

Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 247

made under the

Public Service Act 2008

General Outline

Short title

Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020

Authorising law

Sections 21, 22, 23 and 222 of the *Public Service Act 2008* (PS Act).

Policy objectives and the reasons for them

The PS Act establishes the Queensland public service and provides for the rights and responsibilities of chief executives and employees. The PS Act is supplemented by rulings (directives and guidelines) issued by the commission chief executive (CCE) and the industrial relations Minister under sections 53 and 54 of the Act respectively.

The PS Act provides at section 21(1)(b) that a public service office is a designated entity, or part of an entity, declared under a regulation to be a public service office (known as a declared public service office or DPSO). Section 23 sets out the application of the PS Act to DPSOs, and provides that a regulation under this section may specify what provisions of the Act apply to the office and the way in which the provisions are to apply.

The *Public Service and Other Legislation Amendment Act 2020* (the Amendment Act), which includes amendments to the PS Act, was assented to on 14 September 2020. The Amendment Act implements the priority stage one public sector reforms arising from recommendations of the review into Queensland's public sector employment laws undertaken by Mr Peter Bridgman. The Amendment Act progresses the reforms in two main areas:

- 1) giving full effect to the Government's commitment to maximise employment security in public sector employment; and
- 2) providing for positive performance management of public sector employees.

The policy objective of the amendments to the *Public Service Regulation 2018* (the PS Regulation) is to formally apply provisions of the PS Act, including updates arising from the amendments in the Amendment Act and associated five new and six revised directives, to DPSOs and their employees that are not otherwise subject to the PS Act.

The *Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020* (the Amendment Regulation) will update section 12 of the PS Regulation to reflect the change in terminology from managing employee complaints to individual employee grievances. It will also amend the application of the provisions of the PS Act and directives to DPSOs.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by amending the PS Regulation to apply amended and additional provisions of the PS Act and directives issued under the PS Act to DPSOs and their employees. These changes are as follows:

Gasfields Commission

The Amendment Regulation will apply the following five new directives to the Gasfields Commission:

- appointing a public service employee to a higher classification level
- discipline
- investigations
- positive performance management
- suspension.

Hospital and Health Services (HHS) and Queensland Health

The Amendment Regulation will apply the following PS Act provisions to HHS and Queensland Health and their employees:

- new section 25A (positive performance management principles)
- new section 137A (CCE directive about suspension)
- amended section 149B (review of status after 2 years continuous employment)
- new section 149C (appointment to a higher classification level).

The Amendment Regulation will also apply the following five new directives:

- appointing a public service employee to a higher classification level
- discipline
- investigations
- positive performance management
- suspensions.

Legal Aid Queensland (LAQ)

The Amendment Regulation will apply the following PS Act provisions to LAQ and its employees:

- new section 25A(1) and (2) (positive performance management principles)

- section 120 (secondment)
- amended section 137 (suspension)
- amended section 149B (review of status after 2 years continuous employment)
- part 6, divisions 1, 2, 4 and 5 (assessing suitability to be engaged in employment).

The Amendment Regulation will update references to the amended directives and also apply the directive relating to employment screening to LAQ, other than to the extent it provides for regulated employment or child-related duties.

Queensland Ambulance Service (QAS)

The Amendment Regulation will apply the section 25A of the PS Act (positive performance management principles) to the QAS and its employees.

The Amendment Regulation will also apply the directives relating to independent medical examinations and positive performance management to the QAS's employees, other than the chief executive officer.

Queensland Building and Construction Commission and Queensland Building and Construction Employing Office (QBCC)

The Amendment Regulation will apply the following PS Act provisions to the QBCC and its employees:

- amended section 149A (decision on review status)
- amended section 149B (review of status after 2 years continuous employment)
- chapter 6 (discipline).

Queensland Fire and Emergency Service (QFES)

The Amendment Regulation will apply the following PS Act provisions to QFES:

- new section 25A (positive performance management principles)
- amended section 137 (suspension)
- new section 137A (CCE directive about suspension)
- chapter 5, Part 7 (independent medical examinations)
- new section 186C (apply positive performance management principles before taking disciplinary action)
- new section 192A (CCE directives about disciplinary action and investigating grounds for discipline and grievances).

The Amendment Regulation will apply the following five new rulings to QFES and its employees, including auxiliary firefighters:

- discipline
- individual employee grievances
- investigations
- positive performance management
- suspension.

The Amendment Regulation will also apply the directive relating to independent medical examinations, but only to fire service officers employed by QFES, and not to auxiliary firefighters.

Residential Tenancies Authority and Residential Tenancies Employing Office (RTA)

The Amendment Regulation will apply the following PS Act provisions to the RTA and its employees:

- new section 25A (positive performance management principles)
- section 26 (work performance and personal conduct principles)
- chapter 1, part 4 (the merit principle)
- section 127 (requirement about citizenship)
- section 133 (power to transfer or redeploy)
- sections 135 and 136 (resignation and voluntary retirement)
- amended section 137 (suspension)
- new section 137A (CCE directive about suspension)
- amended section 149B (review of status after 2 years continuous employment)
- section 179A (requirement to disclose previous history of serious discipline)
- section 181 (requirement to give notice of indictable offence).

The Amendment Regulation will apply the following directives to the RTA and its employees:

- discipline
- independent medical examinations
- positive performance management
- recruitment and selection to the extent it provides for a chief executive to exempt a vacancy from advertising or to limit the advertising
- special leave to the extent it provides for bereavement leave
- state wage case and certified agreements
- suspensions.

Safe Food Production Queensland

The Amendment Regulation will apply a minor administrative amendment to Safe Food Production Queensland to reflect current drafting practices.

Trade and Investment Queensland (TIQ)

The Amendment Regulation will apply the following PS Act provisions to TIQ:

- new section 25A (positive performance management principles)
- chapter 1, part 4 (the merit principle)
- chapter 3, part 3 (Rulings by CCE and industrial relations Minister)
- chapter 3, part 6 (functions of commission relating to work performance matters)
- sections 133 and 134 (power to transfer or redeploy and consequence if refused)
- amended section 137 (suspension)
- new section 137A (CCE directive about procedure for suspension)
- amended chapter 5, part 5 (general, fixed term temporary and casual employees)

- amended chapter 6, divisions 1, 2, 4 and 5 (disciplinary action)
- chapter 7 (appeals and reviews).

The Amendment Regulation will apply the following directives to TIQ and its employees, other than the chief executive officer:

- appointing a public service employee to a higher classification level
- discipline
- independent medical examinations
- investigations
- positive performance management
- suspension
- temporary employment, end of contract payment.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising provisions in 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

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The benefit of the Amendment Regulation is that it will update the PS Regulation so that it represents a current and accurate list of the specific provisions of the PS Act and rulings that formally apply to DPSOs, providing clarity to public service offices and their staff.

Any costs associated with implementing the directive will be met by the individual DPSO from existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles.

Consultation

The DPSOs and public sector unions consulted did not raise any concerns with the proposed Amendment Regulation.

In addition, comprehensive consultation was undertaken with all public sector employee and employer stakeholders on the development of the Public Service and Other Legislation Amendment Bill 2020 and the new and amended directives which are applied to DPSOs through the Amendment Regulation.

The proposed regulation affects the management of employees of declared public sector offices, thus an agency-assessed exclusion applies (category (c) - regulatory proposals for the internal management of the public sector or statutory authority). Further regulatory impact assessment under *The Queensland Government Guide to Better Regulation* is not required.