

# Police Service Administration (Queensland Corrective Services) 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* (HR Act), I, Mark Ryan, Minister for Police and Minister for Corrective Services, provide this human rights certificate with respect to the Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020 (the Amendment Regulation) made under the *Police Service Administration Act 1990* (PSAA).

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 Amendment Regulation amends the *Police Service Administration Regulation 2016* (PSAR) to include Queensland Corrective Services (QCS) as an ‘approved agency’ for the purposes of information sharing under Part 10 of the PSAA.

The amendment supports implementation of a recommendation by the Crime and Corruption Commission (CCC) through Taskforce Flaxton (recommendation 32).

## Human Rights Issues

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

In my opinion, the following human rights are relevant to the Amendment Regulation:

- Privacy and reputation (section 25 of the HR Act);
- Protection of families and children (section 26 of the HR Act); and
- Right to life (section 16 of the HR Act).

The Amendment Regulation limits the right to privacy and reputation by allowing the Queensland Police Service (QPS) to share information with QCS that is considered necessary to allow QCS to appropriately manage offenders who are in custody or under a supervision in the community.

The amendment will provide for greater information sharing and collaboration between QPS and QCS in relation to the appropriate supervision and management of offenders, including those with a heightened risk of serious sexual offending, domestic and family violence, terrorism, violent extremism or participation in organised crime.

The type of information which may be given to QCS is any or all information held in a QPS database, including for example intelligence relating to an offender, personal safety warnings, associations an offender may have with serious organised crime, or the existence of a domestic violence order with an offender named as a respondent on an order. The sharing of information will promote the safety of victims, and a safer community and correctional environment by seeking to mitigate risk, reduce recidivism and disrupt crime, actions which support the human rights of others.

The effect of the Amendment Regulation will be to provide information from a QPS database to an authorised member of QCS or provide an authorised member of QCS with direct access to a QPS database.

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

#### (a) the nature of the right

The nature of the right to privacy and reputation (section 25 HR Act) protects the individual from all interferences and attacks upon their privacy, family, home, correspondence and reputation. It protects privacy in the sense of personal information, data collection and correspondence, and extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. 'Arbitrary' in the human rights context refers to conduct that is capricious, unpredictable or unjust and refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

#### (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 limiting the right to privacy and reputation by facilitating the sharing of information is to allow QCS to appropriately manage offenders, for the safety and security of the offender, victims, the correctional environment and community. These actions in turn protect the right to life, right to security of the person and the right to protection of families and children, under sections 16, 26 and 29 of the HR Act.

The lack of appropriate information sharing was identified as a part of Taskforce Flaxton, which noted the limitation of what information QPS can legally share with QCS and the inefficient information exchange making managing the correctional population more difficult. In some circumstances, limitations on information that can currently be shared by the QPS to QCS in relation to an offender may result in QCS making decisions regarding their ongoing management without the benefit of being able to consider information held by the QPS.

The sharing of information will not only assist QCS to proactively identify and mitigate risk, including risks to the safety and security of offenders, victims and the community, it will enable QCS to promote safer correctional environments and provide adequate care, support and rehabilitative opportunities for offenders.

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

The limitation on the right to privacy and reputation achieves the purpose of enabling the appropriate management of persons under the supervision of QCS.

By providing for this information sharing, QCS will be able to provide responsive management of offenders including the provision of safe and secure correctional environments and the provision of adequate care and support for those on community-based orders.

For example, information able to be shared between the QPS and QCS may include information pertaining to the existence of a Domestic Violence Order where an offender is named as a respondent on the order and may also include details of the aggrieved and family members including children and associates.

The sharing of information protects the offender by enabling QCS to provide a level of support aimed at disrupting pre-cursor offending patterns and behaviours that may lead to re-offending and enables QCS to consider appropriate living and working arrangements in preparation of an offender's reintegration back into the community.

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

There are no less restrictive and reasonably available ways to achieve the purpose.

The CCC's Taskforce Flaxton identified impediments with the current information sharing regime, including limitations on what information QPS can legally share with QCS and outdated systems making information exchange logistically difficult and inefficient.

The information sharing arrangements between QPS and QCS are appropriately limited to have the least restrictive impact on the right to privacy and reputation.

Under section 10.2L of the PSAA, the Police Commissioner may give the head of an approved agency all or any information in a QPS database to enable the approved agency to use the information for a law enforcement purpose. Further, the commissioner may give the information to the head of the approved agency by allowing an authorised member of the approved agency to have direct access to a QPS database. Providing that access to the QPS database by QCS officers is only permitted with the authority of the Police Commissioner ameliorates against any inappropriate access or misuse of information within the database.

Further, information given to an 'approved agency' is only able to be used for a purpose the agency is authorised to use the information for and can be further limited by the Police Commissioner under section 10.2M of the PSAA.

Importantly, under section 10.2M of the PSAA, the Police Commissioner may give information to the head of an entity on conditions the commissioner considers appropriate.

There is also an offence under section 10.2P (Misuse of information given under this division) of the PSAA that imposes a maximum penalty of 100 penalty units if a person uses information given by the QPS for a purpose other than for which it was given or authorised under an Act or contrary to a condition that is imposed under another Act.

Similarly, sections 339 and 341 of the *Corrective Services Act 2006* impose maximum penalties of 100 penalty units or 2 years imprisonment where a person unlawfully discloses information that has been acquired during their employment within QCS.

(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 enabling QCS to appropriately manage offenders and support safer correctional environments and communities that is facilitated by the Amendment Regulation outweighs negative impacts on the right to privacy and reputation.

(f) any other relevant factors

Nil.

## **Conclusion**

I consider that the Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020 is compatible with the HRA 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.

**Mark Ryan**  
Minister for Police and  
Minster for Corrective Services

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