

Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 191

made under the *Public Service Act 2008*

General Outline

Short title

Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021

Authorising law

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

Policy objectives and the reasons for them

The purpose of the Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021 (the Amendment Regulation) is to apply Stage 1 Public Sector Reforms to TAFE and WorkCover through the application of provisions of the *Public Service Act 2008* (PS Act) and associated Public Service Commission Chief Executive (CCE) directives. Extending Stage 1 Public Sector Reforms to TAFE and WorkCover is a step in restoring fairness and maximising the Government's commitment to employment security in the public sector.

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 CCE and the Minister for Industrial Relations under sections 53 and 54 of the PS Act respectively.

The PS Act was amended on 14 September 2020 to implement priority Stage 1 Public Sector Reforms arising from an independent review of public employment laws, *A Fair and Responsive Public Service for All* by Mr Peter Bridgman (the Bridgman Review). These reforms resulted in the introduction or amendment of 11 associated CCE directives and amendments to the Public Service Regulation 2018 (PS Regulation).

Section 21(1)(b) of the PS Act provides 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 of the PS Act sets out the application of the 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.

In October 2020, the PS Regulation was amended to apply provisions of the PS Act and the associated CCE directives, to most DPSOs and their employees, with the exception of TAFE and WorkCover. Consequently, at the 2020 State Election, the Queensland Government committed to extending Stage 1 Public Sector Reforms by PS Regulation to TAFE and WorkCover.

To give effect to this commitment the Amendment Regulation will pronounce TAFE to be a declared public service office under the PS Regulation and extend all Stage 1 Public Sector Reforms, including amended provisions of the PS Act and associated CCE directives, to TAFE and WorkCover and their employees.

The Amendment Regulation gives effect to a request from Legal Aid Queensland to clarify that the civil liability protections provided for in section 26C of the PS Act apply to members of the Legal Aid Board. The application of these protections to members of the Legal Aid Board is consistent with the current intent and application of sections 26B and 26C to members of boards and committees of other independent statutory bodies which are prescribed as state employees in the PS Regulation and afforded civil liability protections when engaging in conduct in an official capacity.

The Amendment Regulation also makes a minor typographical correction to the PS Regulation.

Achievement of policy objectives

The Amendment Regulation achieves the policy objectives by amending the PS Regulation to apply the following amended and additional PS Act provisions and CCE directives issued under the PS Act to TAFE and WorkCover and their employees:

Provisions of the PS Act:

- Section 25A (positive performance management)
- Chapter 1, part 4 (the merit principle)
- Chapter 3, part 3 (rulings by the CCE)
- Chapter 3, part 6 (functions of the PSC in work performance matters)
- Sections 137 and 137A (suspension)
- Chapter 5, part 5 (general, fixed term temporary and casual employees)
- Chapter 5, part 6, divisions 1, 2, 4 and 5 (assessing suitability for employment)
- Chapter 5, part 7 (mental or physical incapacity)
- Chapter 6 (discipline)
- Chapter 7 (appeals and reviews).

CCE directives:

- Appeals
- Appointing a public service employee to a higher classification level
- Casual employment
- Discipline
- Fixed term temporary employment
- Independent medical examinations
- Individual employee grievances
- Positive performance management
- Recruitment and selection
- Suspension
- Workforce profile and work performance information
- Workplace investigations
- Workforce profile and work performance information (which assists in giving effect to section 88I and 88N of the PS Act).

The Amendment Regulation also applies the following additional CCE directives to WorkCover:

- Employment arrangements in the event of a health pandemic (which currently applies to WorkCover under the PS Regulation, and will be retained); and

The Amendment Regulation amends Schedule 14 (Prescribed State Employees) to clarify that a member of the Legal Aid Board is a prescribed state employee for the purpose of civil liability protections under section 26C of the PS Act.

The Amendment Regulation inserts an omitted comma in Schedule 12 (Trade and Investment Queensland) to correct a minor error in the PS Regulation.

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 extend Stage 1 Public Sector Reforms to TAFE and WorkCover to ensure their employees have the same access to employment security, fair treatment, and positive performance management as other public service employees to support them in delivering the service and programs of Government for the Queensland community.

Any costs associated with implementing the Amendment Regulation will be met by TAFE and WorkCover from existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles.

Consultation

Comprehensive consultation was undertaken with all public sector employee and employer stakeholders through the amendments to the PS Act, PS Regulation and introduction of new and amended CCE directives as part of Stage 1 Public Sector Reforms. Stakeholders were broadly supportive of the reforms.

Regular and ongoing consultation has also occurred with key stakeholders on the development of the Amendment Regulation and the proposed application of Stage 1 Public Sector Reforms to TAFE and WorkCover.

Key public sector unions have been consulted through the Public Sector Reforms Joint Advisory Committee (JAC) which has met fortnightly since 14 January 2020 to discuss the progress of the Public Sector Reforms. Together Queensland was also consulted in August 2021 to obtain specific feedback on the application of Stage 1 Public Sector Reforms to TAFE and WorkCover. During consultation, union JAC members, specifically Together Queensland and Queensland Teachers' Union, expressed ongoing support for the Stage 1 Public Sector Reforms and have advocated for the extension of Stage 1 Public Sector Reforms to TAFE and WorkCover as a priority.

TAFE and WorkCover were consulted on the regulatory and administrative impacts of the Amendment Regulation and the application of Stage 1 Public Sector Reforms to their employees. TAFE identified resource impacts associated with implementation of the reforms due to the size and nature of their workforce.

Any impacts associated with application of the Stage 1 Public Sector Reforms to TAFE and WorkCover and their employees will be lessened through guidance and support from the Public Service Commission on the implementation of Stage 1 Public Sector Reforms and existing performance management processes. Further, the Amendment Regulation will not commence for TAFE until 28 February 2022, to assist with successful

implementation of the reforms. Together Queensland and Queensland Teachers' Union have indicated support for the delayed commencement of the Amendment Regulation for TAFE.

Legal Aid Queensland was consulted on the proposed wording in the Amendment Regulation and raised no concerns.