

# ***Civil Partnerships 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, Yvette D’Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Civil Partnerships Regulation 2023* made under the *Civil Partnerships Act 2011*.

In my opinion, the *Civil Partnerships Regulation 2023*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

## **Overview of the Subordinate Legislation**

The *Civil Partnerships Regulation 2023* (the Regulation) repeals and replaces the *Civil Partnerships Regulation 2012* (2012 Regulation). Under section 54 of the *Statutory Instruments Act 1992*, the 2012 Regulation was originally due to expire on 1 September 2022. However, the *Statutory Instruments Regulation 2022* extended this expiry to 31 August 2023.

The Regulation is made under section 36 of the *Civil Partnerships Act 2011* (the Act). The Act provides for the legal recognition of relationships of couples, regardless of sex, by registration of their relationships, to be known as civil partnerships.

The Regulation supports the operation of the Act by prescribing:

- the documents required to be provided to the registrar in order to register or terminate a civil partnership;
- the relationships and corresponding laws in other jurisdictions that are taken to be registered as civil partnerships under the Act; and
- relevant fees and annual returns required for the ongoing administration of the civil partnerships scheme.

## **Human Rights Issues**

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

The Regulation engages the following rights under the HR Act:

- Property rights (section 24).

Property rights should be considered in the context of Schedule 2 of the Regulation. Schedule 2 outlines the fees payable for various applications and registrations made under the Act.

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

### Property rights

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

Property rights protect the right of all persons to own property (alone or with others) and provides that people have a right not to 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 that it substantially deprives a property owner of the ability to use his or her property or part of that 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 in this instance by Schedule 2 of the Regulation which introduces a new fee for the registration of civil partnerships. This will have the effect of depriving individuals of additional money. This new fee may particularly impact Aboriginal and Torres Strait Islander people, as well as people from lower socio-economic backgrounds.

#### (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 on the right to property through the revised fee structure is for the purposes of facilitating the ongoing operation of the Registry of Births, Deaths and Marriages (the Registry). The services provided by the Registry, such as the recording and certifying of significant life events, are essential for individuals to demonstrate their legal status when engaging with government and private organisations.

For example, birth certificates provided by the Registry are the foundational personal document that most people will use to access services and prove their identity throughout their lifetime. Consequently, the services provided by the Registry are critical in enabling individuals to participate and engage with society at the most foundational level as well as in a much broader sense.

Therefore, the purpose of the limitation is consistent with a free and democratic society based on human dignity, equality and freedom, by facilitating the ongoing and sustainable operation of the Registry.

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

The fees established under Schedule 2 will ensure that the provision of the services provided by the Registry are appropriately resourced and budgeted to reflect the cost of their delivery. Consequently, the limitation on property rights is related to ensuring that the critical services provided by the Registry can continue to be delivered to individuals throughout Queensland.

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

No less restrictive and reasonably available ways to achieve the purpose of the limits on property rights have been identified.

As mentioned, the impacts of the revised fee structure may disproportionately impact Aboriginal people and Torres Strait Islander people, as well as people from lower socio-economic backgrounds.

However, the fee structure within the Regulation is supported by some key safeguards. Section 6(2) provides the registrar with an express power to waive (wholly or partly) payment of a fee, as well as the power to refund all or part of a fee paid. In determining whether to waive a fee, the registrar may have regard to whether: the person who is to pay the fee is experiencing financial hardship; the provision of the thing applied for would improve the person's circumstances; or if the waiver is otherwise desirable in the circumstances.

(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 ensuring the fees facilitate the provision of important government services in a fiscally responsible way, outweighs the limitation on the right to property.

(f) any other relevant factors

Queensland Treasury's Principles for Fees and Charges requires departments to regularly review their fees and charges to ensure they remain appropriate and that the cost structure underlying the amount of the fee or charge remains accurate and efficient.

## Conclusion

I consider that the *Civil Partnerships Regulation 2023* is compatible with the HR Act 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.

**YVETTE D'ATH MP**  
Attorney-General and Minister for Justice  
and Minister for the Prevention of Domestic  
and Family Violence