section 63(1)(c)—

omit.

(4) Section 63(2)—

omit, insert—

‘(2) Subsection (1) does not apply in relation to the functions of the Crime and Misconduct Commission as a public sector entity in relation to a public interest disclosure made to the commission by a public officer of the commission, or a public interest disclosure referred to the commission under section 31(1)(a).’.

19 Insertion of new ch 9

After chapter 8—

insert—

‘Chapter 9 Transitional provision for Public Service and Other Legislation Amendment Act 2012

‘78 Continuation of standards made by oversight agency

- ‘(1) This section applies to standards made by the Public Service Commission under section 60 that are in force immediately before the commencement of this section.
- ‘(2) The standards are taken, on the commencement, to be the standards made by the ombudsman as the oversight agency.’.

Part 4 Amendment of Public Sector Ethics Act 1994

20 Act amended

This part amends the *Public Sector Ethics Act 1994*.

21 Replacement of s12K (Education and training)

Section 12K—

omit, insert—

‘12K Education and training

- ‘(1) The chief executive officer of a public service agency must ensure that public officials of the agency are given access to appropriate education and training about public sector ethics—
 - (a) as part of an induction program; and

[s 22]

- (b) at regular intervals during the officials' employment.
- '(2) The education and training must include education and training about the following—
- (a) the operation of this Act;
 - (b) the application of ethics principles and obligations to the public officials;
 - (c) the contents of the approved code of conduct for public service agencies;
 - (d) the rights and obligations of the officials in relation to contravention of—
 - (i) the approved code of conduct for public service agencies; and
 - (ii) any approved standard of practice.'

Part 5

Amendment of Industrial Relations Act 1999

22 Act amended

This part amends the *Industrial Relations Act 1999*.

Note—

See also the amendments in the schedule.

22A Amendment of s 89 (When this division applies)

Section 89—

insert—

- '(2) However, this division does not apply in relation to an employee to whom a relevant industrial instrument under chapter 15, part 2 applies.'

23 Amendment of s 319 (Representation of parties)

(1) Section 319(2)(b)—

omit, insert—

‘(b) for proceedings before the commission, the proceedings relate to the following—

- (i) chapter 4, other than section 110;
- (ii) section 149;
- (iii) section 230;
- (iv) section 274A;
- (v) section 277;
- (vi) section 284; or

(ba) for proceedings before the commission not mentioned in paragraph (b)—

- (i) all parties consent; or
- (ii) on application by a party or person—
 - (A) the commission is satisfied, having regard to the matter the proceedings relate to, that there are special circumstances that make it desirable for the party or person to be legally represented; or
 - (B) the commission is otherwise satisfied that it is desirable for the party or person to be legally represented; or’.

(2) Section 319(4), ‘subsection (2)(b)(iii)’—

omit, insert—

‘subsection (2)(ba)(ii)’.

23A Insertion of new ch 15, pt 1, hdg

Chapter 15, before section 686—

[s 23B]

insert—

‘Part 1 General’.

23B Insertion of new ch 15, pt 2

Chapter 15—

insert—

‘Part 2 Particular provisions of industrial instruments

‘691A Definitions for pt 2

‘In this part—

industrial instrument see the *Public Service Act 2008*,
schedule 4.

relevant industrial instrument means an industrial instrument
to which this part applies under section 691B.

TCR provision see section 691D(4).

‘691B Industrial instruments to which this part applies

‘(1) This part applies to an industrial instrument (whether made or
certified before or after the commencement of this part) to the
extent the instrument applies to the employment of persons in
a government entity.

‘(2) In this section—

government entity—

(a) has the meaning given by the *Public Service Act 2008*,
section 24; and

(b) despite the *Public Service Act 2008*, section 23(4),
includes a public service office for which an application
provision has been made under that section.

‘691C Particular provisions are of no effect

‘(1) The following provisions of a relevant industrial instrument are of no effect—

- (a) a contracting provision;
- (b) an employment security provision;
- (c) an organisational change provision.

‘(2) In this section—

contracting provision—

- (a) means a provision about the contracting out, or in, of services; but
- (b) does not include a TCR provision.

Examples—

The following provisions, as in force on 30 July 2012, are examples of contracting provisions—

- clause 7.3 of the State Government Departments Certified Agreement 2009
- appendix 22: Queensland Government Policy on the Contracting-out of Services, of the State Government Departments Certified Agreement 2009
- clauses 4.2 and 4.3 of the Transport and Main Roads Operational Employees’ Certified Agreement 2011
- clauses 2.3(1) and 2.3.2 of the QBuild Field Staff Certified Agreement 8 (2011)
- clauses 6.2 and 6.3 of the Queensland Public Health Sector Certified Agreement (No.8) 2011 (EB8)
- clause 3.1(b) of the Queensland Ambulance Service - Determination 2010.

employment security provision—

- (a) means a provision about job security or maximising permanent employment, including a provision that applies all or part of a government policy about employment security; but
- (b) does not include a TCR provision.

[s 23B]

Examples—

The following provisions, as in force on 30 July 2012, are examples of employment security provisions—

- clauses 7.1 and 7.2 of the State Government Departments Certified Agreement 2009
- appendix 21 of the State Government Departments Certified Agreement 2009
- clause 2 contained in Appendix 5 of the State Government Departments Certified Agreement 2009: New Provisions Applicable to Employees Engaged in Operations in Youth Detention Centres
- clause 4.1.1 of Part 4 of the Transport and Main Roads Operational Employees' Certified Agreement 2011
- clause 2.3 of the QBuild Field Staff Certified Agreement 8 (2011)
- clauses 6.1, 6.6 and 6.7 of the Queensland Public Health Sector Certified Agreement (No.8) 2011 (EB8).

organisational change provision does not include a TCR provision.

Examples—

The following provisions, as in force on 30 July 2012, are examples of organisational change provisions—

- clause 7.3 of the State Government Departments Certified Agreement 2009
- clauses 4.1 and 4.2 of the Queensland Public Health Sector Certified Agreement (No.8) 2011 (EB8).

'691D Termination, change and redundancy provisions

- '(1) This section applies if a relevant industrial instrument includes a TCR provision about notifying an entity of a decision or consulting with an entity about a decision.
- '(2) The following principles apply—
 - (a) the employer is not required to notify the entity of the decision until the time the employer considers appropriate;

-
- (b) the employer is not required to consult with the entity about the decision until the employer notifies the entity of the decision;
- (c) the employer is not required to consult with the entity about the decision other than in relation to implementation of the decision.
- ‘(3) The TCR provision is of no effect to the extent it is inconsistent with any of the principles mentioned in subsection (2).
- ‘(4) In this section—

TCR provision means a termination, change and redundancy provision of a relevant industrial instrument that is an award.

Examples—

The following provisions, as in force on 30 July 2012, are examples of termination, change and redundancy provisions—

- clauses 4.1, 4.7 and 4.8 of the Queensland Public Service Award - State 2012
- clauses 4.5, 4.6 and 4.7 of the District Health Services Employees’ Award - State 2012
- clauses 4.11, 4.12 and 4.13 of the Ambulance Service Employees’ Award - State 2012.

‘691E Restriction on giving personal employee information

- ‘(1) This section applies if a relevant industrial instrument includes provision for giving personal information about an employee to an entity other than the employee or a government entity.
- ‘(2) Despite the provision of the industrial instrument, an employer may give the information to the entity only with the express written consent of the employee.
- ‘(3) In this section—
- giving*** information to an entity includes—
- (a) releasing information to the entity; and

[s 24]

(b) providing the entity with access to the information.

personal information means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.’.

24 Insertion of new ch 20, pt 15

Chapter 20, after part 14—

insert—

‘Part 15 Transitional provisions for Public Service and Other Legislation Amendment Act 2012

‘787 Definitions for pt 15

‘In this part—

amending Act means the *Public Service and Other Legislation Amendment Act 2012*.

commencement means the commencement of this part.

‘788 Application of amended s 319

‘(1) Section 319 as amended by the amending Act, section 23 applies to all proceedings before the commission started on or after the commencement.

‘(2) For subsection (1), an arbitration under section 149 starts when the requirements under section 149(1)(a), (b) or (c) are first satisfied.’.

25 Other amendments

The schedule amends the sections it mentions.

Part 6 **Amendment of Industrial Relations (Tribunals) Rules 2011**

26 **Rules amended**

This part amends the *Industrial Relations (Tribunals) Rules 2011*.

27 **Amendment of rule 79 (Application to refer matter to full bench)**

Section 79, ‘president’—
omit, insert—
‘vice president’.

Schedule **Minor amendments of Industrial Relations Act 1999**

section 25

1 **Section 75(6), ‘president’—**

omit, insert—
‘vice president’.

2 **Section 160(5), ‘president’—**

omit, insert—
‘vice president’.

2A **Section 246A—**

omit.

2B **Section 252—**

insert—

‘(1B) The vice president must prepare, and give to the president, a report for the year on the working of the commission for inclusion in the president’s report under subsection (1).’.

3 **Section 259A(3), ‘president’—**

omit, insert—
‘vice president’.

4 **Section 259AA(3), ‘president’—**

omit, insert—
‘vice president’.

-
- 5 Section 264(1), (2), (3), (4AA), (4A), (6) and (7)(b), ‘president’—**
omit, insert—
‘vice president’.
- 6 Section 264(4A)(a), ‘the vice president’—**
omit, insert—
‘a deputy president’.
- 7 Section 264(4A)(b), ‘the vice president’—**
omit, insert—
‘a deputy president’.
- 8 Section 264(4A)(b), ‘deputy presidents’—**
omit, insert—
‘commissioners’.
- 9 Section 264(5), ‘the president,’—**
omit.
- 10 Section 269, heading, ‘President’—**
omit, insert—
‘Vice president’.
- 11 Section 269, ‘president’—**
omit, insert—
‘vice president’.
- 12 Section 270, ‘president’—**
omit, insert—

‘vice president’.

13 Section 281(2), ‘president’s’

omit, insert—

‘vice president’s’.

14 Section 281(3), (4) and (5), ‘president’—

omit, insert—

‘vice president’.

15 Section 299(3)—

omit, insert—

‘(3) In performing a function or exercising a power, the registrar must comply with a direction given by—

(a) the president in relation to the court; and

(b) the vice president in relation to the commission.’.

16 Section 301(b), ‘president’—

omit, insert—

‘vice president’.

17 Section 308(1) and (2), ‘president may’—

omit, insert—

‘vice president may’.

18 Section 308(5)(b), ‘president’—

omit, insert—

‘vice president’.

- 19 Section 309(1)(a) and (2), ‘president’—**
omit, insert—
‘vice president’.
- 20 Section 310(1)(a) and (2), ‘president’—**
omit, insert—
‘vice president’.
- 21 Section 311(1)(a), (2) and (3), ‘president’—**
omit, insert—
‘vice president’.
- 22 Section 311A(1), ‘president’—**
omit, insert—
‘vice president’.
- 23 Section 313, heading, ‘President’—**
omit, insert—
‘Vice president’
- 24 Section 313, ‘president’—**
omit, insert—
‘vice president’.
- 26 Section 338(3)(c), ‘2 commissioners’—**
omit, insert—
‘the vice president and another commissioner’.

27 Section 708—

insert—

‘(1A) When acting under subsection (1), in relation to forms for use by or in the commission or registry, the president must consult with the vice president.’.

28 Chapter 20, part 13, second occurring—

renumber as chapter 20, part 13A.

29 Section 780, second occurring—

renumber as section 780A.

30 Schedule 2, section 4A(1), after ‘president’—

insert—

‘, the vice president’.

31 Schedule 2, section 4A(2), ‘president’—

omit, insert—

‘vice president’.