

Public Service (Rulings and Other Matters) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Anastacia Palaszczuk, MP, Premier and Minister for Trade provide this human rights certificate with respect to the *Public Service (Rulings and Other Matters) Amendment Regulation 2020*, made under the *Public Service Act 2008* (PS Act).

In my opinion, the *Public Service (Rulings and Other Matters) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The proposed amendments (the Amendment Regulation) to the *Public Service Regulation 2018* (the current regulation) are to update the schedules of the current regulation to apply the directive relating to employment arrangements in the event of a health pandemic (the health pandemic directive) issued under the PS Act to all public service offices declared by regulation (DPSOs). The policy intent of the directive is to prescribe the specific employment conditions to apply in case of disruption caused by the occurrence of a health pandemic.

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

Sections 21, 22 and 222 of the PS Act authorises regulations under the PS Act.

Section 23 of the PS Act sets out the application of the Act to DPSOs and provides that a regulation may specify what directives and provisions of the Act apply to the DPSO and the way in which the provisions are to apply.

The health pandemic directive supports measures to manage the impacts of a health pandemic and prescribes the specific employment conditions to apply in case of disruption caused by the occurrence of a health pandemic. Specifically, it relates to human resources and industrial relations matters including leave, allowances, lawful workplace directions and the consequences of refusing to follow a lawful direction. The directive extends existing leave entitlements and clarifies the application of other existing human resources and industrial relations matters.

This is an existing directive that already applies to a large number of public service employees. Although it is understood that DPSOs are already applying the directive administratively, formally applying it through the directive will help ensure a clear and consistent sector wide approach to managing the industrial and workforce scenarios that are likely to occur as a result of the pandemic.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Privacy and reputation (section 25)

Section 25 of the *Human Rights Act 2019* provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with.

By applying the health pandemic directive to all DPSOs, employees who request pandemic leave under the directive will be required to provide medical and other personal information to support their applications for leave. The requirement to disclose this information is a limit on the human right to privacy.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Section 13 of the *Human Rights Act 2019* provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

It is considered that any potential impact that the Amendment Regulation makes upon the rights and liberties of individuals is justified. The limitation of the right to privacy is for the purpose of ensuring that paid leave is only granted where the conditions for that leave entitlement are met and other support options are accessed where more appropriate. This ensures equitable, consistent support for employees across the sector and maintains an available workforce for essential government services during a pandemic.

Conclusion

I consider that the *Public Service (Rulings and Other Matters) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because while it does limit, restrict or interfere with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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