

Public Sector Regulation 2023

Explanatory notes for SL 2023 No. 9

made under the

Public Sector Act 2022

General Outline

Short title

Public Sector Regulation 2023.

Authorising law

Section 17 of the *Acts Interpretation Act 1954*

Sections 126(4), 129, 159, 268(1)(g), 287 and schedule 2 of the *Public Sector Act 2022* (the Public Sector Act)

Policy objectives and the reasons for them

The policy intent of the Public Sector Act is to provide a modern, simplified and employee-focused legislative framework for the public sector that can further the Government's commitment to being fair, responsive and a leader in public administration.

The policy intent of the Regulation is to:

- support the Public Sector Act from its commencement on 1 March 2023;
- apply specific Public Sector Act provisions to other parties including certain public sector employees;
- preserve the application of certain arrangements contained in the *Public Service Regulation 2018* (the 2018 Regulation); and
- preserve existing arrangements contained in other legislation.

The Public Sector Act contains core provisions that will apply to all public sector employees, such as the key employment arrangements contained in Chapter 3 of this Act. The Public Sector Act also includes other arrangements that are specific to the public service and will not ordinarily apply sector wide.

However, the Public Sector Act anticipates that in some instances arrangements that apply to public service employees may be extended more broadly and contains specific regulation making powers to facilitate the application of such arrangements including in relation to:

- applying transfer and secondment arrangements, with or without modification, to certain public sector entities;
- providing protection against civil liability to prescribed persons;
- prescribing external agencies for the purpose of an information exchange agreement; and
- prescribing another Act or law as a public sector disciplinary law.

The Public Sector Act also permits certain matters to be prescribed by Regulation where the detail is not considered necessary for inclusion in primary legislation or to preserve existing arrangements included in the 2018 Regulation.

The policy objective of making the Regulation is to support arrangements included in the Public Sector Act and to preserve certain existing arrangements included in the 2018 Regulation.

Achievement of policy objectives

The policy objective of the Regulation will be achieved through the specific provisions of the Regulation which include:

- prescribing a commencement date of 1 March 2023 to coincide with the commencement of the Public Sector Act;
- prescribing the divisions of the Act, which apply to public service officers in relation to secondment, transfer or redeployment apply to other public sector employees of particular public sector entities, with or without modification;
- prescribing that a public sector employee has the right to appeal a transfer decision, where the Regulation prescribes that the transfer provision applies to the employee;
- continuing and modernising arrangements relating to the possession and treatment of employee records that currently apply to public service employees and health service employees;
- prescribing the Crime and Corruption Commission and the Queensland Police Service as external agencies for the purpose of section 126 of the proposed new Public Sector Act (Exchange of information with external agency for reviews into an entity's handling of a work performance matter);
- preserving arrangements to apply the pay date for Queensland Health employees included in a directive to health service employees employed in a Hospital and Health Service;
- continuing the application of civil liability protections under the proposed Public Sector Act to prescribed state employees and health service employees; and
- prescribing a "public sector disciplinary law" under the Public Sector Act to preserve current arrangements under s 13A of the *Ambulance Service Act 1991* (Ambulance Service Act) and ss 25B and 25C of the *Fire and Emergency Services Act 1990* (Fire and Emergency Services Act) for the purpose of disclosure of serious disciplinary action for prospective employees and secondees of the Queensland Ambulance Service (QAS) and the Queensland Fire and Emergency Service (QFES).

Consistency with policy objectives of authorising law

The Regulation is consistent with the main object of the Public Sector Act which is to provide a framework for a fair and integrated public sector that serves the people of Queensland and the State.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The Public Sector Act anticipates delegated power by including a general regulation making power and other specific provisions which permit certain matters to be prescribed by regulation.

Matters included in the Regulation are considered necessary to ensure the Public Sector Act operates as intended and/or to ensure the continuation of certain existing regulatory arrangements. While the arrangements included in this Regulation require a regulatory response, the nature of the information is too detailed to warrant parliamentary consideration. Given the matters included in the Regulation require binding treatment, but need not be included in primary legislation, there is no other suitable way of achieving the policy objective.

Benefits and costs of implementation

The benefit of the Regulation is that it will support the Public Sector Act, including by preserving the following arrangements included in the 2018 Regulation:

- transfer and secondment arrangements that currently apply to certain public sector entities;
- appeal arrangements in relation to transfer decisions where transfer arrangements are prescribed;
- preserving appeal arrangements which permit movement decisions to be treated as transfer decisions for appeal purposes for health service employees of Queensland Health or a Hospital and Health Service; and
- preserving directive arrangements that apply change of pay date for Queensland Health employees to health service employees of Hospital and Health Services.

The preservation of these arrangements enables those employees and/or entities the arrangements apply to, to continue to benefit from these arrangements. Implementation should not result in any new costs to the public sector.

The Regulation continues and modernises arrangements included in the Public Service Regulation for the keeping and treatment, including the sharing, of employee records for public service employees and health service employees (relevant employees). It is considered that employee records and associated record keeping arrangements are necessary in ensuring public service entities and hospital and health services (relevant entities) employ 'fit and proper' people. Therefore, the benefit of preserving these arrangements, is that they assist in entities in employing 'fit and proper' people with the

overall goal of ensuring that Queensland communities and the Government of the day are well served.

As the Regulation continues and modernises existing arrangements, its implementation should not result in any new costs to the public sector.

The Public Sector Regulation seeks to continue to prescribe the Crime and Conduct Commission (CCC) and the Queensland Police Service (QPS) as external agencies for the purpose of an information exchange agreement for a review into the handling of work performance matters. The Public Sector Act expands application for these reviews to public sector entities, under the *Public Service Act 2008* a review into the handling of work performance matters only applied to Departments.

The benefit of prescribing these entities is that the Public Sector Commissioner (commissioner) may be able to rely upon them for exchange of information if required, to produce a better-informed outcome. The Public Service Commission has not allocated any additional funds for these types of reviews. Both the CCC and the QPS were consulted on the Public Sector Act and have been consulted on the Regulation, neither party has raised any concern with continuing to be prescribed as an external agency for reviews into the handling of work performance matters.

The Regulation seeks to preserve arrangements for those listed as prescribed persons for the purpose of protection against civil liability. Benefits of preserving protections against civil liability include that those to which the protection attaches are supported in performing their jobs and in providing frank and fearless advice. Implementation of this provision is not expected to result in any new cost to government as the continued application relies upon the operation of existing indemnity arrangements.

The Regulation also seeks to continue arrangements which facilitate disclosure of serious disciplinary action that has occurred in another jurisdiction for prospective employees and secondees of QAS and QFES where a person was engaged in equivalent employment in the other jurisdiction. The arrangements included in the Regulation are necessary to continue arrangements that currently exist in the Ambulance Service Act and the Fire and Emergency Services Act which will be repealed upon commencement of the Public Sector Act as that Act adopts of a public sector wide disciplinary framework.

Consistency with fundamental legislative principles

No potential inconsistencies with fundamental legislative principles have been identified.

Consultation

In accordance with the *Queensland Government Guide to Better Regulation*, the Public Sector Regulation has been assessed as being excluded from further regulatory impact assessment on the basis of the following agency-assessed exclusion categories:

- (a) regulatory proposals that make consequential amendments;
- (c) regulatory proposals for the internal management of the public sector or statutory authority; and
- (g) regulatory proposals that are of a machinery nature.

This assessment is based on:

- the Regulation being made as a consequence of the Public Sector Act being made;
- the regulatory provisions are primarily aimed at the internal management of the public sector and statutory authority; and
- arrangements carried forward from the 2018 Regulation do not result in any substantive policy changes.

As the Regulation is agency assessed as being excluded from further regulatory impact assessment consultation with the Office of Best Practice Regulation was not required. Consultation has occurred with representatives of the following registered industrial organisations of employees:

- Together Queensland, Industrial Union of Employees (TQ);
- Queensland Teachers Union of Employees;
- Queensland Nurses and Midwives' Union of Employees;
- United Workers Union, Industrial Union of Employees, Queensland;
- United Firefighters' Union of Australia, union of Employees (Queensland Branch);
- the Australian Workers Union of Employees, Queensland;
- the Electrical Trades Union of Employees Queensland; and
- the Plumbers & Gasfitters Employees' Union Queensland, Union of Employees.

TQ raised queries in relation to some technical aspects of proposed clauses. These queries were resolved following discussion with the Office of Queensland Parliamentary Counsel.

Other parties did not raise issues with the Regulation.