

Justice Legislation (Fees, Allowances and Other Amounts) 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, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice, provide this human rights certificate with respect to the *Justice Legislation (Fees, Allowances and Other Amounts) Amendment Regulation 2020* (the Regulation) made under the Acts at Schedule 1.

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Department of Justice and Attorney-General (DJAG) administers various Acts at Schedule 1 which provide for the prescription of fees and charges, remuneration and allowances. Queensland Treasury's *Principles for Fees and Charges* policy, January 2020 (Principles for Fees and Charges) requires agencies to set fees and charges to reflect the cost of providing their services and ensure the fees maintain their value over time. The Principles for Fees and Charges permits regulated fees and allowances to be rounded, generally to the nearest coinable amount.

The Regulation provides for various regulated fees and charges prescribed in the regulations made under the Acts set out in Schedule 1 to be increased by the approved Government indexation rate (GIR) of 1.8%. These fees and charges relate to:

- applications, licences, permits and registrations;
- filing, lodging, issuing and serving documents;
- accessing, inspecting and copying registers, documents, records, exhibits and other things; and
- commercial services such as mediation.

The offender levy under the *Penalties and Sentences Regulation 2015* is also indexed in line with the GIR of 1.8%.

The Regulation also provides for increases to various prescribed remuneration amounts and allowances by 1.8% in line with the Brisbane All-Groups Consumer Price Index for the year to March 2020. The remuneration amounts and allowances include those payable to jurors, witnesses in court proceedings, interpreters, Queensland Civil and Administrative Tribunal justices of the peace, animal valuers, and prescribed board members.

Human Rights Issues

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

The Regulation engages the following human rights:

- right to recognition and equality before the law (section 15 of the HR Act); and
- property rights (section 24 of the HR Act).

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Right to recognition and equality before the law

This right is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination.

The right to equality and recognition is limited where the right to access a service is indirectly restricted to some sectors of society. This right may be limited by the Regulation as an increase in fees and charges may restrict access to some services and employment and business opportunities to sectors of the community of a lower socio-economic status. For example, a person may not be able to obtain a copy of a register or document because they cannot afford the access fees or may not be able to obtain a licence to deliver certain services because they cannot afford the application or licence fees. Similarly, the application fee to be appointed to office as a justice of the peace or commissioner for declarations under the *Justices of the Peace and Commissioners for Declarations Regulation 2017* may impede unemployed persons from applying.

Property rights

Property rights protect the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property.

The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HR Act, however deprivation in this sense is considered to include the substantial restriction on a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). Property is likely to include all real and personal property interests, including money.

The right to property is limited by the Regulation as an increase in the fees and charges will have the effect of depriving a person of additional money (comparative to the current fees and charges).

(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 limitation on the right to recognition and equality before the law and the right to property is for the purpose of retaining the value of the fees and charges prescribed by the relevant regulations. Increasing the fees and charges in accordance with the GIR ensures they continue to reflect the cost of providing these government services. The provision of important government services in a fiscally responsible way is a proper purpose consistent with a free and democratic society.

(c) the relationship between the limitation to be imposed by the provisions and the purpose, including whether the limitation helps to achieve the purpose

The increase in fees and charges will ensure that the provision of these government services is appropriately resourced and budgeted to reflect the cost of their delivery, which in turn ensures that services can continue to be delivered to Queensland individuals.

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

There are no less restrictive ways to achieve the purpose of the Regulation.

Where the increase in the fees and charges may impact access to justice (in respect of the limitation on the right to recognition and equality before the law), these are mitigated by a range of exemptions from the payment of fees and charges where it is in the interests of justice. For example, fees to obtain access to documents, exhibits and other items relevant to a criminal proceeding are exempt for defendants in the proceeding. Similarly, fees payable under the *Appeal Costs Fund Regulation 2010* may be exempt if it is in the interests of justice to do so. These exemptions are intended to ameliorate the impact on the right to recognition and equality before the law for sectors of the community of a lower socio-economic status

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

On balance, the importance of ensuring the value of the fees and charges is consistent with the GIR outweighs the limitation on the rights to recognition and equality before the law and the right to property.

(f) any other relevant factors

The Principles for Fees and Charges requires departments to regularly review their fees and charges to ensure they remain appropriate and that the cost structure underlying the amount of the fee or charge remains accurate and efficient. To maintain the value of the fees and charges when a comprehensive review is not conducted, the Principles for Fees and Charges provides for departments to apply the GIR.

Conclusion

I consider that the *Justice Legislation (Fees, Allowances and Other Amounts) Amendment Regulation 2020* is compatible with human rights under the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House

Schedule 1

Agents Financial Administration Act 2014
Appeal Costs Fund Act 1973
Associations Incorporation Act 1981
Births, Deaths and Marriages Registration Act 2003
Body Corporate and Community Management Act 1997
Building Units and Group Titles Act 1980
Casino Control Act 1982
Charitable and Non-Profit Gaming Act 1999
Civil Partnerships Act 2011
Collections Act 1966
Cooperatives Act 1997
Coroners Act 2003
Criminal Code Act 1899
Debt Collectors (Field Agents and Collection Agents) Act 2014
Dispute Resolution Centres Act 1990
Electoral Act 1992
Evidence Act 1977
Funeral Benefit Business Act 1982
Gaming Machine Act 1991
Interactive Gambling (Player Protection) Act 1998
Introduction Agents Act 2001
Jury Act 1995
Justices Act 1886
Justices of the Peace and Commissioners for Declarations Act 1991
Keno Act 1996
Land Court Act 2000
Legal Profession Act 2007
Liquor Act 1992
Lotteries Act 1997
Motor Dealers and Chattel Auctioneers Act 2014
Partnership Act 1891
Penalties and Sentences Act 1992
Property Law Act 1974
Property Occupations Act 2014
Queensland Civil and Administrative Tribunal Act 2009
Recording of Evidence Act 1962
Retail Shop Leases Act 1994
Right to Information Act 2009
Second-hand Dealers and Pawnbrokers Act 2003
Security Providers Act 1993
Status of Children Act 1978
Supreme Court of Queensland Act 1991
Tattoo Industry Act 2013
Tourism Services Act 2003

Wagering Act 1998

Wine Industry Act 1994