

Emergency Services Reform Amendment Bill 2023

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, Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement of compatibility with respect to the Emergency Services Reform Amendment Bill 2023 (the Bill).

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

Overview of the Bill

Currently, the Queensland Fire and Emergency Services coordinate and manage various elements of Queensland's disaster response including the State Emergency Service and, through the administration of grants and service agreements, volunteer marine rescue entities including the Australian Volunteer Coast Guard Association of Queensland (AVCGA) and Volunteer Marine Rescue Association of Queensland (VMRAQ).

The State Emergency Service (SES)

The SES provides assistance in circumstances ranging from non-life-threatening emergency situations during floods, storms or other similar events to supporting other emergency services agencies such as the Queensland Police Service (QPS) and the Fire and Rescue Service with road crash rescue, emergency traffic management, flood boat rescue and urban, rural and evacuation searches. The SES is as a 'not-for-profit' organisation consisting of SES units established within local government areas. The SES relies heavily on the support of its members who are predominately volunteers.

Marine rescue services

In Queensland, marine rescue volunteers play a critical role in keeping the community safe on the water through general marine assistance and assisting with search and rescue operations (SAR). Marine rescue services are provided by two separate organisations namely the AVCGA and the VMRAQ.

A series of reviews culminating in the '*Independent review of Queensland Fire and Emergency Services*' (the Independent Review Report) and the '*Review of Queensland's Disaster Management Arrangements (QDMA)*' (the IGEM Review) have considered the efficiency of the delivery of emergency services in Queensland.

The Bill is a component of a suite of legislative reforms to Queensland's emergency services. These reforms will meet recommendations made in the Independent Review Report by:

- establishing a new statewide marine rescue service called Marine Rescue Queensland (MRQ) through the proposed *Marine Rescue Queensland Act 2023* (MRQ Act);
- establishing the SES through the proposed *State Emergency Service Act 2023* (SES Act); and
- aligning MRQ and SES under the control of the QPS through the Bill which will make the necessary administrative and consequential amendments for this to occur.

The Bill also meets certain recommendations in the IGEM Review by formally establishing the State Disaster Management Group in the *Disaster Management Act 2003*.

Human Rights Issues

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

In my opinion, the human rights that are relevant to the Bill are:

- Privacy and reputation – section 25 (clauses 23 and 27 of the Bill); and
- Right to liberty and security of person – section 29 (clause 23 of the Bill).

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 HR Act)

Expansion of the offence of ‘Unauthorised use of confidential information’ in the Police Service Administration Act 1990 to include SES and MRQ members

The Bill will expand section 10.1 of the *Police Service Administration Act 1990* (PSAA) to apply to all MRQ and SES members and any individual engaged to perform functions under or relating to the administration of the proposed new SES Act, the proposed new MRQ Act and the PSAA. Additionally, this provision will apply to any person who acquires or has access to confidential information as authorised under these Acts or through any person mentioned above. The amendment will prohibit the person from using confidential information unless one of the following statutory exemptions applies:

- to the extent the use is required or permitted under these Acts or another Act or to perform the person’s functions under these Acts or another Act;
- with the consent of the person to whom the information relates if the information would normally be made available to any member of the public on request;
- in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- if the use is otherwise required or permitted under another law.

The proposed amendment will impose a maximum penalty for the offence of 100 penalty units or imprisonment for two years.

This amendment will potentially engage the human right to liberty and security of person and will promote a person’s right to privacy by protecting an individual’s personal information.

(a) the nature of the right

Right to liberty and security of person – section 29 of the HR Act

Section 29 of the HR Act protects a person's right to liberty and security. This includes that a person must not be subjected to arbitrary arrest or detention and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law. It also outlines the procedures that should be followed following a person's arrest for a charge.

The right to liberty means that people must not be arrested and detained, unless provided for by law. Their arrest and detention must also not be arbitrary. This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes. This can be relevant any time a person is not free to leave a place by their own choice.

Subsection 2 states that a person must not be subject to arbitrary arrest or detention. 'Arbitrary' might involve injustice, inappropriateness, unpredictability, or a lack of due legal process. Subsection 3 states that a person can only be detained or have their liberty denied in accordance with the law.

The proposal may be seen to engage this right as the proposed offence provision carries a maximum penalty for the offence that includes a term of imprisonment.

(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 offence provision imposes a maximum penalty of 100 penalty units or two years imprisonment. A person who offends against this section may be arrested and face serious penalties including a custodial sentence. However, these offences and the consequences that may result from the commission of these offences are not arbitrary in nature. The imposition of these offences is a deliberate measure to ensure that confidential information is protected.

The offence provision provides specific circumstances in which the use of confidential information will be permissible and further reduces any concerns about the impact of these amendments on human rights by:

- limiting the offence provision to a select cohort of persons—that is, either a person who would be authorised to have access to confidential information by being engaged to perform functions under the PSAA or a person who has acquired or accessed the confidential information from the aforementioned person; and
- limiting these offence provisions to confidential information which is clearly defined to mean personal information or other information of a confidential nature that is not publicly available.

The concerns about the impacts of these amendments must be balanced against the benefit of their implementation. These amendments will promote the right to privacy by deterring the inappropriate use of confidential information through the significant maximum penalty of the offence, which recognises the seriousness and potential harm that the misuse of confidential

information can cause. This harm occurs not only to those individuals to whom the information relates but may also extend to members of the broader community.

- (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

While it is impossible to quantify the deterrence effect of these amendments, it is known that the potential harm that the release of confidential information may cause is great. The QPS holds a wide range of personal and sensitive information about an extensive range of persons over time. The inappropriate release of this information has the potential to compromise police investigations and may have serious ramifications for members of the community.

As such, a strong disincentive for the misuse of confidential information is in the public interest.

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

No other less restrictive, reasonably available alternatives have been identified.

- (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 limitation on the right to liberty is outweighed by the strong community expectation that confidential information is protected. In protecting such information, these amendments promote the right to privacy for individuals whose information is held by the QPS.

It must also be acknowledged that this amendment is an expansion of an existing offence provision under the PSAA that applies to other members of the QPS. The proposed amendments affecting SES and the MRQ members will ensure that confidential information within the QPS is treated consistently.

As such, on balance, it is considered that the advantages of the amendment outweigh the limitations placed on the right.

- (f) any other relevant factors

Not applicable.

Including SES and MRQ members as persons engaged by the QPS

The Bill will expand the range of persons who will be considered to be engaged by the service to include MRQ and SES members. This will result in a greater number of persons being assessed for their suitability to be engaged by the QPS. To conduct this assessment, the person must provide relevant information to the Commissioner, including the person's criminal history.

This amendment will engage the right a person has to privacy.

(a) the nature of the right

Privacy and reputation – section 25 of the HR Act

Section 25 of the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The right to privacy is very broad and includes privacy in the sense of personal information, data collection and correspondence. The concept of arbitrariness carries a human rights meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.¹

The amendment may limit a person’s right to privacy by authorising the disclosure of information, including personal information, to the QPS under specific circumstances.

(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 the character of MRQ and SES members is of an appropriate standard. MRQ and SES personnel hold a unique position in our community. They are called upon, usually during periods of crisis, to assist members of the public in circumstances where members of the public are vulnerable. In contrast to other public officials, MRQ and SES members are entrusted with special powers to perform their duties, including the use of force and in certain circumstances the power to enter into private property. There is a legitimate community expectation that MRQ and SES members will have the degree of integrity necessary for them to perform 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

The limitation on an individual’s right to privacy and reputation is necessary to ensure that MRQ and SES members have the integrity to perform their duties and the risk of these emergency services personnel acting inappropriately is minimised. This can only be achieved by requiring MRQ and SES members to provide relevant information so that an assessment of the appropriateness of these persons being engaged by the QPS can be conducted.

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

There is not a less restrictive way to achieve the intent of this amendment.

(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 benefit gained by fulfilling the purpose of the amendment, which may impose a limitation on human rights, outweighs the harm caused to the human right.

¹ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 [114]

It may be noted that it is not unusual for an organisation to seek information from a prospective employee or volunteer in order to determine the suitability of engaging that person. It is a common practice adopted by private industry and government. Concerns about the impact on this right are minimised as the Bill only requires an MRQ or SES member to disclose to the Commissioner the minimal amount of information necessary to determine if that person is suitable to be engaged by the QPS. For example, the relevant information that is required to be provided by an MRQ or SES volunteer is information about their criminal history and whether there has been a suspension or working with children authority or a negative notice under the *Working with Children (Risk Management and Screening) Act 2000*. This infringement on an individual's right to privacy and reputation must be weighed against the legitimate expectation of the community that emergency service organisations will engage personnel of appropriate standing and character.

(f) Any other relevant factors

Nil.

Conclusion

In my opinion, the Emergency Services Reform Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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