

Community Services Industry (Portable Long Service Leave) Bill 2019

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Grace Grace MP

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Grace Grace, Minister for Education and Minister for Industrial Relations, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the *Community Services Industry (Portable Long Service Leave) Bill 2019* (the Bill).

In my opinion, the amendments to be moved to the Bill are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The amendments during consideration in detail (ACiDs) will:

- amend to the *Industrial Relations Act 2016* (IR Act) to temporarily put on-hold Queensland public sector wages increases and modify agreement certification requirements;
- amend the *Youth Justice Act 1992* (YJ Act) and the *Bail Act 1980* to ensure that a child is remanded in custody where there is an unacceptable risk that the child will commit an offence that endangers the safety of the community, or the safety or welfare of a person, and that risk cannot be mitigated by appropriate conditions; and to streamline the current two-decision process for bail for children to one decision, and relocate the considerations relevant to a decision about bail so that they are clustered together;
- streamline the current decision process for bail for children;
- make minor amendments to the *Work Health and Safety Act 2011* (WHS Act) to streamline work health and safety (WHS) right of entry dispute resolution processes and increase particular penalties;
- amend the *Holidays Act 1983* to declare Friday, 14 August 2020 as a public holiday in the City of Brisbane and in those districts where the local government has requested that the day be observed as a public holiday in place of the district's show day public holiday;
- amend the *COVID-19 Emergency Response Act 2020* to insert new Part 8A to validate the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* and the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020* which were not tabled within 14 calendar days as required under the *COVID-19 Emergency Response Act 2020* and to provide that any acts, matters and things done (including documents

made) before commencement of these amendments are as valid as they would have been if the regulations had not ceased to have effect. Ordinarily, subordinate legislation is required to be tabled in the Legislative Assembly within 14 sitting days of notification (not calendar days); and

- amend the *Community Services Industry (Portable Long Service Leave) Bill 2019* by changing the commencement date for certain sections from 1 July 2020 to a date to be proclaimed.

Amendments to the Public Health Act 2005 and the Public Health Regulation 2018

On 29 January 2020, a public health emergency was declared under section 319 of the *Public Health Act 2005* (PH Act).

On 19 March 2020, the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* amended the Public Health Act to include powers for the Chief Health Officer to make public health directions to assist in containing, or to respond to, the spread of COVID-19 in the community.

Since 28 March 2020, a public health direction made by the Chief Health Officer has been in place requiring anyone arriving in Queensland from overseas to self-quarantine for a period of 14 days in a hotel or other premises nominated by an emergency officer appointed under the PH Act.

Mandatory quarantine requirements are enforced by emergency officers, with the support of the Australian Defence Force and Australian Border Force. Since the commencement of these restrictions, Queensland has covered the cost of providing mandatory quarantine, including accommodation, food, cleaning, health care, transport and security.

The amendments provide for a fee to be charged for quarantine. Initially, it is proposed that the fee will apply to international arrivals requiring mandatory quarantine. In future, a fee may be payable for other types of quarantine. The amendments also include a power for the fee to be waived. A hardship scheme will be available for vulnerable cohorts.

The hardship scheme will consider two separate cohorts – those facing financial hardship and vulnerable persons. Vulnerable persons may include those with English as a second language, pregnant women, those with newborn babies, unaccompanied minors, those with no home in Australia and those with significant health issues.

In addition to offering a hardship scheme, it is proposed to offer payment plans so that persons can enter into an agreement to repay the quarantine fee over time.

The fees, which will commence on 1 July 2020, are specified in the *Public Health Regulation 2018*. This will allow the fees to be adjusted if advice on the period of quarantine required for COVID-19 is re-assessed or if fees for other types of quarantine are charged in future.

Human Rights Issues

Human rights relevant to amendments to be moved to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights relevant to the amendments to the Bill and the WHS Act to be moved to the Bill are:

- peaceful assembly and freedom of association (section 22)
- property rights (section 24).
- right to privacy and reputation (section 25); and
- right to liberty and security of person (section 29).

These human rights are relevant to the amendments to the IR Act to temporarily put on-hold Queensland public sector wages increases and bargaining for industrial agreements and amendments to the WHS Act to streamline WHS right of entry dispute resolution processes and increase particular penalties.

The other amendments to be moved to the WHS Act are minor and administrative in nature and human rights are not engaged by these amendments. As such, no further analysis of these amendments under the HR Act is required.

In my opinion, the human right relevant to the amendments to the PH Act to be moved to the Bill are:

- freedom of movement (section 19)
- right to property (section 24)
- right to privacy and reputation (section 25)
- protection of families and children (section 26)
- right to health services (section 37)

In my opinion, the human rights relevant to the amendments to the YJ Act and the consequential amendments to the *Bail Act 1980* to be moved to the Bill are:

- freedom of movement (section 19)
- right to liberty and security of person (section 29)
- rights in criminal proceedings (section 32).

For the reasons outlined below, I am of the view that the ACiDs are compatible with each of these human rights.

The other amendments to the *COVID-19 Emergency Response Act 2020*, the *Holidays Act 1983*, the *Industrial Relations Act 2016* and the *Community Services Industry (Portable Long Service Leave) Bill 2019* do not affect or limit human rights under the *Human Rights Act 2019*. As such, no further analysis of these amendments under the *Human Rights Act 2019* is required. A full assessment of the human rights impact of the *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* and the *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020* is contained in the human rights certificates which accompanied the regulations when they were tabled in the Legislative Assembly.

Amendments to temporarily put on-hold Queensland public sector wages increases and to streamline agreement certification process (amendment 9)

Amendment 9 temporarily puts on-hold Queensland public sector wages increases and bargaining for industrial agreements.

The human right relevant to the proposal is:

- peaceful assembly and freedom of association (section 22).

The right to peaceful assembly upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The right entitles persons to gather intentionally and temporarily for a specific purpose and is considered essential for the public expression of a person's views and opinions. The protection of the right is limited to peaceful assemblies.

The freedom of association protects the rights of individuals to join together with others to formally pursue a common interest, such as political groups, sporting groups, professional clubs, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.

Freedom of association also protects collective action, and restrictions on this right will in turn also affect freedom of peaceful assembly which includes strikes, sit-ins and other gatherings or demonstrations which may form collective action. The United Nations Special Rapporteur on Freedom of Peaceful Assembly and Association has noted that “the right to strike is also an intrinsic corollary of the fundamental right of freedom of association. It is crucial for [individuals]... to assert collectively their rights in the workplace, including the right to just and favourable conditions of work... Moreover, protest action in relation to government social and economic policy, and against negative corporate practices, forms part of the basic civil liberties whose respect is essential for the meaningful exercise of trade union rights. This right enables [individuals] to engage with...governments on a more equal footing, and States have a positive obligation to protect this right, and a negative obligation not to interfere with its exercise.”¹

The amendments which put on-hold Queensland public sector wages increases, by extending the nominal expiry date of a nominally expired agreement, may limit right to peaceful assembly and freedom of association to the extent that they will effectively remove a person's right to engage in protected industrial action (under the *Industrial Relations Act 2016*) for the relevant 12-month period from 1 July 2020.

The purpose of the proposed amendments is to put ‘on hold’ public sector wages increases for a 12-month period commencing from the anniversary date of the relevant wage increase in the agreement, between 1 July 2020 and 30 June 2021 to respond to the employment impact of the COVID-19 health pandemic on everyday Queenslanders and on Queensland's fiscal position.

Responding to the COVID-19 health pandemic and ensuring job security in the Queensland public sector present significant social and fiscal challenges to the Queensland Government. Expenditure will be impacted by additional measures to support health services, businesses and

¹ United Nations Special Rapporteur on freedom of Peaceful Assembly and of Association, *Report on the Freedom of Peaceful Assembly and Association*, United Nations Governing Body of the International Labour Organisation, 329th session, 2017.

households, while significant reductions in revenues are expected from the downturn in economic activity, as well as the impact of policy announcements.

The proposed legislative amendment will make the necessary and temporary amendments to the operation of Chapter 4 of the IR Act to allow for a truncated and streamlined process for agreement certification, including changes to the requirements for balloting.

It is proposed that the Queensland Industrial Relations Commission (QIRC) will be required to amend or certify an agreement upon a consent application made by the Government and relevant parties to the agreement who have major or majority coverage of eligible employees, without the requirement to conduct a ballot of eligible employees or reference to other processes or considerations in chapter 4, including a no disadvantage test.

A worker subject to a current certified agreement (e.g. an agreement that has not expired) is not entitled to engage in any protected industrial action. The proposed amendments will defer a person's right to engage in protected industrial action for the 12-month period from the relevant date between 1 July 2020 and 20 June 2021 due to the agreement, otherwise past its nominal expiry date, being put into term.

As the right to strike is also an intrinsic corollary of the fundamental right of freedom of association, the proposed amendments will limit a person's right to their freedom of association for the relevant 12-month period between 1 July 2020 and 30 June 2021 where an agreement is put back into term.

The short term 'roll-over' of those agreements that would otherwise be the subject of continuing negotiations up to 30 June 2021 will re-apply the usual restriction on a worker's right to engage in protected industrial action while an agreement is inside the nominal term. This is considered appropriate as it will allow government and workers to concentrate efforts to respond to the significant economic and fiscal challenges created by the COVID-19 health pandemic. While the proposed amendment will limit a worker's right to engage in protected industrial action for a defined limited period, the amendment will not otherwise limit a person's rights to engage in peaceful assembly in their own time or otherwise participate in the functions of the union they have joined.

The proposed amendments will ensure that all public sector employees will be treated equally, regardless of the status of their current certified agreement, will provide certainty of industrial relations employment provisions and rights for government as the employer and for all employees and their union, and will assist the government to plan and allocate finite financial resources during this unprecedented period created by the COVID-19 pandemic.

Legislative amendment of the *Industrial Relations Act 2016* is required to defer wages increases provided for in certified agreements currently on foot; and also to make temporary changes to agreement certification requirements and processes to provide certainty and clarity for those industrial relations outcomes achieved through negotiations, and to 'roll-over' those agreements that would otherwise be the subject of continuing negotiations up to 30 June 2021.

The 12-month deferral of public sector salary increases that are scheduled during the 2020-21 financial is expected to result in a saving of \$443 million in 2020-21. This will assist the government to respond to the significant economic and fiscal challenges created by the COVID-19 health pandemic.

It is not possible to give effect to the deferral of wages increases other than by amendments to the IR Act. Even with the consent of the relevant public sector unions, legislative amendment of the IR Act to facilitate the deferrals and changes to certification processes to accommodate the public sector wages arrangements are still required.

There are no other relevant factors.

Streamlining dispute resolution processes (amendment 12)

Clauses 146 to 147 streamline right of entry dispute resolution processes by removing sections 141A and 142A of the WHS Act.

Right of entry entails that both Workplace Health and Safety Queensland Inspectors and WHS Entry Permit Holders (relevant union officials) may enter a workplace to inquire into suspected contraventions of the WHS Act. The aim is the safety of workers and the workplace. Part 7 of the WHS Act empowers a WHS entry permit holder to enter a workplace to inquire into suspected contraventions of WHS laws under certain circumstances, which serve as preconditions for entry (section 117). In summary, the preconditions are a reasonable suspicion of a contravention of the WHS Act at a workplace, and “relevant workers” working at that workplace.

A right of entry can be the subject of a dispute between a business and WHS entry permit holder. There are various dispute resolution mechanisms aimed at resolving these disputes. One mechanism was inserted into the WHS Act in 2017, namely the ability of a WHS inspector to issue a section 141A direction stating whether, in the inspector’s opinion, a right of entry exists. The aim of this insertion was to expedite dispute resolution. However, the practical experience has been that section 141A is either unnecessary to resolve disputes or complicating to the process of dispute resolution. It is therefore proposed to remove section 141A, and the associated section 142A. This will streamline and simplify the dispute resolution processes, returning to the pre-2017 scheme that is consistent with national model WHS laws.

The human rights that are relevant to the streamlining dispute resolution processes amendments are:

- Peaceful assembly and freedom of association (section 22)
- Right to privacy and reputation (section 25); and
- Right to liberty and security of person (section 29).

Peaceful assembly and freedom of association (section 22)

The HR Act section 22(3) provides: “Every person has the right to freedom of association with others, including the right to form and join trade unions”. One precondition for entry to a worksite by a WHS entry permit holder is that the suspected contravention must relate to a “relevant worker”, being a worker who is a member or is eligible to be a member of the union that the WHS entry permit holder represents (sections 116 and 117(1)). Some disputes as to entry between a business and a WHS entry permit holder relate to this precondition. In streamlining dispute resolution, the amendments do not limit the right to freedom of association. There is therefore no need to undertake further assessment under section 13 of the HR Act.

Right to privacy and reputation (section 25)

The HR Act section 25(a) provides that a person has the right “not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with”. Insofar as unauthorised entry upon private property constitutes a trespass, the right to privacy entails the right to exclude others from the relevant premises (*Coco v The Queen* (1994) 179 CLR 427 at 435-6). Part 7 of the WHS Act limits this right in certain circumstances, as noted above. This is done to further the right to security of the person (see below). The amendments do not further limit the current relationship between rights to privacy and security struck by the Act, and Part 7 of the Act was introduced prior to the commencement of the HR Act and therefore there is no need to undertake further assessment under section 13 of the HR Act.

Right to liberty and security of person (section 29)

The HR Act section 29(1) provides that “every person has the right to liberty and security”. The central purpose of the WHS Act is to secure the health and safety of workers and workplaces (section 3). Part 7 gives effect to this purpose by allowing WHS entry permit holders to enquire into suspected contraventions of the WHS Act. Therefore, the right to security of the person is protected and promoted by the WHS Act

WHS Act penalty increases (amendment 12)

In the context of right of entry under Part 7 of the WHS, various prohibited conduct is set out in Division 7. Insofar as WHSQ inspectors may assist in right of entry disputes, offences against inspectors under Part 9, Division 6 are also relevant.

In this context, clauses 148 to 155 propose to increase penalties for:

- impermissibly refusing or delaying (s144) or hindering or obstructing (s145) WHS entry permit holders;
- WHS entry permit holders delaying, hindering or obstructing any person or disrupting work at a workplace (section 146);
- a person making a misrepresentation about a thing authorised by Part 7 (section 147);
- a person using or disclosing information or a document obtained under Part 7 (Division 2) that is unauthorised (section 148);
- hindering or obstructing an inspector (section 188);
- impersonating an inspector (section 189); and
- assaulting, threatening or intimidating an inspector (section 190).

The penalty for contravening sections 144 to 148, 188 and 189 is currently 100 penalty units (PU). The penalty for contravening section 190 is currently 500 PU. As per the *Penalties and Sentences Act 1992*, section 5(1)(d), 1 PU under the WHS Act is equivalent to \$100.

In different ways, the above prohibited conduct would limit various rights and the relationships between them established in the WHS Act. As part of exercising functions under Part 7, both WHS entry permit holders and WHSQ inspectors have in recent operational experience encountered persistent obstruction that evidences the current penalties are not having a deterrent effect.

It is proposed to change the penalties in Part 7, Division 7 of the WHS Act by increasing the maximum PU for sections 144 to 148 from 100 PU to 500 PU. An analogous penalty for this

PU amount can be found in legislation that is already in force in Queensland: Obstructing an authorised person under section 485 of the *Water Supply (Safety and reliability) Act 2008* – 500 PU. Similarly, it is proposed to amend the maximum PU for sections 188 and 189 of the WHS Act from 100 PU to 500 PU. Further, section 190 (currently 500 PU) is proposed to be increased to 1000 PU. An analogous penalty for this amount can be found in legislation that is already in force in Queensland: Obstructing an inspector under section 182 of the *Fisheries Act 1994* – 1000 PU. Despite these proposed increases, equivalent Western Australian laws will remain the highest in Australia.

In addition to the rights set out above under the heading “Streamlining dispute resolution processes”, the human rights that are relevant to the penalty increases proposed are:

- Property rights (section 24).

Property rights (section 24)

This right protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. As any fine will be subject to a hearing before a court, it is considered that increasing the penalties for these sections, in the circumstances, does not impermissibly limit property rights. The increases aim to better protect and reflect the importance of the rights to freedom of association, privacy and security of the person provided by the WHS Act. Accordingly, no further assessment under section 13 of the HR Act is required.

Amending and streamlining youth bail decisions (amendment 13)

Freedom of movement (section 19)

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The State must not act in a way that unduly restricts the freedom of movement, though it need not take positive steps to promote the freedom of movement. This right may be limited, however, where it is necessary to protect the safety of individuals from potential criminal offences (e.g. by imprisoning offenders). Such a limitation is consistent with a democratic society because the limitation occurs only at the direction of the courts, and where there is no other way to ensure the safety of the community. Additionally, the process for making a decision to deprive a child of his or her liberty is clear and transparent, and subject to review.

The ACiDs are the least restrictive way to effectively achieve the policy intent of preserving the safety of individuals in the community where there is a particular unacceptable risk which cannot otherwise be mitigated. Where a child is refused bail, the Department of Youth Justice (DYJ) and its government and non-government partners work to identify options that may address the reasons for the refusal, with a view to a possible further application for bail. These include alternative accommodation options, and programs or interventions to address problem behaviours. Children will only be held in custody on remand if they are deemed to pose an unacceptable risk to community safety.

The limitation of the human right is considered appropriate and justified, given the seriousness of the risk to individuals in the community that triggers the limitation. On balance, the

importance of preserving people's safety outweighs the negative impact of the limitation of a child's right to freedom of movement.

Right to liberty and security of person (section 29)

All individuals are entitled to liberty of the person, including the right not to be arrested or detained except in accordance with the law. Conversely, all reasonable steps must be taken to ensure the security of those who are in danger of physical harm. The right to security applies independently of the right to liberty and applies whether or not an individual is detained.

Rights to liberty and security may be limited where necessary to protect the safety of individuals in the community. This is consistent with a democratic society because the limitation will only occur in circumstances where there is no other way to ensure the safety of the community.

The limitation to the right to liberty in the ACiDs helps to protect the security of individuals in the community by preventing prospective offences where there is a particular unacceptable risk which cannot otherwise be mitigated. The proposed ACiDs are the least restrictive way to effectively achieve this policy intent. As described above, DYJ and its partners work to identify options that may address the reasons for a refusal of bail, and the decision-making process is transparent and subject to review.

The introduction of these ACiDs is considered appropriate and justified, given the seriousness of the risk to individuals in the community that triggers the limitation. On balance, the importance of preserving people's safety outweighs the negative impact of the limitation of a child's right to liberty. The child will only be held in custody on remand if they are deemed to pose an unacceptable risk to community safety.

Additionally, the process for making a decision to deprive a child of his or her liberty is clear and transparent, and subject to review.

Rights in criminal proceedings (section 32)

The HR Act explicitly protects a number of rights in criminal proceedings, including the right to have adequate time and facilities to prepare the person's defence and to communicate with a lawyer. There may be a view that the ACiDs limit this right, in that if a child is detained, it is acknowledged that the facilities available to the child and their ability to communicate with their lawyer is impacted to some degree.

Rights in criminal proceedings may be limited where necessary to protect the safety of individuals in the community. This is consistent with a democratic society because the limitation will only occur in circumstances where there is no other way to ensure the safety of the community.

The limitation of the rights in the ACiDs is the least restrictive way to effectively achieve the policy intent of preserving the safety of individuals in the community where there is a particular unacceptable risk which cannot otherwise be mitigated. As described above, DYJ and its partners work to identify options that may address the reasons for a refusal of bail, and the decision-making process is transparent and subject to review. DYJ remains subject to the requirement in section 275 of the YJ Act to help children in detention to gain access to lawyers when a request is made to do so.

The introduction of these ACiDs is considered appropriate and justified, given the seriousness of the risk to individuals in the community that triggers the limitation. On balance, the importance of preserving people's safety outweighs the negative impact of the potential limitation of a child's rights in criminal proceedings.

There are no other relevant factors.

Amendments to the Public Health Act 2005 and the Public Health Regulation 2018

(a) the nature of the right

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. The right means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live.

The requirement to quarantine potentially limits the human right for freedom of movement to the extent that the movements of people wishing to re-enter Queensland will be hindered, even though only for a set period.

The amendments only provide for a fee to be charged for the costs of mandatory quarantine, but do not impose any requirement to quarantine. Therefore, the amendments themselves do not limit a person's freedom of movement beyond the requirements already in place under a public health direction made by the Chief Health Officer about quarantine and any lawful requirement made by an emergency officer under the PH Act to implement the direction. As such, this right is not limited by the amendments.

Right to property

Every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. The requirement to quarantine potentially limits the human right to property to the extent that the proposed policy will require payment of monies.

The amendments allow for a fee to be charged for the costs of mandatory quarantine and therefore, potentially limit this human right.

Right to privacy and reputation

Every person has the right to their privacy, family, home and correspondence and must not be unlawfully or arbitrarily interfered with. The right to privacy is subject to an internal limitation in that it applies only to interferences with privacy that are 'unlawful' or 'arbitrary,' including interferences that are unreasonable, unnecessary or disproportionate. Further, the right to privacy can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The requirement to quarantine potentially limits the human right to privacy to the extent that the person, by virtue of being placed in quarantine in nominated premises, may feel their privacy, family and/or home may be affected.

The amendments only provide for a fee to be charged for the costs of mandatory quarantine, but do not impose any requirement to quarantine. Therefore, the amendments themselves do not limit a person's right to privacy and reputation beyond the requirements already in place under a public health direction made by the Chief Health Officer about quarantine and any lawful requirement made by an emergency officer under the PH Act to implement the direction. As such, these rights are not limited by the amendments.

Protection of families and children

Every family has the right to be recognised as the fundamental unit of society and is entitled to protection. The requirement to quarantine potentially limits the human right to privacy to the extent that the accommodation limits may separate or impact upon certain members of the family unit.

The amendments only provide for a fee to be charged for the costs of mandatory quarantine, but do not impose any requirement to quarantine. Therefore, the amendments themselves do not impact on the protection of families and children, beyond the requirements already in place under a public health direction made by the Chief Health Officer about quarantine and any lawful requirement made by an emergency officer under the PH Act to implement the direction. As such, this right is not limited by the amendments.

Right to health services

Every person has the right to access health services without discrimination and must not be refused necessary emergency medical treatment.

The amendments do not limit or place any impediments on a person's right to receive health services. While undertaking mandatory quarantine, a person will be provided with the health services they require. As such, this right is not limited by the amendments.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The object of the PH Act is to protect and promote the health of the Queensland public. Section 7 of the PH Act provides that the object of the PH Act is mainly achieved by:

- preventing, controlling and reducing risks to public health;
- providing for the identification of, and response to, notifiable conditions; and
- responding to public health emergencies.

The requirement for those returning from overseas to pay a fee for quarantine reflects the fact that they are receiving the benefit of the services provided by the hotels and locations in which they are quarantined, including food and cleaning services being provided. The government is providing these services because they are necessary to enable people returning from overseas to comply with quarantine requirements and meet their responsibility to protect their families and the community from the spread of COVID-19. It is considered appropriate for those receiving the benefit of these services to contribute to these costs.

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered a fee should be charged to ensure

that costs are born primarily by those receiving the benefits of the services provided rather than by the community as a whole. This will ensure that the costs of quarantine are equitably distributed and will encourage persons who are overseas to carefully consider how and when they will return to Queensland.

The fee is not being imposed arbitrarily. Case authority suggests that ‘arbitrary’ in the human rights context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. The fee cannot be considered capricious, unpredictable or unreasonable, as it is directly related and proportionate to the legitimate aim of ensuring that the costs of mandatory quarantine are distributed fairly and are payable primarily by those who receive the benefits of the government services provided.

There may be instances where charging a fee could be considered unjust because it would impose a hardship on certain classes of individuals. To mitigate this concern, the Bill provides for all or part of the fee to be waived in certain circumstances. As discussed further below, the chief executive will have the discretion to waive all or part of a fee for persons who are vulnerable or facing financial hardship. The hardship scheme will be applied in a way that is consistent, reasonable and proportionate.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Any limit on human rights arising from imposing a fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the costs associated with increasing international arrivals returning to Australia. Given the continued growth of COVID-19 cases globally and advice that international border restrictions are likely to be one of the last restrictions to be lifted, it is considered necessary to require payment of a fee for mandatory quarantine.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no alternative or less restrictive way to achieve the purpose of the Bill. The amendments include a provision to allow the fee for quarantine, or part of the fee, to be waived by the chief executive. This will allow a hardship scheme to be available for vulnerable cohorts. The hardship scheme will consider two separate cohorts – those facing financial hardship and vulnerable persons. Vulnerable persons may include those with English as a second language, pregnant women, those with newborn babies, unaccompanied minors, those with no home in Australia and those with significant health issues. The inclusion of a hardship scheme is considered to be an appropriate way to ensure that human rights are not unreasonably limited.

In addition to offering a hardship scheme, payment plans will be offered so that persons can enter into an agreement to repay the quarantine fee over time. This will allow people to pay the fee for quarantine over time, without having to pay the amount upfront, which is considered to also reduce any limitation on human rights.

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

A significant proportion of cases of COVID-19 in Australia originated from overseas. Given this, it is important that Australia continue its policy of requiring mandatory quarantine for overseas arrivals, as this has provided significant protection to the Australian community and helped to lower the rate of transmission compared to other countries. The requirement for those returning from overseas to pay a fee for quarantine reflects the fact that they are receiving the benefit of the services provided by the hotels in which they are quarantined, including food and cleaning services being provided. The inclusion of a hardship scheme and payment plans is considered to ameliorate the potential impact on human rights for vulnerable people and those facing financial hardship.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the ACiDs to be moved to the *Community Services Industry (Portable Long Service Leave) Bill 2019* are compatible with human rights because they do not limit a human right in accordance with section 13 of the Act.

The Honourable Grace Grace
MINISTER FOR EDUCATION AND MINISTER FOR INDUSTRIAL RELATIONS

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