

Public Records (LGAQ) Amendment Regulation 2016

Explanatory Notes for SL 244

made under the

Public Records Act 2002

General Outline

Short title

Public Records (LGAQ) Amendment Regulation 2016.

Authorising law

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

Policy objectives and the reasons for them

Background

Under section 8(3) of the *Public Records Act 2002*, 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.

A relevant public authority has responsibilities, including under sections 6, 7, 8 13 and 14, of the *Public Records Act 2002*.

Pursuant to section 15 of the *Public Records Act 2002*, 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 has certain obligations regarding public access to public records and the restricted access period for public records under the *Public Records Act 2002*.

This explanatory note deals with a public authority which no longer exists. An amendment is required to the *Public Records Regulation 2014* to set the relevant and responsible public authority for the public records of the Local Government Association of Queensland (Incorporated).

Prior to July 2010, the Local Government Association of Queensland (Incorporated) ('Statutory Association') was most recently established under s.1194 of the *Local Government Act 1993*. The Statutory Association was a public authority for the purpose of the *Public Records Act 2002*, being an entity, other than the parliamentary service, that was established under an Act: (under paragraph (g)(i) of the definition of 'public authority' in Schedule 2 to the *Public Records Act 2002*).

Upon its commencement on 1 July 2010, the *Local Government Act 2009* repealed the *Local Government Act 1993* (see s.291 of *Local Government Act 2009*).

The effect of s.287 of the *Local Government Act 2009* is that on and from 1 July 2010:

- (a) the Statutory Association ceased being a public authority for the purpose of the Act; and
- (b) all rights, liabilities and interests of the Statutory Association that were in existence immediately before 1 July 2010 are taken to be the rights, liabilities and interests of the corporation prescribed by regulation.

Prior to the commencement of section 287 of the *Local Government Act 2009* on 1 July 2010, the Statutory Association was a 'State instrumentality' for the purpose of section 9(3) of the *Public Records Act 2002*. Accordingly, ownership of the public records of the Statutory Association vested in the State pursuant to s.9(1) of the *Public Records Act 2002*.

The Statutory Association ceased to be a public authority on 1 July 2010 on commencement of the *Local Government Act 2009*. The functions of the organisation will not be carried out by another public authority.

Relevant and responsible public authorities

There is a need to make the *Public Records (LGAQ) Amendment Regulation 2016*, which prescribes the relevant public authority under section 8(3)(b) and the responsible public authority under section 15(d) of the *Public Records Act 2002* as the Department of Infrastructure, Local Government and Planning (DILGP) for the public records of the Statutory Association (formerly Local Government Association of Queensland (Incorporated)).

While the hard copy records of the Statutory Association may be transferred to the custody of Queensland State Archives (QSA), DILGP will retain custody of the digital records until QSA has implemented a digital archive.

Achievement of policy objectives

The regulation will achieve the objectives by amending the *Public Records Regulation 2014* to prescribe relevant public authorities under section 8(3)(b) and responsible public authorities under section 15(d) of the *Public Records Act 2002* for the former public authority.

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 DILGP, QSA and the Office of Best Practice Regulation within the Queensland Productivity Commission. All

parties consulted support 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.