

Fire Services and Other Legislation Amendment Regulation 2025

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* (HRA), I, Ann Leahy, Minister for Local Government and Water and Minister for Fire, Disaster Recovery and Volunteers, provide this human rights certificate with respect to the *Fire Services and Other Legislation Amendment Regulation 2025* (Amendment Regulation) made under the *Building Act 1975*, the *Fire Services Act 1990* (FS Act) and the *State Penalties Enforcement Act 1999* (SPE Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

The Honourable Deborah Frecklington, Attorney-General and Minister for Justice and Minister for Integrity, has granted authority for the preparation of this human rights certificate to the extent the Amendment Regulation is made under the SPE Act for the purpose of prescribing offences as infringement notice offences.

Overview of the Subordinate Legislation

Emergency Management Levy

Levy classes

The Emergency Management Levy (EML) is imposed under the FS Act and is the primary source of funding for the Queensland Fire Department (QFD). 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 prescribed 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 Services Regulation 2011* (FS 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.

Section 8 of the FS Regulation prescribes levy classes for levy districts based on the number of fire officers at fire stations within the levy district. There are five classes of levy districts ranging from class A, which has a permanent fire station with at least 16 full-time fire officers and attracts the highest amount of EML, to class E which covers the non-urban and remote parts of the State and attracts the lowest EML. For levy classes A – D, schedule 1 of the FS Regulation indicates which levy class each levy district falls into according to the requirements in section 8.

Updates to the levy classes listed in schedule 1 of the FS Regulation are made for a financial year where there are service enhancements or changes to service delivery in a particular levy

district. This is reflective of the EML's characterisation as a tax and ensures all residents continue to receive an appropriately funded and comprehensive fire and emergency service response and that all similar properties contribute equally.

The Yelarbon Levy District will transition from a class D levy district to a class E levy district for 2025-26 in accordance with section 8 of the FS Regulation as the Yelarbon Fire and Rescue Station has transitioned from being staffed by an auxiliary crew to a rural fire brigade service. The Amendment Regulation omits the Yelarbon Levy District from schedule 1 of the FS Regulation to reflect the change.

The Government has decided to pause other levy class changes for 2025-26 which would otherwise operate to increase levy contributions for several levy districts following service enhancements in those areas. To give effect to this pause, the Amendment Regulation amends section 8 of the FS Regulation and inserts new section 8A to provide that the levy classes for the financial year starting on 1 July 2025 will be the same as the classes that applied for the financial year starting on 1 July 2024 (except for the Yelarbon Levy District).

Indexation of the EML

The Amendment Regulation will increase the EML by up to 3.4 per cent, consistent with the Government Indexation Rate (GIR) for 2025-26 applied to fees and charges.

To apply the GIR to the EML, the Amendment Regulation amends schedule 2 of the *Fire Services Regulation 2011* (FS Regulation) which prescribes the annual contributions of owners of prescribed properties.

Penalty infringement notice offences

Chapter 4A, Part 4, Division 5A of the FS Act sets out the requirements for smoke alarms in domestic dwellings and provides offences for failure to comply with the requirements to install alarms and to ensure that alarms are appropriately maintained or are replaced at appropriate intervals.

The Amendment Regulation prescribes six offences under the FS Act as penalty infringement notice offences under the SPE Regulation. The offences relate to a failure to install a smoke alarm by the owner of a domestic dwelling (section 147Z(3)); where an owner fails to replace a smoke alarm within 10 years from its date of manufacture (section 148A(1)); lessors and tenants failing to meet their obligations to test smoke alarms (sections 148B(1) and 148B(2)); and lessors and tenants failing to meet their obligations to clean smoke alarms (sections 148E(1) and 148E(2)).

The Amendment Regulation also corrects two minor and technical errors in the FS Act entry in schedule 1 to the SPE Regulation.

Use of unregistered rural fire brigade vehicles on roads

Under section 152B of the FS Act, an unregistered vehicle may be used on a road by a rural fire brigade, or by a fire service officer assigned to Rural Fire Service Queensland, for carrying persons or equipment for the purpose of preventing, controlling or extinguishing a fire; for the purpose of training relating to firefighting or fire prevention; or for another purpose authorised in writing by the Commissioner. The vehicle must be clearly identified as a vehicle of a rural fire brigade and be covered by an appropriate compulsory third party insurance policy.

The Amendment Regulation amends the FS Regulation to clarify that unregistered rural fire brigade vehicles may also be used on roads in the following circumstances:

- (a) by a member of a fire brigade, or another entity that provides an emergency service, from outside Queensland for a purpose mentioned in section 152B(1)(a)(i)(A), (B), or (C) of the FS Act;
- (b) by a person, including, for example, a mechanic, maintaining or repairing the vehicle for the purpose of carrying out the maintenance or repair or another purpose incidental to that purpose.

Minor and technical amendments

The Amendment Regulation also makes a number of minor and technical amendments of a correcting nature to the *Building Fire Safety Regulation 2008* and the FS Regulation.

Human Rights Issues

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

The Amendment Regulation engages the following rights protected under the HRA:

- right to recognition and equality before the law (section 15)
- right to life (section 16)
- property rights (section 24)
- right to liberty and security of person (section 29)
- right to a fair hearing (section 31); and
- rights in criminal proceedings (section 32).

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

(a) the nature of the right

Section 15 (Recognition and equality before the law) of the HRA reflects that every person holds the same human rights by virtue of being a human and not because of some particular characteristic or membership of a particular social group. This right encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right to equality in subsection (3) ensures that all laws and policies are applied equally, and do not have a discriminatory effect. Public entities, as well as courts and tribunals, are required to treat all people equally when applying the law. It also requires that the laws themselves provide equal protection for everyone.

The right to equality is limited by the proposed levy class change for Yelarbon and pause to other levy class changes for 2025-26 which will result in prescribed property being treated differently, with some property owners paying a higher levy rate than those owners within the paused levy districts, despite receiving equivalent services.

This right may also be limited to the extent that the amendments to the SPE Regulation prescribe six offences as infringement notice offences for which a financial penalty applies through an infringement notice fine. The requirement to pay a fine may adversely and

disproportionally impact persons of lower socio-economic status who may have more difficulty paying a monetary sum.

Section 16 (Right to life) of the HRA 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 fees and levy in accordance with the GIR ensures they continue to reflect the costs of providing urban and rural fire and emergency services across Queensland.

Section 24 (Property rights) of the HRA protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property. The right to property is limited by the proposed increase to fees arising from the application of GIR to EML contribution amounts, depriving a person of additional money in comparison with the current EML contributions. The proposed pause to levy class changes for 2025-26 also limits the right to property as some levy districts will pay a higher levy contribution for the same service being delivered to properties the subject of the pause.

The amendments to the SPE Regulation may also limit property rights to the extent that they prescribe six offences as infringement notice offences. The failure to pay an infringement notice fine may result in enforcement action including, for example, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual), as provided for under the SPE Act.

Section 29 (Right to liberty and security of person) of the HRA provides a person with certain protections relating to liberty and security, ensuring a person is not subject to arbitrary arrest or detention and not deprived of their liberty other than on grounds and in accordance with procedures established by law. The proposed amendments to the SPE Regulation may limit the right to liberty and security to the extent that they prescribe financial penalties that may be enforced under the SPE Act. The registrar of the State Penalties Enforcement Registry (SPER) may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order after the person fails to pay a financial penalty. Importantly, however, the SPER Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

Section 31 (Fair Hearing) of the HRA provides that a person has the right to have a criminal charge, or a civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Section 32 (Rights in criminal proceedings) of the HRA provides the right to be presumed innocent until proven guilty according to law, as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. The proposed amendments to the SPE Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that they prescribe infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence.

(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 equality is to provide a financial benefit to certain prescribed property owners who would otherwise be subject to increased levy contributions following service enhancements in those areas.

The purpose of the limitation on the right to property is to ensure that the value of the EML contributions under the FS Regulation is retained. The limitation on the right to property promotes the right to life and property rights under the HRA 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.

The purpose of prescribing six offences from the FS Act as infringement notice offences in the SPE Regulation is to enhance personal safety in domestic dwellings by:

- ensuring an efficient means of enforcing these offences;
- avoiding the costs and inconvenience to both the individual and the State associated with consideration before a court in relation to offences that are objective in nature; and
- encouraging individuals to comply with the requirements in the FS Act which will assist in achieving the desired safety outcomes.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

The collection of the EML contributions 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 bushfires, 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.

The limitations on the right to recognition and equality before the law, property rights, right to liberty and security of person, right to a fair hearing, and rights in criminal proceedings will achieve the purpose by allowing the prescribed offences to be enforced by way of an infringement notice, while retaining the option for a person to elect to have the matter dealt with by a court, and ensuring that financial penalties discourage unlawful behaviour.

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

There is no less restrictive and reasonably available way to achieve the intended purpose of pausing levy class changes for 2025-26 which would otherwise operate to increase levy contributions for several levy districts following service enhancements in those areas. As section 8 of the FS Regulation operates to upgrade levy classes irrespective of the levy class shown in schedule 1, implementing a pause on levy class changes requires legislative amendment.

There is no other less restrictive and reasonably available way to achieve the intended purpose to increase the EML based on the GIR.

In relation to the amendments to the SPE Regulation, the alternative to the Amendment Regulation would be to not prescribe the six new offences as infringement notice offences.

This is not a less restrictive way to achieve the proper purpose of the limitations as requiring all instances of offending behaviour to be dealt with by a court would not achieve the efficiencies afforded by enforcing offences by way of infringement notices.

- (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 levy contributions based on the GIR outweighs the limitation on the right to property.

In relation to the amendments to the SPE Regulation, it is important for fire safety outcomes that persons comply with the requirements in the FS Act relating to smoke alarms for domestic dwellings, and that they are held accountable when non-compliance occurs. Allowing penalty infringement notices to be issued for smoke alarm related offences under the FS Act provides an efficient and cost-effective method of enforcement for government. Alleged offenders benefit from a fixed and discounted penalty for the offence; avoidance of court proceedings; and no finding of guilt in relation to the offence. On balance, the importance of community safety and ensuring an effective enforcement system outweighs the limitation on equality before the law, property rights, the right to liberty and security of person, the right to a fair hearing, and rights in criminal proceedings.

- (f) any other relevant factors

The proposed pause on changes to levy classes is only intended to operate for the 2025-26 financial year. In accordance with the *Statutory Instruments Act 1992*, the FS Regulation will expire on 31 August 2025, unless earlier extended or remade. An exemption from expiry is being sought as part of the annual process lead by the Department of the Premier for expiry subordinate legislation. The remake of the FS Regulation will include consideration of aspects of the levy set out in the FS Regulation.

Conclusion

I consider that the Amendment Regulation is compatible with the HRA 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.

Ann Leahy MP
Minister for Local Government and Water and
Minister for Fire, Disaster Recovery and Volunteers