

Queensland

Public Sector Act 2022

Public Sector Regulation 2023

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Public Sector Regulation 2023

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Public Sector Regulation 2023

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Public Sector Regulation 2023*.

2 Commencement

This regulation commences on 1 March 2023.

3 Definitions

The dictionary in schedule 2 defines particular words used in this regulation.

Part 2 Secondments, transfers or redeployments, and appeals

4 Application of secondment provisions to particular public sector entities—Act, s 159

(1) For section 159(1)(a) of the Act, chapter 4, part 4, division 2 of the Act is to apply to a public sector employee mentioned in subsection (3) employed in any of the following public sector entities—

(a) the Queensland Ambulance Service;

(b) Queensland Fire and Rescue;

(c) Rural Fire Service Queensland.

(2) For section 159(1)(b) of the Act, chapter 4, part 4, division 2 of the Act is to apply to—

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(a) a public sector entity mentioned in subsection (1) as if it were a public service entity; and

(b) the head of a public sector entity mentioned in subsection (1) as if the head were the chief executive of a public service entity; and

(c) each public sector employee mentioned in subsection (3) as if the employee were a public service officer.

(3) For section 159(2) of the Act, subsections (1) and (2) apply to—

(a) for the Queensland Ambulance Service—

(i) the service; and

(ii) the chief executive of the service; and

(iii) persons employed in the service under the *Ambulance Service Act 1991*, section 13; and

(b) for Queensland Fire and Rescue or Rural Fire Service Queensland—

(i) the fire services under the *Fire Services Act 1990*; and

(ii) the commissioner under the *Fire Services Act 1990*; and

(iii) persons employed in the fire services under the *Fire Services Act 1990*, section 25.

5 Application of transfer or redeployment provisions to particular public sector entities—Act, s 159

(1) For section 159(1)(a) of the Act, chapter 4, part 4, division 3 of the Act is to apply to a public sector employee mentioned in subsection (6) employed in any of the following public sector entities—

(a) Queensland Health;

(b) a Hospital and Health Service;

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(c) the Queensland Ambulance Service;

(d) Queensland Fire and Rescue;

(e) Rural Fire Service Queensland;

(f) the Queensland Building and Construction Commission;

(g) the Queensland Building and Construction Employing Office;

(h) the Residential Tenancies Authority;

(i) the Residential Tenancies Employing Office;

(j) Trade and Investment Queensland.

(2) For section 159(1)(b) of the Act, chapter 4, part 4, division 3 of the Act is to apply to—

(a) a public sector entity mentioned in subsection (1) as if it were a public service entity; and

(b) the head of a public sector entity mentioned in subsection (1) as if the head were the chief executive of a public service entity; and

(c) each public sector employee mentioned in subsection (6) as if the employee were a public service officer.

(3) However—

(a) chapter 4, part 4, division 3 of the Act does not apply to the transfer or redeployment of a health service employee of a Hospital and Health Service to another position as a health service employee, unless the transfer or redeployment is required under a directive; and

(b) section 161(1)(a) of the Act does not apply to a public sector employee employed in the Queensland Building and Construction Commission or the Queensland Building and Construction Employing Office.

(4) For section 159(1)(b) and (3) of the Act, on the transfer or redeployment, under chapter 4, part 4, division 3 of the Act,

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of a public sector employee of a public sector entity mentioned in subsection (6) to a public service entity—

(a) the employee is employed under the Act; and

(b) the employee retains and is entitled to all rights that have accrued to the employee because of the employee's employment with the public sector entity; and

(c) the employee's service as an employee of the public sector entity is taken to be service of a like nature in the public service entity for deciding the employee's rights as a public service employee; and

(d) the transfer or redeployment does not break the employee's continuity of service.

(5) Also, for section 159(1)(b) and (3) of the Act, on the transfer or redeployment, under chapter 4, part 4, division 3 of the Act, of a public service employee to a public sector entity mentioned in subsection (1)—

(a) the employee is employed—

(i) if the entity is Queensland Health—under the *Hospital and Health Boards Act 2011*; or

(ii) otherwise—under the Act under which the entity is established; and

(b) the employee retains and is entitled to all rights that have accrued to the employee because of the employee's employment as a public service employee; and

(c) the employee's service as a public service employee is taken to be service of a like nature in the public sector entity for deciding the employee's rights as an employee of the public sector entity; and

(d) the transfer or redeployment does not break the employee's continuity of service.

(6) For section 159(2) of the Act, subsections (1) to (5) apply to—

(a) for Queensland Health—

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(i) the department; and

(ii) the chief executive of the department; and

(iii) the health service employees of the department; and

(b) for a Hospital and Health Service—

(i) the service; and

(ii) the chief executive of the service; and

(iii) the employees of the service; and

(c) for the Queensland Ambulance Service—

(i) the service; and

(ii) the chief executive of the department in which the *Ambulance Service Act 1991* is administered; and

(iii) persons employed in the service under the *Ambulance Service Act 1991*, section 13; and

(d) for Queensland Fire and Rescue or Rural Fire Service Queensland—

(i) the fire services under the *Fire Services Act 1990*; and

(ii) the commissioner under the *Fire Services Act 1990*; and

(iii) persons employed in the fire services under the *Fire Services Act 1990*, section 25.

(e) for the Queensland Building and Construction Commission—

(i) the commission; and

(ii) the commissioner of the commission; and

(iii) the employees of the commission; and

(f) for the Queensland Building and Construction Employing Office—

(i) the office; and

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(ii) the executive officer of the office; and

(iii) the employees of the office; and

(g) for the Residential Tenancies Authority—

(i) the authority; and

(ii) the chief executive officer of the authority; and

(iii) the employees of the authority; and

(h) for the Residential Tenancies Employing Office—

(i) the office; and

(ii) the executive officer of the office; and

(iii) the employees of the office; and

(i) for Trade and Investment Queensland (the ***entity***)—

(i) the entity; and

(ii) the chief executive officer of the entity; and

(iii) the employees of the entity.

6 Right of appeal in relation to transfer decisions—Act, s 129

For section 129 of the Act, definition *transfer decision*, paragraph (b)(ii), the following provisions of the Act apply to an employee of a public sector entity to whom chapter 4, part 4, division 3 of the Act applies under section 5(1)—

(a) chapter 4, part 4, division 3;

(b) chapter 3, part 10, in relation to a decision made under chapter 4, part 4, division 3.

7 Application of Act, ch 3, pt 10 and directives about appeals to movement of health service employees

Chapter 3, part 10 of the Act and directives about appeals apply to decisions made in relation to health service employees under the *Hospital and Health Boards Regulation*

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2023, part 3 as if a reference to a transfer decision in chapter 3, part 10 of the Act includes a decision about the movement of a health service employee under the *Hospital and Health Boards Regulation 2023*, part 3.

Part 3 Employee records

8 Definitions for part

In this part—

employee record see section 9.

possession, for an employee record, see section 10.

prescribed employee means—

(a) a public service employee; or

(b) a health service employee.

prescribed entity means—

(a) a public service entity; or

(b) a Hospital and Health Service.

relevant investigation or inquiry means an investigation or inquiry into—

(a) an allegation about conduct that, if proved, may make a prescribed employee liable to disciplinary action; or

(b) a grievance involving a prescribed employee lodged under a directive or industrial instrument.

9 Meaning of *employee record*

(1) Each of the following documents is, to the extent the document contains information about a prescribed employee, an ***employee record***—

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(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) However, none of the following documents is an employee record about the prescribed employee—

(a) a medical report about the employee indicating that disclosure of information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing;

(b) a document created by an appropriately qualified person for the primary purpose of providing a professional counselling service to another public service employee that contains information about the employee;

(c) a document about the employee that—

(i) is a public interest disclosure, or a record of a public interest disclosure, made under the *Public Interest Disclosure Act 2010*; or

(ii) was brought into existence for the administration of that Act;

(d) a document about the employee relating to suspected corrupt conduct under the *Crime and Corruption Act 2001* or an investigation of the conduct;

(e) a document about the employee relating to a suspected criminal offence or an investigation of the offence;

(f) a document that is subject to legal professional privilege.

(3) In this section—

misconduct see section 91(5) of the Act.

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10 When an employee record is in an entity's *possession*

(1) An employee record is in an entity's ***possession*** if—

(a) the entity has the record in its possession, under its control, or is otherwise entitled to have access to the record; or

(b) the record is in the possession, or under the control, of an employee of the entity in the employee's official capacity.

(2) For subsection (1)—

(a) if the entity is the Minister, a person is an employee of the Minister if the person is an employee of the department administered by the Minister; or

(b) if the entity is the chief executive of a prescribed entity, a person is an employee of the chief executive if the person is an employee of the prescribed entity.

11 Dealing with employee record if detrimental to employee's interests

(1) This section applies if a prescribed employee's chief executive intends to take either of the following actions (each a ***detrimental action***)—

(a) use an employee record about the employee in a way that could be considered to be detrimental to the employee's interests;

(b) include in a record about the employee's employment history an employee record about the employee that could be considered to be detrimental to the employee's interests.

(2) The chief executive must ensure that, at least 14 days before taking the detrimental action—

(a) the prescribed employee is given the opportunity to read the employee record and to acknowledge having read it by initialling it; and

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(b) the prescribed employee is given a copy of the record; and

(c) if the prescribed employee refuses to read the record or to acknowledge having read it by initialling it—the refusal is noted on the record; and

(d) the prescribed employee is given a reasonable opportunity to respond in writing to the record's contents; and

(e) any written response by the prescribed employee is attached to the record.

(3) However, the chief executive may accept a response mentioned in subsection (2)(d) made at any other time.

(4) Also, if the chief executive considers that giving the prescribed employee access to the employee record under subsection (2) would be likely to prejudice an existing relevant investigation or inquiry, the chief executive must comply with subsection (2) immediately after whichever of the following happens first—

(a) the chief executive no longer considers that giving the employee access to the record would be likely to prejudice the relevant investigation or inquiry;

(b) the end of the period of 6 months after the detrimental action is taken.

12 Employee record in possession of another chief executive

(1) This section applies if an employee record about a prescribed employee is in the possession of a chief executive of a prescribed entity (the ***other chief executive***) who is not the employee's chief executive.

(2) The other chief executive must give the employee record to the prescribed employee's chief executive as soon as practicable.

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(3) However, if the prescribed employee has been seconded to another prescribed entity for a total period of less than 6 months, subsection (2) only applies if the other chief executive and the employee's chief executive agree in writing that the other chief executive give the record to the employee's chief executive.

Note—

The other chief executive may also need to comply with a directive about giving the prescribed employee's personal and employment details to the employee's chief executive.

(4) Also, 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 prescribed entity.

13 Access to employee record

(1) This section applies if a chief executive has possession of an employee record about a prescribed employee.

(2) The prescribed employee may, on request—

(a) inspect the record; or

(b) take an extract from, or copy, the record.

(3) Subject to subsections (4) to (7), the inspection, taking of the extract or copying (the ***requested action***) must be allowed at a time and place convenient to the chief executive within 21 days after the request.

(4) Subsection (5) applies if the record contains personal information of a person (the ***other person***) other than the employee.

(5) The chief executive may refuse the prescribed employee access to all or part of the record—

(a) if the chief executive is satisfied the access—

(i) would be an unreasonable invasion of the privacy of the other person or someone else; or

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(ii) may cause harm to the other person or someone else; or

(iii) would be contrary to a law; or

(iv) would likely be refused if the request for access was an access application made by the employee under the *Right to Information Act 2009*; or

(b) in other circumstances stated under a directive.

(6) Subsection (7) applies if the chief executive considers the requested action would be likely to prejudice an existing relevant investigation or inquiry.

(7) The chief executive must allow the requested action immediately after whichever of the following happens first—

(a) the chief executive no longer considers the requested action would be likely to prejudice the relevant investigation or inquiry;

(b) the end of the period of 6 months after the employee requests the requested action.

(8) In taking the requested action, the employee must not remove anything from the record.

Part 4 Miscellaneous

14 Application of directive about change of pay date for employees of Queensland Health

(1) This section applies to a directive about a change of pay date for employees of Queensland Health.

(2) For applying the directive to a health service employee employed by a Hospital and Health Service, a reference in the directive to Queensland Health is taken to be a reference to the Hospital and Health Service.

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15 External agencies for exchange of information—Act, s 126

For section 126(4) of the Act, definition *external agency*, each of the following entities is prescribed as an external agency—

(a) the Crime and Corruption Commission;

(b) the Queensland Police Service.

16 Prescribed persons for protection from civil liability—Act, s 268

For section 268(1)(g) of the Act, each person mentioned in schedule 1 is a prescribed person.

17 Meaning of public sector disciplinary law for particular persons—Act, sch 2

(1) This section applies in relation to—

(a) a person who the chief executive of the Queensland Ambulance Service proposes, under the *Ambulance Service Act 1991*, to employ in, or second to, the Queensland Ambulance Service; or

(b) a person who the commissioner under the *Fire Services Act 1990* proposes, under that Act, to employ as the chief fire officer or to employ in, or second to, Queensland Fire and Rescue or Rural Fire Service Queensland.

(2) For schedule 2 of the Act, definition *public sector disciplinary law*, paragraph (g), the following laws are prescribed—

(a) a law of another State that provides for the same, or substantially the same, matters as the Act;

(b) for a person mentioned in subsection (1)(a)—a law of another State that provides for the discipline of persons engaged in employment that is equivalent, or substantially equivalent, to employment under the *Ambulance Service Act 1991*, section 13;

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(c) for a person mentioned in subsection (1)(b)—a law of another State that provides for the discipline of persons engaged in employment that is equivalent, or substantially equivalent, to employment under the *Fire Services Act 1990*, section 25;

(d) a code of practice or other instrument under a law mentioned in paragraph (a), (b) or (c) providing for disciplinary matters.

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Schedule 1 Prescribed persons

section 16

1 the head of a public service entity mentioned in schedule 1 of the Act, other than the Human Rights Commissioner under the *Anti-Discrimination Act 1991*

2 a health service employee employed by a Hospital and Health Service or by Queensland Health

3 the commissioner or an employee of the Queensland Ambulance Service

4 the commissioner or a person employed under the *Fire Services Act 1990*, section 25

5 the chairperson of the Queensland Redistribution Commission under the *Electoral Act 1992*

6 the deputy electoral commissioner or the nonjudicial appointee under the *Electoral Act 1992*

7 an electoral registrar, returning officer or assistant returning officer employed under the *Electoral Act 1992*

8 an issuing officer or other person employed on a temporary basis under the *Electoral Act 1992* in connection with the conduct of a particular election or referendum

9 the public advocate under the *Guardianship and Administration Act 2000*

10 the privacy commissioner under the *Information Privacy Act 2009*

11 the chief executive officer or an employee of Legal Aid Queensland under the *Legal Aid Queensland Act 1997*

12 a member of the Legal Aid Board under the *Legal Aid Queensland Act 1997*

13 the commissioner under the *Legal Profession Act 2007*

13A a member of the foundation committee established under the *Libraries Act 1988*, section 40AA

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13B a person appointed to a committee of the Library Board of Queensland under the *Libraries Act 1988*, section 40AG

14 a returning officer, assistant returning officer, presiding officer or issuing officer under the *Local Government Electoral Act 2011*

15 the chief executive officer or an employee of the National Injury Insurance Agency, Queensland established under the *National Injury Insurance Scheme (Queensland) Act 2016*, section 55

16 the ombudsman or an officer of the ombudsman under the *Ombudsman Act 2001*

17 a member of the Queensland Sentencing Advisory Council established under the *Penalties and Sentences Act 1992*

18 a member of the foundation committee established under the *Queensland Art Gallery Act 1987*, section 40C

18A a person appointed to a committee of the Queensland Art Gallery Board of Trustees under the *Queensland Art Gallery Act 1987*, section 40I

19 the commissioner or an employee of the Queensland Building and Construction Commission

20 the executive officer or an employee of the Queensland Building and Construction Employing Office

21 a member of the Queensland Building and Construction Board established under the *Queensland Building and Construction Commission Act 1991*, section 10

22 a person appointed to a committee of the Board of the Queensland Museum under the *Queensland Museum Act 1970*, section 41

23 an honorary assistant appointed under the *Queensland Museum Act 1970*, section 42C

23A a person appointed to a committee of the Queensland Performing Arts Trust under the *Queensland Performing Arts Trust Act 1977*, section 38A

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24 a person appointed to a committee of the Queensland Theatre Company under the *Queensland Theatre Company Act 1970*, section 38

25 the chief executive officer or an employee of the Queensland Rural and Industry Development Authority established under the *Rural and Regional Adjustment Act 1994*, section 5

26 chief executive officer or an employee of the Residential Tenancies Authority

27 the executive officer or an employee of the Residential Tenancies Employing Office

28 the chief executive officer or an employee of Safe Food Production QLD established under the *Food Production (Safety) Act 2000*, section 13(1)

29 the chief executive officer or an employee of TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1)

30 the chief executive officer or an employee of Trade and Investment Queensland

31 the Right to Information Commissioner under the *Right to Information Act 2009*

32 the inspector of detention services under the *Inspector of Detention Services Act 2022*

33 a member of the Public Records Review Committee established under the *Public Records Act 2023*, section 50

34 a member of the First Nations Advisory Group established under the *Public Records Act 2023*, section 64

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Schedule 2 Dictionary

section 3

employee record, for part 3, see section 9.

health service employee see the *Hospital and Health Boards Act 2011*, schedule 2.

Hospital and Health Service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

possession, for an employee record, for part 3, see section 10.

prescribed employee, for part 3, see section 8.

prescribed entity, for part 3, see section 8.

Queensland Ambulance Service means the Queensland Ambulance Service established under the *Ambulance Service Act 1991*, section 3A.

Queensland Building and Construction Commission means the Queensland Building and Construction Commission established under the *Queensland Building and Construction Commission Act 1991*, section 5(1).

Queensland Building and Construction Employing Office means the Queensland Building and Construction Employing Office established under the *Queensland Building and Construction Commission Act 1991*, section 29A(1).

Queensland Fire and Rescue means Queensland Fire and Rescue established under the *Fire Services Act 1990*, section 8(1).

Queensland Health means the department in which the *Hospital and Health Boards Act 2011* is administered.

relevant investigation or inquiry, for part 3, see section 8.

Residential Tenancies Authority means the Residential Tenancies Authority established under the *Residential*

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Tenancies and Rooming Accommodation Act 2008, section 465.

Residential Tenancies Employing Office means the Residential Tenancies Employing Office established under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 491(1).

Rural Fire Service Queensland means Rural Fire Service Queensland established under the *Fire Services Act 1990*, section 8(2).

Trade and Investment Queensland means Trade and Investment Queensland established under the *Trade and Investment Queensland Act 2013*, section 7(1).

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