

Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services

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

In accordance with section 38 of the HRA, I, Nikki Boyd, Minister for Fire and Disaster Recovery and Minister for Corrective Services make this statement of compatibility with respect to the amendments proposed to be moved during consideration in detail of the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

Corrective Services Act 2006 amendments

The objectives of the amendments relating to the *Corrective Services Act 2006* (CSA) are to:

- respond to a recommendation made by the majority of the Community Safety and Legal Affairs Committee (the Committee) regarding new section 340AA by clarifying the operation of this provision,
- validate past parole decisions made by the Parole Board Queensland (the Board) that were made using a ‘subject to’ process, and
- validate past decisions made by the Board which did not meet the quorum requirements in the CSA.

Queensland Civil and Administrative Tribunal Act 2009 amendments

The objective of the amendments to the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) is to validate the exercise of jurisdiction by a supplementary member of the Queensland Civil and Administrative Tribunal (QCAT) who failed to take or make the prescribed oath before performing a function of the office of supplementary member during the period 1 February 2017 to 15 May 2024.

Human Rights issues

Human rights relevant to the Bill (Part 2, Division 2 and Part 3 of the HRA)

CSA amendments

In my opinion, the amendments to clause 32 are of a technical nature and do not raise any additional human rights considerations under the HRA.

The remaining amendments engage human rights and further considerations to determine compatibility are outlined below.

Human rights engaged by the amendments include:

- the right to freedom of movement (section 19 of the HRA) (promoted only),
- the right to protection of families and children (section 26(1) of the HRA) (promoted only),
- the right to liberty (section 29(3) of the HRA) (promoted only), and
- the right to a fair hearing (section 31 of the HRA).

Right to a fair hearing (section 31 of the HRA)

The right to a fair hearing is limited by the amendment, only so far as the amendment removes a prisoner's ability to seek a judicial review on the basis that a parole decision subject to additional requirements or conditions may have been invalid. The validating amendment applies to decisions by the Board to grant a parole order application or re-release a prisoner from a suspended parole order subject to certain conditions being satisfied (conditional parole decisions). However, in the event that the final parole decision was adverse, the prisoner still retained their ability to seek a judicial review.

The extent of any limitations is narrowed only to grant conditional parole decisions made between 26 May 2017 and assent of the Bill, and does not interfere with other parole decisions, including a refusal of parole.

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HRA)

(a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal.

(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 amendment maximises the protection of the community through ensuring the lawfulness of conditional parole decisions and thus supporting the rehabilitation of prisoners. It also maximises protection of the community by ensuring the lawfulness of supervision of prisoners released to parole in the community.

The amendment promotes the right to protection of families and children for released prisoners who are the parent or guardian of a child, as it prevents the potential for a prisoner to be returned to custody as a result of them being in the community on an invalid parole order. Such return to custody would be a serious disruption to the prisoner's family unit (in the instance they are living as part of a family unit).

The right to liberty and right to freedom of movement are also promoted as the validating of past conditional parole decisions aims to ensure prisoners who were released on a parole order which would otherwise be considered invalid are able to lawfully remain in the community and move freely within Queensland.

(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

Validating conditional parole decisions inherently requires the removal of one avenue for judicial review. Without this limitation, the decisions cannot be made lawful, undermining the proper functioning of parole decision making and its support of prisoner rehabilitation. Further, validating conditional parole decisions does not otherwise interfere with a prisoner's ability to commence a judicial review with respect to any decision that refuses parole.

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

A number of safeguards have been built into the Bill to ensure that the limits on human rights are the least necessary to achieve the purpose of ensuring the validity of past conditional parole decisions. These safeguards include:

- the prisoner retains the right to judicial review of the decision on other grounds, and
- the validating provision will not impact decisions where a court has directed the Board to remake its conditional parole decisions.

There are no other reasonably available alternatives that would limit human rights to a lesser extent while still achieving the purposes of the amendment.

(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

On one side of the scales, it is accepted that validating past conditional parole decisions removes the right of the prisoner to request a judicial review on the basis that the decision was an error of law and invalid and therefore impacts the prisoner's right to a fair hearing. It is further acknowledged that such a limitation must be strongly justified to uphold fair processes for individuals subject to administrative decision making.

On the other side, the amendment will ensure the validity of conditional parole decisions to which the prisoner consented, believed to have been made lawfully and aided in their reintegration into the community. In turn, the amendment promotes the right to freedom of movement, the right to protection of families and children and the right to liberty.

The amendment ensures the provision is appropriately limited to only limit the right in so far as is necessary to achieve the purpose. There are also other safeguards included in the amendment to further narrow these limitations.

For these reasons, the limitations are considered justified, and the amendment is compatible with human rights.

(f) any other relevant factors

The Board has ceased making conditional parole decisions.

QCAT Act amendments

The human rights under the HRA engaged by the amendments are:

- the right to a fair hearing (section 31 of the HRA).

The amendments to the QCAT Act may limit the right to a fair hearing under section 31 of the HR Act; however, I consider that the limitation is only to the extent that is reasonable and demonstrably justifiable for the reasons set out below.

The right to a fair hearing

(a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. The concept of a fair hearing applies to both criminal and civil proceedings and guarantees that such proceedings must be heard and decided by a competent, impartial and independent court or tribunal. What constitutes a fair hearing depends on the facts of the case and requires a weighing of a number of public interest factors.

Broadly, this right requires ensuring a party has a reasonable opportunity to put their case in conditions that do not place them at a substantial disadvantage compared to the other party, and also embraces principles of unimpeded access to courts and the justice system that can be said to be operating in a way that is predictable to the parties. The concept of a fair hearing is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

(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 amendments to the QCAT Act may limit this right by retrospectively validating the decisions and actions of supplementary members who did not make or take the oath of office, as required under the QCAT Act.

While those supplementary members did not make or take the oath of office, they were otherwise eligible for appointment as supplementary members. Additionally, the amendments do not limit a person's right to challenge their exercise of jurisdiction on any other grounds.

The purpose of the limitation is to provide certainty to individuals and the justice system as a whole by ensuring the validity of any decisions made by the relevant supplementary

members. This ensures that the justice system can be said to be operating in a way that is predictable to the parties which is consistent with the right to a fair hearing.

On balance, taking into account the nature and extent of the limitation, it is considered that the importance of providing certainty to individuals and the justice system as a whole outweighs any limitation on the right to a fair hearing imposed by the amendments to the QCAT Act.

(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

The amendments to the QCAT Act in the Bill are of a minor, clarifying and correcting nature, to address an administrative oversight.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments.

(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

The amendments adopt an appropriate balance of competing rights to a fair hearing. The benefits in providing certainty to parties about the predictability of the justice system promote the right to a fair hearing and fulfil the purposes of the amendments, outweighing any possible negative impact on the right to a fair hearing identified.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the amendments to the Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024 are compatible with human rights under the HRA because they limit human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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