

**Guide to determine the status
of a government body under the
*Public Sector Act 2022***

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Acronyms

- *Fair Work Act 2009* (**FW Act**)
- Government owned corporations (**GOCs**)
- *Health Ombudsman Act 2013* (**HO Act**)
- *Industrial Relations Act 2016* (**IR Act**)
- Office of Best Practice Regulation (**OBPR**)
- Office of Industrial Relations (**OIR**)
- Office of the Queensland Parliamentary Counsel (**OQPC**)
- *Public Sector Act 2022* (**PS Act**)
- Public Sector Commission (**PSC**)
- *Public Sector Ethics Act 1994* (**PSE Act**)
- *Public Sector Ethics Regulation 2023* (**PSE Regulation**)
- *Public Sector Regulation 2023* (**PS Regulation**)

1. Purpose and context

A range of government bodies, including departments and other bodies, form part of the Queensland Government.

Where it is decided that a government body (other than a department) should perform an activity for the Government, processes must be undertaken to facilitate this. These processes may include establishing a new government body or changing functions of an existing body so that it is appropriately authorised to carry out the new activity. As part of these processes, consideration must be given to legislative and policy obligations that apply to government bodies.

1.1 Guide overview and role of the Public Sector Commission

In accordance with the requirements of Queensland's Cabinet Handbook the Public Sector Commission (PSC) must be consulted on issues relating to the management and governance of the Queensland public sector and certain statutory office holder appointments to ensure remuneration rates align with government policies (where applicable) administered by the PSC.

The primary purpose of this guide is to assist departments or other government bodies where they are considering:

- establishing a new government body or
- making changes to an existing body

to determine whether, and how, the [Public Sector Act 2022](#) (PS Act) will apply.

Information on how the [Public Sector Ethics Act 1994](#) (PSE Act) may apply to government bodies is also included.

This guide includes information on matters to be considered when preparing drafting instructions to inform legislation to establish a new government body or alter the functions of an existing body.

However, it does not identify all issues relevant for consideration in the policy or legislative drafting process, as different or additional considerations may arise depending on the nature of the proposal.

Email policy@psc.qld.gov.au with questions, or to consult with the PSC about aspects of this guide.

1.2 Other legislation and policies

This guide focuses on whether and how the PS Act applies to government bodies. It does not contain comprehensive detail on other Acts or policies that may apply to government bodies.

Where matters relate to the establishment of a new government body or making changes to an existing one, to ensure consistency with other laws and government policies, consultation should occur at the earliest opportunity with:

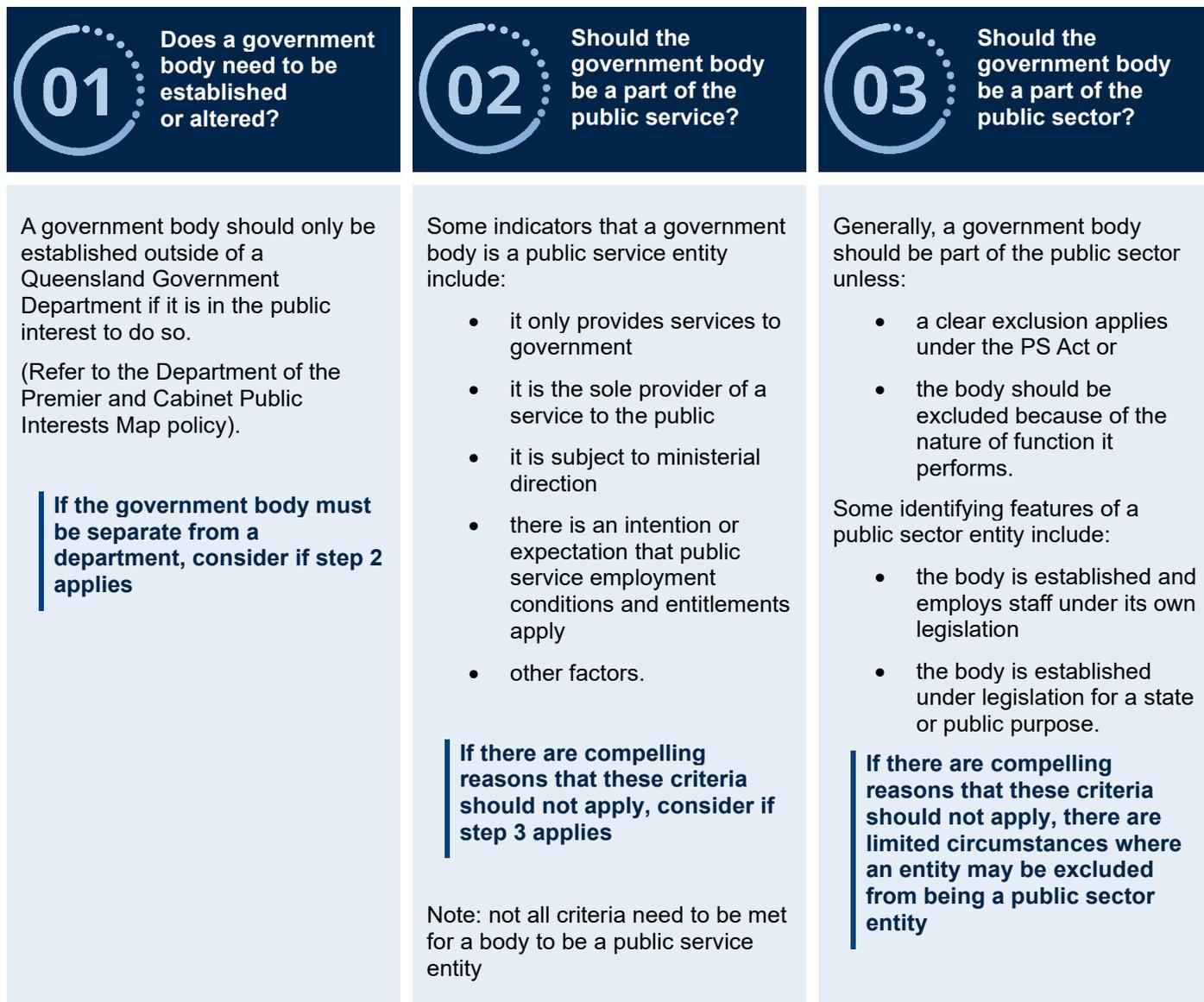
- the Department of the Premier and Cabinet
- Queensland Treasury
- the Office of Industrial Relations (OIR), and
- the Office of Best Practice Regulation (OBPR).

Key policy and resource documents are linked below:

- [Public Interest Map policy](#) including [Threshold Test](#), [Organisational Form Guide](#), [Good Governance Framework](#), and [Public Interest Case](#)
- [Statutory Body Handbook](#)
- [Financial Accountability Handbook](#)
- [Welcome Aboard: A Guide for Members of Queensland Government Boards, Committees and Statutory Authorities](#)
- [Guidelines for the Formation, Acquisition and Post Approval Monitoring of Companies](#)
- [Queensland Government Better Regulation Policy](#).

2. Overview of key questions

The diagram below sets out an overview of the key questions that are explored throughout this guide to support agencies to determine the appropriate status of a government body under the PS Act.



3. Treatment of government bodies under the Public Sector Act 2022

Once it is decided that a government body should be established, or that changes to an existing body are required, the responsible agency should then consider whether the body will be part of the public sector (as defined by the PS Act).

The PS Act establishes a contemporary framework for the administration and management of the Queensland public sector, which is fair, responsive and serves the people of Queensland and the State.

A core component of this framework includes a universal set of employment arrangements for all public sector employees, including:

- recruitment and selection processes
- work performance and personal conduct principles
- positive performance management principles
- discipline processes
- independent appeals processes.

3.1 Meaning of public sector entities under the Public Sector Act 2022

There is no uniform definition of a government body. Terms that apply to what may be considered a government body vary by legislative instrument. For example, the PS Act refers to public sector entities.

The term public sector entity is broad and is intended to capture all forms of entities established under an Act for a public or State purpose. For example, this extends to many statutory offices, boards, committees, councils, bodies and groups.

However, a range of bodies are excluded from being a public sector entity. These exclusions recognise that the PS Act should not apply to some entities because of the special nature or function of those entities, or the statutory context in which they are established or operate. For example, the PS Act does not apply to incorporated associations under the *Associations Incorporation Act 1981* because these are not-for-profit entities whose activities often benefit the community.

Appendix 1 includes a diagram that illustrates public sector, public service, and non-public sector entities for the purpose of the PS Act.

Some key terms include:

- **public sector** recognised under the PS Act as comprising public service entities and other public sector entities, as defined by this Act
- **public service entities** are a subset of the larger group of public sector entities. Public service entities consist of departments as defined in the PS Act and other public service entities prescribed under [Schedule 1](#) of this Act
- **public sector entities** include other bodies established under an Act for a public or State purpose, with some exclusions.

Government bodies that are public sector employers

A significant difference between public service entities and other public sector entities under the PS Act relates to their employing head of power. This is because public service employees are employed under the PS Act, while other public sector employees are generally employed under legislation that establishes the specific entity.

Even though other public sector employees are employed under their own establishing legislation, most provisions of the PS Act apply to public sector entities and their employees, including employment arrangements.

Correctly identifying whether a government body is a public service entity or another public sector entity when it is established, or when changes are made to it, has implications for the application of the PS Act, including compliance with relevant obligations.

Under the PS Act, additional arrangements apply to public service employees that do not apply to other public sector employees more generally.

Government bodies excluded from being public sector employers

The PS Act expressly excludes certain bodies from being public sector entities (see [section 8\(2\)](#)).

Excluded bodies include local governments, the Executive Council and Legislative Assembly, the parliamentary service, courts of the state, government owned corporations (GOCs), universities and national system employers 'within the meaning of the [Fair Work Act 2009](#) (Cwth) (FW Act) section 14, including a national system employer mentioned in section 30N of that Act'.

The exclusion of FW Act national system employers is particularly relevant where it is intended that a Queensland Government body will be established as an employer and a corporation

within the meaning of constitutional corporations at section 51(xx) of the [Commonwealth of Australia Constitution Act](#) (Cwth). Where these conditions are met, the body will likely be a national system employer unless an exclusion applies.

OIR should be consulted in relation to industrial jurisdiction status before a body is established. OIR can then put into effect any necessary processes to exclude the body from being a national system employer under the FW Act.

3.2 What is the public service?

The public service consists of public service employees employed in departments or other public service entities.

Some key features of these public service entities are described in the table below:

Departments	<ul style="list-style-type: none">• Departments of government declared in accordance with section 197(1) of the PS Act, or• an entity declared to be part of a department under section 197(2) of the PS Act. <p>Entities declared to be part of a department may have their own legislation (for example the Office of the Director of Forensic Science Queensland established under the <i>Forensic Science Queensland Act 2024</i> and declared to be part of the Department of Justice.</p>
Other public service entities	<ul style="list-style-type: none">• As per section 9(b) of the PS Act, an entity mentioned in Schedule 1 of the PS Act. <p>These entities have their own establishing legislation (for example the Public Trust Office established under the <i>Public Trustee Act 1978</i>).</p>

Consider if the government body should be part of the public service

Responsible agencies should consider the criteria below to assist in determining whether a government body should be a public service entity employing public service employees.

3.2.1 Public service criteria

a) If the government body's core focus or function is, or will be, providing services to government, this is an indication that the body should be categorised as a public service entity.

Factors to consider include:

- the body's predominant or primary function is to provide a service or services to another government body or bodies
- services provided by the body include cross agency coordination and policy advice and support.

b) If there is an intention that the government body be subject to Ministerial direction in setting the broad strategies and priorities for the body, this is an indication that the body should be a public service entity.

Factors to consider include:

- if there is a need for independence (noting this may not mean that a body is not intended to be subject to Ministerial direction). Consideration should be given to the following competing factors:
 - the need to maintain public confidence in a government body by maintaining a perception of independence, and
 - the ability of the body to achieve necessary independence through other measures (for example, legislative provisions that enable an officer to perform their duties independently and without direction from the executive arm of government).
- the nature of the relationship of the body (or an officer or employee of the body) to Parliament is relevant to this criterion. A direct relationship, such as being required to provide Parliament with a statement of interests, or removal from office only through a Parliamentary motion, is a factor that would support exclusion of a government body as a public service entity.

- a Ministerial function limited to approving the budget of a government body is not necessarily indicative of a government intention that the body is subject to Ministerial direction.

c) If the body's workforce can be appropriately employed under the PS Act and managed under public service employment conditions and entitlements, this is an indication that the body should be categorised as a public service entity.

Factors to consider include:

- if the employment relationship and arrangements under the PS Act that apply to public service employees and entities, and not to the broader public sector, are suitable for the government body (or there is an intention or expectation that these arrangements apply). Examples that support the body being established as a public service entity include:
 - the public service employment framework included under chapter 4 of the PS Act should apply to the body's employees and employer. Relevant features of the public service employment framework include that:
 - employees of the government body should be employed under the PS Act and not the body's establishing Act, and
 - the secondment and transfer or redeployment provisions of the PS Act should apply to the government body and its employees.
- if there are any significant costs or savings associated with becoming a public service entity.
- where the public service specific provisions of the PS Act already apply to a government body and no compelling reasons exist for these arrangements not to continue.

Employment arrangements and entitlements

Consequences of categorising a government body as a public service entity include that:

- the employment provisions under [chapter 4](#) (Public service employment framework) of the PS Act apply
- arrangements contained in certain directives made under the PS Act for the public service (and not the broader public sector) apply to the government body and its employees.

Directives with a public service focus may include:

- directives made by the Minister for Industrial Relations relating to hours of work, salary, leave allowances and related arrangements
- directives made by the Public Sector Commissioner which contain employment conditions for senior officers and senior executive service employees of the public service.

Industrial relations jurisdiction

There is no distinction between public service and public sector entity status for the purpose of the IR Act coverage. Coverage under certain industrial instruments made under the IR Act may not be a predictor of status as a public service or sector entity under the PS Act.

d) If the government body's core focus or function is commercial, including competing with the private sector, this is an indication that a government body should not be categorised as a public service entity.

Factors to consider include:

- a requirement to produce a commercial return on an investment or compete with the private sector when delivering services would support that the body should not be a public service entity
- the existence of commercialised business unit/s within an entity is not in itself a determining factor. Instead, consideration should be given to the overall functions of the body and the extent to which commercial functions are a primary or predominant focus of the body.

e) Other factors to consider

Other factors that may indicate that a government body is a public service entity include:

- where legislation restricts the provision of a service so that the entity is the sole provider of that service leaving consumers requiring the service with no choice in service provider
- the government body receives funding through the consolidated fund or through government grants from the body's portfolio.

Practical example: public service entity

The Office of the Queensland Parliamentary Counsel (OQPC) is a government body listed as a public service entity under Schedule 1 of the PS Act.

OQPC was established under the *Legislative Standards Act 1992*.

Functions of OQPC include performing legislative drafting services for the Government, including drafting Bills for Ministers and other members of Parliament (Private Members Bills) and drafting subordinate legislation.

In providing these services, OQPC is to advise Ministers, private members and government entities on alternative ways of achieving policy objectives and the application of fundamental legislative principles. OQPC is also tasked with advising the Governor in Council, Ministers and government entities on the lawfulness of proposed subordinate legislation.

OQPC is controlled by the Parliamentary Counsel, subject to the Minister, and staff are employed under the PS Act.

Rationale supporting OQPC's categorisation as a public service entity is justified on the basis that its core function involves providing services to government.

As OQPC is a public service entity under the PS Act, it is also a public service agency under the PSE Act.

Therefore, arrangements that apply to the public service agencies under the PSE Act, including the [Code of Conduct for the Queensland Public Service](#) (Public Service Code), applies to the OQPC and those who perform work for it.

If it is determined that a government body is not appropriately categorised as a public service entity, it should then be considered whether the body should be established as a public sector entity more generally.

3.3 What is the public sector?

The public sector is made up of a broad range of public sector entities and public sector employees who are employed in those entities. Public sector entities are described at [section 8\(1\)](#) of the PS Act and consist of:

- a) a public service entity;
- b) an entity, other than a public service entity, prescribed by regulation as a public sector entity;
- c) a registry or other administrative office of a court or tribunal of the State; or
- d) an agency, authority, commission, corporation, instrumentality, office, or other entity, other than an entity mentioned in paragraph (a), (b) or (c), established under an Act for a public or State purpose.

A government body, other than a public service entity, should generally be a public sector entity if it fits within the broad meaning of a public sector entity under [section 8](#) of the PS Act.

Some government bodies are automatically excluded from being public sector entities under the PS Act. Exclusions to eligibility are listed at [section 8\(2\)](#) of the PS Act (refer to the diagram at Appendix 1).

Some key features of public sector entities, excluding public service entities, include:

<ul style="list-style-type: none">• entity is established under its own legislation• meets the description of public sector entity at section 8(1)(c) or (d) of the PS Act (and is not excluded from being a public sector entity under section 8(2)).	<ul style="list-style-type: none">• employees are not employed under the PS Act• while the majority of provisions of the PS Act apply to public sector entities and their employees, certain provisions do not apply or do not automatically apply to these entities and their employees.
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Consider if a government body should be part of the public sector

3.3.1 Public sector criteria

If the government body will be an employer of staff, criteria to consider include whether it is intended that the body:

- operates consistently with the government's strategic workforce agenda, that is:
 - high performing, responsive and mobile
 - aligns with whole-of-government workforce planning
 - remuneration framework is applied (this could include application of a public service / sector certified agreement), and/or
- applies employment related provisions of the PS Act, including directives made under this Act.

Practical example: public sector entity

The Queensland Building and Construction Commission (QBCC) and the Queensland Building Commission Employing Office (Employing Office) are established under the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Both are public sector entities under the PS Act, so many public sector arrangements apply under this Act to the QBCC and their staff. However, staff are employed under the QBCC Act and not the PS Act.

Functions of the QBCC involve administering and furthering the objects of the Act which include regulating the building industry. Functions of the Employing Office include employing staff and entering into work performance arrangements with the QBCC so that its staff can perform work for the QBCC.

The QBCC is governed by the Queensland Building and Construction Board (the Board). While the QBCC must comply with directions of the Minister made in relation to the QBCC and its functions, the Minister's power to direct the QBCC is limited by a requirement that a Ministerial direction must be tabled in the Legislative Assembly. These factors indicate a greater level of independence than a public service entity.

While the QBCC and the Employing Office and their employees are not part of the public service, the Public Sector Regulation 2023 (PS Regulation) prescribes that particular arrangements under the PS Act (that do not ordinarily apply to public sector entities and their employees) apply to their staff including:

- transfer or redeployment arrangements
- civil liability protections for members of the Board, the QBCC Commissioner, QBCC employees and the executive officer and employees of the Employing Office.

The QBCC and the Employing Office are also prescribed as public service agencies under the Schedule 1 of the Public Sector Ethics Regulation 2023 (PSE Regulation). This means the provisions of the PSEA that apply to public service agencies apply to these bodies and the Public Service Code also applies. This makes it unnecessary for QBCC to develop its own specific code of conduct.

3.3.2 Exclusions

In rare circumstances, a government body that otherwise meets the public sector or service criteria, may be prescribed in the [Public Sector Regulation 2023](#) (PS Regulation) or under another Act as not being a public sector entity.

An exclusion of this nature should only be contemplated where adequate justification can be provided.

Examples where exclusion has been justified include bodies that perform certain integrity functions to strengthen the body's independence from government. For example, the Queensland Audit Office, the Office of the Ombudsman, the Office of the Queensland Integrity Commissioner and the Crime and Corruption Commission are all prescribed as not being public sector entities. This represents a policy decision that core integrity bodies and their employees should be excluded from the public sector to preserve their independence from the Government.

Practical example: integrity body

The *Ombudsman Act 2001* (the Ombudsman Act) establishes the Ombudsman as an officer of the Queensland Parliament. Functions of the Ombudsman include investigating administrative actions of certain government agencies including departments, local governments and public authorities.

The Ombudsman is empowered to report and make recommendations related to certain investigations.

The Ombudsman Act also establishes the Office of the Ombudsman (the Office) which comprises the Ombudsman, the Inspector of Detention Services (the Inspector) and officers of the Office.

This Office is controlled by the Ombudsman and, to the extent officers of the Ombudsman are involved in the administration of matters related to the Inspector, the Inspector. The Ombudsman is not subject to external direction in performing Ombudsman functions or determining the priority given to investigations. Similarly, officers are not subject to external direction about matters related to the exercise of the Ombudsman's and Inspector's powers, and priority given to investigations.

The nature of the functions and powers of the Ombudsman, and by association the Office, demonstrate the need for greater independence from Government, justifying the exclusion of the Office as a public sector entity.

While the Ombudsman, the Inspector and officers of the Office are excluded from being public sector employees under the PS Act, the PS Regulation prescribes these office holders and officers of the Office as prescribed persons for the purpose of applying the PS Act's civil liability protections.

The Public Service Code does not apply as the Office as it is not prescribed as a public service agency under Schedule 1 of the PSE Regulation.

3.4 Application of other PS Act arrangements – equity, diversity, respect and inclusion

A chief executive of a prescribed entity under [Chapter 2](#) (Equity, diversity, respect and inclusion) of the PS Act has responsibilities to promote equity and diversity. Duties under the PS Act include:

- the preparation of an equity and diversity plan as part of workforce planning
- conducting an equity and diversity audit annually and reporting on information gathered through the audit and
- promoting and supporting a culture of respect and inclusion.

What is a prescribed entity?

- A prescribed entity includes:
 - a public sector entity
 - the police service
 - an entity prescribed by another Act for this definition, or
 - an entity prescribed by regulation for this definition.

While most provisions of the PS Act do not apply to GOCs, GOCs are prescribed entities for the purpose of [Chapter 2](#) of the PS Act through the [Government Owned Corporations Act 1993](#).

This recognises the Queensland Government's commitment to achieving equity and diversity as part of the broader workforce.

Therefore, even if a government body is excluded from being a public sector entity, consideration should be given to whether the body should be prescribed for the purposes of the Chapter 2 requirements. This can be given effect to under the body's establishing legislation or through the PS Regulation.

4. Considerations for drafting instructions for entities under the Public Sector Act

This part provides information on matters to be considered when preparing drafting instructions for government bodies that will be public service or public sector entities under the PS Act.

4.1 Drafting instructions and other considerations when establishing public service entities

A decision that a government body should be a public service entity should be reflected in the drafting instructions when establishing the body.

This decision may also have consequences in terms of how other legislation, such as the PSE Act, applies to the entity.

4.1.1 Matters for establishing a public service entity

The following matters should be considered and addressed in drafting instructions to establish a public service entity:

- the establishing legislation should confirm that staff are employed under the PS Act
- where an exception to employing staff under the PS Act applies, this should be addressed. Exceptions may apply in relation to employment of chief executives, particular office holders and certain other senior employees. Where certain staff will not be employed under the PS Act, consideration should be given to how appointments to relevant positions will be made and the terms and conditions of the appointment, including termination provisions, that are appropriate to apply
- where appointment arrangements are included in the establishing legislation (instead of the PS Act):
 - those appointees will not be public service employees, and
 - depending on the appointment arrangements, those appointees be excluded from being public sector employees

This may occur where a particular employee holds a certain office that is subject to appointment processes which preclude the person from being employed under the PS Act, such as, where the appointment is required to be made by the Governor in Council.

While it is not uncommon for chief executives of public service entities to be appointed under establishing legislation and often by Governor in Council, in rare circumstances other staff may also be appointed in this way. For example under the *Racing Integrity Act 2016* an appointment as Deputy Racing Integrity Commissioner is made by the Governor in Council, despite this Act making provision for other staff to be appointed as public service employees

- if senior executives are to be employed under the PS Act, regard should be given to [Chapter 5](#) (Public service chief executives and senior executives) of the PS Act
- the public service entity must be listed in schedule 1 of the PS Act
- any limit on the ability of the relevant Minister and/or the Government to direct the public service entity, where appropriate. This is particularly relevant where the nature of the public service entity's role (or the role of its chief executive) requires a degree of independence to properly discharge the relevant functions.

An example of legislation that clarifies the independence of a public service entity can be found in the *Health Ombudsman Act 2013* (HO Act). This Act clarifies the independence of health ombudsman and staff of the Office of the Health Ombudsman in performing functions. Under the HO Act, instances where the Minister is permitted to direct the Health Ombudsman are limited and aside from this, the Health Ombudsman is not subject to direction in performance of his or her functions.

The PSC should be consulted when preparing drafting instructions on:

- the establishment of a public service entity under the PS Act and public service staff of the entity
- changes to functions of an existing government body, that may result in changes to the status of the body under the PS Act
- the employment arrangements for the chief executive officer (or equivalent) of the proposed public service entity
- provisions related to appointment of senior executives (or equivalents) who are to be employed under the PS Act.

4.2 Drafting instructions and other considerations when establishing public sector entities

A decision that a government body should be a public sector entity should be reflected in the drafting instructions when establishing the body.

This decision may also have consequences in terms of how other legislation such as the PSE Act applies to the entity.

4.2.1 Matters for establishing a public sector entity

The following matters should be considered and addressed in drafting instructions to establish a public sector entity:

- identify the relevant provision of the PS Act which permits the government body to be a public sector entity (section 8(1)(c) or (d)).
- consider the meaning of public sector employee at section 12 of the PS Act when determining appointment arrangements for all staff. If the body will employ public sector employees, include the relevant employment provisions under the establishing legislation.
- consider the circumstances established at section 12(2) where a person is excluded from being public sector employees. Reasons a person may be excluded at section 12(2) include the way in which the appointment is made. For example, a person appointed by the Governor in Council is excluded from being a public sector employee.
- consider if it is appropriate for particular employees or office holders, such as chief executives and certain other senior appointments, to be subject to different and more rigorous appointment processes than those that apply to other employees of the government body. If it is decided that different appointment arrangements should apply and that it is appropriate and/or necessary for these employees or office holders to be public sector employees, appointment processes that do not prevent the person from being a public sector employee should be developed. For example, the relevant Minister could be empowered to make the appointment.
- consider if the establishing legislation will include appointment powers, and include the proposed arrangement and the rationale in the drafting instructions.
- consider if any additional provisions of the PS Act that do not automatically apply to (non-public service) public sector entities and/or employees, need to be included. For example, if there is a desire and/or need for the secondment and transfer or

redeployment provisions that ordinarily apply only to public servants to apply to public sector employees of the entity.

The PSC should be consulted when preparing drafting instructions on:

- the establishment of a public sector entity under the PS Act
- changes to functions of an existing government body, that may result in changes to the status of the body under the PS Act
- the employment arrangements for the chief executive officer of the body
- arrangements of the PS Act that may be applied by regulation to a government body that will be a public sector entity.

If it is decided that a government body that otherwise fulfills the legislative requirements of a public sector entity under [section 8](#) of the PS Act, should not be a public sector entity, this should be prescribed in accordance with [section 8\(2\)\(s\)](#) or (t) of the PS Act.

The PSC must be consulted and a strong rationale for a decision of this nature is required.

5. Additional matters for consideration

5.1 Preservation of entitlements and transferring public service or public sector employees

Transitional arrangements may be needed when a new public service or public sector entity is being established to take over functions of an existing entity.

If it is proposed to transfer existing employees to a new entity, consider the following transitional arrangements:

- what arrangements should apply to transferring employees
- whether arrangements preserve existing entitlements should apply.

It should be noted that proposals which give transferring employees a right to revert (reversion right) to their former public service or public sector entity will usually not be supported.

Reversion rights are discouraged because the employee's former position may not be vacant when the employee seeks to exercise this right and there may not be a comparable position.

- if it is decided a reversion right should apply, the department with portfolio responsibility for the entity should assume responsibility for placement of any employees seeking reversion.
- an employee transferring to a public service entity as a public service employee should be subject to the same terms and conditions as other public service employees of the entity, including provisions of the PS Act and relevant directives made under this Act
- arrangements for public sector employees who are remunerated at rates equivalent to or above those of senior officers and senior executives transitioning into the public service need to be identified separately in the transitional provisions
- public service senior officers and senior executives transitioning to the public sector need to be identified separately in the transitional provisions. This is because they are not subject to enterprise bargaining arrangements that apply to other public service employees.

The PSC and the OIR should be consulted on transfer arrangements for public service or public sector employees. Consultation should also occur with affected parties, including employees and their representatives, such as industrial organisations.

5.2 Statutory office holders

When creating statutory office holder roles, consideration may be given to the appropriateness of including a provision to preserve the public service or public sector entitlements of the appointee.

If a preservation provision is included, considerations include whether it will:

- impact on the independent discharge of the office holders' functions
- provide for the period of service of the office holder to be recognised to calculate entitlements in the event of a return to public service employment
- provide for the office holder to continue to accrue entitlements as though they continued employment as a public service employee
- provide a right to request re-appointment OR a right to be reappointed. Such provisions can create challenges, including where a person's former position may not be vacant. If re-appointment provisions are included in legislation, the legislation should identify the entity responsible for managing any reversion and finding a comparable position for the person.

The PSC should be consulted on any proposals related to preservation of entitlements and arrangements related to reappointment.

In relation to statutory appointments (including chief executive or equivalent appointments) consideration must also be given to:

- the terms and conditions of appointment including the duration of appointment and circumstances in which the person can be removed, and
- which matters are best specified through legislation, a contract of employment or determined by Governor in Council.

The PSC should be consulted when appointing certain statutory office holders to ensure remuneration rates are consistent with Government policies.

5.3 Civil liability (indemnity or immunity)

To avoid unnecessary legislative duplication, it is suggested that provisions for immunity from civil liability are not included in new or revised legislation, unless there is a compelling reason to do so.

Instead, if there is an intention to extend civil liability immunity to those who perform functions for a new or revised public service or sector entity, regard should be given to relying on the civil liability provisions of the PS Act.

The civil liability provisions of the PS Act apply to a 'prescribed person', which is a broad definition. To determine if a person has access to civil liability protections, consideration should be given to the meaning of prescribed person at [section 268\(1\)\(a\) to \(f\)](#) and the exclusions at [section 268\(3\)](#).

While public service employees are afforded civil liability protection, other persons performing duties for the same entity may not have access to this protection. Similarly, not all public sector employees will have automatic access to the PS Act's civil liability protection.

For these other persons, eligibility may depend on whether the person is appointed to a position that involves the person acting for or representing the State, or the person is a member of an entity that represents the State. As issues surrounding eligibility based on arrangements related to representing the State can be complex, legal advice to confirm eligibility may be necessary. If it is intended that a person, including particular office holders or employees of a government body, should have the civil liability protections of the PS Act but the person does not fulfill the criteria at [section 268\(1\)\(a\) to \(f\)](#), the PS Regulation may be amended so the person is a prescribed person in accordance with [section 268\(1\)\(g\)](#).

The PSC should be consulted on any proposals to amend the PS Regulation.

Some existing public sector entities have civil liability provisions in their establishing Acts. Where the PS Act's civil liability provisions also apply to a government body, regard should be given to [section 270](#) of the PS Act to clarify which arrangements apply in the event of inconsistency.

6. Implications for the Public Sector Ethics Act

The PSE Act outlines the ethics principles fundamental to good public administration. It requires the entities it covers to develop and implement a code of conduct based on these ethics principles.

Coverage of entities under the PSE Act is different to coverage of entities under the PS Act.

The PSE Act applies to government bodies recognised as public service agencies and public sector entities under that Act. Different arrangements apply to agencies and entities under the PSE Act.

6.1 Public service agencies under the PSE Act

Public service agencies under the PSE Act are:

- departments, which for the purpose of the PSE Act include public service entities listed at schedule 1 of the PS Act
- TAFE Queensland
- administrative offices of a court or tribunal
- entities prescribed by regulation.

Public service agencies must comply with relevant provisions of the PSE Act. In accordance with the requirements of the PSE Act, the Public Service Code applies to all government bodies that are public service agencies under that Act.

If a government body recognised as a public service agency under the PSE Act has any special functions and/or responsibilities that are not addressed adequately through the Public Service Code, the body can prepare a standard of practice under the PSE Act to support the Public Service Code. These standards of practice must be approved by the Public Sector Commissioner.

6.2 Public sector entities under the PSE Act

Public sector entities under the PSE Act are:

- parliamentary service
- local governments
- universities established under an Act

- entities established under an Act or under a State or local government authorisation for a public, State or local government purpose
- entities prescribed under a regulation.

The PSE Act does not apply to:

- a government-owned corporation
- a corporation owned by a local government, or a subsidiary of a corporation owned by a local government
- the following entities under the [Education \(General Provisions\) Act 2006](#) (parents and citizens associations, non-State schools and advisory committees).

Public sector entities must prepare their own codes of conduct. However, the PSE Act also permits public sector entities under the PSE Act to be prescribed by regulation as public service agencies in order to apply the Public Service Code.

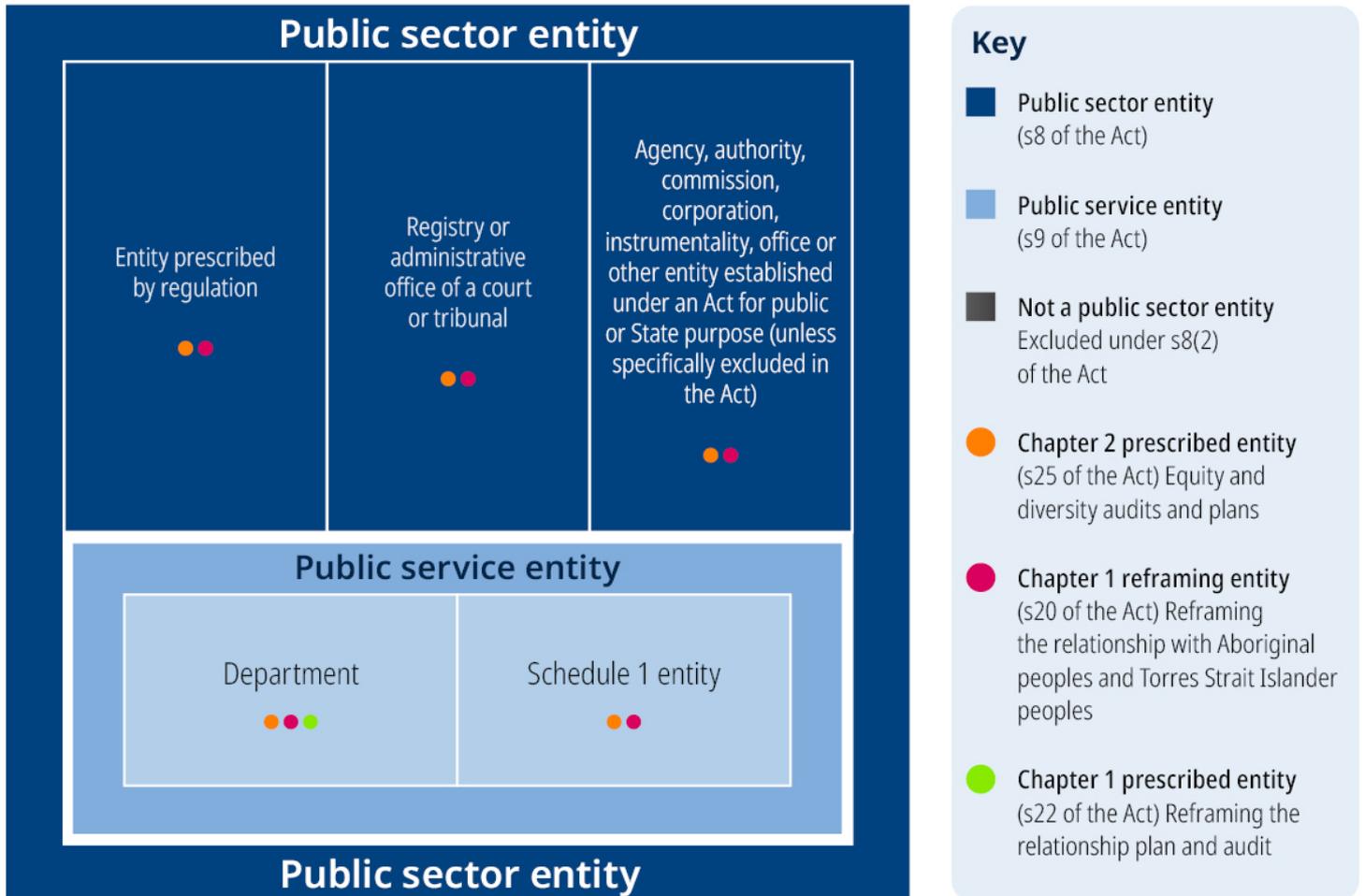
For the entity to be prescribed as a public service agency approval to amend the PSE Regulation will be required.

The PSC should be consulted in relation to whether a body should be a public service agency for the purpose of applying the Public Service Code.

Appendix 1: Entities under the Public Sector Act 2022

– a visual guide

The diagram below explains the relationship between public sector entities, public service entities (which are a subset of the larger group of public sector entities) and other government bodies that are not public sector entities for the purpose of the *Public Sector Act 2022*.



Not a public sector entity

Government owned corporation ●	Entity prescribed not to be a public sector entity	Public Sector Governance Council	Government House and its administrative unit	Association incorporated under the <i>Associations Incorporation Act 1981</i>
The Executive Council and Legislative Assembly	Local government and a local government corporation	Taskforce established under section 195 of the Act	School council and P&C association	National system employer under the <i>Fair Work Act 2009 (Cwlth)</i>
University	Primary producer cooperative	Parliamentary Service	A court of the State	
Queensland Police Service (QPS) (police officers, police recruits and special constables)* ● ● ●		Queensland Audit Office, the Queensland Ombudsman and the Crime and Corruption Commission ●	Community justice group under the <i>Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984</i>	

Not a public sector entity

*This does not include all staff members employed in QPS, e.g. administrative staff are employed by the Department (a public service entity)