

# Public Sector Ethics Regulation 2023

Explanatory notes for SL 2023 No. 126

made under the

*Public Sector Ethics Act 1994*

## General Outline

### Short title

*Public Sector Ethics Regulation 2023.*

### Authorising law

Section 25 and schedule 1 of the *Public Sector Ethics Act 1994* (the PSE Act).

### Policy objectives and the reasons for them

The PSE Act provides a framework for ethical decision making and conduct in the Queensland public sector. The PSE Act outlines ethics values that provide the basis for codes of conduct, which make provision for standards of conduct for public service agencies, public sector entities and public officials.

Under the PSE Act a specific code of conduct, the Public Service Code of Conduct (the Code), must be made for public service agencies.

The PSE Act defines a public service agency as:

- a) a department;
- b) TAFE Queensland;
- c) the administrative office of a court or tribunal; or
- d) an entity prescribed under a regulation that is not a public service agency.

The PSE Act requires public sector entities to develop and apply their own codes of conduct or they may apply the Code if they are prescribed via a regulation as a public service agency.

The policy objective of a regulation made under the PSE Act is to prescribe entities as public service agencies for the purpose of applying the Code. Entities elect to be prescribed as public service agencies. The Public Sector Commission (PSC) manages prescription of entities.

The *Public Sector Ethics Regulation 2010* (PSER) prescribes entities as public service agencies for the purpose of the PSE Act definition of public service agency. Prescribed public service agencies are listed in the schedule of the PSER.

The PSER will expire on 31 August 2023.

## **Achievement of policy objectives**

To ensure continuity of the regulatory regime the *Public Sector Ethics Regulation 2023* (the Regulation), will replace the existing PSER, and commence on 1 September 2023. The purpose of the Regulation is to prescribe entities as public service agencies for the purpose of the PSE Act definition of public service agency. Prescribed public service agencies are listed in the schedule of the PSER.

The replacement Regulation prescribes entities currently prescribed in the PSER, where these entities have sought to maintain existing arrangements. The Regulation also prescribes particular entities that are not currently prescribed where they have sought inclusion.

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

The Regulation is consistent with the policy objectives of the PSE Act which establishes ethics values that are intended to provide the basis for codes of conduct for public service agencies, public sector entities and public officials.

The PSE Act requires that the Code be made for public service agencies and that public sector entities develop and apply their own code of conduct or apply the Code if they are prescribed via regulation as a public service agency.

The only purpose of the Regulation is to enable entities that would not otherwise be public service agencies to be prescribed so that the Code applies to them.

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

The Regulation is not inconsistent with the policy objectives of other legislation.

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

An objective of the PSE Act is to permit an entity to be prescribed as a public service agency for the purpose of applying the Code that applies to the public service agencies.

Given the construction of the PSE Act, whereby entities that do not otherwise fulfill the Act's requirements of the definition of public service agency may be prescribed as such via a regulation, there is no other way of achieving this objective of the PSE Act.

## **Benefits and costs of implementation**

Benefits of prescribing entities as public service agencies, include:

- facilitating compliance with the PSE Act;
- relieving entities of the administrative burden and cost required to develop and apply their own codes of conduct, particularly for smaller entities that do not have the resources to develop their own codes; and

- applying the Code, over developing bespoke arrangements leads to greater consistency across entities.

The preservation of existing arrangements enables those entities to which the arrangements apply to continue to benefit from these arrangements. Implementation should not result in any new costs to the public sector.

## **Consistency with fundamental legislative principles**

The purpose of the Regulation is to prescribe entities as public service agencies for the purpose of the PSE Act. The Regulation does not contain any specific arrangements governing contents of the Code or other employment obligations and is considered compatible with the fundamental legislative principles (FLPs) under section 4 of the *Legislative Standards Act 1992* (LSA).

However, as the Regulation permits application of the Code to public sector entities, that are not public service agencies, the Regulation may be viewed as indirectly limiting the rights and liberties of individuals through application of the Code.

Generally, the contents of the Code confirm existing employment arrangements and do not limit the rights and liberties of individuals, however, clauses of the Code that deal with responsibilities when contributing to public discussion (clause 1.3, paragraph c) and private conduct (clause 1.5, paragraph d) have been identified as potentially limiting this FLP.

As the Code establishes expected standards of behaviour, any limitation imposed by the Code impacts upon employees only in so far as a breach of the Code may result in a consequence for the individual. The apparent impact is that a breach of the Code may result in disciplinary action.

In accordance with section 24 of the PSE Act, relevant disciplinary action for contravention of the Code may be through the *Public Sector Act 2022* (PS Act) or potentially through other disciplinary processes that may apply to a particular employee of a specific entity.

Section 91(1)(f) of the PS Act provides that disciplinary action may be taken against a public sector employee for contravention, without reasonable excuse, of a relevant standard of conduct including the Code, in a way that is sufficiently serious to warrant disciplinary action. Disciplinary action includes termination of employment (see s92(1)(a)).

While disciplinary action taken for contravention of the Code may be regarded as being incompatible with the FLP that the legislation has sufficient regard to the rights and liberties of individuals, any limitation is justified on the following grounds:

- the Regulation itself does not raise incompatibility issues as the ability to prescribe entities and impose disciplinary action for failure to comply with the Code exists in the primary legislation of the PSE Act and the PS Act;
- the ethics values of the PSE Act provide the basis for all codes of conduct required to be developed and any limitation imposed through the Code is outweighed by the public benefit it provides; and
- the PS Act contains protections to ensure any disciplinary action taken for breaching the Code is proportionate and reasonable.

## Consultation

A sunset review of the PSER was undertaken in accordance with the *Queensland Government Guide to Better Regulation*. The Office of Best Practice Regulation was consulted on this review and advised that no further regulatory impact analysis was necessary as it considered the requirements of a sunset review had been met.

Consultation occurred with affected entities currently prescribed in the PSER, as well as entities who sought to be included in the Regulation.

The Department of Regional Development, Manufacturing and Water and the Department of State Development, Infrastructure, Local Government and Planning were consulted to clarify the status of prescribed entities that have since been abolished or had their functions transferred to relevant departments or other entities.

Consultation occurred with representatives of public sector unions as part of the sunset review. Specifically, union views were sought on whether the Regulation is the most efficient way of applying the Code to public sector entities that have chosen to apply it to their workplaces. The following unions were consulted:

- Together Queensland, Industrial Union of Employees
- Queensland Teachers Union of Employees
- Queensland Nurses and Midwives' Union of Employees
- United Workers Union, Industrial Union of Employees, Queensland
- United Firefighters' Union of Australia, Union of Employees
- the Australian Workers Union of Employees, Queensland.

No union objected to the continuation of the Regulation as the mechanism to apply the Code.