

Industrial Relations and Another Regulation Amendment Regulation (No. 1) 2014

Explanatory Notes for SL 2014 No. 190

made under the

Fire and Emergency Services Act 1990
Industrial Relations Act 1999

General Outline

Short Title

Industrial Relations and Another Regulation Amendment Regulation (No. 1) 2014

Authorising law

Sections 108 and 154E of the *Fire and Emergency Services Act 1990* (FES Act)
Sections 692, 709, 827, 828 and 830 of the *Industrial Relations Act 1999* (IR Act)

Policy objectives and the reasons for them

The objective of the *Industrial Relations and Another Regulation Amendment Regulation (No. 1) 2014* (Amendment Regulation) is to amend the:

1. *Industrial Relations Regulation 2011* (IR Regulation) to:
 - a. prescribe a wage increase in certain continuing agreements,
 - b. extend the nominal expiry date in certain continuing agreements, and
 - c. exclude the Queensland Training Assets Management Authority (QTAMA) from the national workplace relations system; and
2. *Fire and Rescue Service Regulation 2011* (FRS Regulation) to include notes to assist the calculation of property size when determining levy groups for payment of annual contributions to the Emergency Management Levy.

The IR Act provides for an award modernisation process and for transitional arrangements for continuing certified agreements that reach their nominal expiry date prior to the modernisation of the awards that underpin the certified agreement. Continuing agreements are extended by one year unless an earlier date is stated in a regulation. A wage increase in a continuing agreement can also be provided for under a regulation.

The *Queensland Public Health Sector Certified Agreement (No. 8) 2011*, the *Queensland Health Building, Engineering and Maintenance Services Certified Agreement (No. 5) 2011*, the *Department of Education and Training Teacher Aide's Certified Agreement 2011* and the *QBuild Field Staff Agreement 8 (2011)* are due to nominally expire on 31 August 2014. The award modernisation schedule indicates that the awards underpinning these agreements will not be modernised before the nominal expiry date. These agreements will therefore become continuing agreements on 1 September 2014 with a new statutory nominal expiry date of 31 August 2015 unless an earlier date is stated in a regulation.

As continuing certified agreements may not be amended, Queensland Health, the Department of Education, Training and Employment, and QBuild together with the Public Service Commission have requested that a regulation be made to provide a wage increase of 2.2% in the named agreements for 12 months in line with government wages policy.

In response to a request from the Local Government Association of Queensland the Amendment Regulation amends the IR Regulation to prescribe a new nominal expiry date of 1 October 2014 for certified agreements applying to employees of local governments (other than the Brisbane City Council) which become continuing agreements during September 2014.

In relation to QTAMA, the objective of this amendment regulation is to remove any ambiguity concerning the industrial relations status of QTAMA by declaring it not a national system employer for the purposes of *Fair Work Act 2009* (Cth). Queensland's industrial relations jurisdiction covers the Queensland public service, local government and some statutory authorities which have been specifically excluded from the national system. This followed a 2010 decision by the Queensland Government to refer its private sector industrial relations powers to the Commonwealth as part of an agreement to establish a national workplace relations system.

The *Fair Work Act 2009* (FW Act) (Cth) regulates the national system.

QTAMA is responsible for managing the state-owned vocational and education training (VET) assets, and a predominant part of QTAMA's activities involves leasing and licensing assets in accordance with sound commercial principles. As QTAMA will have some trading activity it may be considered to be a constitutional corporation and subject to the *Fair Work Act 2009*.

Section 14(2) of the FW Act enables a State or Territory to declare by or under a law of the State or Territory, that certain employers are *not national system employers* (a declaration). An exclusion from the national Fair Work system is being sought for QTAMA to retain it in the Queensland industrial relations jurisdiction.

To be effective, the declaration is required to specify the employer that is not to be a national system employer and a written endorsement by the Minister administering the FW Act (an endorsement) must be in force in relation to the employer.

The amendment to the FRS Regulation relates to the Emergency Management Queensland Levy (the levy). The levy is paid by Queensland property owners and collected by local government areas on behalf of the State Government. The amendments will re-insert the 'Notes to schedule' at the end of Schedule 2 which was inadvertently removed during a recent amendment process. It will also apply a retrospective amendment clarifying that the re-inserted notes apply from 1 July 2014.

These notes are a guide to assessing the area of property being used as opposed to the total land area of the property for the purposes of calculating obligations under the levy. They also provide information to assist in calculating the correct area of land in order to determine the levy category the property falls into.

Achievement of policy objectives

The Amendment Regulation will achieve its objectives by amending the IR Regulation from 31 August 2014 in relation to certified agreements to:

- provide a wage increase of 2.2% effective from 1 September 2014 (see s.146B(3) and Schedule 5C of the IR Regulation) in line with the State Wages Policy for the *Queensland Public Health Sector Certified Agreement (No. 8) 2011*, the *Queensland Health Building, Engineering and Maintenance Services Certified Agreement (No. 5) 2011*, the *Department of Education and Training Teacher Aide's Certified Agreement 2011* and the *QBuild Field Staff Agreement 8 (2011)*, and
- prescribe a new nominal expiry date of 1 October 2014 for certified agreements applying to employees of local governments (other than the Brisbane City Council) which become continuing agreements during September 2014.

In respect of amendments to the IR Regulation concerning QTAMA, the Amendment Regulation is to commence on 30 September 2014. This is the date on which QTAMA's transitional employment arrangements will cease, and from the 1 October 2014, QTAMA will need to employ staff confident that they are doing so in the Queensland jurisdiction. The lead time from the Governor-in-Council's approval to commencement of the amendments will enable the Department of Justice and Attorney General to obtain the federal Minister's endorsement of the declaration prior to commencement.

In respect of amendments to the FRS Regulation, the information is relied upon by the Queensland community and local government in complying with the levy. Funds from the levy assist in funding emergency management in Queensland. In respect of those amendments, the Amendment Regulation will commence retrospectively on 1 July 2014. Those amendments will therefore commence at the time other related amendments to the FRS Regulation commenced, and the date the provisions were inadvertently removed, on 1 July 2014.

Consistency with policy objectives of authorising law

In respect of amendments to the IR Regulation, the Amendment Regulation is consistent with the policy objectives of the IR Act. The principal object of the IR

Act is to provide a framework for industrial relations that supports economic prosperity and social justice.

In respect of amendments to the FRS Regulation, the Amendment Regulation is consistent with the main objects of the FES Act by supporting the provision of a source of ongoing funding for emergency management services across Queensland.

Inconsistency with policy objectives of other legislation

There are no known inconsistencies with policy objectives of other legislation.

Benefits and costs of implementation

In respect of amendments to the IR Regulation concerning the continuing agreements, the Amendment Regulation supports economic prosperity and social justice by providing transitional provisions which ensure coverage of employees by continuing certified agreements during the award modernisation process. Costs associated with a wage increase for employees covered by the named agreements will be a matter for Queensland Health, the Department of Education, Training and Employment and QBuild, but the increase is in line with government wages policy.

In respect of the amendments to the IR Regulation concerning QTAMA, there are no identified impacts on the community as a result.

In respect of the FRS Regulation, implementation of the proposed amendments will reinstate existing provisions which were inadvertently removed. As such, no impact is expected to result from the amendment. Failure to reinstate these provisions, however, may impact negatively on the collection of the levy having negative financial ramifications for Emergency Management Services.

Consistency with fundamental legislative principles

In respect of amendments to the IR Regulation, the Amendment Regulation is consistent with fundamental legislative principles.

In respect of amendments to the FRS Regulation, having that amendment commence retrospectively on 1 July 2014 will provide the Queensland community as well as the local government areas with a consistent and equitable approach in calculating the applicable amount as it relates in Schedule 2.

Consultation

In respect of amendments to the IR Regulation, the Department of Education, Training and Employment, Queensland Health, QBuild, the Public Service Commission, the Local Government Association of Queensland, the Office of Best Practice Regulation (OBPR) and Office of the Queensland Parliamentary Counsel (OQPC) were consulted on the drafting of the Amendment Regulation. All parties consulted agreed with the proposed action.

OBPR has advised that a Regulatory Impact Statement is not required in relation to any of the amendments.

The Commonwealth Minister for Employment, the Honourable Eric Abetz MP, has confirmed the Federal Government's in-principle support to exclude QTAMA from the national Fair Work system pursuant to ss.14(2) of the *Fair Work Act 2009* (Cth).

In relation to the FRS Regulation, consultation regarding the amendments has been undertaken with OQPC and OBPR. Parties consulted expressed support for the amending regulation. OBPR advised that the amendments were exempted from Regulatory Impact Statement requirements.