

Fire and Emergency Services Legislation (Fees) Amendment Regulation 2020

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, Craig Crawford, Minister for Fire and Emergency Services and Minister for Aboriginal and Torres Strait Islander Partnerships provide this human rights certificate with respect to the Fire and Emergency Services Legislation (Fees) Amendment Regulation 2020 (the Amendment Regulation) made under the *Building Act 1975* and the *Fire and Emergency Services Act 1990*.

In my opinion, the Amendment Regulation, is compatible with the human rights protected by the *Human Rights Act 2019* because it does limit with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Queensland Government's Indexation Policy (the Policy) outlines the requirements in regard to increases of fees, charges and levies. Queensland Fire and Emergency Services (QFES) administers a number of fees, charges and levies that increase annually. On 4 June 2020, Cabinet Budget Review Committee decided (Decision No. 1001) the indexation rate for 2020-21 would be 1.8 per cent per annum.

The Amendment Regulation amends the following regulations to implement the Policy:

- *Building Fire Safety Regulation 2008*, which includes fees for assessment, approval and inspection of special fire services required for some building work; and
- *Fire and Emergency Services Regulation 2011*, which prescribes the Emergency Management Levy (EML).

The Amendment Regulation also makes changes to the *Fire and Emergency Services Regulation 2011* to update the date of the levy district map.

Section 7 of the *Fire and Emergency Services Regulation 2011* defines a 'levy district map' for the purposes of constitution of levy districts under section 106 of the *Fire and Emergency Services Act 1990*. The date of the levy district map requires updating from 1 July 2019 to 1 July 2020.

QFES will make a minor update to the Rathdowney district on the levy district map, to reflect the location of the new Rathdowney fire station constructed in 2019-20 which replaces the former fire station. Changes to levy district boundaries do not require Governor in Council approval, but require the certification of the Commissioner, QFES, as stated in section 106 of

the *Fire and Emergency Services Act 1990*. Boundary changes occur to ensure equitable application of levies to prescribed properties in relation to the proximity to response services provided by QFES.

QFES intends to expand the Rathdowney levy district to include the new fire station, with the change reflected from 1 July 2020. The boundary change to the Rathdowney levy district updates the location of the Rathdowney fire station and will reflect the continuous fire and rescue service provision in the district, noting that this will not affect levies for any properties.

Human Rights Issues

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

The increase to fees, charges and levies under the *Fire and Emergency Services Regulation 2011* and *Building Fire Safety Regulation 2008* brought into effect by the Amendment Regulation engages the right to property outlined in section 24 of the *Human Rights Act 2019*.

Revenue derived from fees, charges and levies promotes the right to life, property rights and protection of families and children through provision of urban and rural fire services and the State Emergency Service across Queensland.

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

Amendments made under the *Building Act 1975* and the *Fire and Emergency Services Act 1990* will increase fees, charges and levies administered by QFES.

(a) the nature of the right

These amendments limit the right to property.

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term 'deprived' is not defined by the *Human Rights Act 2019*, however deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it).

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude).

The right to property is said to be limited in this context as any increase to fees and levies made under the Amendment Regulation will have the effect of depriving a person of additional money by way of an increase in fees and levies mentioned above.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The fees and levies under the *Building Fire Safety Regulation 2008* and the *Fire and Emergency Services Regulation 2011* help ensure that urban and rural fire services and the State Emergency Service across Queensland are appropriately resourced and budgeted so that these services can fulfil their mandate of protecting people, property and the environment. In this way, the limitation of the right to property supports the provision of these services to the community and helps protect the right to life, property rights and protection of families and children under the *Human Rights Act 2019*.

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

The proposal to increase fees, charges and levies will help fund QFES, allowing the provision of urban and rural fire services and the State Emergency Service across Queensland. The provision of these services helps protect the Queensland community from natural disasters and provides an essential community service. In this way the limitation to the right to property is rationally connected to the purpose stated above.

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

No less restrictive and reasonably available ways of achieving the purpose have been identified. The fire season of 2019/20 resulted in 7.7 million hectares being burnt and 49 properties lost. The fire season saw urban and rural fire services across Queensland stretched beyond capacity and highlights the need for a fully resourced fire service. The increase in fees and levies under the Amendment Regulation helps to ensure that these services are funded to meet the ever-increasing challenges of future fire seasons. The increase based on the Government Indexation Rate of 1.8% is seen as the less restrictive way of achieving the purpose.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, increasing fees, charges and levies based on the Government Index Rate of 1.8% is seen as striking a fair balance between the limitation on the right to property and the purpose of ensuring that the urban and rural fire services are adequately resourced to fulfil their mandate of protecting the Queensland community.

(f) any other relevant factors

The Policy requires departments to regularly review their fees and charges to ensure they remain appropriate and that the cost structure underlying the amount of the fee or charge remains accurate and efficient. To maintain the value of the fees and charges when a comprehensive review is not conducted, the Policy provides for departments to apply the Government Indexation rate.

Conclusion

I consider that the Fire and Emergency Services Legislation (Fees) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it does limit with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

CRAIG CRAWFORD
MINISTER FOR FIRE AND EMERGENCY SERVICES, AND
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER PARTNERSHIPS

© The State of Queensland 2019