

Disability Services and Other Legislation (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, Craig Crawford, 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 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

On 3 May 2018, the Premier of Queensland signed the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme* (IGA), committing Queensland to implement nationally consistent National Disability Insurance Scheme (NDIS) worker screening to enhance regulatory safeguards and protect people with disability who receive NDIS supports or services from risk of harm. Under the IGA, all states and territories have agreed to set application fees on a cost-recovery basis where possible.

The *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020* (Amendment Act) will implement nationally consistent NDIS worker screening and continue a State screening system for disability services outside the jurisdiction of the NDIS Quality and Safeguards Commission (NDIS Commission) in Queensland.

The objective of the Amendment Regulation is to support the Amendment Act by prescribing the fees for NDIS worker screening applications and continue fees for the State disability worker screening system.

It also makes necessary amendments to prescribe a reduced working with children check (WWCC) application fee for a person who seeks to combine their WWCC application with an application for a NDIS or State clearance (collectively termed a disability clearance) (a combined application). It also enables a person who already holds a disability clearance, or has made an application for a disability clearance that has not been decided yet, to make a WWCC application at the cost of the combined application fee. This is because people working with children with disability will require both an NDIS clearance and a blue card. In particular, the combined application process will allow a person to make one application and pay one combined fee for both checks.

Throughout the Human Rights Certificate, the restructuring and increase to fees achieved by the Amendment Regulation is referred to collectively as the ‘revised fee structure’.

Human Rights Issues

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

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- Property rights (section 24 of the HR Act)

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

Property rights

(a) nature of the right

Property rights protect the right of all persons to own property (alone or with others) and provides that people have a right not to 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 right to property is limited by the revised fee structure as requiring additional fees to work in the disability sector, and may have the effect of depriving a person of additional money (comparative to the way current fees are structured for a person who delivers services to people with disability). This increase in fees may particularly impact Aboriginal people and Torres Strait Islander people and those from lower socio-economic backgrounds.

(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 limitation on the right to property is for the purposes of achieving the revised fee structure to give effect to Queensland’s new disability worker screening system.

The fees paid by an applicant for a NDIS or State disability clearance funds the cost associated with screening the person to ensure they do not pose as an unacceptable risk of harm to people with disability. This is a standard process for how an employment screening system operates in Queensland; and is justified to ensure people with disability are receiving safe supports and services from workers who have been appropriately screened.

If a person pays the fee and is cleared to work, they are issued with a clearance card which is an enabler for obtaining and maintaining employment. In particular, NDIS clearances are portable across roles and jurisdictions in the NDIS and remain valid for a longer period of time compared the previous yellow card (five years instead of three).

The proposed fee for WWCC applications provides for basic cost recovery of the blue card production costs.

The provision of important government services in a fiscally responsible way is a proper purpose consistent with a free and democratic society.

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

The revised fee structure will ensure that the provision of these government services is appropriately resourced and budgeted to reflect the cost of their delivery, which in turn ensures that services can continue to be delivered to Queensland individuals, including the proper functioning of the disability worker screening and blue card systems which provide important safeguards.

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

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

The impacts of the restructuring and increases to fees may impact access to employment or business opportunities and, in particular, disproportionately impact on Aboriginal people and Torres Strait Islander people. This may have negative impacts on already thin markets for disability services in rural and remote areas and can increase the risk of unsafe supports or services for people with disability. It may also exacerbate existing problems with sourcing culturally appropriate supports.

However, these impacts are mitigated by a range of factors. A number of considerations have been taken into account to ensure the fees being prescribed are most reasonable for the circumstances. The fees have been set consistent with the IGA, to achieve cost recovery based on anticipated application volumes. It is noted that a five year validity period means the fees charged are less than current fees when considered on an annualised basis.

Fees for the State disability worker screening check will remain consistent with current fees (subject to ongoing application of the Queensland Government fees and charges indexation policy). Applications by volunteers in both the disability worker screening and blue card systems will continue to be processed free of charge.

There is also significant work being undertaken more generally in the NDIS to build the capacity of the system to support both Aboriginal people and Torres Strait Islander people to participate in the NDIS; and to build the capacity of service providers to participate in the NDIS market, particularly in Aboriginal communities, Torres Strait Islander communities and in rural and remote communities.

For example, there is an Aboriginal and Torres Strait Islander Strategy and Action Plan being developed. The Strategy and Action Plan will play a significant role in empowering Aboriginal people and Torres Strait Islander people to engage with the disability worker screening system

in Queensland. This will include clear communication about screening requirements, fees and how to participate in the process.

(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

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.

(f) any other relevant factors

Clause 50 of the IGA requires all states and territories to set application fees on a cost recovery basis. Clear messaging will be disseminated to the disability sector leading up to and during the roll out of the new NDIS worker screening system in Queensland to ensure all stakeholders including are aware of the changes. There will also be supports available to assist the sector to transition to the new system.

The Queensland Government Principles for Fees and Charges requires departments to regularly review their fees and charges to ensure they remain appropriate and that the cost structure underlying the amount of the fee or charge remains accurate and efficient.

Conclusion

I consider that the *Disability Services and Other Legislation (Fees) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with certain human rights, but those limitations are reasonably justified in a free and democratic society based on human dignity, equality and freedom.

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