Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022

Explanatory Notes

Short title

The short title of the Bill is the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022.

Policy objectives and the reasons for them

The main objectives of the Bill are to deliver operational improvements and efficiencies for the Queensland Police Service (QPS) and Queensland Fire and Emergency Services (QFES) by amending the *Police Service Administration Act 1990* (PSAA), the *Police Powers and Responsibilities Act 2000* (PPRA), the *Weapons Act 1990* (WA), the *Fire and Emergency Services Act 1990* (FES Act) and the *Disaster Management Act 2003* (DM Act).

The PSAA establishes the legislative framework for the QPS by providing for its maintenance, membership, development and administration. The QPS has conducted an evaluation of the PSAA to identify opportunities for improvements and to ensure this Act complies with modern drafting practices. A number of provisions that address a wide range of administrative issues within the QPS have been determined suitable for amendment. These issues are diverse, ranging from clarifying employment arrangements for specific staff, making improvements to the police discipline system through to removing duplicated or obsolete provisions.

In relation to amendments in the Bill that improve the police discipline system, on 30 October 2019, the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* (the Discipline Reform Act) commenced. The Discipline Reform Act established a more efficient police discipline system through amendments that reduced delays in finalising discipline investigations, modernised the disciplinary sanctions that could be imposed on a police officer and formalised the role and range of management strategies within the discipline process. Aspects of the new police discipline system are comprehensively outlined in the Explanatory Notes that accompanied the Discipline Reform Act.

The Bill will make further improvements to the police discipline system through amendments to the PSAA that:

- allow the commencement of a police disciplinary proceeding to be delayed until related applications for domestic violence protection orders naming the subject member as the respondent are finalised;
- clarify the timeframe that will apply to the discipline process when an Abbreviated Disciplinary proceeding is initially offered but later fails;
- expand the definition of 'prescribed operation' to include investigations using surveillance devices and similar operations conducted by other law enforcement agencies so that the grounds for disciplinary action will be deemed to commence at the end of these operations avoiding any potential impact that may arise through instituting a police disciplinary proceeding during the course of a prescribed operation; and

- allow another 'prescribed officer' to continue a disciplinary proceeding if the originally assigned prescribed officer cannot finalise the proceeding.

The Bill will also provide for the dismissal from the QPS of a police officer or a police recruit immediately upon being sentenced to imprisonment, including a suspended sentence for an offence. This contrasts with the current process where a police officer who has not resigned and is sentenced to a term of imprisonment will not be dismissed from the QPS until all criminal appeals have ended and a potentially lengthy police discipline process is finalised.

These amendments will not affect the right of the subject officer to appeal the court's decision leading to their imprisonment. However, once sentenced to imprisonment, the subject officer will be automatically dismissed without an ability to have their dismissal administratively reviewed. If on criminal appeal, the conviction for the offence is overturned or the sentence is changed from a period of imprisonment, the Bill provides that the Commissioner of the QPS (the Commissioner) must, within 5 business days, reappoint the person to the same or similar position at the same classification level or rank held in the QPS prior to dismissal. However, if the person was appointed as an executive officer by the Governor in Council, the Governor in Council must reappoint the person to the same position at the same classification level or rank held in the QPS prior to dismissal.

These amendments reflect the unique position in the community that police officers and police recruits hold. Integral to the role of a police officer is a high standard of integrity. A conviction for an offence resulting in a sentence of imprisonment is inconsistent with the high standards expected of a police officer. The proposed amendment would avoid the unpalatable situation where an offender imprisoned in jail continues to be employed by the QPS as a police officer or police recruit.

The Bill will also reduce the legislative burden on the QPS through amendments to the PSAA and the PPRA that remove duplicated or obsolete provisions and remedy issues arising from the operation of these Acts. These amendments include:

- allowing medically unfit police officers transferred to staff member positions to be employed under the *Public Service Act 2008* so that appropriate employee arrangements including discipline processes can apply;
- inserting the new offence provision, section 10.1 'Unauthorised use of confidential information' into the PSAA to more appropriately address the misuse of police information;
- updating the definition of 'external service provider' in the PSAA to more accurately reflect the employment practices used to manage these providers;
- removing the obligation for police officers to obtain written approval from the Commissioner prior to instituting proceedings for certain offences under the PSAA;
- consolidating definitions used in the PSAA to comply with modern drafting standards;
- clarifying the information that may be considered by the Commissioner in determining if a person should be engaged or continue to be engaged by the QPS;
- omitting out-dated provisions within the PSAA that:
    - prohibit the harbouring of a police officer;
    - refer to the now obsolete software system 'MINDA';
    - require the review of the PSAA within timeframes that have long since passed;
- omitting provisions in the PSAA, duplicated in other Acts, that:
    - allow for a warrant to be issued to retrieve QPS property by instead relying on search warrant provisions under the PPRA;

  - authorise the charging of fees for police prints by instead relying on the fee structure allowed under the *Financial and Performance Management Standard 2019;*
  - allow for the issue of a warrant to obtain possession of a premises by instead relying on warrant provisions under the *Residential Tenancies and Rooming Accommodation Act 2008*; and
  - require the preparation of annual reports and instead rely on the reporting requirements outlined in the *Financial and Performance Management Standard 2019*; and
- clarifying that a reference to an officer of the rank of detective superintendent in the PPRA is a reference to a police officer of the rank of superintendent who has been appointed as a detective.

In addition, the Bill will amend the WA to allow certain authorised officer powers to be delegated to police officers and QPS staff members so that licensing functions can be carried out more efficiently.

The Bill also includes amendments to the FES Act and the DM Act to support the ongoing effectiveness of services delivered by QFES by:

- clarifying that an authorised fire officer may enter premises and open a receptacle using a remote-controlled device for preventative or investigative purposes;
- allowing the Commissioner appointed under the FES Act (the QFES Commissioner) to suspend as well as grant, amend or revoke, a permit to light a fire;
- clarifying the circumstances in which QFES can share information with the QPS about investigations into fires and hazardous materials emergencies involving death or serious injury to a person;
- clarifying an occupier's obligation to maintain prescribed fire safety installations that are located outside of the occupier's building;
- extending the offence of impersonating an officer of the Fire and Rescue Service or a member of the State Emergency Service (SES) to also apply to a member of a Rural Fire Brigade (RFB);
- enabling members of interstate fire brigades to assist at hazardous materials emergencies and rescues, as well as at fires, in Queensland;
- providing for online publications consistent with the online publication requirements of the *Financial Accountability Act 2009* (FA Act);
- clarifying the Building Code of Australia specifications that apply to the domestic dwelling smoke alarm requirements that are being phased out; and
- making minor corrections and amendments to the FES Act.

Achievement of policy objectives

***Police Service Administration Act 1990, Police Powers and Responsibilities Act 2000* and *Weapons Act 1990* amendments**

The Bill delivers operational improvements and efficiencies for the QPS through amendments to the PSAA, the PPRA and the WA. These amendments include:

Allowing the commencement of a police disciplinary proceeding to be delayed until related applications for domestic violence protection orders naming the subject member as the respondent are finalised

One criticism made of the old police discipline system was that, on occasion, there could be a lengthy delay in finalising police discipline matters. This criticism was addressed through the Discipline Reform Act which statutorily required that disciplinary proceedings must start within 1 year from the date the ground for disciplinary action arose.

Provision was also made to cater for circumstances where the conduct of a police officer resulted in the officer being subject to disciplinary action and a criminal proceeding. In such an instance, a disciplinary proceeding must start within 1 year from the date the ground for disciplinary action arose or 6 months from the date the criminal proceeding was finalised.

This delay ensured procedural fairness could be maintained for the criminal proceeding as no assertion could be made that the pending disciplinary proceeding could exert an undue influence. Additionally, the disciplinary proceedings were better informed as the criminal proceedings would be finalised and the facts in relation to that matter known before the disciplinary proceedings start.

However, no such provision was made for an application for a protection order made under the *Domestic and Family Violence Protection Act 2012* naming the subject officer as the respondent. The Bill will ensure that the benefits gained through delaying the start of a disciplinary proceedings until a related criminal proceeding is finalised will also apply in instances where there is a disciplinary proceeding and a related application for a domestic violence protection order naming the subject officer as the respondent.

Clarifying the timeframe that will apply to the discipline process when an Abbreviated Disciplinary proceeding is initially offered but later fails

The new police discipline system introduced a statutory requirement that a disciplinary proceeding against a subject officer must start within a prescribed time. Section 7.12 'When disciplinary proceeding must be started' of the PSAA prescribed these periods to be the later of the following:

- 1 year from the date the ground for disciplinary action arises;
- 6 months from the date the complaint mentioned in section 7.2 or another complaint substantially relating to the same ground for disciplinary action is received by the Commissioner or the Crime and Corruption Commission (CCC); or
- If a relevant criminal proceeding has been started, within 6 months from the day that proceedings is finalised.

Imposing a period of time for a disciplinary proceeding to start provides a balance between affording the QPS sufficient time to conduct investigations into discipline matters and ensuring that there is not an undue delay in commencing a disciplinary proceeding.

Section 7.12 of the PSAA also defines that a disciplinary proceeding starts when an abbreviated process notice or disciplinary proceeding notice for the proceeding is given to the subject officer by the prescribed officer.

An Abbreviated Disciplinary proceeding (ADP) is a shortened, less formal discipline process which is currently considered to commence when an abbreviated process notice is given to the subject officer. In practice, however the process commences five to six weeks prior, when an ADP invitation is given to the subject member. This invitation contains important information including the particulars of the ground for disciplinary action and affords the subject officer an

opportunity to give to the prescribed officer, within at least 21 days, a written submission that addresses the complaint or the disciplinary sanction or professional development strategy the officer would accept if an offer was made under section 7.16 of the PSAA.

The practical effect of a prescribed officer giving an invitation to a subject member, which includes allowances for the subject member to respond through written submissions, is the shortening of the time available to conduct a disciplinary investigation by a significant period. This is not consistent with the original policy intent for the police discipline system.

The Bill will deem that the ADP begins when an ADP invitation is given to the subject officer. This will allow all of the prescribed period in which a disciplinary proceeding must start to be dedicated to investigating a discipline matter thoroughly.

The Bill will also clarify the procedure to be adopted if an ADP invitation is not accepted by a subject officer. If the subject officer:

- does not give the prescribed officer a written submission and other material within a stated period under section 7.17(2)(c) of the PSAA;
- refuses the invitation within the stated period under section 7.17(2)(d) of the PSAA; or
- fails to give the prescribed officer the required information within the period stated in section 7.17(5) or the further period stated in section 7.17(6) of the PSAA;

the disciplinary proceedings ends and a disciplinary proceeding against the subject officer may be started under division 4.

A disciplinary proceeding under division 4 may be started within 6 months from:

- if the subject officer does not give the prescribed officer a written submission and other material within a stated period under section 7.17(2)(c) of the PSAA – the day the stated period ends;
- if the subject officer refuses the invitation within the stated period under section 7.17(2)(d) of the PSAA – the day the notice is given; or
- if the subject officer fails to give the prescribed officer the required information within the period stated in section 7.17(5) or the further period stated in section 7.17(6) of the PSAA – the day the period or further period ends.

This is consistent with the existing section 7.22 'Ending of proceeding – subject officer does not accept proposed sanction or strategy' of the PSAA which outlines the process to be adopted if a subject officer does not accept a proposed sanction or strategy within the required period.

<u>Expanding the definition of 'prescribed operation' to include investigations using surveillance devices and similar operations conducted by other law enforcement agencies</u>

The new police discipline system requires disciplinary proceedings to start within 1 year from the date the ground for disciplinary action arises. Generally, the grounds for disciplinary action arise on the day that the inappropriate conduct occurred or if the conduct is ongoing, the latest day that the conduct occurs.

However, specific provision has been made for prescribed operations which fall within the following criteria:

- a controlled activity or controlled operation under the *Crime and Corruption Act 2001* or the PPRA; or
- a specific intelligence operation under the *Crime and Corruption Act 2001*; or
- an investigation by the CCC.

In these instances, the ground for disciplinary action is deemed to be taken to arise on the day the operation ends provided that the responsible officer for the operation reasonably believes that starting disciplinary action would compromise the operation.

This ensures that investigations into serious offences that incidentally may involve disciplinary action against a police officer will not be unduly compromised as a consequence of the officer's inappropriate behaviour. Further, as this grounds for disciplinary action are deemed to start on the day the operation ends, provision has been made to allow any disciplinary action against the relevant officer to be conducted in a timely manner.

However, the current definition of 'prescribed operation' does not include investigations relying on telephone interception or surveillance devices, which are the most commonly covert strategies used by police agencies for investigations into major or organised crime involving serious offences. Nor does it cater for equivalent investigations conducted by law enforcement agencies or anti-corruption agencies of other jurisdictions that may involve Queensland police officers.

The Bill will broaden the definition of 'prescribed operation' to include these types of investigations so that they may be conducted without being hindered.

Allowing another 'prescribed officer' to continue a disciplinary proceeding if the originally assigned prescribed officer cannot finalise the proceeding

Disciplinary proceedings are overseen by a prescribed officer, who is a senior officer in the QPS. The PSAA makes no provision to substitute a prescribed officer once a proceeding has commenced, either through a subject officer being given an abbreviated process notice or disciplinary proceeding notice.

This amendment is needed as a disciplinary proceeding may not be re-instituted if a prescribed officer cannot continue to oversee the proceeding and the prescribed time limit to start a disciplinary proceeding has expired.

The Bill will allow an alternative prescribed officer to finalise a disciplinary proceeding in the exceptional circumstances where the original prescribed officer is unavailable to do so. These circumstances include where the original prescribed officer cannot continue because of:

- death;
- ceasing employment;
- suspension from duty;
- demotion; or
- mental or physical incapacity as certified by a medical practitioner.

The Bill outlines the process to be employed in appointing a new prescribed officer. Within 28 days of becoming aware that the original prescribed officer cannot continue, the Commissioner must ask the subject officer to consent within the stated period of at least 14 days or as long a period as allowed by the Commissioner to the appointment of a new prescribed officer.

If the subject officer consents, the Commissioner may appoint a new prescribed officer within 28 days of receiving consent. The appointment of the new prescribed officer has the following limitations:

- the new prescribed officer will only have the power to impose the same, or lesser, disciplinary sanction as the original prescribed officer; and

- the new prescribed officer may only consider matters stated in the abbreviated process notice or the disciplinary proceedings notice, and any submissions given to the original or new prescribed officer; and
- if the original prescribed officer has proposed a professional development strategy, the new prescribed officer must offer the same or an equivalent strategy and not impose a discipline sanction; and
- if the original prescribed officer has proposed a disciplinary sanction, the new prescribed officer must not impose a greater sanction.

If the subject officer does not consent to the appointment of a new prescribed officer, the Commissioner must appoint another prescribed officer to start a new disciplinary proceeding. The new prescribed officer must have the power to impose the same disciplinary sanction as the original prescribed officer. The new prescribed officer must start a new disciplinary proceeding within 28 days of being appointed and must conduct the new proceedings without regard to any earlier material unless this is consented to by the subject officer.

Instant dismissal of a police officer or police recruit when sentenced to imprisonment

Currently, a police officer can be convicted of an offence and sentenced to a term of imprisonment, but not be dismissed from the QPS until all criminal appeals have ended and a police disciplinary investigation finalised under part 7 'Discipline process for officers' of the PSAA.

This is consistent with section 7.12 of the PSAA that provides that, if a relevant criminal proceeding against the subject officer has been started, a disciplinary proceeding must be started within 6 months from the day the criminal proceeding is finally dealt with. 'Finally dealt with' is defined to mean 'the proceeding has been withdrawn or dismissed or otherwise ended, including any review or appeal relating to the proceeding or the period for starting a review or appeal relating to the proceeding'.

Additionally, case law (*Flori v Commissioner of Police & another* [2014] QSC 284) suggests that the QPS cannot rely on the information gained for the purposes of investigating a criminal offence for a police discipline matter until the criminal matter is finalised.

Consequently, the Commissioner generally commences disciplinary proceedings under part 7 of the PSAA after all criminal trials and appeals have concluded. This dismissal process then requires the subject person to be provided disciplinary notices and supporting correspondence and allowed a right of reply. This is resource intensive and delays a disciplinary sanction such as a dismissal being imposed.

The Bill will amend the PSAA to provide for the summary dismissal of a police officer or police recruit immediately upon being sentenced to a term of imprisonment, including a suspended sentence of imprisonment for an offence.

This amendment will meet community expectations that certain government officials, such as police officers and police recruits, should be of such good character and standing that they should not be allowed to continue to be employed if they have been imprisoned for an offence, even if that imprisonment is suspended.

The summary dismissal of a police officer or police recruit upon being sentenced to imprisonment is not reviewable as it is based in statute rather than upon an administrative decision. However, to mitigate the potential impact of this amendment to a person, the Bill provides that should the person through a criminal appeal successfully change their sentence to something other than imprisonment, the Commissioner must reappoint the person within 5

business days to the QPS. This reappointment must be in the same position or a similar position, and at the same classification level or rank, held by the person before their dismissal. However, if the person was appointed by the Governor in Council as an executive officer, the Governor in Council must reappoint the person to the same position and at the same classification level or rank held in the QPS prior to dismissal.

Upon reappointment, the person will be entitled to seek reimbursement of salary and entitlements from the date of dismissal at the discretion of the Commissioner. The person will also be subject to any previous stand down or suspension that was in existence upon their dismissal. The Commissioner must then decide within 14 days of reappointment, whether to lift any previous stand down or suspension.

Allowing medically unfit police officers transferred to staff member positions to be employed under the *Public Service Act 2008* so that appropriate employee arrangements including discipline processes can apply

Currently, the PSAA allows the Commissioner to appoint a police officer who cannot continue to perform their duties on medical grounds to a position as a staff member. These members, as distinct from other staff members in the QPS, are employed under the PSAA rather than the *Public Service Act 2008*. As these staff members are no longer considered to be police officers, they are not subject to the disciplinary proceedings outlined in the PSAA. Similarly, these staff members are not subject to the disciplinary proceedings under the *Public Service Act 2008*.

Historically, disciplinary issues with these staff members has rarely arisen. However, the process to deal with these issues is inefficient and cumbersome. The Bill will address this by providing that police officers medically retired to staff member positions will be employed under the *Public Service Act 2008*.

Transitional provisions in the Bill will ensure the employment arrangmements of existing staff members will not be impacted.

Inserting the new offence provision, section 10.1 'Unauthorised use of confidential information' into the PSAA to more appropriately address the misuse of police information

The QPS maintains stringent systems and processes to guard against any unauthorised person being able to access QPS information. Nonetheless, information may still be misused, even when it is accessed lawfully. Fortunately, instances of this occurring are rare. The harm that could be caused by such breaches, however, is significant and it is therefore proposed to expand the current offence provisions to ensure that confidential information held by the QPS is protected.

Currently, there are two distinct offence provisions in the PSAA that address the improper disclosure of police information namely section 10.1 'Improper disclosure of information' and section 10.2C 'Misuse of information obtained under ss 10.2A-10.2B'.

Section 10.1 is limited in scope as this offence provision only applies to a current or former police officer or QPS staff member. This limited subset of people are prohibited from disclosing police information unless the following exemption applies:

- the disclosure is authorised under statute law or made under due process of law;
- the information is not confidential or privileged or would normally be publicly available; or
- the information is about an offer to attend drug diversion and the disclosure is to the relevant department administering this program.

Section 10.2C has similar limitations. Although this offence provision may apply to a person outside of the QPS, this offence provision only relates to disclosures that involve a person's criminal history.

The range of persons accessing QPS information has expanded since the commencement of the PSAA to include contractors, subcontractors, recruits, and other persons or agencies performing a function for the QPS. While contractual obligations including confidentiality agreements may assist in mitigating the risk of the inappropriate use of police information, this cohort may not be subject to the offence provisions outlined in sections 10.1 and 10.2C of the PSAA.

The Bill will ensure that confidential information in the possession of the QPS will be protected by:

- consolidating section 10.2C into section 10.1;
- expanding 10.1 to include any person that accesses QPS information either:
  - in the course of performing a function for the Service; or
  - through being provided access to it under the provisions of the PSAA or another Act, or lawful purpose; and
- prohibiting the unauthorised use of confidential information by defining 'use' to include disclose, give, give access to, publish, make available, and record.

The Bill provides guidance about the circumstances where a person may lawfully use QPS confidential information. These circumstances include:

- to the extent the use is required or permitted under this Act or another Act or to perform the person's functions under this Act or another Act; or
- 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; or
- in compliance with lawful process requiring the production of documents or the giving of evidence; or
- if the use is otherwise required or permitted under another law.

The Bill will increase the maximum penalty of this offence to 100 penalty units or 2 years imprisonment to reflect the seriousness and the potential harm that can be caused by a misuse of QPS information, including not only to individuals to whom the information relates, but also the potential impact that can occur to criminal investigations and operations. This new maximum penalty is consistent with equivalent offences under section 5AA.14 'Secrecy' of the PSAA and other Acts including section 341 'Confidential information' of the *Corrective Services Act 2006*, section 187 'Confidentiality of information obtained by persons involved in administration of Act' of the *Child Protection Act 1999* and section 288 'Preservation of confidentiality' of the *Youth Justice Act 1992.*

Finally, the Bill will ensure that investigations into this new offence may be conducted appropriately. Currently, section 10.23 'Proceedings for offences – general' of the PSAA provides that a PSAA offence, excepting section 10.21BA, must be commenced within 1 year following the commission of the offence or within 1 month after the commission of the offence first comes to the complainant's notice, whichever period is the later.

Investigations into the misuse of confidential information may be complex and protracted. The Bill recognises the importance of a thorough investigation of these offences by allowing sufficient time for these investigations to be conducted. The Bill will allow proceedings in relation to these types of offences to commence within 1 year from their commission or within 6 months after the commission of the offence first came to the knowledge of the complainant.

Updating the definition of 'external service provider' in the PSAA to more accurately reflect the employment practices used to manage these providers

Part 5AA 'Assessment of suitability of persons seeking to be engaged, or engaged, by the service' of the PSAA allows the Commissioner to gather relevant information to assess whether a person is suitable to be, or continue to be, engaged by the QPS. These persons include 'external service providers'. Under these provisions the Commissioner may consider the criminal history of external service providers to assess their suitability.

The PSAA defines external service providers as public service employees, employed or engaged by an entity other than the QPS, to perform corporate service support for the QPS that involves accessing QPS information. The PSAA also states that such persons are to be declared by regulation to be an external service provider. Currently, section 72 'External service providers' of the *Police Service Administration Regulation 2016* (PSAR) specifies public service employees of CITEC and Queensland Shared Services (QSS) to fall within the definition of an external service provider.

CITEC and QSS are business units in the Department of Communities, Housing and Digital Economy (DCHDE). DCHDE has identified that the current definition of 'external service provider' may not cover the scope of persons that DCHDE employ to provide corporate service support to the QPS.

The fluctuating volume of work undertaken by QSS requires a periodic increase to its permanent workforce with a 'surge workforce' consisting of members supplied by labour hire agencies. These personnel are required to access QPS information in order to perform functions supporting the QPS. Similarly, contractors are engaged by CITEC to performing corporate support, commonly in technical or IT-related functions for the QPS.

The Bill will address this issue by ensuring that all external service providers who are employed or engaged by DCDHE and are providing corporate services to the QPS will be subject to part 5AA of the PSAA. This will be achieved by amendments that will remove the requirement that an external service provider is to be a public service employee. Further, the entities listed in section 72 of the PSAR that employ external service providers will be expanded to include Data and Information Services, Smart Service Queensland and Transformation Projects.

Removing the obligation for police officers to obtain written approval from the Commissioner prior to instituting proceedings for certain offences under the PSAA

Currently, the PSAA allows a group of offences namely sections 10.19 'Offences', 10.20 'Bribery or corruption of officers or staff members', 10.21B 'Unlawfully killing or injuring police dogs and police horses' and 10.21BA 'Wilfully and unlawfully killing or seriously injuring police dog or police horse' to proceed on the complaint of any officer.

However, proceedings for all other PSAA offences involving such offences as sections 10.17 'Exemption from tolls', 10.18 'Prohibited use of words suggesting association with police' and 10.21 'False representation causing police investigations' may only proceed on the complaint of an officer authorised in writing by the Commissioner.

There is no identifiable theme that suggests why there should be a distinction between these two groups of offences. Additionally, a statutory requirement obligating the Commissioner to provide approval before proceedings commence incurs an administrative cost and may arguably conflict with a constable's powers under common law.

The Bill will address this issue by allowing all prosecutions for an offence against the PSAA to be taken in a summary manner under the *Justices Act 1886*.

Consolidating definitions used in the PSAA to comply with modern drafting standards

The Bill will ensure the PSAA complies with modern drafting practices by consolidating definitions of terms found in this Act within the new schedule 2 'Dictionary'.

Clarifying the information that may be considered by the Commissioner in determining if a person should be engaged or continue to be engaged by the QPS

The Bill will make a minor amendment to section 5AA.11 'Assessment of suitability' of the PSAA to clarify the information that the Commissioner may rely upon when assessing whether a person is suitable to be employed by the QPS is the relevant information outlined in the new schedule 1 'Relevant information'.

Additionally, sections 5AA.12 'Particular persons to be advised if person unsuitable' and 5AA.13 'External service provider to be advised if person unsuitable' of the PSAA provides the processes to be followed if the Commissioner considers a person may not be suitable to be engaged, or continue to be engaged, by the QPS. These sections oblige the Commissioner to give the person reasons why the Commissioner considers the person may not be suitable to be or, continue to be, engaged by the QPS and afford the person an opportunity to respond to this information prior to the Commissioner making a decision regarding their suitability. If then, the Commissioner considers the person is not suitable to be, or continue to be, engaged by the QPS, the Commissioner must notify the person in writing of that decision.

Currently, sections 5AA.12 and 5AA.13 of the PSAA outline certain circumstances when this information does not need to be provided such as when to do so may prejudice an investigation or endanger a person's life etc. The Bill will make a minor drafting amendment to outline that the Commissioner need only disclose specific reasons why a person is unsuitable to be engaged by the service when the listed circumstances do not apply.

Finally, part 5AA of the PSAA requires a person engaged by the QPS to disclose information or changes to information that may affect their suitability to be engaged to the Commissioner 'in the approved form'. An 'approved form' means a form approved by the Commissioner for use under this Act. Requiring information be provided only through an 'approved form' is limiting. It does not allow the information to be easily shared through other means of communication.

The Bill will address this issue by allowing the disclosure of information to occur in a manner approved by the Commissioner. This will allow the Commissioner to allow other more efficient methods of information sharing to be employed such as email etc.

Omitting out-dated provisions within the PSAA that prohibit the harbouring of a police officer

The PSAA imposes an offence of knowingly harbouring a police officer, or permitting a police officer to linger in a place, when the officer is on duty but not in the actual performance of a duty.

This offence does not apply to the police officer but punishes members of the community for the indolence of officers. Community expectations would now demand that it should be the officers alone, and not community members, that should be accountable if police were inappropriately spending time at a place.

The provision is anachronistic and inconsistent with current broader legislative and discipline frameworks that holds police officers responsible for police misconduct rather than others. The Bill will omit this offence.

Omitting out-dated provisions within the PSAA that refer to the now obsolete software system 'MINDA'

The Bill will omit references to the term 'MINDA' within the PSAA. MINDA is an obsolete software system that the QPS has ceased to use since 2015.

Omitting out-dated provisions within the PSAA that require the review of the PSAA within timeframes that have long since passed

Section 10.27 'Review of Act' requires the PSAA to be reviewed within the last six months of the first term of appointment of the first Commissioner appointed after the passing of this Act, and again within five years of completion of the first review. These dates passed many years ago. Consequently, the Bill will omit this section.

Omitting provisions in the PSAA, duplicated in other Acts, that allow for a warrant to be issued to retrieve QPS property by instead relying on search warrant provisions under the PPRA

The PSAA authorises the Commissioner to direct a police officer to return QPS equipment issued to them upon the cessation of their duties. Failing to comply with this direction is an offence. The PSAA also establishes a search warrant scheme specific to this offence to seize this equipment.

These provisions were enacted prior to the PPRA which allows a police officer to apply for a search warrant to search for evidence of the commission of an offence. As one purpose of the PPRA is to consolidate the powers police officers have for investigating offences, it is appropriate that the Bill omits duplicated search warrant provisions within the PSAA.

Omitting provisions in the PSAA, duplicated in other Acts, that authorise the charging of fees for police prints by instead relying on the fee structure allowed under the *Financial and Performance Management Standard 2019*

Part 9A 'Police prints' of the PSAA outlines the circumstances when a person is entitled to a copy of police prints and that a reasonable amount may be charged by the QPS for them.

The *Financial and Performance Management Standard 2019* now provides the authority for the setting of charges for goods and services by an agency such as the QPS. As part 9A has become superfluous, the Bill will omit this part.

Omitting provisions in the PSAA, duplicated in other Acts, that allow for the issue of a warrant to obtain possession of a premises by instead relying on warrant provisions under the *Residential Tenancies and Rooming Accommodation Act 2008*

Section 10.14 'Vacating of premises' of the PSAA allows the Commissioner to notify a person in possession of a QPS premises to vacate that premises. If the person fails to vacate the premises within 28 days, this section also allows a warrant to be issued authorising a police officer to enter a QPS premises, remove all unauthorised persons from the property and recover possession of the property for the Commissioner.

The QPS maintains a number of residential properties for use by members, particularly in remote areas. These premises are managed in accordance with the *Residential Tenancies and*

Rooming Accommodation Act 2008. As section 10.14 of the PSAA is superfluous, the Bill will omit this section.

Omitting provisions in the PSAA, duplicated in other Acts, that require the preparation of annual reports and instead rely on the reporting requirements outlined in the *Financial and Performance Management Standard 2019*

Section 10.26 'Annual report' of the PSAA creates a requirement for the Commissioner to prepare and provide an annual report on the administration and operations of the police service. However, the FA Act now obliges all departments, including the QPS, to prepare annual reports in accordance with the *Financial and Performance Management Standard 2019*. This Standard requires that annual reports comply with the 'Annual report requirements for Queensland Government agencies' prepared by the Department of the Premier and Cabinet.

As the annual report provision of the PSAA has been made superfluous, the Bill will omit this section.

Clarifying that a reference to an officer of the rank of detective superintendent in the PPRA is a reference to a police officer of the rank of superintendent who has been appointed as a detective

The Bill will make a minor amendment to section 411B 'Application for police assistance removal order' of the PPRA by correcting a reference to a 'police officer of at least the rank of detective superintendent' to a 'police officer of at least the rank of superintendent who has been appointed as a detective'.

Allowing certain authorised officer powers under the WA to be delegated to police officers and QPS staff members so that licensing functions can be carried out more efficiently

The responsibility for managing the regulation of weapons and weapons licences in Queensland is undertaken within the QPS by Weapons Licensing. Authorised officers in Weapons Licensing assess applications for licences and permits to acquire weapons (PTAs) in accordance with legislative requirements under the WA. Licences and PTAs can only be issued by an authorised officer after certain considerations are made.

Records of the issue of firearms licences and PTAs are kept on the Weapons Licensing Management System (firearms register) maintained by Weapons Licensing. Weapons Licensing is experiencing a high volume of demand and, despite increases in staffing, there remains challenges in the processing of applications for PTAs, firearms licences and firearm licence renewals.

The WA places strict limitations on who may be appointed as an authorised officer. Section 153 'Authorised officers' of the WA provides that the Commissioner, an executive officer or a commissioned officer are authorised officers. Other police officers may be appointed as authorised officers by the Commissioner provided the Commissioner is satisfied the officer has the necessary expertise or experience for that role.

Authorised officers have a broad range of functions and powers under the WA varying from monitoring compliance with this Act at shooting ranges through to ensuring the licencing requirements are fulfilled in accordance with the Act. Currently, while Weapons Licensing is predominantly staffed by QPS staff members, only a small number of police officers are performing duties at Weapons Licensing as authorised officers.

An internal review conducted by Weapons Licencing identified some potential uncertainty about the extent to which QPS staff members could assist authorised officers in the performance of their functions under the WA as there is currently no express authority under that Act for staff members to act as agents or delegates of an authorised officer.

Consequently, Weapons Licensing operated on the assumption that the *Carltona* principle, a common law principle recognising the capacity of statutory decision makers to act through their agents, would allow QPS staff members, with the assistance of detailed guidelines and quality assurances, to issue uncontroversial PTAs and weapons licences in the name of an authorised officer.

The Bill will amend the WA to ensure that appropriately qualified police officers and QPS staff members can be delegated the licensing functions of an authorised officer so that the processing of applications for licences and PTAs may be more efficient.

The Bill will ensure that there is no doubt about the validity of licences and PTAs approved by Weapons Licensing staff by clarifying that any licence or PTA issued before the commencement of this Bill is valid.

Fire and Emergency Services Act 1990 **and** ***Disaster Management Act 2003*** **amendments**

The Bill also includes the following amendments to the FES Act and the DM Act to support the ongoing effectiveness of services delivered by QFES.

Use of remote-controlled devices by authorised fire officers

Currently, the FES Act allows authorised fire officers to enter premises and open receptacles under specific circumstances relating to preventing or investigating a fire or a hazardous materials emergency. In regard to dwellings, an authorised fire officer may enter only with the occupier's consent or during or in the aftermath of a fire or hazardous materials emergency at the dwelling for the purpose of ascertaining the cause.

Technological advances now allow officers to use remote-controlled devices such as drones or robots to assess the safety of a premises before entering or opening receptacles.

To ensure that legislation keeps pace with technology, the Bill will amend section 55 'Powers of authorised fire officer for preventative or investigative purposes' of the FES Act to clarify that an authorised fire officer's powers to enter premises or open a receptacle may be exercised by the officer, or an appropriately qualified person acting under the supervision of the officer, using a remote-controlled device being controlled by the officer or person.

Suspension of permits to light a fire

Chapter 3, part 7 division 1 of the FES Act provides powers to the QFES Commissioner relating to fires, including the power to grant a permit to authorise the lighting of fires on any land. A permit granted to a person may specify conditions, be unlimited or for a specified period or until a specified event occurs and may be amended or revoked at any time by the QFES Commissioner giving a notice to the person. However, there is currently no ability to temporarily suspend a permit.

Currently, changes in conditions (such as forecast change in weather conditions or fire danger ratings) or information requiring investigation (such as complaints from neighbours regarding smoke impact on their property or where the permit holder may not be complying with permit conditions) may require the revocation of all or specified types of permits in an area or individual permits. The permit holder would then be required to re-apply for a new permit once the conditions have stabilised or the investigation is completed.

The Bill amends section 71 'Notifications, notices and permits' of the FES Act to allow the QFES Commissioner to suspend a permit. This will allow the QFES Commissioner to suspend a permit to manage a fire risk in an area for a particular period of time or to carry out investigations, without the need to revoke permits and require the holders to re-apply.

Disclosure of fire and hazardous materials emergency investigation information to the QPS

Section 153A 'Confidentiality' of the FES Act prohibits disclosure of information obtained by a person while exercising a power or performing a function under the Act or because of an opportunity provided by the performance of a function or exercise of a power except in specified circumstances.

The Coroners Court of Queensland inquest into the death of John Edward Drane recommended that the QPS, QFES and Workplace Health and Safety Queensland collaboratively review their involvement in the matter and identify the most practical and efficient means for ensuring that, in future, when the agencies are concurrently investigating a death or serious injury involving a fire, that the roles and responsibilities of each agency to inform each other's recommendations and to properly advise and put all relevant evidence before the investigating coroner, are clearly defined and appropriately carried out.

To support the implementation of the Coroner's recommendation, the Bill amends section 153A of the FES Act to provide a clear authority for QFES officers to proactively disclose information relating to an investigation into a fire involving a death or serious injury, if the disclosure is to a police officer or staff member of the QPS, for the purpose of assisting with the QPS's investigation into the death or injury.

As authorised fire officers are also responsible for conducting investigations to ascertain the cause of a hazardous materials emergency, the amendment will also apply to information acquired during these investigations.

Maintenance of prescribed fire safety installations

Section 104D 'Occupier of building to maintain prescribed fire safety installations' of the FES Act provides that occupiers of buildings must maintain at all times every prescribed fire safety installation to a standard of safety and reliability in the event of fire and provides for penalties for failure to comply. Penalties are scalable depending on the harm that results from the contravention.

Prescribed fire safety installations are defined in section 104D of the FES Act as those fire safety installations that are required to be maintained in the building by or under any Act and that was not at any time authorised by or under any Act to be no longer maintained. The functions of fire safety installations are to safeguard occupants from illness or injury while evacuating during a fire, to provide facilities for occupants and authorised fire officers to undertake firefighting operations and to prevent the spread of fire between floors or

compartments of buildings. They include structural features; fire protection systems; firefighting equipment and occupant safety features.

Some fire safety installations must be located outside a building such as fire hydrants which allow authorised fire officers access to a water supply with sufficient pressure and flow at a sufficient distance to allow for fighting a fire from the outside. Because these installations are not located in the building, they do not fall within the definition of a 'prescribed fire safety installation'.

Currently, fire safety installations in a building fall within the definition of 'prescribed fire safety installation' and therefore if rectification work is required to ensure the installation is maintained to the required standard of safety and reliability, a notice under section 104G 'Notice by commissioner about occupier's or owner's obligations' is given to the occupier. However, if rectification work is required on fire safety installations which are outside the building, a requisition under section 69 'Requisition by commissioner to reduce fire risk' of the FES Act is given to the occupier.

Further, the wording of the definition means that fire safety installations outside a building are not covered by the requirement to maintain the installations in section 104D of the FES Act or required to be included in the fire safety management plan for budget accommodation buildings under section 104FA 'Obligation to prepare fire safety management plan'.

The Bill amends the definition of a 'prescribed fire safety installation' to include all installations required to be maintained for the building, to include those that are outside the building. This will simplify compliance and enforcement processes for prescribed fire safety installations and make clear that all fire safety installations, whether inside or outside a building, are subject to the same requirements under chapter 3, part 9A 'Building fire safety' of the FES Act.

Impersonating a member of a Rural Fire Brigade

Section 150G 'Impersonating authorised rescue officer etc.' of the FES Act provides that it is an offence to impersonate a fire service officer, an authorised rescue officer, a State Emergency Service (SES) or emergency services unit member or an SES coordinator (jointly, a Fire and Rescue Service (FRS) officer or an SES member).

The application of the FES Act provision is broad in terms of the types of volunteers and office holders for which it is an offence to impersonate, however, it does not apply to persons impersonating a member of an RFB. Like FRS officers and SES members, RFB members perform functions under the FES Act (section 82 'Functions of a rural fire brigade') and may exercise the powers of authorised fire officers in certain circumstances (section 83 'Powers of first officer'). For consistency, the Bill will amend the offence to also apply to a person who pretends to be a RFB member.

As RFBs may form part of the response during a state of fire emergency with members required to exercise the powers of authorised fire officers, clause 16(2) amends the higher maximum penalty provided in paragraph (b) to apply if a person pretends to be a rural fire brigade member during a state of fire emergency at a place to which the declaration applies.

Interstate assistance at hazardous materials emergencies and rescues

Section 152D 'Interstate assistance at fires' of the FES Act provides that a member of an interstate fire brigade may assist, and in certain circumstances exercise powers, at a fire in Queensland. This enables interstate support to be provided along the Queensland border where members of an interstate fire brigade may be able to respond to a fire more quickly than the FRS.

Under section 8B 'Functions of QFES' of the FES Act, QFES also has functions to protect persons, property and the environment from hazardous materials emergencies and to protect persons trapped in a vehicle or building or otherwise endangered, to the extent that QFES's personnel and equipment can reasonably be deployed or used for the purpose.

To facilitate interstate assistance at hazardous materials emergencies and rescues, the Bill amends section 152D of the FES Act to provide that an interstate fire brigade may assist with 'QFES incidents' which is defined to include these additional functions of QFES.

Online publication requirements

On 1 July 2021, the FA Act was amended to modernise publication requirements by requiring information to be published online instead of in print except in particular circumstances (online publication requirement).

As a number of provisions in the FES Act and DM Act currently provide for print publication, the Bill makes amendments for clarity and consistency with the government-wide approach to online publication.

Deemed approval notices

Under section 20B 'Chairperson may give notice about deemed approvals under Planning Act' of the DM Act, the Chairperson of the Queensland Disaster Management Committee (the Chairperson) may, if there is a disaster situation, give a notice to a local government (local government notice) stating that the 'deemed approval provision' of the *Planning Act 2016* does not apply to a development application or change application made to the local government but not decided before the day the local government receives the notice.

The 'deemed approval provision' is section 64 of the *Planning Act 2016*. This provision provides that, for code assessable development applications, if the assessment manager does not decide the application within the period, or extended period, allowed under the development assessment rules, the applicant may give the assessment manager a notice that states the application should be approved (deemed approval notice). The assessment manager is taken to have given an approval to the applicant on the day they receive the deemed approval notice. Section 82 of the *Planning Act 2016* generally applies the deemed approval provision to change applications.

As soon as possible after giving the local government notice, the Chairperson must also publish, in a newspaper circulating in the relevant local government area, a notice (publication notice) stating that the local government notice has been given and the effect of the notice.

The online publication requirement applies to a print requirement to the extent the requirement applies to a Minister, accountable officer or statutory body (section 88C(1) 'Application of

part' of the FA Act). As section 20B applies to the Chairperson of the Queensland Disaster Management Committee, the online publication requirement does not apply. However, as insufficient print publications remain in operation across Queensland to ensure that the Chairperson can comply with section 20B(5) in all local government areas and for consistncy with the government-wide approach to publishing information, the Bill amends section 20B to provide for online publication.

Section 20B of the DM Act will be amended to provide that the Chairperson must ensure that the publication notice is published on the website of the department administering the *Planning Act 2016* rather than in a newspaper. This will provide the most effective and transparent outcome for all users of the planning framework.

Further amendments will streamline this process by providing for a single notice to be both sent to the local government and published online.

Local fire ban

The FES Act provides that the QFES Commissioner must notify the imposition (section 86B 'Publicising local fire ban') or cancellation (section 86C 'Cancelling local fire ban') of a local fire ban in a local newspaper or, in urgent circumstances, by a broadcasting service. In addition, the QFES Commissioner may publicise the imposition or cancellation of the ban in other ways the QFES Commissioner considers appropriate.

The Bill will amend the FES Act to provide that notice of the imposition or cancellation of a local fire ban must be published on the QFES website, or by a suitable alternative such as by radio or another website, if there are technical or other reasons it cannot conveniently be published on the website.

The authorisation for the QFES Commissioner to publicise the imposition or cancellation of the ban by other means will be retained. This is intended to include the flexibility for newspapers to be used, if appropriate, to ensure the information is disseminated widely in the community. This is consistent with the FA Act which provides an exemption (public health or safety exemption) from the online publication requirement where publication in a newspaper is necessary for a public health and safety purpose, including preventing or lessening a serious risk to the life, health of safety of individuals or the public (section 88I 'Public health or safety purpose').

As sections 86B and 86C of the FES Act will provide for how local fire bans must be notified and publicised, section 88F 'Print requirement must be compiled with by online publication' of the FA Act will not apply.

Other minor amendments to sections 86A and 86D of the FES Act will clarify the administrative processes relating to local fire bans.

Declaration of state of fire emergency

Section 87 of the FES Act 'Declaration of state of fire emergency' provides that the Commissioner may, with the approval of the Minister, declare that a state of fire emergency exists within Queensland. Section 88 'Publication of declaration' of the FES Act provides that every declaration, amendment or revocation of a state of fire emergency must be notified in the

gazette. The declaration, amendment or revocation takes effect from the earlier of the date of gazettal or notification throughout the area to which it applies by newspaper, radio or television

The Bill will amend section 88 to provide that the declaration, amendment or revocation of a state of fire emergency must continue to be notified in the gazette and may also be notified on the QFES website or by radio or television. The declaration, amendment or revocation will take effect on the earliest date of notification.

The requirement for the QFES Commissioner to ensure widespread publicity of the declaration by other means will be retained and extended to apply to an amendment or revocation of a declaration. This is intended to include publication in newspapers, if appropriate, to ensure the information is disseminated widely in the community, consistent with the public health or safety exemption to the online print requirement.

As section 88 will provide for how a declaration, amendment or revocation of a state of fire emergency must be notified and publicised, section 88F of the FA Act will not apply.

Guidelines for preparing fire safety management plans

Section 104FA 'Obligation to prepare fire safety management plan' of the FES Act requires owners of particular budget accommodation buildings to prepare a fire safety management plan for the building within 1 year of commencement. Section 104FD 'Guidelines for preparing fire safety management plans' of the FES Act provides that the QFES Commissioner may issue guidelines for preparing fire safety management plans.

If the QFES Commissioner issues guidelines for preparing fire safety management plans, section 104FE 'Public notice of guidelines' of the FES Act requires the QFES Commissioner to give notice of the guidelines by publishing a notice in an appropriate newspaper and state the places were copies of the guidelines may be inspected or bought. In addition, the QFES Commissioner must, under section 104FF 'Access to guidelines' of the FES Act, ensure that a copy of the guidelines and associated documents are available for inspection on QFES's website.

The Bill amends section 104FE to provide that the QFES Commissioner must ensure the guidelines and associated documents are available for inspection on the QFES website. The requirement to publish a notice in a newspaper is omitted. Section 104FF is also omitted as this requirement is now dealt with in section 104FE.

<u>Smoke alarm requirements being phased out</u>

Chapter 3 part 9A division 5A of the FES Act provides for smoke alarm requirements for domestic dwellings. Currently, new requirements are being phased in to require domestic dwellings to have interconnected, photoelectric smoke alarms. These will be required in all domestic dwellings by 1 January 2027.

The requirements which are being phased out specify requirements for installation of smoke alarms by reference to the Building Code of Australia (BCA). The BCA is defined to mean the document called 'National Construction Code' volume 1 and volume 2 (including the Queensland appendixes) published by the entity known as the Australian Building Codes Board.

However, the specifications in the FES Act refer to the 2016 edition of the BCA, which has now been replaced by the 2019 edition. The numbering of the specifications in the 2019 edition has changed from the 2016 edition.

To clarify the BCA specifications that apply to the smoke alarm requirements that are being phased out, the Bill amends section 104RB(2) to refer to the BCA as in effect on 1 January 2017 (that is, the 2016 edition), which is the date the new smoke alarm provisions commenced.

Minor amendments

The Bill also makes a number of minor amendments to the FES Act as follows:

- amend the heading of section 93 'Certificate re declaration' to reflect current drafting practices;
- amend section 104G 'Notice by commissioner about occupier's or owner's obligations' to remove references to section 150 which previously dealt with continuing offences;
- amend section 104S 'Regulations relating to this part' to update an incorrect cross-reference to section 154 to refer instead to section 154E;
- amend section 106 'Constitution of levy districts' to reflect current drafting practice;
- amend section 154E 'Regulation-making power' to update a reference to 'alternative solutions' to 'performance solutions' to reflect current terminology in the BCA; and
- amend schedule 6 'Dictionary' to correct the reference to the authorising provision, omit a definition which is no longer required and make minor amendments to a number of other definitions.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative reform.

Estimated cost for government implementation

Any costs incurred through the implementation of the amendments in the Bill will be met through the existing budgets of the QPS and QFES.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992* (LSA). The amendments that may impact upon those principles are considered further in these notes.

***Police Service Administration Act 1990* amendments**

Introduction of the new section 10.1 of the PSAA

The proposed amendment to introduce the new section 10.1 'Unauthorised use of confidential information' of the PSAA will impose a maximum penalty of 100 penalty units or two years imprisonment and will apply to a wider range of persons than relevant existing provisions.

In determining whether this amendment is consistent with the fundamental legislative principles (FLPs), consideration should be given to whether the consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied

by the legislation. Penalties should be proportionate to the offence and legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Additionally, penalties within legislation should be consistent with each other.

The QPS maintains large quantities of personal and confidential information on an extensive range of matters. The unlawful disclosure or use of such information could cause great detriment to individuals as well as to ongoing or potential police investigations.

The proposed increase in maximum penalty is considered warranted to reflect the potential serious consequences of disclosing confidential QPS information. This is particularly so, given the contemporary means available to widely disseminate information such as the internet or social media. Furthermore, the proposed penalty is consistent to other equivalent offences both within the PSAA and in other Acts.

The potential breach of FLPs is justified by the need for the QPS to protect the confidential information that it holds and to protect the rights to privacy of individuals to which that information relates.

Expanding the definition of external service provider

The PSAA currently defines external service providers as public service employees, employed or engaged by an entity other than the QPS, to perform a corporate service support for the QPS that involves accessing QPS information. The Act also states that such persons are to be declared by regulation to be an external service provider.

The Bill will expand the range of persons who will be considered external service providers for the QPS by amendments that remove the requirement that external service providers are to be public service employees and by prescribing a greater number of entities that may employ them.

These amendments will result in a greater number of persons being assessed for their suitability to be engaged by the QPS. To conduct this assessment, the person must provide relevant information including the person's criminal history to the Commissioner. The right to privacy and the disclosure of private or confidential information is relevant when considering if legislation has sufficient regard to an individual's rights and liberties.

The purpose of these amendments is to ensure that QPS information is properly protected. The QPS holds confidential information including the personal information of members of the community that could cause damage if it was inappropriately disclosed. External service providers provide corporate support to the QPS and may have access to confidential information. There is a legitimate community expectation that external service providers engaged by the QPS should have integrity so that the risk that they will commit offences, particularly in relation to the misuse of QPS information, will be minimised.

Concerns about the impact of this breach of privacy upon external service providers is mitigated through the nature of the information that is to be disclosed. An external service provider is only required to disclose to the Commissioner the minimal amount of information necessary to determine if that person is suitable to be engaged by the QPS.

The potential breach of FLPs is justified as it strikes an appropriate balance between an external service provider's right to privacy and the community concern that the QPS will appropriately manage the information it holds.

Clarifying when a disciplinary proceeding may be started where a domestic violence protection order application naming the subject officer as the respondent is yet to be finalised

The proposed amendment will allow an application for a domestic violence protection order that names the subject police officer as the respondent to be finalised prior to commencing disciplinary proceedings against the officer.

In determining whether this amendment is consistent with FLPs, consideration should be given to whether the legislation is consistent with the principles of natural justice. The legal maxim 'Justice delayed is justice denied' emphasises the importance of prompt decision-making and that an undue delay can constitute a denial of procedural fairness.

It should be noted that a delay in proceedings does not in itself constitute a denial of procedural fairness. Rather, a denial of procedural fairness may occur where the delay in the proceedings is undue or excessive. The proposed amendment would not be considered to be a denial of procedural fairness as it imposes a strict timeframe in which a disciplinary proceeding must start i.e. either within 1 year from the date the ground for disciplinary action arises or within 6 months from the finalisation of the application for the domestic violence protection order naming the subject officer as the respondent. A period of 6 months is a reasonable length of time needed to conduct any necessary investigations as a precursor to a disciplinary proceeding and cannot be considered excessive in this context.

Importantly, the proposed amendments may be considered to ensure procedural fairness is maintained by allowing disciplinary proceedings and applications for domestic violence protection orders to be considered and finalised without any undue influence that could arise if these matters were to progress simultaneously. For example, a police officer may be compelled to answer questions in a discipline interview. As this will occur after a related domestic violence protection order application has been finalised, there can be no assertion that this would be unfair to the police officer through fears that the information disclosed could be used in the application. Further, disciplinary proceedings heard after the finalisation of related proceedings will be better informed.

Instant dismissal of a police officer or recruit when sentenced to imprisonment

In determining whether the amendments relating to the summary dismissal of a police officer or police recruit when sentenced to imprisonment accord with the FLPs, consideration may be given to the principles of natural justice.

The Bill provides for the legislative dismissal of the person despite any other provision of the PSAA or another Act. It is not an administrative decision and a person summarily dismissed by virtue of these amendments will not be able to seek a review.

However, any potential breach of FLPs is considered justifiable as the conduct of police officers and police recruits are the most critical and visible reflection of the professional standards and reputation of the QPS. It is considered appropriate to amend the PSAA to enable the timely dismissal of a police officer or a police recruit sentenced to imprisonment for an offence without

an ability for the employee to challenge the dismissal to ensure that the standards and reputation of the QPS are maintained.

The Bill mitigates concerns about fairness to the police officer or police recruit by requiring that the Commissioner must, within 5 business days, reappoint the person to the same or similar position that they held prior to being dismissed should they be successful on appeal in overturning their imprisonment sentence or reducing it to something other than imprisonment. If the person was appointed by the Governor in Council as an executive officer, the Governor in Council must reappoint the person to the same position held in the QPS prior to dismissal.

Additionally, prior to the Bill commencing, it is intended that the Commissioner will bring the new summary dismissal provision to the notice of all QPS members to ensure there is no doubt about the consequences of a police officer or police recruit being sentenced to imprisonment by an Australian court.

***Weapons Act 1990* amendments**

Allowing certain authorised officer powers under the WA to be delegated to police officers and QPS staff members so that licensing functions can be carried out more efficiently

Section 4(3)(c) of the LSA outlines that legislation should allow for the delegation of administrative power only in appropriate cases and to appropriate persons. The Bill will allow the Commissioner, an executive officer or a commissioned officer to delegate to a police officer or a QPS staff member the licensing functions of an authorised officer under the WA. This amendment is necessary to ensure the efficient processing of applications under the WA for a PTA, licence or renewal of a licence.

Any concerns about the impact of this amendment upon this FLP are mitigated as the delegator is limited in the delegations that may be made. A delegation cannot be made to any person. The Bill provides that the delegator may only delegate the powers of an authorised officer to a police officer or a QPS staff member. Additionally, the delegation can only be made if the delegator is satisfied that the person has the necessary expertise or experience to carry out the delegated functions. Finally, a police officer or QPS staff member delegated the powers of an authorised officer will be limited to only performing functions under part 2 and division 3 of part 3 of the WA.

Section 4(3)(g) of the LSA outlines that legislation should not retrospectively affect rights and liberties or impose obligations.

When considering the impact of retrospective legislation, the former Scrutiny of Legislation Committee (the Scrutiny Committee) had regard to the following factors:

- whether the retrospective application is beneficial to persons other than Government; and
- whether individuals have relied on legislation and have a legitimate expectation under the legislation before retrospective clauses commence.

The Scrutiny Committee had no concerns about retrospective provisions that do not adversely affect any person other than the State and recognised that there were occasions where curative retrospective legislation, which does not significantly affect an individual's rights and liberties is justified to clarify a situation or correct unintended legislative consequences.

The Bill will ensure that a firearms licence, renewal of a firearms licence or a PTA approved before the commencement of the Bill is not made invalid merely through the issuer not being an authorised officer. The potential impact upon FLPs is justified as licence holders and persons

issued PTAs under the WA have a legitimate expectation that these documents will be valid and any concerns about their validity will be dispelled through this amendment.

***Fire and Emergency Services Act 1990* and *Disaster Management Act 2003* amendments**

Use of remote-controlled devices by authorised fire officers

The proposed amendment to section 55 of the FES Act will expand the ways in which an authorised fire officer may exercise existing powers to enter premises or open a receptacle. The amendment may raise the FLP that legislation should confer power to enter premises only with a warrant issued by a judge or other judicial officer (LSA section 4(3)(e).

The FES Act provides that authorised fire officers may enter premises or open receptacles for specified preventative or investigative purposes, including to prevent or reduce the likelihood of fire or a hazardous materials emergency or to ascertain the cause of a fire or hazardous materials emergency. This is consistent with the functions of QFES under section 8B to protect persons, property and the environment from fire and hazardous materials emergencies. The purpose of the amendment is to ensure authorised fire officers are able to perform these functions in a way that minimises risks to the safety of the officers.

The amendment will not change the circumstances in which an authorised fire officer may enter premises or existing safeguards on the exercise of the power of entry, including about the seizure of property after entering the premises. Importantly, in relation to dwellings, the power of entry may only be exercised with the consent of the occupier or during or in the aftermath of a fire or hazardous materials emergency, for the purpose of ascertaining its cause.

The potential breach of FLPs is justified by the need for authorised fire officers to perform their functions to protect persons, property and the community from fire and hazardous materials emergencies in a way that minimises risks to the officers.

Maintenance of prescribed fire safety installations

The proposed amendment to the definition of 'prescribed fire safety installation' will expand the scope of the existing offence in section 104D of the FES Act that an occupier must maintain at all times every prescribed fire safety installation to a standard of safety and reliability in the event of fire to apply to prescribed fire safety installations located outside the building. The expanded offence may raise the FLP that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The maximum penalties for this offence are significant, and increase depending on the seriousness of the outcome caused by the contravention up to 2,000 penalty units or 3 years imprisonment if the contravention causes multiple deaths.

Prescribed fire safety installations that are outside a building form part of the overall system of fire safety management that is required under legislation for the building. Risks to the safety of occupants and property arise if the overall fire safety system for the building is compromised by failure to maintain prescribed fire safety installations, whether they are inside or outside the building. Therefore, it is appropriate that the equivalent penalties should apply for failure to maintain any prescribed fire safety installation, whether the installation is inside or outside of the building.

Impersonating a member of a Rural Fire Brigade

The amendment to section 150G of the FES Act will expand the scope of the existing impersonation offence to also apply to a member of an RFB. The expanded offence may raise the FLP that consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The existing offence includes a maximum penalty of 250 penalty units or 1 year's imprisonment if a person pretends to be a fire service officer during a state of fire emergency and 100 penalty units in other circumstances.

Like the other positions covered by the offence, members of an RFB carry out functions under the FES Act and, where an RFB is in charge of an operation to control or extinguish a fire, the first officer of the brigade and any person acting under their direction have powers of an authorised fire officer. During a state of fire emergency, RFBs may form part of the response and be required to exercise the powers of authorised fire officers, including the power to enter premises. Where legislation confers specific functions or powers on persons, it is essential that only authorised persons carry out these functions.

There are serious risks to safety and to public confidence in the services provided by QFES if a person pretends to be an FRS officer or a SES member. The higher penalty during a state of fire emergency reflects the seriousness of the situation, where the community must be able to reliably identify RFB members. Persons who impersonate RFB members raise equivalent risks to safety and public confidence as persons who impersonate FRS officers and SES members and it is therefore appropriate to apply consistent penalties.

Suspension of permits to light a fire

The amendment to allow the QFES Commissioner to suspend permits to light a fire may raise the FLP that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined (LSA, section 4(3)(a)).

The power to grant, amend or revoke permits to light a fire is one of a range of powers of the QFES Commissioner in relation to fires and is consistent with the object of the FES Act to provide for the prevention of, and responses to, fires. The FES Act currently provides that the QFES Commissioner may revoke permits and the amendment aims to streamline administrative processes by enabling permits to be temporarily suspended during periods of high fire risk or while an investigation is being carried out, for example into the impacts of the fire or compliance with the permit. This will avoid the need to revoke all permits and require the holders to re-apply after the fire risk has passed or the investigation completed.

No review rights are provided for granting, amending or revoking permits or, under the amendment, for suspending permits. This is appropriate as the delay to the suspension of a permit while a review process is carried out may result in increased fire risk. It is essential that the QFES Commissioner retains the power to respond rapidly and flexibly to fire risk.

Disclosure of fire and hazardous material emergency investigation information to QPS

The proposed amendment to section 153A will clarify that a person may disclose information acquired when investigating a fire or hazardous materials emergency involving a death or serious injury to the QPS, for the purpose of a concurrent investigation into the death or injury.

This may raise the FLP that legislation should have sufficient regard to individuals' rights and liberties, including in regard to the privacy of confidential information.

The purpose of the amendment is to give effect to a recommendation of the Deputy State Coroner to provide for the most practical and efficient means for ensuring collaboration between the QPS and QFES to inform concurrent investigations and fulfil duties to advise and put all relevant evidence before the investigating coroner. The amendment provides a clear exemption to the offence relating to confidentiality of information, and appropriately limits the type of information that may be disclosed, to whom it may be disclosed, as well as the purpose of the disclosure.

The information relating to a death or serious injury caused by a fire or hazardous materials emergency may be 'personal information' under the *Information Privacy Act 2009*. The amendment will not displace the protections on the disclosure of personal information under that Act. However, the amendment will provide a clear authorisation, under a law, for disclosure consistent with Information Privacy Principle 11(1)(d) – the disclosure is authorised or required under a law.

Consultation

A consultation draft of the Bill was circulated with the following stakeholders:
- the Queensland Police Union of Employees;
- the Queensland Police Commissioned Officers' Union of Employees;
- the Together Union;
- the Office of the Information Commissioner; and
- the Crime and Corruption Commission.

A consultation draft of the amendments to the FES Act and DM Act was circulated to the following stakeholders:
- the Together Union;
- the Local Government Association of Queensland;
- the Rural Fire Brigade Association Queensland;
- the United Firefighters Union Queensland;
- the Queensland Auxiliary Firefighters Association;
- the Queensland Fire and Emergency Service Senior Officers Union of Employees;
- the State Emergency Service Volunteer Association; and
- Inspector-General Emergency Management.

Stakeholder feedback was taken into account in finalising the Bill.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the State of Queensland and is not uniform with, or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that the Act may be cited as the *Police Service Administration and Other Legislation Amendment Act (No. 2) 2022*.

2. Commencement

Clause 2 provides that the following provisions commence on a day to be fixed by proclamation—

- part 2;
- part 3, division 3;
- part 5, division 3;
- schedule 1, part 2.

Part 2 Amendment of Disaster Management Act 2003

3. Act amended

Clause 3 provides that part 2 amends the *Disaster Management Act 2003.*

4. Amendment of s 20B (Chairperson may give notice about deemed approvals under Planning Act)

Clause 4 amends section 20B(5) of the DM Act to provide that the chairperson must ensure that a notice given to a local government under section 20B(2) is published on the website of the department in which the *Planning Act 2016* is administered along with a statement that the notice has been given to the local government.

The clause also amends section 20B to streamline the process by providing for a single notice to be given to the local government and published online.

5. Insertion of new pt 14, div 3, sdiv 4

Clause 5 inserts the new subdivision 4 (Transitional provision for Police Service Administration and Other Legislation Amendment Act (No. 2) 2022) which contains the new section 182 ‘Notice about deemed approval provision given before commencement’.

New section 182 confirms that any notices given under former section 20B immediately prior to commencement continue in effect until the end of the stated day for the notice. If a notice under former section 20B(5) has not been published for the notice, the Chairperson must ensure that the notice and specified information is published on the website of the department in which the *Planning Act 2016* is administered.

Part 3 Amendment of Fire and Emergency Services Act 1990

Division 1 Preliminary

6. Act amended

Clause 6 provides that part 3 amends the *Fire and Emergency Services Act 1990*.

Division 2 Amendments commencing on assent

7. Amendment of s 86A (Imposing local fire ban)

Clause 7 amends section 86A 'Imposing local fire ban' to clarify that the QFES Commissioner may impose a local fire ban by publishing a notice under section 86B 'Publicising local fire ban'. The period for which a local fire ban may be in place is relocated from section 86B(3)(c) to section 86A(2) to clarify this is a limitation on the power to impose a ban.

8. Replacement of s 86B (Publicising local fire ban)

Clause 8 replaces section 86B 'Publicising local fire ban' to provide that notice of a local fire ban must be published on the department's website (normal publication) instead of in a newspaper circulating in the fire ban area or by broadcast notice transmitted in the fire ban area.

If there are technical or other reasons which prevent the convenient publication of the notice on the department's website, the ban may be published in another way (alternative publication) decided by the QFES Commissioner (for example by radio broadcast or publication on another website) and by normal publication as soon as practicable. Providing for alternative publication will ensure that, in urgent circumstances, notification of the ban is not delayed for technical or other reasons.

Section 86B as amended provides for how notice of the imposition of a local fire ban must be published or publicised and therefore section 88F 'Print requirement must be complied with by online publication' of the FA Act does not apply.

9. Amendment of s 86C (Cancelling local fire ban)

Clause 9 amends section 86C 'Cancelling local fire ban' to provide that if a local fire ban is cancelled, notice of the cancellation must be published on the department's website (normal publication) instead of in a newspaper circulating in the fire ban area or by broadcast notice transmitted in the fire ban area.

If there are technical or other reasons which prevent the convenient publication of the notice of the cancellation on the department's website, the cancellation may be published in another way (alternative publication) decided by the QFES Commissioner (for example by radio broadcast or on another website) and by normal publication as soon as practicable. Providing for alternative publication will ensure that cancellation of the ban will not be delayed for technical or other reasons.

Section 86C as amended provides for how cancellation of a local fire ban must be published or publicised and therefore section 88F 'Print requirement must be complied with by online publication' of the FA Act does not apply.

10. Replacement of s 86D (Period of local fire ban)

Clause 10 replaces s 86D 'Period of local fire ban' to make consequential amendments to reflect clauses 8 and 9 and to provide for when the cancellation of a local fire ban takes effect.

11. Amendment of s 88 (Publication of declaration)

Clause 11 amends section 88(1) to provide that, in addition to being notified in the gazette, a declaration of a state of fire emergency may be notified on the department's website or by radio or television in the area to which it applies. Notification by radio or television was previously implied in section 88(2)(b) and the amendment will clarify this, as well as providing for online publication rather than in a newspaper.

An amendment to section 88(2) clarifies when the declaration, amendment or revocation of a declaration takes effect by reference to notification under amended section 88(1).

Clause 11 also amends section 88(3) to clarify that the requirement for the QFES Commissioner to take measures to give widespread publicity to a declaration also applies to an amendment or revocation of a declaration.

Section 88 as amended provides for how the declaration, amendment or revocation of a state of fire emergency is to be notified or publicised, and therefore new section 88(5) provides that section 88F 'Print requirement must be complied with by online publication' of the FA Act does not apply.

12. Replacement of s 104FE (Public notice of guidelines)

Clause 12 replaces section 104FE 'Public notice of guidelines' to provide that the QFES Commissioner must ensure the guidelines for preparing fire safety management plans and any document applied, adopted or incorporated by the guidelines are available for inspection on the department's website. As the guidelines will be available online it is not necessary to state where they may be inspected or bought.

13. Omission of s 104FF (Access to guidelines)

Clause 13 omits section 104FF 'Access to guidelines' as the requirement to provide access to the guidelines and associated documents will be dealt with in section 104FE.

14. Amendment of s 104G (Notice by commissioner about occupier's or owner's obligations)

Clause 14 amends section 104G 'Notice by commissioner about occupier's or owner's obligations' by omitting subsection (3A) and part of subsection (4). These subsections referred to section 150.

While the current section 150 provides for an offence of lighting or attempting to light a grass fire with the intention of injuring a person or property, this section previously provided for continuing offences, where a person was liable for additional penalties for each day on which

an act or omission constituting an offence continued. This provision was omitted by the *Fire and Rescue Service Amendment Act 2006* and therefore the references are no longer required.

Amended subsection (4) continues to provide that the giving of a notice under subsection (1) does not affect any other proceedings under this Act relating to the noncompliance to which the notice relates. This includes action the QFES Commissioner may take under section 104R 'Injunction' to seek an injunction from the Supreme Court to prohibit or restrict the use of the building.

Failure to comply with a notice given under section 104G is an offence under section 150E 'Failure to comply with requisition etc.' with a maximum penalty of 50 penalty units or 6 months imprisonment. However, under section 104SF 'Relief from penalty pending determination of review by QCAT' if a person given a notice under section 104G applies to the Queensland Civil and Administrative Tribunal for a review of the notice the person is not liable to a penalty for failure to comply with the notice until they are given notice of the determination of the review by the Queensland Civil and Administrative Tribunal.

15. Amendment of s 104RB (Owner must install smoke alarm—requirements being phased out by 31 December 2026)

Clause 15 amends section 104RB(2)(a) and (b) to clarify that the specifications of the Building Code of Australia referred to are to the Code as in effect on 1 January 2017 (that is, the 2016 edition).

16. Amendment of s 150G (Impersonating authorised rescue officer etc.)

Clause 16 amends section 150G 'Impersonating authorised rescue officer etc.' to provide that it is an offence to pretend to be a member of a group registered as a rural fire brigade under section 79 of the FES Act (a rural fire brigade member).

The offence carries a maximum penalty of 250 penalty units or 1 year's imprisonment if a person pretends to be a fire service officer during a state of fire emergency or 100 penalty units in other circumstances. Clause 16 also amends the higher penalty to apply if a person pretends to be a rural fire brigade member during a state of emergency at a place to which the declaration applies.

17. Amendment of s 154E (Regulation-making power)

Clause 17 amends section 154E 'Regulation-making power' in relation to fees payable for the assessment of proposed alternative solutions within the meaning of the Building Code of Australia. The current edition of the Code uses the terminology 'performance solutions' rather than 'alternative solutions'.

18. Insertion of new ch 5, pt 5, div 9

Clause 18 inserts new division 9 'Transitional provisions for Police Service Administration and Other Legislation Amendment Act (No. 2) 2022', Subdivision 1 'Amendments commencing on assent'. The new subdivision includes new sections 207 'Local fire bans imposed before commencement' and 208 'Declarations notified before commencement'.

New section 207 confirms that a local fire ban in force immediately before commencement, remains in force until the end of the period stated in the notice imposing the ban under former section 86B. However, the ban may be cancelled under new section 86C and new section 86D(2) and (3) apply if the ban is cancelled.

New section 208 provides that new section 88 applies to an amendment or revocation of a declaration of a state of fire emergency in force immediately before commencement.

Division 3 Amendments commencing on proclamation

19. Amendment of s 55 (Powers of authorised fire officer for preventative or investigative purposes)

Clause 19 amends section 55 'Powers of authorised fire officer for preventative or investigative purposes' to provide that an authorised fire officer's power to enter premises or open a receptacle under section 55(1) may be exercised by the officer, or an appropriately qualified person acting under the officer's supervision, using a device remotely controlled by the officer or person, such as a drone or robot.

20. Amendment of s 71 (Notifications, notices and permits)

Clause 20 amends section 71 'Notifications, notices and permits' to provide that a permit granted under chapter 3, part 7, division 1 may be suspended, as well as amended or revoked, at any time.

21. Amendment of s 104D (Occupier of building to maintain prescribed fire safety installations)

Clause 21 amends the definition of 'prescribed fire safety installation' in section 104D to refer to a fire safety installation that was, at any time, required to be maintained for the building (rather than 'in the building') by or under an Act, including as a prerequisite to the granting of any approval or the issue of any notice, certificate or instrument and that was not at any time authorised by or under any Act to be no longer maintained.

Clause 21 also amends other references to 'in the building' in section 104D to 'for the building' and corrects a cross-reference in a note.

22. Amendment of s 152D (Interstate assistance at fires)

Clause 22 amends section 152D 'Interstate assistance at fires' to provide that a member of a fire brigade from outside Queensland who is present to assist with a QFES incident in Queensland, may assist or exercise control and the powers of an authorised officer at the incident as provided for in section 152D.

QFES incident is defined to mean an incident for which Queensland Fire and Emergency Services is exercising a function mentioned in section 8B(a) or (b) of the FES Act.

23. Amendment of s 153A (Confidentiality)

Clause 23 amends section 153A'Confidentiality' to provide that, further to section 153A(2) and (3), the offence in section 153A(1) does not apply to the disclosure of information relating

to an investigation of a fire or hazardous materials emergency involving the death of, or serious injury to, a person if the disclosure is to a police officer or staff member of the QPS under the PSAA for the purpose of an investigation by the Commissioner of the Queensland Police Service of the death or injury.

24. Insertion of new ch 5, pt 5, div 9, sdiv 2

Clause 24 inserts new subdivision 2 'Amendments commencing by proclamation'. The new subdivision contains new sections 209 'Permits granted before commencement' and 210 'Disclosure etc. of information acquired before commencement'.

New section 209 provides that a permit to light a fire granted under section 65 and in effect immediately before commencement may be suspended, amended or revoked under amended section 71(2)(c)(i).

New section 210 confirms that new section 153A(4) applies to the disclosure by a person of information acquired by the person before commencement.

Part 4 Amendment of Police Powers and Responsibilities Act 2000

25. Act amended

Clause 25 provides that part 4 amends the *Police Powers and Responsibilities Act 2000.*

26. Amendment of s 411B (Application for police assistance removal order)

Clause 26 makes a minor amendment to section 411B 'Application for police assistance removal order' of the PPRA by correcting a reference to a 'police officer of at least the rank of detective superintendent' to a 'police officer of at least the rank of superintendent who has been appointed as a detective'.

Part 5 Amendment of Police Service Administration Act 1990

Division 1 Preliminary

27. Act amended

Clause 27 provides that part 5 amends the *Police Service Administration Act 1990.*

Division 2 Amendments commencing on assent

28. Amendment of s 1.4 (Definitions)

Clause 28 makes minor and technical amendments to definitions within section 1.4 including by omitting a now obsolete reference to 'MINDA' and relocating the definition of watch-house officer from section 4.9(6) of the PSAA.

The definition of 'external service provider' is expanded by removing the limitation that an external service provider must be a public service employee or class of public service employee. This will allow sub-contractors and others employed or engaged by an entity other than the QPS to be considered as external service providers provided that the other conditions outlined in this definition apply.

29. Replacement of s 2.5A (Officers etc. employed under this Act)

Clause 29 outlines the persons who are employed under the PSAA are police officers, police recruits and special constables.

A later amendment by this Bill to section 8.3 of the PSAA will ensure that a police officer who on medical grounds cannot continue to perform his or her duty may be appointed by the Commissioner as a public service employee under the *Public Service Act 2008*.

A later transitional provision in the Bill will ensure that no impact to employment arrangmements will occur to existing staff members who have been appointed to their position under section 8.3(5) of the PSAA.

30. Amendment of s 5AA.6 (Persons engaged or seeking to be engaged by the service must disclose relevant information)

Clause 30 clarifies that a person engaged or seeking to be engaged by the service must disclose to the Commissioner relevant information the person knows may affect the person's suitability in the way approved by the Commissioner.

31. Amendment of s 5AA.7 (Persons engaged by the service must disclose changes in relevant information)

Clause 31 clarifies that if a person who is engaged by the QPS is aware of a change in relevant information about the person, the person must immediately disclose the information in the way approved by the Commissioner.

32. Omission of s 5AA.8 (Requirements for disclosure)

Section 5AA.8 'Requirements for disclosure' obliges a person to give to the Commissioner information in the approved form. Clause 32 omits section 5AA.8 of the PSAA so that relevant information may be provided in the way approved by the Commissioner.

33. Amendment of s 5AA.11 (Assessment of suitability)

Clause 33 makes a technical amendment to confirm that section 5AA.11 'Assessment of suitability' applies when the Commissioner is considering the suitability of a person to be, or continue to be, engaged by the QPS.

34. Amendment of s 5AA.12 (Particular persons to be advised if person unsuitable)

Clause 34 outlines the process to be adopted if the Commissioner under part 5AA of the PSAA considers a person, other than an external service provider may not be suitable to be or continue to be engaged by the QPS.

Before deciding that a person is not suitable, the Commissioner must disclose this information to the person, give reasons why the Commissioner considers the person may not be suitable to be engaged or continue to be engaged by the QPS, and allow the person a reasonable opportunity to respond.

However, the Commissioner is not required to disclose information or give reasons if section 5AA.12(2) applies.

35. Amendment of s 5AA.13 (External service provider to be advised if person unsuitable)

Clause 35 outlines the process to be adopted if the Commissioner under part 5AA of the PSAA considers an external service provider may not be suitable to be or continue to be engaged by the QPS.

Before deciding that the person is not suitable, the Commissioner must disclose this information to the person, give reasons why the Commissioner considers the person may not be suitable to be engaged or continue to be engaged by the QPS, and allow the person a reasonable opportunity to respond.

However, the Commissioner is not required to disclose information or give reasons if section 5AA.13(2) applies.

36. Amendment of pt 8, hdg (Resignation, retirement and change in status)

Clause 36 amends the heading of part 8 to reflect that this part will apply to resignations, retirements, change in status and summary dismissal.

37. Insertion of new pt 8, div 1, hdg

Clause 37 inserts the heading for the new division 1 'Resignation, retirement and change of status'.

38. Amendment of s 8.3 (Unfitness for duty on medical grounds)

Section 8.3 'Unfitness for duty on medical grounds' allows the Commissioner to appoint a police officer, who is considered on medical grounds to be unable to perform their duties, as a staff member.

Clause 38 provides that a person who is appointed under this section as a staff member stops being a police officer and becomes a public service employee under the *Public Service Act 2008.*

39. Insertion of new pt 8, div 2

Clause 39 introduces the new division 2 'Summary dismissal if sentenced to imprisonment' to part 8 of the PSAA. This division consists of four subdivisions.

Subdivision 1 'Preliminary' outlines through section 8.4 'Application of division' that this division applies to a police officer or police recruit who is sentenced by an Australian court to a period of imprisonment for an offence and through section 8.5 'References to sentence of

imprisonment' that a sentence of imprisonment will include a suspended sentence of imprisonment.

Subdivision 2 'Summary dismissal on sentencing' introduces the new section 8.6 'Dismissal' that provides upon being sentenced to imprisonment for the offence, the person is dismissed from the QPS. The dismissal will apply despite any other provision of the PSAA or any other Act.

Subdivision 3 'Appeal after summary dismissal' comprises four sections namely sections 8.7 'Application of subdivision', 8.8 'Reappointment', 8.9 'Standing down or suspension after reappointment' and 8.10 'Salary entitlement, continuous service and service history'.

The new section 8.7 provides that subdivision 3 applies if on appeal the conviction for the offence is overturned or changed to a sentence other than a sentence of imprisonment.

The new section 8.8 deals with the reappointment of the person who has been successful on appeal by having their conviction overturned or their sentence changed to something other than imprisonment. If the Commissioner had appointed the person in the QPS, the Commissioner must, within 5 business days after the appeal is decided, reappoint the person to the same or similar position at the same classification level or rank the person held before the person was dismissed. If the Governor in Council had appointed the person, the Governor in Council must reappoint the person to the same position and at the same classification level or rank the person held before the person was dismissed.

If the Commissioner reappoints the person, the position must be in the same location as the person was employed before they were dismissed, unless the person consents to employment in a position in a different location in Queensland. Finally, a person reappointed by this section is taken never to have been dismissed under section 8.6 of the PSAA.

The new section 8.9 provides that upon a person being reappointed, the person will be subject to any standing down or suspension from duty under section 6.1 of the PSAA, including any conditions of the standing down or suspension, that was in effect immediately before the person was dismissed. If the person was stood down or suspended from duty before the person was dismissed, the Commissioner must, within 14 days after the person is reappointed, decide whether to revoke the standing down or suspension or again stand down or suspend the person from duty under section 6.1 of the PSAA. If the Commissioner does not act, the standing down or suspension is taken to be revoked 14 days after the person is reappointed.

The new section 8.10 provides that the period from dismissal to reappointment is taken to be a period of suspension from duty without pay. Any entitlement to salary for that period is to be made in accordance with section 6.3(2)(b) of the PSAA. Where a person is to receive a sum under this section, it is intended that the sum, where applicable, captures any allowances the person is entitled to receive in addition to their salary. Subsection (3) declares that the reappointed person is taken never to have been dismissed under section 8.6 for the purposes of calculating their continuity of service and service history.

Subdivision 4 'Operation of division' introduces the new section 8.11 'Interaction between division and pt 7' that declares that any action taken under this division is not part of the police discipline process and does not limit the operation of this process. For example, should a person be reappointed under section 8.8 there is no impediment to the Commissioner engaging the disciplinary provisions contained in part 7 of the PSAA in relation to the person.

40. Omission of pt 9A (Police prints)

Clause 40 omits part 9A of the PSAA. As the *Financial and Performance Management Standard 2019* provides the authority for the setting of charges for goods and services by the QPS, part 9A has become superfluous.

41. Amendment of pt 10, div 1, hdg (Provisions about information disclosure)

Clause 41 amends the heading for division 1 of part 10 to reflect that this division will apply to provisions about the use or disclosure of information.

42. Amendment of pt 10, div 1, sdiv 1, hdg (Information disclosure generally)

Clause 42 amends the heading of subdivision 1 of division 1 of part 10 to reflect that this subdivision applies to the use or disclosure of information generally.

43. Replacement of s 10.1 (Improper disclosure of information)

Clause 43 replaces the existing section 10.1 'Improper disclosure of information' with the new section 10.1 'Unauthorised use of confidential information'.

The new section 10.1 prohibits the misuse of QPS confidential information.

The new section 10.1(5) defines confidential information to mean personal information or other information of a confidential nature. Confidential information does not include publicly available information, or statistical or other information that couldn't reasonably result in identifying an individual.

The new section 10.1(1) and (2) outline that this offence provision will apply to persons who:

- have acquired confidential information or has access to, or custody of confidential information:
  - due to having been or being a member of the QPS performing functions under or relating to the PSAA;
  - due to having been or being engaged to perform functions under or relating to the PSAA; or
  - due to having been or being engaged by an entity that is engaged to perform functions under or relating to the administration of the PSAA; or
- have acquired confidential information or has access to confidential information:
  - whether directly or indirectly from a person mentioned above; or
  - as authorised under an Act, another law or arrangement with the QPS.

The new section 10.1(3) prohibits the person from using confidential information and imposes a maximum penalty of 100 penalty units or 2 years imprisonment.

The new section 10.1(4) outlines the circumstances when a person may use confidential information. These circumstances are:

- to the extent the use is required or permitted under this Act or another Act or to perform the person's functions under this Act or another Act; or
- 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; or

- in compliance with lawful process requiring the production of documents or the giving of evidence; or
- if the use is otherwise required or permitted under another law.

44. Omission of s 10.2C (Misuse of information obtained under ss 10.2A-10.2B)

Clause 44 omits section 10.2C 'Misuse of information obtained under ss 10.2A-10.2B' as it is superfluous through the introduction of the new section 10.1.

45. Amendment of s 10.2G (Definitions for div 1A)

Clause 45 omits a refence to 'MINDA'. Reference to MINDA is no longer necessary as MINDA is an obsolete software system that the QPS has ceased using since 2015.

46. Omission of s 10.2K (Giving information to Queensland Transport to enable Queensland Transport to administer MINDA)

Section 10.2K 'Giving information to Queensland Transport to enable Queensland Transport to administer MINDA' authorises the Commissioner to give QPS information to the head of Queensland Transport to administer MINDA.

Clause 46 omits this section. As the QPS has ceased using MINDA, this section has become superfluous.

47. Amendment of s 10.13 (Surrender of equipment)

Sections 10.13(3) and (4) authorise the issue of a warrant to recover QPS property. As police officers may apply for a search warrant under the PPRA, clause 47 omits the superfluous sections 10.13(3) and (4).

48. Omission of s 10.14 (Vacating of premises)

Section 10.14 'Vacating of premises' authorises the issue of a warrant to recover possession of a QPS premises. As the QPS manages QPS premises in accordance with the *Residential Tenancies and Rooming Accommodation Act 2008*, this section has become superfluous. Consequently, clause 48 omits section 10.14.

49. Amendment of s 10.19 (Offences)

Clause 49 omits the now obsolete offence of harbouring a police officer.

50. Amendment of s 10.23 (Proceedings for offences - general)

Clause 50 will amend section 10.23 'Proceedings for offences – general' to allow, subject to section 10.23A of the PSAA, all prosecutions for offences against the PSAA to be taken in a summary manner under the *Justices Act 1886* on the complaint of any officer.

As this amendment dispenses with the obligation for officers to obtain approval from the Commissioner to institute proceedings, this clause will also remove the authority to allege or aver in a complaint that the complaint is authorised by the Commissioner to lay the complaint.

This clause also outlines when proceedings for offences under this Act must commence. A proceeding for an offence against the PSAA, other than sections 10.1 or 10.21BA must commence within the later of either 1 year after the commission of the offence or 1 month after the offence comes to the complainant's knowledge.

A proceeding for an offence against section 10.1 of the PSAA must start within the later of 1 year after the commission of the offence or 6 months after the offence comes to the complainant's knowledge.

This amendment, by extending the statutory limitation of time to commence proceedings for an offence against section 10.1 to 6 months after the offence comes to the complainant's knowledge, will ensure an investigation into the misuse of confidential information may be conducted thoroughly.

51. Omission of ss 10.26 and 10.27

Section 10.26 'Annual report' of the PSAA creates a requirement for the Commissioner to prepare and provide an annual report on the administration and operations of the police service. However, the FA Act now obliges the QPS to prepare annual reports in accordance with the *Financial and Performance Management Standard 2019*.

Section 10.27 'Review of Act' of the PSAA requires this Act to be reviewed by dates long since passed.

As sections 10.26 and 10.27 have become superfluous. Consequently, clause 51 omits these sections.

52. Insertion of new pt 11, div 14

Clause 52 inserts the new division 14 'Transitional provisions for Police Service Administration and Other Legislation Amendment Act (No.2) 2022' which consists of the new sections 11.40 'Staff members appointed under section 8.3(5) before commencement' and 11.41 'Application of s 10.1 relating to confidential information acquired or gained before commencement'.

Section 11.40 will ensure that the employment arrangements of an existing staff member employed under section 8.3(5) of the PSAA will not change after the commencement of this Act.

Section 11.41 allows the offence provision outlined in the new section 10.1 to apply to confidential information acquired or accessed prior to the commencement of this Act.

Division 3 Amendments commencing by proclamation

53. Amendment of s 1.4 (Definitions)

Clause 53 inserts definitions of 'new prescribed officer' and 'original prescribed officer' into section 1.4 and relocates section 1.4 to the new schedule 2 'Dictionary'.

54. Amendment of s 7.12 (When disciplinary proceeding must be started)

Clause 54 expands the circumstances that may delay the start of a disciplinary proceeding to include when an associated proceedings for an application for a domestic violence protection order naming the relevant police officer as a respondent has been started. In such an instance, a disciplinary proceeding against the subject officer must start within either of the later:

- 1 year from the date the ground for disciplinary action arose; or
- 6 months from the date the application for the domestic violence protection order has been finalised.

Clause 54 will also clarify that a disciplinary proceeding will start when an ADP invitation is given to the subject officer.

55. Amendment of s 7.13 (When grounds for disciplinary action arises)

Clause 55 expands the current definition of 'prescribed operation' in section 7.13 to include investigations relying on telephone interception or surveillance devices, and equivalent investigations to the investigations outlined in section 7.13(7)(a) to (c) conducted by other Australian law enforcement agencies or anti-corruption agencies.

56. Amendment of s 7.17 (Requirement to give subject officer an invitation and ability to seek further information)

Section 7.16 'Offer to impose disciplinary sanction or professional development strategy' of the PSAA outlines that a prescribed officer may impose a disciplinary sanction or professional development strategy.

Section 7.17 'Requirement to give subject officer an invitation and ability to seek further invitation' of the PSAA requires a prescribed officer to give the subject officer an invitation that must state certain matters.

Clause 56 outlines that an invitation must indicate that the subject officer may refuse the invitation by giving the prescribed officer written notice of the refusal within a stated period of at least 21 days.

57. Insertion of new s 7.17A

Clause 57 inserts the new section 7.17A 'Ending of proceeding – subject officer does not accept invitation' of the PSAA This clause clarifies that a disciplinary proceeding will end under division 3 of part 7 and a disciplinary proceeding against a subject officer may be started under division 4 of part 7 if the officer:

- does not give the prescribed officer a written submission and other material within a stated period under section 7.17(2)(c) of the PSAA; or
- refuses the invitation within the stated period under section 7.17(2)(d) of the PSAA; or
- fails to give the prescribed officer the required information within the period stated in section 7.17(5) or the further period stated in section 7.17(6) of the PSAA.

This clause allows a disciplinary proceeding under division 4 of part 7 to be started within 6 months from:

- if the subject officer does not give the prescribed officer a written submission and other material within a stated period under section 7.17(2)(c) of the PSAA – the day the stated period ends;
- if the subject officer refuses the invitation within the stated period under section 7.17(2)(d) of the PSAA – the day the notice is given; or
- if the subject officer fails to give the prescribed officer the required information within the period stated in section 7.17(5) or the further period stated in section 7.17(6) of the PSAA – the day the period or further period ends.

58. Insertion of new pt 7, div 6, sdiv 1 and sdiv 2, hdg

Clause 58 inserts the new subdivision 1 'Conduct of disciplinary proceeding if prescribed officer unable to continue' and subdivision 2 'Miscellaneous provisions' into division 6 of part 7 of the PSAA. Subdivision 1 consists of sections 7.42A 'Application of subdivision', 7.42B 'Appointment of new prescribed officer' and 7.42C 'Ending of proceeding-subject officer does not give consent for new prescribed officer to conduct proceeding' which are explained below:

Subdivision 1 Conduct of disciplinary proceeding if prescribed officer unable to continue

7.42A Application of subdivision

The new section 7.42A outlines the circumstances where a prescribed officer may be replaced to allow a disciplinary proceeding to be finalised. This subdivision applies if the original prescribed officer has started a disciplinary proceeding and is unable to continue because of:

- death;
- ceasing employment;
- suspension from duty;
- demotion; or
- mental or physical incapacity as certified by a medical practitioner.

Section 7.12 'When disciplinary proceeding must be started' of the PSAA outlines that a disciplinary proceeding starts when an abbreviated process notice or a disciplinary proceeding notice for the proceeding is given to the subject officer by the prescribed officer.

7.42B Appointment of new prescribed officer

The new section 7.42B provides that within 28 days of becoming aware that the original prescribed officer cannot continue, the Commissioner must ask the subject officer to consent, within the stated period of at least 14 days or as long a period as allowed by the Commissioner to the appointment of a new prescribed officer.

This section provides that if the subject officer gives written consent, the Commissioner must appoint a new prescribed officer within 28 days of receiving consent. The appointment of the new prescribed officer has the following limitations:

- the new prescribed officer may only the power to impose the same disciplinary sanction as the original prescribed officer; and

- the new prescribed officer may only consider matters stated in the abbreviated process notice or the disciplinary proceedings notice and any submissions given to the original or new prescribed officer; and
- if the original prescribed officer has proposed a professional development strategy, the new prescribed officer must offer the same or equivalent and not impose a discipline sanction; and
- if the original prescribed officer has proposed a disciplinary sanction, the new prescribed officer must not impose a greater sanction.

7.42C Ending of proceeding-subject officer does not consent for new prescribed officer to conduct proceeding

The new section 7.42C provides that if the subject officer does not consent to the appointment of a new prescribed officer, the Commissioner must appoint another prescribed officer to start the disciplinary proceeding.

This section provides that the new prescribed officer must have the power to impose the same disciplinary sanction as the original prescribed officer. The new prescribed officer must start a new disciplinary proceeding within 28 days of being appointed and must conduct the new proceedings without regard to any earlier material unless this is consented to by the subject officer.

Subdivision 2 Miscellaneous provisions

59. Insertion of new s 11.42

Clause 59 inserts the new section 11.42 'Application of pt 7, div 6, sdiv 1 to disciplinary proceedings started before commencement' which confirms that the scheme providing for the replacement of original prescribed officers by new prescribed officer will not apply to a disciplinary proceeding started before the commencement of the Act.

60. Amendment and renumbering of schedule (Relevant information)

Clause 60 makes a technical amendment by omitting the term 'section 1.4' and inserting the term 'schedule 2'. The effect of this amendment will be to list the exiting schedule 'Relevant information' as schedule 1. A later amendment will insert schedule 2 'Dictionary'.

61. Insertion of new sch 2

Clause 61 inserts the new schedule 2 'Dictionary'.

Part 6 Amendment of Police Service Administration Regulation 2016

62. Regulation amended

Clause 62 provides that part 6 amends the *Police Service Administration Regulation 2016.*

63. Replacement of s 72 (External service providers)

Clause 63 expands the list of entities that employ external service providers to include Data and Information Services, Smart Service Queensland and Transformation Projects.

Part 7 Amendment of Weapons Act 1990

64. Act amended

Clause 64 provides that part 7 amends the *Weapons Act 1990*.

65. Amendment of s 153 (Authorised officers)

Clause 65 amends section 153 'Authorised officers' by authorising the Commissioner, an executive officer or a commissioned officer to delegate their powers as an authorised officer under part 2 or part 3, division 3 to a police officer or a QPS staff member. A power may only be delegated if in the authorised officer's opinion, the delegate has the necessary expertise or experience to exercise the power.

66. Amendment of pt 8, hdg (Transitional provisions)

Clause 66 amends the heading of part 8 to reflect that this part applies to transitional and validating provisions.

67. Insertion of new pt 8, div 8

Clause 67 inserts the new division 8 'Validation provision for Police Service Administration and Other Legislation Amendment Act (No. 2) 2022 into part 8. This division consists of the new section 195 'Validation of particular decisions under pt 2 or pt3, div 3' which applies in relation to an application for a PTA, a licence or a renewal of licence approved before the commencement of the *Police Service Administration and Other Legislation Amendment Act (No. 2) 2022*. Any licence or PTA that has been approved is not invalid merely because the police officer or QPS staff member approving the application was not an authorised officer.

Part 8 Minor and consequential amendments

68. Legislation amended

Clause 68 provides that Schedule 1 makes minor and consequential amendments to the legislation it mentions.