

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

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, Annastacia Palaszczuk MP, Premier and Minister for the Olympics provide this human rights certificate with respect to the *Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021* (the Amendment Regulation) made under the *Public Service Act 2008* (the PS Act).

In my opinion, the Amendment Regulation, 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 to the *Public Service Regulation 2018* (the PS Regulation) in the Amendment Regulation are to amend the schedules of the PS Regulation for the purposes of declaring TAFE Queensland as a public service office (DPSO), and to apply provisions of the PS Act and rulings issued under the PS Act to TAFE Queensland as well as WorkCover Queensland, which is already declared as a public service office (DPSO) in the PS Regulation.

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 issued by the commission chief executive and the industrial relations Minister under sections 53 and 54 of the Act respectively.

Section 222 of the Act authorises regulations under the PS Act.

Section 23 of the PS Act provides that specified provisions of the PS Act and nominated rulings may be applied to public service offices declared under the PS Regulation. The provisions of the PS Act and rulings that are applied to individual DPSOs and their employees are listed in the schedules to the PS Regulation.

The *Public Service and Other Legislation Amendment Act 2020* (the Amendment Act) was assented to on 14 September 2020. It implemented 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, including amendments to the PS Act.

The Amendment Act progressed reforms in two main areas:

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

The Amendment Regulation amends the PS Regulation 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 WorkCover Queensland and TAFE Queensland.

The new and revised directives were issued by the Commission Chief Executive of the Public Service Commission in accordance with the PS Act on 25 September 2020, and relate to:

- 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
- suspensions, and
- workplace investigations.

Further to the above, the Amendment Regulation also:

- applies the work profile and work performance information directive to WorkCover Queensland
- gives effect to a request from Legal Aid Queensland to clarify that the civil liability protections provided for in the PS Act extend to members of the Legal Aid Board.

Human Rights Issues

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

In my opinion, the human rights that are relevant to the subordinate legislation are taking part in public life and privacy and reputation.

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

(a) the nature of the right

Taking part in public life

The right to take part in public life protects a person's ability to have access, on general terms of equality, to the public service. The Amendment Regulation limits this right by applying provisions of the PS Act and directives relating to:

- employment screening
- suspension
- discipline
- independent medical examinations
- investigations.

These provisions authorise a chief executive to make a decision restricting a person's ability to be engaged in the public service.

Note the right to taking part in public life in s 23(2)(b) of the *Human Rights Act 2019* is afforded to 'eligible' persons. That term is not defined in the Act. If 'eligible' means qualified, the right may not be engaged in certain circumstances if the limits arise from the qualifications imposed.

Privacy and reputation

The right to privacy and reputation protects a person's privacy from being unlawfully or arbitrarily interfered with. The Amendment Regulation limits this right by applying provisions of the PS Act relating to employment screening and independent medical examinations to TAFE Queensland and WorkCover Queensland. These sections require the provision of personal information relating to potential or existing public service employees.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of these amendments is to protect general public interest considerations by extending the priority stage one public sector reforms and the high standards of employment in the public service. This will ensure effective and efficient management of TAFE Queensland and WorkCover Queensland and meet community expectations. The amendments also ensure access to a consistent and fair employment framework for the employees of TAFE Queensland and WorkCover Queensland.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Any potential human rights limitation that the Amendment Regulation makes upon the rights and liberties of individuals by applying the relevant PS Act provisions and directives are reasonable and justified to achieve the purpose as explained below.

Taking part in public life

Limiting the right to take part in public life by potentially imposing restrictions on a person's ability to access the public service (for example due to a relevant criminal history, inappropriate workplace conduct or performance or a significant health issue) is necessary to ensure that public service employees are suitable for and able to perform the inherent requirements of their role. This is particularly relevant for roles involving public monies, positions of influence and public accountability.

Privacy and reputation

The applied provisions and directives relating to independent medical examinations provide a chief executive with authority to compel an employee to submit to a medical examination if they are reasonably satisfied the employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability.

The rights of employees are supported in the directive. The directive provides clarity about when medical examinations may be appropriate, how to treat individual employees with respect and sensitivity and provides details on appropriate supports.

The applied provisions and directive that relate to employment screening and requiring notification of certain charges or convictions require the disclosure of personal information to assess the person's suitability for engagement to perform particular duties. Consent is obtained prior to obtaining a person's criminal history (section 154 of the PS Act).

All directives issued following the commencement of the stage 1 amendments to the PS Act contain a clause to alert decision makers to consider the human rights implications of decisions they may make under the rulings.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no alternative or less potentially restrictive ways to achieve the purpose of these amendments.

These measures are designed to align DPSOs with the statutory employment framework of the public service workforce employed under the PS Act. This ensures equality and consistency for public service employees, including employees of WorkCover Queensland and Queensland TAFE.

Safeguards are present, both in the PS Act and the directives (including as required by sections 137A and 192A of the PS Act) to ensure that natural justice is provided to employees in relation to disciplinary matters, workplace investigations, suspensions without pay and decisions relating to independent medical examinations. The requirements for natural justice include the opportunity to respond to the allegations and protection of confidential information. Review of decisions made under the directives is available under the employment framework through grievance and appeal pathways. These safeguards ensure that any discretion to limit human rights under the provisions of the Amendment Regulation is consistent with a free and democratic society.

The potential limitations of the employment screening provisions and directive on the right to privacy are justified and proportionate to achieve these purposes and cannot be achieved in any other way.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, it is considered the importance of the purpose of the high standards of employment in the public service to ensure effective and efficient management of DPSOs outweighs the potential limitations to the right to take part in public life and the right to privacy.

In addition, agencies have a legal obligation to ensure a safe workplace, and the rights to safety of other people in the workplace. Given the objective of these provisions is to govern the management of employees, agencies should have the ability to investigate, suspend and discipline employees where appropriate. This will enhance effective and efficient management of their offices in the public interest and to ensure worker health and safety.

The applied provisions and rulings are not incompatible with human rights and generally do not directly limit human rights. Rather, decisions made by chief executives under these provisions or directives have the potential to limit a person's human rights.

The principles in relation to these measures apply equally to all employees. The principles are applied through the chief executive's decision-making power under the PS Act and directive, and decisions may be subject to review by complaint to the agency or by appeal to the Queensland Industrial Relations Commission. The potential limitations to human rights engaged through these measures are therefore reasonable to ensure an effective public service and to manage inappropriate conduct which may impact other employees, the government and the broader community.

(f) any other relevant factors

The Amendment Regulation extends the application of existing directives and provisions of the PS Act to employees of TAFE Queensland and WorkCover Queensland.

Conclusion

I consider that the *Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

ANNASTACIA PALASZCZUK MP
PREMIER AND MINISTER FOR THE OLYMPICS

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