

Public Trustee (Interest Rate) Amendment Regulation (No. 2) 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, Yvette D'Ath MP, Attorney-General, Minister for Justice and Leader of the House, provide this human rights certificate with respect to the *Public Trustee (Interest Rate) Amendment Regulation (No. 2) 2020* (the Regulation) made under section 142 of the *Public Trustee Act 1978*.

In my opinion, the 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

Interest rates provided for by the *Public Trustee Regulation 2012* are intended to be reflective of regular reviews undertaken by the Public Trustee of interest rates payable on amounts held in the Public Trustee's common fund. Interest rate reviews are undertaken by the Public Trustee using the methodology endorsed by the Public Trust Office Investment Board and approved by the Acting Public Trustee of Queensland and Chief Executive Officer on 4 March 2020.

The Regulation amends the *Public Trustee Regulation 2012* in order to change the interest rates payable by the Public Trustee on amounts held in the Public Trustee's Common Fund. The interest rate changes contained in the Regulation result from the application of the interest rate benchmarks endorsed by the Public Trust Office Investment Board. Section 142 of the *Public Trustee Act 1978* authorises the amendments.

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 right that is relevant to the Regulation is property rights (section 24).

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

Property Rights

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived

of the person's 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. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The right does not provide a right to compensation.

Money held in the common fund is held by the Public Trustee as a trustee. Property includes all real and personal property interests recognised under the general law and could include a person's interest in trust funds held by the Public Trustee.

Deprivation of property will not be limited to situations of forced transfer or extinguishment of title or ownership but will include any "de facto expropriation" by means of a substantial restriction in fact on a person's use or enjoyment of their property.

This may include a substantial restriction on a person's ability to derive profits from their property.

The effect of the Regulation is to set the amount of the profit that a person beneficially interested in the money in the common fund can derive from their property.

The Regulation does not arbitrarily deprive a person of their property because the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.

(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

Section 19 of the *Public Trustee Act 1978* provides that the interest rates payable on moneys held in the common fund are to be prescribed by regulation.

The Public Trust Office Investment Board is established by section 21 of the *Public Trustee Act 1978* and controls and manages all investments of the common fund. Members of the Public Trust Office Investment Board are appointed by the Governor in Council and are both internal and external to the Public Trustee. All members have agreed to adopt the Queensland Government Code of Conduct.

The Public Trustee reviews the interest rates payable on amounts held in the common fund against benchmarks on a monthly basis. Each review is based upon the benchmarks for setting interest rates payable as endorsed by the Public Trust Office Investment Board and approved by the Acting Public Trustee of Queensland and CEO that apply at the relevant time.

The purpose of the Regulation is to set a rate of interest payable on moneys held in the common fund that reflect the market rate of return of a comparative set of competitive financial products and prevailing economic conditions. This is consistent with a free and democratic society based on human dignity, equality and freedom.

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

Although the Regulation restrains the ability of a person beneficially interested in the money in the common fund to derive profits from their property, the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.

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

The Regulation reflects section 19 and the scheme of the *Public Trustee Act 1978* and there are no less restrictive and reasonably available ways to achieve the purpose.

- (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 the appropriate balance between management of the common fund, on the one hand, and limiting certain human rights on the other. Although people with an interest in moneys in the common fund are not free to invest the moneys as they choose, they receive a comparable market rate of return.

- (f) any other relevant factors

Nil.

Conclusion

I consider that the Regulation is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
ATTORNEY-GENERAL, MINISTER FOR JUSTICE
LEADER OF THE HOUSE