

Police Service Administration (Transfer of Executive Officer) 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*, I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services provide this human rights certificate with respect to the *Police Service Administration (Transfer of Executive Officer) Amendment Regulation 2023* made under the *Police Service Administration Act 1990*.

In my opinion, the *Police Service Administration (Transfer of Executive Officer) Amendment Regulation 2023*, 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 Act 1990* (PSAA) provides for the membership and administration of the Queensland Police Service (QPS) including the appointment of police officers to positions on promotion or transfer.

Section 5.2 of the PSAA provides that a decision to appoint a police officer to a position must be made by fair and equitable procedures, which includes inviting applications and a selection on the basis of the merit of applicants. However, these procedures are not necessary where the decision to appoint relates to a transfer of a police officer on a basis prescribed by regulation under section 13 ‘Transfers that need not be on the basis of merit’ of the *Police Service Administration Regulation 2016* (PSAR).

Section 13 of the PSAR lists the categories of transfers that may be conducted without inviting applications and selecting applicants on their merits. These transfers include a determination under section 149B(1) of the *Industrial Relations Act 1999* and an industrial agreement between the Commissioner, the Queensland Police Union of Employees and the Queensland Police Commissioned Officers’ Union of Employees.

This list does not extend to Executive Officers whose conditions of appointment are governed through a contract of employment.

Executive Officers are a small cohort of police officers that hold the rank of Deputy Commissioner or Assistant Commissioner. These officers are responsible for management and leadership of significant components of the QPS, or major operations or projects conducted by the QPS. The nature of their position requires a degree of flexibility and responsiveness to the strategic and operational needs of the QPS. This is reflected within Executive Officers’ contracts of employment which include, as a condition of appointment, that the Executive Officer accepts that they may be transferred to another position at the same classification level which may involve a change in location.

The organisational efficiency of the QPS may be compromised if there is a delay in Executive Officers assuming their position on transfer through a need to satisfy procedures demonstrating that the transfer was merit based. This concern will be addressed by the *Police Service Administration (Transfer of Executive Officer) Amendment Regulation 2023* (the Amendment Regulation) which will clarify that the transfer of Executive Officers does not require an invitation of applications and the selection of the transferee on merit.

Human Rights Issues

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

Fair hearing – section 31 of the HR Act

(a) the nature of the right

Section 31 of the HR Act affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

While the transfer process outlined in Part 5 of the PSAA does not constitute either a court or tribunal, in the Victorian decision of *Kracke v Mental Health Review Board* (2009) 29 VAR 1, the Victorian Civil and Administrative Tribunal decided that the right to a fair hearing was not confined to civil judicial proceedings, but also to administrative proceedings.

Regardless of whether this decision would apply to the transfer process, the principles of supporting a fair hearing in an administrative context may still be thought to be in scope of the intent of the HR Act.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing and balancing of a number of public interest factors. Widely accepted aspects of a fair trial include the application of procedural fairness through an independent court, a public trial, the presumption of innocence, the defendant told of the charge, the allocation of time and facilities to prepare a defence and a trial without undue delay etc. In the context of administrative proceedings, the nature of the right to fair hearing and procedural fairness involves flexible obligations to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case and promote natural justice.

(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 the Amendment Regulation is to ensure the organisational efficiency of the QPS is maintained across the State through removing any potential delay that could prevent an Executive Officer from taking up a position on transfer. This is achieved by amending section 13 of the PSAR and extending the categories of transfers that need not be conducted on the basis of merit to include transfers conducted under a contract of employment made between the Crown and an Executive Officer.

The effect of the proposed amendment to section 13 of the PSAR will allow the Commissioner to transfer an Executive officer to another position at the same classification level as one of the

categories of transfers that need not be conducted on the basis of merit. The impact in the exercise of this administrative power on the right to fair hearing and procedural fairness for the transfer of an Executive Officer must be considered against the procedures that promote natural justice. The proposed Amendment Regulation does not impede on an individual's statutory right to seek a review of the decision under Part 9 of the PSAA. Any concerns about the exercise of this administrative power to transfer an Executive Officer is then further reduced by the statutory safeguard in section 5.2(2)(b) of the PSAA which provides that a decision to appoint a person to a police officer position must be made by fair and equitable procedures that prevent unjust discrimination whether in favour of or against a person. Subsequently, the limit on the human right proposed by the amendment regulation is consistent with a free and democratic society based on human dignity, equality and freedom.

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

Although the Amendment Regulation may potentially limit an individual's right to a fair hearing and procedural fairness, such limitation is mitigated by legislative safeguards. Furthermore, albeit a limitation on an individual's human right, the purpose of the proposed amendment is to ensure the organisational efficiency of the QPS is maintained across the State through removing any potential delay that could prevent an Executive Officer from taking up a position on transfer.

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

No other less restrictive, reasonably available alternatives have been identified.

(e) the balance between the importance of the purpose of the limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

When balancing the importance of maintaining organisational efficiency of the QPS across the State, as achieved by the Amendment Regulation, against the importance of an individuals' right to fair hearing and procedural fairness in administrative decisions, it is necessary to recognise the circumstances and extent of the limitation.

The circumstances to take into account include:

- The Amendment Regulation will only apply to a small cohort of officers.
- The nature of Executive Officer's roles require a degree of flexibility and responsiveness to the strategic and operational needs of the QPS. This is reflected within Executive Officers' contracts of employment which include, as a condition of appointment, that the Executive Officer accepts that they may be transferred to another position at the same classification level which may involve a change in location.

The extent to which any limitation is applied on an individual's right is appropriately mitigated by the legislative safeguards in the PSAA which provides an individual with the right to object or seek a review. As such, on balance it is considered that the benefits of this amendment outweighs any limitations it may be considered to cause.

(f) any other relevant factors

There are no other relevant factors.

Conclusion

I consider that the *Police Service Administration (Transfer of Executive Officer) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

MARK RYAN MP
MINISTER FOR POLICE AND CORRECTIVE SERVICES AND
MINISTER FOR FIRE AND EMERGENCY SERVICES

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