

Penalties and Sentences Regulation 2025

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, the Honourable Deb Frecklington MP, Attorney General and Minister for Justice and Minister for Integrity provide this human rights certificate with respect to the *Penalties and Sentences Regulation 2025* (the 2025 Regulation) made under the *Penalties and Sentences Act 1992* (PS Act).

In my opinion, the 2025 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 PS Act provides the general powers and procedures for courts when sentencing adult offenders in Queensland. The PS Act also provides for a levy to be imposed on a sentenced offender to help pay, generally, for the cost of law enforcement and administration.

The *Penalties and Sentences Regulation 2015* (the 2015 Regulation) supports the PS Act by providing detail essential for the practical operation and implementation of sentence orders such as fines, community-based orders, drug diversion conditions and drug and alcohol treatment orders. Further, the 2015 Regulation prescribes corresponding interstate control orders and the value of the offender levy, for the purposes of the PS Act.

The 2015 Regulation will automatically expire on 1 September 2025 pursuant to section 54(1) of the *Statutory Instruments Act 1992*. The 2025 Regulation replaces and remakes the 2015 Regulation in substantially the same form with some minor updates and drafting changes, thereby ensuring the continued practical operation of sentence orders, the offender levy and corresponding control orders.

The 2025 Regulation is made pursuant to sections 161ZW and 196 of the PS Act.

Human Rights Issues

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

The 2025 Regulation limits the following human rights protected by the HR Act:

- right to recognition and equality before the law (section 15 of the HR Act);
- freedom of movement (section 19 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

The right to recognition and equality before the law encompasses the right to recognition as a person before the law, the right to enjoy human rights without discrimination, and the right to equality before the law and equal protection of the law. The right is a stand-alone right that is also fundamental for the realisation of other human rights. The right to recognition and equality before the law is limited in circumstances where the law is applied or operates differently in relation to some individuals or sectors of society. The 2025 Regulation limits the right to recognition and equality before the law by restricting the availability of drug and alcohol treatment orders to defendants who appear before particular, prescribed courts. This sentence option is not available at large, to all defendants in Queensland.

Freedom of movement and Peaceful assembly and freedom of association

The right to freedom of movement specifically provides for the right of every person to move freely within Queensland, to enter or leave Queensland, and to choose where they live. The right to peaceful assembly and freedom of association guarantees the right to assemble and meet as a means of participating in public affairs, pursuing common interests and furthering common purposes. The 2025 Regulation limits these rights by recognising and making enforceable particular, prescribed interstate control orders (also known as serious crime prevention orders). These interstate orders may include conditions that limit an offender's movements (for example, conditions that prevent attendance at specified events, locations such as licensed premises, or by applying a curfew), and that may prevent an offender from associating with a specific person or class of person (for example, a prohibition on associating with known co-offenders).

Right to property

The right to property provides that all persons have the right to own property, alone or with others, and to not be arbitrarily deprived of their property. Property generally includes all real and personal property interests, including money. In the context of property rights 'deprived' includes a substantial restriction on the use or enjoyment of property, while 'arbitrary' refers to actions that are unpredictable, unjust, unreasonable or not proportionate to a legitimate aim. The 2025 Regulation limits the right to property by prescribing the respective values of the penalty unit and the offender levy. This will ensure the effective operation of the penalty unit and the offender levy, which both have the effect of depriving defendants of property in the form of money. The 2025 Regulation essentially prescribes the extent of that deprivation.

(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

Right to recognition and equality before the law

The purpose of confining the availability of drug and alcohol treatment orders to cases heard in the Central Division of the Brisbane Magistrates Court District is to deliver comprehensive treatment regimens and rehabilitative opportunities to eligible offenders whilst recognising the

resource intensive nature of these orders. Treatment orders are a multi-agency response to drug and alcohol related crime that operate for at least two years under the management of a multidisciplinary review team. The limitation on the availability of the orders to the Brisbane district reflects the higher availability of therapeutic services in this location. It is consistent with principles of human dignity, equality and freedom that Government deliver services to the extent that it is fiscally responsible and commensurate with resource limitations.

Freedom of movement and Peaceful assembly and freedom of association

The purpose of the limitation on the rights to freedom of movement and freedom of association is to protect the Queensland community by restricting, preventing or disrupting an offender's involvement in serious criminal activity, in circumstances where an interstate Court has considered such conditions necessary. It is consistent with principles of human dignity, equality and freedom to impose measures that inhibit serious crime.

Right to property

The purpose of assigning a value to the penalty unit is to ensure that financial penalties may be effectively ordered by Queensland Courts as a sentence. Additionally, the purpose of the assigning a value to the offender levy is to give effect to the framework within Part 10A of the PS Act, which requires an offender to help pay generally for the cost of law enforcement and administration. The proper operation of financial penalties and levies is consistent with principles of human dignity, equality and freedom.

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

Right to recognition and equality before the law

The limitation on the availability of drug and alcohol treatment ensures that eligible offenders within the Brisbane district are intensively supervised, treated and reintegrated into the community, as distinct from diluting the delivery of these services across the State.

Freedom of movement & Peaceful assembly and freedom of association

The recognition and enforceability of prescribed corresponding control orders will contribute to ensuring that offenders, who have travelled to Queensland from interstate, cannot evade conditions imposed on them by an interstate court, which are targeted at hindering their activity in serious crime.

Right to property

The prescription of a monetary value for the penalty unit and the offender levy will give actual force and effect to financial penalties for prescribed criminal and regulatory offences, and to the offender levy.

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

Right to recognition and equality before the law

The alternative approach, to make drug and alcohol treatment orders an available sentencing option throughout Queensland, does not offer a less restrictive way to achieve the identified purpose.

Freedom of movement) and Peaceful assembly and freedom of association

The alternative approach, to not prescribe any interstate corresponding control orders, does not offer a less restrictive way to achieve the identified purpose.

Right to property (section 24 of the HR Act)

The alternative approach, to not prescribe a value for the penalty unit and the offender levy, does not offer a less restrictive way to achieve the identified purpose.

(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

In my opinion, the 2025 Regulation strikes an appropriate balance between the importance of the purposes of the various amendments and the importance of preserving human rights.

(f) any other relevant factors

Nil.

Conclusion

I consider that the 2025 Regulation 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.

DEB FRECKLINGTON MP
Attorney-General and Minister for Justice
Minister for Integrity