

Legal Aid Queensland Regulation 2023

Explanatory notes for SL 2023 No. 11

Made under the

Legal Aid Queensland Act 1997

General Outline

Short Title

Legal Aid Queensland Regulation 2023

Authorising law

Sections 42B and 88(1) of the *Legal Aid Queensland Act 1997*

Policy objectives and the reasons for them

Legal Aid Queensland (LAQ) provides legal help to financially disadvantaged people about criminal, family and civil law matters. LAQ is registered with the Australian Charities and Not-for-profits Commission (ACNC) as a charity and a public benevolent institution (PBI).

PBI status enables LAQ to maintain its deductible gift recipient status with the Australian Taxation Office and confers other tax benefits at an institutional and employee level, ultimately enhancing LAQ's ability to provide legal services for vulnerable clients.

The independence of LAQ is not just statutorily enshrined but the perception of independence is essential for maintaining public confidence in the services LAQ provides and in avoiding conflicts of interest. This is especially important when LAQ advocates for the interests of vulnerable clients against the State.

Schedule 4 of the *Public Service Regulation 2018* (PS Regulation) currently applies particular provisions of the *Public Service Act 2008* (PS Act), and particular rulings made under the PS Act, to LAQ and its employees.

The *Public Sector Act 2022* (the Act) repeals the PS Act and implements the second stage of public sector legislative reforms arising from the recommendations of an independent review of public sector employment laws by Mr Peter Bridgman, titled *A Fair and Responsive Public Service for All* (the Bridgman Review).

In particular, the Act gives effect to the Bridgman Review's primary recommendation to provide all public sector employees with a modern, simplified and employee-focused legislative framework that can further the Government's commitment to being fair, responsive and a leader in public administration.

The Act is fixed to commence on 1 March 2023.

The Act applies to public sector entities and to chief executives and employees of public sector entities.

Section 352 of the Act inserts new sections 42A and 42B into the *Legal Aid Queensland Act 1997* (LAQ Act).

Under section 42A of the LAQ Act, LAQ is not a public sector entity for the purposes of the Act and is therefore excluded from application of the Act as a whole. LAQ is excluded from being a public sector entity in order to protect and safeguard its PBI status.

However, section 42B of the LAQ Act provides that a regulation may apply particular provisions of the Act, including particular directives made under the Act, to LAQ, its chief executive officer and employees. This is facilitated by section 5 of the Act, which allows for an Act or regulation to apply particular provisions to an entity that is not a public sector entity.

The policy objective of the *Legal Aid Queensland Regulation 2023* (the Regulation) is to apply particular provisions of the Act and directives issued under the Act that maintains existing employment conditions and entitlements for LAQ employees so far as reasonably and practically possible without threatening LAQ's PBI status.

Achievement of policy objectives

The Regulation specifically identifies the relevant provisions of the Act and directives issued under the Act to be applied. From 1 March 2023, the regulation will replace Schedule 4 of the current PS Regulation.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main objects of the LAQ Act as it will enable LAQ to continue giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation. In particular, the Regulation is consistent with the policy objectives of the Act, that is, to strengthen the independence of certain bodies that do not employ public service employees by not including them in scope of the Act and establishing alternative mechanisms to enable public sector employment arrangements to be applied to their staff.

Benefits and costs of implementation

The benefit of the Regulation is that it will provide clear and coherent employment arrangements for LAQ and its staff while also protecting LAQ's independence and valuable role in providing services to vulnerable clients.

Any implementation costs will be met from within existing LAQ resources.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles.

Consultation

The applied provisions and applied directives have been informed by extensive consultation between LAQ and Together Queensland.

In accordance with section 42B(2) of the LAQ Act, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence has consulted with the LAQ chief executive officer about the proposed Regulation.

The Department of Justice and Attorney-General has self-assessed the Regulation as meeting Exclusion Category (c) 'Regulatory proposals for the internal management of the public sector or statutory authority' under the *Queensland Government Guide to Better Regulation* and therefore it is excluded from further regulatory impact assessment.