Queensland

Industrial Relations Amendment Regulation (No. 1) 2012

Explanatory Notes for SL 2012 No. 223

made under the

Industrial Relations Act 1999

General outline

Short title

Industrial Relations Amendment Regulation (No. 1) 2012

Authorising law

Industrial Relations Act 1999

Section 692(3) of the *Industrial Relations Act 1999* provides that a regulation may declare an employer not to be a national system employer for the purpose of the *Fair Work Act 2009* (Cth) (FW Act).

Section 709(1) of the *Industrial Relations Act 1999* provides the Governor in Council may make regulations under this Act.

Policy objectives and the reasons for them

The objectives of this regulation are to:

a) support the Queensland Government's *Empowering Queensland Local Government Policy* 2.3 - Restoring body corporate status to Queensland local governments; and

b) provide ongoing certainty as to the industrial relations jurisdiction of local governments by excluding them from the national Fair Work system by: declaring that each local government is not a national system employer for the purpose of the FW Act and those declarations being endorsed by the Minister for the FW Act.

The Queensland Parliament is considering the Local Government and Other Legislation Amendment Bill 2012 which will be an Act to restore body corporate status to Queensland local governments as part of the government's 2012 State Election commitment. Among other things, the objective of the Bill is to give councils the power to deliver effective services to their respective communities.

Local governments were 'de-corporatised' in 2008 (excluding Brisbane City Council) pursuant to the *Local Government and Industrial Relations Amendment Act 2008*. The primary purpose of the Act was to ensure that local government employers, other than Brisbane City Council, and their employees were covered by the State industrial relations jurisdiction. This was achieved by amending the *Local Government Act 1993* to provide that local governments were not incorporated and therefore, local governments would not fall within the meaning of 'employer' in section 6(1) of the now repealed *Workplace Relations Act 1996* (Cth). The Act was intended to resolve the ambiguity around whether a local government council was a constitutional corporation and regulated by national workplace relations laws, or otherwise not a constitutional corporation and regulated by state laws. By removing their corporate status, local governments would be in the state industrial relations system thereby providing certainty for councils and their employees.

In 2009, the Queensland Parliament referred law-making powers for certain industrial relations subject matters (generally, such as terms and conditions of employment) for unincorporated private sector employers and their employees to the Commonwealth Parliament, see *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*. Matters excluded from Queensland's references of power include the Queensland public sector and local governments (s.6) and therefore they continue to be regulated by the state system. Otherwise, from 1 January 2010, all private sector employers and their employees have been regulated by the national workplace relations system.

Additionally, some state and local government owned or controlled corporations have been excluded from the national workplace relations

system (see schedule 6 *Industrial Relations Regulation 2011*) pursuant to the exclusion mechanism contained in the FW Act.

If local government councils are not also excluded from the national workplace relations system pursuant to the mechanism in the FW Act, restoring their corporate status will again create uncertainty about which industrial relations jurisdiction they are regulated by. Section 14(2) of the FW Act prescribes a mechanism to exclude particular employers from the meaning of 'national system employer' and consequently from the reach of the national workplace relation system as it applies to national system employers and their employees.

Achievement of policy objectives

This regulation supports the government's policy to restore councils' corporate status without affecting councils' current industrial relations arrangements as employers in the state industrial relations system.

The policy objective is achieved by:

a) amending the *Industrial Relations Regulation 2011* to declare each local government not to be a national system employer for the purposes of the FW Act; and

b) the Minister for the FW Act endorsing, by legislative instrument, Queensland's declarations and the endorsements being in force.

Consistency with policy objectives of authorising law

This regulation is required to properly give effect to the policy objectives.

Inconsistency with policy objectives of other legislation

None have been identified.

Benefits and costs of implementation

There will be no identified impacts on the community as a result of this regulation.

Consistency with fundamental legislative principles

No fundamental legislative principle issues have been identified in the preparation of this regulation.

Consultation

The Department of Local Government and the Local Government Association of Queensland supported the list of councils to be excluded from the national workplace relations system.

The Regulatory Review Branch, Queensland Treasury and Trade agreed that the proposed regulation qualifies for an exclusion from the Regulatory Assessment Statement System on the basis that it is a consequential amendment.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Justice and Attorney-General.