

Right to Information and Other Legislation 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 *Right to Information and Other Legislation Amendment Regulation 2022* (Amendment Regulation) made under the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act).

In my opinion, the Amendment Regulation, 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 RTI Act requires applications to an agency for access to a document of an agency to be dealt with by the agency's 'principal officer'. Chapter 3 of the IP Act requires applications to an agency for access to, and amendment of, documents of an agency to be dealt with by the agency's 'principal officer'.

Courts and tribunals are entities to which the RTI Act does not apply in relation to their judicial and quasi-judicial functions (section 17, schedule 2, part 2, RTI Act). Courts are 'public authorities' (s16, RTI Act) and therefore 'agencies' under the RTI Act (s14), except when performing their judicial or quasi-judicial functions. Section 17 of the IP Act provides that for chapter 3, 'agency' means anything that is an agency under the RTI Act.

Schedule 5 of the RTI Act and Schedule 5 of the IP Act define 'principal officer' to mean:

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chief executive officer (however described) of the local government; or
- (c) in relation to a government owned corporation—the chief executive officer (however described) of the government owned corporation; or
- (d) in relation to a subsidiary of a government owned corporation—the principal officer (however described) of the subsidiary; or
- (e) in relation to a public authority for which a regulation declares an office to be the principal office—the holder of the office; or
- (f) in relation to another public authority—

- (i) if it is an incorporated body that has no members—the person who manages the body’s affairs; or
- (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
- (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

The definition of ‘principal officer’ does not readily lend itself to courts and tribunals. This may lead to uncertainty as to the identity of the principal officer for dealing with applications under the RTI Act and the IP Act for a court or tribunal. However, paragraph (e) of the definition enables the making of a regulation to declare the principal office of a court or tribunal.

The Amendment Regulation will declare the principal office for certain courts and tribunals. The person occupying the office is intended to be the principal officer for dealing with applications for access to documents under the RTI Act and applications for access to, and amendment of, documents under the IP Act.

Human Rights Issues

The Amendment Regulation clarifies who is the ‘principal officer’ for dealing with applications under the RTI Act and IP Act.

The Amendment Regulation therefore may engage the human right to freedom of expression in section 21 of the *Human Rights Act 2019*, which includes the right to seek, receive and impart information and ideas of all kinds. In *XYZ v Victoria Police*¹, the Victorian Civil and Administrative Tribunal found that the human right to freedom of expression in the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) incorporates a positive right to obtain access to government-held documents.

As the Amendment Regulation does not limit the right to apply for access to, or amendment of, a document of a court or tribunal under the RTI Act or the IP Act, it does not limit the right to freedom of expression. The Amendment Regulation does not limit other human rights in the *Human Rights Act 2019*.

Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because it does not limit human rights.

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Minister for Women and Minister for the Prevention of Domestic and Family Violence

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¹ (General) [2010] VCAT 255 (16 March 2010).