

Disability Services (Fees) Amendment 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, the Honourable Coralee O'Rourke MP, Minister for Communities and Minister for Disability Services and Seniors, provide this human rights certificate with respect to the Disability Services (Fees) Amendment Regulation 2020 (the Amendment Regulation) made under the *Disability Services Act 2006*.

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 objective of the Amendment Regulation is to increase the application fees payable under the criminal history screening provisions of the Disability Services Regulation 2017, in accordance with the *Queensland Government Principles for Fees and Charges*.

The *Disability Services Act 2006* (the Act) protects and promotes the rights of people with disability. An object of the Act is to ensure services funded or delivered by the department are safe, accountable and responsive to the needs of people with disability, including by improving safeguards for people with disability from abuse, neglect and exploitation.

These statutory safeguards include screening requirements under Part 5 of the Act. Persons engaged or to be engaged at a service outlet by the department, a funded non-government service provider or an NDIS non-government service provider are required to undergo screening and obtain a positive notice (and associated yellow card).

The Act provides a prescribed fee is payable in relation to an application made under the Part 5 screening provisions. These fees are prescribed in sections 10, 11, 12 and 13 of the Disability Services Regulation 2017, and are payable in relation to the engagement of paid employees.

The *Queensland Government Principles for Fees and Charges* requires agencies to have processes in place to ensure that fees maintain their value over time. Where regular comprehensive review is not cost-effective and no specific indexation method has been approved by Cabinet Budget Review Committee, agencies should apply the Government indexation rate.

The Government indexation rate for 2020-21 is 1.8 percent, which is consistent with the 2020 Brisbane March CPI data.

Fee indexation is to be applied to prescribed fees for:

- application for a prescribed notice (clause 3)

- application to cancel negative notice (or negative exemption notice) (clause 3)
- application for replacement of a positive notice, positive notice card or positive exemption notice (clause 4), and
- application for an eligibility application (clause 3).

An application for a prescribed notice is an application made by a non-government service provider on behalf of a person engaged or seeking to be engaged at a service outlet.

An application to cancel negative notice (or negative exemption notice) is an application made by a person to cancel a notice that states that an application for a prescribed notice is refused. A negative notice is issued after an application for a prescribed notice refused.

An application for replacement of a positive notice, positive notice card or positive exemption notice is an application made by a person to replace a notice or card that has been lost or stolen. A positive notice is issued after an application for a prescribed notice is approved.

An application for eligibility application is an application made by a person, who has been declared a disqualified person, to be declared as eligible so that they can apply for a prescribed notice. This differs from cancelling a negative notice, as a disqualified person is prohibited from applying for a prescribed notice, and cannot apply to cancel a negative notice.

Fees are prescribed for the above applications in order to account for the costs to the department associated with worker screening (including the checking of criminal history information) and issuing physical ‘yellow cards’ (positive notice card).

Human Rights Issues

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

I consider the following human rights to be relevant to the Amendment Regulation:

- recognition and equality before the law (section 15 of the Human Rights Act),
- property rights (section 24 of the Human Rights Act)

In relation to the right of recognition and equality before the law, the Amendment Regulation engages this right as the fee increases will only apply to applications made after commencement of the Amendment Regulation.

In relation to property rights, the Amendment Regulation engages this right as the fee increases impose additional costs on a person’s ability to apply for, obtain and maintain a positive notice card.

The fee increases effected by the Amendment Regulation are minimal and in line with the Government indexation rate, which applies to fees and charges across Government. Under the *Queensland Government Principles for Fees and Charges*, the Government indexation rate is applied annually to ensure the value of Government fees and charges is not diminished over time.

Considering a similar increase occurs annually in relation to fees and charges across Government, and considering the current increase has been reduced in recognition of the impact of COVID-19, I am satisfied the fee indexation proposed in the Amendment Regulation does not appreciably limit the engaged rights.

On this basis, I am satisfied further analysis is not required.

Conclusion

I consider that the Disability Services (Fees) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it engages, but does not limit, human rights.

The Hon. Coralee O'Rourke
Minister for Communities, and Minister for Disability Services and Seniors

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