

# Criminal Practice (Fees and Allowances) 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* (HR Act), I, 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 *Criminal Practice (Fees and Allowances) Regulation 2021* (the Regulation) made under the *Coroners Act 2003*, *Justices Act 1886* and *Supreme Court of Queensland Act 1991*.

In my opinion, the 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 practice and procedure rules for various matters relating to the criminal jurisdiction of the Supreme, District and Magistrates Courts are set out in the *Criminal Practice Rules 1999* (the Rules). The Rules include providing for access to court exhibits, documents and other things, by persons who are not a party to the trial on payment of a fee. The Rules also provide for the preparation of an appeal record book, and that a party may obtain a copy of the book on payment of the fee.

The *Criminal Practice (Fees) Regulation 2010* (the current Regulation) currently prescribes the relevant fees for:

- searching for or inspecting an exhibit, document or thing;
- obtaining a copy of a document;
- preparing and copying an appeal record book;
- applying for an order permitting an exhibit to be copied for publication; and
- opening or keeping open a Supreme, District or Magistrates Court Registry for the purpose of making an application or copying an exhibit.

Prosecution witnesses play an important role in criminal proceedings. The payment of allowances recognises the impost that performing this role can have on witnesses' lives. The current Regulation prescribes the allowances payable to prosecution witnesses, other than a police officer and prisoner, to compensate them for costs incurred in appearing in a criminal trial. The allowances that prosecution witnesses may be eligible for include a travel allowance, meal allowance, accommodation allowance, and loss of earnings allowance. These allowances are also referenced in the *Justices Regulation 2014* and the *Coroners Regulation 2015*, which each provide that witnesses are entitled to the payment of allowances as set out in the Regulation.

The Regulation provides for the same matters as the current Regulation, which is due to expire under the *Statutory Instruments Act 1992* on 31 August 2021, with minor and clarifying changes to:

- reflect contemporary drafting practices;

- ensure the prosecution witness allowance provisions are clear and are applied as intended;
- remove transitional provisions, which were required for the initial introduction of prosecution witness allowances into the current Regulation, that are no longer required; and
- make consequential amendments to the *Justices Regulation 2014* and *Coroners Regulation 2015*.

## Human Rights Issues

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

The remade 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

##### *Right to recognition and equality before the law*

This right is a stand-alone right that also permeates all human rights. It encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination.

The right to recognition and equality is limited where the right to access a service is indirectly restricted to some sectors of society. This right may be limited by the Regulation as imposing fees to access court exhibits, documents and other things may restrict access services to sectors of the community of a lower socio-economic status.

##### *Property rights*

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 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 is limited by the Regulation as the imposition of fees has the effect of depriving a person of money.

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

The purpose of imposing a fee to access court exhibits, documents and other things in criminal proceedings and to prepare and copy an appeal record book is to recognise the need for government to recover costs associated with providing services.

The provision of important government services 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 imposition of fees for the provision of government services ensures the provision of these services is appropriately resourced and budgeted to reflect the cost of their delivery, which in turn ensures that services can continue to be delivered.

(d) 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. The fees are subsidised by government to reduce the potential impacts on community members of a lower socio-economic status. Further, where the imposition of fees may impact access to justice, these are mitigated by a range of exemptions where it is in the interests of justice. For example, fees to access documents, exhibits and other items relevant to a criminal proceeding are exempt for defendants in the proceeding. Exemptions are intended to ameliorate the impact on 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 government services being provided in a fiscally responsible way outweighs negative impacts on the right to recognition and equality before the law and the right to property.

## Conclusion

I consider that the 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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