

# **Industrial Relations (Revocation of Declaration—LGIAsuper) Amendment Regulation 2018**

Explanatory notes for SL 2018 No. 194

made under the

*Industrial Relations Act 2016*

## **General Outline**

### **Short Title**

*Industrial Relations (Revocation of Declaration—LGIAsuper) Amendment Regulation 2018*

### **Authorising law**

Sections 955(3) and 990 of the *Industrial Relations Act 2016* (IR Act)

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

The objective of the *Industrial Relations (Revocation of Declaration—LGIAsuper) Amendment Regulation 2018* is to remove any ambiguity concerning the industrial relations status of LGIAsuper by revoking a declaration that applied to its predecessor, the Local Government Superannuation Scheme ABN 23 053 121 564 (Local Government Superannuation Scheme).

The IR Act applies to employers operating within the Queensland industrial jurisdiction and employees of those employers. Under the IR Act a national system employer is not an employer for the purpose of the IR Act.

Generally, employers that are corporations are captured by the federal industrial jurisdiction and are national system employers. However, the Commonwealth *Fair Work Act 2009* (FW Act) makes provision for certain employers to be declared as *not national system employers*. Of relevance to the Local Government Superannuation Scheme, section 14(2)(a)(ii) of the FW Act permits an employer established under a law of a State for a local government purpose to be declared not a national system employer.

The Local Government Superannuation Scheme met these requirements and was declared as not a national system employer in 2010, for the purpose of the FW Act. This declaration enabled that body to remain an employer in Queensland's industrial relations jurisdiction.

The declaration of Local Government Superannuation Scheme was made under Schedule 7A of the *Industrial Relations Regulation 2000* (IR Regulation 2000), which has since been repealed. However, in accordance with section 152 of *Industrial Relations Regulation 2018*, the repeal of the IR Regulation 2000 does not affect the declarations made under Schedule 7A of that regulation. As a result, the declaration of the Local Government Superannuation Scheme remains in force until repealed.

Through the enactment of the *Revenue and Other Legislation Amendment Act 2016* (ROLA Act), the Local Government Superannuation Scheme changed to LGIAsuper and the scheme became a public scheme. As LGIAsuper does not operate solely for local government purposes it does not fulfill the requirements of section 14(2)(a)(ii) of the FW Act, making the declaration that applied to the Local Government Superannuation Scheme no longer applicable.

## **Achievement of policy objectives**

As LGIAsuper, which has replaced the Local Government Superannuation Scheme, is not eligible to be declared not a national system employer for the purpose of the FW Act, the revocation of the declaration will make clear the federal industrial relations jurisdiction applies to LGIAsuper and its employees.

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

As LGIAsuper no longer operates solely for local government purposes and does not fulfill the requirements of section 14(2)(a)(ii) of the FW Act, it is ineligible to be declared not a national system employer, for the purpose of that Act and may no longer be an employer in the Queensland industrial relations system.

Under the IR Act:

- eligible employers may be declared as not national system employers at section 955(2); and
- section 955(3) permits the revocation of a declaration made under section 955(2).

However, as the declaration of the Local Government Superannuation Scheme was made prior to the enactment of the IR Act, it was not made under section 955(2). The *Industrial Relations (Revocation of Declaration—LGIAsuper) Amendment 2018* inserts a new clause to clarify that declarations made under repealed regulations are taken to have been made under section 955(2) of the IR Act.

As LGIAsuper is no longer eligible to be declared not a national system employer, the revocation of the declaration that enabled the Local Government Superannuation Scheme to remain in the state system is consistent with the authorising law.

## **Inconsistency with policy objectives of other legislation**

This regulatory amendment is made as a consequence of the enactment of the ROLA Act, no inconsistencies with policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

This amendment is required as a consequence of the enactment of the ROLA Act. Revoking the declaration will provide the greatest certainty with regard to industrial jurisdiction applicability of LGIASuper and its employees.

As an alternative to a regulatory response, the Queensland Government could provide advice that the declaration no longer has application. This is not regarded as a satisfactory response. As the IR Act clearly anticipates that revocations may be necessary, if this declaration is not revoked it may lead to further questions regarding jurisdictional coverage. Revoking the declaration will clarify the industrial jurisdiction that applies to LGIASuper.

## **Benefits and costs of implementation**

This Amendment Regulation is made as a consequential amendment, which was necessary as the enactment of the ROLA Act resulted in LGIASuper not being eligible to remain in the state industrial jurisdiction. LGIASuper has given an undertaking that employees' entitlements will not be reduced as a result of moving from the State industrial jurisdiction to the federal. LGIASuper has also given an undertaking that its employment conditions ensure there is no double-dipping of entitlements in the Queensland and federal systems.

## **Consistency with fundamental legislative principles**

This Amendment Regulation is consistent with fundamental legislative principles.

## **Consultation**

As the enactment of the ROLA Act necessitated this consequential amendment to the *Industrial Relations Regulation 2018*, this regulatory proposal fulfils the agency-assessed exclusion criteria under the Queensland Government Guide to Better Regulation.

Consultation has been undertaken with LGIASuper and relevant employee organisations. No party has objected to this regulatory amendment.