

Public Records Amendment Regulation 2018

Explanatory Notes for Subordinate Legislation 2018 No. 210

made under the

Public Records Act 2002

General Outline

Short title

Public Records Amendment Regulation 2018

Authorising law

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

Policy objectives and the reasons for them

One of the main purposes of the *Public Records Act 2002* (the PR Act) is to ensure 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.

When a public authority has ceased or will cease to exist and some or all of its functions will not be carried out by another public authority, a regulation prescribing the relevant and responsible public authority for the public records of the ceased functions is required. The relevant public authority is established under section 8(3)(b) and has obligations regarding safe custody and preservation of the public records under sections 7, 8, 13 and 14 of the PR Act. The responsible public authority is prescribed under section 15 of the PR Act and has obligations relating to restricted access periods for public records in the custody of Queensland State Archives including making decisions about public access to the records.

The objective of the *Public Records Amendment Regulation 2018* (the Regulation) is to prescribe the relevant and responsible public authorities for the public records of three public authorities which have ceased or will cease to exist: The Gold Coast 2018 Commonwealth Games Corporation (GOLDOC), the HIV Foundation Queensland (HIVFQ) and the New Generation Rollingstock Trains Commission of Inquiry (NGRTCOI).

The Gold Coast 2018 Commonwealth Games Corporation (GOLDOC)

GOLDOC was established under the *Commonwealth Games Arrangements Act 2011* (CGAA) and is a public authority under Schedule 2 of the PR Act (refer to definition of a public authority (g) an entity, other than the parliamentary service, that (i) is established by an Act). Chapter 2 of the CGAA established GOLDOC with responsibility for planning, organising and delivering the Gold Coast 2018 Commonwealth Games (GC2018). The functions of GOLDOC will not be carried on by any public authority.

Under sections 46 and 80 of the CGAA, the *Commonwealth Games Arrangements (GOLDOC Dissolution Day) Amendment Regulation 2018* has prescribed the dissolution day for GOLDOC as 31 December 2018 at which time GOLDOC will cease to exist as a public authority.

An amendment to the *Public Records Regulation 2014* is required to prescribe the relevant and responsible public authority for the public records of GOLDOC under sections 8(3)(b) and 15(d) of the PR Act. The Regulation establishes the department which administers the *Major Events Act 2014*, the Department of Innovation, Tourism Industry Development and the Commonwealth Games (DITID), as the relevant and responsible public authority for the records of GOLDOC.

HIV Foundation Queensland (HIVFQ)

In 2013, HIVFQ was established under section 7 of the repealed *Hospitals Foundations Act 1982* (HFA). On 15 June 2018, HIVFQ was dissolved, in accordance with section 59 of the HFA under the *Hospitals Foundations (HIVFQ) Amendment Regulation 2018*.

While Queensland Health has continued most of HIVFQ's functions, a small number of HIVFQ's functions will not be continued. As such, for the purposes of the public records of HIVFQ relating to the functions that are not being carried out, an amendment to the *Public Records Regulation 2014* is required to prescribe the relevant and responsible public authority under sections 8(3)(b) and 15(d) of the PR Act.

The Regulation provides for the administering agency of the *Hospital Foundations Act 2018*, currently Queensland Health, to be the relevant public authority responsible for HIVFQ's public records that relate to the functions of HIVFQ that are not being continued by another public authority.

The New Generation Rollingstock Trains Commission of Inquiry (NGRTCOI)

The NGRTCOI was established on 1 August 2018 by order of the Governor in Council (*Commissions of Inquiry Order (No. 1) 2018*) under the *Commissions of Inquiry Act 1950*. The NGRTCOI reported to the Honourable the Premier and Minister for Trade on 3 December 2018 and has ceased to exist as a public authority. The functions of the NGRTCOI will not be continued by another public authority.

An amendment to the *Public Records Regulation 2014* is required to prescribe the relevant and responsible public authority under sections 8(3)(b) and 15(d) of the

PR Act for the public records of the NGRTCOI. The Regulation establishes the department which administers the *Constitution of Queensland 2001*, the Department of the Premier and Cabinet as the relevant and responsible public authority for the records of NGRTCOI.

Potential transfer of public records to QSA

While the hard copy records of GOLDOC, HIVFQ and NGRTCOI may be transferred to the custody of Queensland State Archives (QSA) with the approval of the State Archivist, the responsible public authority for the records will retain custody of the digital 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 GOLDOC, HIVFQ (for defunct functions) and the NGRTCOI remain in the control of public authorities which have obligations regarding custody, preservation and access for the records.

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

The Office of Best Practice Regulation has confirmed that the proposed Regulation is excluded from the regulatory impact analysis on the basis that it is for the internal management of the public sector.