

# Recording of Evidence Amendment Regulation 2023

## 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* (the HR Act), I, Shannon Fentiman MP, Minister for Justice and Attorney-General, Minister for Women, and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Recording of Evidence Amendment Regulation 2023* (the Amendment Regulation) made under the *Recording of Evidence Act 1962*.

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

### Overview of the Subordinate Legislation

The *Recording of Evidence Act 1962* (the RE Act) requires the recording of all relevant matters given in legal proceedings heard in a Queensland court or tribunal. Proceedings may be recorded by a public service employee in the Department of Justice and Attorney General (the Department) or under a service delivery arrangement.

The Amendment Regulation supports the introduction of a new service delivery model for recording and transcription services. The Amendment Regulation provides for a new fee structure for copies of audio recordings and transcriptions. Under the new fee structure, the fees prescribed by the *Recording of Evidence Regulation 2018* (the RE Regulation) will apply to all copies of audio recordings, however there will be different fees for copies of transcriptions based on whether it is the first request for a transcription or a second or subsequent request.

Under the new fee structure, a commercial price will be paid to one of the transcription service providers for the first copy of a transcription. Parties to a proceeding who collectively request the first copy of a transcription (multiple copies requested by the parties in one transaction) will pay a discounted commercial price. The fees prescribed by the fee schedule will then apply to all second or subsequent requests for copies of a transcription of a proceeding or part of a proceeding.

The Amendment Regulation also provides that the family of a deceased person whose death is being investigated by the Coroner or is the subject of an Industrial Magistrates Court proceeding, is entitled to a free copy of an existing transcription or a copy of an audio recording.

### Human Rights Issues

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

The Amendment 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

The **right to recognition and equality before the law** is a stand-alone right that also permeates all human rights. It reflects that every person holds the same human rights by virtue of being human and not because of some particular characteristic or membership of a particular social group. The right encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right is limited where the right to access a service is indirectly restricted to some sectors of society.

This right will be limited by the Amendment Regulation as imposing fees to obtain a copy of an audio recording or transcription may restrict access for sectors of the community of a lower socio-economic status. The right may also be limited by the application of different prices for copies of transcriptions depending on whether the person makes the first request for a transcription or a second or subsequent request.

**Property rights** protect the right of all persons to own property and provide that people have a right to 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 it substantially deprives a property owner of the ability to use their 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 will be limited by the Amendment Regulation as the imposition of a requirement to purchase copies of audio recordings and transcriptions has the effect of depriving a person of additional money.

### (b) the nature of the purpose of the limitation

The purpose of imposing a requirement to purchase copies of audio recordings and transcriptions is to recognise the need to cover the costs associated with producing and providing copies of audio recordings and transcriptions. Providing a differentiated pricing structure for first or second or subsequent transcription requests reflects the different costs associated with producing and providing transcriptions of legal proceedings.

The provision of copies of audio recordings and transcriptions of legal proceedings in a fiscally responsible way is a proper purpose consistent with a free and democratic society.

### (c) the relationship between the limitation and its purpose

The requirement to purchase copies of audio recordings and transcriptions of legal proceedings ensures the provision of these services is appropriately resourced and budgeted and reflects the cost of their delivery, which in turn ensures the services can continue to be delivered.

Providing a differentiated pricing structure for first or second or subsequent transcription requests recognises the different costs of producing and providing transcriptions and aims to minimise the costs incurred by the greatest number of people.

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

There are no less restrictive and reasonably available alternative ways to achieve the purpose of the Amendment Regulation.

While the imposition of a cost for a copy of an audio recording or transcription may impact access to justice, this is mitigated by a range of exemptions and fee reductions. Under the RE Regulation, a copy of an audio recording or transcription is to be given to prescribed persons, such as the industrial registry, a defendant in a criminal proceeding in the Supreme or District Courts, and a victim of a personal offence the subject of a criminal proceeding in the Supreme or District Courts, at no cost. Parties to a legal proceeding may also obtain a copy of a transcription and audio recording at no cost or a reduced cost if there is a ground of financial hardship.

The Amendment Regulation also expands the exemptions to include the family of a deceased person whose death is being investigated by the Coroner or is the subject of an Industrial Magistrates Court proceeding. Family members will be entitled to a free copy of an existing transcription or a copy of an audio recording.

The exemptions are intended to ameliorate the impact on the human rights for sectors of the community of a lower socio-economic status.

(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

On balance, the importance of producing and providing copies of audio recordings and transcriptions in a way that provides best value for money and is fiscally responsible outweighs any limitations on the right to recognition and equality before the law and the right to property.

## Conclusion

I consider that the Amendment Regulation is compatible with 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.

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Attorney-General and Minister for Justice,  
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