

Justices (Sharing of Records) and Other Legislation Amendment Regulation 2024

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 Yvette D'Ath MP, 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 *Justices (Sharing of Records) and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) made under the *Justices Act 1998*, *Magistrates Courts Act 1921* and the *Supreme Court of Queensland Act 1991*.

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 Amendment Regulation is intended to facilitate information sharing between Queensland courts and the family law courts at no cost to the requesting party, in accordance with the National Strategic Framework for Information Sharing between the Family Law Courts and Family Violence and Child Protection Systems (National Framework), which was endorsed on 12 November 2021 by the then Meeting of Attorneys-General and commenced operation on 6 May 2024. The Regulation will also facilitate information sharing between Queensland courts and other Australian courts and tribunals without a fee, where that information is relevant to a proceeding before that court or tribunal.

The Amendment Regulation amends the *Criminal Practice Rules 1999* and *Justices Regulation 2014* to establish a fee exemption for Australian courts and tribunals when requesting information relevant to proceedings before that court or tribunal.

The Amendment Regulation also amends the *Domestic and Family Violence Protection Rules 2014* to provide that an Australian court or tribunal does not need to make an application in writing in order to access documents relating to a proceeding under the *Domestic and Family Violence Protection Act 2012*.

These amendments will promote the timely and efficient exchange of information between courts (or tribunals), including under the National Framework.

Human Rights Issues

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

The proposed legislation potentially limits the right to privacy and reputation under section 25 of the *Human Rights Act 2019* (HR Act).

(a) the nature of the right

Section 25 of the HR Act protects a person's privacy and reputation and provides the right not to have the person's privacy, family, home or correspondence (written and verbal) unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked. The right protected by section 25 is modelled on article 17 of the International Covenant on Civil and Political Rights. Under this section, the scope of the right to privacy is broad and may include matters such as personal information, data collection and correspondence. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The underlying value of the right is the importance of human beings as autonomous individuals with power over their actions and protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.¹

The Amendment Regulation will make it clear that Australian courts and tribunals are able to request access to documents from a court registry under the *Domestic and Family Violence Protection Rules 2014* without a written request; and request the provision of court documents and information without payment of a fee under the *Criminal Practice Rules 1999* and *Justices Regulation 2014*. This will limit an individual's right to privacy and reputation as it will facilitate the sharing by a Queensland court of a part of the record of a proceeding, or a document used or tendered in a proceeding with another Australian court or tribunal.

(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 limitation on the right to privacy is to facilitate the sharing of information that is relevant to, or may inform, decision making, including where there may be risks of family violence or child abuse, or a need to protect a child or individual from harm. The purpose of information sharing, including under the National Framework, is to promote the safety and wellbeing of adults and children affected by family violence, child abuse and neglect, and support informed and appropriate decision-making including in circumstances where there is, or may be, a risk of family violence, child abuse or neglect. This potential limitation 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

The limitation on the right to privacy will achieve the purpose by clarifying how an Australian court or tribunal can access documents under the *Domestic and Family Violence Protection Rules 2014* and providing a fee exemption for Australian courts and tribunals when requesting access to court records under the *Criminal Practice Rules 1999* and *Justices Regulation 2014*. The limitation is consistent with the values of a free and democratic society.

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

Any potential impact on the privacy of individuals is mitigated by the requirement that information shared by Queensland courts with other Australian courts or tribunals must be

¹ *Director of Housing v Sudi* [2010] VCAT 328 [29].

relevant to a proceeding before that court or tribunal. In the case of information shared under the National framework, any potential impact on the privacy of individuals is mitigated by the safeguards contained in the Information Sharing Protocol (the Protocol) which supports the operation of the National Framework. The entity releasing the information should be satisfied that the information is relevant and shared in line with the safeguards included in the Protocol, such as: information should only be requested and shared to the extent that it is necessary to assess and manage family violence or child abuse risk; information sharing should be conducted in good faith and with reasonable care to ensure the safety of staff, parties and relevant third parties; and Authorised Information Sharing Entities (prescribed in Schedule 9 to the Protocol) have the discretion to redact identifying or sensitive information prior to sharing it under the National Framework.

There are no less restrictive and reasonably available ways to achieve the purpose. I consider that any potential impact on the privacy of individuals is mitigated by the requirement that information be relevant to a proceeding before the requesting court or tribunals, and the safeguards outlined in the Protocol which supports the National Framework.

(e) the balance between the importance of the purpose of the Regulation which, if enacted, would impose a limitation on human rights and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider the importance of the purpose of the limitation and the Amendment Regulation, which is to support the timely and efficient exchange of information between Australian courts and tribunals, including under the National Framework, will support timely, informed and appropriate decision-making, and therefore, outweighs the limitation on the right to privacy.

(f) any other relevant factors

None.

Conclusion

I consider that the *Justices (Sharing of Records) and Other Legislation Amendment Regulation 2024* 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.

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