

Disaster Management and Other Legislation Amendment Bill 2024

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, Nikki Boyd MP, Minister for Fire and Disaster Recovery and Minister for Corrective Services, make this statement of compatibility with respect to the Disaster Management and Other Legislation Amendment Bill 2024 (the Bill).

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

Overview of the Bill

The Bill is a component of a suite of legislative reforms to Queensland's disaster management arrangements. Queensland's disaster management arrangements (QDMA) operate through a tiered system outlined in the *Disaster Management Act 2003* (DM Act) which enables a progressive escalation of support and assistance to affected communities. The DM Act establishes the Queensland Disaster Management Committee (QDMC) which provides strategic leadership about disaster management for the State and performs a range of high-level disaster management functions. The QDMC is supported by the State Disaster Management Group.

The reforms made by this Bill will meet recommendations made in the *'Independent Review of Queensland Fire and Emergency Services'* and the Inspector-General of Emergency Management's *'Review of Queensland's Disaster Management Arrangements (QDMA)'*. This will be achieved through amendments to the DM Act by:

- clarifying that the Police Commissioner is the chief executive of the DM Act;
- emphasising that the QDMC provides strategic leadership for Queensland during events and crises;
- expanding the existing functions of the chairperson of the QDMC to include approving the annual report and State Disaster Management Plan;
- providing that the chief executive officer (CEO) of the Queensland Reconstruction Authority (QRA) is the State Recovery Policy and Planning Coordinator (SRPPC);
- defining the SRPPC's relationship with the State Recovery Coordinator and the State Disaster Coordinator; and
- defining the term 'resilience' within the DM Act to reflect the Queensland Government's endorsed definition within the *Queensland Strategy for Disaster Resilience*.

The Bill will also amend the *Fire and Emergency Services Act 1990* (FES Act) by:

- amending the title of the FES Act to the *'Fire Services Act'*;

- establishing Queensland Fire and Rescue (QFR) and the Rural Fire Service Queensland (RFSQ);
- establishing the role of the Chief Fire Officer whose functions are to advise the Commissioner about the fire services, including matters relating to service delivery, operational culture, best practice and innovation and research;
- specifying the functions of RFSQ, establishing the role of Chief Officer and a RFSQ advisory committee to advise the Chief Officer on matters relevant to RFSQ and rural fire brigades; and
- making a number of other amendments to:
 - provide clarity about the experience required to perform certain roles within QFR and RFSQ;
 - enable an environment of cooperation and collaboration between the fire services;
 - support accountability and assurance;
 - support brigades and their management;
 - address issues associated with the legal status of brigades and volunteer protections; and
 - address minor or inconsequential matters.

In addition, the Bill will amend the FES Act, the *Fire and Emergency Services Regulation 2011* and the *State Penalties Enforcement Regulation 2014*, to impose a requirement to install smoke alarms in caravans and motorised caravans.

Finally, the Bill will amend the *Queensland Reconstruction Authority Act 2011* (QRA Act) to:

- expand the functions of QRA to coordinate the development and implementation of whole-of-government policies for carrying out risk assessments of potential disasters for Queensland; and
- address minor matters regarding the delegation of chief executive functions and the quorum of the Queensland Reconstruction Board.

Human Rights Issues

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

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

- Right to freedom of expression – section 21 of the HR Act (clause 67 of the Bill);
- Right to peaceful assembly and freedom of association – section 22 of the HR Act (clause 46 and 47 of the Bill);
- Right to take part in public life – section 23 of the HR Act (clauses 25, 28 and 34 of the Bill);
- Right to not be arbitrarily deprived of property – section 24 of the HR Act (clause 54 of the Bill);
- Right to liberty and security of person – section 29 of the HR Act (clause 65 of the Bill); and
- Right to a fair hearing – section 31 of the HR Act (clauses 46 and 47 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 *Human Rights Act 2019*)

Appointment of Commissioner, executive officers and senior officers

The Bill establishes a number of new positions and requires applicants for various roles, including the role of Commissioner, to possess certain qualities to be eligible for appointment. The new positions include the Chief Fire Officer, the Deputy Commissioner and the Chief Officer. The Bill requires, for example, that to be eligible for appointment to the position of Chief Fire Officer, a person must have professional firefighting experience, incident control experience and fire prevention expertise (clause 28 of the Bill). Similar requirements also apply in relation to executive and senior officers appointed by the Commissioner. For example, the Commissioner may employ a person as an executive officer in RFSQ only if satisfied that the person has rural firefighting experience, rural incident control expertise or rural fire prevention expertise (clause 34 of the Bill).

(a) the nature of the rights

Section 15(3) of the HR Act contains the right to equality and ensures that all laws and policies are applied equally, and that they do not have a discriminatory effect. Section 15(4) of the HR Act provides a right to equal and effective protection against discrimination and requires the state to not discriminate when enacting legislation. These rights could be limited to the extent that any eligibility requirements for appointment to, or employment in, a particular role are discriminatory.

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of the public life of the state, directly or through freely chosen representatives. The right encompasses the right of eligible persons to vote and to have access, on general terms of equality, to the public service and to public office.

The right to access the public service provides a right of access, on general terms of equality, to positions in the public service and in public office. The right does not guarantee a job with the public service, but only the opportunity to secure such a job subject to any legitimate qualifications.¹ Criteria and processes for appointment, promotion, suspension and dismissal within the public service must be objective, reasonable, and non-discriminatory.²

The Bill engages the right to take part in public life by restricting access to positions by persons who are not, for example, professional firefighters or who have no knowledge or expertise in fire prevention and incident control. The right to take part in public life would be limited by an eligibility requirement which could have the effect of discriminating against a person on the basis of a protected attribute.

In the context of the workforce profile of Queensland Fire and Emergency Services (QFES), it could be argued that any restriction on this right disproportionately affects the potential for gender diversity and equity in the new Queensland Fire Department. The *Independent Review of Queensland Fire and Emergency Services* by KPMG International Limited noted the “limited diversity across the QFES workforce, which does not currently meet gender balance

¹ Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 183.

² Human Rights Committee, General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote), 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (12 July 1996) [23].

or diversity targets as set out by the Queensland Government and Champions of Change Coalition”. In addition, historical reviews into QFES have identified cultural and organisational issues in the service relating to gender discrimination, sexual harassment and bullying.

Discrimination for the purposes of the HR Act includes direct discrimination or indirect discrimination, within the meaning of the *Anti-Discrimination Act 1991* (AD Act), on the basis of an attribute protected under that Act. The eligibility requirements do not directly discriminate on the basis of any attributes protected by the AD Act, or on any analogous grounds. However, they may result in a lower proportion of women and of persons with a disability being eligible for positions because, as noted above, there is limited diversity across the QFES workforce.

In accordance with section 11 of the AD Act, a term or condition will not constitute indirect discrimination if it is reasonable. The questions of proportionality which arise when considering justification of limits on human rights are complementary to matters which are relevant to assessing whether the eligibility requirements are non-discriminatory because they are reasonable.

Accordingly, the reasonableness of the eligibility requirements will be assessed with reference to the factors contained in section 13 of the HR Act as outlined below.

- (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

For some roles, it is necessary for appointees to possess certain qualities to perform their role. This is particularly relevant where a role requires the appointee to rely on their professional qualifications, knowledge and/or experience when providing advice designed to mitigate risk and when dealing with dangerous situations.

The mandatory eligibility requirements in the Bill reflect the level of command-and-control proficiency and experience expected for making and overseeing operational decisions, including tactical decisions for the use of assets and human resources, often in a high risk, dynamic environment. The purpose of imposing eligibility requirements for certain senior roles is to ensure that persons appointed to these roles have the expert knowledge and experience necessary to carry out the functions of the roles to the required standard within that environment. In so doing, the Bill protects the safety of the community and firefighters and, as such, is consistent with a free and democratic society based on human dignity, equality and freedom.

- (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 requirement to only appoint or employ those persons with certain qualities, such as professional firefighting experience, will achieve the purpose of ensuring that the person appointed to the position has the necessary skills and experience to carry out the functions of the role to the required standard.

For example, due to the complex, high level functions of executive (e.g. Assistant Commissioner) and senior officer (e.g. Chief Superintendent, Superintendent, Inspector) roles in the fire services, experience in firefighting, incident control and/or fire prevention are necessary, reasonable and relevant requirements. It is not merely a theoretical possibility that relevant officers will need to draw on these professional skills and experience. Fire service executives (other than the Chief Fire Officer (CFO) which is a high-level advisory position, as discussed below) have a direct command and control line in a major incident. Fire service executives are required to participate in on-call rosters and, if they are on call, are expected to take operational command and control of major incidents. These fire service executives require firefighting and incident experience to be able to effectively assume their command. Therefore, the requirements imposed by the Bill are considered necessary to ensure a person appointed to such a role has the expert knowledge and experience necessary to carry out the functions of the role to the required standard.

The role of the CFO is to:

- provide high level advice about the fire services to the Commissioner on matters such as service delivery, operational culture, best practice and innovation and research; and
- perform other functions given to the CFO by the Commissioner or under an Act.

The Bill therefore requires that the person appointed to the CFO role has experience in firefighting obtained by employment as a firefighter in QFR or a fire service (however called) in another State or New Zealand that is equivalent to QFR. As a professional firefighter, the appointee is expected to have a high level of technical knowledge and practical experience in firefighting, incident control and fire prevention. This background knowledge and direct experience will ensure the appointee has a deep and genuine understanding of operational matters to support the provision of high-level advice across the range of prescribed functions for the role. Therefore, the requirement to be a professional firefighter is considered to be a reasonable and legitimate qualification for a role which necessitates a high level of skill and experience.

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

A less restrictive way to achieve the purpose would be to not prescribe any requirements for appointment to the relevant positions and to consider each applicant's skills and experience on their individual merits. However, this is not considered a satisfactory way to achieve the purpose as, in practice, applicants without the requisite experience would not be able to fulfil the requirements of those positions to the necessary standard.

Similarly, it could be argued that a less restrictive way to achieve this purpose may be to provide these requirements in the position descriptions for particular roles rather than enshrining them in legislation. However, the relevant positions requiring mandatory experience are in the fire services. They are roles which either: require significant experience in firefighting to provide authoritative advice (CFO); or include direct operational command of fire services officers (Commissioner, Deputy Commissioner and Chief Officer); or are operational (Senior Officers). The prescribed eligibility requirements are so fundamental to these roles that re-evaluating their relevance to the role as part of the position description for each recruitment or appointment process would be unwarranted. Fire service officers exercise significant powers in often high risk, dynamic environments, which can have high consequence

outcomes, it is, therefore, considered critical that the legislation outlines the level of skills, experience or qualifications that a person exercising these powers is required to have attained. Further, including the level of skills, experience or expertise in legislation also appropriately allows these requirements to be scrutinised by Parliament.

- (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 eligibility requirements imposed by the Bill on appointment to, or employment in, certain roles may limit the rights of persons who do not hold the requisite experience by restricting their access to the public service. This could apply, for example, to women and to persons with a disability. However, the requirements only apply to select, senior roles which necessitate a high level of skill and experience. That level of skill and experience is essential to protecting lives and property. On balance, the benefit of ensuring that only suitably qualified persons can be appointed to, or employed in, the relevant roles outweighs any restriction of access to those roles.

It is therefore considered that the eligibility requirements introduced by the Bill are reasonable and, accordingly, do not constitute indirect discrimination which would limit the rights protected under sections 15 and 23 of the HR Act. However, in the alternative, if the eligibility requirements are considered to limit these rights, these limitations are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

- (f) Any other relevant factors

Nil.

Management of rural fire brigade members

The amendments will provide that the Commissioner will have the power to appoint members of rural fire brigades. Under section 25 of the *Acts Interpretation Act 1954* (AIA) powers of appointment to an office also contain certain incidental powers, including the power to remove or suspend a person from the office. Therefore, by virtue of the AIA, the Commissioner will also have the power to suspend or remove rural fire brigade members. The Commissioner cannot currently exercise these powers.

- (a) the nature of the right

Section 22 of the HR Act provides that every person has the right to freedom of association with others. This right extends to all forms of association with others, including but not only for political purposes. The right can be relevant where laws, policies, acts or decisions prohibit membership in a group or association.

The power of the Commissioner to suspend or remove a rural fire brigade member engages this right by prohibiting a person temporarily or permanently from associating with others in the context of being a member of a brigade.

Section 23 of the HR Act provides that every person in Queensland has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. The right encompasses the right of eligible persons to vote and to have access, on general terms of equality, to the public service and to public office. The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives.

The United Nations Human Rights Council considers that the right to participate in the direct conduct of public affairs and public governance embraces both the opportunity to participate in the formulation and implementation of policy and in the exercise of public and political power. Public affairs is a broad concept that encompasses the activities of all forms of government, including local government.

The power of the Commissioner to appoint, suspend or remove a rural fire brigade member or to dismiss or disqualify a person from holding office with the brigade engages this right by restricting the person's ability to take part in the functions of the rural fire brigade which are formed under legislation for the public purposes of protecting persons, property and the environment.

Section 31 of the HR Act affirms the right of all individuals to procedural fairness when appearing before a court or tribunal. It applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

While a decision to suspend or remove a rural fire brigade member, or to dismiss or disqualify a member from holding an office with the brigade would not constitute a decision of either a court or tribunal, in the Victorian decision of *Kracke v Mental Health Review Board* (2009) 29 VAR 1, the Victorian Civil and Administrative Tribunal decided that the right to a fair hearing was not confined to civil judicial proceedings, but also extended to administrative proceedings.

(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

Members of rural fire brigades perform the functions of fire fighting and fire prevention, as well as other functions as directed by the Commissioner (section 82 of the FES Act).

The first officer of a brigade has the powers of an authorised fire officer when the brigade is in charge of operations for controlling and extinguishing a fire. The powers exercisable by the first officer may also be exercised by any person (including other brigade members) acting at the direction of the first officer (section 83 of the FES Act).

Section 81 of the FES Act does not currently recognise officers that occupy other leadership roles or have management or financial responsibilities within a brigade, such as that of chairperson, secretary or treasurer.

The purpose of the amendments is to ensure that persons who perform functions and exercise powers relating to the protection of persons, property and/or the environment, particularly in a leadership capacity, have suitable qualifications, skills and/or experience to perform those functions. The amendments are necessary to ensure the Commissioner can appropriately manage the membership of rural fire brigades and maintain community confidence in the provision of rural fire services which is consistent with a free and democratic society based on human dignity, equality and freedom.

(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 ability to suspend or remove a rural fire brigade member, or dismiss or disqualify office holders, is intended to ensure that only appropriate persons may exercise statutory powers and occupy leadership positions within rural fire brigades. The power to appoint, and by virtue of the AIA, the power to suspend and remove a member, achieves this outcome.

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

The ability for the Commissioner to dismiss and disqualify rural fire brigade office holders in appropriate circumstances, and providing for the appointment, removal and suspension of brigade members in the manner proposed, is the least restrictive way to give effect to the policy the Bill is seeking to address. Importantly, brigade office holders and members will be afforded procedural fairness, with an initial internal review process of any decision available prior to proceeding to judicial review.

Due to brigade members being volunteers, the Bill does not seek to impose a disciplinary regime like that which applies to fire service officers appointed under the FES Act or to public sector employees under the *Public Sector Act 2022* (PS Act). For paid fire service officers and public sector employees, a range of lesser performance and conduct issues can result in discipline against paid employees. These may include a reduction in salary or a reduction of classification level.

It is considered that providing powers to dismiss and disqualify brigade office holders and to suspend and remove rural fire brigade members, which are only likely to be used in serious instances of diminished performance or conduct, is a less restrictive way to achieve the purpose. In circumstances involving less serious matters, there are a range of alternative management actions that may be taken to address performance or conduct matters, including counselling and further training.

For a volunteer cohort, alternative management actions are preferred to the use of more serious disciplinary powers such as a formal reprimand or a reduction of classification level. In addition, the range of disciplinary action that is available for paid public sector employees is not available for volunteers. Sanctions such as the deferment of a remuneration increase, the reduction of remuneration level or the imposition of a monetary penalty only apply to paid employment.

- (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 provision creates the necessary relationship between members and the State relevant to issues regarding volunteer protection and creating consistency with other emergency service volunteers. The benefits for rural fire brigade members and the community from providing the Commissioner with the power of appointment outweighs the limitations on the rights to freedom of association and to take part in public life. By providing the Commissioner with the ability to address issues regarding membership, the Commissioner is also better enabled to discharge their statutory functions and responsibilities as well as support a safe workplace-like environment for rural fire brigade members.

An appropriate balance has been struck by restricting the disciplinary action available to sanctioning members to only those circumstances warranting suspension and removal only rather than the full range of disciplinary action that could have been included. Consideration was given to other forms of disciplinary action but was not considered appropriate.

Procedural fairness will be afforded in the decision-making process associated with the suspension or removal of a rural fire brigade member, or the disqualification or dismissal of office holders. This is considered appropriate as what constitutes a fair hearing will depend on the circumstances of each scenario, and the balancing of public interest factors. Further, the decision will be an administrative decision subject to judicial review.

For the reasons outlined above, it is considered that any limitations on the rights protected under sections 22, 23 and 31 of the HR Act are reasonable and justified.

- (f) Any other relevant factors

Nil.

Restricted expressions relating to fire services and rural fire brigades

Under section 150H of the FES Act, it is currently an offence to use certain restricted expressions for the purposes of business names or to advertise or otherwise promote goods or services provided by the person without reasonable excuse. The maximum penalty for the offence is 40 penalty units. Amendments to the section will provide that the restricted expressions following commencement are ‘Queensland Fire and Rescue’, ‘Rural Fire Service Queensland’, ‘QFR’, ‘RFSQ’, ‘rural fire brigade’ or another expression that includes or is similar to any of those terms. The Bill also provides that it is an offence to use the restricted expressions in a way that suggests that the person is a fire service officer or rural fire brigade member if they are in fact not. The section is also strengthened by providing that approval to use a restricted expression can be conditional and may be cancelled, amended or suspended by the Commissioner at any time.

- (a) the nature of the right

Section 21 of the HR Act provides the right to freedom of expression and the right to hold an opinion without interference. The right to freedom of expression includes the freedom to seek,

receive and impart information and ideas of all kinds. This includes within or outside Queensland, and orally, in writing, in print, by way of art, or in another medium chosen by the person. Freedom of expression has intrinsic value to individual self-fulfilment. It also has importance for society as a whole. There cannot be democracy or the rule of law without freedom of expression.

The Bill engages this right by restricting the expressions that a person may use in carrying on a business or promoting goods or services.

- (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

QFR and RFSQ perform important functions relating to the protection of persons, property and the environment, including in circumstances involving emergency or fire. It is important that members of the public are clear about who they are seeking assistance from when they seek help in an emergency. Therefore, the Bill specifies the range of expressions restricted under the Act to include those relating to the proposed fire services.

The Bill provides that a person may apply to the commissioner for permission to use a restricted expression. A further amendment will allow the Commissioner to grant the approval subject to conditions as well as amend, suspend or cancel the approval.

The purpose of the restriction on the use of these expressions is to ensure that terms associated with the fire services are not used for commercial gain as well as avoiding confusion about who may provide the community with assistance in a fire or other emergency. The restriction is considered consistent with a free and democratic society as it is aimed at ensuring the efficient and effective provision of fire and emergency services which are themselves necessary for a free and democratic society based on human dignity, equality and freedom.

- (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 Bill helps to achieve the purpose by restricting the use of specific expressions which could result in barriers for QFR and/or RFSQ in being able to effectively perform their public safety functions for the Queensland community. Allowing the Commissioner to place conditions on approvals in circumstances where they may otherwise have refused the application further strengthens this position.

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

The legislative restriction on the use of particular terms is considered the least restrictive and reasonably available way to achieve the purpose of the amendment. The restricted terms are limited to only those expressions necessary to achieve the purpose of ensuring clarity in the event of a fire or other emergency.

- (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 amendment appropriately balances the limitation and the importance of preserving the right to freedom of expression by including only those terms that specifically relate to the fire services established by the Bill.

The ability of the Commissioner to provide conditional approval for the use of otherwise restricted expressions provides an appropriate balance between the limitation of the right and preservation of community safety.

It is therefore considered that any limitation on the rights protected under section 21 of the HR Act is reasonable and justified.

- (f) Any other relevant factors

Nil.

False calls relating to hazardous materials emergencies

The Bill will amend the offence in section 150B of the FES Act to include that it is an offence to make a false call relating to a hazardous materials emergency (in addition to the current offences for making a false call asking QFES to provide a fire and emergency service or a false alarm of fire). Where the offence is committed during a state of fire emergency at a place to which the declaration of emergency applies, the maximum penalty for the offence is 250 penalty units or one (1) year imprisonment. In all other circumstances, the maximum penalty is 100 penalty units or one (1) year imprisonment.

- (a) the nature of the right

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 procedures 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. The arrest and detention must not be arbitrary. The right applies to all forms of detention where people are deprived of their liberty, not just the criminal justice process. 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 means that someone can only be detained or have their liberty denied in accordance with the law.

The Bill engages this right as the proposed amendment to the offence provision provides criminal sanctions that may result in a person's incarceration.

- (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 proposed amendment to the offence is not arbitrary in nature. Rather, the offence is designed to deter the community from behaviour that is not in the public interest. The offence relates to falsely raising an alarm about a hazardous materials emergency. Such conduct may result in the wasteful expenditure of resources of the fire services in responding to the call. A response to a false call may also result in the diversion of resources which may compromise the services' ability to respond to a genuine fire or emergency.

The purpose of the offence is to provide appropriate deterrence in order to discourage persons from misusing the resources of fire services which are provided for the purpose of community safety.

- (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 not possible to quantify the deterrent effect of the sanctions, it is essential that the limited resources of the fire services are used efficiently to protect persons, property and the environment from fire and hazardous materials emergencies.

The higher maximum penalty prescribed to the offence of false calls in circumstances where the offence is committed during a state of fire emergency is reflective of the more serious community consequences of a false call that diverts fire services from where they are needed.

- (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 of the right to liberty and security as a result of non-compliance with the Bill is outweighed by the strong community expectation that the deployment of fire services should be made available only in genuine fire and emergency situations. This is consistent with the current offences for a false call for a fire and emergency service or a false alarm of fire.

As such, on balance it is considered the benefits of imposing the proposed offence outweigh any limitations placed on an individual's right to liberty and security.

- (f) any other relevant factors

Nil.

Requirements for smoke alarms in caravans and motorised caravans

The Bill will require working, photoelectric smoke alarms in caravans and motorised caravans (motorised caravans). The requirement to install a smoke alarm is to apply to newly registered caravans and motorised caravans, those for which the registration is transferring and all remaining registered caravans and motorised caravans in Queensland from 1 January 2027. This will align with the roll-out of stage three of the requirements for smoke alarms in domestic dwellings.

(a) the nature of the right

The Bill engages the right to property outlined in section 24 of the HR Act to the extent that it will result in persons incurring expense in fitting a smoke alarm in caravans or motorised caravans that do not currently have one. The Bill also promotes the right to life, property rights and protection of families and children through ensuring community safety.

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right to 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 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 the proposal involves the imposition of an expense for persons on registration of a caravan or motorised caravan where a smoke alarm is not currently installed as prescribed. It may also be considered to impact a person’s enjoyment of their property in circumstances where they do not desire that a smoke alarm be installed in their caravan and the potential inconvenience of unwanted alarms caused by having an alarm in a space that may also include cooking facilities.

(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 amendments is to alert persons in a caravan or motorised caravan of a fire occurring in order to minimise the risk of injury or loss of life from a fire. Caravans and motorised caravans have limited escape options if there is a fire and there may be very limited time to escape a burning vehicle in the event of fire. Fires in caravans and motorised caravans can accelerate very quickly due to their construction (being made from lightweight and combustible materials). Therefore, installing a smoke alarm may alert a person in time to minimise damage and risk to life. This is considered consistent with a free and democratic society based on human dignity, equality and freedom, in that it may assist in promoting human

rights relating such to right to life, protection of property rights and protection of families and children.

- (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 National Council for Fire and Emergency Services (AFAC) recommends that smoke alarms be installed in all domestic and residential accommodation and places where people sleep, including caravans. The requirement for a person to purchase and install a smoke alarm in a caravan or motorised caravan is directly related to the purpose of alerting persons in the event of fire to limit the severity of injuries or loss of life from a fire. 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 (on human rights) and reasonably available ways to achieve the purpose of the Bill

No less restrictive and reasonably available ways of achieving the purpose have been identified. The amendments are limited in scope in terms of the vehicles to which they apply. The expense is to be incurred from the time a new caravan or motorised caravan is registered, or on transfer of ownership. In the context of other costs relating to the purchase of such a vehicle, it is not considered that the additional cost of a smoke alarm is onerous. The penalty for non-compliance (maximum of 5 penalty units) is also considered reasonable in the circumstances. Aligning the commencement of the requirement with the final stage of the roll out of the domestic smoke alarm legislation in 2027 will also ensure that persons affected will be well informed of the commencement of the requirement.

- (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

It is considered that the benefits gained by fulfilling the purpose of the amendment which may impose a limitation on a person's right to property is balanced against the identified risks raised by the Deputy State Coroner in 2020. To not implement the preventative measures aimed at enhancing public and individual safety unnecessarily increases the significant risk of harm to persons sleeping in caravans and motorised caravans not fitted with smoke alarms. On balance, the amendment requiring a small expense of less than \$20 and any resulting inconvenience is considered as striking a fair balance between the limitation on the right to property and the purpose of enhancing the right to life, property rights and the protection of families and children. Consequently, the limitation on a person's property is required to prevent or reduce the likelihood of, amongst other matters, the occurrence of a fire, and the fatal risks to individuals and public safety.

- (e) any other relevant factors

Nil.

Conclusion

In my opinion, the Disaster Management and Other Legislation Amendment Bill 2024 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.

NIKKI BOYD MP
MINISTER FOR FIRE AND DISASTER RECOVERY AND
MINISTER FOR CORRECTIVE SERVICES

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