

Public Service and Other Legislation Amendment Regulation (No. 1) 2018

Explanatory notes for 2018 SL No. 45

made under the

Public Sector Ethics Act 1994
Public Service Act 2008

General Outline

Short title

Public Service and Other Legislation Amendment Regulation (No. 1) 2018

Authorising law

Section 25 of the *Public Sector Ethics Act 1994*
Section 222 of the *Public Service Act 2008*

Policy objectives and the reasons for them

Public Sector Ethics Regulation 2010

The policy objective of the *Public Sector Ethics Regulation 2010* (PSE Regulation) is to enable public sector entities (prescribed public service agencies) to apply the Code of Conduct under the *Public Sector Ethics Act 1994* (PSE Act) to the public sector entities and its employees.

The proposed amendments to the PSE Regulation are required to prescribe a new public sector entity as a public service agency for the purpose of applying the Code of Conduct under the PSE Act.

Public Service Regulation 2008

The policy objective of the amendments to the *Public Service Regulation 2008* (PS Regulation) is to apply provisions of the *Public Service Act 2008* (PS Act) and directives issued under the PS Act to public sector entities (declared public service offices) and their employees that are not otherwise subject to the PS Act.

The proposed amendments are required to update schedules of the PS Regulation to apply additional sections of the PS Act and/or directives issued under the PS Act to a number of declared public service offices (DPSOs).

The proposed amendments will also prescribe nominated persons or office holders as persons to whom the civil liability protections under the PS Act apply.

Achievement of policy objectives

The amendments to the schedule of the PSE Regulation will prescribe the Queensland Building and Construction Commission and Queensland Building and Construction Employing Office established under the *Queensland Building and Construction Commission Act 1991* (QBCC) as a 'public service agency' for the purpose of applying the Code of Conduct for the Queensland public service. This will result in the Code of Conduct under the PSE Act applying to the QBCC and its employees.

The policy objectives of the PS Regulation will be achieved by amending sections 9 and 14A and Schedules 1, 2 and 3 of the PS Regulation.

Amending section 9 will clarify the application of the managing employee complaints directive to hospital and health service employees. It will ensure that complaints by hospital and health service employees working in hospital and health services about their chief executive are handled by the Board of the service.

Amending section 14A (Prescribed State employees) of the PS Regulation will allow a number of additional office holders to be afforded civil liability protection under section 26C of the PS Act. Section 26C was introduced to the PS Act on 31 March 2014 and provides that a 'State employee' will not incur civil liability for engaging, or as a result of engaging, in conduct in an official capacity. The PS Act allows a person to be prescribed as a State employee under the PS Regulation.

The following office holders will be prescribed as State employees through the PS Regulation to put their civil liability protection under the PS Act beyond doubt:

- the head of a public service office mentioned in schedule 1 of the Act, other than the Anti-Discrimination Commission under the *Anti-Discrimination Act 1991*, but not including a person to whom the Act, section 26B(1)(a), (b), (c), (d), (e) or (f) applies;
- the head or an employee of a public service office listed in schedule 1, but not including a person to whom the Act, section 26B(1)(a), (b), (c), (d), (e) or (f) applies;
- the commissioner under the *Ambulance Service Act 1991*;
- the following officers appointed or employed under the *Electoral Act 1992* – the deputy electoral commissioner or the nonjudicial appointee, the chairperson of the Queensland Redistribution Commission, an electoral registrar, a returning officer or assistant returning officer, an issuing officer or another person employed on a temporary basis in connection with the conduct of a particular election or referendum.
- the public advocate under the *Guardianship and Administration Act 2000*;
- the privacy commissioner under the *Information Privacy Act 2009*;
- the commissioner under the *Legal Profession Act 2007*;

- a returning officer, assistant returning officer, presiding officer or issuing officer under the *Local Government Electoral Act 2011*;
- the ombudsman or an officer of the ombudsman under the *Ombudsman Act 2001*;
- a person appointed as a member of the Queensland Sentencing Advisory Council established under the *Penalties and Sentences Act 1992*;
- a person appointed as a member of the Prostitution Licensing Authority established under the *Prostitution Act 1999*;
- the right to information commissioner under the *Right to Information Act 2009*.

Several additional rulings will be applied to the Queensland Fire and Emergency Service (QFES) to ensure their continued application beyond a sunset clause in the 'Queensland Fire and Emergency Service Employees Award – State 2016'. These rulings are:

- domestic travelling and relieving expenses; and
- international travelling, relieving and living expenses.

The Gasfields Commission (GFCQ) is established under the *Gasfields Commission Act 2013* with all of its employees appointed under the PS Act. However, when the GFCQ was established it was not listed as a public service office in schedule 1 of the PS Act, meaning it did not have a 'chief executive' for the purposes of managing its employees in accordance with the PS Act. To overcome this issue, the GFCQ was declared a public service office under the PS Regulation and all relevant rulings were applied to the agency and its employees through the PS Regulation. The following more recently issued rulings will be applied to the GFCQ and its employees through the PS Regulation:

- attendance recording and reporting;
- attraction and retention incentives;
- conversion of casual employees to permanent employment;
- employment arrangements in the event of a human influenza pandemic;
- managing employee complaints;
- study and examination leave; and
- workforce profile and work performance.

Other amendments to the schedules of the PS Regulation will result in the application of further directives issued under the PS Act and provisions of the PS Act to the following declared public service offices and their employees:

- Hospital and Health Services and Department of Health:
 - conversion of casual employees;
 - managing employee complaints;
 - amendments to the application of the recruitment and selection directive; and
 - medical examinations as mentioned in section 175 of the PS Act .
- Legal Aid Queensland:
 - conversion of casual employees to permanent employment;

- higher duties;
 - managing employee complaints; and
 - temporary employment.
- Queensland Ambulance Service:
 - managing employee complaints.
- Queensland Building and Construction Commission:
 - court attendance and jury service;
 - critical incidents entitlements and conditions;
 - declaration of interests for public service employees;
 - employment arrangements in the event of human influenza pandemic;
 - employment separation procedures;
 - gifts and benefits;
 - hours, overtime and excess travel;
 - leave without salary credited as service;
 - managing employee complaints;
 - recognition of previous service and employment;
 - study and examination leave; and
 - temporary employment.
- Residential Tenancies Authority:
 - conversion of casual employees to permanent employment;
 - managing employee complaints;
 - special leave to the extent a ruling applies to bereavement leave;
 - study and examination leave recognised as a directive in its own right; and
 - temporary employment.
- Trade and Investment Queensland:
 - conversion of casual employees to permanent employment; and
 - managing employee complaints, other than to the extent a ruling provides for the complaints to the commission chief executive about the chief executive of an agency.

Where additional rulings are proposed to be applied to an office that require provisions of the PS Act to have effect, those provisions have also been applied through the amendments.

Provisions regarding complaints against chief executives in the managing employee complaints directive are not proposed to be applied to the agencies above. The managing employee complaints directive provides that such complaints should be referred to the Public Service Commission Chief Executive. The entities above have boards that are a more appropriate to handle such complaints.

Consistency with policy objectives of authorising law

The amendments to the PSE Regulation are consistent with the objective enabling agencies to apply the Code of Conduct under the PSE Act.

The amendments to the PS Regulation are consistent with the objectives of the PS Act ensuring a high performing public service that promotes the effectiveness and efficiency of government entities, and providing for the administration of the public service.

Inconsistency with policy objectives of other legislation

The *Public Service and Other Legislation Amendment Regulation (No. 1) 2018* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The application of the applied provisions will enhance the effective operation and management of public sector entities and their employees and allow for a broader application of the civil liability protection provisions of the PS Act and the PSE Act.

No other costs of implementation have been identified.

Consistency with fundamental legislative principles

It is considered that the legislation is consistent with fundamental legislative principles. Section 4(3) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard for the rights and liberties of individuals depends on a number of factors, including that it does not confer immunity from proceeding or prosecution without adequate justification.

The immunity provided for under section 26C of the PS Act applies to conduct in an official capacity. If a state employee engages in conduct other than in good faith and with gross negligence, the state can recover contribution from the employee. Section 26B(4) allows the PS Regulation to specify additional persons as state employees for the purposes of conferring the immunity. The amendments will clarify that immunity applies to a number of office holders and employees that were intended to be covered by the broad definition of state employee in the PS Act.

Consultation

Unions did not raise any concerns with the amendments.

The Public Service Commission has self-assessed the amendment regulation as relating to the internal management of the public sector or statutory authority, therefore excluding the requirement for further assessment under the Queensland Government Guide to Better Regulation and review by the Queensland Productivity Commission.