

Fire and Emergency Services Amendment 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* (HR Act), I, Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services, provide this human rights certificate with respect to the *Fire and Emergency Services Amendment Regulation 2024* (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

Emergency Management Levy District Maps

The Emergency Management Levy (EML) has been a significant source of funding for Queensland Fire and Emergency Services and will continue to be for the Queensland Fire Department. The EML applies to prescribed properties within the various levy districts throughout the State and is collected by local governments, generally as part of rates notices. The amount of EML a property owner is required to contribute depends on their proximity to firefighting services and their use of the land (in particular, the level of fire and incident risk from that use). EML contributions for the different classes of levy districts and land uses are set out in Schedule 2 to the *Fire and Emergency Services Regulation 2011* (FES Regulation).

To assist in the administration of the EML, levy district maps are prepared which show the boundaries and name of the various levy districts throughout the State. With residential development and expansion and the ongoing construction of additional firefighting facilities, the boundaries of those levy districts are reviewed annually to ensure the burden of the EML is shared fairly across prescribed property owners.

Section 7 of the FES Regulation currently defines a 'levy district map' to mean a map held by the Commissioner immediately before 1 July 2023. The Amendment Regulation updates the year in the definition of 'levy district map' in section 7 of the *Fire and Emergency Services Regulation 2011*, to '2024'.

Following the annual review, the boundaries of the Kilcoy levy district map are being adjusted to take account of property development in the area. No regulatory amendment is required for this as it is the result of the operation of existing provisions within the FES Regulation. The new boundary will, however, be set out in a new levy district map to be approved for 1 July 2024, as provided for by the amendment.

The boundary change will result in 257 properties previously within a class E levy district moving into the class D Kilcoy levy district. This will, however, only impact the owners of two businesses that fall within the levy category of ‘Industry (light, service or offensive) (gross floor area of 5,501–7,500m²)’, (levy group 9) and ‘Industry (heavy) (gross floor area of more than 15,000m²)’, (levy group 12). These businesses will see an increase of \$6026.40 and \$48,262.60 respectively from the current contribution of \$1752.20 in their 2024–25 EML contributions. This will equate to total amounts of \$7778.60 and \$50,014.80. All other properties in the area are within lower risk levy groups (that is, levy group 6 or below) and, as a result, will not see any increase to their EML contribution. For example, residential properties moving into the class D Kilcoy levy district will pay the same levy group 2 EML in 2024–25 (that is, \$119.00) as residential properties in their previous class E district.

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 for the owners of two businesses in the new Kilcoy levy district as they will need to contribute a higher amount of EML than in the previous financial 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

The purpose of the limitation on the right to property is to ensure that the EML accurately reflects the property's proximity to firefighting services and is shared fairly across the community. The collection of EML contributions in accordance with the provisions of the FES Regulation ensures funding to provide for the prevention of, and responses to, fires and other emergency incidents and for rescue services and operations.

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 to adopt positive measures to protect life.

The EML ensures the State can continue to meet the costs of providing urban and rural fire and other emergency services across Queensland. 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 collection of the EML contributions in accordance with provisions of the FES Regulation ensures fire services continue to be properly funded to provide services to the community. The provision of these services helps to protect the Queensland community from fires, including structural and bush fires, and from the impacts of natural disaster events and emergencies. In this way, the limitation to the right to property is directly connected to achieving the purpose outlined above.

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

The increase in EML contributions for the two impacted business due to the redrawing of the Kilcoy levy district boundary in line with provisions of the FES Regulation ensures property owners are paying the correct EML under existing legislation. The EML is a long-standing and well-established scheme that is based on a property's proximity to fire services and the level of risk from the particular use of the land. Adjusting EML contributions each year to take account of property development and the construction of new firefighting facilities is seen as the fairest and least 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, redrawing the boundary of the Kilcoy levy district in line with the provisions of the FES Regulation to ensure all property owners are contributing their share and to ensure fire services remain properly funded to provide services outweighs the limitation on the right to property.

Conclusion

I consider that the *Fire and Emergency Services Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because it does not 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 NIKKI BOYD MP
MINISTER FOR FIRE AND DISASTER RECOVERY AND
MINISTER FOR CORRECTIVE SERVICES

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