

# **Public Records Amendment Regulation (No. 2) 2016**

## **Explanatory Notes for SL 220**

made under the

*Public Records Act 2002*

## **General Outline**

### **Short title**

*Public Records Amendment Regulation (No. 2) 2016.*

### **Authorising law**

Sections 8, 15 and 57 of the *Public Records Act 2002*.

### **Policy objectives and the reasons for them**

#### Background

Under section 8(3) of the *Public Records Act 2002* (PR Act), if a public authority ceases to exist, the records of the public authority must be –

- (a) if the functions of the public authority are to be carried out by another public authority – given to the other public authority; or
- (b) if the functions of the public authority are not to be carried out by another public authority – given to the public authority that is the relevant public authority under a regulation; or
- (c) in any other case – given to the archives or disposed of in accordance with a decision of the archivist.

A relevant public authority has responsibilities, including under sections 6, 7, 8 13 and 14, of the PR Act.

Pursuant to section 15 of the PR Act the ‘responsible public authority’, for a public record, is –

- (a) the public authority that gave the public record to the archives; or
- (b) if the public authority that gave the record to the archives no longer exists, but there is another public authority carrying out the functions of the former authority – the other authority; or

- (c) if the record relates to a function or power of a public authority that has been transferred to another public authority – the other authority; or
- (d) in any other case – the public authority prescribed under a regulation for this definition.

The responsible public authority for a public record has certain obligations regarding public access to public records and the restricted access period for public records under the PR Act.

This explanatory note deals with two public authorities which no longer exist. An amendment is required to the *Public Records Regulation 2014* to set the relevant and responsible public authority for the public records of those former public authorities. These former public authorities are:

- Bureau of Sugar Experiment Stations
- Port of Brisbane Corporation Limited

#### Bureau of Sugar Experiment Stations

The Bureau of Sugar Experiment Stations ('BSES') was established under section 143 of the *Sugar Industry Act 1999* ('SI Act'). BSES was a public authority for the purpose of the *Public Records Act 2002* ('PR Act') being an entity, other than the parliamentary service that was established by an Act: (under paragraph (g)(i) of the definition of 'public authority' in Schedule 2 of the PR Act).

Amendments to the SI Act resulting from the *Sugar Industry and Other Legislation Amendment Act 2003* resulted in the BSES being dissolved. There is no public authority which carries out the functions which were carried out by the BSES.

The BSES ceased to exist on 1 September 2003 when it transferred its assets and liabilities to BSES Ltd. The public records were not assets of Bureau of Sugar Experiment Stations which were capable of being transferred to BSES Ltd.

#### Port of Brisbane Corporation Limited

The Port of Brisbane Corporation Limited ('POBCL') was a government owned corporation ('GOC'): section 5 of the *Government Owned Corporations Act 1993* and section 5 of the *Government Owned Corporations Regulation 2004*. As a GOC, POBCL was a public authority for the purpose of the *Public Records Act 2002* (PR Act) (under paragraph (h) of the definition of public authority in Schedule 2 of the PR Act).

By gazette notice dated 30 June 2010 (Vol. 354 No. 77), the then Treasurer and Minister for Employment and Economic Development issued two transfer notices dated 29 June 2010 which transferred, among other things, all of

POBCL's documents and records (including electronic documents and records) used in connection with the Port of Brisbane Operations or anything transferred or granted to or imposed on POB Pty Ltd under the transfer notice that were in the possession or control of POBCL (other than Excluded Records and duplicate documents and records from the Port of Brisbane Corporation Limited ('POBCL') to the Port of Brisbane Pty Ltd ('POB Pty Ltd')).

While the effect of section 16 of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* is that the transfer of records from POBCL to POB Pty Ltd was a 'disposal' for the purposes of section 13 of the PR Act, the transfer notices did not cover all records including 'Excluded Contracts' and 'Excluded Records and duplicate documents and records'. 'Excluded Records' included records of POBCL which it has a contractual obligation to keep and included minutes of board meetings or any committee of the board as well as board or committee papers, board or committee working papers and correspondence with POBCL shareholding ministers. Therefore those documents not covered by the transfer notices were not subject to 'disposal' for the purposes of section 13 of the PR Act and remained public records in the hands of POBCL.

The new entity created, the Port of Brisbane Pty Ltd ('POB Pty Ltd'), is not a public authority for the purposes of the PR Act because it did not fall within one of the limbs of the definition of 'public authority' in Schedule 2 to the PR Act.

POBCL ceased to be a GOC and consequently a public authority, pursuant to a gazette notice dated 16 December 2010 (Vol. 355 no. 113) issued under section 11A(1)(b) of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*.

#### Relevant and responsible public authorities

There is a need to make the Public Records Amendment Regulation (No. 2) 2016, which prescribes the relevant public authority under section 8(3)(b) and the responsible public authority under section 15(d) of the PR Act:

- the Department of Agriculture and Fisheries (DAF) for the public records of the former BSES
- the Department of Transport and Main Roads (DTMR) for the public records of the former POBCL.

While the hard copy records of the BSES and POBCL Statutory Association may be transferred to the custody of Queensland State Archives (QSA), DAF and DTMR (respectively) will retain custody of the digital records until QSA has implemented a digital archive.

### **Achievement of policy objectives**

The regulation will achieve the objectives by amending the *Public Records Regulation 2014* to prescribe relevant public authorities under section 8(3)(b)

and responsible public authorities under section 15(d) of the PR Act for two former public authorities.

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

The regulation is consistent with its authorising Act.

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

The regulation is not inconsistent with the main objectives of other legislation.

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

The regulation is the only effective means of achieving the policy objectives.

### **Benefits and costs of implementation**

The regulation does not impose an appreciable cost on government or the community.

### **Consistency with fundamental legislative principles**

The regulation is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

### **Consultation**

Consultation has taken place with DAF, DTMR, QSA and the Office of Best Practice Regulation within the Queensland Productivity Commission. All parties consulted support the regulation.

The Office of Best Practice Regulation advised that the proposed regulation is excluded from the Regulatory Impact Statement system on the basis that it relates to the internal management of the public sector.