

Safety in Recreational Water Activities Regulation 2024

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* (the HR Act), I, Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing provide this human rights certificate with respect to the *Safety in Recreational Water Activities Regulation 2024* (Regulation 2024) made under the *Safety in Recreational Water Activities Act 2011* (SRWA Act).

In my opinion, the Regulation 2024, 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

The objective of the Regulation 2024 is to remake the *Safety in Recreational Water Activities Regulation 2011* (SRWA Regulation) resulting from a sunset review. The SRWA Regulation is due to expire on 1 September 2024 unless it is remade. The Regulation 2024 is restructured to simplify the SRWA Regulation to align with contemporary drafting practices, reduce duplication and is updated with minor technical amendments.

Broadly, the Regulation 2024 will support the SRWA Act to maintain Queensland's high standards of safety in recreational water activity industries, specifically, the recreational diving, recreational technical diving and recreational snorkelling industries.

In summary, the Regulation 2024 requires that:

- all persons aboard the boat are counted;
- entry-level certificate divers and non-certified divers complete a medical declaration;
- entry-level certificate divers are provide a medical certificate where required;
- snorkellers are given advice about medical conditions which may impact their ability to snorkel safely;
- lookouts (and/or guides for snorkellers), rescuers and first aid facilities are provided;
- non-certified divers are adequately supervised; and
- a dive safety log is kept.

Human Rights Issues

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

I have considered the rights protected by Part 2 of the HR Act. In my opinion, the human rights under the HR Act that are relevant to the Regulation 2024 are:

- right to life (section 16); and
- privacy and reputation (section 25)

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

The Regulation 2024 will potentially limit or interfere with the following rights:

- privacy and reputation (section 25).

(a) the nature of the right

Privacy and reputation (section 25)

Under section 25 of the HR Act, a person has the right:

- not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- not to have the person's reputation unlawfully attacked.

Medical declarations and certificates may disclose medical conditions and health information about a person that may be considered private. The dive operator is required to keep a copy of the medical declaration or certificate for at least one year.

(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

Privacy and reputation (section 25)

The purpose of this minor limitation to privacy is considered a necessary requirement to ensure the safety of persons undertaking recreational water activities. Snorkelling and diving fatalities occur in Queensland every year and the purpose of the medical declaration or medical certificate is to inform the dive operator of the persons medical fitness to dive. The dive operator cannot exercise their duty under the Regulation 2024 without information about the person's medical fitness to dive. The nature of the purpose of the limitations is consistent with a free and democratic society based on human dignity, equality and freedom, as described above.

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

There is a direct relationship between the limitations and achieving the purpose ensuring safety and risk reduction in recreational diving and snorkelling, including minimising the risk of death from these activities provided by a dive operator.

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

There are no other less restrictive and reasonably available ways to achieve 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

I am satisfied the Regulation 2024 strikes a fair balance between the health and safety benefits gained by properly assessing a person's medical fitness to dive to minimise the risk of injury

or death, and any limitations to the human rights of privacy and reputation that may result from the commencement of the Regulation 2024.

(f) any other relevant factors

There are no other factors considered relevant.

Conclusion

I consider that the *Safety in Recreational Water Activities Regulation 2024* is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

GRACE GRACE MP
Minister for State Development and Infrastructure
Minister for Industrial Relations and
Minister for Racing

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