

Public Sector Ethics Regulation 2023

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, the Honourable Annastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games provide this human rights certificate with respect to the *Public Sector Ethics Regulation 2023* made under the *Public Sector Ethics Act 1994*.

In my opinion, the *Public Sector Ethics Regulation 2023*, 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 *Public Sector Ethics Regulation 2023* (the Regulation) will replace the *Public Sector Ethics Regulation 2010* (PSER) upon its expiration on 31 August 2023. The Regulation will continue the regulatory regime by prescribing entities as public service agencies to which the Public Service Code of Conduct (Code of Conduct) will apply. It will make minor amendments to the schedule of prescribed public service agencies by removing entities that are no longer in existence and including additional entities that have requested to be prescribed. The entities prescribed as public service agencies are listed in schedule 1 to the Regulation.

The definition of a ‘public service agency’ in the *Public Sector Ethics Act 1994* (PSE Act) includes an entity prescribed under regulation. An entity prescribed as a public service agency is required to apply the Code of Conduct. The Code of Conduct sets out standards of conduct for employees of public service agencies consistent with the ethics principles and values outlined in the PSE Act: integrity and impartiality, promoting the public good, commitment to the system of government and accountability and transparency. In accordance with these ethics principles and values, the Code of Conduct designates standards of conduct which include contributing to public discussion in an appropriate manner (section 1.3), managing participation in external organisations (section 1.4) and demonstrating a high standard of workplace behaviour and personal conduct (section 1.5).

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 in the *Human Rights Act 2019* (HR Act) that are engaged by the Regulation are:

- freedom of thought, conscience, religion and belief (section 20);
- freedom of expression (section 21(2));
- freedom of association (section 22(2));
- the right to take part in public life, including the right to participate in the conduct of public affairs without discrimination, and the right to have access to the public service

- and public office without discrimination and on general terms of equality (section 23); and
- the right to non-arbitrary interference with a person's privacy, family, home or correspondence (section 25(a)).

The right to freedom of expression and the freedom to demonstrate one's religion or belief will be engaged and may be limited where an employee of a public service agency seeks to correspond in public or private in a manner that does not adhere to the standards prescribed by the Code of Conduct. Similarly, the right to freedom of association and to take part in public life may be limited if compliance with the Code of Conduct impedes a public service agency employee's capacity to associate or interact with others.

The right to take part in public life will also be engaged in circumstances where the ethical demands imposed by the Code of Conduct impede public servants from participating in their political community, or where non-compliance with the Code of Conduct results in dismissal from the public service.

The right to non-arbitrary interference with a person's privacy, family, home or correspondence will be engaged and may be limited if compliance with the Code of Conduct would require a public service agency employee to regulate their conduct in their 'personal and social sphere': *Re Kracke and Mental Health Review Board* (2009) 24 VAR 1, 131 [619].

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

(a) the nature of the right

Freedom of thought, conscience, religion and belief (section 20): This right encompasses the freedom to demonstrate a person's religion or belief either individually or as part of a community, in public or in private.

Freedom of expression (section 21(2)): 'Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment': *Matalas v Greece* (2021) 73 EHRR 26, 975 [38].

Freedom of association (section 22(2)): The explanatory notes to the HR Act acknowledge that although the right to freedom of association is 'important for political purposes and trade unions, it extends to all forms of association with others'. The Code of Conduct expressly does not limit an employee's right to participate in a political party, professional organisation or trade union. Therefore, the Regulation will not engage this aspect of the right to freedom of association.

The right to take part in public life (section 23): This right protects individual and collective participation in the democratic process and is critical to building and sustaining a robust democracy. It provides that every person has the right to participate in the conduct of public affairs without discrimination, and that every eligible person has the right, without discrimination, to have access to the public service and public office on general terms of equality.

The right to privacy (section 25(a)): The purpose of this right is to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere: *Director of Housing v Sudi* (2010) 33 VAR 139, 145 [29]. It also protects privacy in a narrower sense including personal correspondence and may extend to a right to work. The right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. Non-arbitrariness and proportionality are different standards, but if the impact is proportionate under section 13 of the HR Act, it will not be arbitrary.

(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 the Regulation is to prescribe entities as public service agencies. As a consequence of being prescribed as a public service agency, the Code of Conduct that applies to public service agencies (the Code of Conduct) applies to prescribed entities.

Benefits of prescribing entities as public service agencies include application of standards of conduct consistent with those that apply to public service agencies, facilitating compliance with the PSE Act and relieving entities of the administrative burden and cost required in developing and applying their own codes of conduct.

The Code of Conduct applies standards of conduct that adhere to the ethics principles and values underlying the PSE Act. These principles, which seek to maintain an independent, transparent and effective public service, are consistent with, and promote, a free and democratic society.

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

The prescription of entities as public service agencies to which the Code of Conduct will apply helps to achieve this purpose.

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

Given the purpose of the Regulation is to prescribe entities as public service agencies, which in turn applies the Code to these entities, there are no less restrictive or reasonably available alternative ways to achieve the purpose of the Regulation.

(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

The Regulation strikes an appropriate balance between the need to respect human rights and the importance of ensuring an independent and transparent public service. Requiring public service agencies to comply with the Code of Conduct may impose limits on the rights of employees of public service agencies in some circumstances, by requiring them to alter their behaviour or communication. However, this impact is readily outweighed by the need to ensure the integrity, independence and effectiveness of public service agencies, which will enhance our democratic system.

(f) any other relevant factors

As the interference with the right to privacy, home, family and correspondence is proportionate, it will not be arbitrary. Accordingly, this right is not limited.

Conclusion

I consider that the *Public Sector Ethics Regulation 2023* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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PREMIER AND MINISTER FOR OLYMPIC AND PARALYMPIC GAMES

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