

Industrial Relations and Other Legislation Amendment Bill 2026

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Jarrod Bleijie, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, make this statement of compatibility with respect to the Industrial Relations and Other Legislation Amendment Bill 2026 (the Bill).

In my opinion, the Industrial Relations and Other Legislation Amendment Bill 2026 is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The *Industrial Relations Act 2016* (IR Act) and the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) collectively have a key role in setting the employment related legislative scheme for workers in Queensland, including for the public sector and local government.

The Bill gives effect to certain recommendations arising from the 2026 industrial relations and workers' compensation scheme review (the review) as outlined in the government response to the review report to support productivity and a fair, balanced and sustainable workers' compensation scheme.

For the industrial relations framework, the review identified issues with the existing system including protracted bargaining, wage setting mechanisms, differences between the federal and state systems and that the framework does not adequately provide for the consideration of Government having the dual roles of service delivery for the broader Queensland public and being the primary employer in the jurisdiction. The Bill seeks to deal with these issues.

For the workers' compensation scheme, the review found that emerging trends will have long-term impacts on the sustainability of the scheme if not managed carefully. This includes:

- sustained and continual increases in the number of primary and secondary psychological injury claims which have high direct and indirect costs on workers, employers, the scheme and the community;
- increasing claim durations with direct impacts on scheme costs and premiums through increasing statutory compensation payments and common law damages, as well as poorer outcomes for workers;
- reducing return to work rates for both physical and psychological injuries; and
- increasing fraud reporting which poses an unacceptable risk to the integrity and viability of the scheme and impacts both employers and workers.

Industrial Relations Act 2016

Amendments to the IR Act include a new ‘fit and proper person’ test for authorised officers, protections from reprisals for union ‘whistleblowers’, changes to protected industrial action, to allow for direct balloting of employees where agreement cannot be reached but where some parties agree and requiring consideration of the Government’s fiscal position and strategy in arbitrations. Amendments to the IR Act:

- encourage productivity in workplaces and support fair wages and employment conditions as a main purpose of the Act;
- seek to balance freedom of association with transparency and rigour for registered organisations and their officers and employees, including a new ‘fit and proper person’ test for authorised officers and protections from reprisals for ‘whistleblowers’;
- introduce changes to collective bargaining that promote good faith bargaining and protect against adverse impacts on the broader Queensland public including changes to provide for direct balloting of employees, a reduced timeframe for when protected industrial action may be taken, and a Ministerial power to terminate or suspend protected industrial action that aligns with the Commonwealth’s FW Act;
- improve consistency between the Queensland industrial relations framework and the Commonwealth’s Fair Work Act; and
- support the efficient operation of the Queensland Industrial Relations Commission (QIRC) and the Industrial Court of Queensland (ICQ).

Workers’ Compensation and Rehabilitation Act 2003

Amendments to the WCR Act include changes to support a fair, balanced and sustainable workers’ compensation scheme through ensuring only work-related psychological injuries have coverage under the scheme, uplifting the scheme’s ability to effectively respond to workers’ compensation fraud, ensuring strong clinical governance and efficient permanent impairment assessment pathways, enhancing the regulatory tools available to the Workers’ Compensation Regulator to uplift insurer performance, greater alignment between WorkCover Queensland and licensed self-insured employers, consistent coverage of firefighters for deemed injuries, and fair dispute resolution processes.

Amendments to the WCR Act:

- ensure appropriate coverage of psychological injury claims
- improve consistency and quality of insurer claims decision-making and claims management practices with a focus on primary and secondary psychological injuries and rehabilitation and return to work;
- uplift insurer capability including through insurers being supported by appropriately qualified specialist medical expertise and clinical governance;
- ensure the Workers’ Compensation Regulator under the WCR Act (the Regulator) has the appropriate tools to encourage continuous improvement and respond to non-compliance within insurers;
- broaden the scope of tools available to the scheme to prevent, detect and respond to fraud and related offending appropriately; and

- streamline processes for assessing degrees of permanent impairment and reviewing insurer decisions.

Brisbane Olympic and Paralympic Games Arrangements Act 2021

The amendments proposed in the Bill include amendments to the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* (BOPGA Act).

The purposes of the BOPGA Act are to facilitate the timely delivery of authority venues, other venues and villages and maximise the legacy benefits from the Games.

The amendments to the BOPGA Act proposed as part of this Bill will address an unintended consequence of s 53DD of the BOPGA Act in relation to noise restrictions that may apply to venues defined in the BOPGA Act and will facilitate a minor boundary realignment for the Gabba Arena.

Planning and Environment Court Act 2016

The Bill also amends the *Planning and Environment Court Act 2016* (P&E Court Act) to establish a new position of P&E Court Judge Administrator within the Planning and Environment Court. The amendments to the P&E Court Act recognise the increasing complexity of judicial administration and the need for a Judge Administrator to assist with court administrative processes and general oversight. This will facilitate efficient administration, timely resolution of planning matters, clarify and improve transparency for court stakeholders about judge seniority and lines of communication.

Human Rights Issues

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

In my opinion, the following human rights under the HR Act are engaged (including rights that are promoted or limited) by the provisions in the Bill:

- recognition and equality before the law;
- freedom of expression;
- peaceful assembly and freedom;
- fair hearing;
- retrospective criminal laws;
- property rights; and
- privacy and reputation.

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

Industrial Relations Act 2016

Limitations arising from introducing a new fit and proper test for authorised officers and aligning right of entry powers with FW Act to balance freedom of association with transparency and rigour for registered organisations (recommendations 16, 17 and 22)

(a) the nature of the right

The *right to freedom of association* protects the rights of individuals to join with others to formally pursue a common interest, such as in forming or joining a trade union.

Clause 65 of the Bill inserts replaces chapter 9, part 1, division 2 of the IR Act. The amendments introduce a ‘fit and proper person’ test whereby the register may grant an authorised officer’s authority if they are satisfied the employee or officer is a fit and proper person to hold the authority. This could be considered as limiting the right to freedom of association for certain individuals who do not satisfy the new ‘fit and proper person’ test prescribed to assist the industrial registrar in determining whether or not an officer or employee of a registered organisation should be granted an authority under section 337 of the IR Act that permits them to exercise powers under the IR Act, such as right of entry to workplaces of employees they represent.

(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 purpose of the new ‘fit and proper person’ test and other amendments to the IR Act’s existing provisions on authorised officers and their rights of entry is to ensure consistency with the FW Act jurisdiction as well as the ongoing integrity of authorised officers and the regulatory framework for registered organisations.

The Bill models the IR Act’s new ‘fit and proper person’ test for the registrar to grant an *authorised officer authority* to an officer or employee of a registered organisation on the FW Act’s ‘fit and proper person’ test for an entry permit. This new test sets out specific criteria the registrar must consider, including whether the official has completed the relevant training, been disqualified from holding an equivalent authority, convicted of an offence under an industrial law or convicted of an offence involving unlawful entry, violence, fraud or dishonesty.

The test also includes additional criteria on whether the applicant has previously been an employee or officeholder of the Construction and General (C&G) Division of the CFMEU and whether the person has been terminated, suspended, removed from office or been subject to disciplinary action. If the registrar considers that a person applying for an authorised officer’s authority is under the control of, or substantially influenced by, another person whom the registrar does not consider to be fit and proper under this test, they must refuse the application.

The role of this test in ensuring the integrity of authorised officers and their conduct is complemented by other amendments to align the IR Act’s right of entry powers with those in the FW Act. This includes giving employers written notice of at least 24-hours for proposed

entry and authorised officers expressly considering their members' interests and whether there is a more appropriate course of action that should be taken.

While the Bill limits freedom of association, it is considered that these measures will help to achieve the purpose of the providing safe workplaces for Queenslanders and is considered justified as it responds to serious unlawful and criminal conduct which has been widely reported, including in evidence to the Commission of Inquiry into the CFMEU and Misconduct in the Construction industry. Insofar as it concerns the limitations on freedom of association, the purpose of this test is to ensure the integrity of the authorised officers and their conduct do not adversely impact workers and employers in Queensland workplaces. The right of others, such as employees on worksites, have a right to their physical and mental integrity. Having fit and proper officers entering worksites will likely enhance these rights by reducing incidents of inappropriate behaviours that have occurred in the recent past.

These additional criteria and right of entry requirements do restrict the rights of certain individuals to be authorised officers and their freedom of association in terms of representing members, and the particular requirement to indicate whether a person has been removed or had their employment terminated under the CFMEU C&G administration schemes seeks to ensure union officials or employees that are removed or terminated for misconduct are not able to gain and exercise authorised officer powers, e.g. for another union, without specific consideration of their fitness under this test. This supports the overall integrity of the IR Act's registered organisations framework by ensuring that workers' rights are represented by their chosen representatives. This is consistent with the principles of a free and democratic society based on human dignity, equality and freedom.

(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 limitations to an individual's freedom of association that are imposed by the additional 'fit and proper person' test criteria and right of entry requirements are considered necessary to achieving the purposes of the amendments, which is to create a more robust regulatory scheme for registered organisations with appropriate use of right of entry powers as well as ensuring consistency with the FW Act jurisdiction as much as possible.

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

The amendments represent the most reasonable and efficient way to achieve the Bill's purpose of providing for a more transparent and rigorous regulatory framework for registered organisations and their officers and employees while still respecting the freedom of association generally and for all Queensland workers.

(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 balance, the limitations the Bill places on the rights of certain individuals and their freedom of association are considered reasonable and justified in the context of the Government's policy objective to provide greater transparency and rigour for registered organisations and their officers and employees.

The amendments are designed to support and complement the right of all Queenslanders to protection from torture and cruel treatment, such as acts that cause severe physical or mental suffering, fear, anguish or a sense of inferiority or humiliation. The amendments are also designed to support and complement the right to security of a person, including mental integrity or freedom from injury to the body and mind. It could be considered the existing legislative scheme do not adequately provide for these protections, such as safety, wellbeing and security in the workplace. The authorised officers have a broad range of powers including entering and inspecting workplaces and particular records and discuss matters with employees. This approach will ensure the ongoing integrity of officials of registered organisations and prevent repeated misconduct as evidenced by the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry. The amendments can be expected to enhance and support employee mental health and wellbeing by ensuring workers' rights are represented by their chosen representative, prevent violent disputes on job sites and ensuring unsuitable officers will not be able to enter or if there is a conduct allegation, their authority of the officer can be revoked, suspended or have conditions imposed.

The conduct of the CFMEU has been at the centre of serious criminal, systemic and industrial allegations across Australia and have exposed connections to organised crime, extortion, intimidation and defying industrial law. In this context, the Government considers the Bill strikes the right balance between respecting the right to freedom of association and preventing repeated misconduct that puts worker safety at risk. Workers will have their rights represented by their chosen representatives in a way that prevents abuses of right of entry powers and ongoing violent disputes on job sites, including against other union members, as evidenced by the Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry.

The right to freedom of association can be limited by public entities, but only where it is reasonable and demonstrably justified based on human dignity, equality and freedom. On balance, the limitations the Bill places on the rights of certain individuals and their freedom of association are proportionately balanced with the safety, security and wellbeing of Queenslanders in their workplace and their right to be represented by their chosen representative.

Limitations arising from changes to collective bargaining that allow for direct balloting of employees, amend protected industrial action provisions and give the Minister and QIRC additional powers to suspend or terminate industrial action in certain instances, in order to balance rights, productivity and service delivery, and provide for fair conduct (recommendations 23-30)

(a) the nature of the right

The *right to freedom of expression* under section 21 of the HR Act protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas. This is central to the fulfilment of other rights like the *right to peaceful assembly and freedom of association* under 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 prepare and conduct a peaceful protest or demonstration. The *right to freedom of association* protects the rights of individuals to join with others to formally pursue a common interest, such as in forming or joining a trade union. Relatedly, the International Court of Justice has held that the right to strike is protected in connection with

the *Freedom of Association and Protection of the Right to Organise Convention, 1948* (No. 87), although it has indicated that there is no determination on the precise content, scope or conditions for the exercise of the right to strike.

In the context of the IR Act, these rights are interrelated in that individuals are entitled to join a union to collectively bargain for improved wages and conditions with their colleagues and can lawfully take part in protected industrial action which is only protected when it is taken in support of their claims. The IR Act currently imposes limitations on these rights by (*inter alia*) defining the period in which industrial action will be protected and including mechanisms for suspension and termination by the QIRC in defined circumstances.

Clauses 23 to 33, 37, and 43 to 60 of the Bill contains a range of amendments to the IR Act's collective bargaining framework that engage with and/or limit these rights. This is firstly through the inclusion of a direct balloting option allowing employers to canvass employee support for a proposed agreement without needing the in-principle agreement of all bargaining parties but particularly through additional prescriptions on when and how protected industrial action can be taken by employees and the process for seeking agreement in the bargaining process. The additional prescriptions include:

- limiting the period of time during the bargaining process that employees can take protected industrial action (clause 49);
- limiting the ability to take protected industrial action in conciliation (clauses 48 and 49);
- introducing a standard three-day notice period before any instance of protected industrial action can be taken (clause 50);
- providing the QIRC with an ability to suspend or terminate industrial action where there is disruption to the delivery of public services (clause 53); and
- providing a power for the Minister to terminate industrial action in particular circumstances (clause 54).

Clauses 30, 33, 39 and 43 of the Bill also engage with but do not necessarily limit these rights to freedom of association and expression through the inclusion of a direct balloting option that would allow employers to canvass employee support for a proposed agreement without needing the in-principle agreement of all bargaining parties (i.e. unions). Clause 56 of the Bill also provides that a direct ballot of employees would be conducted by the Electoral Commission of Queensland. This could be seen to limit freedom of association by balloting employees directly rather than through their union and engages the freedom of expression through the balloting process.

The Bill also engages an existing limit on the *right to property* of its employees (insofar as wages are considered property) by making clear that employees are not entitled to payment for types of protected industrial action, where there is a full withdrawal of labour and in the case of a partial withdrawal of labour, the employer may reduce payment by a reasonable and proportionate amount, if the prescribed process is followed. However, this provision is not arbitrary and requires that the employer must issue a notice if there is any intention of not paying or reducing the wages of a worker who takes protected action.

(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 purpose of the amendments to the collective bargaining framework is to promote fair and ethical conduct in the collective bargaining process and to encourage meaningful negotiations towards agreement and discourage protracted negotiations. The Bill limits employees' rights to express views or conduct a protest under section 22 of the HR Act through:

- introducing a standard three-day notice period before any instance of protected industrial action can be taken;
- limiting the period of time during the bargaining process that employees can take protected industrial action; and
- including new avenues through which approved protected industrial action can be suspended or terminated, including through a new Ministerial declaration power.

The purpose of the Bill's amendments to the collective bargaining framework is to promote fair and ethical conduct in negotiations and encourage bargaining parties to reach agreement without protracted negotiations. Part of achieving this purpose is better recognition of the dual roles of the Queensland Government and local governments as the main employers under the IR Act's jurisdiction and the role governments and their employees have in delivering critical public services within fiscal policies and budgets. This brings context to the collective bargaining process that allows for meaningful negotiations between the parties while also ensuring third parties, such as the general public, are not significantly adversely affected. The amendments are designed to support and complement the right of all Queenslanders to participate in public life including to have access to public services. It acknowledges that the scope of this jurisdiction is predominantly state and local government workers involved in the delivery of services for Queenslanders and as a consequence, any disruption to such services through protected industrial action may be significant.

While this involves some limitation of the rights of employees in terms of their freedom of expression, association and peaceful protest, it is considered to support the rights and dignities of the broader public.

(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 purpose of the Bill's amendments to the collective bargaining framework is to encourage meaningful negotiations and genuine agreement between the parties while reducing protracted disputes to encourage productivity in workplaces and support the effective delivery of public services. While this involves some limits to the rights of freedom of expression, association and peaceful protest, particularly on employees who take protected industrial action, this is with the intention of better managing protracted negotiations and working towards a resolution given the inherent public interest in the delivery of public services in Queensland. The purpose of the amendments proposed in the Bill aligns broadly with the provisions of the *Human Rights Act 2019* which provide that every person has the right, and is to have the opportunity, to have access to, on general terms of equality, the public service by ensuring the productive and effective delivery of services by State and Local Government workers to Queenslanders. It will

also support the related rights to healthcare, education, and the protection of families and children, as well as property rights and the right to security enshrined in the *Human Rights Act 2019* which may all be impacted by disruptions caused through industrial action.

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

The amendments represent the most reasonable and efficient way to achieve the Bill's purpose of providing for a fair and more balanced bargaining process that promotes fair and ethical conduct that is in the public's best interest and promote the effective delivery of services to Queenslanders.

The Bill's amendments to collective bargaining provisions will allow a way to progress towards agreement where not all parties agree to a proposed bargain. By providing direct balloting with the support of the employer and at least one other negotiating party, the Bill balances the availability of protected action with the potential for broader impacts on the general public not involved in the bargaining, who also have rights to consider and protect. The changes maintain much of the existing collective bargaining framework which does not restrict the rights of the parties. In respect of the direct balloting provisions, these are considered to better support fair conditions for workers in circumstances where at least one employee organisation and a majority of employees are supportive of a proposed industrial instrument but negotiations are being compromised by the actions of one or more employee organisations such that any limitations on human rights are justified. Insofar as it concerns the limitations on protected industrial action that form part of the Bill, these are considered justified given the focus of this jurisdiction is on the delivery of public services by State and Local Government workers and there is an inherent interest in supporting the continued delivery of such services with minimal disruption and ensuring respect for taxpayers' money.

Where the Bill unavoidably limits the rights of employees, particularly in regard to the limited time period for when protected industrial action can be taken, this is considered necessary as alternative approaches would likely introduce additional steps or processes to bargaining that would ultimately outweigh any intended benefits or efficiencies the Government is seeking including the more effective delivery of public services, respect for taxpayers money and productivity in workplaces. Approaches which may be less restrictive in terms of freedom of association or the right to strike, may conversely have significant impacts on the right of all Queenslanders to participate in public life and have access generally to public services. Connected with this are the rights to healthcare and education and the protection of families and children which may also be impacted by disruptions associated with industrial action.

Maintaining the legislative status quo may be seen as a less restrictive approach although it would not achieve the Government's policy objectives in terms of supportive workplace productivity and the effective delivery of public services to Queenslanders and respect for taxpayers' money. Further, as outlined above, the legislative status quo may be seen as limiting the right to participate in public life and the rights to healthcare and education, the protection of families and children contained in the *Human Rights Act 2019*. It is also acknowledged that the existing legislative scheme already imposes limitations on the right to freedom of association and the right to freedom of express, as well as the right to strike through existing

limitations on protected industrial action and existing mechanisms to terminate or suspend protected industrial action.

- (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 balance, the limitations the Bill places on employee's *right to freedom of expression, association and public protest or assembly* under sections 21 and 22 of the HR Act through its amendments to the collective bargaining process are considered reasonable and justified. In the context of the Government's policy objective of promoting fair and balanced bargaining and overall governing priorities, the Bill will ensure effective public service delivery with minimal disruption and respect for taxpayers' money.

The Government considers that the Bill's amendments of limiting when (and to some extent, how) employees can take protected industrial action are reasonable and justifiable in the context of the Government's role as employer and its unique public service delivery obligations. Limiting protected industrial action during the conciliation stage, increasing the notice period to three days and clarifying employee entitlements during full and partial work stoppages, allows for both employees to exercise their rights and for employers to actively plan to mitigate that action to appropriately manage any disruption to public service delivery.

Consideration has been given to the limitation imposed by the Bill on protected industrial action where a party has asked for the Commission's assistance through conciliation by including a complementary amendment which provides that conciliation cannot commence until 28 days after the peace obligation period. The additional powers for the Minister (by declaration) or the QIRC (upon application) to suspend or terminate protected industrial action are not arbitrary but reserved for circumstances where the action significantly impacts or is contrary to the public interest, and where the action is causing or would cause harm to third parties.

There are mechanisms for review of the exercise of either of these powers to ensure procedural fairness, with the ministerial declaration being subject to a judicial review and the QIRC decision being appealable under the IR Act. This approach helps ensure that any limitations on employees' right to freedom of expression, association and public protest or assembly, are reasonable and necessary. It is also acknowledged that the existing scheme of legislation already provides limitations on protected industrial action which may limit the rights to freedom of expression and the right to freedom of association, however the existing limitations do not proportionately respond to limitations on the right to participate in public life and have access to the public service, as well as rights to healthcare and education, protection of families and children, which may be impacted by industrial action taken in this jurisdiction.

On balance therefore, it can be seen that the limitations proposed as part of the Bill are appropriate and proportionate given the scope of this jurisdiction is largely comprised of State and Local Government workers involved in the delivery of public services to Queenslanders and that any action taken may cause significant impacts or harm and limit the rights of third parties.

The Bill's provision for direct balloting of employees for a proposed agreement by an employer does not directly limit the rights of employees to freedom of expression or association. Instead, it provides an alternative mechanism to hear directly from employees and progress the bargaining process when agreement between all negotiating parties cannot be reached but some parties do agree. The Bill contains reasonable mitigations to protect the right to freedom of association and expression by clarifying direct balloting is intended to address the deliberate frustration of negotiations by uncooperative parties and requiring the agreement of at least one other bargaining party.

The Bill could be seen to engage or limit the right to property of employees (insofar as an employee's wages are considered property) by providing that an employer must deduct pay for a partial withdrawal of labour and must not pay an employee if the employee engages in industrial action that amounts to a full withdrawal of labour. However, these amendments aim to clarify the application of existing provisions of the IR Act that already limit an employee's entitlement to their usual pay when they are taking protected industrial action in the form of work stoppages. Also, section 24(2) of the HR Act provides that a person must not be arbitrarily deprived of the person's property. Arbitrary means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought. A deprivation which is proportionate under section 13 of the HR Act will not be arbitrary. In my opinion, this provision is not arbitrary and requires that if wages are reduced for a partial work ban, the reduction must be proportionate and reasonable having regard to the nature and extent of the partial work ban. The employer must issue a notice if there is any intention of not paying or reducing the wages of a worker who takes protected action. Furthermore, this limit exists in the private sector and is considered reasonable in the context of the Government's public service delivery obligations and ongoing commitment to respect taxpayer funds.

Limitations arising from the industrial registrar's ability to make inquiries about whether a person is fit and proper to hold an authorised officer's authority

(a) the nature of the right

The *right to privacy and reputation* under section 25 of the HR Act provides that a person has the right not to have the person's family, home or correspondence unlawfully or arbitrarily interfered with.

The Bill engages and limits the right to privacy because it permits the registrar to make certain inquiries for the purpose of deciding whether a person is or continues to be a fit and proper person to hold an authorised officer's authority at clause 65 which replaces ch 9, pt 1, div 2 (Authorised Officers). The additional provisions related to the registrar's inquiries include:

- Section 338B which allows the registrar to make inquiries;
- Section 338C which allows the registrar to ask the police commissioner for a written report about criminal history;
- Section 338D which provides that the registrar may request information through the chief inspector

The Bill allows the registrar to ask the police commissioner for a written report about the person's criminal history if the person gives written consent to the request at section 338C. The

police commissioner is required to comply with the request if the person consents, although this duty only applies to information in the police commissioner's possession or information the police commissioner has access to. Further, section 338D provides that the registrar may request other information from the chief inspector in relation to the person. The chief inspector has a duty to comply with such a request, although this duty only applies to information in the possession of the chief inspector, or information the chief inspector has access to. The registrar's powers to request this information from the police commissioner or chief inspector do not limit the registrar's right to make any other inquiries in deciding whether the person is or continues to be a fit and proper person to hold an authorised officer's authority.

The Bill constitutes an interference with the privacy of a person who makes an application to hold an authorised officer's authority because it permits the disclosure of personal information to the registrar concerning, for example, the person's criminal history, any similar authority or permit held by the person and whether the authority or permit was revoked, suspended or made subject to conditions, penalties imposed on the person for contravention of an industrial law and any previous association by the person with the C&G Division of the CFMEU. However, this is essential for the operation of the 'fit and proper person' test.

(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 purpose of allowing the registrar to make inquiries as to whether the person is a fit and proper person to hold an authorised officer's authority is to guard against illegal or unethical conduct by an authorised officer in the exercise of the officer's powers and promote the health, safety and wellbeing of employees in the workplace.

Authorised officers have the right to exercise a broad range of powers under the IR Act, including the right to enter a workplace for the purpose of inspecting the time and wages records of employees. Introducing an additional screening process for persons applying to hold an authorised officer's authority will help protect against the misuse of these powers for unauthorised purposes, and behaviour by authorised officers which threatens the health, safety and wellbeing of people in the workplace, by excluding individuals whose behaviour indicates they are not fit and proper to hold an authority.

To give effect to this new requirement, it is necessary to allow the registrar to obtain any information needed to assess the person's suitability to hold an authorised officer's authority.

(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

There is a connection between appropriately limited access to information necessary for the registrar to assess whether a person is a fit and proper person to hold an authorised officer's authority and ensuring that the powers of an authorised officer are exercised lawfully, ethically and in a way that does not threaten the health, safety and wellbeing of employees. If the registrar was not permitted to request the details of the applicant's criminal history and other relevant information, the registrar could not make a complete and accurate assessment of the person's suitability to exercise the powers of an authorised officer. This would increase the

likelihood of unsuitable individuals being granted an authorised officer's authority and exercising the powers of an authorised officer in ways that are unethical or illegal.

(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 Bill. Allowing the registrar to request information from the police commissioner and chief executive and make other inquiries is necessary for the registrar to form a complete picture of the person's suitability. It is therefore necessary to impose certain limitations on the person's privacy in order to achieve the purpose of the new 'fit and proper person' test.

(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 Bill provides the registrar with the ability to request certain information about a person applying to be granted an authorised officer's authority, including information about the person's criminal history. The amendments providing for investigations by the registrar balance the competing interests of an individual's right to privacy and guarding against misuse of an authorised officer's powers under the IR Act and the associated risks to employees.

The introduction of a new 'fit and proper person' assessment for the purposes of granting an authorised officer's authority will support the health, safety and wellbeing of workers by reducing the likelihood of an authorised officer displaying unethical or illegal behaviour in the workplace.

The HR Act anticipates that some level of interference with an individual's right to privacy may be necessary to achieve a legitimate purpose. Section 25 of the HR Act aims to protect the individual from an unlawful or arbitrary interference with and attacks on the person's privacy and reputation. Provisions allowing the registrar to make investigations for an assessment of whether a person is fit and proper to hold an authorised officer's authority are appropriately limited and necessary to achieve a particular purpose. The applicant's information is only accessible on request by the registrar for the purposes of the assessment. Further, the registrar may only request the applicant's criminal history information with the person's consent. These provisions therefore do not interfere arbitrarily with the person's right to privacy and achieve an appropriate balance between the rights of the individual and the purpose of the amendments.

Limitations arising from amendments to streamline legal representation provisions and appeal pathways for full bench decisions and empower members to more efficiently deal with matters that are not in the public interest, which will better support the efficient operation of the QIRC and ICQ (recommendations 41-44)

(a) the nature of the right

The *right to a fair hearing* under section 31 of the HR Act affirms the right of all individuals to procedural fairness when appearing before a court or tribunal and guarantees an individual's right to have the charge or proceeding (whether criminal and civil) decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The *right to freedom of expression* under section 31 of the HR Act affirms the right to protect every person's ability to hold opinions and share information and ideas in various forms, while also respecting the right of others.

The Bill could be perceived to limit these rights through proposed amendments that aim to support the more efficient operation of the QIRC and ICQ. These amendments are contained at:

- Clause 79 which inserts new section 456A (Consolidation of proceedings);
- Clause 90 which amends section 554 to provide for appeal from the court or commission in certain circumstances
- Clause 87 replaces section 541 (Decisions generally)

Firstly, the Bill proposes to streamline legal representation provisions under section 530 (at clause 85) of the IR Act so that the parties to any matter before the QIRC can engage the legal representative of their choosing with the consent of the other parties or leave of the QIRC or where the proceedings relate to an alleged offence. The Bill removes restrictions on the use of external legal representation in arbitration. The IR Act currently prohibits parties being represented by external lawyers in certain kinds of proceedings so as to maintain the informal, low-cost and accessible nature of the QIRC as a lay tribunal (as distinct from a court) and to not over-complicate simple proceedings. These changes could be perceived as a limitation on the right to a fair hearing if proceedings in the QIRC are no longer simple, informal and low-cost due to the right for parties to engage legal representation in all proceedings.

Secondly, the Bill proposes at clause 90 to redirect the appeal pathway of a Full Bench decision where at least one of the members is a presidential member, directly to the Court of Appeal instead of to the ICQ where it currently sits. On balance, this amendment limits the right to a fair hearing by removing an additional avenue of appeal that currently exists, where a Full Bench decision is appealed to the ICQ first before the matter can proceed to the Court of Appeal. (The only exception to this is when the Full Bench decision involves the President of the QIRC, in which case the appeal lies directly to the Court of Appeal as the President is a justice of the Supreme Court.)

Thirdly, the Bill introduces powers and mechanisms for the QIRC and ICQ to more efficiently dispose of matters where the proceedings are not considered to be in the public interest, with particular regard to vexatious litigants or duplicative applications at clause 87. The Bill also provides at clause 79 for the consolidation of two or more proceedings where they involved the same or related facts. These amendments would allow the QIRC and ICQ to limit an individual's access to these jurisdictions and so directly engages the *right to a fair hearing*.

This amendment may also be perceived to engage and potentially limit the *right to freedom of expression* where individuals who seek avenues to make multiple applications to the QIRC are unable to have them all heard under a range of provisions.

- (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 purpose of these amendments, which will put limitations on the *right to a fair hearing* and *right to freedom of expression* if the Bill is enacted, is to support the efficient operation of the QIRC and ICQ.

Firstly, the streamlined legal representation provisions under section 530 will remove significant complexity and confusion that currently exists around when parties can be represented by a lawyer in a proceeding before the QIRC and ICQ. This will ensure that all proceedings before the QIRC and ICQ can begin with certainty and consistency as all parties will have the ability to seek their preferred legal representative and all applications for legal representation can be treated the same with legal representation through either consent or leave of the QIRC and ICQ having regard to relevant considerations such as fairness and efficiency. This is considered consistent with democratic principles of equality and freedom of choice and in the context of union and employer groups, supports an individual's freedom of association with their preferred representatives. By supporting freedom of choice in terms of legal representation, the Bill will align with the right that all persons are equal before the law and are entitled to the equal protection of the law without discrimination by removing existing barriers to legal representation in particular proceedings and applying a consistent and equitable framework for all parties.

Secondly, redirecting the appeal pathway of a Full Bench decision that included any presidential member (and not just the President) to the Court of Appeal removes operational complexities and inefficiencies for the QIRC and ICQ and ensures consistency in the treatment of Full Bench decisions. In practice, Full Bench matters often include a presidential member. Therefore, giving all Full Bench decisions involving a presidential member the same appeal pathway frees up the ICQ from dealing with appeal matters that in practice may likely end up in the Court of Appeal anyway for a determinative judgement. It aligns with the principles underlying the right to a fair hearing by ensuring that the appeal pathway lies to the separate and distinct Court of Appeal rather than to a fellow member of the Industrial Court.

Finally, the introduction of powers and mechanisms for the QIRC and ICQ to more efficiently dispose of matters that it finds are not in the public interest is intended to allow the members to deal more effectively with matters involving vexatious litigants or duplicative applications that tie up the tribunals' resources and hamper its efficient operations.

- (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 perceived limits on the right to a fair hearing that would be imposed on certain parties by these amendments would support the more efficient operation of the QIRC and ICQ but could also in turn promote greater access to the QIRC and ICQ's jurisdiction generally.

In the case of streamlining legal representation provisions, the amendments will provide a consistent approach for parties and the QIRC and ICQ in relation to legal representation, ensuring proceedings can progress with greater efficiency and focus on the substance of a matter. This will also put all parties on an equal footing with regards to their access and choice

to legal representation in proceedings regardless of what kind of matter they have brought before the QIRC. Where a member hearing a matter considers the parties would be better served by not giving leave for representation to support equity, that is also provided for. It is considered that if these provisions were enacted they would enable proceedings in the QIRC and ICQ to be dealt with more expeditiously and equitably for all parties and better support adequate protections for workers such that any limitation is justified.

Providing an appeal pathway for Full Bench decisions involving presidential members directly to the Court of Appeal does remove an appeal step to the ICQ but not the entire right of appeal. In simplifying these appeal pathways, the Bill favours appellants with the decision of the superior court while ensuring the resources of the QIRC and ICQ are available for other users of the jurisdiction.

Finally, the limitation imposed by further empowering the QIRC and ICQ members to more efficiently dispose of matters brought by vexatious litigants or duplicative applications, directly serves the purpose of bolstering the efficient operation of the QIRC and ICQ and will enhance access to a fair hearing for other applicants bringing substantive matters to the tribunal.

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

The IR Act's current legislative framework for legal representation, Full Bench appeal pathways and case management could be considered as the less restrictive approach in relation to ensuring the rights to a fair hearing, although in each case, the complexity of the legislative status quo could also be seen to impose limits on this same right.

Firstly, the ability to have a fair hearing is currently limited for parties who are prohibited from having legal representation or an external lawyer of their choice because of the kind of matter they are involved in, even if they consider legal representation would help them better put their case before the QIRC. At present, employers and employee organisations are at an inherent advantage when compared with employees, given they are able to be represented by employees who are qualified lawyers this creates an inherent tension with the right to recognition and equality before the law, including the right to equal protection of the law without discrimination. In evaluating less restrictive and reasonably available ways to achieve the purpose of the Bill, the option to ensure equity in representation by further limiting legal representation for all parties was considered contradictory to the intentions of the Bill in supporting workplace productivity and adequate protections for workers.

Secondly, the current appeal framework for all Full Bench decisions (except those involving the President) requires an appeal proceed to the ICQ before the Court of Appeal, which in practice has been found to extend the overall duration of a matter that will ultimately end up in the Court of Appeal. While this can be avoided for particularly urgent or complex legal matters by having the President included in the Full Bench, this is not always feasible nor sustainable for the workload of the QIRC and ICQ. This current legislative framework therefore presents a potential time and costs barrier to accessing justice particularly in complex cases because of the administrative allocation of members to the Full Bench.

Finally, the current case management mechanisms included in the IR Act are less restrictive of the right to a fair hearing but also hamper the ability of members to effectively deal with applications that are not in the public interest or seek to revisit matters that have already been substantively dealt with in other proceedings. This in turn has resource impacts on the ability of the QIRC and ICQ to provide timely access to a fair hearing for other applicants.

- (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 balance, the limitations on the *right to a fair hearing* under section 31 of the IR Act by the Bill's amendments to legal representation, Full Bench appeal pathways and case management mechanisms are considered reasonable and justified in the context of the more efficient operation of the QIRC and ICQ and the clarity, consistency and access these measures provide for all users of Queensland's IR jurisdiction.

Streamlining legal representation provisions under section 530 of the IR Act will create equality in when and how legal representation can be utilised before the QIRC and ICQ, including with regard to the greater choice parties will have in who can represent them. This in turn enhances their rights to freedom of association. Furthermore, the amendments do not require legal representation and still allow the consent of both parties, thereby maintaining the informal, low-cost and accessible nature of the QIRC in particular as a lay tribunal.

Ensuring all Full Bench decisions involving a presidential member are appealed directly to the Court of Appeal is considered reasonable given this is expected to only affect a small number of matters which are typically complex in nature. The Court of Appeal will still provide a right to a fair hearing but through a clearer and shorter pathway that provides a determinative judgement for the appellants and frees up access to the presidential members for other users of the jurisdiction. It is also acknowledged that there is an inherent tension in a decision of a Full Bench including a Presidential member being appealable to a fellow Presidential member and the amendments will better align with the right for a party to a civil proceeding to have the matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Finally, empowering the QIRC and ICQ members to more efficiently dispose of matters that are not in the public interest is considered reasonable and justified limit to an individual's right to a fair hearing where there may be little benefit in proceeding with particular application and the impact on the tribunal's efficient operation and delivery of justice. Courts have previously found that the right to a fair hearing is not absolute and may be subject to particular limitations in the case of vexatious proceedings (see for instance: *Kay v Victorian Attorney-General & Anor* (Victorian Court of Appeal, Unreported, 19 May 2009). Particularly in the case of vexatious and duplicative applications, the limit is considered reasonable and it is appropriate for the QIRC or ICQ to be able to deal with a matter flexibly, for example where the applicant has already received a substantive decision on the same matter or has other related proceedings on foot.

The current provisions which enable vexatious and duplicative applications could be seen to limit the right of others whose rights to justice are being limited when members of the QIRC and ICQ are unable to deal with genuine matters. On balance this will support greater access

to the QIRC and ICQ jurisdiction for other applicants who are seeking genuine remedies for matters that have not yet been substantially heard. In relation to the limit to the right to freedom of expression, which protects the ability to hold and express opinions, the amendment does not prevent the individual from discussing these matters or the provisions of law which they believe have failed.

The amendment does not limit or prevent the individual from holding the opinion or expressing it elsewhere.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

To the extent the amendments limit the relevant human rights, I am satisfied the limitation is reasonable and demonstrably justifiable as outlined above.

Workers' Compensation and Rehabilitation Act 2003

Increases to maximum penalties for fraud and related offences, and penalties for failure to provide a work notice to the insurer and unlawful disclosure of claims history summary by a prospective employer.

(a) the nature of the right

The *right to liberty and security of person* ensures that a person must not be deprived of liberty except on grounds, and in accordance with procedures, established by law.

Clauses 151 and 152 of the Bill may engage the *right to liberty and security of person* as they increase the maximum penalties for fraud (under section 533 of the WCR Act), and false and misleading information or documents (under section 534 of the WCR Act) from 5 to 10 years and 1 to 2 years respectively. The Bill retains provisions in the WCR Act that penalties for fraud and providing false and misleading information may be imposed on conviction for an offence after completion of appropriate judicial proceedings. Therefore, in my opinion it is not limited.

The *right to property* from the HR Act provides that all persons have a right to own property alone or in association with others and must not be arbitrarily deprived of their property.

The maximum financial penalty provided for committing the offence of fraud under section 533(1) is omitted by the Bill. In the absence of a prescribed financial penalty for the offence, a fine may be determined by the *Penalties and Sentences Act 1992* which gives the courts discretion, within bounds, to apply a fine in addition to, or in place of a sentence. This amount maybe greater than currently prescribed. The maximum financial penalty for committing the offence of providing false and misleading information or documents is an increase from 150 to 300 penalty units.

Clause 138 of the Bill also amends the operation of section 136 of the WCR Act to provide that claimants must regularly disclose their working status and whether they are engaged in a calling. Failure to notify the insurer of their status is an offence, carrying a maximum financial penalty of 50 penalty units. This aligns with the existing penalty for section 136.

Clause 177 of the Bill also introduces provisions allowing for a prospective employer to seek a prospective worker's claims history summary from the Regulator, subject to the consent of

the prospective worker. The information contained in the claims history summary must only be used for the proposed of the employment process, or disclose the claims history information, to the extent the purpose is permitted or required by law. Using or disclosing this information outside of these purposes carries a maximum financial penalty of 100 penalty units.

Clauses 157 and 174 of the Bill also inserts a maximum penalty of 500 penalty units if an insurer contravenes an enforceable undertaking given by the insurer that is in effect, and a maximum penalty of 100 penalty units if an insurer fails to comply, without reasonable excuse, with a written notice given by the Workers' Compensation Regulator requesting provision of a document or information that is in the insurer's possession or control. However, these penalties do not engage the *right to property* as they apply to persons which are corporations.

The *right to property* provides that all persons have a right to own property alone or in association with others that must not be arbitrarily deprived of their property. The provision of a financial penalty on being found by a court to have committed an offence may affect their right to property by imposing a direct financial cost on the person.

(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 nature and purpose of the limitation is to ensure the effective operation, integrity and administration of the scheme and support important public benefit objectives by—

- for fraud and false or misleading information or documents—deterring fraud and other dishonest conduct directed at obtaining benefits to which a person is not entitled.
- for failure to provide a work notice to an insurer—ensuring that insurers are aware on the worker's ongoing capacity as part of providing effective management of the workers' claim.
- for unlawful disclosure or use of information contained in a prospective workers' claim history summary—protecting the confidentiality of workers' claims history information and to promote compliance with statutory restriction governing the collection, use and disclosure of sensitive and protected personal information.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom because it promotes the proper administration of a statutory compensation scheme, protects public confidence in the scheme, and seeks to ensure that benefits are directed to persons who are entitled to receive them.

(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 limitation is rationally connected to the purpose of each of the offence provisions. Monetary penalties provide a deterrent against conduct that may undermine the operation of the scheme. By imposing financial consequence for non-compliance, the provisions encourage individuals to meet their statutory obligations and discourage conduct that may adversely affect workers, insurers, employers or the broader scheme.

In particular:

- The penalty for failing to notify a return to work promotes the accurate administration of compensation entitlement and assists in the prevention of overpayments.

- The penalties attaching to fraud and false and misleading information or documents deter dishonest conduct and protect scheme funds.
- The penalty attaching to misuse of claims history information encourages compliance with confidentiality obligations and protects worker privacy

The imposition of penalties on human rights therefore directly supports the achievement of the legislative objectives.

- (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 Bill.

- (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

Fraudulent and deceptive conduct within the scheme pose significant risks to the integrity and sustainability of the scheme and divert resources away from injured workers who have a legitimate entitlement to compensation and damages. The amendments with respect to imposing financial penalties for fraud, the provision of false and misleading information and the requirement to regularly declare whether a person has returned to work or engaged in a calling are intended to strengthen the scheme's ability to limit fraud once detected and limit the potential scope of a person's offending and ensure that workers notify their insurer of their return to work or engagement in a calling. The amendments with respect to imposing financial penalties for misuse of claims history information ensure that the information is used responsibly and lawfully when used for employment purposes.

The provisions do not authorise the arbitrary confiscation of assets or the permanent deprivation of property; rather, they expose a person to a financial penalty only where the person has contravened a clearly defined statutory obligation.

The amended maximum penalties are considered proportionate and relevant to the conduct. Offences involving defrauding and deceiving the scheme or disclosing a worker's claims history summary pose a significant risk to the scheme's integrity, and it is appropriate the maximum penalties reflect the seriousness of the offending and meet community expectations. Importantly, courts will retain discretion to determine the appropriate sentence up to the maximum penalty considering the circumstances of each case.

The amendments to the maximum penalties for fraud and false and misleading information and documents are designed to enhance consistency with similar offences in other jurisdictions. Other new offences are proportionate with similar offences under the Act.

On balance, the limitation on the right to property is outweighed by the significant importance in ensuring the effective operation, integrity and sustainability of the scheme and the proper administration of justice.

Limitations on damages because of authorised persons' powers to stay common law pre-proceedings and automatic stay of pre-proceedings and proceedings on commencement of fraud proceedings

(a) the nature of the right

The *right to recognition and equality before the law* in the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Clause 154 of the Bill may engage this right to the extent that it establishes or maintains different procedural requirements or consequences for persons seeking damages under the workers' compensation scheme. However, the Bill does not discriminate on the basis of a protected attribute. Any distinction created by the measure would be directed towards regulating access to and the orderly conduct of proceedings for damages under the worker's compensation scheme. Therefore, in my opinion, the right is not limited.

The *right to a fair hearing* in the HR Act affirms the right of all individuals to procedural fairness when brought before a court or tribunal and guarantees an individual's right to have the charge or proceeding (whether criminal and civil) decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The Bill may also engage in the *right to freedom of expression* in that it stays a person's ability to receive and impart information either orally or in writing in the context of a civil proceeding.

The Bill engages these rights because it provides that an authorised person of the Regulator (authorised person) may direct a stay of common law pre-court proceedings, and that common law pre-court proceedings and proceedings are automatically stayed on commencement of fraud proceedings. This may delay or prevent the affected person's common law proceedings from being determined by a court or tribunal.

The nature and extent of the limitation is mitigated by the circumstances in which the stay operates. For a direction by an authorised person, the direction must be made on a reasonable belief of fraud, does not stay a common law claim already before the courts, and may only remain in place for a maximum period of 3 months. Where a proceeding for a fraud offence is brought against the person, the automatic stay applies until the fraud offence proceedings end or are finally dealt with.

In each circumstance, the Bill provides that access to common law is preserved after the relevant timeframe ends, except where existing provisions of the WCR Act extinguish access to the common law if the person is convicted of a fraud offence. Additional time is provided to a person where the direction or the fraud offence proceedings end, and less than six months remain before the limitation period expires.

(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 purpose of the limitation is to facilitate the proper administration of the workers' compensation scheme by preventing payments made on fraudulent claims before the fraud can finally be dealt with in the criminal jurisdiction. This ensures that proceedings for damages are not finalised, and payments resulting from fraudulent claims are not made, before a proper investigation and prosecution can be conducted.

This mechanism enables potentially fraudulent proceedings to be stayed in circumstances where continuation of the proceeding would be inconsistent with the objectives of the scheme and serves legitimate public-interest purposes, including avoiding premature court decisions, empowering the regulator to prevent further fraudulent conduct and reduce the burden of restitution ordered following conviction.

These are legitimate purposes consistent with a free and democratic society based on human dignity, equality and freedom.

- (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 limitation is connected to the purpose of ensuring that common law proceedings for damages are not made on fraudulent claims before criminal proceedings can be finalised. The power to stay pre-proceedings and proceedings in circumstances, where the person would otherwise proceed without restriction, is intended to protect the scheme from providing payments on fraudulent claims.

An automatic stay may provide certainty and consistency by ensuring that proceedings cannot continue in circumstances in which the legislation intends that they be paused.

- (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 Bill.

- (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

Fraudulent claims within the scheme pose a significant risk to the integrity and sustainability of the scheme and diverts resources away from injury workers who have a legitimate entitlement to compensation and damages. The amendments are intended to strengthen the scheme's ability to limit fraud once detected, limit the potential scope of a person's offending, and ensure that information available to the courts is accurate and contemporary.

The temporary suspension of a worker's ability to progress common law proceedings limits the right to a fair hearing only in so far as it delays it, rather than removes it. The limitation is procedural in nature and applies only to the three-month period at the direction of an authorised person during an investigation, or for the duration of the criminal proceeding. In the absence of a conviction for a fraud offence or another provision, the worker's ability to pursue common law redress is restored.

The limitation is important to ensure the proper administration of justice. Allowing a worker to continue to pursue common law damages while an authorised person has arrived at a reasonable belief of fraud during their investigation is proportionate to the interest in protecting scheme integrity and limiting fraudulent conduct and potential offending of the person.

Suspension of lump sum compensation on direction of authorised person in relation to a fraud offence or on commencement of proceedings for a fraud offence

(a) the nature of the right

The *right to recognition and equality before the law* in the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Clauses 154 and 142 of the Bill may engage this right to the extent that it establishes or maintains different procedural requirements or consequences for persons with an entitlement to lump sum compensation for an injury under the workers' compensation scheme. However, the Bill does not discriminate on the basis of a protected attribute. Any distinction created by the measure would be directed towards regulating the timing of access to receiving a payment of lump sum compensation. Therefore, in my opinion, the right is not limited.

The Bill engages this right because it provides that an authorised person of the Regulator (authorised person) may direct a suspension of an entitlement to a payment lump sum compensation, and that payments of lump sum compensation are automatically suspended on commencement of fraud proceedings.

The *right to property* from the HR Act provides that all persons have a right to own property alone or in association with others that must not be arbitrarily deprived of their property. Lump sum compensation payments provide a statutory financial benefit to an injured worker and suspending that payment may affect their right to property by delaying their ability to receive that financial benefit.

The nature and extent of this limitation is mitigated by the circumstances in which the suspension operates. For a direction by an authorised person, the direction must be made on a reasonable belief of fraud, does not suspend a person's ability to have their permanent impairment assessed or a notice of assessment issued, and may only remain in place for a maximum period of 3 months. Where a proceeding for a fraud offence is brought against the person, the automatic suspension applies until the fraud offence proceedings end or are finally dealt with. Importantly, in each circumstance, the Bill provides that the entitlement to the lump sum compensation is preserved until after the relevant timeframe ends, except where existing provisions of the WCR Act extinguish access to the entitlement if for example, the person is convicted of a fraud offence.

(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 purpose of the limitation is to facilitate the proper administration of the workers' compensation scheme by preventing payments made on fraudulent claims before the fraud can finally be dealt with in the criminal jurisdiction. This ensures that lump sum compensation resulting from fraudulent claims are not made, before a proper investigation and prosecution can be conducted.

This mechanism enables lump sum payments potentially impacted by fraud, to be suspended in circumstances where the making of the payment would be inconsistent with the objectives of the scheme and serves legitimate public-interest purposes, including avoiding empowering

the regulator to prevent further fraudulent conduct and reducing the burden of restitution ordered following conviction.

These are legitimate purposes consistent with a free and democratic society based on human dignity, equality and freedom.

- (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 limitation is connected to the purpose of ensuring that lump sum payments are not made on fraudulent claims before an investigation and/or criminal proceedings can be finalised. The power to suspend the payment of lump sum compensation in circumstances, where the person would otherwise proceed without restriction, is intended to protect the scheme from providing payments on fraudulent claims.

- (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 Bill.

- (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

Fraudulent claims within the scheme pose a significant risk to the integrity and sustainability of the scheme and diverts resources away from injury workers who have a legitimate entitlement to compensation and damages. The amendments are intended to strengthen the scheme's ability to limit fraud once detected and limit the potential scope of a person's offending.

The temporary suspension of a worker's ability to receive lump sum compensation limits the *right to property* in so far as it delays it, rather than removes it. The limitation is procedural in nature and applies only to the three-month period at the direction of an authorised person during an investigation, or for the duration of the criminal proceeding. In the absence of a conviction for a fraud offence or another provision, the worker's ability to receive any lump sum compensation entitlement is restored.

The limitation is important to ensure the proper administration of justice. Allowing a worker to receive lump sum compensation while an authorised person has arrived at a reasonable belief of fraud during their investigation is proportionate to the interest in protecting scheme integrity and limiting fraudulent conduct and potential offending of the person.

Ending of entitlement to Compensation on direction of authorised person in relation to a fraud offence or following an insurer reviewing compensation based on material information

- (a) the nature of the right

The *right to property* under the HR Act provides that all persons have a right to own property alone or in association with others that must not be arbitrarily deprived of their property.

Clause 154 of the Bill engages the *right to property* because it provides that an authorised person may end a person's entitlement to compensation where the authorised person has a reasonable belief that the person has committed a fraud offence, and that compensation will continue to be paid. In addition, under clause 139 an insurer may end compensation if it reviews a workers' entitlement to compensation due to material information that was not known by, or reasonably available to the insurer at the time the application for compensation was decided, and if the insurer had that information they would not have allowed the claim. Neither of these amendments require a worker to refund any money's paid prior to the direction or decision of the insurer or limit the person's ability to access common law damages.

Compensation payments provide a statutory financial benefit to an injured worker and the ending of those payments may affect their right to property by depriving them of income or lump sum payments.

To the extent that the Bill permits the ending of the person's entitlement to compensation, the Bill may limit the right to property. The limitation is confined to circumstances where there is a reasonable belief that the worker has committed fraud, or where new material information indicates that the insurer would not have allowed a claim had it known or had reasonably available to it material information at the time they allowed the claim.

(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 purpose of the limitation is to limit payments made under the scheme for which a person should not be entitled to, and to protect the integrity of the Queensland scheme by deterring fraudulent claims and ensuring that public and scheme resources are available to workers who are genuinely entitled to compensation under the scheme.

The workers' compensation scheme relies upon accurate information being provided around the person's injuries (including whether work-related), status as a worker and capacity for work for the determination of their entitlement to compensation and rehabilitation. Where an insurer does not have information in relation to a claim, either due to the information not being known or reasonably available at the time the decision to accept the claim, or by deception or fraudulent conduct of a person before or during the claim, an accurate assessment of the workers' entitlement to compensation cannot be made.

Where the Bill amends the WCR Act to allow insurers to review ongoing compensation based on material information, the Bill seeks to provide a pathway for insurers to end the worker's ongoing entitlement, had the insurer had the material information at the time of making the decision the person would not have had.

Where the Bill amends the WCR Act to allow for an authorised person to end compensation on a reasonable belief of fraud, the Bill seeks to limit the financial harm to the scheme by ongoing fraudulent conduct and ensures that persons do not continue to gain financial advantage obtained through criminal conduct.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom because it promotes the proper administration of a statutory

compensation scheme, protects public confidence in the scheme, and seeks to ensure that benefits are directed to persons who are entitled to receive them.

(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 ability to end compensation where a worker is suspected of fraud, or where material information was not reasonably available to the insurer at the time the insurer decided to accept the application of compensation is connected to the limitation of the right to property.

By ending entitlements, the provisions directly support the object of protecting scheme funds, preserving public confidence in the scheme and maintaining fairness for workers legitimately entitled to compensation under the scheme and comply with their legal obligations.

With respect to the ending of compensation by an authorised person, the limitation is constrained to achieving those objectives because it applies only where an authorised person reasonably believes that the person committed a fraud offence and compensation will continue to be paid. The limitation therefore applies only after the relevant evidence has been considered by the authorised person, and not simply on the report of fraud by another person.

With respect to the ending of compensation by an insurer based on material information, the limitation is constrained to achieving its objective because it applies only where the insurer considers that the worker would not have had an entitlement to compensation if the information had been known when they allowed the compensation. The provision also limits the circumstances if the insurer did not make reasonable inquiries, or merely because of different medical information.

Accordingly, the limitation is connected to the purpose of protecting the integrity and sustainability of the scheme and ensuring compensation is only paid where there is an entitlement under the WCR Act.

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

There is no less restrictive and reasonably available means of achieving the purposes of the bill that would be equally effective.

(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 impact of these provisions on the right to property is balanced against the importance of preventing the payment of compensation where there is new evidence that the person should not have an ongoing entitlement to compensation.

Workers whose entitlement to compensation is ended under these provisions may seek a review and appeal of the decision to end entitlement under these provisions. Additionally, the workers' access to common law proceedings for damages is preserved, allowing for damages for injuries arising from negligence to be decided by the courts. The Bill also provides that the ending of compensation has no impact on payments already made.

On balance, the ending of compensation in these circumstances, together with the availability of review rights and common law proceedings for damages, means that the limitation on the right to property is justified by, and proportionate to, the significant public interest in ensuring that compensation is paid to workers who have a legitimate entitlement to compensation under the Act.

Proceedings against offences committed prior to commencement may be dealt with under the amending provisions, with limitations

(a) the nature of the right

The *right to protection against retrospective criminal laws* from the HR Act protects individuals from retrospective criminal laws. Clause 181 of the Bill allows for proceedings for fraud to be brought against offences prior to the commencement under the amending provisions.

The purpose of the measure is to ensure that transitional arrangements for the fraud offence operate effectively when the amended offence provisions commence while avoiding unnecessary disruption to the prosecution of conduct that was already criminal under the existing law.

Permitting offences committed before commencement to be dealt with under transitional provisions will reduce legislative complexity and facilitate continuity in the administration and prosecution of the fraud offence.

The Bill may assist in avoiding uncertainty about which statutory provisions apply to conduct that occurred before commencement and ensure that offences brought to the attention of the Regulator after the commencement of the amending provisions are not unnecessarily disrupted by requirements to proceed under the former Act.

Notably, the amending provisions provide that the maximum penalty for offences committed prior to commencement are preserved, and provide that prosecutions for offences committed prior to the commencement are dealt with in a summary way, and cannot be brought on indictment. The amending provisions additionally provide that an offence that comes to the awareness of the Regulator before the commencement of the amending provisions retains the existing time limitations to ensure that the offences, about which the Regulator is already aware, are not re-enlivened by the removal of the limitations to bring proceedings.

The right is appropriately connected to this purpose only to the extent that it preserves the prosecution of conduct that was already criminal at the time it occurred and does not retrospectively increase the criminal liability or penalty applicable to that conduct.

Given that the maximum penalty is unchanged and safeguards are in place to prevent revival of liability where the Regulator was already aware of the offending, the right is neither limited or engaged by these amendments.

Prospective employer able to obtain claims history summary with consent of prospective worker

(a) the nature of the right

The *right to privacy* from the HR Act provides that a person has the right not to have the person's family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 177 of the Bill engages and limits the right to privacy because it permits, subject to the consent of a prospective worker, a prospective employer to apply to the Regulator for a copy of the prospective worker's claims history summary. A claims history summary states high level information about the number and nature of the person's current or previous applications for compensation or claims for damages under the WCR Act or a former Act.

The *right to privacy* is broad and protects various aspects of the person's private life, including, their physical and mental integrity, privacy and personal information. Workers' compensation records may contain sensitive personal information, including about a worker's injury.

The Bill limits the information in a workers' claims history summary to high level information about the number, and nature of a person's claims information. The circumstances in which it may be requested, who may access the information, the purposes for which the information may be used and whether the information may subsequently be disclosed to other persons are also limited.

The Bill may constitute an interference with the worker's privacy because it permits personal information concerning the worker's workers' compensation history to be accessed by an employer or prospective employer.

The *right to recognition and equality before the law* provides that every person has the right to equal and effective protection against discrimination. I do not believe that these amendments limit equal protection for prospective workers whose claims history summary is provided to prospective employers, as the Bill limits the use of claims history summaries to lawful uses within the employment process.

(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 purpose of permitting prospective employers to obtain specified workers' compensation information is to support legitimate workplace risk management practices together with self-disclosure by prospective workers (including under existing section 571B) to manage the risk of injury aggravation.

There may be circumstances in which a prospective employer requires information about a worker's previous injuries to safely manage workplace risks. Access to limited and relevant information may assist in determining whether reasonable adjustments or workplace controls are required.

The purpose of ensuring that employers can obtain information that is genuinely necessary to protect workers and others in the workplace is a legitimate public-interest objective consistent with a free and democratic society based on human dignity, equality and freedom.

- (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

There is a connection between appropriately limited access to relevant workers' compensation information and the objective of ensuring that employers can identify if information is required from prospective workers to safely manage workers and workplaces. For example, information about a worker's claims history with self-disclosure by a prospective worker (including under section 571B) may assist an employer in determining whether workplace controls or reasonable adjustments are required to manage health and safety risks.

A workers' claims history may also provide information that has no direct relevance to the worker's proposed employment. It may create a risk that information is used for unrelated purposes, however this is limited by the need for the information only to be used for the employment process in a lawful way.

- (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 Bill.

- (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

Providing prospective employers access to the claims history summary of a prospective worker supports prospective employers to make informed employment decisions (in particular with regards to workplace risk management) by allowing a prospective employer to understand and make enquiries about a worker's previous injury history (including under section 571B). Employers must consider the likelihood of harm occurring from workplace risks as part of their work health and safety obligations. The information provided in a claims history summary together with self-disclosure from a prospective worker (including under section 571B) may assist prospective employers where an injury may be relevant to the inherent requirements of the position and the management of workplace risks.

Claims history summaries may only be released with the prospective worker's consent. It is noted that consent is given in the context of being considered for employment, which may operate to reduce the free provision of that consent in limited circumstances. However, this is considered reasonable for the purpose of supporting legitimate workplace risk management objectives where there is consent and it is supported by self-disclosure (including under s571B). Further, strict restrictions apply to the use and disclosure of the information, with non-compliance attracting a penalty. These safeguards reduce the risk that the information contained in the claims history summary is used for unlawful purposes.

The limitation on these rights is balanced by the objective of the Bill to enable employers to make informed employment decisions with regards to workplace risks while maintaining confidence in the scheme. The limitations are confined to because of the requirement to obtain the prospective worker's consent, that the information provided is high level and may only be used for limited purposes, and significant legislative protections exist to prevent the information from being used for other purposes.

Recurrent notification by workers of engaging in work or a calling

(a) the nature of the right

The *right to privacy* from the HR Act provides that a person has the right not to have the person's family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 138 of the Bill engages and limits this right in that it requires workers on-claim to regularly notify the insurer as to whether or not they have engaged in work or a calling. Failure to provide a notice to the Insurer within the prescribed timeframe without a reasonable excuse is an offence, and the insurer may suspend the worker's entitlement to compensation until the worker provides the notice. Under clause 153 of the Bill, where a worker has not, without reasonable excuse, completed the notice, or has provided a notice that they have not returned to work or a calling or that is false or misleading in a material particular, and has returned to work or engaged in a calling, this conduct may also be considered fraud under the WCR Act. This amends the existing notification requirements in section 136 and fraud provisions in section 535 of the WCR Act.

The *right to privacy* is broad and protects various aspects of the person's private life, including, their privacy and personal information. The workers' engagement in work or a calling constitutes various aspects of the persons private life.

(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 purpose of the provision is to ensure the integrity and proper administration of the scheme. Certain compensation payments are intended to replace earning capacity lost due to a partial or total incapacity arising from the work-related injury, while other compensation payments are made to support the worker's injury, rehabilitation and return to work. A worker's engagement in work or a calling is directly relevant to the worker's ongoing entitlements to compensation, and insurers' calculation of payments and decision-making on appropriate medical treatments and rehabilitation.

A recurrent notification requirement promotes:

- accurate assessment of entitlement;
- timely adjustments of compensation payments;
- effective determinations on appropriate medical treatments and rehabilitation and return to work supports;
- prevention and detection of overpayments and fraudulent and dishonest activity; and
- protection of scheme sustainability for employers and injured workers.

These are important and legitimate objectives consistent with a free and democratic society based on human dignity, equality and freedom.

- (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

There is a relationship between appropriately limited information about whether an injured worker is engaging in work or a calling and the objective of ensuring that the worker's payments for compensation accurately reflect the worker's actual entitlements.

The limitation on privacy is intentionally narrow. The provision requires disclosure only of information directly relevant for determining the worker's entitlement to compensation. While workers are additionally required to notify if they have not engaged in work or a calling, no further details about other aspects of their private life are sought.

The provision is also a less intrusive means to achieve a determination as to whether a worker has or has not engaged in work or a calling. Without a positive duty on a worker to notify changes to their work or calling status, insurers may be required to rely on more intrusive investigative tools in determining whether the worker is or is not working or engaging in a calling in determining a particular worker's entitlement to compensation.

The limitation on privacy arising from the disclosure of work or calling related information is connected to and achieves the purpose of the provision. Without the notification requirement, insurers may continue to make compensation payments and rehabilitation decisions based on outdated information, resulting in overpayments, incorrect calculation of benefits and inappropriate medical and rehabilitation interventions for injuries.

- (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 Bill.

Existing requirements under section 136 of the WCR Act provide that workers must notify their insurer within 10 business days of the worker's return to work or engagement in a calling. However, this provision has been limited in achieving the objective of ensuring that accurate information of the worker's engagement in work or a calling is provided to the insurer.

Compared to the existing requirements under section 136, the Bill's implementation of the notification requirement will improve compliance with the duty to notify the insurer of the worker's return to work or engagement in a calling, given that the requirement to notify will be incorporated as part of the broader worker-insurer engagement throughout the claim's life.

- (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 balance, the importance of preserving the privacy interests affected by the provision is outweighed by the substantial public interest in ensuring the proper administration and financial integrity of the scheme. The provision does not require workers to disclose broad personal or sensitive information unrelated to their claim; rather, it requires disclosure of specific information regarding their return to work or engaging in a calling that is directly relevant to the worker's entitlement to statutory compensation.

Given the limited nature of the information required to be disclosed outside of information directly relevant to determining the worker's compensation entitlement, the impact on human

rights is proportionate to the important objective being pursued. Consequently, the balance factors the limitation as a reasonable and demonstrably justified limitation on human rights.

Definition of injury for psychological and psychiatric injuries

(a) the nature of the right

The *right to recognition and equality before the law* in the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Clause 121 of the Bill makes amendments to the definition of injury which provide a different threshold for work-related injuries that are psychological or psychiatric disorders. For these injuries employment must be “the major significant contributing factor” compared with physical injuries where work must be “the significant contributing factor”.

The distinction means workers with psychological or psychiatric injuries are subject to a more stringent eligibility requirement, compared with physical injuries, before they are entitled to access workers' compensation. As a result, the amendments may engage or limit the right to equality before the law.

(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 purpose of the limitation is to ensure that workers' compensation coverage for psychological or psychiatric injuries is confined to injuries where employment is the major cause of the injury. The amendments recognise that psychological or psychiatric injuries frequently arise from a complex interaction of work-related, personal, social, familial and pre-existing factors that may be difficult to distinguish and assess.

By requiring employment to be the major significant contributing factor, the amendments seek to ensure an appropriate connection between employment and an entitlement to compensation or damages, improve the consistency and integrity of decision-making, and maintain the financial sustainability of the workers' compensation scheme for the benefit of workers and employers.

The purpose is consistent with a free and democratic society based on human dignity, equality and freedom because it does not exclude compensation for work-related psychological or psychiatric injuries. Rather, it establishes a higher causation threshold designed to ensure that compensation is provided where employment is the major significant contributor to the injury. The objective of preserving the affordability of the workers' compensation scheme is a legitimate public purpose that supports the ongoing provision of benefits to workers who suffer work-related injuries.

(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

There is a rational connection between the limitation and its purpose.

The requirement that employment be the major significant contributing factor to a psychological or psychiatric injury assists in ensuring that compensation is payable only where the injury is principally attributable to employment. The higher threshold reduces the prospect

that compensation will be payable where employment is only one of a number of contributing factors and not the major significant cause of the condition.

The limitation directly advances the policy objective of maintaining a strong causal connection between employment and entitlement to compensation or damages. It also assists in containing scheme costs associated with claims where non-work-related factors are substantial contributors to the worker's condition, thereby supporting the long-term sustainability of the workers' compensation scheme.

As the limitation operates by requiring a greater degree of work-related causation, it is logically connected to achieving the purpose of directing compensation towards injuries that are work-related.

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

There are no less restrictive and reasonably available means of achieving the purpose that would be equally effective.

Maintaining the existing requirement that employment be merely "a significant contributing factor" for psychological or psychiatric injuries would not achieve the objective of ensuring that compensation is restricted to injuries primarily caused by work. Alternative approaches, such as relying solely on administrative guidelines, enhanced evidentiary requirements or claims management practices, would not provide the same degree of certainty or consistency and would be less effective in directing entitlement toward injuries principally caused by employment.

Although a less restrictive approach could involve retaining a uniform causation threshold for all injuries, such an approach would not address the policy concern that psychological or psychiatric injuries may have multiple significant causes unrelated to employment. The legislature is therefore entitled to adopt a differentiated causation test where it considers the nature of the injury and the policy objectives of the compensation scheme justify doing so.

Accordingly, the limitation may reasonably be regarded as the least restrictive practical means of achieving the objective while continuing to preserve access to compensation for psychological or psychiatric injuries that are predominantly work-related.

(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

There does not appear to be less restrictive and reasonably available means of achieving the purpose that would be equally effective.

Maintaining the existing requirement that employment be "a significant contributing factor" for psychological or psychiatric injuries would not achieve the objective of ensuring that compensation is only available to psychological or psychiatric injuries where work is the major significant contributing factor. Alternative approaches, such as relying solely on administrative guidelines, enhanced evidentiary requirements or claims management practices, would not provide the same degree of certainty or consistency and would be less effective in directing entitlement toward injuries principally caused by employment.

Although a less restrictive approach could involve retaining a uniform causation threshold for all injuries, such an approach would not address the policy concern that psychological or psychiatric injuries may have multiple significant causes unrelated to employment. The legislature is therefore entitled to adopt a differentiated causation test where it considers the nature of the injury and the policy objectives of the compensation scheme justify doing so.

Accordingly, the limitation may reasonably be regarded as the least restrictive practical means of achieving the objective while continuing to preserve access to compensation for psychological or psychiatric injuries that are predominantly work-related.

(f) any other relevant factors

The amendment to the definition of injury for psychological or psychiatric injuries previously applied under the WCR Act between 29 October 2013 and 30 October 2019.

Presumptive coverage for parks and wildlife service employees engaged in firefighting

(a) the nature of the right

The right to recognition and equality before the law in the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination. Clause 122 and 185 of the Bill limits the right to recognition and equality before the law as the amendments are limited to a particular cohort of workers (i.e. Queensland Parks and Wildlife Service (QPWS) firefighters) who will be entitled to seek compensation through alternative pathways that reverse the onus of proof.

Since 2015, firefighters have had access to presumptive legislation which deems specified diseases to be work-related and an injury under the WCR Act. 23 deemed diseases are now covered by the presumptive legislation, recognising the causal relationship between the firefighting occupations and these diseases.

In 2020, presumptive legislation for post-traumatic stress disorder (PTSD) was introduced into the WCR Act which allowed first responders and other eligible persons diagnosed with PTSD by a psychiatrist to seek compensation to be deemed to have a work-related injury.

All workers, irrespective of occupation, are currently entitled to seek compensation for a work-related injury arising from the above medical conditions. However, the presumptive legislation provide an alternative pathway for specified workers to seek compensation for PTSD and deemed diseases that reverses the onus of proof by taking the disease and PTSD to be an injury within the meaning of the WCR Act, unless it is proved that the disease or PTSD did not arise out of, or in the course of, the person's relevant employment, or the relevant employment was not a significant contributing factor to the disease or PTSD.

These presumptive pathways generally cover firefighters engaged by the Queensland Fire Department, and includes volunteer firefighters and fire wardens, and members of the rural fire brigade. However, these presumptive laws do not apply to QPWS firefighters.

By allowing QPWS firefighter access to the presumptive approaches under the WCR Act, the rights of others in Queensland's workers' compensation scheme will not change; however, they will not be consistent to the extent that:

- other workers or persons entitled to compensation, irrespective of diagnosis, cannot access the alternative pathway; and
- QPWS firefighters who have a diagnosis other than a deemed disease or PTSD cannot access the alternative pathway.

(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 purpose of the limitation is to provide QPWS firefighters' access to presumptive pathways already available to other firefighters, which encourages QPWS firefighters to seek support through the workers' compensation scheme and minimise barriers which prevent QPWS firefighters from claiming compensation in the first instance.

QPWS firefighters are exposed to similar hazards, and consequential risks of injury, to those of other firefighting occupations, due to the nature of their duties in managing, preventing and controlling wildfires.

Safe Work Australia provides guidance about the criteria generally applied to determine the suitability of presumptive legislation for an injury:

- a strong causal link between the disease and occupational exposure supported by academic literature;
- clear diagnostic criteria; and
- a considerable proportion of the cases of that disease in the overall population or in an identifiable subset of the population are known to be due to occupational exposure.

Deemed diseases and PTSD have known and strong causal links between the disease and occupational exposure risks of firefighters, and QPWS firefighters are exposed to similar occupational hazards as a result of their duties.

(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

There is a connection between the limitation on the right to recognition and equality before the law and the purpose of the limitation.

The purpose of the Bill is to give eligibility to QPWS firefighters access to the presumptive pathways, with the aim of improving their workers' compensation experience and mental health outcomes for QPWS firefighters diagnosed with PTSD. The limitation is appropriately focussed to achieve its purpose of providing earlier and simpler access to the scheme for QPWS firefighters who are diagnosed with a deemed disease or struggling with the impacts of PTSD and to provide an alternative to the traditional claims process to reduce impacts on their injury and recovery.

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

The Queensland Government recognises the need to implement a range of administrative and claims management improvements to better support first responders with work-related injuries, including QPWS firefighters.

It is possible for the proposed amendments to be less restrictive i.e. apply to a larger cohort of workers or a broader type of injuries; however, this is not reasonable as the causal connection with other occupations or other psychological injuries (e.g. depression or anxiety) is less clear as these conditions can result from a multitude of factors other than exposure to trauma.

- (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

First responders are significantly impacted by their exposure to traumatic incidents in protecting and serving our community and have a higher prevalence of deemed diseases and mental health injuries, when compared to other cohorts in the workers' compensation scheme. First responders with cumulative exposure to workplace hazards experience difficulties accessing workers' compensation, which is compounded by the latent onset of deemed diseases, for PTSD, and the nature of the illness of PTSD itself.

The application of presumptive pathways to QPWS firefighters will assist in reducing difficulties in establishing the causal link between injury and work, and encourage them to seek early assistance and ensure they can more easily access treatment and rehabilitation support necessary to recover from their injury.

Providing QPWS firefighters with access to the alternative pathways for first responders to access the scheme recognises the exposure characteristics of QPWS firefighters with other firefighters and first responders, both in their duties and claiming compensation, and given the importance of supporting their ongoing mental health, the limitation to the right to recognition and equality before the law is justified.

- (f) any other relevant factors

It is important to note these amendments only provide QPWS firefighters access to the alternative pathways to access the scheme and do not amend the operation of the existing alternative pathways. Therefore, the right to recognition and equality before the law is limited only to the extent that it impacts a person's ability to access the alternative pathway.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

To the extent the amendments limit the relevant human rights, I am satisfied the limitation is reasonable and demonstrably justifiable as outlined above.

Brisbane Olympic and Paralympic Games Arrangements Act 2021

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

Boundary realignment for the Gabba Arena

To facilitate a boundary realignment for the Gabba Arena, new ch 3A, pt 2A, div 2A (and schedule 4AB) provides for the creation of a new lot comprised of land which currently forms part of Lot 1291 on SP149280 (a reserve held by the State of Queensland represented by the Department of Transport and Main Roads) and for the vesting of the new lot in Cross River Rail Delivery Authority as an estate in fee simple.

I am satisfied that these amendments will not limit or affect any human rights, because:

- no individuals have been identified as holding any interests in the land comprising the proposed new lot;
- although the land comprising the proposed new lot falls within scope of existing State controlled road and motorway declarations under the Transport Infrastructure Act, the revocation of those declarations insofar as they apply to the relevant land will not in any way interfere with the ongoing operation of the relevant State controlled road and motorway (or any person's ability to access and use that infrastructure); and
- the land comprising the proposed new lot already falls within scope of the definition of 'arena land' under schedule 2 of the BOPGA Act, such that the amendments will not cause any increase in the scale or nature of the expected impacts associated with the construction and operation of the Gabba Arena. In fact, the amendments will facilitate a reduction in the amount of land caught by the definition of 'arena land'.

New section 53DFAA and schedule 4AA

The effect of new section 53DFAA is to exempt noise from amplified music played at 'relevant venues' from being subject to noise restrictions under the Liquor Act 1992 (including any noise condition included in any liquor licence issued in respect of all or part of the venue).

This amendment could potentially limit or otherwise affect the following human rights:

- Freedom of expression (section 21)
- Taking part in public life (section 23)
- Property rights (HR Act, section 24)
- Right to privacy (HR Act, section 25)

Freedom of expression and taking part in public life

The right to freedom of expression protects a person's right to hold an opinion and to express themselves by seeking, receiving, and imparting information and ideas. The right to take part in public life provides 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.

The proposed amendment may limit or affect these rights by depriving affected individuals of the ability to make complaints to the regulator under the Liquor Act in relation to noise from amplified music played at relevant venues.

Property and privacy rights

The right to property includes protection from the arbitrary deprivation of property. Deprivation in this sense is 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 their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The right to privacy protects against unlawful or arbitrary interferences with a person's privacy, family, home or correspondence. Privacy captures personal information but extends to a person's private life more generally, including their mental and physical integrity.

The proposed exemption from noise restrictions under the Liquor Act for amplified music played at relevant venues may limit the rights to property and privacy because it may impact upon the amenity of nearby residences.

However, the right to privacy will only be limited if the interference with privacy is unlawful or arbitrary. The interference with privacy will be authorised by the BOPGA Act and will therefore be lawful. The right to property will also only be limited if the deprivation is arbitrary. 'Arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

To the extent the amendments limit the relevant human rights, I am satisfied the limitation is reasonable and demonstrably justifiable for the following reasons.

(a) the nature of the right

For each of the relevant rights, the nature and underlying values are as follows:

- Freedom of expression (HR Act, section 21) – The right protects the ability of a person to hold an opinion and express themselves freely.
- The right to take part in public life (HR Act, section 23) – This right is concerned with providing an opportunity for people to participate in public affairs.
- Property rights (HR Act, section 24) – The right to property protects the right to own property and not to be arbitrarily deprived of property.
- Right to privacy (HR Act, section 25) – The right to privacy protects personal information and extends to protect an individual's private life more generally, including protection from interference with a person's physical and mental integrity, as well as the existence, autonomy, security and wellbeing of every individual in their own private sphere.

(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 seeks to exempt noise from amplified music played at 'relevant venues' from noise restrictions under the Liquor Act. This is because the noise restrictions under the Liquor Act are considered too onerous for the effective performance of entertainment venues in the nature of the 'relevant venues'. Existing venues (of a similar scale and nature to the 'relevant venues') are typically exempt from the noise restrictions under the Liquor Act, either on the basis that the venue is a 'major sports facility' under the Major Sports Facilities Act or through an exemption pathway available under the Liquor Act for licensed premises in 'special

entertainment precincts'. The purpose of this amendment is to provide certainty that an equivalent relaxation will be provided for 'relevant venues'. This will ensure that the relevant venues can be delivered in a timely and cost effective manner, and to a design standard that is appropriate for the intended games and legacy uses of the venues.

- (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 potential limitations on property and privacy rights (associated with potential impacts on amenity) are directly related to the purpose of the amendments (i.e., to provide certainty that amplified music played at relevant venues will be exempt from noise restrictions under the Liquor Act, allowing the relevant venues to be designed and constructed to an appropriate standard for venues of this nature). Similarly, the limitation of rights to make complaints to the regulator under the Liquor Act (in circumstances where noise emissions exceed the 'unreasonable noise' thresholds under that Act) will ensure that the venues are able to effectively operate, by ensuring that amplified music can be played at the venues to a level that is expected for entertainment venues of this nature.

- (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 or 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 may impact upon the amenity of nearby residences and therefore may affect rights to property and privacy. However, it is intended that amenity impacts associated with the operation of the relevant venues will be appropriately managed and mitigated through contractual arrangements with venue operators, including noise management plans.

In addition, the amendments will ensure that relevant venues can be designed and constructed to an appropriate standard for venues of this nature, which will facilitate the delivery of the venues in a timely and cost effective manner and ensure that legacy benefits are maximised.

Having regard to the above, I consider any impacts on the rights to privacy and property to be proportionate and therefore not arbitrary. As a result, I am of the opinion that those rights are not limited by the amendments.

In relation to impacts on freedom of expression and the right to take part in public life, it is acknowledged that the amendments will deprive affected individuals of the ability to make complaints to the regulator under the Liquor Act in relation to noise from amplified music played at relevant venues. However, similar to the impacts upon amenity described above, this impact will be managed and mitigated through contractual arrangements with venue operators, including requirements to comply with approved noise management plans and complaints management procedures. Furthermore, the amendments will ensure that amplified music is able to be played to a level that is appropriate for an entertainment venue of the scale and nature of the relevant venues. This will enhance the legacy benefits of the venues (including the ability to host world-class entertainment events), increasing local and international tourism and boosting the economy. On balance, I am satisfied that the benefits of the amendments outweigh

the potential limitation on complaint rights. To the extent that a person's freedom of expression or right to take part in public life is limited by the amendments, I am satisfied that the limitation is reasonable and demonstrably justifiable.

The amendments are therefore compatible with human rights.

Planning and Environment Court Act 2016

The Bill amends the P&E Court Act to establish a new office of P&E Court Judge Administrator.

Human rights which are relevant to these provisions include recognition and equality before the law, freedom of movement, right to take part in public life, property rights and the right to a fair hearing. While these rights are engaged, for the reasons that follows, it is not considered that these rights will be limited by these amendments.

Section 15 Recognition and equality before the law

Section 15 of the HR Act provides the entitlement for the law to recognise all individuals as a person and for all persons to enjoy their human rights in a manner that is free from discrimination. It provides that the law applies equally to all persons, and that all individuals are afforded the protection of the law, equally and without discrimination. Individuals should be protected from discrimination equally and effectively.

Amendments to the P&E Court Act which establish a new P&E Court Judge Administrator position engages, but does not limit the right, to recognition and equality before the law. The P&E Court Judge Administrator's role in supporting the Chief Judge with judicial administrative processes and oversight of the court will apply equally to all matters listed before the P&E Court, and to all parties to those matters. The P&E Court Judge Administrator will not be appointed to office arbitrarily but will be appointed by Governor in Council. Proposed amendments to the P&E Court Act include provisions relating to judge seniority. However, judge seniority is not determined arbitrarily but by the date that the judge was appointed as a judicial officer.

Section 19 Right to freedom of movement

Section 19 of the HR Act provides a right for individuals to decide where to live and to move around or enter or leave the State as they see fit. If established, the P&E Court Judge Administrator will have responsibility for oversight of the P&E Court, and judicial administrative processes (subject to the Chief Judge who will retain overall responsibility for the P&E Court pursuant to section 6 of the P&E Court Act). This may involve making decisions about where and when matters are listed for hearing at P&E Court locations (Brisbane, Southport, Maroochydore, Townsville, Cairns and other locations as required). Therefore, the right to freedom of movement may be engaged. However, the amendments to the P&E Court Act do not propose changes to existing P&E Court locations or listing practices and so the decision will not limit this right. Rather, the P&E Court Judge Administrator will assist the Chief Judge in administering existing court administrative practices.

Section 23 Right to take part in public life

Section 23 of the HR Act provides the people of Queensland with the right to take part in public affairs, without discrimination. Relevantly, this includes being granted with equal access to the public service and the public office.

Amendments to the P&E Court Act to establish a P&E Court Judge Administrator position as part of Queensland's judicial branch of Government, engages but does not limit, the right to take part in public life. In fact, by facilitating more efficient judicial administration processes this decision promotes access to and transparency of judicial services.

Section 24 Property rights

Section 24 of the HR Act confers upon individuals the right to hold property, on their own or with others, and to not be deprived of that property arbitrarily.

The amendments to the P&E Court engage, but do not limit, rights relating to property as, amongst other things, the P&E Court has jurisdiction to hear appeals against decisions under the *Planning Act 2016*: see note 1 of section 7 of the P&E Court Act. Establishing an office of P&E Court Judge Administrator will promote property rights by facilitating access to justice and the timely hearing and resolution of planning and development related matters.

Section 31 Right to fair hearing

Section 31 of the HR Act, relevantly, provides a right that charges or proceedings must be determined by a court or tribunal that is competent, independent and impartial following public hearing that is fairly conducted. This right is subject to decisions made in the public interest or interests of justice to exclude certain persons or entities such as media organisations. It also confers an entitlement for court and tribunal decisions to be accessible by the public.

This decision engages the right to a fair hearing as the P&E Court Judge Administrator's role and functions relating to court oversight and judicial administration may affect P&E Court matters, including their hearings.

However, beyond establishing this position, no changes to the way in which hearings are conducted, or court practices or procedures are proposed by these amendments. Rather, the P&E Court Judge Administrator would assist Chief Judge in overseeing and administering existing court practices therefore the right is not limited. In fact, the decision may promote the right to a fair hearing by providing clearer, more transparent and effective judicial administrative processes to ensure that P&E Court matters are listed, heard and resolved in a timely manner.

Given the administrative nature of the role, the intent to appoint an existing P&E Court to this office is not expected to affect the judge's impartiality in decision making when sitting and exercising powers as a P&E Court Judge.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The amendments to the P&E Court Act do not limit any human rights.

Conclusion

In my opinion, the Industrial Relations and Other Legislation Bill 2026 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

JARROD BLEIJIE
DEPUTY PREMIER
MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING
MINISTER FOR INDUSTRIAL RELATIONS

© The State of Queensland 2026