

Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022

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* (HR Act), I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services provide this human rights certificate with respect to the *Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022* (the Amendment Regulation) made under the *Fire and Emergency Services Act 1990* (FES Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, 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 Subordinate Legislation

Annual Indexation of the Emergency Management Levy

The *Queensland Government Principles for Fees and Charges* requires agencies to set fees and charges to reflect the cost of providing their services and to ensure the fees maintain their values over time. The Amendment Regulation will increase the Emergency Management Levy (EML) administered by Queensland Fire and Emergency Services (QFES) by up to 2.5 per cent, consistent with the Queensland Government's approved indexation rate (GIR) for 2022-23.

To apply the GIR, the Amendment Regulation amends the *Fire and Emergency Services Regulation 2011* (FES Regulation) which prescribes annual contributions of owners of prescribed properties for the EML.

EML District Map and Levy Classes

The Amendment Regulation also amends the FES Regulation to update the date of the levy district map and to reflect changes to levy classes for a number of levy districts.

Section 106 of the FES Act provides that a regulation may constitute any portion of the State as a levy district and may assign or alter a name of a levy district and alter the boundaries of a levy district. Section 7 of the FES Regulation defines a 'levy district map' for this purpose as a map held by the Commissioner immediately before 1 July 2022 showing a portion of the State as a levy district and stating a name for the portion.

The date of the levy district map will be updated from 1 July 2021 to 1 July 2022 to reflect changes to boundaries and names for particular levy districts.

Section 108 of the FES Act provides that a regulation which prescribes the amounts of the contributions to be paid by owners of prescribed properties for a financial year, shall prescribe

the contributions by categorising prescribed properties and the amount of contributions in accordance with those categories.

Section 8 of the FES Regulation prescribes levy classes for levy districts based on the number of full-time fire officers at fire stations within the levy district. For levy classes A – D, schedule 1 of the FES Regulation sets out which levy class each levy district falls into.

The following describes the boundary and name changes to be reflected in the updated levy district map and the changes to levy classes to take effect from 1 July 2022:

- Charters Towers - the Charters Towers Fire and Rescue Station has transitioned from a five day to a seven day, day-work station with an addition of seven permanently staffed day-work officers. The service enhancement moves the Charters Towers Levy District Class from C to B. Approximately 4,230 properties will be affected by the change to the levy district class.
- Tully – the appointment of a full time Station Officer to the Tully Fire and Rescue Station moves the Tully Levy District Class from D to C. Approximately 2,427 properties will be affected by the change to the levy district class.
- Wallaville – Changes to the Wallaville Auxiliary Station moves personnel to the Howard Station and decommissions the Wallaville Auxiliary Station. The Wallaville Levy District will be removed from regulation and properties in the district will change from Levy Class D to E. Approximately 234 properties will be affected. Note this will be a reduction in EML contribution from these properties.

Minor amendment

The Amendment Regulation also makes a minor amendment to schedule 2, category 3.08 to remove obsolete terminology. The category currently refers to ‘Day care centre for aged, disabled or handicapped persons’ and the reference to ‘handicapped’ persons will be removed.

Human Rights Issues

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

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

- Right to life (section 16); and
- Property rights (section 24).

Consideration of reasonable limitations on human rights (section 13 HR Act)

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property (alone or with others) and that a person must 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 HR Act, however, deprivation in this sense is considered to mean an interference with property rights which is sufficiently serious. Deprivation includes 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 encompasses economic interests in the broad sense and 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 limited by the Amendment Regulation as any increase to the EML contributions will have the effect of depriving a person of additional money in comparison with the current EML contributions.

The levy will be increased by the determination of the GIR. In addition, the Amendment Regulation will affect particular levy districts which will change levy classes, potentially resulting in an increase in the levy for property owners in those districts.

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

The purpose of the limitation on the right to property is to ensure that the value of the EML contributions under the FES Regulation is retained and that the EML charged to property owners is consistently applied throughout Queensland and reflects the classes for districts in accordance with section 8 of the FES Regulation.

Section 16 of the HR Act provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life.

Increasing the levy consistent with the GIR ensures it continues to reflect the costs of providing urban and rural fire services and the State Emergency Service across Queensland. The increase in the levy for property owners in particular levy districts reflects enhancements to services available at Fire and Rescue Stations in those districts. In this way, the limitation on the right to property promotes the right to life and property rights under the HR Act through the provision of comprehensive fire and emergency services.

The provision of these services in a fiscally responsible way to protect lives and property is a proper purpose consistent with a free and democratic society.

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

The proposal to increase the levy and adjust levy classes for some levy districts will help fund QFES. The provision of these services helps protect the Queensland community from fires (structural and bushfire) and impacts from natural disaster events and emergencies 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

The increase in the levy under the Amendment Regulation helps to ensure that services are funded to meet the ever-increasing challenges of future fire seasons. The increase based on the GIR is seen as the least restrictive way of achieving the purpose.

The amendment of levy classes for particular levy districts reflects the changes to resources at Fire and Rescue Stations within those districts, including allocation of additional resources and is in accordance with the categorisation of prescribed properties in the FES Regulation. This categorisation applies throughout Queensland and therefore ensures that EML contributions across Queensland are calculated in a consistent manner. There is no other less restrictive and reasonably available way to achieve the purpose of the Amendment Regulation in this regard.

(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 the levy based on the GIR and maintaining consistency and proportionality in the application of the levy outweighs the limitation on the right to property.

(f) any other relevant factors

The *Queensland Government Principles for Fees and Charges* 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 *Queensland Government Principles for Fees and Charges* provides for departments to apply the GIR.

Conclusion

I consider that the *Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere 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.

THE HONOURABLE MARK RYAN MP
MINISTER FOR POLICE AND CORRECTIVE SERVICES AND
MINISTER FOR FIRE AND EMERGENCY SERVICES