

# **Public Records (CCYPCG and QR Limited) Amendment Regulation 2018**

Explanatory notes for Subordinate Legislation 2018 No. 159

made under the

*Public Records Act 2002*

## **General Outline**

### **Short title**

*Public Records (CCYPCG and QR Limited) Amendment Regulation 2018*

### **Authorising law**

Sections 8, 15 and 57 of the *Public Records Act 2002*

### **Policy objectives and the reasons for them**

The *Public Records Act 2002* (the PR Act) was enacted for the purpose of ensuring that public records are made, managed, kept and preserved in a useable form for the benefit of present and future generations. Sections 8 and 15 are located within Part 2 of the PR Act, which provides the legislative basis for custody, preservation and access to public records.

Section 8(3)(b) provides for the custody of public records when a public authority ceases to exist and some or all of its functions will not be carried out by another public authority. When that situation arises the records relating to the defunct function are given to the relevant public authority which has been prescribed by regulation.

The responsible public authority is prescribed under section 15 of the PR Act and has obligations regarding restricted access periods.

The objective of the *Public Records (CCYPCG and QR Limited) Amendment Regulation 2018* (the Regulation) is to prescribe the relevant and responsible public authorities for the public records of two public authorities which have ceased: The Commission for Children and Young People and Child Guardian (CCYPCG) and QR Limited ACN 124 649 967 (QR Limited).

## **The Commission for Children and Young People and Child Guardian (CCYPCG)**

The Commission for Children and Young People and Child Guardian (CCYPCG) was established by the *Commission for Children and Young People and Child Guardian Act 2000*. The definition of a public authority includes an entity established by an Act (Schedule 2, PR Act).

The CCYPCG ceased to exist on 1 July 2014, as a result of the implementation of recommendations from the Queensland Child Protection Commission of Inquiry, (the Carmody Inquiry) and the Office of the Public Guardian and the Queensland Family and Child Commission were established. Some functions of the CCYPCG have been continued by other public authorities and some functions are defunct.

The Regulation establishes the following entities as the relevant and responsible public authorities for the records relating to defunct functions:

- The Department of Child Safety, Youth and Women (DCSYW) which administers the *Child Protection Act 1999* will be responsible for records relating to:
  - the functions of community visitors and the administration of a state-wide community visitor function for children and young people in alternative care. Part 4 of the *Commission for Children and Young People and Child Guardian Act 2000* (as in force on 1 September 2004) provides the legislative basis for the functions and powers of a community visitor. Section 93 of that Act sets out the functions of the community visitor as: developing supportive relationships with the children; acting as advocate and facilitating resolutions on their behalf; assessing their physical and emotional well-being and assessing the appropriateness of accommodation and facilities provided for children living in visitable homes and sites; and
  - the functions of child guardianship including monitoring and reporting on the effectiveness of services provided to children in the youth justice and child protection systems. For more information refer to the Children's Rights, Protection and Promotion Retention and Disposal Schedule QDAN 636 v. 2 approved by the State Archivist on 23 December 2013 available at <https://www.forgov.qld.gov.au/schedules/childrens-rights-protection-and-promotion-retention-and-disposal-schedule>
- The Queensland Family and Child Commission (QFCC) established under the *Family and Child Commission Act 2014* will be responsible for records relating to media releases about the services provided during the 2011 floods, the Annual Report 2012-13 and other information not concerning the function of community visitors.

While the hard copy records of the CCYPCG may be transferred to the custody of Queensland State Archives (QSA), the Queensland Family and Child Commission will retain custody of the digital records until QSA has implemented a digital archive.

## **QR Limited**

QR Limited was a Government owned corporation (GOC) under section 5 of the *Government Owned Corporations Act 1993* and a public authority as defined by Schedule 2 of the PR Act.

In 2010, pursuant to the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, QR Limited was separated into two distinct corporate groups so that from 1 July 2010:

- QR Limited would conduct coal haulage, regional freight, intermodal and bulk rail haulage businesses; and
- Queensland Rail would conduct passenger and non-coal network businesses.

In September 2010, the status of QR Limited as a GOC was revoked and it became a private entity called QR National Limited and was listed on the stock exchange in November 2010. QR National Limited (now known as Aurizon) is not a public authority as defined by the PR Act. QR Limited has ceased to exist and the functions formerly carried out by that entity are no longer carried out by a public authority.

The Regulation establishes Queensland Rail, a statutory authority in accordance with the *Queensland Rail Transit Authority Act 2013*, as the relevant and responsible public authority for QR Limited's public records pursuant to sections 8(3)(b)15(d) of the PR Act.

While the hard copy permanent records of QR Limited may be transferred to the custody of QSA, Queensland Rail will retain custody of the digital permanent records until QSA has implemented a digital archive.

### **Achievement of policy objectives**

The Regulation supports the policy objectives of the PR Act by ensuring that the public records of the CCYPCG and QR Limited remain in the control of a public authority which has obligations regarding custody, preservation and access.

### **Consistency with objectives of authorising law**

The Regulation is consistent with the objectives of the PR Act.

### **Benefits and costs of implementation**

The Regulation does not impose an appreciable cost on government or community.

### **Consistency with fundamental legislative principles**

The Regulation is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

### **Consultation**

Consultation has taken place with the former Commission for Children and Young People and Child Guardian (about which records should be transferred to specific agencies), the Queensland Family and Child Commission, the Department of Child Safety, Youth and Women, Queensland Rail and Queensland State Archives. Consultation also took place about which records should be transferred to specific agencies with the Public Safety Business Agency and the Department of Justice and Attorney-General.

All parties consulted support the regulation. The proposed Regulation has been self-assessed by the Department of Housing and Public Works as excluded from further regulatory impact analysis on the basis that it is for the internal management of the public sector.