

Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022

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 the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022* (the Regulation) made under the Acts at Schedule 1 to this certificate (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. The Queensland Treasury's Principles for Fees and Charges policy, October 2021 (Treasury Principles) require agencies to set fees and charges to reflect the cost of providing their services and ensure the fees maintain their value over time.

From 1 July 2022, all fees and charges, subject to the application of the government indexation rate (GIR), must be displayed as a number of fee units in agencies' respective subordinate legislation, unless an exemption has been provided in accordance with the Treasury Principles. The *Acts Interpretation Act 1954* provides legislative authority for an Act, including a regulation, to express a fee or other matter as a number of fee units.

The main objective of the Regulation is to amend the regulations made under the Acts set out in Schedule 1 to convert the prescribed fees and charges from dollar amounts to fee units, in accordance with Government policy.

The Regulation also provides for increases to various prescribed remuneration amounts and allowances by 2.5%, which is in line with the annual GIR for 1 July 2022 to 30 June 2023, including those payable to a person summoned for jury service, jurors and reserve jurors (jurors) prescribed under Schedule 2 of the *Jury Regulation 2017* (the Jury Regulation). Remuneration and allowances payable to a juror are, in effect, paid by the party to a civil trial requiring the jury and include remuneration for attending court and meal allowances.

Human Rights Issues

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

The Regulation engages property rights (section 24 of the HR Act).

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

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 remuneration and allowances paid to jurors in a civil trial, will have the effect of depriving a person who is a party to the proceedings requiring the jury, of additional money (comparative to the current remuneration and allowance amounts).

- (a) 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 property is for the purpose of maintaining the value of the juror remuneration and allowances over time and ensuring the amounts payable to jurors reflect adequate compensation for undertaking jury service. Facilitating access to justice through the delivery of jury services in civil trials, in a fiscally responsible way, is a proper purpose consistent with a free and democratic society.

- (b) 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 juror remuneration and allowances, in line with the annual GIR, will ensure that jurors are adequately compensated for their jury service and will go toward ensuring that jury services in civil trials are appropriately resourced.

- (c) 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, indexing the remuneration and allowance amounts in line with the GIR, maintains the value of those amounts over time and is consistent with the indexation of the regulated fees under the Jury Regulation.

- (d) 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 juror remuneration and allowances are maintained over time to provide adequate compensation to a person undertaking jury service, outweighs the limitation on the right to property.

Conclusion

I consider that the *Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022* 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.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and Minister for the
Prevention of Domestic and Family Violence

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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
Co-operatives National Law Act 2020
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
Information Privacy Act 2009
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 Occupations Act 2014
Prostitution Act 1999
Queensland Civil and Administrative Tribunal Act 2009
Recording of Evidence Act 1962
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