

Working with Children (Risk Management and Screening) Regulation 2020

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 Leader of the House, present this human rights certificate with respect to the Working with Children (Risk Management and Screening) Regulation 2020 made under the *Transport Planning and Coordination Act 1994* and the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act).

In my opinion, the 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 Working with Children (Risk Management and Screening) Regulation 2020 (the 2020 Regulation) repeals and replaces the *Working with Children (Risk Management) Regulation 2011* (current Regulation) as a result of amendments made to the WWC Act by the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Act 2019* (Amendment Act). The 2020 Regulation also amends the Transport Planning and Coordination Regulation 2017 (Transport Regulation).

The purpose of the 2020 Regulation is to support Blue Card Services (BCS) in the administration of the WWC Act by:

- updating terminology to align with amendments made to the WWC Act by the Amendment Act;
- modernising and updating the language used in the matters which must be included in a responsible person’s risk management strategy;
- providing for the recording, or disclosure, of confidential information about a person in certain circumstances;
- maintaining the expanded scope of blue card screening for National Disability Insurance Scheme (NDIS) providers in line with the requirements that registered providers are required to implement to meet their obligations under the NDIS;
- prescribing fees payable under the WWC Act, including giving effect to the increase in fees in line with the approved Government indexation rate of 1.8% for 2020-21;
- omitting circumstances in which a function of employment will not be considered a “usual function of employment” due to the introduction of a new and simplified frequency test by the Amendment Act; and
- amending the Transport Regulation to include the WWC Act as a prescribed authorisation Act and the working with children authority, or a working with children card for a working with children authority as a prescribed authority to facilitate the inclusion of a person’s photograph on their working with children card.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 *Human Rights Act 2019*)

The 2020 Regulation engages the right to privacy and reputation under section 25 of the *Human Rights Act 2019* (HR Act). In my opinion, any interference with a person's privacy which may arise from these amendments will neither be unlawful nor arbitrary.

The blue card system is comprised of three core components:

- the 'blue card' or working with children check;
- the ongoing monitoring of the Queensland police information of all card holders and applicants; and
- the requirement for organisations to develop and implement child and youth risk management strategies.

Together, these three elements provide a framework for the management and mitigation of past, present and future risks to children.

The 2020 Regulation promotes the protection of families and children under section 26 of the HR Act by detailing the eight matters which must be addressed in a risk management strategy. For example, item 4 of Schedule 1 requires policies and procedures for handling disclosures or suspicions of harm to children, including reporting guidelines. Such a requirement protects children by ensuring there are appropriate avenues for disclosure of harm as well as response mechanisms.

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

(a) the nature of the right

Section 25(a) of the HR Act provides, amongst other things, that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Section 25(b) provides that a person has the right not to have their reputation unlawfully attacked.

The right to privacy is broad, and protects the individual from all interferences and attacks upon their privacy and reputation. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation. Amendments in the 2020 Regulation require the disclosure of personal information, and allow for the sharing of information in certain defined circumstances.

The amendments in the 2020 Regulation will arguably limit the right to privacy in the following ways:

- by enabling the use of a person's digital photo that has been collected and kept for use under the *Transport Planning and Coordination Act 1994*, to be used under the WWC Act for a working with children card;
- by re-stating the scope of regulated employment captured by the blue card system to include persons engaged in a risk assessed role by an NDIS service provider, which includes:
 - key personnel roles of an entity providing NDIS supports or services to people with disability;

- roles for which the normal duties include the direct delivery of specified supports or specified services to a person with disability; and
- roles for which the normal duties are likely to require more than incidental contact with a person with disability; and
- by allowing a person under section 385(4)(d) of the WWC Act, to advise a person, who seeks the information through an online system, whether or not another person's working with children authority is in force.

(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 requirement to include a photograph on a working with children card is part of a complementary suite of changes to support the Government's 'No Card, No Start' policy introduced by the Amendment Act. The amendments to the Transport Regulation enable the chief executive of BCS to leverage off the digital photo library maintained by the Department of Transport and Main Roads (DTMR) to enable the inclusion of a photograph on a person's working with children card. This strengthens the identity check process and will also reduce the chance of a person fraudulently using another person's card.

The use of personal information for this purpose is consistent with the aims and the intention of the WWC Act—the promotion and protection of the rights, interests and wellbeing of children and young people.

Maintaining the scope of regulated employment to capture persons delivering specified NDIS supports and services outlines the circumstances in which a person will need to apply for a blue card, thereby requiring these individuals to provide personal information to BCS. Consistent with the objects of the WWC Act, this scope of screening ensures an established, rigorous screening process applies to additional NDIS providers and workers in order to safeguard the rights, interests and wellbeing of children with disability receiving supports and services.

The ability for a person to make a record of, or disclose certain confidential information about a person enables the chief executive of BCS, in limited circumstances, to disclose information about whether a person has a working with children authority in force.

In particular, it enables BCS to deliver an online validation tool which allows interested persons to confirm the validity of a person's blue card – for example, a parent who is seeking to engage another person running a regulated business to provide services to their child.

The ability for the chief executive to disclose this type of information increases safeguards for children and young people by enabling persons who would otherwise not be able to check the validity of a person's blue card to do so.

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

Limiting the right to privacy by allowing BCS to leverage off DTMR's photo library to include a photo on a person's working with children card achieves the purpose of providing stronger identity verification, reducing the chance of a person fraudulently using another person's card and ultimately, providing stronger safeguards for children.

The process is consistent with other licensing systems, for example, the high risk work licences issued under the *Work Health and Safety Act 2011* which also relies on DTMR's photo library.

Limiting the right to privacy by requiring certain persons engaged by NDIS service providers to undergo a 'blue card' check achieves the purposes of protecting children with disability by requiring persons to have their criminal history assessed and a determination made as to whether issuing a blue card to the person would be in the best interests of children.

Limiting the right to privacy by enabling persons under section 385(4)(d) of the WWC Act, to make a record of, or disclose information about whether a person has a working with children authority in force, facilitates the provision of information to interested persons (for example, parents engaging a regulated business such as a personal tutor for their child) to ensure that the person they are engaging has a valid working with children authority.

This achieves the purpose of promoting and protecting the rights, interests and wellbeing of children and young people by ensuring a person's working with children authority can be verified by interested persons, and minimises the fraudulent use of working with children cards.

(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 purposes discussed under (b) above, have been identified.

(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

The importance of the purpose of limiting the right to privacy (discussed under (b) above) outweighs the potential negative impact on an individual's right to privacy. The amendments appropriately balance ensuring the best interests of children are protected and providing sufficient safeguards to ameliorate the limitation on the right.

The amendments which facilitate the inclusion of a person's photo on their working with children card ensure the best interests of children are protected by strengthening the identity check process and reducing the chance of a person fraudulently using another person's card. The application process is supported by a privacy notice on the blue card application which highlights how the person's photograph will be used (and, in addition, there is no cost to an individual in having their photograph taken).

The amendments which facilitate the screening of persons engaged in a risk assessed role by an NDIS service provider, are safeguarded by the limitations under the WWC Act which provide that information obtained under the Act must not be used about a person, other than for the purposes of employment screening. Penalties also apply under the WWC Act in relation to the unauthorised disclosure of confidential information.

The amendments which facilitate the operation of the online validation tool, are safeguarded by requirements such that, in order to use the online validation tool, a person must have sufficient identifying details (including the blue card holder's name, card number and card expiry date) to be able to lodge a request. This provides an important protection against misuse. Further, the tool only indicates whether a person has a valid blue card or not – it does not disclose whether a person has a negative outcome or their criminal history.

Conclusion

In my opinion, I consider that the Working with Children (Risk Management and Screening) Regulation 2020 is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

YVETTE D'ATH MP
ATTORNEY-GENERAL
MINISTER FOR JUSTICE
LEADER OF THE HOUSE

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