

Public Records Amendment Regulation (No. 2) 2015

Explanatory Notes for SL 158

made under the

Public Records Act 2002

General Outline

Short title

The *Public Records Amendment Regulation (No. 2) 2015*.

Authorising law

Sections 8, 15 and 57 of the *Public Records Act 2002*.

Policy objectives and the reasons for them

By *Commissions of Inquiry Order (No. 3) 2015* issued by the Governor in Council under the *Commissions of Inquiry Act 1950*, the Grantham Floods Commission of Inquiry (the Grantham Commission) was established to inquire into the flooding of the Lockyer Creek between Helidon and Grantham on 10 January 2011.

The *Commissions of Inquiry Order (No. 3) 2015* identified that the Grantham Commission would report to the Premier by 31 August 2015, however, this timeframe was then extended until 7 October 2015.

By *Commissions of Inquiry Order (No. 1) 2015* issued by the Governor in Council under the *Commissions of Inquiry Act 1950*, the Queensland Organised Crime Commission of Inquiry (the Organised Crime Commission) was established to inquire into the extent and nature of organised crime in Queensland and the economic and societal impacts of such activity.

The *Commissions of Inquiry Order (No. 1) 2015* identified that the Organised Crime Commission would report to the Premier by 30 October 2015.

The Grantham Commission and the Organised Crime Commission were public authorities as defined in Schedule 2 of the *Public Records Act 2002* (“PR Act”) because they were commissions of inquiry under the *Commissions of Inquiry Act 1950*. Consequently, records made for use by, or a purpose of, the commissions and records received or kept by the commissions in the exercise of their respective statutory, administrative or other public responsibilities or for a related purpose are public records under section 6 of the PR Act.

Pursuant to section 8(3) of the PR Act, if a public authority ceases to exist, the records of the public authority must be –

- (a) if the functions of the public authority are to be carried out by another public authority – given to the other public authority; or
- (b) if the functions of the public authority are not to be carried out by another public authority – given to the public authority that is the relevant public authority under a regulation; or
- (c) in any other case – given to the archives or disposed of in accordance with a decision of the archivist.

The Grantham Commission ceased to exist on 7 October 2015 when it handed its report to the Premier. The Organised Crime Commission ceased to exist on 30 October 2015 when it handed its report to the Premier. The functions of both these commissions will not be carried out by another public authority.

Pursuant to section 15 of the PR Act the “responsible public authority”, for a public record, is –

- (a) the public authority that gave the public record to the archives; or
- (b) if the public authority that gave the record to the archives no longer exists, but there is another public authority carrying out the functions of the former authority – the other authority; or
- (c) if the record relates to a function or power of a public authority that has been transferred to another public authority – the other authority; or
- (d) in any other case – the public authority prescribed under a regulation for this definition.

The responsible public authority for a public record, as defined in section 15 of the PR Act, has certain obligations regarding public access to public records and the restricted access period for public records under the PR Act.

The Department of the Premier and Cabinet (DPC) has agreed to accept responsibility for the ownership and control of all of the Grantham Commission’s records and the Department of Justice and Attorney-General (DJAG) has agreed to accept responsibility for the ownership and control of all of the Organised Crime Commission’s records. The regulation amends the *Public Records Regulation 2014* accordingly.

While the hard copy records of both the commissions may be transferred to the custody of Queensland State Archives, DPC and DJAG will retain custody of the digital records relating to the relevant commission of inquiry until Queensland State Archives has implemented a digital archive.

Achievement of policy objectives

The regulation will achieve the objectives by amending the *Public Records Regulation 2014* to prescribe DPC and DJAG as the relevant public authorities under

section 8(3)(b) and the responsible public authorities under section 15(d) of the PR Act in relation to public records of the Grantham Commission and Organised Crime Commission respectively.

Consistency with policy objectives of authorising law

The regulation is consistent with its authorising Act.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with the main objectives of other legislation.

Alternative ways of achieving policy objectives

The regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The regulation does not impose an appreciable cost on government or the community.

Consistency with fundamental legislative principles

The regulation is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Consultation

Consultation has taken place with the Grantham Commission, Organised Crime Commission (before their expiry), Queensland State Archives, DPC, DJAG and the Office of Best Practice Regulation within the Queensland Productivity Commission. All parties consulted supported the regulation.

The Office of Best Practice Regulation advised that the proposed regulation is excluded from the Regulatory Impact Statement system on the basis that it relates to the internal management of the public sector.