

Marine Rescue Queensland Bill 2023

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, Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement of compatibility with respect to the Marine Rescue Queensland Bill 2023 (the Bill).

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

Overview of the Bill

Currently, Queensland Fire and Emergency Services coordinate and manage various elements of Queensland's disaster response including the State Emergency Service (SES) and, through the administration of grants and service agreements, volunteer marine rescue entities including the Australian Volunteer Coast Guard Association of Queensland (AVCGA) and Volunteer Marine Rescue Association of Queensland (VMRAQ).

The State Emergency Service (SES)

The SES provides assistance in circumstances ranging from non-life-threatening emergency situations during floods, storms or other similar events to supporting other emergency services agencies such as the Queensland Police Service (QPS) and the Fire and Rescue Service with road crash rescue, emergency traffic management, flood boat rescue and urban, rural and evacuation searches. The SES is a 'not-for-profit' organisation consisting of SES units established within local government areas. The SES relies heavily on the support of its members who are predominately volunteers.

Marine rescue services

In Queensland, marine rescue volunteers play a critical role in keeping the community safe on the water through general marine assistance and aiding with search and rescue operations. Marine rescue services are provided by two separate organisations namely the AVCGA and the VMRAQ.

A series of reviews culminating in the '*Independent review of Queensland Fire and Emergency Services*' (the Independent Review Report) have considered the efficiency of the delivery of emergency services in Queensland.

The Bill is a component of a suite of legislative reforms to Queensland's emergency services that will meet recommendations made in the Independent Review Report by:

- establishing a new statewide marine rescue service called Marine Rescue Queensland (MRQ) through the proposed *Marine Rescue Queensland Act 2023* (MRQ Act); and
- establishing the SES in a standalone Act and will align MRQ and the SES under the control of the QPS.

Human Rights Issues

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

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

- Freedom of expression – section 21 (clauses 26 and 28);
- Property rights – section 24 (clauses 23 and 24);
- Privacy and reputation – section 25 (clause 27);
- Right to liberty and security of person – section 29 (clauses 25 to 28); and
- Fair hearing – section 31 (clause 16).

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 HR Act)

The new offence of ‘Unauthorised use of confidential information’ in the proposed MRQ Act

The Bill will introduce a new offence provision of ‘Unauthorised use of confidential information’ which will apply to all MRQ members and any individual engaged to perform functions under or relating to the administration of the proposed MRQ Act. Additionally, this provision will apply to any person who acquires or has access to confidential information as authorised under an Act or through any person mentioned above.

The amendment will prohibit the use of confidential information unless one of the following statutory exemptions applies:

- to the extent the use is required or permitted under these Acts or another Act or to perform the person’s functions under these Acts or another Act;
- with the consent of the person to whom the information relates if the information would normally be made available to any member of the public on request;
- in compliance with a lawful process requiring the production of documents or giving of evidence before a court or tribunal; or
- if the use is otherwise required or permitted under another law.

The proposed amendment will impose a maximum penalty of 100 penalty units or imprisonment for two years.

This amendment will potentially engage the human right to liberty and security of person and will promote a person’s right to privacy by protecting an individual’s personal information.

(a) the nature of the right

Right to liberty and security of person - section 29 of the HR Act

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 the procedures that should be followed after a person’s arrest.

The right to liberty means that a person must not be arrested or detained, unless provided for by law. Their arrest and detention must also not be arbitrary. This right applies to all forms of

detention where a person is deprived of their liberty, not just criminal justice processes. 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 states that a person can only be detained or have their liberty denied in accordance with the law.

The proposal may be seen to engage this right as the proposed offence provision carries a maximum penalty for the offence that includes a term of imprisonment.

- (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 new offence provision imposes a maximum penalty of 100 penalty units or two years imprisonment. A person who offends against this section may be arrested and face serious penalties including a custodial sentence. However, this offence and the consequences that may result from the commission of this offence are not arbitrary in nature. The imposition of this offence is a deliberate measure to ensure that confidential information is protected.

The offence provision provides specific circumstances in which the use of confidential information will be permissible and further reduces any concerns about the impact of these amendments on human rights by:

- limiting the offence provision to a select cohort of persons—that is, either a person who would be authorised to have access to confidential information by being engaged to perform functions under the proposed MRQ Act or a person who has acquired or accessed the confidential information from the aforementioned person; and
- limiting the offence provision to confidential information which is clearly defined to mean personal information or other information of a confidential nature that is not publicly available.

The concerns about the impacts of this amendment must be balanced against the benefit arising from its implementation. This amendment will promote a right to privacy by deterring the inappropriate use of confidential information through the significant maximum penalty of the offence, which recognises the seriousness and potential harm that the misuse of confidential information can cause. This harm occurs not only to those individuals to whom the information relates but may also extend to members of the broader community.

- (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 impossible to quantify the deterrence effect of this amendment, it is known that the potential harm that the release of confidential information may cause is great. MRQ may hold a wide range of personal and sensitive information about an extensive range of persons over time.

As such, a strong disincentive for the misuse of confidential information is in the public interest.

- (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 on the right to liberty is outweighed by the strong community expectation that confidential information is protected. In protecting such information, this amendment promotes the right to privacy for individuals whose information is held by MRQ.

It must also be acknowledged that this offence provision reflects an existing provision under the *Police Service Administration Act 1990* that applies to the QPS. The proposed amendments affecting MRQ will ensure that confidential information across these organisations is treated consistently.

As such, on balance, it is considered that the advantages of the amendment outweigh the limitations placed on the right.

- (f) any other relevant factors

Not applicable.

The new offence prohibiting a person from assaulting or obstructing an MRQ member performing a function of MRQ

The Bill will introduce an offence prohibiting a person from assaulting or obstructing an MRQ member performing a function of MRQ. The offence has a maximum penalty of 100 penalty units or 6 months imprisonment.

This amendment will potentially engage the human right to liberty and security of a person.

- (a) the nature of the right

Right to liberty and security of person - section 29 of the HR Act

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 that should be followed 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. Their arrest and detention must also not be arbitrary. This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes. 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 states that a person can only be detained or have their liberty denied in accordance with the law.

The proposal may be seen to engage this right as the proposed 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 offence is not arbitrary in nature but is designed to deter offenders from behaviour that acts against the public interest. For example, emergency services personnel, including volunteers, should be protected by the law when performing duties which benefit the community.

- (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 deterrence effect that these offences may cause, it is essential that emergency services personnel are protected and their safety is promoted. Consequently, creating strong disincentives for committing the proposed offence may be considered to be in the public interest.

- (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 caused by the proposal is outweighed by the strong community expectation that our emergency services personnel will be protected from harm when performing their duties.

It must also be acknowledged that these offence provisions are consistent with similar offence provisions that protect other emergency services organisations and personnel. For example, similar protections apply to emergency services personnel performing a function or exercising a power under the *Fire and Emergency Services Act 1990* (FES Act).

As such, on balance, the benefits of imposing the proposed offences outweigh any limitations placed on an individual's right.

- (f) any other relevant factors

Not applicable.

The introduction of new offences prohibiting the impersonation of an MRQ member and using restricted expressions unique for MRQ

The Bill will introduce the following new offences for MRQ:

- impersonating an MRQ member (Maximum penalty: 100 penalty units); and
- using restricted expressions unique to MRQ (Maximum penalty: 40 penalty units).

This amendment will potentially engage the human right to liberty and security of persons and the right to freedom of expression.

(a) the nature of the right

Right to liberty and security of person - section 29 of the HR Act

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 the procedures that should be followed 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. Their arrest and detention must also not be arbitrary. This right applies to all forms of detention where people are deprived of their liberty, not just criminal justice processes. 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 states that a person can only be detained or have their liberty denied in accordance with the law.

The proposal may be seen to engage this right as the proposed offence provisions provide criminal sanctions that may result in a person's incarceration.

Right to freedom of expression – section 21 of the HR Act

Section 21 of the HR Act provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, in print, by way of art or in another medium chosen by the person. The right has a broad scope, protecting almost all forms of expression, including verbal or through art or conduct. The expression must be able to convey some kind of meaning, whether or not it does actually convey an objectively clear meaning to a particular person,¹ and includes attempting to convey a meaning.²

The amendment proposes that it will be an offence to pretend to be an MRQ member or to use restricted expressions unique to MRQ. Depending on the circumstances, the new offence may prohibit a person who is not an MRQ member from wearing an official MRQ uniform or using the phrases 'Marine Rescue Queensland' or 'MRQ'. This may impact a person's human rights

¹ *Magee v Delaney* (2012) 39 VR 50; [2012] VSC 407 [61]

² *R v Keegstra* [1990] 3 SCR 697

by limiting their freedom of expression through imposing restrictions on the person's dress, speech or conduct.

- (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 offences are not arbitrary in nature but are designed to deter offenders from behaviour that is not in the public interest. For example, in relation to impersonating an MRQ member, these personnel hold a unique position in our community as, unlike many other public officials, they may have the ability to exercise powers in circumstances where members of the public are under great stress such as when confronting an emergency. This new offence provision is justifiable to ensure that the public may trust in the authority of these personnel and not be misled into thinking that a person is an emergency services member when this is not the case.

Similarly, in relation to the offence of using an expression unique to MRQ, organisations that provide emergency services to the community such as the proposed MRQ are held in high regard. The reputation of these organisations could be compromised if persons inappropriately trade on that reputation for financial gain. This new offence provision is justifiable to ensure that the public can trust the accurate use of these expressions and not be misled into thinking that a thing or activity is associated with MRQ when this is not the case.

- (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 impossible to quantify the deterrence effect that these offences may cause, it is essential that the reputations of emergency services organisations and personnel are protected.

As such, creating a strong disincentive for committing the proposed offences is in the public interest.

- (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 caused by the proposal is outweighed by the strong community expectation that the reputation of emergency services personnel and organisations will be protected.

Concerns are further mitigated through the safeguards inherent in the offence provisions. For example, a person may escape liability for using expressions associated with MRQ if they can prove to the requisite standard that they have a reasonable excuse. Additionally, the Commissioner may approve the use of the words 'MRQ' or 'Marine Rescue Queensland' when funds are being raised or to promote goods or services provided by the person.

It must also be acknowledged that these offence provisions are consistent with similar offence provisions that protect other emergency services organisations. For example, under the *Police Service Administration Act 1990*, it is an offence to pretend to be a police officer or to use certain words that suggest an association with the police.

As such, on balance, the benefits of imposing the proposed offences outweigh any limitations placed on an individual's right.

Powers of an MRQ member to use force and to enter places

MRQ members may encounter circumstances where they must act to protect another person's life or property. For example, MRQ members may come across an unoccupied vessel floating in a sea lane causing a navigational hazard and presenting a clear risk to a person's safety and property. To gain control of the vessel, an MRQ member may need to board the vessel so that it may be safely steered and recovered for its owner. Alternatively, an MRQ member may need to gain urgent access to a jetty to fend off a boat that is moving dangerously close to the jetty and is threatening to cause damage to this structure if the MRQ member does not intervene.

The Bill will authorise an MRQ member to use the force reasonably necessary to perform or attempt to perform a function of MRQ. This power does not extend to the use of force against an individual.

The Bill will also allow an MRQ member to enter a place in the following limited circumstances:

- the MRQ member is performing a function of MRQ; and
- the MRQ member reasonably suspects that there is a dangerous situation associated with the place.

The Bill will define a dangerous situation as a situation that is likely to result in the death or injury to a person, damage to property or harm to the environment if action is not taken to prevent, remove or minimise the danger.

An MRQ member may only enter and remain on the place for the time reasonably necessary to:

- establish whether the reason for the entry exists; and
- to ensure that, in the MRQ member's opinion, a risk of injury or damage does not exist at, or in association with, the place; and
- give or arrange for reasonable help to any person at the place.

However, if the occupier is present at the place, the MRQ member must do, or make a reasonable attempt to do, the following things before entering the place:

- tell the occupier the purpose of the entry;
- seek the consent of the occupier to the entry; and
- tell the occupier the MRQ member is permitted under this Act to enter without the occupier's consent.

The MRQ member is not required to provide information to the occupier or seek consent from the occupier if the MRQ member reasonably believes that to do so would lead to a person or property being endangered.

Human rights that are impacted through the exercise of this power are section 24 'Property rights' of the HR Act.

(a) the nature of the right

Section 24(2) of the HR Act is a conditional right that applies to the arbitrary deprivation of property. This right does not provide a right to compensation for property.

(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 power afforded to the MRQ member is to authorise that member to protect life and property from harm. The power is not arbitrary but considered and limited in scope.

The power to enter a place is limited in that it can only occur in circumstances where there is a reasonable prospect that damage is going to occur to a person or property. Additionally, the time that may be spent on that place is limited to determining if that damage will occur, and to providing any necessary assistance. A further safeguard requires, if practicable, the MRQ member to obtain consent to enter a place.

It should be noted that authorised rescue officers have similar powers of entry (under the current sections 149 and 149A of the FES Act and the proposed sections 35 and 36 of the *State Emergency Service Act 2023*). Further, this power of entry is consistent with the powers afforded to public officials such as inspectors or police officers under such Acts as the *Explosives Act 1999* and the *Police Powers and Responsibilities Act 2000* which authorises the entry to a place by a public official where there are concerns about the safety of persons and property at that place.

(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 purpose of these amendments is to protect life and property. Authorising MRQ members with the power to use force in relation to property and the power of entry in limited circumstances is necessary to achieve this objective.

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

There is no reasonably available and less restrictive way to achieve the purpose identified.

(e) the balance between the importance of the purpose of the amendment, 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

Protecting life and property is a paramount concern. Authorising an MRQ member to use force to deal with property or to enter a place is justified given the importance of ensuring the safety of persons and property. Concerns about this power's impact upon a person's property rights are mitigated through the inherent limitations of this power and safeguards that have been put in place.

(f) any other relevant factors

Not applicable.

The suspension of an MRQ volunteer

A significant issue for MRQ is the maintenance of public confidence in this organisation. This confidence is promoted and preserved by ensuring that members of MRQ adhere to proper standards of conduct. This requires the implementation of a comprehensive and effective discipline system. As volunteers are not State employees, the discipline process used by the public sector does not apply. Consequently, in response to an allegation of wrongdoing involving a volunteer, there are limited courses available to resolve the matter. Usually, the only alternatives that may be available are to take no action or to revoke a volunteer's appointment.

The Bill will allow the Commissioner to suspend an MRQ volunteer where the Commissioner reasonably believes:

- the volunteer would, if deemed an employee under the *Public Sector Act 2022*, be liable to be disciplined; or
- the proper and efficient management of MRQ might be prejudiced if the volunteer is not suspended.

The power to suspend a volunteer will benefit both the volunteer and the volunteer's organisation. The organisation benefits through the maintenance of its good reputation. The volunteer benefits in that they are afforded an opportunity to have an allegation of wrongdoing against them investigated. If the allegation is baseless, the volunteer may continue with the organisation once the suspension is lifted.

The proposed power to suspend an MRQ volunteer will mirror existing provisions in the *Public Sector Act 2022* that outline discipline processes for public sector employees. The power to suspend a volunteer from duty will be initiated by a written notice that must state when the suspension starts and ends. Before suspending the volunteer, the Commissioner must consider all reasonable alternatives available to the volunteer, such as alternative duties, a change in the location where the volunteer performs duties or another alternative agreement about how the volunteer may continue to participate in the organisation.

The proposal will engage the human right to a fair hearing under the HR Act.

(a) the nature of the right

Fair hearing – section 31 of the HR Act

Section 31 of the HR Act affirms the right of all individuals to procedural fairness when coming 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 the proposed decision by the Commissioner to suspend an MRQ volunteer would not constitute 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 to administrative proceedings.

Regardless of whether this determination would apply to the decision to suspend a volunteer, the principles of supporting a fair hearing in an administrative context may still be thought to be in scope of the intent of the HR Act.

What constitutes a ‘fair’ hearing will depend on the facts of the case and will require the weighing of a number of public interest factors. Widely accepted aspects of a fair trial include, but are not limited to, the application of procedural fairness through an independent court, a public trial, the presumption of innocence, the defendant knowing the charge and the case against them, the allocation of time and facilities to prepare a defence and a trial without undue delay, and other factors.

- (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 impact of the proposed power to suspend a volunteer will be that the MRQ volunteer, during the suspension period, will not be able to participate in this organisation’s activities. However, this impact must be balanced against the benefit of a robust discipline system for this organisation. One criticism that can be levelled in relation to disciplining volunteers is that the alternatives available to resolve a matter are limited to either taking no action or revoking a person’s status as a volunteer. The proposed power to suspend would allow a matter to be properly investigated allowing any decision made to resolve the matter to be properly informed.

The proposed power to suspend is nuanced. It may only apply to a small cohort of individuals, namely MRQ volunteers, and only in exceptional circumstances where the volunteer would, if deemed an employee under the *Public Sector Act 2022*, be liable to discipline or where the proper and efficient management of MRQ might be prejudiced if the volunteer was not suspended. Additionally, the power to suspend is inherently restricted. Rather than having an indeterminate suspension period, the proposed power to suspend requires the Commissioner to nominate the duration of the suspension period. As a further mitigating feature, the Commissioner must first consider alternative arrangements for the volunteer that would allow the volunteer to continue participating in the organisation.

- (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 proposed power to suspend a volunteer would allow sufficient time for a matter to be properly investigated allowing an informed decision to be made to resolve the matter.

- (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

As mentioned above, the proposed power to suspend a volunteer balances the benefits of an appropriate discipline system against the impact caused by suspending a volunteer from participating in their organisation.

Emergency service organisations provide critical services to Queenslanders. It is essential that these organisations are held in high regard as the community needs to trust these organisations and their members during times of crisis. This may only be achieved if these organisations have access to a discipline system that protects their reputation and the reputation of their members. In this context, the proposed power to suspend a volunteer is justifiable as it allows sufficient time for an allegation of wrongdoing to be properly investigated so that an informed decision can be made.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Marine Rescue Queensland Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

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