

Parliamentary Service By-law 2023

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, the Honourable Annastacia Palaszczuk MP, Premier and Minister for the Olympic and Paralympic Games, provide this human rights certificate with respect to the *Parliamentary Service By-law 2023* made under the *Parliamentary Service Act 1988*.

In my opinion, the *Parliamentary Service By-law 2023*, 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

The *Parliamentary Service By-law 2023* is made by the Speaker of the Legislative Assembly of Queensland (the Speaker) under the *Parliamentary Service Act 1988* (the Act).

Section 50 of the Act provides for the Speaker, and certain authorised officers, to issue directions as to the behaviour, demeanour and conduct of persons (other than members of the Legislative Assembly) entering or upon the parliamentary precinct in the form of by-laws.

The *Parliamentary Service By-law 2023* (the By-law) is remaking the *Parliamentary Service By-law 2013* in accordance with the requirements of the *Statutory Instruments Act 1992*.

The By-law is important for protecting the safety of persons attending the parliamentary precinct, members of the Legislative Assembly and parliamentary staff, and ensuring that members of the Legislative Assembly are free to perform their duties without interference.

Human Rights Issues

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

In my opinion, the rights under the *Human Rights Act 2019* (the HR Act) which are relevant to the By-law include:

- Freedom of expression (section 21)
- Peaceful assembly and freedom of association (22)
- Taking part in public life (section 23)
- Privacy and reputation (section 25).

Freedom of expression and peaceful assembly

Clauses 10 and 11 limit a person's right to freedom of expression and peaceful assembly as they pertain to restrictions on the display of political statements on the precinct. Political statements on clothing, banners or signs must not be displayed on the precinct; or attached to

a building, fence or other structure without the permission of the Speaker or an authorised officer.

Taking part in public life

In accordance with section 50 of the Act, if a person fails to comply with a direction of the Speaker, the Clerk of the Parliament (the Clerk) or an authorised officer, as stipulated in the By-law, a person may no longer be entitled to enter or be on the parliamentary precinct. This limits a person's right to take part in public life insofar as it restricts their ability to observe, or where relevant participate, in the proceedings of the Legislative Assembly or its committees.

Privacy

Clauses 5 and 7 limit a person's right to privacy. Clause 5 requires persons entering the precinct to provide certain personal information to an authorised officer for the purpose of issuing an entry pass to the precinct. Clause 7 provides for authorised officers to conduct scans and searches of persons and their property.

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

Freedom of expression (section 21) and Peaceful assembly and freedom of association (section 22)

(a) the nature of the right

Section 21 of the HR Act states that every person has the right to an opinion without interference; and that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds whether verbally, in writing, in print, by way of art or in another medium.

Section 22 of the HR Act states that every person has the right of peaceful assembly.

Clause 10 limits these rights as it provides a direction that if a person enters the parliamentary precinct wearing an item of clothing that displays a political statement, which cannot reasonably be placed in the custody of an authorised officer, the person must cover or obscure the political statement and not uncover or reveal the political statement while on the precinct.

Clause 11 also limits these rights as it provides a direction that a person must not, without the permission of the Speaker or an authorised officer, display a political statement on a banner, sign or other thing; or attach a banner, sign or other thing displaying a political statement or other matter to a building, fence or other structure on the precinct.

(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 purpose of limiting these rights, which currently exists under the *Parliamentary Service By-law 2013*, is to ensure members of the Legislative Assembly are free to perform their duties without interference.

The Queensland Parliament has the inherent power to determine its own procedures. Having evolved through centuries of parliamentary law, the Parliament's right to exclusive cognisance

over its own affairs is enshrined in the *Parliament of Queensland Act 2001* (POQA), which sets out the powers, rights and immunities of the Legislative Assembly and its members.

In accordance with section 37 of the POQA, conduct that is intended, or likely to amount to, an improper interference with the free performance by a member of the member's duties as a member, is a contempt of Parliament.

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

The limitation of the human right is necessary to ensure that the behaviour and conduct of persons on the precinct does not interfere with a member's performance of their duties while on the precinct.

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

There are no less restrictive ways to achieve the purpose. It is paramount to the integrity of the institution of Parliament that members are free to perform their duties without interference.

(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

The benefit of the subordinate legislation in ensuring that members of the Legislative Assembly can perform their duties free from interference outweighs the limitations placed on individuals who may not display political statements while on the precinct; and recognises the Legislative Assembly's right to control its own proceedings, and to conduct its proceedings free from interference. The limitation only applies to the very restricted area of the parliamentary precinct.

Taking part in public life (section 23)

(a) the nature of the right

Section 23 of the HR Act states that every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives. Section 23 also provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to the public service and to public office.

The subordinate legislation limits this right insofar as, in accordance with the Act, directions embodied in the By-law empower the Speaker, the Clerk and authorised officers to restrict a person's access to the parliamentary precinct, therefore preventing persons who are subject to such a direction from observing, or where relevant participating, in the proceedings of the Legislative Assembly or its committees.

(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 purpose of limiting this right, which currently exists under the *Parliamentary Service By-law 2013*, is to ensure the safety and security of the parliamentary precinct including visitors, members of the Legislative Assembly and parliamentary service staff. The limitation on the

right applies equally to all persons attending the precinct, and all persons must abide by the same standards of behaviour and conduct.

This purpose meets a public good, in providing members of the Legislative Assembly the freedom to perform their duties free from interference; and manages security risks to the benefit of all persons on the parliamentary precinct.

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

The limitation of the human right is necessary to effectively and efficiently manage the security of the parliamentary precinct and maintain the safety of persons on the precinct.

(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. Ensuring the safety and security of the parliamentary precinct would not be practicable without the power for authorised officers to restrict access to persons who pose a risk, or have engaged in behaviour or conduct resulting in a direction that they be removed from, or prevented from returning to, the precinct. The limitation is generally consistent with the security management of other state buildings.

(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

The benefit of facilitating the secure management of the parliamentary precinct afforded by the issuing of directions about behaviour and conduct outweighs the limitation placed on individuals who have engaged in behaviour or conduct that would subject them to a direction that restricts their access to the parliamentary precinct. Parliamentary proceedings are now broadcast via the Parliament's website though, so a person restricted from physical access to the parliamentary precinct could still observe the proceedings of the Legislative Assembly and its committees on the website.

Privacy and reputation (section 25)

(a) the nature of the right

Section 25 of the HR Act states that every person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The subordinate legislation limits this right by requiring persons entering the parliamentary precinct to provide certain personal information to an authorised officer for the purposes of issuing the person an entry pass; and directing persons allows themselves to be subject to searching and scanning of their person and 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 purpose of limiting the right, which currently exists under the *Parliamentary Service By-law 2013*, is generally to ensure that authorised officers are authorised to manage security risks arising from persons entering or on the parliamentary precinct.

The requirement to obtain personal information from persons entering the precinct is to enable authorised officers to maintain a record of persons entering and exiting the parliamentary precinct for the purposes of security. The limitation with respect to searching and scanning is another measure by which authorised officers proactively maintain the security of the precinct.

These are not arbitrary measures, and apply to all persons equally. The effective management of security on the parliamentary precinct is in the public interest.

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

The limitation of the human right is necessary to effectively and efficiently manage the security of the parliamentary precinct and maintain the safety of persons on the precinct.

(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. It is paramount to the functioning of the Queensland Parliament that authorised officers are authorised to give directions in respect of behaviour and conduct to manage potential risks to the security of the parliamentary precinct.

Maintaining a register of persons entering and exiting the parliamentary precinct, and conducting searches and scans of persons and their belongings assist authorised officers in discharging their duty to ensure the behaviour and conduct of persons entering and on the precinct accords the By-law.

The limitation is generally consistent with security management of other state buildings.

(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

The benefit of the subordinate legislation in facilitating the management of security risks posed by persons entering or upon the parliamentary precinct, outweigh the limitations placed on individuals who are required to provide personal information to an authorised officer; or are subject to a search or scan by an authorised officer. The *Information Privacy Act 2009* requires that any personal information be appropriately collected and handled.

Conclusion

I consider that the *Parliamentary Service By-law 2023* is compatible with the *Human Rights Act 2019* because, while it does limit, restrict or interfere with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**THE HONOURABLE ANNASTACIA PALASZCZUK MP
PREMIER AND MINISTER FOR THE OLYMPIC AND PARALYMPIC GAMES**

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