

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

In my opinion, the *Police Service Administration and Other Legislation Amendment Regulation 2020*, 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 *Police Service Administration and Other Legislation Amendment Regulation 2020* (the amendment regulation) amends the *Police Service Administration Regulation 2016* (the PSAR) and the *Weapons Regulation 2016*.

### *Police Service Administration Regulation 2016*

The PSAR is amended to prescribe all Australian police agencies as approved agencies in section 67 ‘Approved agencies – Act, s. 10.2G’ to facilitate efficient information sharing.

The PSAR is made under the *Police Service Administration Act 1990* (PSAA) which provides for the Queensland Police Service (QPS) and its administration. Part 10, Division 1A of the PSAA contains provisions about the exchange of policing information. Under section 10.2L ‘Giving information to approved agencies to enable use of information for particular purposes’ of the PSAA, the Commissioner may give the head of an approved agency all or any information in a Queensland Police Service (QPS) database to enable the approved agency to use the information for a law enforcement purpose and may give the information by allowing an authorised member of the approved agency to have direct access to a QPS database.

The QPS has streamlined information sharing with approved agencies through development of a web-based portal known as Self Service of Document Retrieval (SSoDR), which allows authorised agencies to securely search and retrieve certain documents from the Queensland Police Records and Information Management Exchange database (QPRIME). SSoDR can be accessed by an authorised member of an approved agency to retrieve criminal history and initial court brief documents in a fully automated process.

Since 2008, Australian police agencies have been able to access and view national criminal history information through the National Police Reference System (NPRS), which is administered by the Australian Criminal Intelligence Commission. Information sharing by the QPS to the NPRS is authorised under section 10.2J ‘Giving approved information to police services and law enforcement agencies to enable use of approved information for particular purposes’ of the PSAA. However, the NPRS does not enable printing of criminal history information for court or other legal purposes and instead, a manual request for QPS criminal history information must be submitted to the QPS Police Information Centre (PIC). Manual requests must also be submitted for copies of court briefs. These requests are manually processed by PIC staff which is resource intensive and creates delays in the provision of the requested information.

The Australian Federal Police is currently the only police agency prescribed in section 67 of the PSAR as an approved agency. The proposed amendment in section 3 of the amendment regulation will prescribe police agencies in all other states and the Northern Territory as approved agencies. This will allow access by all Australian police agencies to SSoDR to obtain court briefs and criminal histories only. This will improve the timeliness of document retrieval and reduce manual processing by the QPS. There is no change to the nature and extent of information accessed by the approved agencies, only to the process by which it is obtained. SSoDR has audit processes to ensure oversight of access and the information exchange process.

### ***Weapons Regulation 2016***

The amendment regulation also amends the *Weapons Regulation 2016* to insert new section 143A ‘Prohibition on possession of detachable magazines without licence’.

The *Weapons Regulation 2016* repealed and replaced the *Weapons Regulation 1996* but, due to an administrative error, the offence in repealed section 68E ‘Prohibition on possession of certain magazines’ was not replicated in the new regulation. The policy objective of the *Weapons Regulation 2016* was to replace the *Weapons Regulation 1996*, with no changes to the existing policy position and the omission of the section 68E offence was an oversight.

Other similar offences in repealed sections 68CA ‘Prohibition on possession of particular magazines – category B weapons’ and 68D ‘Prohibition on possession of particular magazines – category H weapons’ in the repealed *Weapons Regulation 1996* were included in the current regulation as sections 34 and 24 respectively. The omission of the section 68E offence has therefore created an anomaly where it is now an offence for the holder of a firearms licence to possess certain magazines, but it is not an offence for an unlicensed person to possess a magazine. There is no lawful reason an unlicensed person should be in possession of a detachable magazine and the insertion of new section 143A will correct the anomaly.

## **Human Rights Issues**

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

### **Privacy and Reputation**

Section 25 of the *Human Rights Act 2019* (the HRA) provides that a person has the right not to have the person’s privacy unlawfully or arbitrarily interfered with. The amendment regulation

limits this human right as section 3 of the amendment regulation facilitates the efficient sharing of police information, including criminal histories and initial court brief documents, to police agencies in other Australian states and the Northern Territory for law enforcement purposes. This means certain private information about a person in the possession of the QPS will be provided to other Australian police agencies via the SSoDR portal.

### **Property rights**

Section 24 of the HRA provides that a person must not be arbitrarily deprived of the person's property. The amendment regulation limits this human right as the new section 143A of the *Weapons Regulation 2016* will prohibit possession of a detachable magazine without a relevant licence issued under the *Weapons Act 1990*.

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

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. In determining if it is justifiable for the amendment regulation to limit a human right, consideration may be given to the human rights that are promoted through the amendment regulation and if an appropriate balance with any limitation of human rights is achieved.

Section 29 of the HRA provides that every person has the right to liberty and security. The amendment regulation promotes this right by promoting efficient information sharing between Australian police agencies to assist with law enforcement and by limiting possession of detachable magazines to licensed persons.

It is considered that any potential impact of the amendment regulation on the rights and liberties of individuals is justified, as the limits on privacy and property rights are reasonable and promote the safety and security of the community in general.

### **Privacy and Reputation**

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

The right to privacy is broad but is internally limited to the right not to have the person's privacy unlawfully or arbitrarily interfered with. Arbitrary interference extends to interferences that may be lawful, but are unreasonable, unnecessary and disproportionate.

#### (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 limitation of this right by the amendment regulation is for law enforcement purposes. The amendment to section 67 of the PSAR will allow the sharing of information via the SSoDR portal. This information is already being shared by the QPS with other police agencies via NPRS and manual requests. The amendment will create efficiencies for the QPS and other police agencies in sharing criminal history and court brief information as it will alleviate the need for manual requests and processing.

The information can only be shared for law enforcement purposes which is defined in section 10.2G of the PSAA as 'a purpose for which the agency is authorised to use the information

under the law of the Commonwealth or a State'. This is most commonly for investigative and prosecution purposes.

Concerns about an individual's right to privacy are mitigated through limiting access to SSoDR to authorised members of the other police agencies. Further, the SSoDR portal is fully auditable to ensure information is only being shared with these authorised members and for relevant purposes.

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

The limitation is needed to help achieve the purpose of the amendment Regulation.

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

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

- (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

It is in the public interest for this information to be shared as it supports law enforcement within Queensland and nationally. The limitation of the right to privacy is therefore consistent with a free and democratic society.

- (f) any other relevant factors

There are no other relevant factors.

### **Property Rights**

- (a) the nature of the right

The human right relating to a person's property rights is conditional as the protection against being deprived of property applies to the arbitrary deprivation of property. The restriction on possessing detachable magazines in new section 143A is not arbitrary, but considered and limited in scope.

- (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 new section 143A is to limit possession of detachable magazines to those persons who are appropriately licensed under the *Weapons Act 1990*. A person found in possession of a detachable magazine in non-compliance with section 143A commits an offence and, under the *Police Powers and Responsibilities Act 2000*, a police officer has the power to seize the magazine as evidence of the commission of the offence. In most circumstances, the magazine will be forfeited to the state upon finalisation of the offence.

New section 143A of the PSAR provides appropriate exceptions including a reasonable excuse for possession of a detachable magazine for a category A or B weapon (section 143A(1)(b))

and ‘that the person has lawful authority, justification or excuse’ for possession of a category C, D, H or R weapon (section 143A(2)(b)).

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

The limitation is needed to help achieve the purpose of the amendment Regulation.

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

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

- (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 new section promotes the freedom and security of the community generally as it ensures magazines are only in the possession of persons appropriately licensed under the *Weapons Act 1990*. This supports the principles and objects of this Act as outlined in section 3. These include the principle that ‘weapon possession and use are subordinate to the need to ensure public and individual safety’ with the object of the Act being ‘to prevent the misuse of weapons’. There is no need for a person to possess a detachable magazine without an appropriate licence and the new section assists with the restriction and misuse of weapons in the community.

- (f) any other relevant factors

There are no other relevant factors.

## Conclusion

I consider that the *Police Service Administration and Other Legislation Amendment Regulation 2020* 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.

**MARK RYAN**  
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