

Trading (Allowable Hours) and Other Legislation Amendment Bill 2022

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*, I, Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Trading (Allowable Hours) Act 1990* (TAH Act) to ease the regulatory burden and reduce complexity for shops operating throughout Queensland. The Bill will achieve these objectives by implementing recommendations arising from the recent Queensland Parliamentary Education, Employment and Training Committee *Inquiry into the operation of the Trading (Allowable Hours) Act 1990* to:

- streamline and simplify the categories of core trading hours for non-exempt shops;
- clarify the powers of the Queensland Industrial Relations Commission (QIRC) to declare special events and make orders;
- ensure consistent voluntary work protections for employees so they are not coerced, threatened, intimidated or harassed to work extended hours by their employer if the QIRC makes trading area orders or special event declarations, and irrespective of the employee's applicable industrial instrument; and
- extend two existing five-year moratoriums in the TAH Act for an additional 12 months.

The Bill also amends the *Education (Queensland College of Teachers) Act 2005* (QCT Act) and *Education (General Provisions) Act 2006* to make permanent particular provisions in the *Education Legislation (COVID-19 Emergency Response) Regulation 2020* under the *COVID-19 Emergency Response Act 2020*. These provisions allow meetings as part of investigations under the QCT Act, and particular meetings required under the Education (General Provisions) Regulation 2017 (EGPR), such as Parents and Citizens' (P&C) Association meetings, to be conducted through communication technology rather than physical attendance.

Human Rights Issues

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

Amendments to the Trading (Allowable Hours) Act 1990

In my opinion, amendments to the TAH Act engage the following human rights:

- freedom from forced work (section 18 of the HR Act); and
- right to a fair hearing (section 31 of the HR Act).

These rights are promoted through amendments in the Bill and no limitations to human rights have been identified.

Freedom from forced work

The **freedom from forced work** under section 18 of the HR Act protects a person's right to not be held in slavery or servitude or to be made to perform forced or compulsory labour. The Bill promotes the right to freedom from forced work by clarifying that employees can freely elect to work extended hours, including if the QIRC makes an order or declares a special event.

Currently, sections 36A-36B of the TAH Act protect employees from being forced to work extended hours, unless employees have freely elected to do so, by making this conduct a civil offence. However, these protections do not apply to employees subject to industrial instruments which:

- provide for employees to refuse or agree to work during extended hours, and
- in the case of section 36A of the TAH Act, are prescribed in a regulation.

The Bill amends the TAH Act to clarify employees are protected from being coerced, harassed, threatened or intimidated by their employer to work extended hours, and must freely elect to work these extended hours, irrespective of the arrangements in their relevant industrial instrument.

New section 36BA extends these same protections to employees if an amendment of the TAH Act commences or if an order or special declaration is made by the QIRC.

The Bill promotes the right to freedom from forced work by ensuring existing safeguards are not bypassed through industrial instruments which have less favourable protections for employees, and that these protections are consistently applied if a new amendment commences or following orders or declarations made by the QIRC.

Right to a fair hearing

The **right to a fair hearing** under section 31 of the HR Act provides, in part, that all persons who are a party to a civil proceeding have the right to a fair and public hearing for the matter to be decided by a competent, independent and impartial court or tribunal. This right reaffirms the right of all individuals to procedural fairness when seeking justice.

The Bill includes amendments aimed at providing greater guidance and clarification on the QIRC's power to declare special events. These amendments promote the right to a fair hearing by clarifying the matters to be considered by the QIRC, such as predicted attendance numbers, and the event's contribution to Queensland's national or international reputation. These amendments will result in greater transparency and procedural fairness, as well as reduced complexity, delays and costs to parties, for these proceedings. The right is also promoted as it will provide individuals, such as small business owners, greater equity and access to justice, particularly when making or opposing applications against larger organisations.

Amendments to the Education (Queensland College of Teachers) Act 2005 and Education (General Provisions) Act 2006

In my opinion, the human right relevant to the amendments made by Parts 2-3 of the Bill is:

- right to Freedom of Movement (section 19 of the HR Act).

The Bill does not limit the right, as discussed below.

Freedom of Movement

The **right to freedom of movement** provides every person lawfully within Queensland with the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This right is relevant to the proposed amendment to section 181 of the QCT Act. Section 181 enables a Queensland College of Teachers (QCT) investigator to require a person to attend a place or produce a thing. While the existing provision limits a person's right to freedom of movement, the Bill does not add to this existing limitation, but rather reduces its impact.

Section 181 currently limits a person's right to freedom of movement if they are required to attend a meeting with an investigator. The limitation existed prior to the commencement of the HR Act and was identified during a review by the Department of Education in 2020 of the existing legislation's compatibility with the HR Act. The limitation is justified by the importance of enabling QCT investigators to appropriately carry out investigations related to ensuring the integrity of the teaching profession. This is in accordance with the objects of the QCT Act, which is to uphold standards and maintain public confidence of the teaching profession. Requiring attendance at a meeting or the production of things relevant to an investigation are essential tools to ensuring the QCT can fulfil its discipline and enforcement functions under section 231 of the QCT Act.

The amendment in the Bill does not impose any additional limitation, but rather reduces the impact of the existing limitation on a person's right to freedom of movement. The amendment to section 181 enables a person required to attend a meeting with an investigator to attend via electronic means and allows them to produce items via means other than in person. It therefore gives them an ability to attend meetings from anywhere that they have access to communication technology, such as their own home. It maintains the integrity of QCT investigation but broadens the person's ability to meet the requirements of the provision, and positively impacts on the Right to Freedom of Movement.

Conclusion

In my opinion, the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* as it does not limit an individual's human rights.

GRACE GRACE MP
Minister for Education
Minister for Industrial Relations
Minister for Racing

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