

Disability Services and Other Legislation (Fees) Amendment Regulation 2022

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 Craig Crawford MP, Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships, provide this human rights certificate with respect to the *Disability Services and Other Legislation (Fees) Amendment Regulation 2022* (Amendment Regulation) made under the *Disability Services Act 2006* (DS Act) and the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act).

In my opinion, the Amendment 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 Amendment Regulation updates the fees payable under the *Disability Services Regulation 2017* (DS Regulation) and the *Working with Children (Risk Management and Screening) Regulation 2020* (WWC Regulation), in accordance with the *Queensland Government Principles for Fees and Charges* (Principles).

The DS Act protects and promotes the rights of people with disability, including by ensuring people who pose an unacceptable risk of harm to people with disability cannot carry out particular work with people with disability. The DS Act requires that all persons engaged to carry out particular work with people with disability—either by a registered National Disability Insurance Scheme (NDIS) provider or through a service funded or delivered by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships—must undergo worker screening and obtain a disability worker screening clearance.

The DS Act provides a prescribed fee is payable for an application made under the Part 5 screening provisions. From 1 July 2022, the Amendment Regulation increases some application fees prescribed under Schedule 1 of the DS Regulation, and converts the remainder to fee units as required under the Principles.

The WWC Act promotes and protects the rights, interests and wellbeing of children and young people in Queensland, including by ensuring people cannot be engaged in child-related employment where it would not be in the best interests of children.

The WWC Act requires that persons employed in regulated employment or carrying on a particular business must undergo a working with children check and obtain a working with children clearance.

People who work with children with a disability must obtain both an NDIS clearance and

working with children clearance (i.e. a blue card). The joint application process allows a person to make one application and pay one combined fee for both checks.

Schedule 2 of the *Working with Children (Risk Management and Screening) Regulation 2020* (WWC Regulation) outlines the fees payable. Currently, a \$10 fee is payable for a joint application for an NDIS worker screening check and a blue card for a paid employee (Schedule 2, item 2(a), WWC Regulation).

From 1 July 2022, the Amendment Regulation provides for an increase of \$5.00 to the existing \$10.00 blue card fee associated with a joint application.

Item 5 (Schedule 2, WWC Regulation) prescribes a fee for the exchange of information between Blue Card Services (BCS) and the Queensland College of Teachers (QCT) and is not subject to indexation. Both the joint application fee, and the fee for the exchange of information between BCS and QCT, will remain in dollar amounts (rather than be converted to fee units).

The remaining fees prescribed under Schedule 2 of the WWC Regulation will be converted to fee units.

Human Rights Issues

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

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, I consider the following human right to be relevant to the Amendment Regulation.

- Property rights (section 24 of the HR Act).

In relation to property rights, I consider the Amendment Regulation limits this right as outlined below.

(a) The nature of the right

The right to property protects an individual's right to own property alone or in association with others, and requires that individuals not 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 increase of fees for an NDIS worker screening clearance, and for the blue card component of a joint application process, engages the right to property in s 24 of the HR Act and will likely amount to a de facto deprivation of the property.

(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 Amendment Regulation limits this right by increasing NDIS worker screening application fees, and fees for the blue card component of the joint application process, at rates other than the Government Indexation Rate. NDIS worker screening application fees are increased in accordance with a specific indexation method calculated to achieve cost recovery. This meets Queensland's obligation under the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme* (Intergovernmental Agreement) that NDIS worker screening fees must achieve cost recovery. The indexation method reflects the sustained high rate of applications, and the operational workload associated with processing applications, which has been experienced since introduction of nationally consistent NDIS worker screening in February 2021.

The blue card component of the joint application fee, which is currently a fixed cost not subject to indexation, is subject to a small increase under the Amendment Regulation. Increasing this fee reflects the costs of providing application processing services, and assists in meeting the costs of managing the interaction between the two screening systems associated with the joint application process.

More accurately reflecting the costs associated with the operation and interaction of the two screening systems in the applicable fee structures supports the timely and effective operation of those systems. The increase in fees ensures that both the NDIS worker screening unit and the working with children screening unit are appropriately resourced to deliver the services to their customers.

These increased costs for people engaged to work with people with disability (including children with disability), other than in a voluntary capacity, could impact their capacity to obtain a clearance and participant in relevant employment. This potential impact is consistent with a free and democratic society based on human dignity, equality and freedom, as it contributes to the operation of screening systems which protect and promote the rights of people with disability, and the rights, interests and wellbeing of children and young people.

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

The value of the NDIS worker screening application fee reflects operational experience since commencement of nationally consistent NDIS worker screening, and independent cost modelling to determine an appropriate fee structure to support cost recovery.

Similarly, the value of the joint application fee reflects operational experience with respect to the interaction between the two screening systems since commencement of nationally consistent NDIS worker screening and the associated introduction of the joint application process.

Accordingly, the fee increases contribute directly to achieving the purpose of supporting the timely and quality operation and interaction of the two screening systems, by helping ensure those systems' fee structures accurately reflect the associated operational costs and maintain their value over time.

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

In the case of the NDIS worker screening application fee, there are no less restrictive and reasonably available ways to achieve the purpose of achieving cost recovery. Indexing this fee other than in accordance with the specific indexation method would increase inconsistency between its value and the cost of operating NDIS worker screening. This would be inconsistent with Queensland's obligations under the Intergovernmental Agreement, and could adversely impact the disability worker screening system's timely and effective operation.

In the case of the blue card component of the joint application fee, there is similarly no less restrictive and reasonably available way to achieve the purpose of meeting the costs associated with managing the interaction between the two screening systems. The increase to the fee is minimal, and reflects the costs associated with issuing physical working with children cards and managing the associated interaction between the two screening systems. This fee is fixed and not otherwise subject to indexation.

Of note, the joint application process enables people engaged to work with children with disability to obtain a five-year working with children clearance (normally these clearances are only valid for three years) without also paying the full working with children check fee in addition to the disability worker screening fee.

Of note, the Amendment Regulation retains the existing position of not charging a fee for people engaged in a voluntary capacity under either screening system.

- (e) the balance between the importance of the purpose of the provisions 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.

Conclusion

I consider that the *Disability Services and Other Legislation (Fees) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* 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.

THE HONOURABLE CRAIG CRAWFORD MP
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