

Disability Services (Fees) Amendment Regulation 2023

Human Rights Certificate

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

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Craig Crawford MP, Minister for Child Safety and Minister for Seniors and Disability Services, provide this human rights certificate with respect to the *Disability Services (Fees) Amendment Regulation 2023* (Amendment Regulation) made under the *Disability Services Act 2006* (Disability Services Act).

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* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of Subordinate Legislation

The Amendment Regulation updates the fees payable under the *Disability Services Regulation 2017*, in accordance with the Queensland Government Principles for Fees and Charges (the Principles).

The Disability Services 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 Disability Services Act achieves this by requiring 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 an appropriate worker screening clearance.

The Disability Services Act provides a prescribed fee is payable for an application for a worker screening check. From 1 July 2023, the Amendment Regulation increases the application fees prescribed under Schedule 1 of the Disability Services Regulation for an NDIS worker screening clearance.

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 Human Rights Act. In my opinion, I consider the following human right to be relevant to the Amendment Regulation.

- Property Rights (section 24 of the Human Rights Act)

In relation to property rights, I consider the Amendment Regulation engages 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 are not arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintain 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 Human Rights 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 the 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 engages the right to property in section 24 of the Human Rights Act, in that it requires the payment of a fee in order for a person to be engaged in particular employment.

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 the right to property by increasing the NDIS worker screening application fees at a rate other than the Government Indexation Rate 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* that NDIS worker screening fees must achieve cost recovery. The indexation method reflects the operational workload associated with processing applications at the sustained high rate of applications experienced since introduction of nationally consistent NDIS worker screening in February 2021, and in light of further experience since the introduction of NDIS worker screening as to the scale of effort required to maintain an effective and timely screening system in accordance with Queensland's obligations.

The increase in fees ensures that the NDIS worker screening unit is appropriately resourced to deliver services to applicants. However, this in turn increases the cost for people engaged to work with people with disability, other than in a voluntary capacity, and could impact their capacity to obtain a clearance and participate 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 sustainable operation of a robust screening system which protects and promotes the rights of people with disability.

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

The value of the NDIS worker screening application fee has been set based on cost modelling undertaken to determine an appropriate fee structure to support cost recovery of NDIS worker screening clearance processes.

Accordingly, the fee increases contribute directly to achieving the purpose of supporting the timely and quality operation of the NDIS worker screening system, by helping to ensure the system's fee structure accurately reflects the associated operational costs and maintains its value over time.

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

The increase to the NDIS worker screening application fee represents the least restrictive and only reasonably available way to achieve the purpose of cost recovery. Indexing this fee other than in accordance with the specific indexation method used would introduce inconsistency between its value and the cost of operating the NDIS worker screening system. Any other method of indexation would be inconsistent with Queensland's obligations under the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme* and could adversely impact the sustainable and effective operation of the NDIS worker screening system in Queensland.

Of note, the Amendment Regulation retains the existing position of not charging a fee for people engaged in a voluntary capacity under the NDIS worker 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 limitations on the right to property.

Conclusion

I consider that the *Disability Services (Fees) Amendment Regulation 2023* 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
MINISTER FOR CHILD SAFETY
MINISTER FOR SENIORS AND DISABILITY SERVICES

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