

Witness Protection Regulation 2021

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 Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Witness Protection Regulation 2021* (the Regulation) made under the *Witness Protection Act 2000* (WPA).

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

The Regulation is made pursuant to section 51 of the WPA.

The Regulation assists in the achievement of the policy objectives of the WPA. The main objective of the WPA is the protection of witnesses via the establishment of the witness protection program, which complements, and provides a statutory basis for recognition of, witness protection arrangements in place in other Australian jurisdictions.

The provision of assistance by witnesses is essential to law enforcement agencies and the courts. The need to protect those witnesses from harm because of that assistance is recognised worldwide, particularly where those witnesses are providing evidence of major and organised crime. Witness protection provides security to persons and an incentive to give assistance where, in the absence of such protection, assistance may not be forthcoming. Witness protection also recognises the responsibility of government to provide protection for persons who put themselves at great risk to personal safety.

Schedule 2 of the WPA contains the definition of an ‘approved authority’, a ‘complementary witness protection law’ and a ‘law enforcement agency’. For the purpose of these definitions the Regulation prescribes a list of approved authorities, complementary witness protection laws and law enforcement agencies.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The following human rights are relevant to the Regulation:

- right to privacy (section 25 of the *Human Rights Act 2019*).

The right to privacy is considered limited by clause 4 of the Regulation. The limitation is discussed below.

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

(a) the nature of the right

Right to privacy (section 25 of the Human Rights Act 2019)

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender). Only lawful and non-arbitrary intrusions may occur upon privacy.

The Regulation prescribes a list of approved authorities for the purpose of section 43 of the WPA which enables the chairperson of the Crime and Corruption Commission (CCC) to share information about a participant in the Witness Protection Program in certain circumstances. Section 43 of the WPA provides that where a person has been given a new identity or relocated under the WPA and either an approved authority, the commissioner of the police service or the senior executive officer (crime) under the *Crime and Corruption Act 2001* (CC Act) notifies the chairperson that the person is under investigation for, has been arrested or has been charged with a serious offence (being an offence an offence against a law of Queensland, the Commonwealth, or another State punishable by more than 1 year's imprisonment) then the chairperson may do any one or more of the following things:

- (a) release to the entity notifying the chairperson (notifying entity) the person's new identity or location;
- (b) provide the notifying entity with the person's criminal history and fingerprints;
- (c) if the chairperson considers it appropriate in the circumstances:
 - (i) release to the notifying entity information relating to the person; or
 - (ii) allow officers of the notifying entity to interview witness protection officers in relation to the protected witness.

Section 43 of the WPA operates to prevent persons who have been given a new identity or relocated under the Witness Protection Program from using their new identity or location to avoid detection from interstate law enforcement. It also enables law enforcement to properly investigate potential criminal conduct by participants within the Witness Protection Program. This promotes community safety which is important in a free and democratic society. The Regulation prescribes a list of approved interstate authorities for the purpose of section 43 thereby defining the scope of approved authorities under the WPA who can request and be provided information from the Chairperson, in addition to the commissioner of the police service or the senior executive officer (crime) under the CC Act (who are already listed under the section). The limitation on the right to privacy is a result of the Regulation defining the class of people, beyond those listed in section 43, that may be privy to a person's private information, such as new identity, location and criminal history.

(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 limitation is to ensure community safety. The approved authorities prescribed under the Regulation can obtain relevant information about persons who are under investigation, have been arrested for or have been charged with committing a serious offence. In these circumstances, it is proper that the authorities prescribed under the Regulation can obtain information about participants in the Witness Protection Program such as a participant's new identity or location, criminal history, fingerprints or other relevant information having regard to the particular circumstances of the request. This allows information to be provided in order to better inform investigations and prosecutions relating to the commission of serious offences which ensures community safety.

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

The limitation enables law enforcement to properly investigate potential criminal conduct. The Regulation will achieve its purpose of protecting community safety by ensuring the effective operation of the Witness Protection Program, in that, participation in the Witness Protection Program is not being used in a way that is contrary to the interests and safety of the public by preventing the disclosure of important information to appropriate parties.

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

There are no less restrictive options to achieve the purpose of the Regulation. The Regulation prescribes approved authorities for the purpose of section 43 of the WPA only. This limits the Chairperson's power to disclose the information to those authorities that are prescribed in the Regulation and only in the specified circumstances permitted under the section 43 of the WPA, namely in circumstances where the person is under investigation for, has been arrested for, has been charged with, a serious offence. The prescription of limited circumstances where information can be shared provides a safeguard which assists to strike an appropriate balance between the protection of a person's sensitive and private information, the effective operation of the Witness Protection Program and the interests of the community generally.

(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 prescription of a class of people that may be privy to the disclosure of personal information under section 43 of the WPA, in addition to those listed in the section, represents a limit on the right to privacy. However, on balance, I consider that the importance of providing relevant information to law enforcement agencies is in the public interest and in the interest of community safety and therefore outweighs the limitation on the right to privacy.

Conclusion

I consider that the *Witness Protection Regulation 2021* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Honourable Shannon Fentiman MP

Attorney-General and Minister for Justice

Minister for Women

Minister for the Prevention of Domestic and Family Violence

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